

November 27, 2018

Mr. Bill Wilson, Chair, and Members of the Commission
Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, KY 40507

Dear Chairman Wilson and Members of the Commission:

Please accept the comments below from the Fayette County Neighborhood Council (FCNC) on the elements of the draft 2018 Comprehensive Plan. The FCNC, as you know, is a 501(c)(3) nonprofit organization engaged in educating and assisting Lexington's many neighborhoods. Neighborhoods depend upon our organization to provide assistance and guidance in local planning matters. The FCNC knows full well the massive amount of time that has been invested by Planning Staff and others in writing the plan to this point. Likewise, we have invested many hours of time in addressing the same proposed elements. We believe that the Planning Commission members would not have time to read or understand our concerns if they do not have exposure to them prior to the Planning Commission hearing on December 10 and we ask that you circulate this message to them upon receipt.

I. Urban Services Boundary

Our signature agricultural area and equine industry are part of what makes Lexington different and desirable. However, how we develop inside the Urban Services Boundary (USB) is equally important to Lexington's future and is vital to our identity, appeal, and livability. This development should include preservation of historic and cultural resources, protecting the integrity and design of existing neighborhoods and corridors, multimodal transportation, adequate greenspace, sustainability, jobs, and neighborhood focal points. We have to invest in all of these and more inside the USB to balance increased density if Lexington is to remain a desirable place to live.

Recommendation: Equal quality of development inside and outside of USB

II. Plan Organization

The organization of the draft plan is by "themes" rather than by the elements required and authorized by Kentucky statutes (KRS 100.183 and KRS 100.187). Subtopics such as density, multimodal transportation, accessory dwelling units, residential diversity, greenspace, etc. are scattered across the draft plan in multiple locations. The FCNC would prefer that the Commission reorganize the plan by statutory elements and eliminate repetitious passages. The FCNC requests, at the least, an electronic and hard-copy index of statutory elements for public use. It is important to remember that the plan's primary user is the amateur citizen, both the volunteer Planning Commission members and the general public. A document too lengthy and confusing for responsible study and use robs citizens of the power to participate duly and intelligently in the decision-making process. Definitive guidance on land use, including recommended density of dwellings, is especially difficult to discern in the proposed draft. A much cited Kentucky Court of Appeals opinion (1977 McKinstry v. Wells, 548 S.W. 2d 169,172) observes that "the classification of the property under the land use plan is the prime consideration in determining whether the map amendment is in agreement with the Comprehensive Plan." The land use element is fundamental.

Recommendation: Organize plan by statutory element, provide electronic index, and eliminate duplication

III. Legal Environment

The draft Plan proposes development criteria, pre-process development meetings with neighbors, and numerous objectives that hold some promise of collaborative, flexible design solutions to the difficult issues of increased density and intensity that are of great concern to neighborhoods. While the approach has promise, the FCNC anticipates court challenges and likely opposition to the recently initiated Article 21 ZOTA that would require development plans to comply with the Comprehensive Plan. The Planning Commission is an appointed administrative body, and the Comprehensive Plan is a policy document that offers broad and sometimes overlapping and conflicting guidelines. The Urban County Council is Lexington's legislative body and approves all zoning ordinances. Do the Kentucky Revised Statutes authorize the powers and scope to the Comprehensive Plan and the Planning Commission from the proposed Article 21 revisions? Is the Council resolution adopting the Goals and Objectives sufficient to authorize the whole? The FCNC recommends that the Planning Commission and staff prepare for legal disagreements.

Recommendation: Prepare for likely legal disagreements over 2018 Plan implementation

IV. Planning Process Changes

The FCNC supports ongoing meetings between developers and neighborhoods and between staff and neighborhoods. Meetings can help resolve differences that later hinder a development and burden the public. A careful process should be in place to assure that all parties are at each meeting and that the parties report the results of the meeting accurately. If a developer declines to meet with a neighborhood, the Planning Commission should be able to take that into account as part of the approval/disapproval of a proposed zone change and its preliminary development plan.

Recommendation: Require pre-application developer/neighborhood meeting(s) and record results accurately

Many times planning staff works with developers and their legal and design staff for long periods of time before the submission of a proposal to the Commission. Neighborhoods, on the other hand, do not even know about a proposed development until after formal submission. Part of the process should include a required planning staff offer to discuss any proposed development with neighborhoods, prior to the technical, zoning and subdivision meetings of the Commission. The meeting would include possible neighborhood concerns. Otherwise staff may think that it has addressed neighborhood concerns when it has not. Also, notice to neighborhoods is exceptionally inadequate, both the scope and content of written notices. Written notices should be electronic to adjacent and surrounding neighborhood and homeowners' associations.

