

3. LEX PROPERTIES, LLC, ZONING MAP AMENDMENT & WINDING CREEK AT MONTICELLO ZONING DEVELOPMENT PLAN

- a. MAR 2015-11: LEX PROPERTIES, LLC (8/30/15)\* – petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 10.14 net and gross acres, for property located at 3455 Saybrook Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The 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 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A) by expanding housing choices (Goal #1), supporting infill and redevelopment (Goal #2) and providing well-designed neighborhoods (Goal #3). It also recommends protecting the environment (Theme B) by supporting the community's green infrastructure program (Goal #3) and by implementing the adopted environmental policy (Goal #2.a.). Lastly, the Plan advocates for compact, contiguous and/or mixed-use sustainable infill development to accommodate future growth needs and sustain the Urban Service Area concept (Theme E, Goal #1.b.)

The petitioner proposes to develop 27 detached single-family residential lots on the site, which would yield a residential density of 2.66 dwelling units per acre.

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

The Staff Recommends: Postponement, for the following reasons:

1. The environmental suitability of the site for residential land use is questionable given its previous use for a private sanitary sewer treatment plant. Such plants, once removed, can leave contaminated soils or other potentially hazardous materials that would not be appropriate for a future residential land use. Additional environmental studies are recommended to provide assurance to the Urban County Government and the Planning Commission prior to making a recommendation to the Urban County Council.
  2. The requested Planned Neighborhood Residential (R-3) zone is not the most compatible residential zone with the surrounding Monticello and Robinwood subdivisions. If the site can be found to be suitable for development from an environmental perspective, the staff believes that the Single Family Residential (R-1D) zone would be more appropriate for the subject property.
- b. ZDP 2015-53: WINDING CREEK AT MONTICELLO (8/30/15)\*- located at 3455 Saybrook Road.  
(EA Partners)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the proposed lotting and past environmental concerns involving the subject property.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote 25' floodplain setback on east side of floodplain.
8. Addition of radius information on cul-de-sac.
9. Discuss lotting pattern proposed for floodplain.
10. Discuss proposed access to LFUCG property.
11. Discuss lack of environmental Phase I or II study on the property.
12. Discuss need for HOA maintenance of floodplain area.
13. Discuss width of park access from cul-de-sac.
14. Discuss environmental conditions on site.

Request for Amendment: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner has closed on the purchase of the subject property, and now needs to amend the application for this rezoning request to reflect the change. He entered an amended application form and the new deed for the property into the record of the meeting, noting that, although the company name contains the word "condominiums," the petitioner does not intend to build condominiums on the subject site.

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

Staff Presentation: Ms. Wade began the staff's presentation of this rezoning request by noting that the staff had distributed to the Commission members a supplemental staff report; copies of a 1994 staff report; and an excerpt from the Zoning Ordinance. She added that the staff had received a large amount of correspondence related to this request, including a petition submitted in July, and a more recent petition submitted a few days prior to this hearing. She distributed those items to the Commission members for their review.

Ms. Wade stated that the subject property is mostly treed or covered in vegetation, and approximately one-third of its area is occupied by the floodplain of South Elkhorn Creek. The property is approximately 10 acres in size, and Saybrook Road stubs into it. All of the surrounding properties are zoned R-1C, with the exception of a small lot to the south, which is zoned A-U and owned by the Lexington-Fayette Urban County Government. The property is bordered by the Robinwood and Monticello subdivisions, with Boston Road, Cromwell Way, and Monticello Drive serving as collector streets in the area. Ms. Wade explained that the petitioner is proposing the R-3 zone for the subject property in order to develop 27 single-family residential lots, for a density of 2.66 dwelling units per acre.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view into the property from Saybrook Road, noting a deteriorated driveway with a gate; 2) a view of the property looking toward South Elkhorn Creek, noting the adjacent single-family homes to the east; 3) a view toward the west, also depicting single-family residences; 4) a view of South Elkhorn Creek from Halifax Drive, noting that, although the stream is channelized at that location, it flows naturally through the subject property; 5) a view from Cromwell Way, south of the subject property, noting the more natural creek in that area; and 6) an aerial view of the subject property.

