

Planning and Public Works Committee

Bill Farmer – 5th District - Chair
Jennifer Mossotti – 9th District –Vice Chair
Linda Gorton – Vice Mayor
Charles Ellinger – At-Large
Steve Kay - At-large
Chris Ford – 1st District
Diane Lawless – 3rd District
Julian Beard – 4th District
Harry Clarke – 10th District
Peggy Henson – 11th District

Staff:
Jenifer Benningfield

**AGENDA
PLANNING AND PUBLIC WORKS
COMMITTEE
March 12th, 2013
1:00pm**

- | | | | |
|----|--------------------------------------|------------------------|----------------|
| 1. | Approval of Summary | Bill Farmer | (1-4) |
| 2. | Right of Entry | Chris King | (5-20) |
| 3. | Newtown Pike Extension Update | Andrew Grunwald | (21-22) |
| 4. | Todds Road Update | Robert Bayert | (23-25) |
| 5. | Paving Update | Kevin Wente | |
| 6. | Items in Committee | Bill Farmer | (26) |

Future Committee Meetings

April 16th, 2013
May 14th, 2013
June 11th, 2013
August 20th, 2013
September 17th, 2013
October 8th, 2013
November 12th, 2013
December 3rd, 2013

“Planning and Public Works Committee, to which should be referred matters relating to the Division of Planning and including, but not limited to, matters related to housing, infill and redevelopment, purchase of development rights and historic preservation, and any related partner agencies and the Department of Public Works and its related divisions, including capital improvement projects and any related partner agencies.”



Planning and Public Works Committee
February 12th, 2013
Summary and Motions

Chair Bill Farmer Jr. called the meeting to order 1:03pm. Council Members Jennifer Mossotti, Linda Gorton, Charles Ellinger, Steve Kay, Chris Ford, Diane Lawless, Julian Beard, Harry Clarke, and Peggy Henson were present.

1. Approval of January 15th, 2013 Summary

Motion by Ellinger to approve the summary. Seconded by Clarke. Motion passed without dissent.

2. Working with FCPS to Sustain Salt Services

Kevin Wenthe said that he met with Vice Mayor Gorton and Commissioner Richard Moloney to discuss the issue. Wenthe had also met with Mary Wright from the FCPS. Wenthe said that it is written in the Kentucky State Constitution (Section 186) that all funds accruing to the school fund shall be used for maintenance of public schools and no other purpose. Wenthe also has a list of people who can request additional services from the LFUCG. FCPS would like to partner with the LFUCG so that if additional salt is needed, the LFUCG could get a lower price per ton on their contract.

Gorton said that she was concerned about the money for additional salt and also about who could request the additional salt.

Wenthe said another aspect of the conversation is staging. Wenthe suggested that they have a staging area for their campuses.

Gorton said that she wants to use the tax payer dollars in the appropriate way.

Stinnett asked Wenthe if he has looked at other ways to fund the additional salt. Stinnett's suggestion was revising the Facilities Usage Policy. Stinnett said that since the LFUCG is spending money to help them, maybe the fees could be altered for using their facilities.

Farmer said that he wants to keep the item in committee. Wenthe told Committee members that he stays in constant contact with Ms. Wright.

3. Tree Board Street Tree Presentation

Karen Angelucci from the Tree Board came to the podium to present. Angelucci said that she would like to have a Council Member serve on the Tree Board. Farmer said that he spoke to Vice Mayor Gorton and she is going to seek out a volunteer to serve.

Angelucci said that there was a position that was eliminated a few years ago. The position involves talking to all business owners about how much landscaping they need and also how to keep it alive. The trees are starting to look really bad in many places.

Gorton asked how a new business owner knows they have any responsibilities for the trees. Tim Queary said that the Landscape Subdivision Regulations detail the plans that need to be followed. Now building inspectors do the educating. There is not a dedicated person who deals solely with trees. This is a check off for a certificate of occupancy.

Bob Carpenter said that even when the position was filled, their duties have shifted. The building inspectors were doing the inspection. After it is approved, the only time a representative from the LFUCG goes back to inspect the property is when there is a complaint.

Carpenter said that the development plan does not illustrate the landscaping layout. When they apply for a building permit that is when they approve the landscape plan. The building inspectors do not have landscaping backgrounds.

Susan Bush, the Director of Environmental Quality said that there is a slow degradation of trees around the community is what she receives the most complaints about. Since the process is complaint driven, they are not proactive. She suggested an inspection process.

Kay mentioned the trees that the LFUCG plants and is responsible for. He said that he would like the LFUCG to do better in the designing process for right of way trees. Kay said that the maintenance of trees on private property need better enforcement. Kay said that there are two issues; one is the maintenance of the LFUCG trees and the second is about enforcement generally. He said that we do not do a good job of making sure they do what they committed to do and we don't follow up and enforce.

Farmer suggested that the replacement of the position in the Division of Building Inspection should become part of links consideration during the upcoming budget process.

Angelucci said that developers currently have two options. They can plant the trees in the easement or they can plant from the sidewalk out approximately five feet.

Angelucci said that during new construction, the land is taken away. They only put back two inches of top soil. Trees cannot live in those conditions. Angelucci suggested that they are only given one option. She said that if the trees are planted closer to homes, the homeowners may take better care of the tree, but they could also want to cut it down.

Stinnett said that everyone is dealing with trees that are in the easements. He mentioned that homeowners cut tree roots to fix sidewalks. The mail carriers are complaining that the branches are hitting their trucks. Stinnett said that since we make the homeowners replant the trees, we need to have a discussion going forward. He also mentioned the leaves clogging up the storm sewers. Angelucci said that there has to be enough room in the easement to even plant a tree.

Angelucci said that they could have the homeowner opt out and then donate the tree to a public park.

Stinnett suggested keeping the item in Committee to work on improving the language in the Code of Ordinances.

Mossotti said that on the Clays Mill Road project, many homeowners opted out and those trees were donated to parks. Angelucci said that many of the trees that were planted were planted too deeply.

Commissioner Derek Paulsen said that street trees are currently part of the new development ordinance. Paulsen said that street trees were banned from the 1950's to the 1980's. Farmer asked Paulsen if he could work with the Tree Board on this. Paulsen committed to working with them.

4. Right of Entry

David Barberie from the Division of Law came to the podium to present. Barberie gave a brief history of the item. He said that the Building Inspection Task Force made proposals; the right of entry was one of them. Barberie said that the issue was eliminated due to concerns expressed by Planning Commission members. They voted to take it out. Dick Murphy spoke against it on behalf of the Landlord Tenant Association.

