

AN ORDINANCE MODIFYING THE CONDITIONAL ZONING RESTRICTIONS IN A PLANNED NEIGHBORHOOD RESIDENTIAL (R-3) ZONE AND IN A HIGH DENSITY APARTMENT (R-4) ZONE FOR 20.01 NET AND GROSS ACRES, FOR PROPERTY LOCATED AT 478 SQUIRES ROAD. (BALL HOMES, INC; COUNCIL DISTRICT 7).

WHEREAS, at a Public Hearing held on June 28, 2018 a petition for a zoning ordinance modifying the conditional zoning restrictions in a Planned Neighborhood Residential (R-3) zone and in a High Density Apartment (R-4) zone for property located at 478 Squires Road for 20.01 net and gross acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 9-0; and

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

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

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

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a modification of conditional zoning restrictions in a Planned Neighborhood Residential (R-3) zone and in a High Density Apartment (R-4) zone for property located at 478 Squires Road for 20.01 net and gross acres being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

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


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

PASSED URBAN COUNTY COUNCIL: August 30, 2018



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

Published: September 6, 2018-1t

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LEGAL DESCRIPTION
Peninsula
(Kentucky-American Water Company Property)
Zone Change to eliminate Conditional Zoning
Restrictions in the R-3 and R-4 zone
478 Squires Road
Lexington, Fayette County, Kentucky

A TRACT OR PARCEL OF LAND SITUATED SOUTH OF SQUIRES ROAD APPROXIMATELY 650 FEET EAST OF THE INTERSECTION OF HUNTERS POINT DRIVE AND SQUIRES ROAD IN SOUTHEAST LEXINGTON, FAYETTE COUNTY, KENTUCKY AND BEING MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

COMMENCING AT A POINT in the eastern corner of 3224 Hunters Point Drive as shown on the Final Record Plat of Hunters Point, Unit 1 of record in Plat Cabinet D Slide 577 in the Fayette County Clerk's office; thence through Kentucky American Water Company Property, (480 Squires Road) South 68 Degrees 33 Minutes 21 Seconds East, 148.25 feet to the **TRUE POINT OF BEGINNING**, said point being a corner to 478 Squires Road as shown on the Non-Building Minor and Easement Minor Amended & Consolidation Minor Subdivision Plat of the Peninsula, as recorded in Plat Cabinet R Slide 684 of record in the Fayette County Clerk's office; thence with the boundary of 478 Squires Road for twenty two (22) calls; thence 232.63 feet along a curve to the left having a radius of 525.00 feet and a chord which bears North 30 Degrees 56 Minutes 55 Seconds East a distance of 230.73 feet to a point; thence North 18 Degrees 15 Minutes 17 Seconds East a distance of 175.68 feet to a point; thence 36.18 feet along a curve to the right having a radius of 25.00 feet and a chord which bears North 59 Degrees 42 Minutes 47 Seconds East a distance of 33.10 feet to a point; thence 322.07 feet along a curve to the left having a radius of 544.00 feet and a curve which bears North 84 Degrees 12 Minutes 38 Seconds East a distance of 317.39 feet to a point; thence 428.94 feet along a curve to the right having a radius of 446.00 feet and a chord which bears South 85 degrees 11 Minutes 53 Seconds East a distance of 412.60 feet to a point; thence South 57 Degrees 38 Minutes 45 Seconds East a distance of 51.90 feet to a point; thence 34.40 feet along a curve to the right having a radius of 25.00 feet and a chord which bears South 18 degrees 13 Minutes 34 Seconds East a distance of 31.75 feet to a point; thence 78.26 feet along a curve to the left having a radius of 530.00 feet and a chord which bears South 16 degrees 57 Minutes 49 Seconds West a distance of 78.19 feet to a point; thence 153.22 feet along a curve to the right having a radius of 400.00 feet

and a chord which bears South 23 Degrees 42 Minutes 26 Seconds West a distance of 152.29 feet to a point; thence South 34 Degrees 40 Minutes 51 Seconds West a distance of 291.66 feet to a point; thence 85.36 feet along a curve to the left having a radius of 125.00 feet and a chord which bears South 15 Degrees 07 Minutes 05 Seconds West a distance of 83.71 feet to a point; thence South 85 Degrees 33 Minutes 19 seconds West a distance of 110.00 feet to a point; thence South 09 Degrees 50 Minutes 44 Seconds East a distance of 88.10 feet to a point; thence South 40 Degrees 24 Minutes 35 Seconds East a distance of 245.92 feet to a point; thence South 22 Degrees 39 Minutes 43 Seconds East a distance of 22.00 feet to a point; thence South 37 Degrees 33 Minutes 10 Seconds West a distance of 427.06 feet to a point; thence South 49 Degrees 49 Minutes 20 Seconds East a distance of 105.02 feet to a point; thence 15.03 feet along a curve to the right having a radius of 975.00 feet and curve which bears South 43 Degrees 51 Minutes 12 Seconds West a distance of 15.03 feet to a point; thence North 49 Degrees 49 Minutes 20 Seconds West a distance of 81.17 feet to a point; thence North 54 Degrees 41 Minutes 17 Seconds West a distance of 561.81 feet to a point; thence North 33 Degrees 22 Minutes 06 Seconds West a distance of 449.05 feet to a point; thence North 43 Degrees 38 Minutes 32 Seconds East a distance of 251.31 feet to the **True POINT OF BEGINNING** and containing 20.01 acres gross and acres net.

Rec'd by KA

Date: 8/3/18

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

IN RE: **PLN-MAR-18-00010: BALL HOMES, INC** - petition for a zone map amendment to remove the conditional zoning restrictions in the Planned Neighborhood Residential (R-3) zone and in the High Density Apartment (R-4) zone for 20.01 net and gross acres, for property located at 478 Squires Road. (Council District 7)

Having considered the above matter on June 28, 2018, at a Public Hearing, and having voted 9-0 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter for the following reasons:

1. The decision by the Fayette County Public Schools (FCPS) to terminate their contract with Kentucky American Water Company and to not construct a middle school on the subject property alters the traffic impact planned for the site. Replacing the school with single-family residences will not eliminate traffic, but will substantially reduce the total number of new trips, will likely disperse such trips throughout the day, and will eliminate the bus and parent drop-off/pick-up impacts to the neighborhood (car lines around the school site). The elimination of the school constitutes a major change to this area of a physical and economic nature which was not anticipated at the time the restrictions were imposed on the subject property in 2017, thus justifying the removal of the density restriction on the subject property
2. The subject property is not located along the water's edge, adjacent to the Kentucky American Water Company's Reservoir #4; therefore, the environmentally sensitive area previously restricted through conditional zoning restrictions is not located within the 20-acre subject site. The modified development plan for this portion of the Peninsula Property and the location of the parcel removed from the water's edge make the restrictions inappropriate for the subject property. This constitutes a major change to this area of a physical nature which was not anticipated at the time the restrictions were imposed on the subject property in 2017, thus justifying the removal of the density restriction on the subject property.
3. This recommendation is made subject to the approval and certification of PLN-MJDP-18-00045: Peninsula (a portion of)(Amd).

