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Knox van Nagell, J.D.

LFUCG Planning Commission
Government Center
200 East Main Street
Lexington, KY 40507

October 22nd, 2014

Dear Chairman Owens and Planning Commission members,

My name is Knox van Nagell, and I am writing this letter on behalf of Fayette Alliance.

Founded in 2006, Fayette Alliance is a coalition of citizens dedicated to achieving sustainable growth in Lexington-Fayette County through land use advocacy, education, and promotion.

Through our efforts at government and beyond, Lexington can become the model for sustainable growth, by connecting and balancing its vibrant city with its unique and productive Bluegrass farmland.

In furtherance of this mission, Fayette Alliance respectfully submits recommendations for your consideration and adoption in re: **ZOTA 2014-4 & SRA 2014-1: Recreation and Tourism Land Uses.**

As you know, this legislation aims to introduce recreation and tourism uses primarily in the rural area of Fayette County, in a fashion that advances agriculture, environmental stewardship, and public access.

This is a complex, yet essential task.

Our sensitive Bluegrass farmland, livestock operations, and historic context are the bedrock of Lexington's brand and diverse economy—and while compelling, they are fragile and threatened resources that can be compromised by adverse intrusions.

In fact, in 2006, the World Monument Fund listed the inner Bluegrass Region, including Lexington-Fayette County, as one of the one hundred most endangered cultural landscapes in the World, along with the Taj Mahal and Great Wall of China.¹

And yet, this vulnerable and productive landscape gives enjoyment and pride to those who experience it. The "Bluegrass" as a community amenity is a powerful opportunity in its own right.

¹ World Monument Fund, "A Race Against Time for Kentucky's Bluegrass Country", 2006.



To strike a successful balance between these two seemingly competing interests, we must strengthen the foundation upon which our brand is built—our signature agricultural and environmental assets—while introducing public access opportunities that build upon, and not undermine, this foundation. **Protecting the ag-intent of our rural zones and preserving our unique natural resources are essential to achieving this vision.**

If accomplished, we will improve Lexington’s economic, environmental, and cultural currency for locals and tourists alike...and if we fail, we may kill the proverbial goose that laid the golden egg.

Pursuant to achieving this policy goal, Fayette Alliance conditionally supports **ZOTA 2014-4 & SRA 2014-1: Recreation and Tourism Land Uses, provided several key revisions are incorporated into the legislation.** They are summarized below, and please read the full statement for additional details:

1. Definitions. Farm Gift Shops and Homegrown Restaurants...AG-Nexus Required To Preserve Ag-Intent of applicable zones.

- Farm gift shops and homegrown restaurants must have an agricultural-nexus between the products sold and the subject farm. Work is needed to determine a feasible and enforceable definition for “ag-nexus”, to legitimize the “ag” aspect of tourism uses in the rural area, and the A-R zone in particular.

2. Protect the AG-Intent of the Agricultural-Rural Zone

- Commercial vs. Non-Commercial recreational uses are an important distinction. For-profit motives increase frequency and environmental impacts, therefore they should be regulated differently
- Support non-commercial hiking and biking trails on public rights of way along scenic rural roads, as a means of basic infrastructure. “Pay to play” is not an equitable or holistic approach to establishing multi-use trails in the rural area.
- Do not support active-commercial recreational uses such as zip lines, canopy tours, recreational outfitters, kayak launching sites, and campgrounds in the A-R zone. These uses undermine the agricultural intent of zone, and are disruptive to neighboring farm operations. Uses are better suited to B-1, A-U, A-B, and A-N zones if properly regulated.
- Support farm gift shops only if located on working farms that are giving farm tours. Stand alone shops without ag-connection challenge intent of zone and may introduce troubling commercial activity that disrupts neighboring farm operations and undermines our Bluegrass brand.

3. Commercial Recreation May be Allowed Outside Core Agricultural Areas, such as the rural B-1, A-U, A-B, and A-N Zones, provided Natural Resources of Subject Sites are Protected.

- Support commercial recreation, adventure tourism, and ecotourism uses in zones, provided the natural resources of the subject property are protected. An environmental surety bond may be required if extenuating circumstances are present on environmentally sensitive lands.
- The Planning Commission should appoint a work group to explore the use and application of such bonds. Ostensibly, a bond requirement would demonstrate that the business operator is well financed and capable of stewarding our most precious resources, and also able to clean up the site in the event the use ceases for any reason. If Lexington requires such bonds for development projects in the heart of downtown, Lexington can and should do it for our most remote and sensitive natural resources throughout the rural area.