With regard to the history of the subject property, Ms. Wade stated that it was rezoned in 1964 from a Residential zone to a Heavy Industrial zone to allow for development of the Monticello Wastewater Treatment Plant, which was a private sanitary sewer package plant. The facility provided sanitary sewer service to this portion of Fayette County prior to construction of public sewers in the far southwestern portion of the community. In 1969, the property was rezoned from the I-2 zone to the A-U zone as part of a comprehensive rezoning of the entire community. That zoning has remained in place since 1969. Ms. Wade noted that, in 1984, LFUCG went through a condemnation process to remove the private sanitary sewer plant, and require connection of that area to the public sanitary sewer system. Shortly thereafter, the property was reconfigured for use as a public park. In 1993, the park was closed, and equipment was removed. In 1994, Ball Homes requested to rezone the property from A-U to R-1D in order to develop 22 single-family residential lots. The staff recommended approval at that time, due to the appropriateness of the R-1D zone, but that request was withdrawn after concerns surfaced about environmental contamination on the subject property.

Ms. Wade stated that the 2013 Comprehensive Plan Goals & Objectives emphasize the importance of growing successful neighborhoods; specifically by supporting infill and redevelopment, and providing well-designed neighborhoods. The Plan also recommends protecting the environment via support of the community's Green Infrastructure program, as well as providing infill and redevelopment in a compact, contiguous, and/or mixed-use fashion in order to accommodate future growth needs and sustain the Urban Service Area. The staff reviewed all of the elements of the Plan prior to their presentation of the staff report to the Zoning Committee in July, wherein they recommended postponement of this request due to environmental concerns on the subject property, and staff concerns that the requested R-3 was not the most compatible residential zone for the surrounding neighborhoods. The staff contended that the site was more suitable for development of R-1D lots.

Ms. Wade noted that, since that meeting in July, the petitioner has completed soil sample studies on the subject property, and provided a report on those studies from Childress & Associates, LLC. The soil sample locations were established in consultation with the LFUCG Division of Environmental Services; the testing indicated that there was no significant contamination on the subject property. The staff's major concern about the appropriateness of the R-3 zone remains, however. The petitioner revised their development plan a few days prior to this hearing, but the proposed density did not change. And, although some revisions were made to the lotting pattern, some lots still include portions of the creek, the floodplain, and the treed areas, about which the staff is also concerned. The petitioner seems intent on subdividing the creek and the floodplain area, rather than leaving it in the ownership of an HOA, which could better manage and maintain it. The staff has seen several instances wherein single-family residential lots abutting creeks and floodplain areas led to a degradation of the environmental quality of the land, and impacted the stormwater quality through unnecessary mowing of riparian areas.

Ms. Wade stated that, although the petitioner contends that the proposed rezoning to R-3 is in agreement with the Comprehensive Plan, and that the A-U zone is inappropriate and the R-3 zone is more appropriate, the staff cannot come to that conclusion. While the Comprehensive Plan does emphasize infill and redevelopment, it encourages that it be done in a context-sensitive manner to both the environment and the scale of the lots of the adjoining neighborhoods. The staff could support the development of single-family homes on the subject property, but the number of lots proposed--and possible--in the R-3 zone remains troubling to the staff, and leads to their recommendation of dis-

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approval of this request. With regard to the petitioner's contention that the A-U zone is not appropriate for the subject property due to the unlikelihood of developing an agricultural use there, the staff would note that that is also intended as a "holding zone" until more appropriate urban development is proposed. The petitioner contends that the proposed density is much lower than that of the surrounding neighborhood, but the staff opined that the density is only lower because so much of the property is undevelopable due to the floodplain.