Recommendation: Add Planning Staff/Neighborhood Meeting(s) and Improve Notice

Post-application revisions to a rezoning application and development plan--sometimes only hours or days before a hearing and without notice--counter the purpose of improving communication and having ongoing meetings between staff, developer, and neighborhoods.

Recommendation: Improve post-application transparency and implement requirement for realistic and timely notice to all concerned

V. B-1 Form Based Project

"The Placebuilder" includes B-1 Form Based Project as a "preferred zone" within the "2nd tier urban" and "corridor" place-types and does not include B-1. The FCNC believes that "B-1 Special Project," even though already in ordinance, does not belong in a neighborhood business zone because of its potential mass and scale, which is virtually unlimited in height and other dimensions; it falls outside the intent of the B-1 zone. Mixed-use zones would be more appropriate. The FCNC requests that B-1 Form Based

Project be removed from B-1 which, after all, is the "neighborhood" business zone. Among the preferred zones in Placebuilder, B-1 without B-1 Form Based Project is acceptable in certain contexts.

Recommendation: Remove B-1 Special Project from the B-1 Neighborhood Business Zone

VI. Context Sensitive

LFUCG Planning needs to define "context sensitive" in the 2018 Plan because many people do not understand it. Placing specific examples in the Plan showing what is and is not context sensitive would make its determination more objective. Such a definition would be important for both Planning Commission members and the public to understand and be in agreement if outcomes are to be accepted and understood.

Recommendation: Define "context sensitive" and show examples in the plan

VII. Established Existing Uses

The FCNC finds the elimination of established, existing uses from the lists of "preferred zones" to be especially objectionable. For example, a developer seeking to up-zone property in an R-1 neighborhood may claim his application for many of the multi-family, mixed, or commercial zones is in agreement with the Comprehensive Plan, while the objecting homeowners will find that R-1 is nowhere offered in the Place-Types of Placebuilder as a preferred zone. Thus a neighborhood must employ extraordinary arguments to protect the use, integrity, and design of the very property residents have invested in and enjoyed for decades, whose zone is now no longer designated as in agreement with the Comprehensive Plan. Aging and affordable neighborhoods are especially vulnerable to up-zoning that is counter to the existing context and use. The PVA noted in its 2015 annual report that \$12,300,000,000 of county property is residential, and the report classed 71.5% of all county properties as single-family detached. Commercial (including multi-family) and agricultural property together did not come up to even half, \$5,700,000,000. A primary purpose of planning and zoning is to protect the property investment of its citizens.

Recommendation: Include R-1 as a preferred zone in established R-1 neighborhoods

If the Commission wishes to render R-1 zones in Lexington obsolete, the FCNC believes that it should first seek adoption of that goal and objective through the Urban County Council.

Recommendation: Officially down-zone areas where established low-density residential use does not match the zone.

VIII. Multimodal Transportation and Neighborhood Focal Points

The FCNC supports multimodal transportation and neighborhood focal points and, as such, believes that LexTran and the Fayette County Public Schools (FCPS) should be much more engaged than they are currently in development projects under consideration before the Planning Commission. We do not believe it sufficient for an applicant to simply rely on "multimodal transportation" as the solution to resulting traffic congestion. The Planning Commission needs to give consideration to when multimodal transportation will be in place and its effectiveness over time following development. Note the Fountains of Palomar development as one example where the applicant successfully argued that the transportation "delivery system" to bring users to the recommended higher intensity (targeted floor area) was not in place. A development plan relying on multimodal transportation should have a realistic plan for multimodal development and impact. If there is no plan, the result could be a lack of parking and more traffic congestion.

Recommendation: Have in place a Transportation Delivery System Plan for new development and engage LexTran in the transport plan's formulation

Schools ultimately are the most important focal point for neighborhoods, especially elementary schools. Planning staff attends meetings with the Fayette County Public Schools (FCPS) and developers to discuss school sites for new development without apparent consideration of the displacement of existing elementary school students. Greater transparency would be desirable, and school disruption should be a consideration for the Planning Commission in approving or disapproving a proposed development and/or zone change.