Gorton said that all of the other Building Inspection Task Force recommendations went forward and passed. Barberie asked the Committee members if they want to pursue this again and if so, he would like direction on the language.

Chris King said that the Planning Commission did not take it out. They cannot do that. The Council initiated the text amendment. The Division of Planning did not agree with the Planning Commission. The Commission heard it on the last possible day so they couldn't delay it. They wanted more information on what other communities do. King said that there were concerns from Planning Commission members that the language read that they could enter private properties without appropriate restraint. King said that those concerns were unfounded. This particular item was referred back to Committee and there are no time constraints for them to act on it.

Gorton asked for research to see if other communities do this.

Kay said that he has an interest in continuing this conversation. He asked for guidance from the Planning staff. He wants clarification on the concerns.

King said that currently, there is no law on the books where it says that the Divisions of Planning or Building Inspection can be charged with the review of property for enforcement purposes. If they go to a court to get a search warrant, the court asks if the government agency wants this division to have those powers. This text amendment would help them inspect the properties to better enforce the LFUCG ordinances.

Henson had questions about businesses operating illegally out of homes in residential areas. Henson said that we cannot impede on the rights of citizens but we should be able to reasonably enforce our laws.

Beard asked about inspections for illegal sanitary sewer hook ups. Barberie said that inspectors can walk around properties to get information and do not have to enter the structure. He said that there is language to assist them with the inspections when they need to enter onto private property.

Stinnett asked Barberie what needs to change in the current language. Barberie said that there were concerns that the Division of Planning could create a program laying out how it would work. The Director could create a rogue program and the Council might not know what the Director is doing. They wanted the Council to have a say in any program they could implement. Barberie said that language they added at the end of the text amendment should have alleviated those concerns.

Stinnett said that he believes the language gives the Council power to approve any program that the Division of Planning may want to implement. Stinnett believes they are good to go with the language.

5. Items in Committee

Gorton suggested that the items referred by Doug Martin should be taken over by a new Council Member. Kay said that the Adult Day Care Centers should be listed under Chris Ford.

Clarke agreed to take the Re-Paving Program, Street Trees and Utility Poles in the Right of Way, all originally referred by Martin.

Motion to adjourn by Henson. Seconded by Beard. Motion passed without dissent.

Submitted by Jenifer Benningfield, Council Administrative Specialist

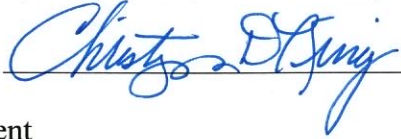


LEXINGTON - FAYETTE URBAN COUNTY GOVERNMENT
Department of Planning, Preservation & Development
Division of Planning

Jim Gray
Mayor

Derek J. Paulsen, Ph.D.
Commissioner

MEMORANDUM

TO: Councilmember Bill Farmer, Jr., Chair; & Members, Urban County Planning and Public Works Committee
 FROM: Chris King, Director 
 DATE: March 5, 2013
 RE: Right-of-Entry for Zoning Enforcement

As requested, this memorandum is to summarize statements made at the February Planning and Public Works Committee regarding the need to clearly establish right-of-entry authority for investigation of alleged zoning violations.

- Although Article 5 of the Zoning Ordinance assigns investigation and enforcement responsibilities to Planning (and other LFUCG agencies as appropriate), it does not clearly articulate its intent for such investigations.
- This deficiency was noted and recommended for correction by the Council's Building Inspection Task Force.
- Approval of the ordinance language proposed does not grant unlimited right-of-entry to inspectors – it clearly articulates the authority and responsibility, and charges the Director to create written guidelines for such investigations.

Subsequent research by Council staff indicates that ordinance provisions of this nature are common, and viewed in at least one scholarly publication as a recommended practice “consistent with constitutional safeguards and any requisite warrant.” The intent of the proposed ordinance is to achieve that aim through a combination of ordinance language and the Director's written guidelines.

If Council wishes to more directly articulate the extent of the entry, there are many alternative approaches that can be employed. For example, Council could review and adopt the Director's procedural guidelines, or, require their approval by a Department Commissioner and/or CAO.

I am attaching three ordinance excerpts to illustrate how other communities have legislated right-of-entry. Each shows a different approach and any of these approaches could be taken as an alternative to the current language pending before Council.

- Portland, Oregon: This example gives fairly broad authority to the Zoning Administrator to enter premises upon presentation of documentation as to the suspected

H O R S E C A P I T A L O F T H E W O R L D

violation to the property owner; and provides for a court ordered entry process when denied.

- Kenosha, Wisconsin: This example gives expressed access rights, and defers to Wisconsin state law for cases when the Zoning Administrator is refused access.
- Indianapolis, Indiana: This example establishes right-of-entry, and articulates in some detail the procedures to be followed for gaining an administrative search warrant.

I hope these examples provide Council clarification of the need for the proposed ordinance language and different approaches available to properly implement basic right-of-entry procedures. The fact that the current Zoning Ordinance only implies rather than directly authorizes such investigation procedures only provides for potential confusion on the part of government officials, property owners, and the judicial system.

I look forward to discussing this matter with the Council Planning and Public Works Committee at its March 11 meeting.

C; David Barberie, Law Department
 Tracy Jones, Law Department
 Derek J. Paulsen, Commissioner, Department of Planning, Preservation, and Development
 Jim Marx, Division of Planning

Attachments

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I hope these examples provide Council clarification of the need for the proposed ordinance language and different approaches available to properly implement basic right-of-entry procedures. The fact that the current Zoning Ordinance only implies rather than directly authorizes such investigation procedures only provides for potential confusion on the part of government officials, property owners, and the judicial system.