Ms. Wade noted that the staff had distributed several excerpts from the Zoning Ordinance to the Commission members, detailing the specifications of the R-1C, R-1D, and R-3 zones. The R-1C zone requires an 8,000 square-foot lot; the R-1D zone requires a 6,000 square-foot lot; and the R-3 zone permits zones as small as 2,500 square feet. With regard to street frontage, the required frontage for the R-1C and R-1D zones is 60 feet, while the R-3 zone requires only 25 feet. The petitioner is currently proposing 27 lots with 50 feet of frontage, but they could double the number of lots depicted on their development, and the staff does not believe that level of density would be appropriate directly adjacent to existing, established single-family residential neighborhoods. With regard to the petitioner's offer of conditional zoning restrictions, Ms. Wade said that limiting the development of the property to single-family does not go far enough to ensure that the proposed development is compatible with the adjoining neighborhood. The staff is recommending disapproval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the preliminary zoning development plan, referring to a rendered copy of the plan to orient the Commission. He stated that the petitioner is proposing to extend Saybrook Road into the subject property, with an "elbow" and a cul-de-sac. The plan depicts 26 single-family lots, of varying sizes, with a 27<sup>th</sup> lot for management of the floodplain area. This version of the development plan is a revision, for which the staff issued the following revised recommendation:

The Staff Recommends: Approval, subject to the following revised requirements:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~7. Denote 25' floodplain setback on east side of floodplain.~~
- ~~8. Addition of radius information on cul-de-sac.~~
- ~~7.9. Discuss lotting pattern proposed for Revise (shorten the depth of) Lots 19-22 to include additional floodplain area in Lot 27.~~
- ~~10. Discuss proposed access to LFUCG property.~~
- ~~11. Discuss lack of environmental Phase I or II study on the property.~~
- ~~8.12. Discuss Denote need for HOA maintenance of floodplain area.~~
- ~~13. Discuss width of park access from cul-de-sac.~~
- ~~14. Discuss environmental conditions on-site.~~

Mr. Martin stated that the staff has considerable concerns about the proposed lotting of the floodplain, although there is no specific prohibition against it. That type of development exists in several older areas of Lexington-Fayette County, but, in the past, it has led to management issues for floodplain areas. The staff believes that it would be better to have as much of the floodplain area as possible under HOA control, rather than private ownership, because that arrangement typically leads to better maintenance of floodplain areas. Condition #7 in the revised staff recommendation would require that several of the depicted lots be shortened, so that more of the floodplain area could be included in the HOA lot.

With regard to condition #10, Mr. Martin said that the plan originally depicted a proposed access to the adjacent LFUCG property. The original plat for the property includes a note that access is provided to that property via an access easement. Since that access exists, the staff no longer believes that it is necessary to provide access from the subject property, so condition #10 was deleted. Conditions #11 and #14 were deleted following the submission of the petitioner's environmental report, indicating that there are no existing environmental issues on the property.

Commission Questions: Mr. Drake asked for the dimensions of the smallest lot depicted in the proposed development. Mr. Martin answered that the smallest lots are approximately 5,000 square feet in size.

Mr. Owens asked Mr. Martin to indicate the location of the access easement to the LFUCG property. Mr. Martin answered that the access easement is not depicted on this plan, but it is located off of Cromwell Way. Mr. Owens asked if it would be possible to create lots that did not include the floodplain area. Mr. Martin responded that it would require an irregular lot line, but it was possible, particularly given the smaller lot sizes that are allowed under R-3 zoning.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He reiterated that the petitioner is proposing to construct single-family, detached residential units on the subject property, with a conditional zoning restriction that would permit only such units to be constructed.

