

**1. BALL HOMES, INC (AMD) ZONING MAP AMENDMENT & HAMBURG EAST (BELHURST) ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-19-00010: BALL HOMES, INC (AMD) (10/24/19)\*- an amended petition for a zone map amendment from an Agricultural Rural (A-R) zone to an Expansion Area Residential (EAR-1) zone, for 26.34 net (27.19 gross) acres and an Expansion Area Residential (EAR-2), for 11.92 net (13.30 gross) acres, for property located at 2575 Polo Club Boulevard (a portion of).

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. 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 has requested a zone change from an Agricultural Rural (A-R) zone to an Expansion Area Residential-1 (EAR-1) zone for 26.34 net (27.19 gross) acres and an Expansion Area Residential-2 (EAR-2) zone for 11.92 net (13.30 gross) acres for the rear portion of the property located at 2575 Polo Club Blvd. The corollary development plan depicts 80 detached single family dwelling units and 78 attached single family dwelling units, for an average density of 3.9 dwelling units per gross acre.

The Zoning Committee Recommended: **Referral** to the full Commission.

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

1. The zone change application for the subject property, as proposed, does not address how the petitioner will implement the Goals and Objectives, nor the policies of the 2018 Comprehensive Plan. Until the applicant addresses the adopted Comprehensive Plan in a complete manner the staff cannot offer a substantive and fully analyzed recommendation.
  2. The current Agricultural Rural (A-R) zoning is appropriate for the subject property, as supported by the LFUCG Zoning Ordinance.
  3. There has been no physical, social, or economic change in the immediate area, since the adoption of the 2018 Comprehensive Plan, which has significantly altered the basic character of the area.
- b. PLN-MJDP-19-00036: HAMBURG EAST (BELHURST) (10/24/19)\* - located at a portion of 2575 POLO CLUB BOULEVARD, LEXINGTON, KY.  
Project Contact: EA Partners

The Subdivision Committee Recommended: **Postponement**. There are questions regarding the Placebuilder Criteria.

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

1. Provided the Urban County Council rezones the property EAR 1 & 2; 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. Discuss interior pedestrian system for townhouse area.
8. Discuss proposed relationship to the greenway.
9. Discuss proposed Park Road alignment and cross-section per the Expansion Area Master Plan (EAMP).
10. Discuss single family lot access to Park Road for Lots 1, 2 & 19.
11. Discuss Placebuilder criteria.
12. Resolve second entrance for gate at the time of the final development plan.

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the amended zone change application. He said the applicant initially submitted this application in June 3, 2019, and then submitted an amended application on September 20, 2019. He said that during the revisions to the application, the staff discussed the need for the application to address KRS findings in particular, agreement with the 2018 Comprehensive Plan and the need to address the various goals, objectives, and policies in a complete manner. The applicant made a statement within their justification questioning the validity of the 2018 Comprehensive Plan, which is irrelevant and outside of the Planning Commission's decision to be made at today's public hearing.

Mr. Baillie displayed photographs of the subject property and aerial photographs of the general area. He said the subject property is located within Expansion Area 2a, part of a larger agricultural area located along the eastern portion of the Urban Service Boundary that has been platted as Hamburg East, and situated in an area of mixed land uses and zoning. The portion of the subject property that is located west of the North Elkhorn Creek was rezoned to the Expansion Area Residential-3 (EAR-3) zone

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in 2010, which resulted in the flipping of Community Center (CC) zoned land. The CC land use was recommended by the EAMP to be located on the east side of Polo Club Blvd, and the EAR-3 zoned land was recommended to be located on the west side of Polo Club Blvd.

Mr. Baillie said that since the Zoning Committee meeting on October 3, 2019, the applicant has provided the staff with additional information regarding the alternative justifications for the proposed zone change. The Zoning Ordinance states that before any map amendment is granted, the Planning Commission must find that the map amendment is in agreement with the adopted Comprehensive Plan. In the absence of such a finding, KRS and Article 6 of the LFUCG Zoning Ordinance provide two potential justifications for the Commission to consider: 1) that the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate; and/or; 2) that there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area. He said that the applicant suggests that their application meets two of the findings: 1) the Planning Commission must find that the map amendment is in agreement with the adopted Comprehensive Plan; and 2) that the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate. He said that the applicant has stated their objection to addressing the development criteria of the Comprehensive Plan, which necessitates a full review of how they are complying with the goals, objectives, and policies of the Plan. Since the submission of this revised plan, the applicant has not provided additional information as to how they are addressing each of the goals, objectives, and policies. He said that the applicant has only addressed 10 of the 42 total goals, objectives, and policies and that they have exclusively focused on the design policies.