Recommendation: More involvement of the Fayette County Public Schools in the zoning process and more transparency regarding elementary school displacement

IX. Environmental Considerations

The environmental requirement that the Planning Commission will support the capacity assurance provisions in the Consent Decree with the U.S. Environmental Protection Agency is inadequate. Particularly because of the emphasis on higher density in the Elements of the 2018 Plan, any addition to residential or commercial buildings or any new structures attaching to an existing sanitary sewer lateral should require that the lateral be proven fully functional as a condition for occupancy. Similarly no stormwater line should be connected to a lateral. The LFUCG is spending hundreds of millions of dollars on the repair of its public sanitary sewer lines, while many private lateral sewer lines are known to have failed and dump raw sewage into our streams and all of our watersheds.

Recommendation: Sanitary sewer laterals must function properly as a condition of occupancy for all residential or commercial expansion on an existing property

We noted with disappointment that staff proposed eliminating green building practices and energy efficiency for consideration in approving/disapproving proposed developments and zone changes. The plan is too long to determine if the staff recommendation included all green building and energy efficiency recommendations.

Recommendation: Include green building practices and energy efficiency in plan

X. Deed Restrictions

A number of existing neighborhoods in Lexington have deed restrictions that prohibit anything but one single family residence per lot. Restrictions also sometimes require a minimum lot size or prohibit commercial development. Inevitably, someone, somewhere will look at the Placebuilder and request a zone change to a "preferred zone" that violates deed restrictions. How will staff and the Commission handle the request? If the Commission were to approve a development violating deed restrictions, then undesirable litigation among residents would be the likely outcome. Zoning in the past has protected deed-restricted neighborhoods from internal litigation for the most part, and the draft Comp Plan appears to remove that protection.

Recommendation: Study deed restriction issue and change Plan to limit violations and litigation in deed-restricted neighborhoods

XI. Overlays

A number of neighborhoods have ND-1 (neighborhood) and H-1 (historic) overlays. The purpose of overlays is to protect neighborhood character, whether it be streetscape, setbacks, architecture, building materials, size, historic elements, etc. The draft 2018 Comprehensive Plan does not expressly address how it will impact these neighborhoods even though the Plan will lead to material changes throughout Lexington, particularly through higher density, the promotion of different housing types, and the addition of commercial enterprises near and in neighborhoods.

Recommendation: The plan at completion needs to address more explicitly how it will impact overlay neighborhoods and how any new development will be contextually sensitive.

Similarly, if a neighborhood is architecturally or historically significant but is without an H-1 or ND-1 overlay, clearer and more explicit guidance is needed on how the preferred zones for the downtown, 2nd tier urban, corridor, and enhanced neighborhood place types have to be done so as to be contextually sensitive. The plan should adopt clear language that recognizes as historically significant property listed or qualifying for listing on the National Register of Historic Places; this is a national standard with well-defined guidelines and a long and consistent tradition of interpretation. Such design and fabric both in the subject property and its surrounding context should be respected, and, to the greatest extent possible, preserved to remain intact; in rezoning decisions, minimal impact on historically significant property should be paramount.

Recommendation: Plan should protect overlay neighborhoods and adopt National Register criteria for historical significance.

XII. Small Area Plans

Planning staff have worked closely with neighborhoods over many years to develop Small Area Plans (SAP's) focusing on areas undergoing changes. Generally such plans have buy-in from local communities and are important to addressing the future. The FCNC believes that these plans should not just sit on the shelf but should be living documents. We would recommend periodic updates based on community meetings and/or meetings with neighborhood leaders and Community Development Corporations as applicable and ongoing metrics indicating the degree of success or failure of the plan. When a proposed zone change is in a location under a small area plan, the Commission should have to address both how the zone change complies with the SAP but also how it does not.

Recommendation: Small Area Plans respected and periodically reviewed with community leaders; metrics to address SAP success or failure; and Commission consideration of both SAP compliance and noncompliance in zoning hearings

Among adopted small area plans not explicitly carried forward in the Placebuilder section of the draft Comprehensive Plan are: Newtown Pike Extension Corridor Plan (adopted 2002), Greenbrier Small Area Plan (adopted 2003), Indian Hills Small Area Plan (adopted 2003), Southend Park Urban Village Plan (adopted 2003), and Paris Pike Corridor Small Area Plan (adopted 1995). The Commission should confer directly with the surrounding neighborhoods prior to SAP removal.

Recommendation: Confer with surrounding neighborhoods prior to the removal of an SAP from the Comp Plan

XIII. Affordable Housing

The LFUCG-commissioned czb study, "Lexington Affordable Housing Challenge and Potential Strategy (February 2014)" found a growing affordability gap between the wages of low-skill workers and the cost of housing. The shift in Lexington's economy to jobs requiring more skills has led to increasing housing costs while real wages for unskilled employees have remained stagnant. The study points to a decline in affordable housing leading to other higher costs such as declining neighborhood health, higher crime rates and crime-fighting costs, higher demand for services, commuting pressures and the costs of congestion, and increased air and water pollution. Clearly some things have happened since 2014 to deal with the problem, including the successful Affordable Housing Trust.