ATTEST: This 3rd day of August, 2018.

Jim L. Wamf
Secretary, Jim Duncan for Jim Duncan

WILLIAM WILSON
CHAIR

Note: The corollary development plan, PLN-MJDP-18-00045: PENINSULA (PORTION OF) (AMD) was approved by the Planning Commission on June 28, 2018 and certified on July 12, 2018.

K.R.S. 100.211(7) requires that the Council take action on this request by September 26, 2018.

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

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (9) Berkley, Brewer, Cravens, Mundy, Owens, Penn, Plumlee, Richardson and Wilson

NAYS: (0)

ABSENT: (2) Bell and Forester

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR-18-00010** carried.

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

MAP AMENDMENT REQUEST (MAR) APPLICATION

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

Applicant:

Ball Homes, Inc., 3609 Walden Avenue, Lexington, KY 40517

Owner(s):

KY AMERICAN WATER CO., 2300 RICHMOND RD, LEXINGTON, KY 40502

Attorney:

Nick Nicholson, 300 W Vine Street Ste. #2100, Lexington, KY 40507 PH: 859-231-3000

2. ADDRESS OF APPLICANT'S PROPERTY

478 SQUIRES RD, LEXINGTON, KY

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing	Zoning	Requested	Acreage	
	Use		Use	Net	Gross
R-3 & R-4 with conditional zoning restrictions	Vacant	R-3 & R-4 without restrictions	Single-Family Residential	20.01	20.01

4. EXISTING CONDITIONS

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

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

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





NICK NICHOLSON
DIRECT DIAL: (859) 231-3950
DIRECT FAX: (859) 246-3649
Nick.Nicholson@skofirm.com

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

May 7, 2018

Planning Commission
Lexington-Fayette Urban County Government
101 East Vine Street
Lexington, KY 40507

Dear Members of the Planning Commission:

On behalf of Ball Homes, LLC, ("Ball Homes" or "Applicant") we have filed a zone change application to remove the conditional zoning restrictions in the Planned Neighborhood Residential (R-3) zone, for the property located at 478 Squires Road (the "Property"). The Property consists of approximately 20.01 net (20.01 gross) acres and is a part of the original Peninsula development that consists of 89.59 net (89.83 gross) acres (the "Peninsula Project"). The Property is presently zoned Planned Neighborhood Residential (R-3) for 19.28 acres and High Density Apartment (R-4) for 0.73 acres and is subject to the conditional zoning restriction limiting the density for the entire Peninsula Project to 450 dwelling units and a 50 foot landscape buffer along the water's edge. The Applicant requests removal of these conditional zoning restrictions for *just* the 20 acre site, not the entire Peninsula Project as there has been a major change to the economic, physical, and social nature of the Property as discussed below.

With the heart of the Peninsula Project suddenly becoming available to develop residential lots, Ball Homes is altering the approved street and lot layout of the single family area to provide a more efficient site design. While the Applicant is proposing to develop the Property with 81 single family lots, there is only a net increase of 77 single family lots on the entire Peninsula Project, which now totals 240 single family lots. There is no proposed change to the apartment portion of the site and only a slight alteration of the design of the townhouse area.

When zoning for the Peninsula project, including the above-referenced conditional zoning restrictions, was approved by the Urban County Council, it was expressly contemplated that the 20-acre site would be acquired by the Fayette County Public Schools ("School Board") to be used as a middle school for 1,000 students. As of that time, the School Board had indicated to Kentucky-American Water Company its intention to purchase the property, had agreed with the water company upon site configuration, and had received preliminary approval from the Kentucky Board of Education for the site. Subsequent to the approval of the zoning and the imposition of the restrictions, the School Board followed through on its previous expression of intent and entered into a contract to purchase the site subject to certain due diligence investigations. However, on or about March 26, 2018, the School Board terminated the purchase agreement and indicated it would not locate a middle school on the Property. When the Council approved the Peninsula Project it did so with conditional zoning restrictions limiting

the density on the entire development to 450 dwelling units and specific landscape buffer requirements along the water's edge. These restrictions were never intended to restrict the 20 acre school site, as there never were any proposed residential units on this acreage and the acreage is far removed from the water's edge. While the technical wording of the Council's motion granting the zone change at the end of a six-hour hearing applies to the acreage in question, the record is clear that: (i) all parties understood the project as approved to consist of 450 residential units on 60 acres of the site plus a 20-acre 1,000-student middle school; and (ii) the conditional zoning restrictions were intended to apply to the areas of the site where residential development was contemplated.

The recent decision by the School Board to terminate its contract to purchase the Property drastically changes the developable area of the Peninsula Project and is a major reduction in traffic generated by the original proposed development. In fact, "addressing the traffic concerns" was the only reason listed in the Council's findings as the primary justification for the density restriction. As such, it is imperative that the Planning Commission and the Urban County Council revisit the Council's decision to specifically limit the density to only 450 units for the entire project.

According to the Traffic Impact Study originally submitted with the Peninsula Project, the proposed middle school accounted for 486 trips in the AM Peak – approximately 62% of the total trip generation for the entire development – and 144 trips in the PM Peak – approximately 28% of the total trip generation. Of course, the PM Peak time frame does not capture the typical time frame when middle schools dismiss the students causing the traffic rush. The impact of eliminating this traffic generator cannot be stressed enough. It is inarguable that converting the largest traffic generator of the entire Peninsula Project and replacing it with the lowest possible traffic generating residential use – single family – is not a major change to the nature of the Property. In fact, the Traffic Impact Study looked at the scenario where the school did not choose to utilize the site and 80 single family lots were developed in its place. In that instance, traffic generated by the entire project dropped from 779 trips to 349 trips in the AM and from 510 trips to 437 trips in the PM (again, middle school traffic isn't fully captured in PM Peak). The Council's main justification for limiting density was to ensure that the surrounding area was not burdened with traffic that it could not handle. This proposal eliminates an overwhelming majority of that traffic – this alone justifies removing the density restriction on the Property.

While not a requirement to remove the conditional zoning restriction, this proposal is in complete agreement with the Comprehensive Plan. The Planning Commission and the Urban County Council already determined that the Peninsula Project is in agreement with the 2013 Comprehensive Plan. The departure of the middle school does not change this reality. This project is still an ideal iteration of Lexington's guiding principle for infill development on vacant land inside the urban service boundary. This well-designed project upholds the Urban Service Area preservation strategy, is appropriate infill in a residential corridor, provides varied housing choices which meet several community needs, and encourages community interaction through pedestrian connectivity.

The Fayette County Public Schools decision to not build an 1,000 student middle school represents a major change to the area and the underlying facts that the Council based its decision on to restrict the density for the site. Simply put, the request to add all single family lots to the 20 acres in the middle of the previously approved Peninsula Project is clearly appropriate and should be approved. The

Planning Commission

May 7, 2018

Page 3

Applicant is limiting the removal of the conditional language to just the Property in order to ensure that the original intent to not overload the entire Peninsula Project remains protected. Removing the density restriction as requested will not allow for Ball Homes to add additional apartment buildings to the multi-family portion of the site, nor to shrink the size of the single family lots to gain additional units. This request simply recognizes replacing a proposed school with 20 acres of residential land represents a major change to the financial, physical, and social nature of the Property and the conditional zoning restrictions on this 20 acre site are no longer appropriate.