4. New non-commercial recreation and ecotourism programs should be explored on our 2,800 acres of rural parkland in Fayette County. These lands could accommodate a community need without setting disruptive land use precedents in our Zoning Ordinance

ZOTA 2014-4 & SRA 2014-1 is a most serious undertaking that, if responsibly done, will benefit Lexington-Fayette County for years to come. It is from this vantage point, Fayette Alliance submits the following commentary for your consideration.

Background

Lexington has a storied history and national reputation for innovative land-use planning. Fayette County is home to the state's second largest city, while also generating the most agriculture receipts in Kentucky². This urban-rural tension defines us, is our strength, and also is no accident.

For over fifty years, we have led the nation in planning progress—from the inception of the Urban Services boundary in the 1950s, and merged government in the 1970s, to the PDR program, forty-acre minimum, and Rural Service Area Land Management Plan in the 1990s. In fact, the American Farmland Trust is celebrating our planning traditions this year, by hosting its prestigious national planning conference in Lexington for a second time in October 2014.³

We have and continue to look for ways to leverage our urban and rural assets for Lexington's collective success. And, a core principle of this effort is a longstanding commitment to ag-enterprise on our storied Bluegrass soils—without which, economic development and farmland preservation are not possible.

² Kentucky Farm Bureau, "KY Agriculture Facts", 2013.

³ www.farmland.org/new/pressreleases/2013/AFT-to-Hold-National-Conference.asp.

Constituting a \$2.4 billion industry and one-in-nine jobs in Lexington, Fayette County agriculture is an industry that is primarily involved in equine and cattle cultivation, but is expanding into exciting new markets such as local food, row crops, and agri-tourism.⁴

As the national economy continues to climb out of the “great recession” ag-revenues are on the rise. Recently, the Keeneland thoroughbred sales, along with the commodity and beef markets, have reached record highs. In 2012, Kentucky farms (which rank fourth in the U.S. in number) generated \$5.2 billion in cash receipts and are anticipated to exceed \$6 billion in 2013.⁵ This farm activity also supports billions in professional services, including the construction, legal, finance, medical, and real estate fields.⁶

Fayette County farms are at the apex of this economic cluster, as they are assessed at nearly \$900 million in value—which is the highest in the state and nearly doubles second-place Woodford County. With over 112,000 acres of prime farmland, Lexington has set aside over 60% of its landmass for agriculture.⁷

At its heart, the “factory floor” for these enterprises is the phosphorous rich, prime soils that encompass nearly 90% of our Rural Services Area.⁸ By leveraging these soils to produce the world’s best livestock, Lexington has a well-established competitive advantage in the equine and cattle sectors.

As such, Fayette County farming is inherently tied to, and shaped by the Bluegrass woodland pasture upon which it relies. This unique relationship defines how and why we are the Horse Capital of the World, and also is the number one reason why tourists visit Lexington.⁹ It’s in the ground here, which is a finite natural resource that cannot be replicated. Consequently, it is ideal for our authentic form of agriculture... and tourism.

How we use and regulate this environmental asset has a direct impact on Lexington’s economies of scale in the private sector. As a land-based venture, Fayette County agriculture and its respective real estate markets is greatly impacted by planning and zoning laws, which govern land use activities and how adjacent properties interact with one another.

Specifically, the cultivation of fractious and valuable livestock—combined with the farm improvements needed to raise these animals—make it a risky, but potentially lucrative undertaking whose operations are susceptible to neighboring activities.

⁴ University of Kentucky College of Agriculture, “The Influence of the Agricultural Cluster on the Fayette County Economy”, January 2013.

⁵ Kentucky Farm Bureau, “KY Agriculture Facts”, 2013; KY Department of Agriculture, 2013.

⁶ University of Kentucky College of Agriculture, “The Influence of the Agricultural Cluster on the Fayette County Economy”, January 2013.

⁷ University of Kentucky College of Agriculture, “The Influence of the Agricultural Cluster on the Fayette County Economy”, January 2013.

⁸ 1999 LFUCG Rural Service Area Land Management Plan, Page III-2.