Mr. Murphy stated that there was a package sewage treatment plant on a portion of the subject property until approximately 1990, when LFUCG created a policy to take private sewage facilities offline, and require connections to the city sewer system. He said that there was some discussion at the Subdivision Committee meeting about overnight pumping of sewage onto the subject property in the past, which was the basis for the petitioner's environmental study. Mr. Murphy interviewed Wayne Waddell, who worked for the LFUCG Department of Law at the time, and he indicated that, when the private plant was taken offline in 1990, the lagoons were drained. A siphon system was developed to transfer that water into the newly-constructed trunk sewer system; those transfers were performed overnight, because that is the lowest flow time for sanitary sewer systems. The sludge was also removed from the property, and taken to the city's main sewage treatment facility, which had the capacity to handle it. Mr. Murphy noted that the neighbors of the subject property have been vigilant over the years, and have made several complaints about dumping on the property. He obtained copies of the most recent complaint, which indicated that a company called Hydromax was dumping raw sewage in the vacant park area. LFUCG sent representatives from six different divisions to investigate the complaint, and found a sanitary sewer manhole with tire tracks near it, but no evidence of dumping. They contacted Hydromax and found that the company had performed TV testing, clearing, and smoking of the sewers in December of 2011. Mr. Murphy explained that TV testing requires a truck with a motor, which could easily be mistaken for a pump truck.

Mr. Murphy stated that the petitioner performed Phase I and II environmental testing on the subject property. Phase I involves an inspection by the consultant, and a check of public records to see if a Phase II test would be needed. The petitioner determined that a Phase II test would not be necessary, but, because of the neighbors' concerns, performed the additional Phase II testing anyway. Copies of the Phase II testing report, which indicated no concerns on the property, were distributed to the Commission members prior to the start of the hearing.

Mr. Murphy said that the petitioner contends that the proposed development is fully compatible with the existing neighborhoods, despite the neighborhood concerns to the contrary. With regard to the concerns about traffic, he said that it was always planned for Saybrook to end in a cul-de-sac on the subject property, since it is the only way in and out of the property. In response to concerns about overcrowding at Wellington Elementary School, Mr. Murphy contacted Fayette County Public Schools, which indicated a projected 2015 fall enrollment of 666 students. The actual enrollment was 640 students, so there should be no issues with overcrowding. The petitioner contends, with regard to concerns about displacement of wildlife on the property, that over 1/3 of the acreage will remain undeveloped, since it is a floodplain area, so there will still be habitat areas for the wildlife. Mr. Murphy added that the petitioner also contends that residents' concerns about the proposed development causing a reduction in property values will likely be unfounded. Houses in the proposed development will be 2,000 square feet in size, with a two-car garage, and will sell for approximately \$240,000. The houses will be larger than most of the surrounding homes, so there should be no loss of property values.

Mr. Murphy stated that the staff seems to agree that the subject property is suitable for development, but they do not agree with the petitioner's contention that the R-3 zone is appropriate. He said that one of the overarching themes of the 2013 Comprehensive Plan was the need to utilize vacant, overlooked parcels for development, in order avoid the expansion of the Urban Service Area boundary. The 2013 Vacant Land Survey, performed in 2013, determined that the subject property should be included in the 6,700 acres that were found to be available for development. The property has been designated for residential development in every Comprehensive Plan for the last 40 years.

With regard to the staff's concerns, Mr. Murphy said that their opinion seems to differ from the petitioner's on two points: management of the floodplain area, and the appropriateness of the R-3 zone. Referring to the rendered development plan, he said that the west side of the floodplain area is irregularly-shaped; the east side is straighter, but the stream does not lie in the center of the floodplain. The petitioner lotted off the floodplain area, because of the other floodplain in the area is included in individual lots rather than being managed by an HOA. The petitioner is concerned that the small size of the proposed development would not be able to maintain the floodplain area, since many small HOAs go defunct. By placing the floodplain in the direct responsibility of private owners, the petitioner believed that it could be better maintained. The petitioner has included part of the floodplain in a lot, with the intention of performing a hydrological study at some point in the future to determine the exact location of the floodplain. Once that determination is made, the petitioner might take further action on the property. Mr. Murphy noted that, after some discussion with the petitioner prior to the hearing, the petitioner would be willing to create an HOA and revise the lotting of the proposed development in order to place more of the floodplain area under HOA management.