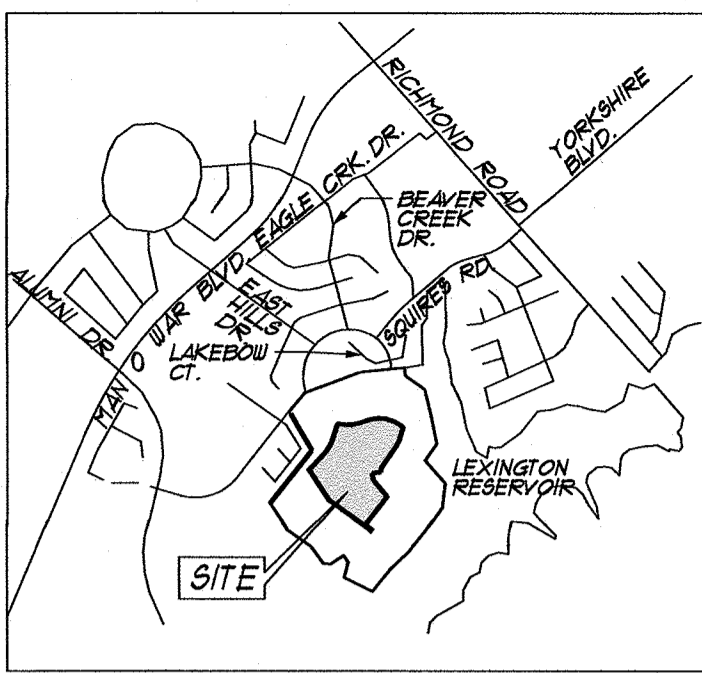
We will be at the June public hearing in order to make a complete presentation of this application and request your favorable consideration.

Best Regards;


Stoll Keenon Ogden PLLC

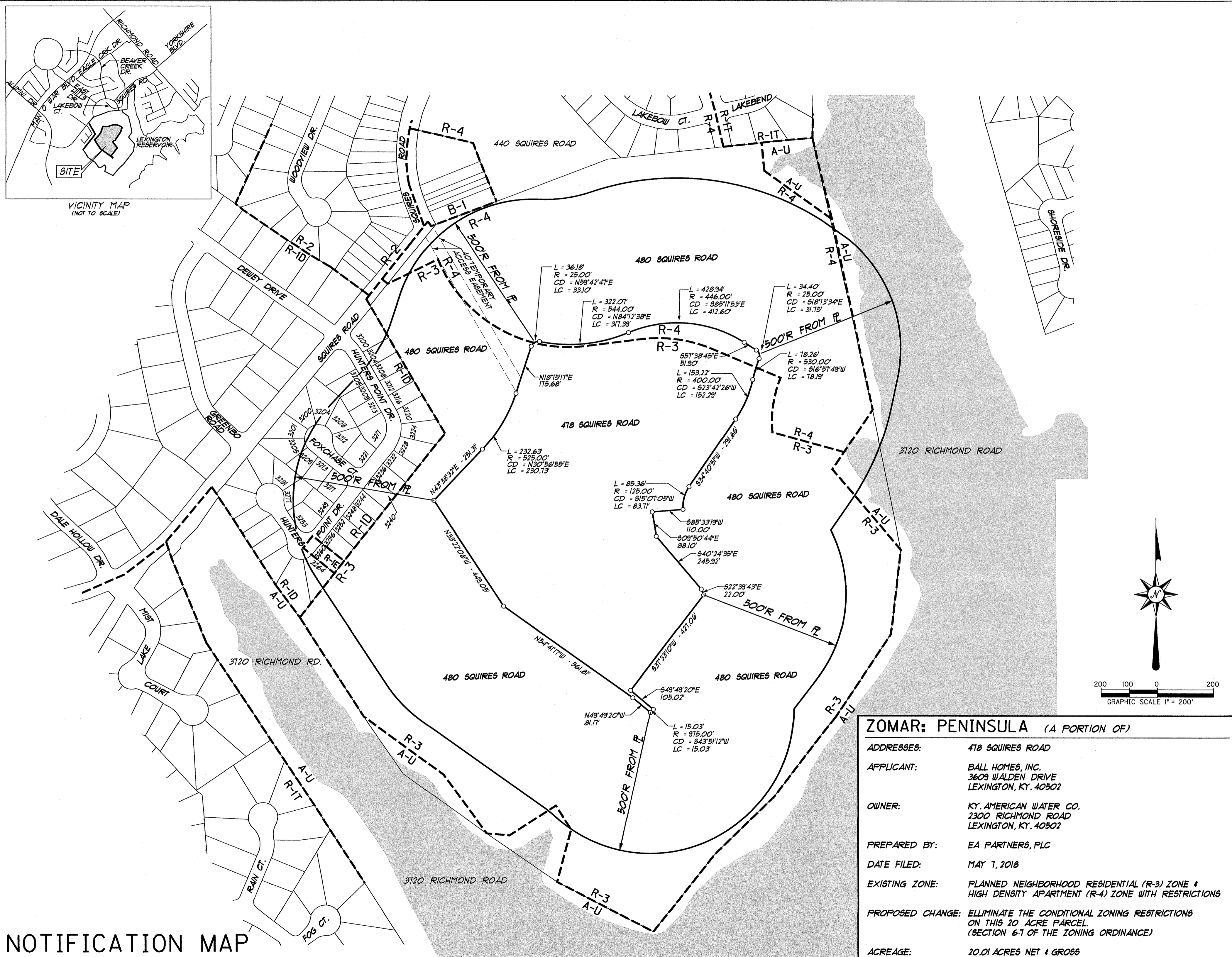
William M. Lear
Nick Nicholson

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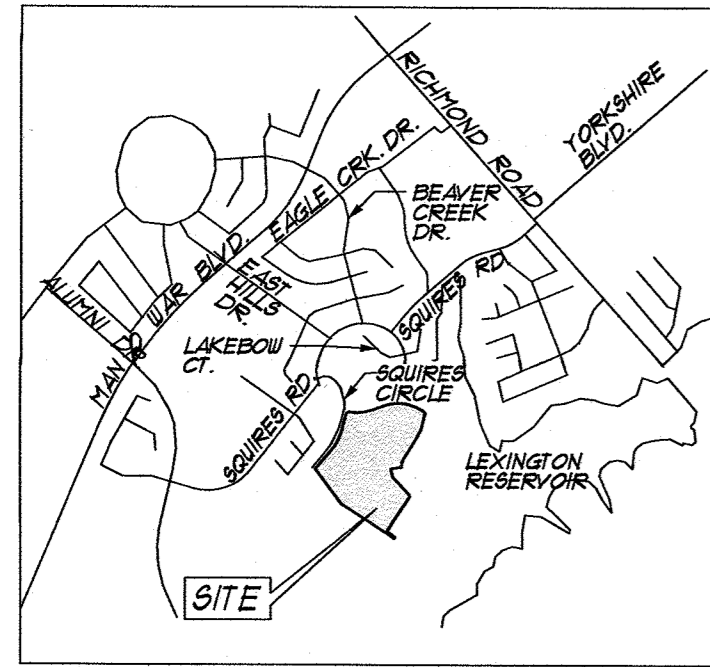


