

**Minutes**  
**URBAN COUNTY PLANNING COMMISSION**  
**SUBDIVISION ITEMS**

**September 10, 2009**

- I. CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Frank Penn, Chair; Carolyn Richardson; Joan Whitman; Mike Owens; Lynn Roche-Phillips; Mike Cravens; Marie Copeland; Patrick Brewer (arrived at 1:35 p.m. and departed at 4:00 p.m.); Ed Holmes; Derek Paulsen and William Wilson.

Planning Staff Present – Chris King, Director; Bill Sallee, Barbara Rackers, Tom Martin, Cheryl Gallt, Chris Taylor, and Denice Bullock. Other staff members in attendance were: Steve Farmer, Division of Engineering; Bob Carpenter, Division of Building Inspection; Rochelle Boland, Department of Law; Captain Charles Bowen and Firefighter Allen Case, Division of Fire & Emergency Services; Paul Hockensmith, Addressing Office; Tim Queary, Streets, Roads and Forestry and Jeff Neal, Traffic Engineering.

- II. APPROVAL OF MINUTES** – There were none to be considered at this time.

- III. POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

- a. DP 2009-60: MILLER BIRD COMMERCIAL PARK SUBDIVISION, BLOCK A, UNIT 1, LOTS 1-6 (CURRY SHOES) (AMD)  
(11/12/09)\* - located at 2555 Nicholasville Road. (Council District 10) **(The Roberts Group)**

Representation – Bob Cornett, The Roberts Group, was present representing the applicant, and requested postponement of DP 2009-60 to the October 8, 2009, Planning Commission meeting.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 10-0 (Brewer absent) to postpone DP 2009-60 to the October 8, 2009, Planning Commission meeting.

- b. PLAN 2005-169F: CLARK PROPERTY UNIT 1-E (12/3/09)\* - located at 1551 Deer Haven Lane (a portion of).  
(Council District 12) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant. He noted that this plat was recorded on September 9, 2009; therefore, they are requesting that consideration of PLAN 2005-169F be withdrawn.

Planning Commission Question – Ms. Roche-Phillips asked for clarification that this item had been recorded. Mr. Kahly replied affirmatively, and said that they had requested the one-year extension as a precaution.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for withdrawal. There was no response.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 10-0 (Brewer absent) to accept withdraw of PLAN 2005-169F.

- c. PLAN 2009-74F: HAROLD R. BLACK PROPERTY (AMD) (10/8/09)\* - located at 3521 & 3589 Combs Ferry Road.  
(Council District 12) **(Wes Witt)**

Staff Comments - Mr. Martin said that the staff had received written communication from the applicant, requesting postponement of PLAN 2009-74F to the October 8, 2009, Planning Commission meeting.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 10-0 (Brewer absent) to postpone PLAN 2009-74F to the October 8, 2009, Planning Commission meeting.

*Note: Mr. Brewer arrived at this time.*

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, September 3, 2009, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland, Derek Paulsen and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jim Gallimore, Division of Traffic

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Engineering. Staff members in attendance were: Bill Sallee, Chris Taylor, Tom Martin, Denise Bullock and Cheryl Gallt, as well as Rochelle Boland, Department of Law; Captain Charles Bowen, Division of Fire & Emergency Services; Paul Hockensmith, Street Addressing Office; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

*General Notes*

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

**A. CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

- Criteria:**
- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
  - (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
  - (3) no discussion of the item is desired by the Commission; and
  - (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
  - (5) the matter does not involve a waiver of the Land Subdivision Regulations.

- Requests can be made to remove items from the Consent Agenda:**
- (1) due to prior postponements and withdrawals,
  - (2) from the Planning Commission,
  - (3) from the audience, and
  - (4) from Petitioners and their representatives.

At this time, Mr. Penn requested that the Consent Agenda items be reviewed. Mr. Sallee noted that the recent bylaw amendments have greatly impacted several items listed on the Consent Agenda, which includes reapproval and one-year extensions. He identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on their regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2009-94F: WOODWARD-LANDER PROPERTY, UNIT 1A, SECTION 1, LOT 108 (AMD) (11/12/09)\* - located at 3117-3125 Daly Place. (Council District 12) **(Banks Engineering, Inc.)**

**Note:** The purpose of this amendment is to subdivide one lot into six lots.

**The Subdivision Committee Recommended: Approval,** subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping and required street tree information.
  4. Addressing Office's approval of street names and addresses.
  5. Urban Forester's approval of tree preservation plan.
  6. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
  7. Correct note "I" to specify required trees on this property.
  8. Clarify vicinity map.
  9. Addition of private access easement maintenance note.
  10. Addition of private utilities listing per Article 5-4(e) of the Land Subdivision Regulations.
2. PLAN 2009-95F: ANGLIANA SUBDIVISION & A.G. MCGREGOR SUBDIVISION (11/4/09)\* - located at 520 and 534 Angliana Avenue. (Council District 2) **(EA Partners)**

**The Subdivision Committee Recommended: Approval,** subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
7. Correct Angliana Avenue cross-sections (to include medians).
8. Complete adjacent property information.
9. Addition of note to that include street trees will be planted in the required vehicular use buffer on Curry Avenue.

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3. PLAN 2009-96F: GESS PROPERTY, UNIT 11B (11/12/09)\* - located on Bulrush Trace.  
(Council District 7)

**(EA Partners)**

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Addition of north arrow.
10. Exactions to the approval of Division of Planning.
11. Provide the geotechnical / grading report for all lots requiring fill.

4. PLAN 2009-97F: BLUEGRASS EXECUTIVE PARK, LOTS 4A & 4B (AMD) (11/12/09)\* - located at 2240 Executive Drive.  
(Council District 6)

**(EA Partners)**

Note: The purpose of this amendment is to subdivide one lot into two lots and dedicate easements.

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
6. Denote the 25' floodplain setback.
7. Addition of floodplain information, per current FEMA maps.

5. PLAN 2008-77F: EAST BRIDGEFORD LAND & DEV. CO., (KINGSTON HALL), PHASE 1, UNIT 2 (12/3/09)\* - located at 2356 Newtown Pike. (Council District 12)

**(EA Partners)**

Note: The Planning Commission originally approved this plan on July 10, 2008, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names and/or addresses per the street addressing office.
5. Addition of utility and streetlight easements, as required by the utility companies, the Urban County Engineer and the Urban County Traffic Engineer.
6. Identify existing access easements to remaining tract to the east.
7. Verify exaction information.
8. Denote required buffer along the Urban Service Area Boundary (conditional zoning).
9. Correct Newtown Pike cross-section.
10. Resolve the possible need for a final development plan to be approved by the Planning Commission.
11. Resolve access easement.
12. Health Department's approval of septic tank system prior to certification.

Note: The applicant has now requested reapproval of this plan.

The Staff Recommended: Reapproval, subject to the previous conditions.

6. PLAN 2008-42F: VICTORY LUTHERAN CHURCH (12/3/09)\* – located at 1420 Todds Road and 2835 Rio Dosa Drive.  
(Council District 7)

**(Eagle Engineering)**

Note: This item was originally approved by the Planning Commission on April 10, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.

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8. Improve text size on notes and cross-sections.
9. Denote dimensions of tree protection area (TPA).
10. Addition of Todds Road cross-section.
11. Denote prior date(s) of Board of Adjustment approval.

Note: The applicant has requested reapproval of this plan.

The Staff Recommended: Reapproval, subject to the previous requirements.

7. PLAN 2007-156F: CLARK PROPERTY, UNIT 1-M (12/3/08)\* - located at Polo Club Boulevard and Ice House Way.  
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on August 8, 2007, and reapproved it on September 11, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Verification of exaction information by Division of Planning.

Note: The applicant now requests an extension of the approval granted this plan.

The Staff Recommended: Approval of a one-year extension, subject to the previous conditions.

8. PLAN 2008-24F: THOMAS COMMUNICATIONS, INC., UNIT 1-C (WALNUT GROVE ESTATES) (12/3/09)\* – located at 2236 Walnut Grove (a portion of). (Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on September 11, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, floodplain, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Environmental Planner's approval of environmentally sensitive areas.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Delete trees without corresponding Tree Protection Areas (TPA) from plan face.
10. Document that water service is available to this subdivision prior to certification.
11. Document compliance with minimum (80%) open space area.

Note: The applicant now requests an extension of the approval granted this plan.

The Staff Recommended: Approval of a one-year extension, subject to the previous conditions.

9. PLAN 2008-25F: THOMAS COMMUNICATIONS, INC., UNIT 1-D (WALNUT GROVE ESTATES) (12/3/09)\* – located at 2236 Walnut Grove (a portion of). (Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on September 11, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Environmental Planner's approval of environmentally sensitive areas.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Document that water service is available to this unit prior to certification.

Note: The applicant now requests an extension of the approval granted this plan.

The Staff Recommended: Approval of a one-year extension, subject to the previous conditions.

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10. DP 2009-34: BEAUMONT FARM, UNIT 1, SECTION 1 (A PORTION OF) (AMD) (9/10/09)\* - located at 3100 Beaumont Centre Circle. (Council District 10) **(EA Partners)**

Note: The Planning Commission postponed this plan at its June 11, 2009, July 9, 2009, and August 13, 2009, meetings. The purpose of this amendment is to add a turn lane and access off Beaumont Centre Circle, and add a generator yard next to the dumpster location.

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. Remove the entrance to Beaumont Centre Circle, as per the approved development plan.

11. DP 2009-56: GESS PROPERTY, UNIT 7 (11/27/09)\* - located at 950 Chilesburg Road. (Council District 7) **(EA Partners)**

Note: This plan requires the posting of a sign and an affidavit of such.

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Solid Waste's approval of refuse collection.
9. Addressing Office's approval of street names and addresses.
10. Addition of private utilities listing per Article 5-4(e) of the Land Subdivision Regulations.
11. Denote source of contours.
12. Denote proposed easements.
13. Denote construction access.
14. Correct plan title.
15. Denote the construction of temporary turnarounds to the approval of the Division of Fire and Division of Solid Waste.

12. DP 2009-59: DEERFIELD, UNIT 1, LOTS 35 & 36 (11/12/09)\* - located at 140 and 144 Southland Drive. (Council District 10) **(Allen Engineering, Inc.)**

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Solid Waste's approval of refuse collection.
8. Addressing Office's approval of street names and addresses.
9. Correct vicinity map.
10. Label canopy and dimension.
11. Denote construction access point.
12. Provided the Board of Adjustment approves a landscape variance.
13. Denote sidewalk improvements along Southland Drive.

13. DP 2009-60: MILLER BIRD COMMERCIAL PARK SUBDIVISION, BLOCK A, UNIT 1, LOTS 1-6 (CURRY SHOES) (AMD) (11/12/09)\* - located at 2555 Nicholasville Road. (Council District 10) **(The Roberts Group)**

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.

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5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. Correct spelling in note #11.
9. Remove extraneous information from plan face (construction info & former buildings).
10. Denote: The patio seating shall be limited to 24 seats.
11. Denote: No parking along Nicholasville Road Service Road.

Mr. Sallee noted that DP 2009-60 was previously postponed by the applicant.

14. DP 2007-57: VICTORY LUTHERAN CHURCH PROPERTY (12/3/09)\* - located at 1420 Todds Road.  
(Council District 7) **(Eagle Engineering)**

Note: This item was originally approved by the Planning Commission on August 9, 2007, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Approval of street names and addresses per e911 staff.
8. Correct plan title.
9. Complete site statistics and cross-sections.
10. Clarify note number 13 (homeowners' association reference).
11. Resolve the location of off-site detention basin.
12. Denote compliance for parking, lot sizes and required private open space.

Note: The applicant has requested reapproval of this plan.

The Staff Recommended: Reapproval, subject to the previous requirements.

In conclusion, Mr. Sallee said that the items listed on the Consent Agenda could be considered for conditional approval by the Commission, unless there was a request for an item to be removed from consideration.

Audience Comments – Chairman Penn asked if anyone in the audience wished to discuss any of the items listed on the Consent Agenda. Mr. Kahly requested that DP 2009-34 be removed from the Consent Agenda for further discussion.

Planning Commission Comments – Chairman Penn asked if any Commission member wished to discuss any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Mr. Holmes, seconded by Mr. Brewer, and carried 11-0 to approve the items listed on the Consent Agenda, removing DP 2009-34 for further consideration.