⁹ Lexington Convention and Visitor’s Bureau, “2011 Conversion Study”, January 2012.

If not properly regulated by the zoning ordinance, farm liabilities can increase and profitability can decrease when residential and commercial development locate next door. Traditionally, these uses generate trespassers, pets, traffic, noise and light pollution, litter and water quality issues which can be harmful to animals and pose costly challenges for operating farms efficiently and safely.¹⁰ The more difficult it is to do business, the more challenging it becomes to attract new investors to agriculture and grow the industry in Fayette County.

By in large, our current Zoning Ordinance protects the itinerant needs of livestock farms, and as a result, Lexington-Fayette County is able to attract outside investment into the community. For example, nearly \$100 million in farms were purchased in Fayette County during 2012.¹¹ This number does not include the dollars spent to improve the land for livestock cultivation, which directly supported the scenic vistas and “brand” that propel Lexington’s \$1 billion tourism industry and 23,420 local jobs.¹²

Additionally, Lexington’s farm-base continues to make it an ideal destination for visitors and locals alike. Annually, over one million tourists collectively visit the KY Horse Park, our rural park system, and famous horse farms.¹³ Our rural parks alone constitute over 2,800 acres for public access and enjoyment.

Further, Lexington hosts major ag-related events that have significant economic benefits for our entire community, including the annual Keeneland and Fasig-Tipton sales, the Bluegrass Stockyards sales, the yearly Rolex Three Day Event, the 2010 World Equestrian Games, and the recently announced 2015 Breeder’s Cup, just to name a few.

Lexington’s land use authorities recognize this reality, and the fundamental need to support agriculture and natural resource management as a means to strengthen economic development, tourism, and recreational opportunities for the community at large.

The 2013 Comprehensive Plan states:

“ C. Creating Jobs and Prosperity

Goal 1. Support and showcase local assets to further the creation of a variety of jobs.

b. *Strengthen regulations and policies that propel the agricultural economy, including but not limited to, local food production and distribution, agri-tourism, and the equine industry that showcase Lexington-Fayette County as the Horse Capital of the World.*¹⁴

¹⁰ 1999 LFUCG Rural Service Area Land Management Plan, Page III-18 and Page III-20.

¹¹ Kirkpatrick & Company, “2012 Fayette County Farm Sales”, 2013.

¹² 2013 LFUCG Comprehensive Plan, “Creating Jobs and Prosperity”, p. 63.

¹³ KY Horse Park; LFUCG Parks and Recreation; VisitLex.

¹⁴ LFUCG 2013 Comprehensive Plan, “Goals and Objectives”, p. 3.

Unlike most large cities, Lexington is not located on a major body of water, nor are there expansive forests or mountaintops to protect. Our most significant natural asset is the rich, fertile soil that sustains a thriving agricultural industry. Originating from the underlying Lexington limestone, the fertile soils and mineral-rich water have been integral to the diversity in crop, equine, and livestock farming since the area was settled.¹⁵

Rural Tourism. The premise for rural tourism is to offer an activity, event, product, or experience that attracts visitors and has a direct tie to the land. Rural tourism adds value to traditional rural income and helps preserve the agriculture industry and culture...Fayette County should tailor its definitions and regulations to meet the objective of rural tourism without negatively affecting natural resources, landscapes, and farm operations.¹⁶

The trend in tourism worldwide is to offer opportunities for tourists to have a total experience. Lexington is well situated to capitalize on opportunities for ecotourism, agri-tourism, and cultural tourism, which are the fastest growing segments of the tourism marketplace.”¹⁷

Additionally, the 1999 Rural Service Area Land Management Plan affirms the need to promote agriculture as the primary land use for our rural lands:

“ III. A. Core Agricultural and Rural Land Category (CARL)

This land category is the primary category for rural land associated with agriculture in Fayette County...the total land area is 113,953 acres. The policy emphasis for land in this category should be for preservation and enhancement of the land for agricultural purposes in order to ensure the continued viability of the local agricultural economy.¹⁸

The following programs are recommended for this area:

4. Principal uses permitted in this area should be those associated with agriculture and its attendant housing needs. Non-agricultural conditional uses for this area should be kept to a minimum.¹⁹

III. B. Natural Areas Category (NAT)

This land category is designed to encompass certain areas that are physically unique from other portions of Fayette County in that they are important for preservation, but not primarily for their association with agriculture...Lands in this area exhibit a combination of characteristics including an association with the KY River and its tributaries...The policy

¹⁵ LFUCG 2013 Comprehensive Plan, “Protecting the Environment”, p. 39.