Mr. Murphy said, with regard to the staff's concerns about the proposed R-3 zone, that he took exception to the portion of the staff report that reads: "The only reason the density is lower than the adjoining subdivision is because of the calculation factors in the large amount of undevelopable land and floodplain." He said that the overall density pro-

posed is 2.6 dwelling units per acre; Low Density Residential is defined as five units per less per gross acre, or four units or less per net acre. After removing approximately 1/3 of the property area from the calculation (because of the floodplain), Mr. Murphy calculated a residential density of approximately 3.9 units per acre, which is also below the definition of Low Density. The petitioner believes that, although the density and lot sizes proposed would be commensurate with the requirements of the R-1D zone, the R-3 zone is necessary due to the topographic features of the subject property. The setback and side yard flexibility will be required in order to construct the larger houses proposed, which include two-car garages.

Referring to his exhibit packet, Mr. Murphy stated that he had performed an assessment of the 161 properties within the 500' notification area. Those properties have an average lot size of .26 acres; the average lot size of the proposed development is .25 acre. The average frontage of most of the lots in the neighborhood is 74 feet; lots in the proposed development will have an average of 50 feet of frontage. The average assessed value of the homes in the area is \$141,000; the petitioner is proposing home prices of approximately \$240,000 for the subject property. The petitioner contends that a grid development would not be feasible for the subject property, due to the extensive floodplain area and the need for a cul-de-sac, rather than a through street. Mr. Murphy said that the petitioner will agree to a minimum lot size of 6,000 square feet, but they believe that the R-3 zone is necessary for the success of the proposed development.

Mr. Murphy stated that the petitioner understands the concerns of the staff and the neighbors, but he believes that he "has gone above and beyond" to address those concerns. The petitioner also believes that many successful neighborhoods have been developed in the community with R-3 zoning. Mr. Murphy displayed several photographs of existing subdivisions with the types of housing that could be built under the proposed R-3 zoning. He added that the subject property is not appropriate for agricultural use, so the existing A-U zoning is no longer appropriate.

Citizen Support: Greg Edmonson, realtor, stated that he had performed some cost analysis of the proposed development and the surrounding area. He believes that the homes in the proposed development would be attractive and energy efficient, and would enhance the property values in the area. He said that the proposed development could be similar to the successful Wellington Gardens subdivision.

Mr. Edmonson added that he believes that the proposed R-3 zoning could help to keep the prices of the homes in the proposed development down, since it could reduce construction costs.

Note: Chairman Owens declared a brief recess at 3:04 p.m. The meeting reconvened at 3:12 p.m.

Citizen Opposition: Otto Piechowski, 3451 Saybrook Road, stated that his home is immediately adjacent to the subject property. He asked if the Commission has the authority to reject the proposed development. Mr. Owens answered that the Commission can recommend approval or disapproval to the Urban County Council.

Mr. Piechowski stated that Lenntech, a company specializing in water treatment and purification, defines heavy metals as "elements of heavy density which are seriously toxic." Referring to a photograph of the subject property, he noted that several areas were recently mowed, because he and his neighbors have been mowing it for over 20 years, in addition to removing trash and debris. Mr. Piechowski feels that he and his neighbors "have been caring for the property for 20 more years than the people who wish to develop it."

Mr. Alcorn, a former neighbor, had testified that there were two sewage tanks which were removed from the subject property. He said that the environmental study performed by Childress & Associates, LLC, did not indicate the former location of the towers, or whether those locations were tested. If illegal dumping was done on the property, those sites needed to be found and tested to the full depth, Mr. Piechowski opined, because heavy metals sink. The site should also be tested for polychlorinated biphenyls (PCBs), he believes, which were made illegal by the Environmental Protection Agency in 1979 due to their high levels of carcinogens. Mr. Alcorn had also testified that an electrical transformer had been removed from the site at some point, and Mr. Piechowski believes that site should be found, and the soil tested for PCBs.

Mr. Piechowski stated that, although the testimony at this hearing has referred to one floodplain and one stream being located on the subject property, he believes that there are two streams on the site. He said that climate change could result in annual rainfall rates as much as five inches above current levels; the additional impervious surface created by the proposed development could increase the amount of stormwater in the area and further exacerbate an existing flooding problem. The presence of PCBs or heavy metals on the subject property could cause that runoff to be toxic.