VICINITY MAP
(NOT TO SCALE)

NOTIFICATION MAP



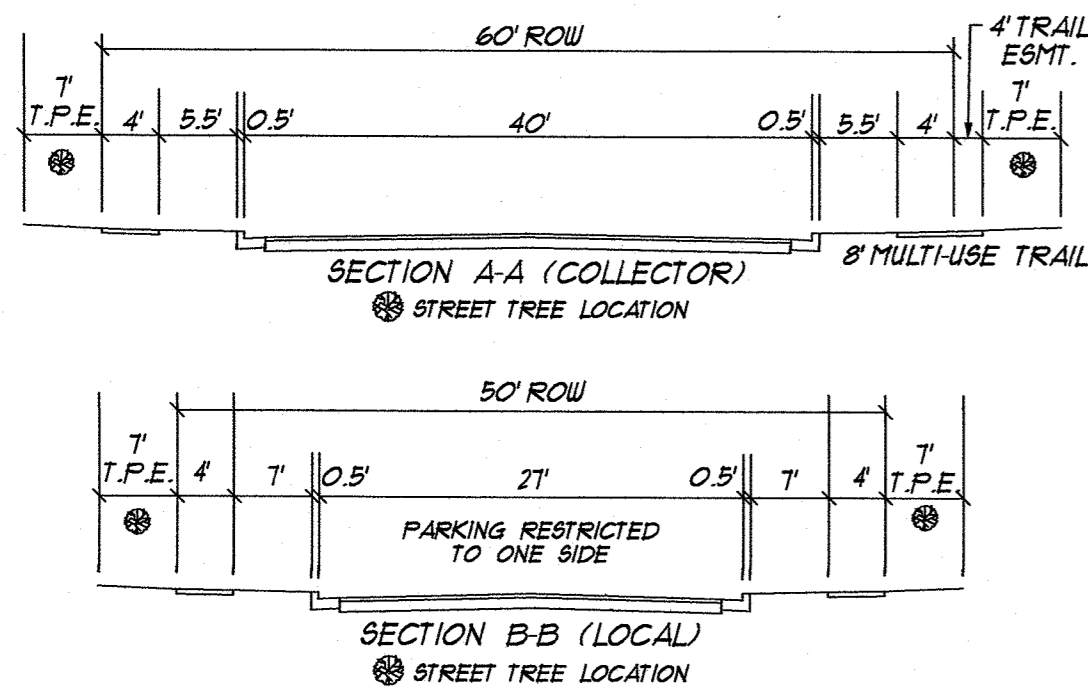
ZOMAR: PENINSULA (A PORTION OF)	
ADDRESSES:	418 SQUIRES ROAD
APPLICANT:	BALL HOMES, INC. 3609 WALDEN DRIVE LEXINGTON, KY. 40502
OWNER:	KY. AMERICAN WATER CO. 2300 RICHMOND ROAD LEXINGTON, KY. 40502
PREPARED BY:	EA PARTNERS, PLC
DATE FILED:	MAY 7, 2018
EXISTING ZONE:	PLANNED NEIGHBORHOOD RESIDENTIAL (R-3) ZONE & HIGH DENSITY APARTMENT (R-4) ZONE WITH RESTRICTIONS
PROPOSED CHANGE:	ELIMINATE THE CONDITIONAL ZONING RESTRICTIONS ON THIS 20 ACRE PARCEL. (SECTION 6-7 OF THE ZONING ORDINANCE)
ACREAGE:	20.01 ACRES NET & GROSS



VICINITY MAP
(NOT TO SCALE)

PURPOSE OF AMENDMENT:

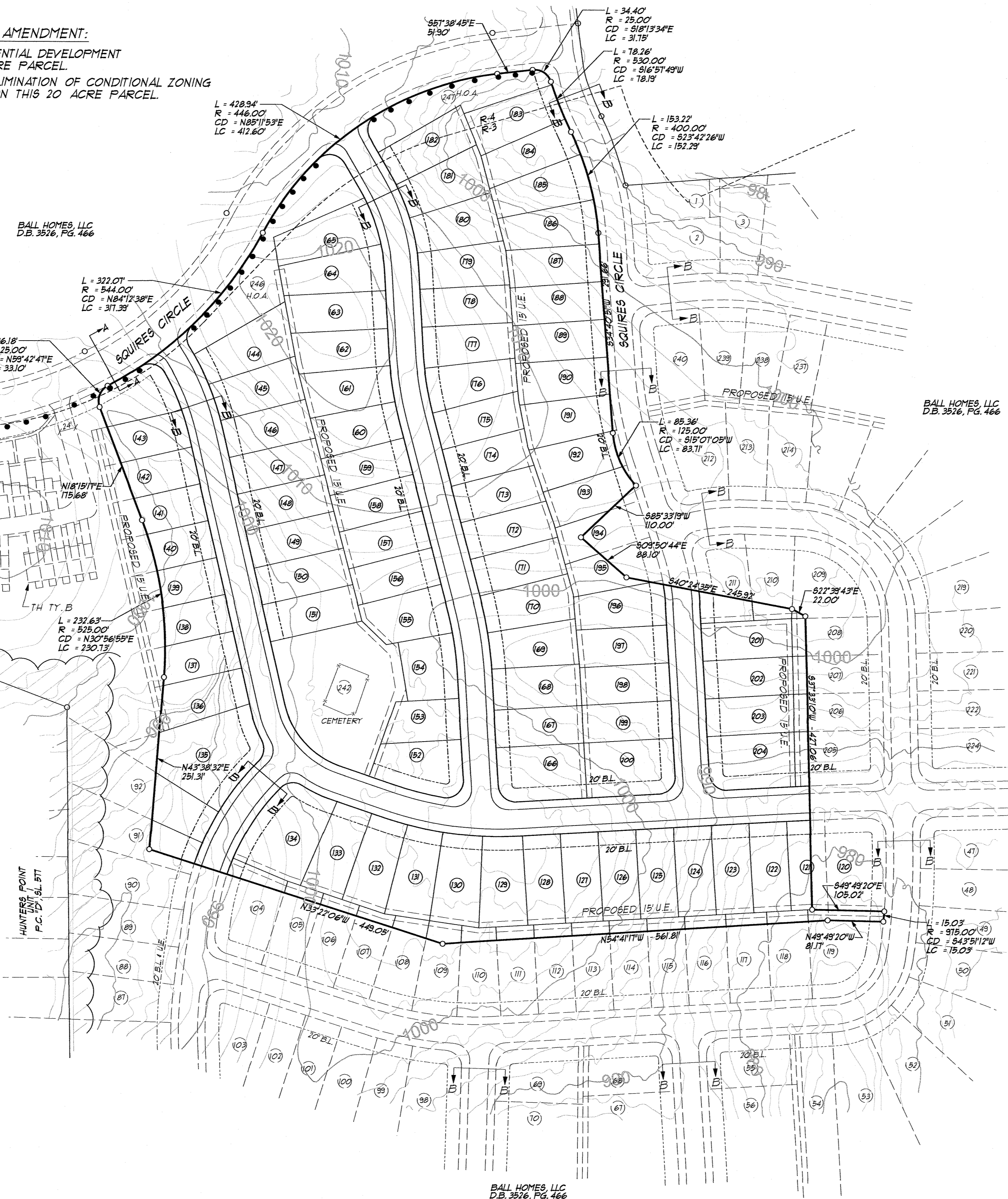
- REFLECT RESIDENTIAL DEVELOPMENT OF THIS 20 ACRE PARCEL.
- REFLECT THE ELIMINATION OF CONDITIONAL ZONING RESTRICTIONS ON THIS 20 ACRE PARCEL.