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C; David Barberie, Law Department
 Tracy Jones, Law Department
 Derek J. Paulsen, Commissioner, Department of Planning, Preservation, and Development
 Jim Marx, Division of Planning

Attachments

ENFORCEMENT & PENALTIES

Section 12

12.1 General Provisions

- A. **Authority:** The Plan Commission Board of Zoning Appeals, Building Commissioner, Mayor, Common Council, Board of Public Works and Safety, and/or Plan Commission Director (including their staff and/or designees) are designated to enforce the provisions, regulations, and intent of this Ordinance. All remedies and enforcement shall comply with the powers set forth in IC 36-7-4-1000 et al. and all other applicable state laws.
- B. **Violations:** Complaints made pertaining to compliance with provisions of this Ordinance shall be investigated by the Plan Commission Director. The Plan Commission Director may include other officials, such as the, Building Official, Police Chief, or any of their designees in the investigation. Action may or may not be taken depending on the findings of the investigation. The degree of action will be to the discretion of the Plan Commission Director, and should reflect both what is warranted by the violation as well as a consistent approach to the enforcement of this Ordinance.
-  C. **Inspections:** Investigations of property may be done by the Plan Commission Director from a right-of-way, from adjacent property (with permission of that property owner), or from the property suspected of a violation once he/she has presented sufficient evidence of authorization and described the purpose of the inspection to the owner, tenant, or occupant at the time of the inspection.
-  D. **Court Ordered Entry:** In the event that the Plan Commission Director is denied entry to the subject property, he/she may apply to a court of jurisdiction to invoke legal, applicable, or special remedy for the enforcement of this Ordinance or any other applicable ordinances adopted under Indiana Code.
 1. **Information Required:** The applicant shall include the purpose, violation(s) suspected, property address, owner's name if available, and all relevant facts. Additional information may be necessary as requested by the court.
 2. **Entry Permitted:** Pursuant to applicable regulations and the orders of the court of jurisdiction the owner, tenant, or occupant shall permit entry by the Plan Commission Director.
- E. **Responsibility:** The property owner shall be held responsible for all violations on his/her or their property.
- F. **Types of Violations:** The following items shall be deemed zoning violations, enforceable by the Plan Commission Director (penalties may be imposed based on the provisions set forth in this Article):
 1. **Illegal Structures:** The placement, erection, and/or maintenance of a primary structure, sign, accessory structure(s) or any other element determined by the Plan Commission Director to not conform to the provisions or explicit intent of this Ordinance.
 2. **Illegal Use:** Conducting a use or uses that do not comply with the provisions or explicit intent of this Ordinance.
 3. **Failure to Obtain a Permit:** Failure to obtain an Improvement Location Permit or other permits and approvals required by this Ordinance.
 4. **Violation of Stop-Work-Order:** Proceeding with work under a Stop-Work-Order or in violation of a Memorandum of Agreement (as described in Section 12.2(B)).
 5. **Failure to Comply with Development Standards:** Any failure to comply with the development standards and/or any regulations of this Ordinance.
 6. **Failure to Comply with Commitments:** Any failure to comply with commitments or conditions made in connection with a rezoning, special exception, or variance; or other similar and documented commitment.

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

SECTION 8.0 ADMINISTRATION

8.01 PLAN COMMISSION

The City Plan Commission shall have the duties of making reports and recommendations relating to the plan and development of the City to public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens. The Commission, its members and City of Kenosha support staff, in the performance of its functions, may enter upon any land and make examinations and surveys. In general, the Plan Commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning.

8.02 ZONING ADMINISTRATOR DESIGNATED

The Director of the Department of Neighborhood Services and Inspections is hereby designated as the administrative and enforcement officer for the provisions of this Ordinance and hereafter shall be referred to as the Zoning Administrator or Administrator. The duty of the Zoning Administrator shall be to interpret and administer this Ordinance and to issue, following on-site inspection, all permits required by this Ordinance. The Zoning Administrator shall, to the best of his/her ability:

A. Establish that all necessary permits that are required for floodland uses by State and Federal Law have been secured.

B. Inspect all structures, lands, and waters as often as necessary to assure compliance with this Ordinance.

C. Investigate all complaints made relating to the location of structures and the use of structures, lands and waters, give notice of all violations of this Ordinance to the owner, resident, agent or occupant of the premises and report uncorrected violations to the City Attorney in a manner specified by him.

D. Assist the City Attorney in the prosecution of Ordinance violations.

E. Seek access to premises and structures during reasonable hours to make those inspections as deemed necessary by him or her to ensure compliance with this Ordinance. If, however, the Administrator is refused entry after presentation of his/her identification, the Administrator may procure a Special Inspection Warrant in accordance with §66.0119 of the Wisconsin Statutes.

F. Prohibit the use or erection of any structure, land or water until he/she has inspected and approved such use or erection.

G. Request assistance and cooperation from any governmental office or agency as deemed necessary.

H. Advise applicants of the Ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.

I. Inspect all damaged floodplain structures and perform a substantial damage assessment to determine if substantial damage to the structures has occurred.

J. Keep records of all official actions, such as:

1. All permits issued, inspections made, and work approved;

2. Documentation of certified lowest floor and regional flood elevations for floodplain development;

3. Records of water surface profiles, floodplain zoning maps and Ordinances, nonconforming uses and structures, including changes, appeals, variances and amendments.

4. All substantial damage assessment reports for floodplain structures.

K. Submit copies of the following items to the Regional Office of the Wisconsin Department of Natural Resources:

1. Within ten (10) days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;

2. Copies of any case-by-case analyses, and any other information required by the Department of Natural Resources, including an annual summary of the number and types of floodplain zoning actions taken.

3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.

4. Copies or reports of violations of this Ordinance involving floodlands.

L. Submit copies of text and map amendments and biennial reports to the FEMA Regional Office.

8.03 BUILDING PERMIT APPLICATIONS

A. Surveys.

1. All applications submitted for a Building

Sec. 730-502. Jurisdiction.

- (a) The Metropolitan Development Commission of Marion County may institute a suit for injunctive and monetary relief in the municipal, circuit, or superior courts of Marion County, Indiana; such suit is to brought in the name of and captioned as "The Metropolitan Development Commission of Marion County, Indiana," versus the person, persons or entity charged with violating the provisions of any zoning ordinance or land use regulations of Marion County, Indiana.
- (b) The Metropolitan Development Commission may also institute a suit for mandatory injunction directing a person, persons or entity to remove a structure erected in violation of any zoning ordinances or land use regulations of Marion County, Indiana.
- (c) A structure erected, raised, or converted, or land or premises used in violation of any zoning and land use ordinance of Marion County, Indiana, shall and hereby is declared to be a common nuisance and the owner or possessor of the structure, land, or premises shall be liable for maintaining a common nuisance pursuant to IC 36-7-4-1012.