Mr. Baillie stated that this proposal deviates from the recommendations made in the Land Use Element of the Expansion Area Master Plan (EAMP). This property was recommended for EAR-1 and EAR-2 land uses and zones, as well as for the extension of the park road. The EAMP proposed the EAR-1 land use and zoning to be located along the greenway with the park road as a divider of the two zones. He said that the greenway was meant to be a unifying feature to provide integration between various land uses on both sides of Man o' War Boulevard. He said that the applicant is proposing to flip the location of the EAR-1 and EAR-2 land uses. The EAR-2 land use is proposed to be located along the greenway, southwest of the proposed roadway, and the EAR-1 land use is proposed to be located northeast of the proposed roadway, extending to the edge of the subject property and that this change is not in agreement with the EAMP Land Use Element, an adopted element of the 2018 Comprehensive Plan.

Mr. Baillie said that the staff has determined that the applicant has not provided sufficient and complete information to demonstrate agreement with the Goals, Objectives, Policies, or Development Criteria of the 2018 Comprehensive Plan. Additionally, they have deviated from the Land Use Element of the EAMP, an adopted element of the 2018 Comprehensive Plan. As such, the proposed zone change cannot be found to be in agreement with the 2018 Comprehensive Plan.

Mr. Baillie said that the petitioner argues that the current zoning and any type of agricultural use is inappropriate, as it has become increasingly difficult due to the development of the surrounding area as residential subdivisions, multi-family developments, commercial uses, and the interstate system. In terms of inappropriateness, this argument is flawed as it contends the agricultural uses cannot occur in proximity to areas of residential or commercial development. This would indicate that all farms or farmland along the Urban Service Area boundary are inappropriately zoned and should be slated for rezoning. The petitioner also stated that the grade of the land, which slopes toward the floodplain, has made the use of the land for cattle production difficult, which resulted in the discontinuation of cattle production approximately 50 years ago. They state that there has been little interest in utilizing the land for production of crops outside of the production of hay. Furthermore, the ownership of the once contiguous farm has been divided overtime, as the land has passed from one owner to another. The subject property is approximately 40 acres of a much larger farm that was added to the Urban Service Area boundary, via the adoption of the Expansion Area in 1996. Although the parcel is approximately 40 acres, it is limited because the subject property has a significant floodplain, which covers approximately 7.5 acres of land. The floodplain limits the ability to consistently utilize the property for crop production. He added that in the initial staff report, it discussed agricultural uses of land or agricultural uses of buildings or structures, which would continue on until development actually occurs. He said that the staff agrees with these elements of the applicant's justification for the inappropriateness of the current Agricultural Rural (A-R) zoning.

Mr. Baillie said that the applicant states that the proposed zoning is compatible with the surrounding land uses and zoning at this location. The proposed zoning presents an appropriate step-down in the residential uses from the highest intensity residential zoning to the lowest intensity, as the zoning in the area transitions away from the interstate corridor and Polo Club Boulevard toward the Urban Service Area boundary. Positioning higher density residential land uses adjacent to the greenway at this location allows for greater access for those residents to the open space, while also providing connectivity and infrastructure that is needed for denser development. The subject property is currently supported by urban services, including the transportation network and sewer services. He added that the staff is recommending approval of this zone change for the following reasons:

1. The applicant has not provided sufficient and complete information to demonstrate agreement with the Goals, Objectives, Policies, or Development Criteria of the 2018 Comprehensive Plan. Additionally, the applicant has deviated from the Land Use Element of the EAMP, an adopted element of the 2018 Comprehensive Plan. As such, the proposed zone change is not in agreement with the 2018 Comprehensive Plan.
2. The existing Agricultural Rural (A-R) zoning is inappropriate for the subject property, for the following reasons:

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- a. The grade of the subject property has resulted in the difficulty of utilizing agricultural uses and those conditional uses in the A-R zone.
- b. The ownership of the once contiguous farm has been divided overtime, as the land has passed from one owner to another. The subject property was added to the Urban Service Area (USA) boundary, via the adoption of the Expansion Area in 1996 and has a significant area of land that is unsuitable for agricultural land uses due to the floodplain, which covers approximately 7.5 acres of land.
3. The proposed Expansion Area Residential-1 (EAR-1) Expansion Area Residential-2 (EAR-2) zones are appropriate for the subject property, for the following reasons:
  - a. The proposed zoning is compatible with the surrounding land uses and zoning at this location.
  - b. The proposed zoning presents an appropriate step-down in the residential uses from the highest intensity residential zoning to the lowest intensity, as the zoning in the area transitions away from the interstate corridor and Polo Club Boulevard toward the Urban Service Area boundary.
  - c. Positioning higher density residential land uses adjacent to the greenway at this location allows for greater access for those residents to the open space, while also providing connectivity and infrastructure that is needed for denser development.
  - d. The subject property is located within the Urban Service Area and is currently supported by urban services, including the transportation network and sewer services.
4. There has been no physical, social, or economic change in the immediate area, since the adoption of the 2018 Comprehensive Plan, that has significantly altered the basic character of the area.
5. This recommendation is made subject to approval and certification of PLN-MJDP-19-00036: Hamburg East (Belhurst), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Development Plan Presentation – Mr. Martin presented a revised rendering of the preliminary development plan associated with this zone change. He indicated that revised conditions were distributed to the Planning Commission, as follows:

1. Provided the Urban County Council rezones the property EAR 1 & 2; 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. ~~Discuss~~ Resolve interior pedestrian system for townhouse area at the time of the final development plan.
8. ~~Discuss~~ Resolve proposed relationship to the greenway at the time of the final development plan.
9. ~~Discuss~~ Resolve proposed Park Road alignment and cross-section per the Expansion Area Master Plan (EAMP), to the approval of the Divisions of Traffic Engineering and Planning.
10. ~~Discuss~~ Resolve single family lot access to Park Road for Lots 1, 2 & 19.
11. ~~Discuss~~ Placebuilder criteria Resolve compliance with the Community Design Element of the EAMP at the time of the final development plan.
12. Resolve second ~~emergency gate~~ entrance for gate at the time of the final development plan.
13. Resolve proposed design standards at the time of the final development plan, including front facing garage setbacks along the Park Road.
14. Depict extension of Man o' War Boulevard improvements along entire frontage of subject property.

Mr. Martin identified Blackford Parkway, Man o' War Boulevard, and the proposed entrance into this development. He said that the applicant is proposing 80 single family lots and 78 townhouses. He said that the applicant is demonstrating that the park road, which is Blackford Parkway, has a relationship with the greenway. He also pointed out the greenway that Mr. Baillie had referred to and said that the EAMP had envisioned it to coordinate, compliment, and connect the area. It is also a drainage feature for stormwater. He said that the applicant will continue to discuss and resolve some of the staff's concerns. One of those is condition #9, the cross-section of park road (Blackford Parkway) and how the roadway will function adjacent to the properties, in particular in providing the appropriate pedestrian and shared-use trail facilities that are envisioned. Another concern is condition #11, which is to be resolved at the next stage. The EAMP requires that the applicant submit statements addressing the community design element and the infrastructure element of the EAMP at the time of the final development plan. He added that the extension of the park road is identified as part of the infrastructure in the EAMP, and it is an exactable feature. He said that condition #7, is focused on the internal pedestrian system for the townhouses and the trail system, which will both be resolved at the time of the final development plan.

Mr. Martin said that the EAMP allows developers to set their own design standards, which include lotting standards and setbacks, and that the minimum setback is only five feet. These also need to be resolved at the time of the final development plan. He said that staff had a concern with the driveways and vehicular conflict along the Blackford Parkway, which will be a collector street. The single-family lots along that roadway have a twenty-five foot setback. He said that the staff is recommending that the applicant show improvements to Man o' War Boulevard, because it needs to be improved to urban standards.