TREE INVENTORY MAP:
(PER TREE PROTECTION ORDINANCE)
20.01 Acres
6.0 Acres Required Canopy Coverage (30%)
2.4 Acres of Proposed Street Trees (142 large trees)
0.0 Acres of Proposed Tree Preservation Areas (T.P.A.)
3.6 Acres of Additional Canopy to be planted
Each residential lot is required 1 large species tree (or equivalent coverage) in addition to the required street trees.
Canopy Credits for new Trees:
Large Species, 150 S.F. per tree
Medium Species, 400 S.F. per tree
Small Species, 100 S.F. per tree

PRIVATE UTILITY PROVIDERS:

KENTUCKY UTILITIES 500 STONE ROAD LEXINGTON, KY 40503 1-800-981-0600	COLUMBIA GAS 2001 MERCER ROAD P.O. BOX 1421 LEXINGTON, KY 40512 (606) 268-0315
WINDSTREAM 150 WEST NEW CIRCLE ROAD SUITE 110 LEXINGTON, KY 40505 (606) 351-8224	KENTUCKY AMERICAN WATER COMPANY 2300 RICHMOND ROAD LEXINGTON, KY 40502 (606) 269-2386



SITE STATISTICS:
TOTAL AREA - 20.01 ACRES
ZONE - R-4 + R-3
R-4 = 0.13 ACRES + R-3 = 19.88 ACRES
NO. OF LOTS = 81 BUILDABLE 84 TOTAL
TYPICAL LOT SIZE = 55' X 110'-132'
DENSITY = 4.05 LOTS/ACRE
PROPOSED LENGTH OF STREET = 2,356'

PLANNING COMMISSION CERTIFICATION

I DO HEREBY CERTIFY THAT THIS PLAN WAS APPROVED BY THE URBAN COUNTY PLANNING COMMISSION AT ITS MEETING HELD

SECRETARY _____ DATE _____

OWNER'S CERTIFICATION

I DO (WE DO) HEREBY CERTIFY THAT I AM (WE ARE) THE SOLE OWNER(S) OF RECORD OF THE PROPERTY SHOWN HEREON, DO FULLY AGREE TO ALL GRAPHIC AND TEXTUAL REPRESENTATIONS SHOWN HEREON, AND DO HEREBY ADOPT THIS AS MY (OUR) PLAN FOR THIS PROPERTY.

NAME _____ K.A.W.C. REPRESENTATIVE _____ COMPANY _____
SIGNATURE _____ 2300 RICHMOND ROAD _____ ADDRESS _____
LEXINGTON, KY 40502

NOTES:

- THIS PLAN SHALL NOT BE USED AS A BASIS FOR SALE OF THIS PROPERTY. ANY SALE OF LAND SHALL BE BASED UPON A RECORDED SUBDIVISION PLAN.
- THIS PLAN MAY BE AMENDED WITH THE APPROVAL OF THE URBAN COUNTY PLANNING COMMISSION.
- ACCESS SHALL BE LIMITED TO THE POINTS INDICATED ON THIS PLAN.
- NO GRADING, STRIPPING, EXCAVATION, FILLING, OR OTHER DISTURBANCE OF THE NATURAL GROUND COVER SHALL TAKE PLACE PRIOR TO APPROVAL OF AN EROSION CONTROL PLAN. SUCH PLAN MUST BE SUBMITTED IN ACCORDANCE WITH CHAPTER 16 OF THE CODE OF ORDINANCES.
- ALL AREAS THAT HAVE BEEN DISTURBED BY GRADING SHALL HAVE TEMPORARY VEGETATIVE COVER PROVIDED. SUCH COVER WILL CONSIST OF ANNUAL GRASSES OR SMALL GRAINS. SLOPES EXCEEDING 4% WILL HAVE ADDITIONAL PROTECTION OF ADEQUATE MULCHING OR SODDING IN ORDER TO PREVENT EROSION.
- LANDSCAPING SHALL CONFORM TO ARTICLE 18 OF THE ZONING ORDINANCE, ARTICLE 6-10 OF THE SUBDIVISION REGULATIONS AND THE TREE PROTECTION ORDINANCE. TREES SHALL BE SELECTED FROM THE APPROVED LIST.
- THE LOCATION OF ANY FIRE HYDRANTS, FIRE DEPARTMENT CONNECTIONS, OR FIRE SERVICE FEATURES, IF REQUIRED, SHALL BE APPROVED BY THE DIVISION OF FIRE-WATER CONTROL OFFICE.
- ENTRANCE DETAILS ARE SUBJECT TO THE APPROVAL OF THE URBAN COUNTY TRAFFIC ENGINEER.
- CONSTRUCTION ACCESS SHALL BE FROM SQUIRES ROAD + SQUIRES CIRCLE.
- SANITARY SEWERS, STORM SEWERS AND DRAINAGE SHALL MEET THE SPECIFICATIONS OF THE L.F.U.C.G. ENGINEERING MANUALS.

CONDITIONAL ZONING RESTRICTIONS

- (ORDINANCE NO. 20-171) 480 SQUIRES ROAD ONLY
UNDER THE PROVISIONS OF ARTICLE 6-11 OF THE ZONING ORDINANCE, THE FOLLOWING RESTRICTIONS AFFECT THE SUBJECT PROPERTY VIA CONDITIONAL ZONING:
- ALONG THE BOUNDARY OF THE SUBJECT PROPERTY WHICH IS SHARED WITH KENTUCKY AMERICAN WATER RESERVOIR (4), THERE SHALL BE A FIFTY (50) FOOT LANDSCAPE BUFFER AREA ESTABLISHED FROM THE ZONE CHANGE BOUNDARY, WITHIN THE BUFFER AREA.
 - ALL STRUCTURES, INCLUDING ACCESSORY STRUCTURES, FENCES AND PLAY STRUCTURES SHALL BE PROHIBITED.
 - EXISTING TREES WITH A 1 AND 1/2" CALIPER OR GREATER, SHALL BE PRESERVED, EXCEPT FOR DEAD, DISEASED, HAZARDOUS TREES OR INVASIVE SPECIES.
 - ALL OTHER TREES MAY BE REMOVED ONLY WITH THE WRITTEN CONSENT OF THE DIVISION OF ENVIRONMENTAL SERVICES IF DEEMED TO BE NECESSARY FOR THE OVERALL HEALTH OF THIS ENVIRONMENTALLY SENSITIVE AREA.
 - THE TOTAL NUMBER OF DWELLING UNITS WITHIN THE ZONE CHANGE AREA SHALL BE LIMITED TO FOUR HUNDRED AND FIFTY (450).
- THESE RESTRICTIONS ARE APPROPRIATE AND NECESSARY FOR THE SUBJECT PROPERTY IN ORDER TO MORE FULLY PROTECT THE ADJACENT RESERVOIR TO ADDRESS TRAFFIC CONCERNS BASED ON THE TRAFFIC IMPACT STUDIES AND TO MORE FULLY IMPLEMENT THE PRINCIPLES OF THE 2013 COMPREHENSIVE PLAN.