**Sec. 730-503. Inspection of property; right of entry.**

- (a) The *Administrator, Inspectors and Law enforcement officers* are authorized to make inspections of all lands located within Marion County in order to enforce all zoning ordinances and land use regulations of Marion County, Indiana.
- (b) In order to execute inspections, the *Administrator, Inspectors and Law enforcement officers* shall have the right to enter upon any premises at any reasonable time for the purpose of carrying out his/their duties in the enforcement of zoning ordinances and land use regulations of Marion County, Indiana, unless the owner or occupant of the premises refuses to permit entry to the *Administrator, Inspectors or Law enforcement officers* when such entry is sought pursuant to this section. In the event of such refusal, the *Administrator* may make application to any judge of the municipal, circuit or superior courts of Marion County, Indiana, for the issuance of an administrative search warrant. Such application shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is a violation of a zoning ordinance or land use regulation of Marion County, Indiana, exists on such premises, or that a violation in fact exists and must be abated, and that the condition or violation is not a lawful nonconforming use to the best of the affiant's belief. Any warrant issued pursuant to such application shall order such owner or occupant to permit entry to the *Administrator, Inspectors or Law enforcement officers* for the purposes stated therein. In no event shall the *Administrator, Inspectors or Law enforcement officers* have the right to enter a residential structure or other structures not open to the public without the permission of the owner or occupant and/or an administrative search warrant first obtained. Prior to entering such residential structure or other structure not open to the public, the *Administrator, Inspectors or Law enforcement officers* shall advise the owner or occupant that such owner or occupant is not required to grant entry without the presentation of an administrative search warrant.

(G.O. 63, 2005)

Sec. 730-504. Stop-work order.

- (a) The *Administrator* or his duly authorized designee is empowered to issue an order requiring the suspension of land improvement of any kind when any of the following circumstances exist:
 - (1) *Site improvement* is occurring without an Improvement Location Permit or any other permit required by a zoning ordinance having first been obtained;

ORDINANCE NO. 98 -2011

AN ORDINANCE AMENDING ARTICLES 5-9, 17-14, 23C-13 AND 26-12 OF THE ZONING ORDINANCE TO PROVIDE FOR CIVIL CITATIONS AND CIVIL PENALTIES RELATED TO ZONING ENFORCEMENT.

WHEREAS, the Lexington-Fayette Urban County Council has initiated these proposed text amendments; and

WHEREAS, the Lexington-Fayette County Planning Commission has considered these proposed text amendments; and

WHEREAS, the Planning Commission did hold a public hearing on these proposed amendments on June 23, 2011; and

WHEREAS, the Planning Commission did recommend APPROVAL of some of these proposed amendments by a vote of 7-0; and

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

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

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

Section 1 --That Article 5-9 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

CIVIL CITATIONS AND CIVIL PENALTIES – To the extent allowable by law, any violations of this Zoning Ordinance may be enforced through the issuance of a civil citation pursuant to KRS 65.8801, et seq., as an additional or supplemental means of obtaining compliance. All citations issued pursuant to this Zoning Ordinance shall be issued by the citation officers cited in Section 14-10 of the Code of Ordinances and referred to the Infrastructure Hearing Board with the citations and the civil process to conform to Sections 16-76 through 16-83 of the Code of Ordinances.

Section 2 – That Article 17-14 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

PENALTIES FOR VIOLATION – Violation of the provisions of these sign regulations shall constitute a misdemeanor, or in the alternative may be punishable by the issuance of a civil citation, which shall be subject to the fines and penalties as set forth in Article 5 for violation of this Zoning Ordinance.

Section 3 – That Article 23C-13 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government is hereby amended to read as follows:

PENALTY AND ENFORCEMENT – Any violations of this Article shall be subject to the penalties provided in Article 5 of the Zoning Ordinance. In addition to those remedies, the Lexington-Fayette Urban County Government retains the right to enforce the provisions of this Article by filing an enforcement action in civil court. Knowingly furnishing false information to the Lexington-Fayette Urban County Government on any matter relating to the administration of this Article shall constitute a violation thereof.

Section 4 – That Article 26-12 of the Zoning Ordinance of the Lexington-Fayette

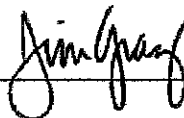
Urban County Government is hereby amended to read as follows:

PENALTIES – Penalties are set forth under Article 5-8, Penalties for Violations, of the Zoning Ordinance, and Article 5-9, Civil Citations and Civil Penalties. Each act or each healthy tree removed or damaged, except as described in the approved TPP, shall constitute a separate violation.

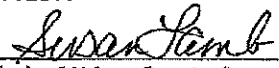
Section 5 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: August 25, 2011

MAYOR



ATTEST:


Clerk of Urban County Council

PUBLISHED: September 1, 2011-1t

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Read by KC
Date: 8/3/11

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

IN RE: ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS, AND CIVIL PENALTIES - text amendments to Articles 5, 17, 23, & 26 to provide for right-of-entry, administrative warrants, and civil penalties related to zoning enforcement.

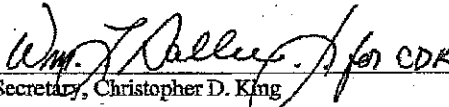
Having considered the above matter on June 23, 2011, at a Public Hearing and having voted 7-0 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend APPROVAL of the proposed amendments to Articles 5-9, 17-14, 23C-13, and 26-12, for the following reason:

1. Enforcement of and compliance with the Zoning Ordinance has been hampered in the past by the fact that penalties for violations result in a criminal citation, and criminal court proceedings. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Amending the Zoning Ordinance to allow for the use of a civil citation process will be more effective and expedient than the existing criminal process, and should result in greater compliance with the Zoning Ordinance for the local government.

The Urban County Planning Commission does also hereby recommend DISAPPROVAL of the proposed amendment to Article 5-1(a), for the following reason:

1. The Planning Commission has concerns about right-of-entry into private dwellings.

ATTEST: This 3rd day of August, 2011.


Secretary, Christopher D. King

CAROLYN RICHARDSON
CHAIR

At the Public Hearing before the Urban County Planning Commission, this text amendment was presented by **Traci Wade**, Senior Planner.

FINAL REPORT

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OBJECTORS

- Richard Murphy
- S. Charles Hite

OBJECTIONS

- Concerned about right-of-entry and constitutional issues.

VOTES WERE AS FOLLOWS:

AYES: (7) Beatty, Blanton, Copeland, Cravens, Owens, Paulsen, Richardson, Roche-Phillips, Wilson

NAYS: (0)

ABSENT: (4) Brewer, Copeland, Holmes, Paulsen

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for Approval of portions of ZOTA 2011-3, and disapproval of a portion of ZOTA 2011-3, carried.