¹⁶ LFUCG 2013 Comprehensive Plan, “Creating Jobs and Prosperity”, p. 65.

¹⁷ LFUCG 2013 Comprehensive Plan, “Creating Jobs and Prosperity”, p. 63.

¹⁸ 1999 Rural Service Area Land Management Plan, “Rural Land Categories”, page III-6.

¹⁹ 1999 Rural Service Area Land Management Plan, “Rural Land Categories”, page III-6.

emphasis for land in this category should be for preservation and enhancement of the land in a natural state with a minimum of intrusions.²⁰

4. Principal uses permitted in this area should be those associated with agriculture and rural housing in a natural setting with minimal disturbance to the land and vegetation. Conditional uses for this area should be kept to a minimum.²¹

6. The LFUCG should seek to implement programs throughout this area designed to improve and manage public accessibility to the resources in this area...²²

IV. A. Environmentally Sensitive Areas (ESA)

Rural Environmental Concerns

The Land Capability Analysis defined the boundaries of an extensive Inventory of environmentally sensitive areas within the Rural Services Area. The Environmentally Sensitive Areas (ESAs) are primarily stream corridors, karst areas (sinkholes), steep slope areas including the palisades of the KY River, areas of poor soils, wetlands, mature tree stands, and similar areas...²³

Protection, preservation, and proper management of the environmentally sensitive areas are critical for the quality of life not only in the rural areas of the county, but our urban areas and the region as well. For example, protection of the quality of water in the Rural Service Area is essential to the agricultural economy, to the drinking water supplies of the region, and also for the protection of our plant and animal habitat areas...²⁴

The most basic environmental concern centers on the drainage corridors in the Rural Service Area...The scope of programs associated with these stream corridors should be expanded to recognize the need to preserve and protect these areas for all of their associated benefits. Protection of many of these areas can be accomplished through programs designed to link the urban and rural areas by allowing public access to scenic resources for passive recreation such as hiking and bike trails, wildlife programs, botanical areas, environmental education, and similar uses. These can and should be accomplished, wherever possible, without creating interference with agricultural activities.²⁵ (Emphases added).

As articulated by the aforementioned planning authorities that govern zoning in the rural area—promoting agriculture and the preservation of our natural resources are the touchstones and primary intent of our Bluegrass landscape and its zoning categories.

²⁰ 1999 Rural Service Area Land Management Plan, “Rural Land Categories”, page III-9.

²¹ 1999 Rural Service Area Land Management Plan, “Rural Land Categories”, page III-9.

²² 1999 Rural Service Area Land Management Plan, “Rural Land Categories”, page III-9.

²³ 1999 Rural Service Area Land Management Plan, “Special Land Elements”, page IV-4.

²⁴ 1999 Rural Service Area Land Management Plan, “Special Land Elements”, page IV-4.

²⁵ 1999 Rural Service Area Land Management Plan, “Special Land Elements”, page IV-4.

Only because of this planning approach, does Lexington have a remarkable asset—“The Bluegrass”—which currently supports billions in economic development activity, while also capable of promoting new land uses, markets, and tourism opportunities...provided they complement its “signature”.

Under this scenario, Lexington creates a win-win that builds on current strengths instead of undermining proven ones. It is through this constructive lens that we should examine the proposed ZOTA recommendations moving forward.

ZOTA Recommendations

The ZOTA recommendations are the result of a thorough planning process, spanning over two years and including over twenty meetings by a diverse fifteen-member stakeholder group, extensive planning staff resources, and Planning Commission review. The ZOTA initiative deserves no less, given the importance, breadth, and scope of this legislation.

Fayette Alliance supports the majority of the ZOTA recommendations, as they appropriately balance the needs of agriculture and natural resource preservation with new public access and recreation opportunities in Lexington-Fayette County.

A key component of Fayette Alliance’s mission is to “connect” our urban and rural areas using sustainable growth policies...and by in large, the ZOTA proposal accomplishes this goal.

However, there are several key recommendations that require revision in the interest of protecting the agricultural intent and natural resources of our rural area— which is essential to strengthening our signature brand for public access and tourism opportunities.