Mr. Piechowski urged the Planning Commission members to disapprove this request, since he believes that proper testing of the site has not been done. He read the following quote from Pope Francis: "Neighborhoods lacking in sufficient greenspace often occur. We are not meant to be inundated by cement, asphalt, glass, and metal, and to be depleted from our physical contact with nature. There is a need to protect common areas in urban landscapes, which increase our sense of belonging, of rootedness, of feeling at home within a city, which includes us and brings us to-

gether. In urban settings it is helpful to set aside green spaces which can be preserved and protected from human intervention."

Janet Piechowski, 3451 Saybrook Road, stated that over 400 residents in the Robinwood and Monticello neighborhoods had signed petitions against this request due to concerns about the environmental issues and increased density. She said that she was concerned that the proposed R-3 zoning could result in the petitioner constructing additional units over the number currently proposed. Ms. Piechowski added that she was not reassured by Mr. Edmonson's indication that the proposed development could be similar to the Wellington Gardens subdivision, since she believes that development is "claustrophobic" and "just an unappealing series of garages."

Bob Seelbach, formerly of 3485 Boston Road, stated that he resided at that address at the time of the removal of the sewage plant. He said that the treatment plant was located directly behind his house; and, at one time, his brother spent a summer painting the two holding tanks to which Mr. Piechowski referred. Mr. Seelbach has photographs of the former park on the property, and he served as the chairman of the committee that raised funds to provide the park equipment there.

Mr. Seelbach stated that the former sewage retention pond was located near the end of the existing terminus of Saybrook Road. The report from Childress & Associates, LLC, indicated that that area of the property was tested, and was determined to be free of hazards; however, the effluent that was stored in the pond had already been treated, so Mr. Seelbach believes that the testing should have been done at the location of the tanks. He noted that, contrary to Mr. Murphy's statements, the effluent was not pumped away, but rather was drained into the creek.

Mr. Seelbach said, with regard to the LFUCG property on Cromwell Way, that he does not believe that the access easement on the property exists. The owner of the property at 529 Cromwell Way signed the submitted petition, and he was not aware of such an easement or its location on his property.

Mr. Seelbach stated that the subject property is 10.1 acres in size, but the petitioner is proposing to develop 4.2 acres of it due to the floodplain area. He said he does not believe that the proposed R-3 zoning is appropriate for the subject property.

Molly Franklin, 556 Merrimac Drive, stated that she is concerned that, if the subject property is rezoned to R-3, the petitioner will develop it with the maximum number of units, rather than the 27 units proposed. She said, with regard to Mr. Murphy's comments about Wellington Elementary School, that it is not overcrowded at the moment. However, in the FCPS redistricting plan, which will take effect in 2016, Wellington's coverage area was increased. Ms. Franklin is concerned that that plan did not take into account the proposed development, and the resulting increases in attendance could result in overcrowding.

Mark Tucker, 545 Cromwell Way, stated that his home is located downstream from the subject property. He echoed his neighbors' concerns about the proposed R-3 zoning, opining that any density greater than that allowed by the R-1C zone would be inappropriate and inconsistent with the surrounding neighborhoods.

Mr. Tucker said that there have been two sanitary sewer overflows into his living space within the past five years. He is concerned that deforesting the subject property and adding impervious surface could increase the stormwater runoff, which could increase the flooding impact on his property. Mr. Tucker stated that, until LFUCG has addressed the ongoing concerns in the area, he believes that it would be "highly imprudent" to add more development to the area.

Robin Young, Robinwood Neighborhood Association, stated that she is concerned about the proposed R-3 zoning and its potential impact on the Robinwood, Monticello, and Stonewall neighborhoods. She said that those three neighborhood associations have worked together over the years to keep the south side of Lexington-Fayette County "clean, healthy, and safe," and they do not want additional development to be to the detriment of the existing residents.

Ms. Young noted that she is not opposed to development itself, because she appreciates her neighbors. She said that developing the vacant subject property, which is heavily treed, could help to eliminate some areas of concern, and could provide more eyes and ears to help monitor the neighborhood. She asked that, should the Commission choose to approve this request, they consider the R-1D zone, rather than the R-3 zone.