Enclosures: Copy of Council Resolution initiating this request
Staff Report
Applicable excerpts of minutes of above public hearing

tw/wls/src

Urban County Planning Commission
200 East Main Street, Lexington, KY

Planning Services Section
Zoning Text Amendments

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS,
AND CIVIL PENALTIES**

INITIATED BY: Urban County Council

PROPOSED TEXT: (See attached document)

STAFF REVIEW:

The Urban County Council has initiated a text amendment to Articles 5, 17, 23C, and 26 of the Zoning Ordinance to broaden the means of enforcement for the Division of Building Inspection, namely to allow right-of-entry for the purpose of inspecting, ascertaining and causing to be corrected any violation of the Zoning Ordinance; to allow for an administrative search warrant to be issued by the district court (if entry is denied); and to clarify that civil citations and penalties are allowed in all cases of a violation of the Ordinance.

This text amendment has been recommended by the Building Inspection Task Force, an ad-hoc Committee of the Council. The Task Force was established in October 2009 to complete a comprehensive review of the functions of the Division of Building Inspection, in part to address student housing issues at the time. The Task Force addressed six primary issues, including safety issues and civil administrative enforcement of the Zoning Ordinance. These two issues were discussed by the Task Force multiple times and resulted in the Department of Law drafting the proposed Zoning Ordinance modifications.

The Task Force reported to the Urban County Council's Planning and Zoning Committee in March 2011, and both the safety issue and civil administrative enforcement of the Zoning Ordinance were referred to the full Urban County Council for further consideration. The Council agreed to initiate this text amendment proposal in April, triggering review and a public hearing by the Planning Commission.

The Planning Commission must review the proposed changes to the Zoning Ordinance and make a recommendation to the Urban County Council within 60 days of receiving the proposal, which in this case is by mid-July.

Article 5 of the Zoning Ordinance governs administration, enforcement and violations of the Ordinance. It establishes the Division of Building Inspection as the government's authorized enforcement agent of the Zoning Ordinance, outlines the type of permits required, and specifies how violations of the Ordinance are to be handled. The proposed changes would involve establishing *Article 5-1 Right-of-Entry* to expressly allow for the Division of Building Inspection to enter upon property, land, structures or buildings for the purpose of enforcing the Ordinance. Currently, the Division of Code Enforcement and the Fire Marshall have such authority to address life safety issues inside a structure, but the Division of Building Inspection does not. Additionally, if access is denied by the owner or occupant, the division may seek an administrative search warrant from the Fayette District Court. This section has one qualifying clause, which states that "this authority shall apply to the interior of occupied, private dwellings only when the inspecting agent has reason to believe that a zoning violation exists in the dwelling." This qualifying language is intended to protect residences from unreasonable inspections and is in accord with the 4th Amendment of the Bill of Rights, which guards against unreasonable search and seizure.

-2-

The remainder of the proposed changes to Articles 5-9, 17-14, 23C-13 and 26-12 all pertain to allowing for civil penalties for violations of the Zoning Ordinance as an alternative remedy to the issuance of a criminal citation and fine. Currently, when a zoning violation occurs, the Division of Building Inspection issues a notice of violation (NOV) to the responsible party identifying the violation and requiring that it be corrected within a specified time. In some cases the violation can be remedied with a change of use, and in other instances a variance or conditional use permit from the Board of Adjustment is the most appropriate solution. There are many violations that cannot be remedied in an immediate fashion, and the Zoning Ordinance (and KRS) read so that for each day a zoning violation continues, a fine can be assessed. If the owner or occupant does not attempt to timely address the violation or continues to refuse to adhere to the Zoning Ordinance after the NOV is issued, the case can be pursued in Fayette District Court as a criminal matter. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Also, a criminal court proceeding can be extremely time consuming and relatively expensive for the local government to pursue, and commonly, the court system does not necessarily prioritize these matters due to its existing case load of other criminal cases, which can be viewed as more serious in nature.

The proposed text amendment would specifically provide that both criminal and civil penalties are available in order to enforce any violation of the Zoning Ordinance. The civil citation process is already set forth as part of Article 5-9, because it was referenced in and utilized to enforce the Erosion Control Ordinance (formerly Article 20 of the Zoning Ordinance). No other provision of the Zoning Ordinance explicitly allows for enforcement through the civil process. The language of Article 5-9 states that "where violations of this Zoning Ordinance provide for the issuance of a civil citation" they can be used by the enforcement agency. Since Article 20 was recently removed from the Ordinance, and is now wholly part of the Code of Ordinances, there are currently no sections of the Zoning Ordinance that allow provide for enforcement through the issuance of a civil citation. With the proposed changes to Article 5-9 and the other references to violations in the Sign Regulations (Article 17-14), Expansion Area Development Exactions (Article 23C-13), and Tree Protection Standards (Article 26-12), there will be an alternative civil process available for enforcement which is expected to be more effective and expedient than the existing criminal process, and which should result in greater compliance with the Zoning Ordinance. In cases where a civil citation is issued and appealed, the Infrastructure Hearing Board will review the case.

The Staff Recommends: Approval for the following reasons:

1. Enforcement of and compliance with the Zoning Ordinance has been hampered in the past by the fact that penalties for violations result in a criminal citation, and criminal court proceedings. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Amending the Zoning Ordinance to allow for the use of a civil citation process will be more effective and expedient than the existing criminal process, and should result in greater compliance with the Zoning Ordinance for the local government.
2. The proposed amendment to Article 5-1 will allow for the Division of Building Inspection, the authorized enforcement agency, to have "right-of-entry" to any land, property, structures or buildings in order to inspect, ascertain or cause to be corrected any violation of the Zoning Ordinance. The new language will allow the Division of Building Inspection to have access similar to that afforded the Division of Code Enforcement and the Fire Marshall in order to address enforcement issues. Additionally, an administrative search warrant from the Fayette District Court will be permitted to further facilitate enforcement of the Zoning Ordinance.

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Minutes
Page 23**C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS**

1. **ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS, AND CIVIL PENALTIES (7/12/11)*** -- text amendments to Articles 5, 17, 23, & 26 to provide for right-of-entry, administrative warrants, and civil penalties related to zoning enforcement.

REQUESTED BY: Urban County Council

PROPOSED TEXT: (Note: Text underlined indicates an addition; text dashed-through indicates a deletion to the current Zoning Ordinance.)

ARTICLE 5: ADMINISTRATION, ENFORCEMENT AND VIOLATIONS*Proposed Changes to Provide for Administrative Search Warrants and Civil Fines*

5-1(a) RIGHT OF ENTRY - The Director or his authorized agent is authorized to enter upon property, land, structures or buildings, at reasonable times for the purpose of inspecting, ascertaining and causing to be corrected any violation of this Zoning Ordinance, and is hereby empowered to prescribe, adopt, promulgate, and enforce reasonable rules, regulations, and/or guidelines pertaining to administrative inspections of properties for zoning violations which are not otherwise inconsistent with the Zoning Ordinance. Whenever the Director or his authorized agent is denied entrance to any property, land, structure or building he may apply to the district court for a warrant allowing entrance and inspection. This authority shall apply to the interior of occupied, private dwellings only when the inspecting agent has reason to believe that a zoning violation exists in the dwelling.