In addition to viewing the problem as a housing issue, the FCNC believes the problem is falling disproportionately on minority populations and neighborhoods. The issue for the Planning Commission should be to determine if its new paradigm of smart growth, higher density, and developer flexibility will accelerate the affordable housing problem, help solve it, or both. This important component of the

research basis for the plan should be developed and added before the plan as a whole is adopted. Will added density, infill, and redevelopment reduce the pressure on lower cost housing by increasing overall housing, or will it replace existing affordable housing and exacerbate the problem? Similarly, what is the impact of the continued growth of the University of Kentucky on affordable housing? Will enough senior citizens move out of single-family detached homes into alternative townhouses and condominiums to make a difference? When new development replaces houses in minority neighborhoods, where are dislocated people moving? Metrics are necessary but not just to answer, "Have we successfully followed the plan?" One of the metrics should include the impact of the Comp Plan on the affordability of housing. The czb study has set baseline measurements on the wages of low-skilled workers and the cost of housing, and an update of the study would be desirable.

Recommendation: Metrics needed to determine the impact of planning on Affordable Housing and help develop solutions; identify the location of Affordable Housing in Lexington

XIV. Accessory Dwelling Units (ADUs)

The FCNC has preliminary concerns regarding ADUs and understands that work will begin on an ordinance in 2019. Some of our concerns include: 1. deed restrictions in some neighborhoods effectively prohibiting ADUs; 2. neighborhoods with overlays; 3. principal, accessory, or conditional use; 4. institution via text or map amendment; 5. dimensions; 6. design; 7. attached or detached; 8. placement; 9. owner occupancy and rental management; 10. the disposition of an ADU when the owner is no longer living there; 11. the lack of effective registration and enforcement without added resources, staffing, and authority; 12. neighborhood or neighbor input/approval/engagement; and, 13. adequacy of public/private infrastructure, environmental impact.

Recommendation: Very careful, detailed consideration necessary before adopting an ADU ordinance

We share the concerns of the Senior Services Commission and think ADUs allowing caregivers to live with an older homeowner can have a positive impact. We are disappointed that Universal Design Principles have been removed from the draft plan. We believe that design to allow seniors to age in place is important for Lexington's growing senior population.

Recommendation: Universal design principles should remain in Comp Plan elements

XV. Macro and Micro Planning

The draft 2018 Plan by necessity is a "macro-plan" involving broad countywide goals, objectives, and aspirations. However, neighborhoods, when they fail, fail house-by-house, lot-by-lot, and solutions involve micro-planning. The underlying cause for failure most frequently involves poverty and outside ownership. Outside ownership includes abandonment or structures held vacant on property that does not rise to the level of the Abandoned Property Commission (or sometimes does) and rental property. When abandoned and rental property hit 20% to 30% in a neighborhood, the area starts a spiral toward failure. Abandoned property, in itself, not in quantity, is a more serious problem than rental property and more should be done to identify it. For example, if an owner has turned off utilities to a residence or a commercial property for a defined length of time, for planning purposes that should be considered an "abandoned property."

Widespread home ownership is a public good, and the plan should acknowledge its importance as such. For the Planning Commission, great care should be required before approving rental property development that reaches a neighborhood's tipping point for failure. The draft 2018 Plan has merit in advocating a diversity of housing types in neighborhoods, especially new neighborhoods. However, such advocacy works both ways. The Planning Commission should not cause the failure of a neighborhood by overwhelming it with higher density rental property. The 2018 Plan, as mentioned

previously, does not even include single-family detached residential as a preferred housing type where it already exists. The Plan needs correction on that point as it could lead to a rush to neighborhood failure.

Recommendation: Attention is necessary to avoid any growth of rental properties to the extent that it leads to the decline/failure of neighborhoods; metrics are necessary to better identify "abandoned property," which in conjunction with rental property accelerates decline.

We appreciate the opportunity to comment on the current version of the 2018 Plan Elements. We hope the Planning Commission will give considerations to neighborhoods as noted above in finishing the Plan and making planning decisions.

Sincerely,
Walter Gaffield, President
Fayette County Neighborhood Council, Inc.

Cc: FCNC Board of Directors
Jim Duncan
Chris Woodall
Chris Taylor
Mayor Jim Gray
Mayor Elect Linda Gorton
Planning Commission Chair, Bill Wilson