Mr. Seelbach noted, for clarification, that he currently resides at 3386 Tisdale Drive (on the other side of the subject property), and has done so since 1974.

Evan Belt, 3439 Saybrook Road, stated that he was concerned that, if the R-3 zone is approved for the subject property, the development plan could change, based on the petitioner's need for flexibility.

Kathy Acres, 3436 Saybrook Road, stated that she is concerned about the land on the other side of the creek, and how it will be maintained.

Petitioner Rebuttal: Mr. Murphy stated that the petitioner understands the neighbors' concerns, particularly since the subject property has remained undeveloped for 40 years. He said that environmental testing is not a requirement for a zone change, but the petitioner had it done in an attempt to address the residents' concerns about the safety of developing the property. Ms. Childress is experienced, and conducted the environmental testing to recognized industry standards, and no hazards were found.

With regard to the concerns about flooding, Mr. Murphy noted that the Engineering Manuals place very stringent requirements on development, which the petitioner must meet. In addition, the petitioner cannot build within 25 feet of the established floodplain area on the property, and every permit throughout the construction process requires the approval of the Divisions of Engineering and Water Quality. Mr. Murphy explained that the petitioner is also required to conform to the requirements of the EPA Consent Decree, including the Capacity Assurance Program.

Mr. Murphy said, with regard to the concerns that the development plan could change, that the petitioner is willing to agree to conditional zoning restrictions for the property. Should the petitioner wish to change those restrictions, another zone change would be required to do so, including the notification and hearing processes. He said that the petitioner is willing to agree to those conditional zoning restrictions to restrict the minimum lot size, and to create an HOA lot to manage the floodplain area. The petitioner believes, however, that the R-3 zoning is necessary to provide the degree of flexibility in setbacks and side yards in order to develop the types of homes that will sell in the current market.

Opposition Rebuttal: Mr. Belt stated that Mr. Murphy did not refer to a restriction to limit the subject the property to single-family units. He added that he believed that there is sufficient demand for the types of homes that already exist in the area.

Petitioner Comment: Mr. Murphy stated that the petitioner is requesting a conditional zoning restriction to limit the subject property to single-family, detached dwellings.

Staff Rebuttal: Ms. Wade noted that the staff did not receive formal notice of the petitioner's intent to offer conditional zoning restrictions for the subject property; rather, those restrictions were included on the face of the revised plan when it was filed earlier in the week. According to the Zoning Ordinance, the Planning Commission and the Council may restrict a property to a particular use, a category of uses, or a particular density; may impose architectural or visual requirements; or impose screening or buffering restrictions. Ms. Wade noted that the Planning Commission could not restrict lot sizes via conditional zoning, and she would not advise that they pursue that avenue, because it is not specifically outlined by Kentucky state law. She opined that the petitioner has not offered a particular density restriction because he intends to attempt to change the location of the floodplain in order to create additional lots on the property. The staff believes that the R-1D zone would be more appropriate for the subject property, and that the Comprehensive Plan recommends compatible development, including massing and scale. The staff contends that the massing and scale of a development with three-foot side yards would be different from that of the existing, adjoining neighborhoods.

Ms. Wade stated, with regard to Mr. Murphy's statement about the A-U zone, that there are currently 24 conditional uses that are available in the A-U zone, besides single-family residential or agricultural use. The staff's contention that the subject property is not ready for the R-3 zone does not indicate, therefore, that there are no allowable uses for the property.

Ms. Piechowski asked if a community garden would be allowed in the existing A-U zone. Ms. Wade answered that a garden center would be allowed as a conditional use in the A-U zone, but a community garden is not specifically listed in the Zoning Ordinance; they have been deemed appropriate in any zone.