Without incorporating our proposed revisions, the ZOTA proposal encourages the widespread emergence of non-agricultural, commercial uses throughout our rural area, which if left un-checked, will weaken the agricultural intent of our zones and de-stabilize the real estate conditions of our farmland. This scenario will discourage investment in our signature ag industries, and precipitate disruptive zone changes outside of the Urban Services Boundary.

Needless to say, this policy choice is a critically important one for our community.

Accordingly, Fayette Alliance supports the ZOTA proposal only if it protects the agricultural intent and natural resources of our rural area. Specifically, we ask that you incorporate the following recommendations as a condition of our support:

A. DEFINITIONS

***Gift Shop.** Gift shops should be split into two categories: Non-Farm, and Farm. Gift shops allowed in the agricultural zones (Farm) should have an agricultural nexus between the products sold and the subject farm on which the shop is located.

(1) Fayette Alliance proposes the following language for Farm Gift Shop: *A retail facility limited to 1,000 square feet that sells farm products grown or raised on the premises; and/or farm memorabilia representative of the farm products grown or raised on the premises, such as hats, shirts, and souvenirs.*

If this definition is adopted, the commercial activities of the “Farm Gift Shop” will support the agricultural intent of the rural zones by selling products or farm memorabilia that are directly related to the land. By establishing this context-specific requirement, the use will be truly accessory to working farms and the unique products sold will affirm the authenticity of our signature industries—making our “Bluegrass” brand more valuable in the long-term.

***Restaurant, Homegrown.** Homegrown restaurants should have a direct correlation between the food sold and the farm upon which it is located. This cultivation requirement will support the agricultural intent of the rural zones where they may exist. Without this “agricultural nexus” between the food produced/consumed and the land...these restaurants will be no different than their city counterparts and operationally, will weaken the rural brand from which they hope to benefit.

(2) Therefore, Fayette Alliance proposes a “cultivation” requirement for homegrown restaurants.

Additionally, each zoning category where homegrown restaurants are allowed must have appropriate grease-trap, and septic regulations to address environmental hazards associated with their operation.

B. A-R ZONE- Primary intent is to encourage production agriculture and preserve rural character; and to discourage all forms of urban development except for a limited amount of conditional uses.

Proposed Conditional Use:

***Gift Shops.** There is a great opportunity for farms to sell produce and memorabilia as part of the growing “farm tour” network in Fayette County. “Horse Country” and other tourism initiatives seek to educate the public on the land, people, and animals that create our “Bluegrass” cultural brand. Like the Kentucky Bourbon Trail, this is an exciting and promising component of agri-tourism in the Lexington area.

(3) Fayette Alliance proposes the following language to further define “gift shops” in the A-R zone: “Farm gift shops on agricultural properties that offer farm tours”.

This language will ensure that the gift shops are not merely stand-alone commercial enterprises in the agricultural zones...but rather, have a distinct and

accessory connection to agriculture, and the farms where they are located. Such a distinction is important, as it affirms the agricultural intent of the A-R zone, and ensures that the farm gift shops will be an authentic extension of our “Bluegrass” brand.

***Outdoor recreational and agri-tourism, ecotourism, or adventure tourism activities.**

Within this category, there is a great need to introduce these uses in a way that complement—not undermine— our signature agricultural industries and landscape for the reasons mentioned above.

While going through this exercise, it is significant to note that many “disruptive” land uses that are currently allowed in the A-R zone were grandfathered into the ordinance as conditional uses decades ago when zoning was first implemented, government merger occurred, etc.

- Commercial vs. Non-Commercial Uses. This is an important distinction that should remain in the ZOTA language. “Commercial” activity is more intense and creates more environmental impacts to neighboring properties such as traffic, noise, sewer, parking, etc. because profit motive encourages higher frequency of use. Conversely, “non-commercial” activity poses fewer impacts to neighboring properties by the same rationale. Therefore, these uses should be regulated differently in land use planning.

(3) As in other “recreational” conditional uses listed in the A-R zone, Fayette Alliance proposes the “commercial vs. non-commercial” modifier should remain for this category.

- Biking, and Hiking Trails. The ability for the public to experience our iconic Bluegrass landscape is of paramount importance. Through the Urban Service Area concept and PDR programs, the government and taxpayer have supported measures to preserve and promote land and the farm economy. These government incentives set the stage for market investment and private property acquisition that are the lifeline of Fayette County’s agricultural industry and resource conservation efforts. This scenario is not unlike other “public-private” partnerships for economic development and environmental initiatives that benefit the community.