5-9 CIVIL CITATIONS AND CIVIL PENALTIES - To the extent allowable by law, any violation of this Zoning Ordinance may be enforced through the issuance of a civil citation pursuant to KRS 65.8801, et seq., as an additional or supplemental means of obtaining compliance. [Where violations of this Zoning Ordinance provide for the issuance of a civil citation, such civil citation shall be construed to provide an additional or supplemental means of obtaining compliance with the Zoning Ordinance.] All citations issued pursuant to this Zoning Ordinance shall be issued by the citation officers cited in Section 14-10 of the Code of Ordinances and referred to the Infrastructure Hearing Board with the citations and the civil process to conform to Sections 16-76 through 16-83 of the Code of Ordinances.

ARTICLE 17: SIGN REGULATIONS*Proposed Changes to Provide for Civil Citations*

17-14 PENALTIES FOR VIOLATION - Violation of the provisions of these sign regulations shall constitute a misdemeanor, or in the alternative may be punishable by the issuance of a civil citation, which shall be subject to the fines and penalties as set forth in Article 5 for violation of this Zoning Ordinance.

ARTICLE 23C: EXPANSION AREAS DEVELOPMENT EXACTIONS*Proposed Changes to Provide for Civil Fines*

23C-13 PENALTY AND ENFORCEMENT - Any violation of this Article shall be subject to the penalties provided in Article 5 of the Zoning Ordinance. In addition to those [criminal] remedies, the Lexington-Fayette Urban County Government retains the right to enforce the provisions of this Article by filing an enforcement action in civil court. Knowingly furnishing false information to the Lexington-Fayette Urban County Government on any matter relating to the administration of this Article shall constitute a violation thereof.

ARTICLE 26: TREE PROTECTION STANDARDS*Proposed Changes to Provide for Civil Fines*

26-12 PENALTIES - Penalties are set forth under Article 5-8, Penalties for Violations, of the Zoning Ordinance, and Article 5-9, Civil Citations and Civil Penalties. Each act or each healthy tree removed or damaged, except as described in the approved TPP, shall constitute a separate violation.

The Zoning Committee Recommended Referral of the proposed changes to Article 5-1(a) to the full Commission due to concerns about the extent of the proposed regulation; and Approval of the remainder of the proposed text, for the applicable reasons provided by staff.

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

June 23, 2011

Staff Recommended: Approval, for the following reasons:

1. Enforcement of and compliance with the Zoning Ordinance has been hampered in the past by the fact that penalties for violations result in a criminal citation, and criminal court proceedings. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Amending the Zoning Ordinance to allow for the use of a civil citation process will be more effective and expedient than the existing criminal process, and should result in greater compliance with the Zoning Ordinance for the local government.
2. The proposed amendment to Article 5-1 will allow for the Division of Building Inspection, the authorized enforcement agency, to have "right-of-entry" to any land, property, structures or buildings in order to inspect, ascertain or cause to be corrected any violation of the Zoning Ordinance. The new language will allow the Division of Building Inspection to have access similar to that afforded the Division of Code Enforcement and the Fire Marshall in order to address enforcement issues. Additionally, an administrative search warrant from the Fayette District Court will be permitted to further facilitate enforcement of the Zoning Ordinance.

Staff Presentation: Ms. Wade presented the staff report, stating that this proposed text amendment was initiated by the Urban County Council. She noted that the staff had distributed copies of an exhibit handout and a letter of support from the Fayette Alliance to the Commission members prior to the start of the hearing.

Ms. Wade stated that the proposed text amendment would affect Articles 5, 17, 23C and 26 of the Zoning Ordinance, and it is intended to broaden the means of enforcement for the Division of Building Inspection in three ways: first, to allow for right-of-entry for the purpose of inspecting, ascertaining and causing to be corrected any violation of the Ordinance; second, in order to administer a search warrant, if provided for by District Court; and third, to clarify that civil citations and penalties are allowed in all cases for violations. Ms. Wade said that the proposed text was recommended by the Building Inspection Task Force, which was an ad-hoc committee of the Council established in 2009. They completed a comprehensive review of the Division of Building Inspection and its functions with regard six primary issues, two of which affect this proposed text amendment. Those issues, of safety and enforcement, were discussed by the Task Force on multiple occasions, which resulted in the Department of Law drafting the proposed text amendment. The Task Force then forwarded their recommendation to the Planning and Zoning Committee of the Council in March of 2011; Council initiated this proposed text amendment in April.

Ms. Wade said that the proposed changes to Article 5 would result in the addition of a new section regulating right-of-entry. The proposed text would allow Building Inspection to enter upon a property, land, structure, or building for the purpose of enforcing the Ordinance. The Divisions of Code Enforcement and Fire & Emergency Services currently have the authority to address life safety issues, but the Division of Building Inspection does not. Their inability to enforce the Ordinance became a concern during the student housing issues around the University of Kentucky campus two years ago. Ms. Wade noted that, in addition, the text proposed for Article 5-1(a) would allow for the Division of Building Inspection to seek an administrative search warrant from Fayette District Court, and would provide language for protection for individual property owners in residential areas from unreasonable inspections in accordance with citizens' Fourth Amendment rights.

Ms. Wade stated that the remainder of the proposed text amendment involves Articles 5-9, 17-14, 23C-13, and 26-12. Those proposed changes all pertain to allowing civil penalties to be issued as an alternative to the current practice of issuing criminal citations for violations. Under the current process, when Building Inspection identifies a zoning violation, they issue a notice of violation to the offender. That notice would identify the specific violation and provide a time period in which that violation would need to be corrected. If the offender does not correct the violation in a timely manner, or refuses to correct it at all, the issue can be forwarded to Fayette District Court as a criminal matter. Overall, there has been a lack of satisfaction with this process, because it has limited success in obtaining compliance in a timely manner; and it can be costly, for both the government and the offender. Additionally, the court system does not prioritize this type of case, so the process can be very lengthy. The proposed text amendment would provide specifically for both civil and criminal penalties in the instance of any violation. Ms. Wade noted that the civil citation process is currently outlined in Article 5-9; in the past, it has been used with the Soil Erosion Control Ordinance. Since that regulation was moved to the Code of Ordinances, there is no section of the Zoning Ordinance that allows for a civil citation process. One of the goals of this change to the process is to achieve greater compliance with the Zoning Ordinance if notices of violation are issued. The citizen in violation would have the opportunity to either pay a fine, or appeal the case to the Infrastructure Hearing Board.

