

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

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

COMPREHENSIVE PLAN AND PROPOSED USE

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

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

The Zoning Committee Recommended: Approval to the full Commission.

The Staff Recommends: Approval, for the following reason:

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

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

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

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

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

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

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

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

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

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

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

Proposed Additional Notes for Preliminary Subdivision Plan/Preliminary Development Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Provided the Urban County Council rezones the property R-1A; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
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8. ~~Resolve Discuss~~ status of sanitary sewer system and service to proposed lots.
9. ~~Resolve Discuss~~ discontinuation of non-conforming business use.
10. Denote: The consenting property owners (Pauline Moore, Brian McLaughlin, Melinda McLaughlin, Brenda Barbieri, and Waits/Moore Ltd. Partnership) shall be notified before filing of a final or amended subdivision or development plan or subdivision plat.
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