Therefore, Fayette Alliance proposes the following conditional uses to leverage this investment in a way that respects private property rights and the itinerant needs of farmers on one hand, while increasing public access in the rural area on the other:

(4) Fayette Alliance supports non-commercial hiking and biking trails. Hiking and biking trails are not only essential for a more sustainable transportation network, they are key “amenities” for locals and visitors alike. Everyone should be able to enjoy these trails, not just those who can “pay to play.” **Like sidewalks in the urban context, a rural trail network that uses public rights of way along scenic rural**

roads that respects the logistical and liability concerns of privately held farm operations is the focal point of the issue. Fayette Alliance is currently working on such a trail master plan, and hopes to make it public for discussion and eventual implementation by January 2015.

Ultimately, by allowing non-commercial hiking and biking trails, these facilities are treated like basic infrastructure for public use, and pose fewer disruptions to livestock on adjacent farms and sensitive environmental areas. Under this vision, the protection of agribusiness and natural resources, while promoting public access and tourism is achieved .

-Active-Commercial adventure-tourism, eco-tourism, and outdoor recreational uses such as canopy tours, zip lines, recreational outfitters, kayak launching sites, and campgrounds.

Active adventure and eco-tourism uses, in the commercial context, will create many disruptions for neighboring farm operations in the A-R zone—from traffic and noise problems, to unintentional property trespass, water quality, and other environmental issues. These problems are well-documented impacts of adventure and ecotourism development, and they do not bode well for traditional agricultural activities, such as raising fractious livestock, next door.²⁶

The primary intent of the A-R zone is to promote production agriculture and protect the “rural character” of the Bluegrass.

As referenced above, the Rural Service Area Land Management Plan expressly discourages non-agricultural conditional uses in the A-R zone to protect the logistical, environmental, and legal underpinnings of our signature livestock industries and the soils upon which they depend.²⁷

By introducing new active non-agricultural commercial uses in the A-R zone, we violate a core planning principal that has served this community well for decades and given rise to a multi-billion dollar industry and iconic cultural landscape that is envied throughout the world.

To do so even in the conditional use context is problematic, as zoning enforcement is difficult and the process unpredictable.²⁸ Such an environment does not breed confidence to potential investors looking to buy land for livestock production in the A-R zone, only to find out a disruptive, commercial adventure or eco-tourism use can locate next door.

²⁶ Sujata Narayan, “Below the Surface: The Impacts of Ecotourism in Costa Rica”, Ch.7 1998; Margaret Lowman, “Ecotourism and Its Impact on Forest Conservation”, Action Bioscience 2004.

²⁷ 1999 Rural Service Area Land Management Plan, “Rural Land Categories”, page III-6.

²⁸ Photo of unapproved mining operations on Con Robinson property, located on environmentally sensitive lands at 4247 Georgetown Rd, Lexington KY. Google Earth.

Instead of spending resources on improving land, the farmer will be forced to finance legal battles to protect their business interests and real estate investments...creating a very volatile market.

While active, commercial recreational uses have some financial gains for the community, the economic losses incurred by creating a climate that discourages large-scale livestock production will far outweigh any recreational benefits in the A-R zone.

By adopting such a zoning policy, Lexington will discourage the very land-use that competitively leverages our natural resources and generates a profitable agricultural commodity... which in turn, improves real estate values and constitutes our signature brand. This snowball effect races us to the bottom, and is not a sustainable economic strategy for the prime agricultural areas of Fayette County.

Given the high land values of our farmland, only robust commercial activity will financially work in the place of agriculture...which will fundamentally change the area, paving the way for non agricultural zone changes and development outside of our urban services area. Commercial uses in our core agricultural areas will create a domino effect that will weaken our growth boundary today and in the future.

Therefore, active-commercial adventure tourism, ecotourism, and outdoor recreational uses should locate outside of our core agricultural areas with prime soils, where—if properly regulated—the natural resources and infrastructure are better suited to accommodate them, such as the hundreds of acres collectively located in or recommended for the rural B-1, A-U, A-B, or A-N zones.

(5) Therefore, Fayette Alliance opposes active commercial adventure-tourism, eco-tourism, and outdoor recreational uses such as canopy tours, zip lines, recreational outfitters, kayak launching sites, and campgrounds in the A-R zone.