Ms. Wade stated that the staff is recommending approval of this proposed text amendment, for the reasons as listed in the staff report and on the agenda. She said that the staff presented their report to the Zoning Committee at their meeting three weeks ago, and the Committee members had some concerns about the proposed language for Article 5-1(a). The Committee, therefore, recommended referral of that section of the proposed text amendment, and approval of the remainder of the proposed text. The staff is proposing a small change to the initiated text in order to address those concerns. Ms. Wade referred to the exhibit that was provided to the Commission members prior to the hearing, stating that the staff is proposing to delete the following phrase: "...and is hereby empowered to prescribe, adopt, promulgate, and enforce reasonable rules, regulations, and/or guidelines pertaining to administrative inspections of properties for zoning violations which are not otherwise inconsistent with the Zoning Ordinance." She

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noted that the staff had discussed the proposed text with the staff of the Department of Law, who indicated that that text was not necessarily required to maintain the intent.

Commission Questions: Ms. Roche-Phillips stated that, at the Zoning Committee meeting, the members had concerns about providing the Division of Building Inspection the ability to enter properties. At that time, the Committee members requested that the staff conduct research to determine whether other jurisdictions have similar regulations. Ms. Wade answered that, in Kentucky, the city of Louisville has a similar provision in their Ordinance. She also found that Cleveland, Ohio, and Falls Church, Virginia, have such a provision; and the language in their Ordinances was similar to the proposed text.

Citizen Comments: Richard Murphy, attorney, stated that he was one of the attorneys who represented property owners during the discussions of the student housing problems around UK. He said that those discussions brought about the text amendments that changed the definition of "family" and limited the number of unrelated persons residing in a dwelling. Those changes were drafted with a special focus on ease of enforcement. Mr. Murphy contacted representatives of the Greater Lexington Apartment Association, which he represented during the student housing discussions, and learned that they had concerns about allowing the Division of Building Inspection the right to enter a property. He said that he did not believe that police officers could enter a property without probable cause that a crime had taken place; and he was concerned that some tenants, particularly young residents around the University, might not realize that they could refuse a government representative the right to enter the property without a warrant. The Greater Lexington Apartment Association requested that Mr. Murphy ask the Planning Commission to postpone this proposed text amendment in order to allow them to be present, as they were attending a convention at this time. After discussing the issue with Mr. Sallee, Mr. Murphy said he learned that, since the proposed text amendment was initiated by the Council, the Commission had only 60 days to act upon it, which did not allow the members of the GLAA time to fully consider all of its implications. Mr. Murphy said that, if the proposed text amendment was worded differently, he could possibly be in support of it, but the members of the GLAA have serious concerns about it as written. They intend to request postponement from the Council in order to have more time to review and consider it.

Charles Hite, 929 Aurora Avenue, stated that, as a homeowner, he was concerned that the proposed text amendment was in violation of the Fourth Amendment of the U.S. Constitution.

Commission Questions: Ms. Blanton stated that the Zoning Committee members had also had concerns about some of the implications of the proposed text amendment, and asked how Mr. Murphy would word it differently. Mr. Murphy answered that, if it were worded in the negative, i.e., "...were not authorized to enter without a warrant." He added that the resident could also consent to let the Division of Building Inspection staff enter the property.

Department of Law Comments: David Barberie, Department of Law, stated that the proposed text amendment was drafted broadly in order to be applicable to the entire Zoning Ordinance. He said that the Division of Building Inspection currently had the authority to enter business premises during operating hours without permission, and that that would not be affected by the proposed text amendment. Mr. Barberie said that, with regard to private residences, the proposed text amendment would give the Division of Building Inspection the right to enter a residence if the resident permitted them to do so. If the resident did not agree to the search, then a warrant would still need to be obtained. Mr. Barberie noted that that would be very similar to how the law currently operates, but the proposed text amendment would formalize it.

Ms. Roche-Phillips stated that it appeared that the proposed text amendment would apply only to private dwellings, rather than businesses, as Mr. Barberie had stated. Mr. Barberie responded that the specific protection inherent in the proposed text applied only to private residences; there was no need to include businesses, since their rights are different given that they are open to the public. He added that, if a portion of a structure that housed a business was not open to the public, a warrant would have to be obtained unless the owner agreed to allow entry to that portion of the property.

Mr. Cravens asked if the Planning Commission could postpone this item in order to allow the Greater Lexington Apartment Association time to respond. Ms. Wade answered that the Planning Commission was required to make a decision on this item prior to July 12th, and they had no more meetings scheduled prior to that date. Mr. Cravens asked if it could be postponed if the petitioner agreed. Ms. Wade responded that the Council, rather than the Planning Commission, was the petitioner in this case, and they would have to agree to the postponement.

Legal Comment: Ms. Boland said that KRS 100 requires that, if the local legislature initiates a text amendment, the Planning Commission is required to act upon in 60 days. If the Commission chooses not to act upon it, the item would go directly to the Council, which would eliminate the Commission's ability to comment on it at all. Ms. Boland noted that the Commission could choose to approve, disapprove, or make no recommendation on the proposed text amendment.

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

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Ms. Wade noted that the Greater Lexington Apartment Association might have the opportunity to comment on this item when it goes before the Council.

Ms. Beatty asked why the Council had not heard this request prior to this meeting. Ms. Wade answered that Mr. Murphy intended to request postponement of this item at the Council work session, which would give the GLAA an opportunity to comment. Mr. Murphy added that he was not sure why the GLAA was not invited to participate in the Building Inspection Task Force process. Ms. Wade noted that, since the Council initiated this text amendment, they were familiar with the proposed text. Ms. Boland added that the text would not become an amendment to the Zoning Ordinance until it is acted upon by Council. She said that the GLAA would have the opportunity to not only request a public hearing, but ask that the Council put this item back into committee, and emphasized that this meeting would not be the last opportunity for them to comment on it.

Ms. Wade said that KRS 100 specifically states that the Planning Commission must make a recommendation of either approval or disapproval.

Mr. Cravens stated that Mr. Murphy had raised a good point with regard to the possibility that not all residents are aware of their right to refuse a search of their property. He added that he was also concerned about giving the Division of Building Inspection more rights.