Commission Questions: Mr. Drake stated that it appeared that the major point of contention was the difference between the R-1 and R-3 zones; he asked if the petitioner would lose lots in the proposed development if he agreed to the R-1D zone. Ms. Wade answered that she did not know if the petitioner would lose lots under those circumstances. Mr. Drake said that it seemed that the economics of the development could change, which might require the petitioner to develop larger homes that were more out of scale with the surrounding development. Ms. Wade responded that Mr. Drake's scenario made a number of assumptions, which she was not sure the Commission should be prepared to make. She said that there were several options for the petitioner, including developing the property with smaller houses that would fit in with the neighborhood, or selling the property to another developer. Mr. Drake said that all of those options were limited by economics, and there is a minimum rate of return to make the development profitable. Ms. Wade responded that the Planning staff does not review pro formas or "crunch numbers" to determine whether a development will provide a return on investment, because planning for the community does not include calculating the economic success for the developer. Mr. Drake said that, if the number of lots is decreased, the developer will be required to earn more revenue to per lot by constructing larger homes. He asked if that type of devel-

opment would fit with the desire for compatibility with the existing neighborhoods, to which Ms. Wade responded that it would not.

Mr. Owens asked if the Commission should not restrict the number of lots in the proposed development via conditional zoning. Ms. Wade answered that, under previous Comprehensive Plans, the staff used the density recommendations of the Land Use map to generate a maximum number of units for a development that would be appropriate for a property. The Planning Commission and the Council have adopted conditional zoning restrictions in the past for a particular number of units; however, the 2013 Comprehensive Plan no longer includes a Land Use map, so the staff no longer feels comfortable recommending a maximum number of units for a property. Rather, the staff now bases their recommendations on which zones are more appropriate for the property. Ms. Wade noted that the staff does not believe that the Commission should attempt to restrict lot sizes via conditional zoning. Mr. Owens asked if a conditional zoning restriction limiting the number of lots would also limit the lot size. Ms. Wade answered that it would not, because the petitioner could vary the lot sizes.

Mr. Penn stated that today's hearing is an example of "trying to push a development through" without being responsive to the staff's concerns or the recommendations of the Subdivision Committee. He said that the committee process is in place to address these types of issues, and that he did not believe that the Commission should be trying to change a development plan to support the requested zone during a public hearing. Mr. Penn opined that the Commission should be prepared to either support the staff, or oppose the staff based on zoning law, but they should not be "designing a development plan on the fly."

Ms. Plumlee thanked the neighbors for their input in the process, noting that she had concerns about the maintenance of the floodplain; access to the LFUCG property; the fate of Lot 27; and the possibility of development that is not compatible with the surrounding neighborhood. She said that she would support the staff's recommendation of disapproval of this request.

Mr. Cravens stated that this is a preliminary development plan; the Subdivision Committee was required to review it as if the requested R-3 zoning was in place. He said that, based on his calculations, increasing the lot size from a 50' frontage lot to a 60' lot could result in a price increase of \$48,000 for the house. Mr. Cravens said that he would support removing the lots from the floodplain, so that homeowners would not be forced to buy flood insurance. He would also support a conditional zoning restriction to limit development on the property to 27 single-family residences.

Ms. Mundy said that she also appreciated the comments from the neighbors. She said that she had some background in sanitary and wastewater treatment, and she was not concerned about the removal of sludge from the subject property, as that could have been safely removed and hauled away.

Ms. Mundy stated that the neighbors should consider that homes valued at \$240,000 could increase their own property values, and could improve the overall housing market in that area.

Mr. Brewer stated that it was "hard to vote against 400 people" who signed petitions. He commended the petitioner for completing environmental testing, even though he was not compelled to do so, noting that the development of the property provided the neighbors with some answers as to the safety of the property that they might not have had otherwise. Mr. Brewer noted, however, that he has not heard sufficient reasons to go against the staff recommendation of disapproval.

Zoning Action: A motion was made by Ms. Plumlee, seconded by Mr. Penn, and carried 8-1 (Drake abstained; Cravens opposed; Berkley and Wilson absent) to disapprove MAR 2015-11, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 8-1 (Cravens opposed; Berkley and Wilson absent) to indefinitely postpone ZDP 2015-53.