The A-R zone constitutes the core-agricultural lands of Fayette County. As such, it is the factory floor of our signature industries and we must do all we can to honor its agricultural intent, and protect our acclaimed farm operations and resources from disruptive land uses.

Farm tours complete with small-scale homegrown restaurants and gift shops, public trail systems, agri-tourism such as corn mazes, and passive recreation can responsibly introduce new tourism opportunities in the A-R zone without compromising the foundation of our rural economies and brand.

C. A-N ZONE- Primary intent is to preserve areas within the Rural Service Area that are physically unique, primarily due to their association with the Kentucky River and its tributaries. This area is characterized by steeper slopes, forested areas, and

thinner/poorer soils and is known as a habitat for rare and unusual flora and fauna. Because these lands are sensitive, special care is needed to ensure that the uses that are permitted are compatible with the goal of conservation and preservation of these lands.²⁹ (emphasis added).

Proposed Conditional Use:

***Outdoor recreational and agri-tourism, ecotourism, or adventure tourism activities.**

The 2013 Comprehensive Plan, the Rural Service Area Land Management Plan, and current Zoning Ordinance, recommend competing land-use objectives of public access and recreation on one hand, and the conservation and protection of natural resources on the other, for the environmentally sensitive lands in A-N designated areas.³⁰

By introducing active, commercial adventure-tourism, eco-tourism, and recreational uses—such as canopy tours, recreational outfitters, kayak launching sites— on these lands, we will satisfy the public’s desire to enjoy the Kentucky River Palisades area in new ways that can complement Lexington’s already robust tourism industry.

However, if left unregulated, we run a very real risk of losing these sensitive lands “to death” and irreversibly compromising their natural resources and threatening the considerable farming operations of the area.³¹

We must look at innovative and practical ways to achieve this complex balance...especially given LFUCG’s limited resources in enforcing the Zoning Ordinance and reclaiming lands damaged by environmental abuse.³²

Moving forward, (6) Fayette Alliance proposes an “environmental surety” ordinance to demonstrate that the business operator is well financed and capable of stewarding our most sensitive environmental resources, and also able to clean up the site in the event the use ceases for any reason. If Lexington requires performance bonds for development projects in the heart of downtown, we can and should have similar requirements for our most remote and sensitive natural resources throughout the rural area.

²⁹ LFUCG Zoning Ordinance, Section 8 Page 14.

³⁰ LFUCG 2013 Comprehensive Plan, “Creating Jobs and Prosperity”, p. 65; 1999 Rural Service Area Land Management Plan, “Rural Land Categories”, page III-9 & page IV-4.

³¹ Sujata Narayan, “Below the Surface: The Impacts of Ecotourism in Costa Rica”, Ch.7 1998; Margaret Lowman, “Ecotourism and Its Impact on Forest Conservation”, Action Bioscience 2004.

³² Photo of unapproved mining operations on Con Robinson property, located on environmentally sensitive lands at 4247 Georgetown Rd, Lexington KY. Google Earth.

Such bonds would bridge the gap between the competing goals of conservation and commercial recreation in fragile natural areas.

We ask that the Planning Commission assemble a diverse stakeholder group to determine the elements and feasibility of such a program in Lexington-Fayette County. Stakeholder membership should include representatives from Commerce Lexington, Lexington Realtor Association, Fayette Alliance, Fayette County Farm Bureau, Kentucky Thoroughbred Association, the Nature Conservancy, property owners, and others. After the stakeholder group completes its work, the environmental surety ordinance should be incorporated into the ZOTA recommendations by reference.

(7) Fayette Alliance supports commercial recreation and tourism in the rural B-1, A-U, A-B, and particularly the A-N zone, but only if the natural resources are protected on subject sites.

If the proposal has the potential to substantially impact an environmentally sensitive area, applying an environmental surety should be required, on a case by case basis.

The jurisdiction of the environmental surety ordinance would ostensibly be countywide, and its application would be on a case-by-case basis where a proposal involves substantial impacts on environmentally sensitive lands.

Program requirements may include:

First, the planning authority (Board of Adjustment, Planning Commission, or Urban County Council) must find that the proposed land use will have substantial environmental impacts on the subject property.

Second, the applicant must be required to implement best management practices to ensure that the use will not adversely impact the land and water.