DEVELOPER:
BALL HOMES, LLC
3503 WALDEN DRIVE
LEXINGTON, KY 40517

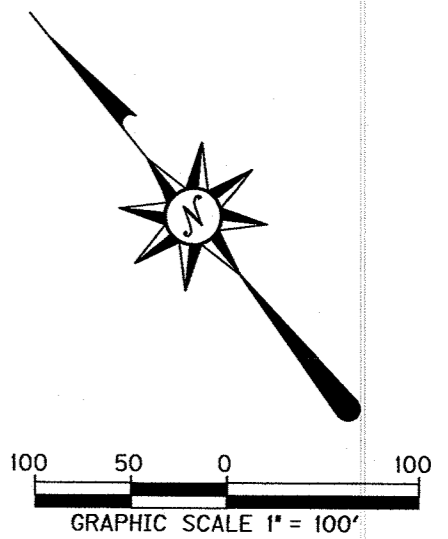
OWNER:
KY AMERICAN WATER CO.
2300 RICHMOND ROAD
LEXINGTON, KY 40502

EA Partners, PLLC
CIVIL ENGINEERS - LAND SURVEYORS - LANDSCAPE ARCHITECTS
3111 WALL STREET
LEXINGTON, KENTUCKY 40513
FACSIMILE (606) 269-2887

AMENDED PRELIMINARY DEVELOPMENT PLAN
THE PENINSULA (a portion of)
478 SQUIRES ROAD
LEXINGTON, FAYETTE COUNTY, KENTUCKY

DRAWN _____ RS
DATE 05/07/18
CHECKED _____
REVISED _____

SHEET



SOURCE OF CONTOURS
CONTOURS TAKEN FROM
LFCG MAPPING (2012)

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-16-00016: BALL HOMES, INC.

DESCRIPTION

Zone Change: From a Planned Neighborhood Residential (R-3) zone and a High Density Apartment (R-4) zones, with conditions
To a Planned Neighborhood Residential (R-3) zone and a High Density Apartment (R-4) zones, without conditions

Acreage: 20.01 net and gross acres

Location: 478 Squires Road

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	R-3 & R-4	Vacant
To North	R-4	Single-Family & Multi-Family Residential
To East	R-3 & R-4	Planned Residential & Reservoir
To South	R-3	Planned Residential
To West	R-1E & R-3	Single-Family Residential & Planned Residential

URBAN SERVICES REPORT

Roads – Squires Road is a two-lane collector roadway that connects Alumni Drive to Richmond Road (US25/421), south of Man o’ War Boulevard. The subject property is located south of Squires Road and Squires Circle, but north of the Kentucky American Water Reservoir #4, within the center of the Peninsula Property. The extension of Squires Road is planned along the northern boundary of the subject parcel. The petitioner proposes connectivity of the local streets planned within the Peninsula Property.

Curb/Gutter/Sidewalks – Curbs, gutters and sidewalks exist along both Squires Road and Squires Circle, as well as along many other local and collector roadways in the neighborhood. Such urban improvements will be required throughout the site. Additionally, the Squires Trail is planned to follow Squires Road within this portion of the neighborhood, which will allow for connectivity to the existing Squires Trail (to the west) and trails along Richmond Road in Jacobson Park (to the east).

Storm Sewers – The subject property is located within the East Hickman watershed. A FEMA Special Flood Hazard Area does exist along the edge of Reservoir #4, and does encroach on the surrounding parcel in a few locations. The corollary development plan does not depict any stormwater facilities on-site, but improvements will be required to be constructed in compliance with the Division of Engineering Stormwater Manual within the proposed development.

Sanitary Sewers – The subject property is located within the East Hickman sewershed, and is served by the West Hickman Wastewater Treatment Facility, located in northern Jessamine County. Sanitary sewer lines do run along the southern and eastern property boundaries at the water’s edge. There is currently sanitary sewer capacity available in this sewershed, according to the latest Capacity Assurance Program information.

Refuse – The Urban County Government serves this portion of the Urban Service Area with collection on Fridays.

Police – The subject property is located approximately two miles to the northeast of the East Sector Roll Call Center on Centre Parkway.

Fire/Ambulance – The subject property is located equidistant from the nearest fire stations. It is 1½ miles from Fire Station #21 on Mapleleaf Drive, and Fire Station #16 on Man o’ War Boulevard at Bold Bidder

Drive. Another fire station is planned in the vicinity of Hays Boulevard and Athens Boonesboro Road to the southeast of the subject property.

Utilities – All utilities, including street lights, natural gas, telephone service, electric, water, and cable television are available in the adjoining neighborhoods, and should be able to be extended to serve the subject property.

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 petitioner proposes removal of the previously adopted conditional zoning restrictions in order to develop 81 single-family dwelling units to replace the previously proposed Fayette County Public Schools middle school on the 20 acre site. This is a proposed residential density of 4.0 dwelling units per acre.

CASE REVIEW

The petitioner requests the removal of conditions that were placed on the subject property, which is split-zoned Planned Neighborhood Residential (R-3) and High Density Apartment (R-4), in 2017 by the Urban County Planning Commission (landscape buffer) and the Urban County Council (density cap of 450 dwelling units) for the entire Peninsula Property.

The subject property is located within the center of the Peninsula Property, a 90-acre site that included a mixture of residential dwelling types, centered around a middle school. The Peninsula development is bounded on the north by a mixture of land uses and zoning categories, including single-family residences in the Hunter's Point and East Hills neighborhoods, townhouses along Squires Road, a small convenience store/gas station and neighborhood business area, and an apartment complex which is currently being replaced in connection with a new complex planned to the immediate north of the subject property. Kentucky American Water's Reservoir #4 is located to the west, south and east of the subject property, beyond the limits of the subject site.

The subject property was rezoned to a combination of Planned Neighborhood Residential (R-3) and High Density Apartment (R-4) zoning in order to develop single-family, townhouse and multi-family residential dwelling units (PLN-MAR-16-00016: Ball Homes, Inc.). The rezoning was contentious and there were expressed concerns regarding the intensity of the proposed land use, traffic impacts to the existing collector roadway system, environmental impacts to Reservoir #4, and the location of the planned shared-use trail through the neighborhood, rather than along the water's edge as planned. At that time, conditional zoning restrictions were adopted to limit the density and create a landscape buffer along the water's edge, as follows:

- a. Along the boundary of the subject property which is shared with Kentucky American Water (Reservoir #4), there shall be a fifty (50) foot landscape buffer area established from the zone change boundary. Within the buffer area:
 - (1) All structures, including accessory structures, fences and play structures shall be prohibited;
 - (2) Existing trees with a 1 and ½" caliper, or greater, shall be preserved, except for dead, diseased, hazardous trees or invasive species;
 - (3) All other trees may be removed only with the written consent of the Division of Environmental Services, if deemed to be necessary for the overall health of this environmentally sensitive area.
- b. The total number of dwelling units within the zone change area shall be limited to four hundred and fifty (450).