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Applicant Presentation – Mr. Nick Nicholson, attorney, Buddy Goodwin, Ball Homes, LLC and Rory Kahly, EA Partners, were present to represent the petitioner. He said that this zone change has been planned for more than 20 years and it is to transform 38 acres of vacant and under-utilized agricultural land. He said that they are proposing to change 26 acres to the EAR-1 zone and 12 acres to the EAR-2 zone. He added that this not the first development in this area nor on this farm. He said that at the Zoning Committee meeting there was discussion regarding the statute that governs the zone change process and how the Planning Commission can recommend approval. He said that the first question in a zone change hearing is, is the project in compliance with the Comprehensive Plan. He added that if the that answer is no, then there are two more questions and if the answer is yes to either of them, the Commission can recommend approval to their legislative body. He said that they believe that the existing zoning is inappropriate and the proposed zoning is appropriate. He added that that they will not be submitting any separate findings at today's hearing because all three of these provisions of the statute are viewed equally and any of them are appropriate to recommend approval.

Mr. Nicholson said they believe that this proposal is in compliance with the Comprehensive Plan because the proposed mix of EAR-1 and EAR-2 zoning will allow for a development that will activate an under-utilized agricultural parcel that has long been recommended for this exact type of residential use, at this exact density, and even the exact zones. He said that this will 1) expand housing choices by having a 50/50 single-family and townhomes development; 2) support infill and redevelopment throughout the Urban Service Area by completing full urban improvements at Man o' War Boulevard; 3) provide well-designed neighborhoods and communities by matching zones, types, and density levels with the adjacent neighborhood, while maintaining character and context; and 4) address community facilities at a neighborhood scale by protecting the environment.

Mr. Nicholson said that with regards to the effective and comprehensive transportation system, the change of location of Blackford Parkway impacted the future development of this property. He said that they believe that this is compliance with the Comprehensive Plan because this development is sustainable and will match the character and context of the existing area, in an under-utilized corridor. He said that this property has been within the Urban Service Area boundary for more than 20 years and has remained vacant. He believes that this is exactly where development should be going. Theme E, Goal 1 states to activate large, undeveloped landholdings within the Urban Service Area boundary, which is what they are proposing to do.

In regards to the design policies, Mr. Nicholson said that the adopted Comprehensive Plan encourages utilizing a people-first design to ensure proper road connections, to provide pedestrian-friendly street patterns and walkable blocks, to adhere to the recommendations of the MPO Bike/Ped Master Plan, and to connect to adjacent stub streets in order to maintain connectivity. He said that they are providing a stub street to the adjacent vacant land to make a fully connected neighborhood. He said that there will be pedestrian improvements throughout the property. He added that they are proposing a secondary emergency entrance on the northern end of the development, which will need to be approved by the state. He made a correction that Mr. Martin had provided, the applicant is showing a thirty-five foot building line setback for the houses along Man o' War Boulevard, which will allow for larger driveways to discourage parking on Blackford Parkway. He said that they are providing a development that is sensitive to the surrounding concept, designing car parking areas to not be the primary component and providing varied housing choices. He said that all of the townhouses facing Man o' War Boulevard and Blackford Parkway are rear-loaded. He said that they are also providing adequate greenspace for all neighborhoods within walking distance, having the focal points accessible to all residents, and the single-loaded streets.

Mr. Nicholson said that it was a difficult decision to not follow the EAMP's recommendations, but after meeting with the staff and determining that the alignment of Blackford Parkway was a major concern. The road needed to near the greenway and he believes that this integrates this development into the greenway system and provides dedicated access for the single-family and any residents along the pedestrian infrastructure, it's a visual and key component for everyone who enters this development. He said that since they are not in agreement with the future land use map of the EAMP, they believe that they are in compliance with the EAMP, and will submit a compliance statement at the final development plan phase.

Mr. Nicholson said that in regards to the appropriateness and inappropriateness of the current zoning, this property is ill-suited for agricultural land because of the layout and the topography of the parcel. He said that they searched back fifty years and couldn't find any type of livestock that was actively using this land. He also believes that this property is ready to be developed because of the infrastructure that is already available to serve it. He said that the EAMP acted as a guide to provide the community, the developers, and the government as to how this large piece of land will be developed. He added that the EAMP provided a list of the infrastructure that was needed, the street system, the sanitary sewer, and stormwater system. He said that the current property owner installed trunk sewer line beneath the property, to serve this property, the adjacent commercial and residential areas. He said that the inappropriateness of this property to remain agricultural is the unwillingness to expand the Urban Service Area boundary, because there is sufficient amount of vacant land located inside of the boundary. He then displayed a map from Imagine Lexington, which depicts 64% Residential, 25% Employment, and 11% Commercial. There isn't any agricultural use recommended inside of the Urban Service Area boundary. He said that the Fayette Alliance specifically identified this parcel as a potential new residential growth area.