Mr. Penn stated that before the meeting moves forward, the Commissioner's would like to welcome Mr. William Wilson, who is the newest member of the Planning Commission.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

**1. Preliminary Plans**

- a. PLAN 2006-75P: PATCHEN WILKES, UNIT 2B (12/3/09)\* - located at 1811 Winchester Road (a portion of).  
(Council District 6) **(EA Partners)**

Note: The Planning Commission originally approved this plan on May 11, 2006, and reapproved it May 10, 2007, and August 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.

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3. Building Inspection's approval of landscaping, arterial screening and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Greenspace Planner's approval of the treatment of greenways/bike trails.
7. Discuss the connection to Charleston Drive.
8. Show spacing from the alley to the school entrance.
9. Show the cross-section with median.
10. Show alley radius from "F-F" to "B-B" sections.
11. Identify the school connections (pedestrian access).
12. Provided the Commission grants a waiver to Article 6-8 of the Land Subdivision Regulations to allow the centerline horizontal curve radius to be 35', and to allow reduced right-of-way dimensions.
13. The notation of a public passageway easement adjacent to the right-of-way, detailing the primacy of the LFUCG over utility easements in this area.
14. All interior curb radii are to be increased to a minimum of 40'.

The Planning Commission approved the requested waiver(s) to Article 6-8 of the Land Subdivision Regulations, except only allowing a curve radius to a minimum of 40' on the inside curb line, for the following reasons:

- a. A design innovation throughout the entire unit of this subdivision is possible with the requested waivers, and is consistent with the previous waivers approved by the Planning Commission for Unit 1 of this subdivision.
- b. A safe and functional vehicular and pedestrian system can still be implemented with this proposal, if modified as recommended.

This approval was subject to the following conditions:

1. The notation of a public passageway easement adjacent to the right-of-way, detailing the primacy of the LFUCG over utility easements in this area.
2. All interior curb radii are to be increased to a minimum of 40'.

Note: The applicant now requests reapproval of the plan.

The Staff Recommended: Reapproval, subject to the previous conditions.

Staff Presentation – Mr. Martin directed the Commission's attention to a rendering of the preliminary subdivision plan for the property located on Winchester Road, within the Patchen Wilkes development. He noted that the Planning Commission had previously approved this request on May 11, 2006, and it was then reapproved on two other occasions. He oriented the Commission to the area, noting that the subject property is in the vicinity of Winchester Road and Charleston Drive, Crawford Middle School. He said that the subject property is proposed for 143 single family units that are to be designed in a neo-traditional style.

Mr. Martin said that the applicant is requesting reapproval of this item, and the reason this item is not listed on the Consent Agenda is due to: 1) the year when this item was originally approved by the Planning Commission; and 2) there is a waiver request to Article 6-8 of the Land Subdivision Regulations. He then said that the waiver request references the turning radius along the street system and the alleys within the development. This waiver would allow the street system to be consistent with the overall design of the Patchen Wilkes area.

In reviewing the past minutes, Mr. Martin said that the Planning Commission had previously approved the extension, subject to the conditions listed on the agenda, noting that this approval did include the granting of the waiver. He then said that the staff is now recommending reapproval of the applicant's request, subject to those same conditions as previously stated.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2006-75P.

Commission Comment – Mr. Penn asked if anyone on the Commission wished to discuss this request. There was no response.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Copeland, seconded by Ms. Richardson, and carried 11-0 to reapprove PLAN 2006-75P, subject to the conditions listed on the agenda, including the granting of the waiver.

## 2. Final Subdivision Plans

- a. PLAN 2008-76F: BOGIE ESTATE, LOT 1 (9/10/09)\* - located at 5846 Old Richmond Road.  
(Council District 12) (EA Partners)

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\* - Denotes date by which Commission must either approve or disapprove plan.

Note: The Planning Commission postponed this plan at its July 10, 2008; August 14, 2008; September 11, 2008; October 9, 2008; November 13, 2008; December 11, 2008; January 8, 2009; February 12, 2009; March 12, 2009; April 9, 2009; May 14, 2009; June 11, 2009; July 9, 2009, and August 13, 2009, meetings. The purpose of this plat is to subdivide one 14-acre lot into two lots, consisting of one 4-acre lot zoned B-1 and one 10-acre lot zoned A-R. This subdivision also requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: Postponement. There were questions regarding the need for a waiver of Article 6-6(a) of the Land Subdivision Regulations concerning minimum lot size for a septic tank and right-of-way dedication.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names and/or addresses per the street addressing office.
5. Addition of utility easements, as required by the utility companies.
6. Addition of the entire A-R zoned lot on this plan.
7. Denote buildable and non-buildable areas on proposed A-R lot.
8. Correct 300-foot building line (to scale) from right-of-way of Jacks Creek Road.
9. Kentucky Transportation Cabinet's approval of right-of-way dedication.
10. Discuss waiver to Article 6-6(a) in relation to the 10-acre rule and septic system.
11. Discuss right-of-way dedication on Jacks Creek Road.

Staff Presentation – Mr. Sallee directed the Commission's attention to PLAN 2008-76F: Bogie Estate, Lot 1, noting that this is a final record plat for property located at 5846 Old Richmond Road. He said that this item was originally recommended for postponement by the Subdivision Committee, and it has continually been postponed by the Planning Commission since July 10, 2008. He noted that during the postponement period, the Subdivision Committee had a couple of opportunities to discuss this request; however, there has been no discussion in the recent months.

Mr. Sallee noted that the staff had previously distributed two handouts to the Commission, and one of those handouts included a petition for a waiver request to Article 6-6(a) of the Land Subdivision Regulations; and the second handout was the Staff Exhibit packet. He said that the first page of this handout is a schematic from Building Inspection. He noted that several items contained in the Staff Exhibit were provided by Building Inspection. He then said that the information provided to the staff has been instrumental in the staff's review of this proposal, as well as helping to determine whether this proposal meets the Zoning Ordinance requirements for this property.

Mr. Sallee then directed the Commission's attention to the 2007 Comprehensive Plan, and oriented them to the surrounding areas. He said that the subject property is located outside of the Urban Service Area and is near Delong Road. He then said that the subject property is at the corner of Old Richmond Road and Jacks Creek Road. He noted that the subject property is approximately 2 miles southeast of the Urban Service Area.

Mr. Sallee provided a series of photographs to the Commission, and noted that this information was germane to the rendering of the final record plat. He said that the subject property is approximately 14 acres in size; and in reviewing the aerial photograph, at least 2/3 of the property is situated at the corner of the Old Richmond Road and Jacks Creek Road. He noted that the photograph shows an abandoned garage very close to the corner of the intersection; and toward the center of the property there is a single family detached house, a mobile home, several sheds and a barn. He said that immediately behind the subject site there is a second barn, as well as another residence.

Mr. Sallee stated that in looking at the zoning map shown on the overhead, this property is currently split into two zones, one being 10 acres of the land (zoned A-R), and the second being 4 acres of land (zoned B-1). In reviewing the Zoning Map Atlas dated September, 1969 (page 2 of the Staff's Exhibit), he said that this zoning dates back to the 1950s, which was prior to the City and County Government's merger. He said that the purpose of this request is to subdivide the single 14-acre tract into two separate parcels, preferably along the zoning boundaries of these parcels.

Referring to the rendering of the final record plat, Mr. Sallee oriented the Commission to the surrounding state highway, as well as the location of the existing structures on site. He said that the purpose of this plat is to subdivide the single 14-acre lot into two separate lots, that will result in one 4-acre lot zoned B-1 and one 10-acre lot zoned A-R. He then said that there are a number of Zoning Ordinance provisions that have been in the forefront in the staff's review; and noted that within the Staff's Exhibit, there is documentation of the history of this land, as well as evidence that denotes that this land has been split zoned since the 1950s. Referencing the Zoning Ordinance that was adopted on December 15, 1983 (pages 3 through 5) Mr. Sallee said that Article 8 of the Zoning Ordinance did not list mobile homes being used as a principal or accessory use in this zone, which is a significant factor in the staff's review. However, in reviewing Article 10-12(a) of the 1983 Zoning Ordinance, there was an exception for the first mobile home to be located on land that is used for agricultural purposes. This 1983 change was a result of a case law, at the time, which tied the use of one mobile home to an agricultural use elsewhere in the State.

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\* - Denotes date by which Commission must either approve or disapprove plan.

Mr. Sallee stated that in 1987, Building Inspection had approved a locational permit that allowed a mobile home to be placed on the subject site with a setback of 300-feet from Old Richmond Road. He said that the 300 foot setback was the required setback at that time, as stated in 1983 Zoning Ordinance. He then said that the permit application did indicate that this was the first mobile home placed on the farm, which was also a significant factor in the staff's review.

Mr. Sallee then stated that there is documentation from the Lexington-Fayette County Health Department indicating that there are two septic systems located on the subject property. He said that the staff was unaware that these two systems existed; and in reviewing the applicant's proposal the staff initially believed they had made a request to add an additional septic system on the subject property. He directed the Commission's attention to the vicinity map on page 1 of the Staff's Exhibit, and noted that the schematic shown does indicate the location of these two septic systems.

Mr. Sallee said that on February 15, 1995, the Planning Commission had approved two major revisions to the regulations within the A-R zone (page 12 and 13). He said that under Article 8-1(c)(10), mobile homes were added as being an accessory use in the A-R zone. At the same time, a deletion to Article 10-12(a) was also approved that deleted the exception for the first mobile home be permitted on land used for agricultural purposes.

Mr. Sallee then said that on June 6, 1996, the applicant had filed for a dimensional variance from the Board of Adjustment (V-96-91, shown on page 14), after Building Inspection had denied their request to change the setback requirements from 300 feet to 15 feet, as well as retain a mobile home and to subdivide the property (Page 15). In reviewing the notification map for that variance (page 16), the applicant had requested to subdivide the farm into two sections. Listed on the BOA application, the applicant had stated that the proposed use of the land is to be agricultural with residences, meaning two homes on the subject property. He said that in reviewing case number V-96-91, there was no mention in the staff report, or the minutes from the June 28, 1996, Board of Adjustment meeting (pages 17-21) that the existing mobile home located on the property was to be considered as an accessory use. He noted that this documentation was significant to the staff's review of this proposal. He said that the Board of Adjustment had ultimately approved case number V-96-91; however, in reviewing the plats there was a non-building subdivision minor plat approved that severed the 14 acres from the balance of 142 acres along the southwest corner of the property (page 22). This was followed by a corrected amended plat that did not change the geometry of the lot; but it did reflect the split zoning of the property, and it removed the 300-foot building line that was applied to both lots (page 23).

Mr. Sallee stated that the information previously mentioned provides the background to the current Zoning Ordinance requirements (pages 24 – 27). He said that Article 8-1 of the Zoning Ordinance does allow single family detached dwelling units, and Article 8-1(b)(11) permits mobile homes in the A-R zone, as an accessory use only. He then said that this proposal suggested that the main residence will remain on the 4-acre lot that is zoned B-1; and as for the mobile home, it will remain on the 10-acre lot that is zoned A-R. This information is significant with regard to the A-R zone. He said that Article 8-1(f) requires a single lot to have a minimum of 40 acres; and more importantly, Article 4-5(a) of the Ordinance speaks to how these lots are regulated when they are considered a non-conforming lot. He said that the B-1 portion of the land does not require a minimum lot size; however, the A-R portion does require the minimum 40-acre lot size; therefore, the existing lot is considered non-conforming. As such, it may only be subdivided under Article 4-5(a) of the Zoning Ordinance. He said that when there are two or more legally constructed principal residences that have been used separately and have separate utilities, the Planning Commission may approve the subdivision of that land.

Mr. Sallee said that a section of the Land Subdivision Regulations is also being affected by this proposal through the waiver request. He noted that Mr. Martin will present the waiver report to the Commission; and upon completion of his presentation, he (Mr. Sallee) would continue his presentation to the Commission that includes the revised recommendation listed by the staff (page 38).

Waiver Presentation – Mr. Martin noted that the staff had previously distributed the waiver report for PLAN 2008-76F to the Commission, and noted that the applicant is requesting a waiver to Article 6-6(a) of the Land Subdivision Regulations. He said that this waiver would allow a septic system to be built on a lot that is less than 10 acres in size. He then said that this waiver request is specifically for the proposed septic system on the 4-acre lot that is zoned B-1.

Mr. Martin said that the applicant had requested approval from the Lexington-Fayette County Health Department (LFCHD) for a septic system to be built on the 4 acre lot; however, it is the staff's understanding that that request was denied. He then said that the applicant had resubmitted the request to the LFCHD; and in a letter dated August 11, 2009, their request was approved. In that letter, the applicant had indicated that the intention was to remove the existing mobile home and construct a single family residence on the property. He said that the staff had previously mentioned that there are two existing residences on this property, each having its own services, as well as separate functioning septic tank systems. He said that if the mobile home was to be removed, and a new structure built, this would allow for a new septic tank to be built that would accommodate a larger structure. He noted that the LFCHD establishes the size of the septic tank based upon the number of bedrooms in the home.

Mr. Martin stated that the applicant is basing the hardship argument on the unique conditions of the property. He said that they have cited the following reasons:

- the property having split zones;
- the historical agricultural uses;
- the improvements that have been made to the property, such as fencing;
- the property having two road frontages;
- the two functioning septic systems serving two principal residences on the property.

Mr. Martin said that these are relatively singular circumstances affecting the property; and with that the staff is recommending approval of the requested waiver, for the following reasons provided by the applicant:

*"Based upon the evidence presented, this Planning Commission finds that the proposed subdivision is in agreement with Section 4-5(a) and grants a waiver of Section 6-6(a) of the Subdivision Regulations, relating to allowing a septic tank on a lot less than 10 acres in size.*

*First, this Planning Commission finds that the Health Department has approved the application and found it in compliance with Health Department regulations.*

*Second, pursuant to Section 1-5(a) of the Subdivision Regulations, this Planning Commission finds that strict compliance with the regulations would create an undue hardship because of exceptional unique man-made topographic or other conditions on the particular land. These "single man-made" matters include: first, this 14-acre tract is split-zoned, with one portion of approximately 4-acres being zoned Neighborhood Business (B-1) and approximately 10 acres being zoned Agricultural Rural (A-R). Second, the lot is extremely irregularly shaped, which reflects the historic use of the property including fence lines, driveways and roadways. Third, the lot already has two functioning septic systems and two residences on the property. One residence is a house, and the other is a mobile home. The applicant wishes to replace the mobile home with a conventional house. We find that the granting of this waiver will not result in an additional septic system being placed on the property. There will be two septic systems serving two residences with or without the subdivision of the property. Further, the same result could be accomplished through approval of a development plan showing two principal structures on the same lot, but this would result in great hardship for the applicant in obtaining financing for the new house. Thus, we find that granting this waiver will not impair the development to the neighborhood or community and will not impair the public health, safety or welfare in this area. In fact, it will result in a desirable change, the replacing of a mobile home by a conventional house.*

*Third, we find under Section 4-5(a) that both the house and the mobile home on the property were legally constituted as principal residences under the ordinance in effect at the time they were built. The applicant is requesting this subdivision for sale or transfer of the individual residence. The properties have been used in a separate and distinct matter with separate utilities and septic facilities. The resulting subdivision will not constitute a material change in the use of the property as the zoning categories will not change, and the mobile home residence will be replaced by another residence. "*

Commission Questions – Mr. Holmes asked for clarification regarding the Board of Adjustment granting the dimensional variance that is listed on the revised recommendations (page 38 of the Staff Exhibit). Mr. Sallee said that according to the Locational Certificate (page 6 of the Staff Exhibit), this property was originally 160 acres; and when the mobile home was placed on the property, it was positioned more than 300 feet from Old Richmond Road. He then said that the mobile home was also more than 300 feet from the side property line and from Jacks Creek Road. When the applicant decided to create the current property boundaries, it required the applicant to obtain a dimensional variance for the mobile home to be less than 300 feet from the new property line. Mr. Holmes confirmed that the mobile home was already on the property at that time. Mr. Sallee replied affirmatively, and said that the dimensional variance was obtained to subdivide the property rather than relocate the mobile home.

Ms. Roche-Phillips said that it seems that this proposal is opposite of what is required in the Land Subdivision Regulations, and asked if this lot is being created around an existing septic system. Mr. Martin said that the lot in question will be less than 10 acres in size, which will require a waiver to be granted by the Commission. Ms. Roche-Phillips asked if the septic system is existing. Mr. Martin replied affirmatively, noting that there are two systems on the subject site. Ms. Roche-Phillips said that these septic systems exist; and according to the waiver report, this would condone having a septic system on a lot that is created through the subdivision of this land, and asked if this request is in the opposite order to how it would normally happen. Mr. Martin said that the Commission is being requested to create two lots within the Rural Service Area, as well as allow the septic system. He said that even though the B-1 zone does not have a minimum lot size requirement, it is governed by the regulation of the 10-acre rule for the septic system, which is the root of this request. Ms. Roche-Phillips asked if the subdivision request is for the 4 acre lot with a balance of 10-acres. Mr. Martin replied affirmatively, and said that once the zoning boundaries are established there will be 10-acres remaining in the A-R zone and 4 acres remaining in the B-1 zone. Ms. Roche-Phillips commented that the Commission would be creating a 10-acre lot and a 4-acre lot. Mr. Martin replied affirmatively. Ms. Roche-Phillips asked if the waiver request is for both of these lots. Mr. Martin replied the waiver request is only requested for the 4-acre parcel.

Mr. Owens clarified that there is a total of 14 acres that will be subdivided into a 10-acre tract and a 4-acre tract. Mr. Martin replied affirmatively.

Mr. Penn understood that there are more B-1 lots like this one in the Rural Service Area. He said that his concern is creating those non-conforming lots, and asked if this type of request has been done in the past. Mr. Martin said that the Commission has approved a waiver for a plat near the Bryan Station Road area; however, it has expired. Mr. Penn said that he sees no problem in using the B-1 lot as part of the whole property. He then said that he does see a problem that if this land is subdivided, then there is an opportunity for it to be sold in sections. He understands the issue presented about the septic system, but in granting this request it sets a precedent for future requests. He asked if the staff believes this action would set a precedent. Mr. Martin said that there are fairly unique standards when considering this land, such as the agricultural history, the frontage, the split zoning and the two existing residential units. He said that the staff believes this to be a relatively rare situation for Fayette County.

Ms. Roche-Phillips clarified that this is 14 acres tract with split zoning. She said that out of the 14 acres, 4 acres are zoned B-1 and asked if there is a zoning requirement for the remaining 10 acres zoned A-R. She said that as the A-R lot exists today, it is non-conforming. She then said that even though the B-1 lot has no size restriction, there are restrictions for the A-R lot, and this request would only create a worse situation. Mr. Sallee said that the only provision within the Zoning Ordinance that allows an existing non-conforming lot to become less conforming in size is stated in Article 4-5(a) of the Zoning Ordinance (page 27 of the Staff Exhibit). He said that there are specific conditions that limit the Planning Commission's ability to subdivide a non-conforming lot under this circumstance, but it will not tie the Commission's hands in terms of the zoning on the property. He then said that Article 4 regulates non-conforming structures, uses and lots; and in order to subdivide this property, as it is being proposed, Article 4-5(a) will need to be applied.

Ms. Copeland asked when this land was a whole piece. Mr. Sallee said that this was a 160-acre farm prior to it being subdivided in the mid 1990s. Ms. Copeland said that after 10 years the applicant finally has a hardship. Mr. Sallee said that when the 14-acre parcel was created, the minimum lot size for the A-R zone was only 10 acres; and in the late 1990s, the minimum amount of acreage for a lot in an A-R zone was changed from 10-acres to 40-acres. He then said that with that change it made this lot non-conforming. This result was not from the applicant's doing, but rather from a governmental change to the minimum requirements in the A-R zone. Ms. Copeland noted that this land is oddly shaped even before the governmental change. Mr. Sallee replied affirmatively, and said that the shape of the land was the applicant's decision.

Staff Presentations (continued) – Mr. Sallee again directed the Commission's attention to the Staff Exhibit, and said that in reviewing Article 15-3 of the Zoning Ordinance (page 28), it states that when a property is adjacent to a more restrictively zoned property, the yard requirements of the more restrictive zone are to be applied. He said that in reviewing the proposed plat, the staff had discovered that the zoning listed on that schematic is not correct, noting that it does not correspond to the staff's exhibit. He then said that the area in question is not so much near the western property line where the mobile home is located, but rather near the house. According to the staff's exhibit, the zoning line is within 25 feet of the existing zoning boundary; and if this subdivision is approved, the best scenario is to have the subdivision of the two lots along the zoning boundary, which would create a B-1 lot and an A-R lot. He said that if this is done, the house would be closer to the 25-foot boundary line, which is not a requirement of the B-1 requirements; but rather the A-R requirements. With that being said, the applicant would need approval for a dimensional variance from the Board of Adjustment. He noted that this same type of request was approved by the Board of Adjustment in 1996, for the mobile home.

Mr. Sallee stated that the applicant had submitted evidence that these two properties are separate dwellings. He said that the applicant had submitted past bills from various utility companies within Lexington-Fayette County, such as KU, Insight, and so forth (pages 29-37). He noted that this evidence is important under Article 4-5 of the Zoning Ordinance.

In conclusion, Mr. Sallee directed the Commission's attention to the revised recommendation (page 38), and said that the Subdivision Committee had recommended postponement of the applicant's proposal. He said that at that meeting there were questions regarding the Land Subdivision Regulations and the Zoning Ordinance requirements, as well as concerns that have been voiced throughout the meeting. He then said that the staff does believe that this proposal can be approved under Article 4-5 of the Zoning Ordinance, if the Planning Commission grants the requested waiver, and if the Board of Adjustment approves the dimensional variance from the existing structure to the proposed lot line that the staff has recommended. In reviewing the original conditions listed on the agenda, the staff has made the following changes to its recommendations:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names and/or addresses per the street addressing office.
5. Addition of utility easements, as required by the utility companies.

6. ~~Addition of~~ Correct the entire B-1 and A-R zoned lot zoning boundary on this plan, and relocate the proposed property line to be coincident with that zoning boundary.
7. Denote buildable and non-buildable areas on proposed A-R lot.
8. Correct 300-foot building line (to scale) from right-of-way of Jacks Creek Road.
9. Kentucky Transportation Cabinet's approval of right-of-way dedication.
10. ~~Discuss~~ Provided that the Planning Commission grants a waiver to Article 6-6(a) in relation to the 10-acre rule and septic system.
11. ~~Discuss right of way dedication on Jacks Creek Road~~ Provided the Board of Adjustment grants a dimensional variance to the side yard requirement under Article 15-3 of the Zoning Ordinance prior to certification.

Commission Questions - Mr. Penn asked for clarification to condition number 6. Directing the Commission's attention to the rendering of the plat, Mr. Sallee said that it is the staff's opinion that there is a discrepancy in the zoning information shown on the proposed plat, which consists of 30 to 50 feet. He said that by correcting the zoning boundary shown on this plat, it will impact the required setback from the existing house to the A-R zone, which is why the dimensional variance would be needed. He then said that this is also the reason why condition number 6 states that the property line is to be coincident with the zoning boundary.

Mr. Holmes asked if the two mobile homes share an existing septic system. Mr. Sallee said that according to the documentation from Building Inspection, there are two separate septic systems. He then said that in reviewing the rendering in the staff exhibit, the two systems that are shown on the schematic are clearly indicating that each system is intended for either the mobile home or the house. He noted that each system is located on the 14-acre tract, which is why this is a unique situation. He then noted that the staff was not made aware of this situation until the last 90 days. Mr. King clarified that there are not two mobile homes on the property, but rather there is one mobile home and one built structure.

Ms. Roche-Phillips asked if the home was existing when the septic system permits were obtained for each of these structures. Mr. Sallee said that the permits were issued in 1989, and at that time the home existed. Ms. Roche-Phillips said that presumably the permit was obtained due to public health improvements. Mr. Sallee replied that the septic field may have likely been investigated and the information updated. Ms. Roche-Phillips then asked if that information is on hand. Mr. Sallee said that according to the documentation found in the Staff's Exhibit (page 8), there was an inspection of an existing septic system on September 12, 1989, as well as a new permit issued on September 28, 1989, noting that there were conditions attached to that permit. Mr. Sallee said that the staff believes the permit issued on 09/28/89 was for the mobile home, since it was done in the same time frame.

Ms. Roche-Phillips said that in reviewing the Zoning Map Atlas, it appears that the septic field will remain in the A-R zone, and asked how common is it to have a septic system not located on the intended parcel. Mr. Sallee said that he has heard of this type of situation existing, and perhaps for a smaller piece of land in the rural area it would be more likely to occur. He noted that in the past when these drain fields extend over a property line, that area would be considered an easement; and if this proposal were to remain, then that would be the staff's expectation for this proposal, as well. Ms. Roche-Phillips said that when a septic system fails, it is not wise to have the drain lines located on a separate parcel. She said that this is not the best plan for the Commissioner to execute.

Ms. Copeland said that the Commission's first hearing of this case is at today's meeting; and in reviewing the utility bills for these properties, there is not sufficient amount of history listed for each of these properties to prove that they have been two separate entities this entire time. She then said that this is the second time she has heard about this case, but there are two new Commission members who have never heard of it, and asked why this case bypassed the Sub-Committee phase. She then asked if the Commission could obtain the information, and not act on the information at this time. She believed that this is a large amount of information to digest in a short amount of time. Mr. Sallee noted that in reviewing the agenda, this item appears on page 2, under item 2a, and there is a date within the parentheses that reads (9/10/09)\*. He noted that this is the date by which the Commission must either approve or disapprove the plan. He said that without the consent of the applicant, the Commission does not have the ability to postpone this matter any further. He then said that in speaking with the applicant's representative, they did not want this item to be postponed at today's meeting. Ms. Copeland clarified that the applicant is "whamming" the Commission. Mr. Sallee said that the regulations only allow 90 days for the Commission to review the application; and since this item has been postponed so many times, that time period has expired. Ms. Copeland said that the applicant was fully aware of this, and they are the ones who have backed the Commission into a corner. Mr. Penn commented that the Commission should hear the petitioner's remarks; and after that time, the Commission could then take action on this item. He said that the Commission has a deadline to hear the application, and the applicant had chosen to postpone this item until now.

Mr. Brewer asked if the driveway will be on a separate parcel. Mr. Sallee said that the driveway begins on the A-R lot and runs next to the mobile home, ending at the single family residence in the B-1 zone. He then said that the staff is expecting the driveway to be shown as an access easement on this splat.

Mr. Owens asked if the staff knows how many other similar lots there are in the county. Directing the Commission's attention to a map from the Rural Service Area land Management Plan (RLMP) on the overhead, Mr. Sallee indicated

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that there are a few more than 20 areas in the Rural Service Area with non-residential zoning that date back to the 1950s. He said that some of those areas contain split zoned parcels and some of these areas involve multiple properties. He noted that there are parcels on Georgetown Road that are zoned B-3, while others in the county are zoned B-1. He said that these parcels date back to the 1950s, when Fayette County had first adopted the zoning regulations.

Representation – Dick Murphy, attorney, along with Rory Kahly, EA Partners, and Jeff Taylor, the applicant, was present. He submitted the photograph for the posting of a sign, and entered the signed affidavit into the record. He also submitted their Exhibit Packet to the Commission and noted that Ralph Ruschell was also present on behalf of the applicant.

Mr. Murphy stated that his client is requesting the Commission to approve the subdivision of a split-zoned lot into two tracts. He said that they have been working on this proposal for 13 months, and it is clear that the Commission is upset with this item being postponed so many times. He then said that they have taken this request back to the Subdivision Committee at least twice; and throughout this process they have been working with the staff, the Fayette Alliance, the Lexington-Fayette County Health Department and the Old Richmond Road Neighborhood Association. He said that even though this item had been postponed several times, if the Commission wants to postpone this item after their presentation today, they would be agreeable to that decision. He then said that they do not want the Commission to believe this case has been rammed down their throats, or for the Commission to feel that they are being forced into a decision.

Mr. Murphy noted that his client is a graduate of the University of Kentucky, College of Architecture, and he wants to construct a home on this property. Directing the Commission's attention to a series of photographs, he illustrated two different views of the existing house, as well as two different views of the mobile home. He said that his client wants to remove the mobile home from the property and replace it with a modest house. He said that his client is the son-in-law of the property owner (Bogie-Strain), and their intentions are to build a 3-bedroom home next to the existing house.

Mr. Murphy stated that there have been several discussions between his client and the Fayette Alliance and the Old Richmond Road Neighborhood Association, and no one from these organizations has voiced any objections to this proposal. Everyone that has been involved with this proposal has viewed this to be a positive improvement to this area. He then said that there has been concern regarding the uses of the B-1 lot, and under the zoning requirements there is no minimum lot size for the 4 acre lot; but there is a lot size requirement for a septic system. He noted that the 10-acre A-R lot does have a minimum lot size requirement, as well as a size requirement for the septic system. He noted that they are not requesting the size of land to be changed in either zone. Mr. Murphy said that there has never been a problem in the area with regard to the septic system, and the LFCHD has stated that this is the best soil in the county for septic systems. He noted that there are two systems on this property, one for each of the structures.

Referring to the rendering of the plat, Mr. Murphy oriented the Commission to the surrounding area, and noted that across from Jacks Creek Road was a store located within a B-1 zone. He said that in reviewing the history of this area, there was a service station at the corner of Jacks Creek Road and Old Richmond Road on the applicant's property, which is where the house will be located, while the mobile home is on the A-R lot. He then said that these two lots are irregularly shaped, and that was done due to the fence line. Mr. Murphy stated that in the beginning of this process, there were concerns from the Fayette Alliance and the Old Richmond Road Neighborhood Association regarding rural preservation in this area, as well as what type of uses that could be placed on the B-1 lot. They were concerned with the potential harm it would have in the area. Mr. Murphy said that they had several meetings with James Hodge, who represents the Fayette Alliance and the Old Richmond Road Neighborhood Association; and at those meetings his client informed them that their goal was to keep the B-1 zone as is, but build a house on that lot. He said that after months of negotiation they agreed to have a restricted covenant on this property that eliminates several uses that would normally be allowed. These restrictions speak to open space, types of uses, landscape buffers, building restrictions and so forth. He said that these restrictions also prevent the properties from being subdivided in the future. He then said that his client has signed and submitted this proposal to Mr. Hodge; and if the Commission approves this request, Mr. Hodge will then record that deed restriction.

Mr. Murphy stated that if this land was not subdivided, a commercial use could be located on the B-1 portion of this plat. He said that a building permit could be obtained as long as there is only a single building on the site; and if there were to be more than one building, a development plan would need to be submitted to the Commission for approval. He noted that the Lexington-Fayette County Health Department would also need to approve a septic system for this land as well. He then said that these options were discussed with the Fayette Alliance Group and the Old Richmond Road Neighborhood Association, and they fully know the magnitude of what could come here. He said that this is a win-win situation between the organizations and his client.

Mr. Murphy then stated that another reason for postponing this item was due to the approval by the Lexington-Fayette County Health Department. He said that, under normal circumstances, a plat would be submitted and approved by the Planning Commission, and then the LFCHD would approve the plat for a septic system. The staff wanted the septic system to be approved by the LFCHD prior to this request coming to the Planning Commission.

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Directing the Commission's attention to the previously submitted Exhibit Packet, page 1, Mr. Murphy explained that they had received a letter from James Hodge that notes there are no objections from either the Fayette Alliance or the Old Richmond Road Neighborhood Association. He noted that pages 2 through 6 are several correspondences between the LFCHD and himself, and said that the LFCHD regulation number 17 prohibits development of properties that are less than 10-acre tracts outside the government sanitary sewer service area. This regulation is similar to Article 6-6(a) of the Land Subdivision Regulations. He then said that the Lexington-Fayette County Health Department reviewed the applicant's plan and approved it. It was noted that this land has good soil for a septic system, and there are no records of any malfunctions in the past. Mr. Murphy stated that they have had very positive meetings and outcomes in speaking with the Fayette Alliance, the Old Richmond Road Neighborhood Association, and the Lexington-Fayette County Health Department; and now they are seeking approval from the Planning Commission.

Mr. Murphy said that a question was asked as to whether or not the utilities to a property could have been separated just prior to the hearing. He noted that he would not recommend a client to fabricate evidence and the utility bills that were submitted were furnished by the staff. He said that the staff did request the history of these properties, but his client did not retain those bills; and for that reason, they had requested the history of these properties from Kentucky Utilities (KU). KU has provided the evidence showing there has been a separate account for these two residences since 2007; and in a signed affidavit, Ms. Bogie-Strain has stated that these two structures have had separate utility bills since 1989. (A copy of the KU exhibit and the two signed affidavits is attached as an appendix to these minutes). Mr. Murphy stated that these two structures do have separate utilities (electric, phone, and cable), with the exception of the water bill that is currently on one meter. He noted that having a single water meter in the rural area or within Fayette County is not uncommon.

Mr. Murphy stated that Article 4-5(a) of the Land Subdivision Regulations relates to a past case in which the Planning Commission had received several plats that had more than one structure located on the land. This case is known as the Zack Carter case. He said that when the Carter lots came in for subdivision, those lots did not meet the minimum lot size requirements for what the zone was at that time. He then said that the Planning Commission knew that approving that request would be a positive idea, but they were prohibited by the Zoning Ordinance; therefore, the Planning Commission had approved a regulation that would deal with the issue of two or more existing residences on a single lot. He said that Article 4-5(a) of the Land Subdivision Regulations notes that these must be in a separate and distinct manner, with separate utilities and other facilities, so that the resulting subdivision will not constitute a material change in the use of the property. He then said that the sewer system is considered a utility, and these two residences have separate and distinct bills. In reviewing the submitted evidence, he believes that they have shown that these two residences are separate entities from each other, and this will only improve the area.

Mr. Murphy said that they are requesting a waiver to Article 6-6(a) of the Land Subdivision Regulations that would allow a septic system for a 10-acre lot. He then said that in the past there were many of these 10-acre lot requests, but in this day and time those lot sizes are few and far between. He noted that this item was postponed until the approval of the Lexington-Fayette County Health Department was obtained. He noted that they will need to acquire a septic system permit prior to the building permit being issued. He said that they are requesting the waiver to be granted based upon hardship. This property is split-zoned; these lots are irregularly shaped due to previously plats following the fence lines, and there are two septic systems existing on these lots. He said that if the applicant is prohibited from constructing the house, this will cause a hardship. He then said that this request will not impair the character of the area; and with the restrictions being added to the deed, there are limits as to what can be built here. Mr. Murphy stated that they believe they are eligible for the waiver, and they believe they qualify under Article 4-5(a) of the Land Subdivision Regulations, noting that this mobile home was a principal use from 1989 until 1995, which was when the Zoning Ordinance was changed to allow mobile homes only as an accessory use in the A-R zone. He stated that in reviewing the BOA minutes from the 1996 case, the mobile home was considered legal and it was granted the variance.

Mr. Murphy said that in 2004, the Planning Commission had approved a plat located on Muir Station Road. He said that that proposal was also a split-zone issue consisting of A-R and B-1 zones. He then said that there were no existing buildings on that land; and with the Commission's approval four lots were created in the B-1 zone and one lot in the A-R zone, as well as granting the waiver request to Article 6-6(a) of the Land Subdivision Regulations. He noted that the difference between 2004 case and this case is that there are two residences existing on this land. He gave several examples of places within Lexington that the Planning Commission had approved similar requests to this one. He said that there are areas where the lots were subdivided into 10-acre lots, those lots use a septic system and those lots are within the A-R zone. He then said that the Planning Commission had approved such requests, which allowed those lots to be purchased by home owners.

Mr. Murphy noted that the Lexington-Fayette County Health Department had approved the septic system, as well. Mr. Murphy stated that they are not requesting to increase the density of this area; they are not requesting a third septic system to be built in the A-R zone; and the LFCHD is in agreement with that request. He said that this could create a precedent, but each case would have to mirror this request.

In conclusion, Mr. Murphy stated that they have obtained approval from the Lexington-Fayette County Health Department, they have obtained approval from the Fayette Alliance, as well as from the Old Richmond Road

Neighborhood Association, and they believe this request is appropriate for this area. He then stated that they are agreeable to a postponement if the Commission wishes, but they would appreciate that this request go forward. With that being said, Mr. Murphy said that the applicant is in agreement with the staff's revised recommendations, and requested approval of PLAN 2008-76F, to include the granting of the waiver.

Commission Questions – Ms. Copeland asked why Ms. Bogie-Strain was the source of both utility bills. Mr. Murphy said that since 1989, either a family member or a non-family member has resided on the property in the mobile home. Ms. Copeland asked if the mobile home could be considered a guest house. Mr. Murphy replied that it could not. He said that a guest house within the A-R zone cannot have cooking facilities. A guest house must be associated with the main house, and it must be on the same utilities as the main house. He said that the mobile home does not qualify as a guest house. In reference to the name on the utility bill, Mr. Murphy said that the mobile home is being used by a family member at this time; and even though Ms. Bogie-Strain has the utility bill in her name, her daughter is the person who pays for the mobile home utilities.

Ms. Copeland asked if the applicant's college background is architecture. Mr. Murphy replied affirmatively. Ms. Copeland then asked when his client graduated from college. Mr. Murphy said that he graduated in 1998. Ms. Copeland said that this proposal is creating two lots and asked if there is an agreement between the parties as to when this home will be built. Mr. Murphy said that there is no time limit. Ms. Copeland commented that the applicant could never build on these lots. Mr. Murphy said that that would result in no advantage. Ms. Copeland said that the advantage would be gained by creating two lots. Mr. Murphy said that there would be two lots, but the restrictions on the deed limit the uses for the B-1 lot. He said that if the house does not get built, then there will be no agreement between the Fayette Alliance and the Old Richmond Road Neighborhood Association. His client has indicated that it will take a couple of years to plan and develop on this lot. He said that his client is planning to develop this land; otherwise, he would not have gone through this ordeal.

Mr. Owens said that the Lexington-Fayette County Health Department has approved the septic tank system for the 10-acre lot, and asked if the 4-acre lot had been reviewed. Mr. Murphy said that both systems are working properly according to the LFCHD. Mr. Owens asked if the LFCHD reviewed a new system for the 4-acre lot. Mr. Murphy said that a new system for the 4-acre tract is not required at this time. Mr. Owens said that if the B-1 lot were to be built, then a new septic system would be required. Mr. Murphy said that if additional development were to happen on either the A-R or B-1 lot, the Lexington-Fayette County Health Department would need to reapprove the septic system. He then said that the current approval from the LFCHD is only for the proposed 3-bedroom house.

Mr. Brewer said that Article 4-5 of the Zoning Ordinance states that this may be done only if the Commission finds that the properties have been used in a separate and distinct manner, and asked what would constitute the separate and distinct manner. Mr. Murphy said that in 1989, the mobile home was considered a principal use on the property. He said that the mobile home has been used by the family throughout the years, and this property has two distinctive units on it. Mr. Brewer asked if the mobile home will be destroyed and if the family members will be moving elsewhere. Mr. Murphy said that when Mr. Bogie and Ms. Bogie-Strain decide to retire, then their other daughter will move into the main house. He said that during the process of constructing the house, Building Inspection will allow the mobile home to be retained on site until the occupancy permit is obtained for the new house. He said that when the permit is issued, the mobile home will be removed from the land. Mr. Brewer asked where the proposed deed restrictions are. Mr. Murphy submitted a copy of the deed restrictions to the Commission for review. He said that the original copy is with James Hodge, who is the attorney representing the Fayette Alliance and the Old Richmond Road Neighborhood Association. If the Commission should approve this request, Mr. Hodge will then submit the deed restrictions for recordation; and if the Commission should deny this request, Mr. Hodge will destroy the document.

Mr. Penn asked if the copy of the deed restrictions should be entered into the record. Ms. Boland replied that whether or not one or more member reviews the document, a copy will need to be retained on file. Mr. Penn suggested that a copy of the deed restrictions be entered into the record. Mr. Murphy agreed. He said that in reviewing the deed restrictions, the uses will be limited to equine related use or a sit-down restaurant. There will not be any type of fast food, chain restaurant, service station or convenience store, and so forth and explained what is permitted and what is prohibited at this location.

Mr. Brewer said that the deed restrictions state that there will be no more than two septic systems located on the property and asked if a Bed and Breakfast (B & B) is developed, if it would connect into the existing system on the adjacent property. Mr. Murphy said that the approval from the LFCHD would need to be attained for that type of request.

Ms. Copeland confirmed that a B & B could be placed on this site. Mr. Murphy said that if that were to happen, his client would have to comply with the deed restrictions associated with that land. He then said that since there is no desire to have a B & B on site they have not attained any information for that issue; however, if a B & B were to develop, it would more than likely be placed in the B-1 zone, since there are spacing requirements for the A-R zone. Mr. Saltee said that within the A-R zone, there is a conditional use restriction that is subject to a one-mile spacing. Mr. Murphy said that a B & B would need approval from the Board of Adjustment for a conditional use permit; everyone within a one-mile radius would need to be notified, and they would need to contact the Fayette Alliance, and the Old Richmond Road Neighborhood Association, as well. Ms. Copeland asked if the Bed and Breakfast could be placed in the 3-bedroom house that will be constructed. Mr. Murphy replied affirmatively, but said that it would be very unlikely. He said that the items listed on the deed restrictions were placed there as a possibility for appropriate uses in the future. He then said that it may never happen, but there is that

possibility. Ms. Copeland confirmed that the agreement states that the 14-acre piece of land could have only two septic systems. Mr. Murphy replied affirmatively, and noted that the land cannot be subdivided any further.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Petitioner's Rebuttal – Mr. Penn asked if the petitioner had any rebuttal comments to bring forward. Mr. Murphy declined.

Staff Rebuttal – Mr. Penn asked if the staff had any rebuttal comments to bring forward. Mr. Sallee declined.

Commission Comments and Questions – Mr. Penn said that the staff is recommending approval of the applicant's request, subject to the revised conditions listed in the handout. He said that as part of those conditions of approval, the Planning Commission must grant a waiver to Article 6-6(a) in relation to the 10-acre rule for the septic system.

Ms. Roche-Phillips reminded the Commission that this request would not comply with the spirit of the Rural Service Area Land Management Plan with regard to the 40-acre rule, or to the adopted policy of the 2007 Comprehensive Plan that minimizes the development within the rural area. She said that in the immediate vicinity there are active equine industries, such as Champagne Run Riding Stable; and the purpose of the 2007 Comprehensive Plan is to protect the equine interests from any encroachment.

Ms. Copeland said that in reviewing the Rural Service Area Land Management Plan, this particular site is listed on Figure 4-13: RSA Sites in Other than Agricultural or Residential Zoning. She asked if this proposal is in the spirit of the RLMP or is this a decoy saying this proposal is alright with regard to the Rural Service Area Land Management Plan. Mr. Sallee said that in reviewing Figure 4-13; this section refers to the B-1 portion of the land. He said that the real change that is being proposed is concerning the A-R portion of the land. He then said that within the A-R zone, a single family dwelling is a principal use along with agriculture; whereas, mobile homes are now an accessory use. Ms. Copeland asked if the staff felt this proposal is in agreement with the intent of the Rural Service Area Land Management Plan. Mr. Sallee replied that single family dwelling units are allowed in the A-R zone. Mr. Murphy said that the Rural Service Area Land Management Plan does not discourage residential dwelling units, nor does it want to retain mobile homes. He said that the previous zone change in this area was a different issue at that time.

Mr. Penn said that in reference to the previous comment made by Mr. Murphy, the Planning Commission had initiated a down-zoning for property that was not being utilized as B-1. Mr. King said that when the Rural Service Area Land Management Plan was in the process of being completed, it was discovered that there were several pieces of land zoned B-1, and the concern was that if these properties developed as a commercial use, it would not be compatible with the Rural Service Area, resulting in several issues coming about. In looking at the language, any parcel of land not having a business located on it would be considered an agricultural use. He said that when the Commission had started the series of zone changes for this area, the outcome was contested and controversial; therefore, the down-zoning was halted. As an alternative, the Commission considered a modified text amendment for the Rural Service Area that proposed a number of restrictions to the B-1 zone when it is in the Rural Service Area by limiting the size and scale, as well as the type of businesses permitted. He said that the Planning Commission recommended the text change to the Urban County Council, who then referred it to a Committee, where it has been pending for many years. He then said that the proposed deed restrictions are separate from the issues that have been discussed by the staff, but the restrictions for the uses are in keeping with what the Planning Commission had originally proposed to the Council. He then said that the deed restrictions are an agreement between the applicant and two different entities, and it is not material in the staff's review for the facts of this case. Mr. Penn added that he was involved in the Rural Service Area Land Management Plan, and this is the reverse of what the Commission had thought what would happen with the B-1 lots. He said that most of the B-1 lots are older stores or gasoline stations that have been vacant for many years. He then said that with regard to the "spirit" of the Rural Service Area, there are a number of properties in this area that are in this same type of situation as this case. This agreement that has been formed between the applicant and the Fayette Alliance and the Old Richmond Road Neighborhood Association will not be available to those other properties. Mr. Penn said that as a Commission member, he fears that this will set a precedent for future requests. He then said that as a property owner in the Rural Service Area, it is never a good idea to have a septic system located on a different piece of property.

Ms. Whitman referred to the revised staff recommendations, and read the following excerpt from that document into the record: "There are two substantial benefits of this subdivision, in the staff's opinion. First, a split-zoned lot will be eliminated, and each lot will have consistent (A-R and B-1) zoning. Secondly, one non-conforming use will be eliminated, if replaced with a single family dwelling, as is proposed by the applicant." She said that this entire discussion is summed up with that statement.

Mr. Holmes said that it is not unusual to have business use in the Rural Service Areas, and that was the nature of places such as those within the Crossroad Communities. He said that the B-1 issue does not concern him because there will be some non-conforming uses due to the 40-acre rule. He is concerned with the septic system; but, overall

the density is not being increased, and with the deed restrictions in place it gives a layer of protection that the Commission could not attain.

Ms. Roche-Phillips said that she is not concerned with the density of these lots, but the 4-acre remnant parcel that is zoned B-1 is a concern. She then said that there could be deed restrictions imposed on the property; but the Planning Commission cannot enforce those restrictions, and she believes the restrictions should not be a part of the discussion. She noted that the only things that should be discussed are the zoning classifications, and the land uses that are permitted in the B-1 zone.

Mr. Penn asked if the waiver should be considered prior to the motion of this request. Ms. Boland said that if the waiver is not granted then this request is not approvable. She said that from a legal standpoint it does not matter which motion comes first.

Mr. Penn asked if the petitioner has any issues at this time. Mr. Murphy said that the applicant has agreed to place the same deed restrictions on the plat with the Commission's approval, which would make those restrictions publicly and privately enforceable.

Mr. Owens said that he also has concerns with the unintended consequences of the 4-acre tract, and the issue of the septic system being on the adjacent property, as well as the remaining tracts of land within the Rural Service Area.

Action - A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, to disapprove the granting of the waiver. The motion failed 4-7 (Penn, Richardson, Holmes, Paulsen, Whitman, Cravens and Wilson opposed.)

Commission Comments - Mr. Owens stated that he would like additional information on the ramifications for the other properties within the Rural Service Area.

Action - A motion was made by Mr. Owens, and seconded by Ms. Roche-Phillips, to postpone PLAN 2008-76F to the October 8, 2009, Planning Commission meeting.

Discussion of Motion - Mr. Holmes asked the purpose of the postponement request. Mr. Owens said that the postponement will allow the staff more time to seek additional information regarding the other businesses within the Rural Service Area, as well as the ramifications of those requests.

Mr. Cravens said that this case has been discussed for the past hour and a half, and there is no need to postpone this request any further.

The motion failed 4-7 (Richardson, Holmes, Paulsen, Whitman, Cravens, Brewer, and Wilson opposed.)

Action - A motion was made by Mr. Cravens, and seconded by Ms. Richardson to approve PLAN 2008-76F, for the following reasons: the staff has shown that this property has met all technical requirements and the regulations; the Fayette Alliance and the Old Richmond Road Neighborhood Association have an approved agreement with the property owner to limit the uses of the B-1 lot; per the applicant's request, the deed restrictions will be placed upon on the plat; and there are two dwelling units on the property. The motion included granting the associated waiver request.

Discussion of Motion - Mr. Penn clarified that the motion on the floor is to approve PLAN 2008-76F, subject to the revised conditions listed by the staff in their exhibit packet. Mr. Cravens replied affirmatively. Mr. King clarified that there was a request that the use restrictions, as per the private agreement, be included on the plat. Mr. Cravens replied affirmatively. Mr. Penn confirmed that that additional condition would be number 12. Mr. Cravens replied affirmatively. Mr. Penn confirmed that granting the waiver is also included in the motion on the floor. Mr. Cravens replied affirmatively.

Mr. Holmes asked who will enforce those restrictions placed on the plat. Mr. King said that he has not seen those restrictions, and cannot comment on that issue; but under normal conditions they are enforced by the party who is in favor of them through the court system. He then said that if those restrictions were added to the plat, it would be on record and enforceable at the time a building or occupancy permit is requested.

Mr. Holmes asked if Building Inspection would be responsible. Mr. Carpenter requested a brief recess to inspect the deed restrictions and to determine that they can be enforced. Mr. Holmes said that he wants to make sure Building Inspection can enforce these restrictions.

Ms. Roche-Phillips said that she believes approving this request is wrong. She then said that this is poor planning by endorsing a subdivision and separating the user from their septic system. She is not concerned with the 10-acre lot, but rather the 4-acre lot, as well as the precedent that will be set within the Rural Service Area.

Upon reviewing the deed restrictions, Mr. Carpenter said that if only the permitted uses were added to the plat, Building Inspection would be able to enforce those listed. Mr. Penn asked for clarification as to what uses will be permitted. Mr.

Carpenter read sections of the following excerpt into the record (A copy of the deed restrictions is attached as an appendix to these minutes).

*"Permitted Uses. The small lot may be used for the following purposes and for no other purposes: (a) antique shops; (b) artist studios; (c) arts and crafts shop; (d) bed and breakfast inn, limited to the rental of not more than five (5) rooms; (e) community buildings, including community centers, library and museums; (f) equine boarding and training; (g) equine equipment and apparel shops; (h) equine veterinary office; (i) florist/flower shops; (j) fruit and vegetable market; (k) gift and souvenir shop, which is not a franchise operation; (l) home office and home occupation; (m) park or recreation area; (n) restaurant which (i) offers no live entertainment or dancing; (ii) has no drive-thru window or facilities, (iii) is not a franchise operation, and (iv) which devotes no more than twenty percent (20%) of its public floor area exclusively to the preparation and service of malt beverages, wine or alcoholic beverages; (o) small farm winery, as described in KRS Chapter 100 and those specific uses outlined in KRS Chapter 100 that are incidental only to a small farm winery licensed as such by the Commonwealth of Kentucky, such as the manufacture and bottling of wine; tasting rooms for the purpose of serving complementary samples; sales by the drink or bottle, either on or off premises; and sale and shipment of wine, either wholesale or retail; and (p) stationery store. Except as limited herein, and subject to the terms of the Zoning Ordinance of the Lexington-Fayette Urban County Government, the large lot may be used for the following purposes and for no other purpose: the Principal Uses and Accessory Uses permitted in the A-R zone."*

Mr. Penn clarified that the mentioned uses will be permitted. Mr. Carpenter replied affirmatively. Mr. Penn asked Mr. Cravens, who made the motion, and Ms. Richardson, who seconded the motion, if this was agreeable. Mr. Cravens and Ms. Richardson noted that they were in agreement.

Mr. Owens asked if these restrictions will be applied to the 10-acre tract. Mr. Carpenter said that these permitted uses will be applied to the 4-acre tract that is zoned B-1. Mr. Owens said that he believed the Bed and Breakfast could not be within the B-1 zone, but within the A-R zone. Mr. King said that 10 years from now the Zoning Ordinance could be changed to permit a Bed and Breakfast in the B-1 zone, and it will need to meet the zoning laws that are in place at that time, as well as meet the deed restrictions.

The motion for approval was carried 7-4 (Penn, Owens, Roche-Phillips and Copeland opposed.)

- b. PLAN 2009-72F: LANSDOWNE-MERRICK SUBDIVISION, UNIT 3-A (AMD) (10/8/09)\* - located at 3119 Lansdowne Drive. (Council District 5) **(Wheat and Ladenburger)**

Note: The Planning Commission postponed this plan at its August 13, 2009, meeting. The purpose of this amendment is to revise the building line.

The Subdivision Committee Recommended: Postponement. There were questions regarding the proposed setback in relation to those on the adjacent properties along Montavesta Road.

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
6. Provided the Planning Commission grants a waiver to Article 5-4(h)(2) of the Land Subdivision Regulations.
7. Correct building line setback to 30.'

Staff Presentation – Mr. Taylor directed the Commission's attention to a rendering of the amended final record plat for property located on Lansdowne Drive. He oriented the Commission to the surrounding street system, noting that the subject site is just off Tates Creek Road, inside New Circle Road. He then noted that the subject site is situated at the corner of Lansdowne Drive and Montavesta Drive.

Mr. Taylor said that the purpose of this amendment is to revise the platted building line (setback) from 40' to 30' along Montavesta Drive for the subject property. He then said that the Subdivision Committee had recommended postponement of this request at their August 6, 2009, meeting, due to questions regarding the building line being reduced to 30' (condition #7).

Mr. Taylor stated that the applicants have requested a waiver of the Engineer's and Surveyor's Certification required by Article 5-4(h)(2) of the Land Subdivision Regulations. He said that Article 5-4(h)(2) requires that a final record plat be prepared jointly by an engineer and a land surveyor unless the plan is exempted for Preliminary and Improvement Plans in accordance with Article 4-3 of the Land Subdivision Regulations. This exemption is granted if no private or public street needs to be constructed or other public improvements or improvement plans are required. He said that if that was the case, it would only be necessary for a land surveyor to prepare the final record plat; however, the certification required by Article 5-4(h)(2) makes no provision for only a land surveyor's signature.

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\* - Denotes date by which Commission must either approve or disapprove plan.

In conclusion, Mr. Taylor said that since this subdivision is developed and no additional public improvements are required, the staff is in agreement with the waiver request, for the following reasons:

1. Granting the waiver will not adversely affect public health and safety, and will otherwise maintain compliance with the Land Subdivision Regulations.
2. Strict compliance with this requirement of the Land Subdivision Regulations would constitute a hardship for the applicant by requiring an engineer's stamp and signature to be affixed to the plat when it is not otherwise required by the same Land Subdivision Regulations.

This recommendation is made subject to the following additional requirement:

- a. This certification shall read as follows:

"I hereby do certify that this record plan was prepared by me or under my direction; ~~that all work performed by me or under my direction, including engineering design and construction observation of the infrastructure,~~ was done in accordance with the provisions of the Land Subdivision Regulations, the Zoning Ordinance, ~~the Division of Engineering Technical Manuals~~ and the requirements of the Planning Commission; that all monuments indicated hereon do exist and their locations, size, and materials are correctly shown; that, to the best of my knowledge and belief, the information shown hereon is accurate." ~~(Engineer's and Surveyor's signature, address, date, and seal)~~

Planning Commission Questions – Ms. Copeland asked if the staff is in agreement with the location of the carport. Mr. Taylor said that it is not uncommon to have corner lots with dual setbacks, requesting that the building line be reduced to the minimal amount. He then said that normally this type of request would be heard in front of the Board of Adjustment; and at that time, the applicant would be requesting a variance. However, with this particular case the applicants are requesting to amend the building line; therefore, the staff is recommending approval, based on what had transpired at the Technical Committee meeting.

Ms. Copeland asked has the Technical Committee or staff driven by the site as a passenger in a car and seen the relationship of the house to the gateway to this subdivision. Mr. Taylor said that he had not visited the site. Ms. Copeland then asked if any staff member has been on site. Mr. Taylor said that he could not answer that question. Ms. Copeland asked if the staff had relied upon aerial photos instead. Mr. Taylor said that the staff had reviewed what the Zoning Ordinance allows, what has been done in the past and determined the staff recommendation for this plan. Ms. Copeland asked again if the staff had visited the site. Mr. Taylor replied no, the staff did not go on a site visit.

Referring to the waiver report, Mr. Penn asked if the language noted in Article 5-4(h)(2) is what is listed on the plat. Mr. Taylor said that Article 5-4(h)(2) is the required certification, and what is being shown on the plat is the proposed language from the waiver report. Mr. Penn then asked if this change would allow a land surveyor to certify the plat instead of an engineer. Mr. Taylor responded affirmatively.

Representation – Richard Murphy, attorney, was present representing the applicants. He noted that he was not at the recent Subdivision Committee meeting, and said that it is his understanding that there were concerns raised regarding the platted setback requirement. He then said that this waiver request only relates to the language for the certification of the plat, noting that this type of waiver is routine, since there are no public or private improvements needed.

Mr. Murphy submitted an exhibit to the Commission, and said that the applicants property is located at the corner of Lansdowne Drive and Montavesta Drive, noting that this property is not adjacent to Bates Creek Road. He then said that immediately behind the applicants property is a KU transformer station, the Lansdowne-Merrick Park and the Julius Marks School.

Mr. Murphy stated that this property is zoned R-1C; and according to Article 8-7(h), the minimum front yard requirement is 30'. He said that at the Subdivision Committee meeting, there were concerns raised regarding the appearance of the proposed carport; and to alleviate any concerns, the applicants had spoken with the neighbors in close proximity to their property, most of which were in support of their request. He then said that these neighbors had signed a petition showing their support, Mr. Murphy presented a map of the neighborhood showing their support; and in reviewing the map of the area, there was only 1 property owner, who objected to the applicants proposal. Referencing the map on page 2, he explained that the area noted in yellow were neighbors not at home. He said that the applicants had made several attempts to speak to these neighbors; but when looking at the area, the majority of the neighbors were in agreement with the applicants proposal.

Mr. Murphy then stated that in reviewing the plats within this area (page 6), the Planning Commission has granted several properties a reduction of the required setback to 30' along Lansdowne Drive and 40' along Montavesta Drive. He directed the Commission's attention to the following exhibits, and noted that throughout the years, several amendments had been made to plats.

- Page 7: in 1995, the Planning Commission had approved a setback reduction to 30 feet along Montavesta Road;

- Page 8: the Planning Commission approved a setback reduction to 30' for a duplex at the corner of Pepperhill Drive and Montavesta Drive;
- Page 9:, shows the plat for Montavesta Circle, where the setbacks range from 30' to 45;'
- Page 10: shows the plats for Whittington Court, where the platted setbacks range from 22 feet to 30 feet;
- Page 11: shows the amended final record plat for properties at the corner of Albany Road and Montavesta Road with a setback range of 30' to 35;'

Mr. Murphy said that corner lots have always been treated differently than interior lots, as far as the setback requirements are concerned. He then said that there have been individual lots changed in the past, and normally this would be an administrative action as long as the plat meets the requirement of the Zoning Ordinance. He said that the applicant is in compliance with the required setback for this zone; and more importantly, the neighbors in this area are in support of the request. He then said that the applicants are in agreement with the staff's recommendations, and requested approval of PLAN 2009-72F, including the waiver request.

Planning Commission Questions – Mr. Cravens asked if there was a reason for the building lines to be different within in this area. Mr. Murphy said that the original developer had set those building line locations, and the reasons behind their action are unknown. Mr. Cravens said that there had to be some reason for the original developer to place these setbacks where they are located, because the more area available to develop, the more expensive it would be. Mr. Murphy said that there could have been a reason behind these setbacks; but the Planning Commission had ultimately approved those requests. Mr. Cravens asked if there is a site plan for this property. Mr. Murphy submitted a site plan, as well as photographs of the subject site, and explained that the lot is located at the corner of Montavesta Drive and Lansdowne Drive. He pointed out the proposed lot line versus the existing lot line. He said that the applicants restore cars at another location on Manchester Street; and after those cars are restored, he wants to be able to park them under the acrylic awning. He then said that this would normally act as a temporary use, which would not require a building permit. However, Building Inspection has classified this proposal as being a carport, which is considered to be a permanent structure; therefore, the applicants had to obtain approval for a variance from the Board of Adjustment. He said that after speaking with the staff, it was determined that a variance from the BOA would not be needed because the setback would be decreased to what is required within the R-1C zone. It was determined that the applicants would need the approval of the Planning Commission to change the 40' building line to a 30' building line. At this time, Mr. Murphy directed the Commission's attention to the photographs, and said that as the site exists today, the applicants property and the adjacent property's driveway apron merge together into the street. He said that they had placed a digital awning on the photograph to show what the site would look like in the end.

Mr. Cravens asked where the 40' building line is located on the site plan. Mr. Murphy said that the 40' building line comes to the edge of the house. Mr. Cravens then asked if the new addition would encroach over the 30' building line. Mr. Murphy said that only the corner of the awning would encroach over the building line.

Mr. Cravens then asked if this would not be permissible with Building Inspection. Mr. Bob Carpenter, Building Inspection, said that an encroachment of only 5 feet is permitted over the building line. Mr. Cravens asked if this proposal would be considered similar to what is allowed for a porch. Mr. Carpenter replied no, and said that a porch could extend out 8 feet.

Ms. Copeland asked the square footage of the house. Mr. Murphy said that the square footage of the house is about 3,600. Ms. Copeland then asked if the square footage of the house includes the 4-car garage. Mr. Murphy said that this residence has a 3-car garage, and this garage is included in the total square footage. Ms. Copeland asked how many vehicles would be able to park under the proposed canopy. Mr. Edwards, the applicant, said that 3 cars could be parked under the canopy. Ms. Copeland said that there is the potential of 6 cars being parked at this residence. Mr. Edwards said that the garage currently has three bays, two double and one single. Ms. Copeland clarified that there are three bays inside and there will be the potential of 3 additional cars outside under the canopy. Mr. Edwards replied affirmatively. Ms. Copeland commented that there will be 6 vehicles parked on the property, with the house only having 2,500 square feet. Mr. Edwards said that he believes the square footage is larger than what was previously stated, noting that the residence has 4 bedrooms and 3 baths. Mr. Murphy commented that he had the pleasure of seeing these vehicles, and these vehicles are old classic show cars, they are not for everyday use, which is why Mr. Edwards needs the covered awning.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request. There was no response.

Staff Comment – Chairman Penn asked if the staff wished to make any rebuttal comment. There was no response.

Petitioner's Comment – Chairman Penn asked if the petitioner wished to make a rebuttal comment. There was no response.

Commission Comments – Chairman Penn asked if anyone on the Commission wished to make any comments. Ms. Copeland said that at the Subdivision Committee meeting, it was recommended that a site visit should be done. She

said that the applicants house sits diagonally to the other houses in this area. She believes that this house is the gateway into the area; and for people visiting this area, this house is a significant feature. In her personal opinion and being a landscape architect, she said that having that many vehicles would be an obstructive view to this area, and it would not be appropriate for this neighborhood. She then said that more and more of this type of request will be coming forward as the areas become tighter and tighter for space.

Ms. Roche-Phillips said that this property is somewhat unique. She noted that the property is a corner lot and is positioned diagonally, and for that reason she is in support of the applicant's request.

Audience Comment – Ms. Edwards stated that in the previous statement, it was noted that there would be 3 additional cars under the awning. She said that the parking under the awning is for temporary parking for the vehicles coming and going throughout the day. She did not believe that the parking would be permanent.

Action - A motion was made by Ms. Whitman, seconded by Ms. Roche-Phillips, and carried 9-1 (Copeland opposed; Brewer absent) to approve PLAN 2009-72F, subject to the conditions listed on the agenda, including the granting of the waiver, for the reasons provided by the staff.

- c. PLAN 2009-69F: WRITT STATION SUBDIVISION (AMD) (10/8/09)\* - located at Laclede Avenue.  
(Council District 6) **(Summit Engineering)**

Note: The Planning Commission originally approved this plan on August 13, 2009, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Denote: This property shall be developed in accordance with the approved final development plan.
7. Correct Planning Commission's certification.
8. Addition of private utilities listing per Article 5-4(e) of the Land Subdivision Regulations.
9. Denote: Street trees and arterial screening are to be planted within a year of recordation of this plat.
10. Provided the Planning Commission grants a waiver to Article 5-4(h)(2) of the Land Subdivision Regulations.

The Planning Commission approved the applicant's requested waiver(s) to Article 5-4(h)(2) of the Land Subdivision Regulations, for the following reasons:

1. Granting the waiver will not adversely affect public health and safety, and will otherwise maintain compliance with the Land Subdivision Regulations.
2. Strict compliance with this requirement of the Land Subdivision Regulations would constitute a hardship for the applicant by requiring an engineer's stamp and signature to be affixed to the plat when it is not warranted by the same Land Subdivision Regulations.

This recommendation is made subject to the following additional requirement:

- a. This certification shall read as follows:  
"I hereby do certify that this record plan was prepared by me or under my direction; was done in accordance with the provisions of the Land Subdivision Regulations, the Zoning Ordinance, and the requirements of the Planning Commission; that all monuments listed hereon do exist and their location, size, and materials are correctly shown; that, to the best of my knowledge and belief, the information shown hereon is accurate." (Engineer's and surveyor's signature, address, date and seal)

Note: The applicant now requests another waiver for this plan.

The Staff will report at the meeting.

Staff Presentation – Mr. Martin directed the Commission's attention to a rendering of the amended final record plat for property located on Laclede Avenue. He said that the Planning Commission had previously approved this request on August 13, 2009, subject to the conditions listed on the agenda. As part of that approval, the Commission had also granted a waiver to Article 5-4(h)(2) of the Land Subdivision Regulations. At that meeting, the applicant agreed to those conditions; however, since that time, they have informed the staff of a continuing problem with the language that is stated in item "a" on the waiver report. He said that the original waiver request was specific to the Engineer's and Surveyor's Certification that is required by Article 5-4(h)(2) of the Land Subdivision Regulations. He said that this plan was amended to remove a provision for the shared driveway access that is required for this development, which was the reason for the original waiver request. He then said that the applicant noted that this development had already been surveyed by another person; and there is no reason for this area to be resurveyed or verified.

Mr. Martin directed the Commission's attention to the waiver report, and said that the staff has reevaluated the applicant's request, and recommends approval of an additional waiver to Article 5-4(h)(2), for the following reasons:

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\* - Denotes date by which Commission must either approve or disapprove plan.

1. Granting an additional waiver to this required Certification will not adversely affect public health and safety, and will otherwise maintain compliance with the Land Subdivision Regulations.
2. Strict compliance with this requirement of the Land Subdivision Regulations would constitute a hardship for the developer by requiring an engineer or surveyor to affix their stamp and signature to the plat, at a cost to the developer, when it is not warranted by the same Land Subdivision Regulations.

This recommendation is made subject to the following additional requirement (modified from last month **in bold text**):

a. This certification shall read as follows:

"I hereby do certify that this record plan was prepared by me or under my direction; ~~that all work performed by me or under my direction, including engineering design and construction observation of the infrastructure,~~ was done in accordance with the provisions of the Land Subdivision Regulations, the Zoning Ordinance, ~~the Division of Engineering Technical Manuals~~ and the requirements of the Planning Commission; ~~that all monuments indicated hereon do exist and their locations, size, and materials are correctly shown; and~~ that, to the best of my knowledge and belief, the information shown hereon is accurate."

(Engineer's and/or surveyor's signature, address, date, and seal)

Mr. Martin then stated that the modified language in Item "a" will now allow the applicant to certify that the plan was done under their direction, and it was done in accordance with the provisions of the Land Subdivision Regulations and the Zoning Ordinance, and to the best of their knowledge and belief the information shown hereon is accurate. He said that with the modified language, the staff is comfortable in recommending approval of the applicant's request, as it is presented on the waiver report.

Representation – Matt Williams, Summit Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of the waiver for PLAN 2009-69F.

Commission Comment – Mr. Penn asked if anyone on the Commission wished to discuss this request. There was no response.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Roche-Phillips, seconded by Ms. Whitman, and carried 10-0 (Brewer absent) to approve PLAN 2009-69F, for the reasons provided by the staff, including the additional condition recommended and the following modified language:

"I hereby do certify that this record plan was prepared by me or under my direction; ~~that all work performed by me or under my direction, including engineering design and construction observation of the infrastructure,~~ was done in accordance with the provisions of the Land Subdivision Regulations, the Zoning Ordinance, ~~the Division of Engineering Technical Manuals~~ and the requirements of the Planning Commission; ~~that all monuments indicated hereon do exist and their locations, size, and materials are correctly shown; and~~ that, to the best of my knowledge and belief, the information shown hereon is accurate."

(Engineer's and/or surveyor's signature, address, date, and seal)"

- d. PLAN 2008-118F: SAND LAKE & ESTES PROPERTY (12/3/09)\* - located at 3200 & 3294 Richmond Road and 101 South Eagle Creek. (Council District 7) **(EA Partners)**

Note: The Planning Commission originally approved this plan on September 11, 2008, subject to the following conditions, provided the plan was found to be in compliance with the Richmond Road Traffic and Safety Ordinance:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers (including grease trap information).
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: This property shall be developed in accordance with the approved final development plan.
7. Correct conditional zoning restrictions.
8. Correct 20' building line along Man O' War Boulevard and adjacent to private access easement.
9. Correct cul-de-sac right-of-way detail unless Planning Commission grants a waiver to Article 6-8 of the Land Subdivision Regulations.
10. Label "pedestrian" access easement from Lake Wales Drive.
11. Include a notation of a public passageway easement adjacent to the right-of-way, detailing the primacy of the LFUCG over utility easements in this area.
12. Addition of drainage easement per note number 14 on the approved development plan.
13. Denote access allowed for fill per note number 14 on the approved development plan.
14. Addition of Private Access Easement note per the Land Subdivision Regulations.
15. Provided the Planning Commission grants a waiver to Article 4-7(d)(1) of the Land Subdivision Regulations.

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16. Resolve note number 10.
17. Resolve timing of pavement removal adjacent to Beale Street and Richmond Road.
18. Resolve Richmond Road Landscaping Ordinance planting areas.
19. Addition of the following four notes to the plan.
  - a. Developer shall provide a drainage easement from the retaining wall to the 3270 and 3292 Richmond Road properties. Access to the wall shall also be provided to permit the placement of fill material on 3270 and 3292 Richmond Road, to the acceptance of the Division of Engineering.
  - b. Developer shall provide a vehicular and pedestrian easement, if necessary, for the property at 3292 Richmond Road to have access to the portion of Sand Lake Drive (aka Beale Street), which adjoins the eastern boundary of 3292 Richmond Road.
  - c. The properties located at 3292 and 3270 Richmond Road are hereby granted easements over the private access easement shown herein for vehicular and pedestrian access; and for access to utilities; sanitary sewer and storm sewers, which easements shall run with the land for the benefit of the properties located at 3292 and 3270 Richmond Road.
  - d. There shall be no Certificate of Occupancy for any lot on the plat until Sand Lake Drive is completed to Richmond Road, except for the final surface course, sidewalks, and miscellaneous punch list items which are bondable pursuant to Section 4-7 of the Subdivision Regulations.

The Planning Commission approved the requested waiver(s) to Article 4-7(d)(1) of the Land Subdivision Regulations, for the following reasons:

1. Granting the waiver would avoid a severe hardship, and proceeding with the development of Beale Street (aka Sand Lake Drive) cannot be completed as required until the utilities are relocated in that area. The pavement in place is strictly temporary for construction purposes. This approval is subject to compliance with the Richmond Road Traffic and Safety Ordinance.

Note: The applicant has requested reapproval of this plan.

The Subdivision Committee Recommended: Reapproval, subject to the previous requirements.

Staff Presentation – Mr. Martin directed the Commission's attention to a rendering of the amended final record plat for property located at 3200 & 3294 Richmond Road and 101 South Eagle Creek. He noted that this item was originally approved by the Planning Commission on September 11, 2008, subject to the conditions listed on the agenda. This approval also included the Commission granting a waiver to Article 4-7(d)(1) of the Land Subdivision Regulations, for the following reason:

1. Granting the waiver would avoid a severe hardship, and proceeding with the development of Beale Street (aka Sand Lake Drive) cannot be completed as required until the utilities are relocated in that area. The pavement in place is strictly temporary for construction purposes. This approval is subject to compliance with the Richmond Road Traffic and Safety Ordinance.

Mr. Martin said that the waiver referenced a portion of the service road that connects Richmond Road and Sand Lake Drive. He then said that the service road has been constructed and recorded, and currently there is a Zaxby's restaurant located on the corner lot.

In conclusion, Mr. Martin said that the applicant is requesting reapproval of this item, subject to the conditions listed on the agenda. He said that since the area affected by the waiver has been completed, the staff believes that action from the Planning Commission is not necessary (condition #15).

Commission Question – Mr. Penn clarified that it is not necessary for any action to take place on the waiver request and the Commission will only take action on the reapproval portion of this request. Mr. Martin replied that that is correct and that the waiver is moot at this time.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2008-118F.

Commission Comment – Mr. Penn asked if anyone on the Commission wished to discuss this request. There was no response.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Holmes, seconded by Mr. Cravens, and carried 10-0 (Brewer absent) to reapprove PLAN 2008-118F, for the reasons provided by the staff.

- e. PLAN 2005-166F: CLARK PROPERTY, UNIT 1-B (12/3/09)\* - located at 1551 Deer Haven Lane (a portion of).  
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on July 14, 2005, and reapproved it on September 11, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Addition of utility and street light easements by the utility companies and the Urban County Traffic Engineer.
5. Urban Forester's approval of tree preservation plan.
6. Approval of street names and addresses by e911 staff.
7. Addition of exaction information.

Note: The applicant now requests an extension of the approval granted this plan.

The Staff Recommended: Approval of a one-year extension, subject to the previous conditions.

Staff Presentation – Ms. Gallt said that this Final Record Plat was originally approved on July 14, 2005; and since that time, it has been reapproved several times over the years. She said that the applicant is now requesting a one-year extension of the plat.

Ms. Gallt directed the Commission's attention to a rendering of the Final Record Plat, and oriented them to the surrounding street system. She said that the subject property is located on Deer Haven Lane, southwest of Polo Club Boulevard. There are 23 lots already recorded at this time, and the applicant is requesting a one-year extension to record the remaining 8 lots in this subdivision.

In conclusion, Ms. Gallt said that the staff has reviewed the applicant's request, and found it appropriate to grant the requested one-year extension, subject to the conditions listed on the agenda.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of the one-year extension for PLAN 2005-166F.

Commission Comment – Mr. Penn asked if anyone on the Commission or in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Richardson, seconded by Mr. Owens, and carried 10-0 (Brewer absent) to approve the one-year extension for PLAN 2005-166F, for the reasons provided by the staff.

### 3. Development Plans

- a. DP 2009-34: BEAUMONT FARM, UNIT 1, SECTION 1 (A PORTION OF) (AMD) (9/10/09)\* - located at 3100 Beaumont Centre Circle. (Council District 10) **(EA Partners)**

Note: The Planning Commission postponed this plan at its June 11, 2009, July 9, 2009, and August 13, 2009, meetings. The purpose of this amendment is to add a turn lane and access off Beaumont Centre Circle, and add a generator yard next to the dumpster location.

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. Remove the entrance to Beaumont Centre Circle, as per the approved development plan.

Staff Presentation – Mr. Martin directed the Commission's attention to a rendering of the overall Beaumont area, and noted that the subject property is located within Beaumont Centre Circle, which is off Harrodsburg Road and is adjacent to New Circle Road. He then oriented the Commission to the surrounding street system, and noted that the subject property is directly across from Wall Street, and it abuts Monarch Street, Lakecrest Circle and Midnight Pass.

Mr. Martin then directed the Commission's attention to the amended final development plan, and noted that when this development plan was first submitted, the applicant had requested access off Beaumont Centre Circle; however, that request was denied by the Commission. He said that the purpose of this amendment is to add a turn lane and access off Beaumont Centre Circle, and add a generator yard next to the dumpster location. He noted that the staff is recommending

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approval of the applicant's request, subject to the conditions listed on the agenda. He noted that the staff is still recommending that the entrance off Beaumont Centre Circle be removed, which is noted through condition number 8.

Mr. Martin said that Beaumont Centre Circle is heavily traveled, and the staff feels that the introduction of a new access is not necessary and it will cause an overall safety conflict. He then said that staff believes this request to be an approvable plan; however, the staff stands behind their original recommendation of no access from Beaumont Centre Circle.

Commission Question – Mr. Owens asked if the Commission denied the access off Beaumont Centre Circle in the original development plan request. Mr. Martin replied affirmatively.

Representative – Todd Gute, Mayotte Architects, along with Rory Kahly, EA Partners, was present representing Auto-Owners Insurance. He said that he was present at the time this request was first introduced to the Commission; and at that meeting, there were promises made on the type of materials that would be used to construct the building. He noted that Auto-Owners Insurance is appreciative of Lexington, and they want to contribute to this area. He said that adherence to their promises is being shown thorough the construction of this building, as well as in the landscaping of the lot.

Mr. Gute said that they are requesting access off Beaumont Centre Circle, and they do not believe the access would create a safety hazard. He then said that the proposed access meets what is required to have a direct connection to a major intersection, such as Beaumont Centre Circle and Wall Street. They believe a second entrance would provide an adequate ingress and egress should something prevent access at the other entrance.

Mr. Gute stated that Auto-Owners Insurance will not sell insurance at this location, but rather only provide training classes to their sales people. He said that they believe they have contributed to the community, and requested that the Commission reconsider their decision regarding access off Beaumont Centre Circle. He commented that there is an unintentional consequence with not having this access, and that is the address of the property itself. He said that the staff has this item being listed as 3100 Beaumont Centre Circle; however, according to the Addressing Office, this location will be listed as 1124 Monarch Street. He said that the reason Monarch Street was selected by the Addressing Office is due to the entrance of the property on Monarch Street.

Mr. Gute stated that Auto-Owners Insurance believes in the Beaumont development, which is the reason they purchased the 4 lots. He said that when this request was originally submitted, the lot was associated with an address on Beaumont Centre Circle; therefore, they believed that this property would be assigned a Beaumont Centre Circle address, which would help identify their building.

Mr. Gute referenced Article 6-4(i) of the Land Subdivision Regulations, and said that according to this section of the regulations, street addressing shall be assigned by the Planning Commission. He then said that this has caused some confusion, considering that the site is listed on the agenda with a Beaumont Centre Circle address, but the Addressing Office has assigned this lot a Monarch Street address. At this time, he provided a photograph to the Commission, and noted that the subject property is adjacent to the intersection of Beaumont Centre Circle and Monarch Street. He said that they are proposing to construct a masonry street sign at the corner of the lot that will identify their name and address. He then provided a second picture, which is a closer view of the intersection of Beaumont Centre Circle and Wall Street. The picture is looking toward the front façade of the building. (A copy of these photographs is attached as an appendix to these minutes). Mr. Gute stated that they understand the Commission's decision regarding the entrance off Beaumont Centre Circle, and Auto-Owners Insurance is willing to try only one access; but they are requesting that this property be identified as being on Beaumont Centre Circle.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request. There was no response.

Commission Questions – Ms. Copeland asked how many times has this issue concerning the entrance had come before the Commission. Mr. Martin said that there have been several plans for this area; but as for this particular plan, it has not been discussed. Ms. Copeland said that the Commission is in agreement with the staff when it comes to the entrance, and asked if the Commission can influence the address for the property. Mr. Martin clarified that the title of this item refers to the entire area of the circle, and 3100 Beaumont Centre Circle is not the assigned address, but rather it is a reference point to help locate this property.

Ms. Copeland confirmed that the Commission cannot override the Addressing Office's decision. Mr. Martin said that the Planning Commission had delegated that decision to the Addressing Office, as part of the conditional approval. Furthermore, the Addressing Office is bound by City Ordinance, and there is an Addressing Committee that makes those decisions. Ms. Copeland asked if the Commission can influence the Addressing Committee decision. Ms. Boland stated that the Planning Commission has delegated that authority to the Addressing Office. If the Planning Commission chooses to, they can take back that authority at any time; however, the issue would be whether or not there would be ramifications with providing the E911 services. She recommended that a representative from the Addressing Office be present to discuss any concerns that would be present with regard to providing emergency

services. She said that legally the Planning Commission can exercise their authority over this issue. Ms. Copeland commented that this same problem had happened with a previous development plan request along Moore Drive.

Mr. Holmes said that the Planning Commission has delegated addressing responsibility to the Addressing Office, and he is uncomfortable with the Planning Commission assuming that responsibility when there is an issue with an address. He then said that he would prefer that the Addressing Office remain responsible for those decisions.

Mr. Martin noted that a representative from the Addressing Office is not present at the meeting, and said that their office has been working on an alternate method to allow the applicant to discuss the assignment of addresses. Mr. Penn asked if that would be at the applicant's discretion. Mr. Martin replied affirmatively.

Mr. Cravens clarified that the only way the Planning Commission could influence this decision would be to allow the entrance off Beaumont Centre Circle. Mr. Martin said that the E911 Committee would assign the address based on the property access. Mr. Cravens said that he is not opposed to the entrance being off Beaumont Centre Circle since it aligns with Wall Street; and since Beaumont Centre Circle is a Boulevard, it can provide enough room for vehicles to maneuver around each other.

Mr. Kahly noted that the final record plat for this property does show 5 addresses, and one of those address is listed as 3100 Beaumont Centre Circle. He said that he was informed that wherever the driveway is located, that will be how the address is assigned, which is why the Beaumont entrance is important to the client. He said that they are not violating any Ordinances or Regulations, they are providing enough room for emergency services vehicles, and they are trying to get the Beaumont address assigned to this lot for their client. In reviewing the previous development plan, 3100 Beaumont Centre Circle was taken off the plan, but it is still being used in the title block. He said that according to Article 6-4(i) of the Land Subdivision Regulations, the Planning Commission could grant this request.

Mr. Penn asked if the applicant is requesting that the Planning Commission grant the 3100 Beaumont Centre Circle address, regardless of the entrance being approved. Mr. Kahly replied affirmatively, adding that this address was listed on the plat, and the Commission has the ability to grant this request. He then said that according to E911, the address must coincide with an entrance; and since the front door faces Beaumont Centre Circle and the driveway faces Monarch Street, the address will be listed as Monarch Street. He said that regardless of how many accesses there are, the site is large enough to clearly show how to enter and exit the parking area.

Mr. Owens said that the Planning Commission has delegated the issue of addressing to the Addressing Office, and it would be inappropriate to take that responsibility from them. He then said that Beaumont Centre Circle was constructed to have limited access, and he believes having another entrance off Beaumont Centre Circle would present a problem.

Action - A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, to approve DP 2009-34, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. Remove the entrance to Beaumont Centre Circle, as per the approved development plan.

Discussion of Motion – Mr. Cravens asked if the Planning Commission could make a recommendation to support this property having 3100 Beaumont Centre Circle as its address. Ms. Boland replied that the Planning Commission could make a request to the Addressing Office to consider the possibility of assigning 3100 Beaumont Centre Circle to that lot.

Ms. Copeland asked if that should be a separate motion. Ms. Boland replied affirmatively. Mr. Owens confirmed that there should be a separate motion to consider the address. Ms. Boland replied affirmatively.

The motion carried 10-0 (Brewer absent).

Action - A motion was made by Mr. Cravens, seconded by Mr. Owens, and carried 10-0 (Brewer absent) to make a recommendation to the Addressing Board that this plat be addressed as 3100 Beaumont Centre Circle.

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 10-0 (Brewer absent) to approve the release and call of bonds as detailed in the memorandum dated September 10, 2009, from Ron St. Clair, Division of Engineering.

- V. **COMMISSION ITEMS** - The Chairman will announce that any item a Commission member would like to present will be heard at this time.
- A. **UPCOMING WORK SESSION** – Mr. King reminded the Commission members of the upcoming work session on September 17, 2009.
- B. **COMMISSIONER'S WELCOME BACK MR. PENN** - Mr. Owens noted that Mr. Penn had been out of the country for the last month, and welcomed him back from his recent vacation. He suspected that Mr. Penn had an enjoyable time. Mr. Penn thanked the Planning Commission, and said that this was “the trip of a lifetime” and wonderful experience.
- VI. **STAFF ITEMS** – None was considered at this time.
- VII. **AUDIENCE ITEMS** – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission’s formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.
- VIII. **NEXT MEETING DATES** -
- |                                                                                                           |                           |
|-----------------------------------------------------------------------------------------------------------|---------------------------|
| Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....                           | September 17, 2009        |
| Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) .....              | September 23, 2009        |
| <b>Zoning Items Public Hearing, 2<sup>nd</sup> Floor Council Chambers.....</b>                            | <b>September 24, 2009</b> |
| Planning Committee/Planning Commission Joint meeting, Tuesday, 9:00 a.m., Lexington Public Library.....   | September 29, 2009        |
| Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) .....             | October 1, 2009           |
| Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building) .....                  | October 1, 2009           |
| <b>Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2<sup>nd</sup> Floor Council Chambers .....</b> | <b>October 8, 2009</b>    |
- X. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 5:00 p.m.

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Frank Penn, Chair

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Mike Owens, Secretary

CT/CG/TM/JE/BR/BS/DB