These restrictions were adopted in order to “more fully protect the adjacent reservoir, to address traffic concerns based on the traffic impact studies and to more fully implement the principles of the 2013 Comprehensive Plan.” (Ordinance 50-2017, adopted April 18, 2017)

Since the petitioner is requesting removal of the conditional zoning restrictions, agreement with the Comprehensive Plan is not part of the evaluation by the staff, as it would be normally. Rather, Article 6-7(c) of the Zoning Ordinance requires that the petitioner establish a finding, by a clear preponderance of evidence, that there have been unanticipated changes of an economic, physical, and social nature in the immediate area since the time the conditional zoning restrictions were imposed that have substantially changed the basic character of the area.

The petitioner contends that the requested removal of the adopted conditional zoning restrictions is appropriate because there have been such changes in the immediate area since April 2017. At the time of the initial rezoning a year ago, the Fayette County Public Schools (FCPS) expressed their interest in locating a middle school on Squires Road, occupying 20 acres of the 90-acre site proposed for development. In fact, the FCPS had originally approached Kentucky American Water Company (KAWC), the current owner of the site, to express interest in the property several years prior to the requested rezoning and proceeded to evaluate the property for compliance with state regulations. At the time of the rezoning request, the FCPS expressed their intent to purchase the property, agreed with the water company on a site configuration, and received preliminary approval from the Kentucky Board of Education for the site. The FCPS entered into a contract with the water company to purchase the property subject to certain due diligence investigations. In late March 2018, the Fayette County School Board terminated the purchase agreement with KAWC and indicated publically that they would not locate a middle school on the site. The proposed middle school, according to the traffic impact study submitted in 2016, would have generated approximately 62% of the new trips in the morning peak hour and 28% of the new trips in the evening peak hour associated with the overall development. Replacing the school with single-family residences will not eliminate traffic, but will substantially reduce the total number of new trips, will likely disperse such trips throughout the day, and will eliminate the bus and parent drop-off/pick-up impacts to the neighborhood (car lines around the school site).

In addition, the site is located within the core of the larger Peninsula Property; thus, the conditional zoning restrictions for landscape buffering along the water's edge in order to protect the environmentally sensitive area are not appropriate for the subject site.

The staff agrees with the petitioner that the FCPS decision to not build a middle school on the site and the fact that the site is not located along the water's edge constitute an unanticipated change of an economic, physical, and social nature in the immediate area since the time the conditional zoning restrictions were imposed that have substantially changed the basic character of the area. For this reason, the staff finds that the request to remove the conditional zoning restrictions is appropriate. It should be noted that the conditional zoning restrictions established for the property will remain in place for the area surrounding the subject property, which constitutes approximately 70 acres, with an address of 480 Squires Road.

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

1. The decision by the Fayette County Public Schools (FCPS) to terminate their contract with Kentucky American Water Company and to not construct a middle school on the subject property alters the traffic impact planned for the site. Replacing the school with single-family residences will not eliminate traffic, but will substantially reduce the total number of new trips, will likely disperse such trips throughout the day, and will eliminate the bus and parent drop-off/pick-up impacts to the neighborhood (car lines around the school site). The elimination of the school constitutes a major change to this area of a physical and economic nature which was not anticipated at the time the restrictions were imposed on the subject property in 2017, thus justifying the removal of the density restriction on the subject property.

2. The subject property is not located along the water's edge, adjacent to the Kentucky American Water Company's Reservoir #4; therefore, the environmentally sensitive area previously restricted through conditional zoning restrictions is not located within the 20-acre subject site. The modified development plan for this portion of the Peninsula Property and the location of the parcel removed from the water's edge make the restrictions inappropriate for the subject property. This constitutes a major change to this area of a physical nature which was not anticipated at the time the restrictions were imposed on the subject property in 2017, thus justifying the removal of the density restriction on the subject property.
3. This recommendation is made subject to the approval and certification of PLN-MJDP-18-00045: Peninsula (a portion of)(Amd).

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4. BALL HOMES, INC. ZONING MAP AMENDMENT & PENINSULA (PORTION OF) (AMD) ZONING DEVELOPMENT PLAN

- a. PLN-MAR-18-00010: BALL HOMES, INC. (8/5/18)*- petition for a zone map amendment to remove the conditional zoning restrictions in the Planned Neighborhood Residential (R-3) zone and in the High Density Apartment (R-4) zone for 20.01 net and gross acres, for property located at 478 Squires Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 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 removal of the previously adopted conditional zoning restrictions in order to develop 81 single-family dwelling units to replace the previously proposed Fayette County Public Schools middle school on the 20 acre site. This is a proposed residential density of 4.0 dwelling units per acre.

The Zoning Committee Recommended: Approval to the full Commission.

The Staff Recommended: Approval, for the following reasons:

1. The decision by the Fayette County Public Schools (FCPS) to terminate their contract with Kentucky American Water Company and to not construct a middle school on the subject property alters the traffic impact planned for the site. Replacing the school with single-family residences will not eliminate traffic, but will substantially reduce the total number of new trips, will likely disperse such trips throughout the day, and will eliminate the bus and parent drop-off/pick-up impacts to the neighborhood (car lines around the school site). The elimination of the school constitutes a major change to this area of a physical and economic nature which was not anticipated at the time the restrictions were imposed on the subject property in 2017, thus justifying the removal of the density restriction on the subject property.
 2. The subject property is not located along the water's edge, adjacent to the Kentucky American Water Company's Reservoir #4; therefore, the environmentally sensitive area previously restricted through conditional zoning restrictions is not located within the 20-acre subject site. The modified development plan for this portion of the Peninsula Property and the location of the parcel removed from the water's edge make the restrictions inappropriate for the subject property. This constitutes a major change to this area of a physical nature which was not anticipated at the time the restrictions were imposed on the subject property in 2017, thus justifying the removal of the density restriction on the subject property.
 3. This recommendation is made subject to the approval and certification of PLN-MJDP-18-00045: Peninsula (a portion of)(Amd).
- b. PLN-MJDP-18-00045: PENINSULA (PORTION OF) (AMD) (8/5/18)* - located at 478 SQUIRES ROAD, LEXINGTON, KY (EA Partners)

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Provided the Urban County Council approves the removal of conditional zoning restrictions; 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 Final Record Plat Information for property.
8. Denote dimensions of cemetery fence.
9. Denote cemetery lot as HOA area.
10. Submit required cemetery study per Article 3 of the Zoning Ordinance.
11. Discuss resolution of asbestos construction debris removal per consultant's report for the Fayette County School Board.

Staff Zoning Presentation – Ms. Wade presented the staff report and recommendations for the zone change. She displayed photographs of the subject property and aerial photographs of the general area. She said the applicant is proposing this zone change in order to remove the conditional zoning restrictions from the existing R-3 and R-4 zoned property. She gave a brief history of the subject property and said that the site was rezoned to R-3 and R-4 in April 2017, where conditional zoning restrictions were recommended by the Planning Commission and adopted by the Council. The first restriction was related to the 50 feet buffering along the edge of the zoning at its nearest location to the water and the second restriction was to restrict the entire 90 acre property to a total of 450 dwelling units. She said that there was also a traffic study completed for the April 2017 hearing, which included traffic counts for morning and afternoon that related to activates for the proposed middle school.

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

Ms. Wade said that the subject property is no longer going to be utilized by the Fayette County Public Schools for a new middle school and the applicant would like to remove these conditions so that the land could be used for single-family residential homes. She said that Squires Circle is one of the circles that was planned many years ago to be completed with a mixture of zoning and uses within the center and this will allow the completion of that circle. She said the staff and the Zoning Committee are recommending approval of this zone change.

Development Plan Presentation – Mr. Martin presented a rendering of the preliminary development plan associated with the zone change. He said that applicant is proposing 77 single-family lots. He said that there was a cemetery discovered on the property and the applicant has submitted the required study associated with cemeteries. He said that the applicant will need to complete more detailed work, including installing a fence around the cemetery, as the development moves to the next stage.

Mr. Martin said there are several clean up conditions along with the standard sign-off conditions for a preliminary development plan. He said condition #9 concerns denoting Final Record Plat on the plan, condition #8 concerns the dimension for the cemetery fence, and condition #8 concerns denoting the cemetery lot as an HOA area, which the residents will need to maintain. He said that condition #10 could be removed, since the required cemetery study has been submitted. He said that condition #11 relates to the asbestos removal from the site and the applicant will have to remove it in accordance with all applicable regulations and dispose of it in an acceptable landfill. He said the staff and Subdivision Committee are both recommending approval.

Commission Question – Ms. Plumlee asked if there will be a park in this area. Mr. Martin said there is a clubhouse and pool within the development plan for the multi-family/apartment area. He said the cemetery area could also function as a park. He said that the Zoning Ordinance requires that only the cemetery area be fenced in, not the entire open space area.

Mr. Wilson asked if condition #11 could be changed from “discuss” to “resolve”. Mr. Martin said that if the Planning Commission is satisfied with the discussion at this hearing, that condition could be removed.

Applicant Presentation – Mr. Nicholson, attorney representing the petitioner, stated that the applicant is in agreement with the staff's recommendations and is available for clarification regarding the asbestos remediation.

Commission Question – Ms. Plumlee asked for clarification of the conditional zoning restrictions that were previously placed on this site. Mr. Nicholson said the Planning Commission implemented a tree protection for any tree that was larger than 3 inches in diameter, which the Council changed that to 1 ½ inches in diameter. Ms. Plumlee asked how many units are going to be on this site. Mr. Nicholson said that this application proposes an additional 77 more dwelling units, to the 450 already approved for this area. Ms. Plumlee stated that she would like to add a condition to cap the number of units for this site at 527. Mr. Nicholson said that this request is to remove the density cap on this 20 acre property only, not the other area that has already been approved with a density cap. He said that the middle school would have represented a major traffic generating use and that the initial zone change was for 70 acres of residential around a 20 acre school site. The Council capped the surrounding area at 450 dwelling units. He said that this property will be developed at a density of 4 units per acre. Ms. Plumlee asked if density restriction could be placed on this property. Mr. Nicholson said that when the Council decided to limit the dwelling units to 450 in this area, 55 percent of the traffic was estimated to be associated with the school. Now since the school will not be built in that location, that traffic concern is no longer there, and the applicant doesn't believe that a density restriction is necessary.

Mr. Owens asked for clarification of condition #11 on the development plan, since it is a discussion item. Mr. Nicholson said that old concrete water pipes, that contained asbestos, have been stored on this site. He said that this has been a discussion during the entire development plan process. He said that they will cooperate with any state, local and/or federal officials to make sure that all rules and regulations are followed with regard to how these pipes will need to be remediated. He said that he recently met with the Kentucky Energy and Environmental Cabinet, who investigated the site and determined that there isn't a health concern. However, Mr. Nicholson stated that they will continue to work with them. He introduced Mr. Bill Tucker, an engineer from S&ME, Inc., who has been contracted to handle the remediation of these pipes and to make sure that everything is in complete compliance.

Citizen Comment – There were no citizens present to speak to this application.

Zoning Action – A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Bell and Forester absent) to approve PLN-MAR-18-00010: BALL HOMES, INC., for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Cravens, seconded by Ms. Mundy, to approve PLN-MJDP-18-00045: PENINSULA (PORTION OF) (AMD), for the reasons provided by the staff, with the deletion of conditions #10 and #11, as follows:

1. Provided the Urban County Council approves the removal of conditional zoning restrictions; 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 Final Record Plat information for property.
8. Denote dimensions of cemetery fence.
9. Denote cemetery lot as HOA area.
- ~~10. Submit required cemetery study per Article 3 of the Zoning Ordinance.~~
- ~~11. Discuss resolution of asbestos construction debris removal per consultant's report for the Fayette County School Board.~~

Commission Discussion – Mr. Owens said that he would like to add a note to condition #11 stating to continue remediation of the asbestos. Ms. Wade clarified if he was asking for the documentation of the removal to be submitted to LFUCG, which will need to be submitted to the Division of Engineering. Mr. Owens believes that this is a serious concern and there should be notation that it will be completed. Ms. Wade asked if there is a timing restriction or just a verification that it has been completed. Mr. Martin suggested that a notation could be made on the plan at the time of the preliminary subdivision plan and/or final development plan that the asbestos issue will be addressed per relevant regulations.

Amended Motion - A motion was made by Mr. Owens, seconded by Mr. Penn, to approve PLN-MJDP-18-00045: PENINSULA (PORTION OF) (AMD), for the reasons provided by the staff, with the deletion of conditions #10 and #11 and the addition of a new condition #10, as follows:

1. Provided the Urban County Council approves the removal of conditional zoning restrictions; 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 Final Record Plat information for property.
8. Denote dimensions of cemetery fence.
9. Denote cemetery lot as HOA area.
- ~~10. Submit required cemetery study per Article 3 of the Zoning Ordinance.~~
- ~~11. Discuss resolution of asbestos construction debris removal per consultant's report for the Fayette County School Board.~~
10. Denote remediation of asbestos construction debris removal at the time of the Preliminary Subdivision Plan and/or Final Development Plan.

Commission Discussion – Mr. Cravens said that this has been discussed and documented by the attorneys, the applicant, and the staff. He said that since everyone is in agreement, he doesn't know why this notation is necessary.

Amended Motion Action - Motion failed 4-5 (Berkley, Brewer, Cravens, Mundy, and Richardson opposed; Bell and Forester absent).

Development Plan Action – The original motion was restated by Mr. Cravens, seconded by Ms. Mundy, and carried 7-2 (Owens and Plumlee opposed; Bell and Forester absent) to approve the development plan with the nine conditions.