Commission Questions - Ms. Plumlee what would be the developer's and the state's improvement along Man o' War Boulevard. Mr. Nicholson said that the developer is proposing to install curb and gutter and the sidewalks along Man o' War Boulevard.

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Mr. Penn said that he is appreciative of the single-loaded streets within the development.

Mr. Owens asked Mr. Nicholson if they are in agreement with the staff's revised recommendations. Mr. Nicholson agreed.

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

Staff Rebuttal – Mr. Baillie said that there are numerous other policies from the Comprehensive Plan that should also be addressed when reviewing an application in compliance and agreement with the Comprehensive Plan. He said that the applicant complied with ten of the forty-two policies. He said that the other policies that were not addressed include density, equity, protection, sustainability, restoration, livability, connectivity, place making, accountability, and growth policies. He said that reducing the Comprehensive Plan to the design of the site is not the community's desire nor the directive of the Planning Commission.

Commission Comments – Mr. Nicol commended the staff for working with the applicant to get to an approval recommendation. He said that there was a lengthy discussion regarding the Comprehensive Plan and Placebuilder at the October 3, 2019 Zoning Committee meeting. He said that he believes that the Placebuilder was not a checklist, but it is a distillation of the criteria that's within the Comprehensive Plan. He said that with enough time, the applicant could have gotten to a staff approval recommendation based on the Comprehensive Plan. If they had used the Placebuilder, the approval most likely would have been received earlier, which could have allayed any concerns with lack of transparency. He said that Fayette County is expecting a population growth of more 20,000 over the next ten years, which would be 2,000 per year. He said that this proposed development is a small percentage of what is needed to meet these growth objectives. He added that he believes that this is good plan and is supporting it.

Mr. Penn said that the Planning Commission worked for the past two years to approve of the 2018 Comprehensive Plan and it needs to be respected. As Mr. Nicol stated, the design was transparent, but the development plan should be as well. He said that plan will be submitted again as a final development plan, and there are many conditions that need to be completed. He said that the process was meant to be followed and the applicant has made the decision to only follow it on the design standards. This property fits the narrative of K.R.S. 100, which is the only reason why it is moving forward. He stated that he doesn't want the community to feel that every piece of property, going forward, will be able to not address the Comprehensive Plan.

Mr. Owens said that the recommendation is that this gets approved, but the Planning Commission hasn't voted on it at this time.

Ms. Plumlee said that it is unusual to get approval from the staff with the first reason being that the applicant hasn't provided complete and sufficient information to demonstrate agreement with the Comprehensive Plan. She said that she is concerned that this may set a precedence in the future. She said that each zone change is individual and is considered with individual aspects within those realms.

Mr. Owens said that there is a different set of circumstances with any request/application and he doesn't believe that there will be any precedence setting with this decision. He said that there had been many revisions since the original application and more can be still be completed. He agrees with Mr. Nicol that taking a different path would have provided easier and better results. He added that failure to address the majority of elements of the 2018 Comprehensive Plan shows a lack of respect for the City of Lexington, which includes the Planning Commission, the staff, the city government, and the citizens of Lexington who live and work here. We are all after the same desire, to make Lexington a better place. He said that he hopes that this is a single occurrence and that future request will not necessitate these types of statements that have been presented here today.

Zoning Action – A motion was made by Mr. Forester, seconded by Ms. Mundy, and carried 7-0 (Bell, Brewer, Pohl, and Wilson) to approve PLN-MAR-19-00010: BALL HOMES, INC (AMD), for the reasons provided on the supplemental report by the staff.

Development Plan Action – A motion was made by Mr. Forester, seconded by Ms. Mundy, and carried 7-0 (Bell, Brewer, Pohl, and Wilson) to approve PLN-MJDP-19-00036: HAMBURG EAST (BELHURST), for the revised reasons presented by the staff.

*Note: Planning Commission took a recess at 3:20 p.m. until 3:30 p.m.*

*Note: Mr. Nicol left the meeting at 3:20 p.m.*

*Note: Mr. Bell arrived at the meeting at 3:20 p.m.*