Motion: A motion was made by Mr. Owens and seconded by Mr. Wilson to approve the staff alternative text for ZOTA 2011-3, for the reasons provided by staff. The motion failed, 5-2 (Owens and Wilson in favor; Beatty, Blanton, Cravens, Richardson, and Roche-Phillips opposed; Brewer, Copeland, Holmes, and Paulsen absent).

Commission Question: Ms. Richardson asked if that motion was sufficient for a recommendation of disapproval. Ms. Wade responded that the Commission could choose to disapprove the portion of the proposed text amendment that had generated the most concern, and approve the remainder, if they so chose. Ms. Boland agreed that the Commission could choose to approve only a portion of the proposed text, but noted that they must be prepared to provide a reason for their disapproval of the remainder.

Motion: A motion was made by Ms. Roche-Phillips and seconded by Mr. Wilson to approve the proposed amendments to Articles 5-9, 17-14, 23C-13, and 26-12, for reason #1 provided by staff; and to disapprove the proposed amendment to Article 5-1(a), due to the Commission's concern about right-of-entry into private dwellings.

Discussion of Motion: Mr. Cravens asked if the intent of Ms. Roche-Phillips's motion was to approve the proposed text pertaining to civil penalties, and asked if that would make it easier for a homeowner to be taken to court. Mr. Barberie answered that the civil proceeding would be much less involved, and therefore probably faster, and added that he believed that both sides would obtain a better result.

Action: Ms. Roche-Phillips's motion carried, 7-0 (Brewer, Copeland, Holmes, and Paulsen absent).

**Newtown Pike Extension
March 12, 2013**

Phase I (Redevelopment/Mitigation Area)

- Central Bridge began construction on the Lower Town Branch Box Culvert in October 2012, and they have made substantial progress.
- On November 23, 2012 KYTC opened bids for Phase I infrastructure construction. The contract was awarded to L-M Asphalt Partners. This contract is for construction of the new neighborhood. L-M Asphalt Partners has begun grading operations and will begin placing the fill once Central Bridge has constructed the box culvert.
- AU Associates is preparing to submit their application for Low Income Tax Credits. These funds will be paired with HOME Investment Partnerships funding to facilitate the rental portion of the CLT housing.
- Bids were received for renovations to the Carver Center on December 21, 2012. Council approved this contract with Churchill-McGee on February 28, 2013. The work to be performed is in accordance with the project's Record of Decision.

Community Land Trust

- The CLT has received 501C3 status with the IRS.
- The project has for sale one of the temporary manufactured homes. This manufactured home needed to be removed from the site because of its close proximity to the active construction area. This home was used by one of the residents who was relocated within the project (another manufactured home). The proceeds of the sale will be given to the CLT as required by the Record of Decision.

Phase II (Versailles Road to South Broadway)

- Design plans are approximately 70% complete.
- The KYTC is proceeding with acquisitions for the 21 "total takes" within Phases II and III. These include the Nathaniel Mission and Harry Gordon Steel.
- Meetings have been held with Nathaniel Mission representatives and various scenarios have been investigated relative to temporary or permanent relocation of the Mission. Discussions remain ongoing.
- Discussion with Harry Gordon Steel has concluded and they have accepted an offer for the purchase of their property and relocation of their business.
- Utility costs are estimated at \$5.4 million and construction costs at \$16.1 million; funds are programmed within the state's Six Year Plan.

Phase III – (Scott Street Connector)

- Final design has not begun on this section.
- Utility costs are estimated at \$3.5 million and construction costs at \$8.7 million; funds are programmed for beyond 2014 in the state's Six Year Plan.



KY 1927 – Liberty/Todds Road Widening**Section 2****March 12, 2013****Project Description**

The project begins on Todds Road near Andover Forest Drive, where the Liberty/Todds Road Section 1 improvements ended, extending 1.6 miles southeast to the future Polo Club intersection just east of the I-75 overpass. The project will widen the existing rural 2-lane section of Todds Road to an urban 2-lane section plus a center turn lane, right turn lanes, bike lanes, curb and gutter and sidewalks. Existing right of way will be utilized for new construction as much as possible to minimize new right of way acquisition.

Design Phase

The design plans are approximately 70% complete. Changes resulting from the Practical Solutions Review with the project review team are being incorporated.

Right of Way Phase

\$1 million is programmed in the Transportation Improvement Program (TIP) for right of way acquisition. We have requested authorization of these funds, matched with toll credits, so that we may begin property owner contacts, appraisals, negotiations and acquisitions.

Utility Relocation Phase

Approximately \$2 million is programmed in the TIP in FY13 for utility relocation.

Construction Phase

Funding for construction, estimated at \$10 million, is currently spread between two fiscal years in the TIP, but the full amount will be available at bid time. It is our intent to let one construction contract for all of Section 2. However, throughout the right of way, utility and construction phases, emphasis will be placed on completion of the outer portion of the project, in support of the August, 2015 opening of the new elementary school in the area. Contract letting and construction oversight will be by KYTC.



Sheet - 1



Sheet - 2

Planning and Public Works Committee Referrals

Item	Referred by	Date	Status
Oliver Lewis Way Project	Blues	04/09/2009	Quarterly Update
Todds Road Widening Phase II	Stinnett	04/15/2010	Quarterly Update
Erecting Large Utility Poles in ROW	Martin	03/12/2010	12/11/2012
Re-Paving Program	Martin	04/13/2011	10/16/2012, 12/11/2012
			03/12/2013
Working with FCPS to sustain Road Salt Services	EQ Link	06/19/2011	11/20/2012
Downtown Traffic Study			Quarterly Update
Review Street Tree and Tree Protection Ordinances	Martin	09/27/2011	11/20/2012
Article 16 Zoning Ord: Off Parking Requirements/			
StormWater Management	Lawless	11/22/2011	
Emergency Preparedness	Henson	05/17/2012	
Possible Revision of Sign Ordinance	Farmer	06/12/2012	
Design Excellence Update	Kay		Quarterly Update
Exploring the Use of Alternative Fuel Resources for Fayette County	Farmer	07/10/2012	08/14/2012, 01/15/2013
Adult Day Care Centers	Kay	10/11/2012	09/18/2012
Amendment of Article 5-1(a) Right-of-Entry	Gorton	08/18/2011	03/12/2013
Private Streets: Enforcement, Maintenance, Specifications	Mossotti	01/29/2013	
Notification Process for H1 Overlay	Myers	01/29/2013	
Exaction Fees	Stinnett	03/05/2013	