Third, the applicant must be required to restore the land to its pre-development condition in the event the use ceases to operate for any reason.

Fourth, the applicant must be required to post a bond or other surety to cover the cost of restoring the land to its original condition, in the event the use ceases to operate for any reason and the operator fails to restore the land to its original condition. The bond duration and amount will be determined on a case-by-case basis, according to the criteria and parameters established in the environmental surety ordinance.

After research on the issue, we found that other progressive communities have regulations governing land use in environmentally sensitive areas—

and in particular, require operators to post a surety bond for certain activities, to ensure that the land will be properly developed, operated and restored when the use ceases.³³

With a surety bond in place, needed funds would be at the ready to reclaim property in the event of environmental abuse, neglect, or zoning violations.

If fair and reasonable, these bonds will ensure that our finite natural resources are not exploited, but enjoyed and protected on a countywide level. Such stewardship is key to both Lexington's economic and environmental wellbeing, as it will safeguard the resources upon which our businesses and public health depend. The LFUCG Mining and Quarrying ordinance provides a policy precedent for such a measure in Lexington, and environmental sureties are legally permissible in the state of Kentucky.³⁴

As history has proven, Lexington runs the risk of environmental damage and expensive clean ups for both the taxpayer and entrepreneur without such an insurance policy in place. Enclosure.³⁵ And if established, sureties will responsibly enable more intrusive commercial tourism activities in areas once off-limits from widespread public use and enjoyment.

Given the importance and sensitivity of our Bluegrass landscape, we ask that the Planning Commission explore an environmental surety bond ordinance, and ultimately make reasonable sureties a potential requirement for doing business on environmentally sensitive lands—and particularly in the A-N zone—of Fayette County.

(8) Lastly, new non-commercial recreation and ecotourism programs should be explored on our 2,800 acres of rural parkland in Fayette County. These lands could accommodate a community need without setting disruptive land use precedents in our Zoning Ordinance.

³³ Maryland Wetland Mitigation Requirements; Sensitive Area Permits in Lake Forest Park, Washington; Conditional Use Permits in the City of Fircrest Washington; Environmentally Sensitive Areas in the City of Algona, Washington; Conditional Use Permits in the City of Buffalo, Minnesota; Temporary Real Estate Sales Centers in the City of Millville, Delaware; Environmentally Sensitive Areas in the City of Seatac, Washington.

³⁴ Christine Westover, Legal Memo in re: Environmental Bonds for Conditional Uses in the A-N Zone, submitted to LFUCG Planning Commission February 11 2014.

³⁵ Photo of unapproved mining operations on Con Robinson property, located on environmentally sensitive lands at 4247 Georgetown Rd, Lexington KY. Google Earth.

Conclusion

Fayette Alliance appreciates your consideration of our recommendations in re: ZOTA 2014-4 & SRA 2014-1 Lexington Fayette Urban County Government Zoning Ordinance Text Amendment (ZOTA) for Recreation and Tourism Land Uses.

This is a most significant legislative initiative that seeks to introduce recreation and tourism uses primarily in the rural area of Fayette County, in a fashion that advances agriculture, environmental stewardship, and public access.

This is a complex effort, and a “win-win” is needed where we build on our strengths, not undermine them.

To accomplish this, we must strengthen the foundation upon which our acclaimed Bluegrass brand is built—our signature agricultural and environmental assets—while introducing exciting new land uses and public access opportunities that complement this foundation.

Protecting the agricultural intent of our rural zones and preserving our unique natural resources are essential to achieving this vision.

Conversely, the widespread emergence of non-agricultural, commercial uses will have the opposite effect and undermine the vision...de-stabilizing the real estate conditions of our rural area, discouraging investment in our signature ag industries, and precipitating disruptive zone changes outside of the Urban Services Boundary.

This policy choice is a critically important one for our community.

We must continue to protect agriculture and the landscape upon which it depends. If done, we will improve Lexington’s economic, environmental, and cultural currency for locals and tourists alike...and if we fail, we may destroy the very qualities that make us unique.

Much is at stake, and we respectfully request that you incorporate our recommendations into the ZOTA text moving forward. Thank you for your consideration and dedication to innovative land use planning in Lexington-Fayette County.

Respectfully submitted,

Knox van Nagell, JD

Addendum to footnote 28:

