

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

March 12, 2015

- 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 - Mike Owens, Chair; Mike Cravens; Will Berkley; Patrick Brewer; Karen Mundy Carolyn Plumlee; Carolyn Richardson; Joseph Smith; Bill Wilson; David Drake and Frank Penn.

Planning staff members present – Chris King; Bill Sallee; Barbara Rackers; Tom Martin; Cheryl Gallt; Kelly Hunter; Dave Jarman and Denise Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Tim Queary, Department of Environmental Policy; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; and Tracy Jones and Andrea Brown, Department of Law.

- II. **APPROVAL OF MINUTES** – The Chair reminded the Commission members that the amended minutes of the December 11, 2014, meeting were previously emailed to the Commission for their review; and if there were no changes, those minutes were ready to be considered at that time.

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 11-0 to approve the amended minutes of the December 11, 2014, meeting.

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

- a. DP 2015-18: FRITZ FARM, LLC & DMK DEVELOPMENT GROUP (5/3/15)* - located at 4210 Nicholasville Road.
(Council District 4) **(HDR)**

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Postponement**. There were some questions regarding the proposed access and the landscaping adjacent to the residential properties.

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

1. Urban County Engineer's acceptance of drainage, and 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. 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. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Denote building height in feet.
12. Denote existing and proposed easements on plan.
13. Denote BOA approval of conditional use permit for this use.
14. Denote final record plat information in title block.
15. Discuss proposed access to Man o' War Boulevard and possible waiver.
16. Discuss access restrictions per final record plat(s).
17. Discuss existing access easement to Nicholasville Road.
18. Discuss dumpster location adjacent to residential zone.
19. Discuss the extent of excess parking.
20. Discuss proposed landscaping adjacent to Man o' War Boulevard and Nicholasville Road.
21. Discuss timing of improvements to Nicholasville Road.
22. Discuss the need for an internal pedestrian connection to Man o' War Boulevard.
23. Discuss landscaping adjacent to the homes in the R-1D zone.
24. Discuss height of any proposed retaining wall near detention basin.

Representation – Nick Nicholson, attorney, was present representing the applicant, and requested postponement of DP 2015-18: FRITZ FARM, LLC & DMK DEVELOPMENT GROUP to the March 28, 2015, Planning Commission meeting.

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

Action - A motion was made by Mr. Penn, seconded by Mr. Wilson and carried 11-0 to postpone DP 2015-18: FRITZ FARM, LLC & DMK DEVELOPMENT GROUP to the March 28, 2015, Planning Commission meeting.

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

- b. PLAN 2014-101F: LONG VALLEY FARM, KY, INC., UNIT 2-B (AMD) (3/12/15)* - located at Long Valley Lane and Russell Cave Road. (Council District 12) **(Randy Martin)**

Note: The Planning Commission postponed this item at their December 11, 2014 and January 15, 2015, meetings. This plan requires the posting of a sign and an affidavit of such. The purpose of this amendment is to subdivide a 124-acre tract into a 40-acre tract and an 84-acre tract.

The Subdivision Committee Recommended: **Postponement**, due to the failure of posting the sign on the property, as required by Article 6-4(j)(6) of the Land Subdivision Regulations.

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

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Addition of 300' building line.
8. Denote non-buildable areas.
9. Denote access easement locations and maintenance responsibility.
10. Addition of detail for adjacent corner monuments.
11. Addition of general notes required by the Subdivision Regulations.
12. Correct Urban County Engineer's certification.
13. Health Department approval for septic facilities prior to plan certification.
14. Discuss possible need for a waiver to Art. 6-4(c) of the Subdivision Regulations.
15. Discuss proposed access per prior plat note on Cabinet/Slide I-544.
16. Discuss access easement standards required by Art. 6-4(j)2(a) of the Subdivision Regulations.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of PLAN 2014-101F: LONG VALLEY FARM, KY, INC., UNIT 2-B (AMD) to the April 9, 2015, Planning Commission meeting.

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

Action - A motion was made by Ms. Plumlee, seconded by Ms. Richardson and carried 11-0 to postpone PLAN 2014-101F: LONG VALLEY FARM, KY, INC., UNIT 2-B (AMD) to the April 9, 2015, Planning Commission meeting.

- c. **PLANNING COMMISSION WORK SESSION** – Following adjournment of today's meeting, the Planning Commission will meet in a work session. The Commission will consider the following item, and possibly other matters:

1. **ZOTA 2014-4: RECREATION AND TOURISM LAND USES** – petition for a Zoning Ordinance text amendment to address recreation and tourism land uses in all zones, in order to implement the recommendations of the Recreation ZOTA Work Group.

Ms. Mundy requested to postpone today's work session and to amend the 2015 Meeting and Filing Schedule to allow today's work session to be held on March 19, 2015.

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

Action - A motion was made by Ms. Mundy, seconded by Ms. Plumlee and carried 11-0 to postpone today's work session to March 19, 2015, to a meeting that afternoon.

Mr. King reminded the Commission members that the upcoming work session will be held at 1:30 p.m. on the 2nd Floor in the Council Chambers.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee was scheduled to meet on Thursday, March 5, 2015, at 8:30 a.m. to review plans considered by the Technical Committee at their meeting on Wednesday, February 25, 2015. However, the March Subdivision Committee meeting was cancelled due to the weather emergency that closed the LFUCG Phoenix Building that day. The Committee last met on Thursday, February 5, 2015, at 8:30 a.m., and was attended by Commission members: Karen Mundy, Joe Smith, Carolyn Plumlee, Will Berkley and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gall, Dave Jarman, Denice Bullock, Scott Thompson and Kelly Hunter, as well as Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; C.D. Schnelle, Division of Police; and Stephen

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Shelman, Mayor's Office, representing the Department of Law. The Committee made a recommendation on one listed plan below, 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** - The Chair announced that, as a result of last week's weather emergency, the March 5th Subdivision Committee meeting was cancelled. With that said, the remaining items listed on today's agenda have no Subdivision Committee recommendation. He then said that there is no Consent Agenda to be read, and the remaining items listed on today's agenda will be presented to the Commission and the audience members.
- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

1. FINAL SUBDIVISION PLANS

- a. PLAN 2015-12F: MELROSE ADDITION, BLOCK D, LOTS 2 & 3 (AMD) (5/3/15)* - located at 112 and 114 Thompson Road. (Council District 2) **(Randy Martin)**

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

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections.
3. Addressing Office's approval of street names and addresses.
4. Urban Forester's approval of tree canopy and required street tree information.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Revise engineer's/surveyor's certification to the approval of the Division of Planning.
9. Correct note #1 to refer to an erosion control plan per Art. 16 of the Code of Ordinances.
10. Denote compliance with Art. 8-7(o)(c) and Art. 15-7 as applicable to Infill and Redevelopment requirements.
11. Denote: There is, but not shown, a 3' drainage utility easement parallel to all side and rear lot lines.
12. Discuss sanitary sewer service to proposed lot.

Staff Presentation – Mr. Jarman directed the Commission's attention to the Melrose Addition, Block D, Lots 2 & 3 plan, and said that this is an amended final record plat for property located at 112 and 114 Thompson Road. He said that the purpose of this amendment is to subdivide one lot into two lots. He oriented the Commission to the location of the subject property on the rendering of this plat, and explained that the site is located just past the Lexington Cemetery on W. Main Street, immediately across the railroad tracks, on Thompson Road.

Mr. Jarman said that the Technical Committee and Staff met on February 25th, and recommended approval of the applicant's request, subject to the conditions listed on today's agenda. He briefly explained that conditions #1-7 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" items that will be addressed prior to the plan being certified. He directed the Commission's attention to condition #12; he explained that the sewer line is located on Thompson Road, and the staff is concerned with the

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applicant providing sanitary sewer service to Lot 3. He then said that the staff would like the applicant to confirm that Lot 3 has a sewer line and proper service; and, if not, then if a sewer tap would be installed connecting Lot 3 to the existing sewer line on Thompson Road.

Commission Questions – The Chair asked if condition #7 addresses condition #12. Mr. Jarman said that the applicant needs to provide documentation for the Capacity Assurance Program requirements, at which time the sewer tap could follow.

Representation – There was no representation present.

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

Commission Questions – Mr. Penn asked if both lots would have the same requirements. Mr. Jarman replied affirmatively. Mr. Penn asked if the original lot already has documentation for the Capacity Assurance Program requirements. Mr. Jarman said that there is service on the original lot.

Mr. Sallee said that the staff believes that condition #12 can be deleted from the list of requirements, since condition #7 exists. He then said that if there is a capacity issue, the applicant will not comply with the Capacity Assurance Program requirements, resulting in no new sewer tap. The Chair confirmed that condition #7 would address condition #12, to which Mr. Sallee replied affirmatively.

Action - A motion was made by Mr. Brewer, seconded by Ms. Richardson and carried 11-0 to approve PLAN 2015-12F: MELROSE ADDITION, BLOCK D, LOTS 2 & 3 (AMD), subject to the conditions, as presented by the staff, deleting condition #12.

Note: The next two items were acted on simultaneously.

- b. PLAN 2015-13F: CLARK PROPERTY, UNIT 3-A (5/3/15)* - located at 3372 Polo Club Boulevard.
(Council District 12) **(EA Partners)**

Note: The purpose of this amendment is to create 34 lots for the construction of detached single family dwellings.

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s) and required street tree information.
 6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Correct Clark Property plat information for adjoining property.
 9. Addition of street cross-section location for Polo Club Boulevard.
 10. Denote applicable exactions, in effect at time of plat recording, to the approval of the Division of Planning.
- c. PLAN 2015-14F: CLARK PROPERTY, UNIT 3-B (5/3/15)* - located at 3372 Polo Club Boulevard.
(Council District 12) **(EA Partners)**

Note: The purpose of this amendment is to create 12 buildable lots for detached single family dwellings.

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Denote applicable exactions, in effect at time of plat recording, to the approval of the Division of Planning.
9. Discuss need for minimum floor elevations similar to adjoining lot.

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Staff Presentation – Ms. Gallt directed the Commission's attention to the final record plat for the Clark Property, Units 3-A and 3B, located at 3372 Polo Club Boulevard. She said that the purpose of Unit 3-A is to create 34 lots for the construction of detached single family dwellings, and the purpose of Unit 3-B is to create 12 buildable lots for detached single family dwellings. She oriented the Commission to the location of the subject properties on the rendering of these plats, and explained that the site is located in the Expansion Area between Polo Club Boulevard and I-75. She noted that the property adjacent to Unit 3-A is owned by the LFUCG, which is where the Rails-to-Trails facility is to be located in the future.

Ms. Gallt said that the Technical Committee and staff met on February 25th, and recommended approval of PLAN 2015-13F, subject to the conditions listed on today's agenda. She briefly explained that conditions #1-7 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" items that will be addressed prior to the plan being certified.

Ms. Gallt then said that the Technical Committee and staff also recommended approval of PLAN 2015-14F, subject to the conditions listed on today's agenda. She briefly explained that conditions #1-7 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" items that will be addressed prior to the plan being certified. She noted that condition #9 is related to the minimum floor elevations and explained that the adjacent property has a minimum floor elevation for that lot and the staff would like to be sure that the property on Unit 3-B has a similar floor elevation as the adjoining lot. She said that the staff recommends adding a note to the plat to reflect this.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that he had spoken to the staff about condition #8, and the information listed on this plat is correct; he believes that this item can be removed from the list of conditions. He then said that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2015-13F, deleting condition #8.

Mr. Kahly directed the Commission's attention to PLAN 2015-14F, and said that, as for the discussion concerning the minimum floor elevation (condition #9), he believed that this should be part of the Urban County Engineer's signoff (condition #1). To protect the builder from themselves, essentially that lot is a bit lower than the curb and they wanted to make sure that the builder did not build the house in such a way that he flooded himself. He said that they set a minimum floor elevation to keep him "raised up," and the rest of these new lots will get reviewed before submitting the as-built drawings, and if these lots were graded lower than the curb, then those would have minimum floor elevation also. He then said that, as these lots are built, if a minimum floor elevation is needed, those lots will also be raised to the minimum floor elevation. He added that this type of issue was usually handled through the review by the Division of Engineering. With that said, he noted that they are in agreement with the staff's recommendations, and requested approval of PLAN 2015-14F.

Commission Questions – The Chair asked if the applicant is requesting to delete condition #8 from PLAN 2015-13F. Mr. Kahly said that the plat information for the adjoining property is correct on the plat. He then said that when there is one plat that is recorded in sections, that results in two plats with the same identifying number. Mr. Sallee responded that the staff had no objection to deleting condition #8 from the requirements on PLAN 2015-13F.

The Chair said that the applicant has requested to delete condition #9 since it would be handled by condition #1. Mr. Sallee said that the staff does not disagree. The Chair then said that condition #9 could also be deleted from the list of requirements on PLAN 2015-14F.

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

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 11-0 to approve PLAN 2015-13F: CLARK PROPERTY, UNIT 3-A, subject to the conditions, as presented by the staff, deleting condition #8.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 11-0 to approve PLAN 2015-14F: CLARK PROPERTY, UNIT 3-B, subject to the conditions, as presented by the staff, deleting condition #9.

- d. PLAN 2015-20F: WOODLAND PARK SUBDIVISION (AMD) (5/26/15)* - located at 173 and 175 Old Park Avenue.
(Council District 3) **(Wes Witt)**

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

The Subdivision Committee made no recommendation.

The Staff Recommends: **Approval**, subject to the following conditions:

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

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4. Urban Forester's approval of tree canopy and required street tree information (per lot).
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Addition of proposed and existing easements.
7. Dimension width of access easement.
8. Addition of access easement note (found in Art. 5-4(h)(l) of the Land Subdivision Regulations).
9. Clarify note for garage access.
10. Clarify exact area of access easement on both lots.
11. Provide final record plat information (Article 5-4(f) & (g)), including purpose of amendment note.
12. Review by Technical Committee prior to plan certification.
13. Discuss possible need for the Division of Water Quality's approval of the Capacity Assurance Program requirements.

Staff Presentation – Ms. Gallt directed the Commission's attention to the amended final record plat for Woodland Park Subdivision, located at 173 and 175 Old Park Avenue. She said that the purpose of the amendment is to subdivide one lot into two lots. She oriented the Commission to the location of the subject property using a rendering of the plat, and explained that the site is located between Woodland Park and W. Main Street. She said that there are two existing townhomes on the parent tract, and the applicant wants to subdivide this lot, separating the townhomes each to be on its own lot.

Ms. Gallt said that the staff reviewed this plat and recommended approval, subject to the conditions listed on today's agenda. She briefly explained that conditions #1-5 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" items that will be addressed prior to the plan being certified. She directed the Commission's attention to condition #13, and explained that these townhomes were built on a single lot; and both units were occupied prior to the Capacity Assurance Program being implemented in 2011. She said that the staff needs to know whether or not both of these lots, once subdivided, would need to comply with the requirements of the Capacity Assurance Program.

Commission Questions – The Chair asked what the staff's recommendation is to resolve condition #13. Mr. Sallee said that the staff's recommendation is to change condition #13 to read: "~~Discuss~~ Resolve possible need for the Division of Water Quality's approval of the Capacity Assurance Program requirements." He then said that the reason for this change is that a note about the use of a sewer lateral is one possible means to resolve this condition; but the issue is still unknown and whether or not the existing lateral will be deemed to be sufficient to serve both units, once subdivided. However, if an additional sewer tap is needed, then the requirements of the Capacity Assurance Program would need to be met. He said that by "resolving" condition #13, it would address both possible scenarios.

The Chair then asked the staff to explain the conditions listed that relate to the access, access easements and so forth. Ms. Gallt explained that the townhomes front on Old Park Avenue; and there is a shared driveway access on Lot 1 that leads to the rear of Lot 2, where two garages are located. She said that several years back, the Board of Adjustment approved a variance to modify the rear yard setback requirements in order to allow these garages. She then said that, when looking at the rendering, the easement line between the two units is not straight, and the access easement needs to extend to the garages. This is why the conditions for the access and access easements were added.

Ms. Mundy asked if the garages are located on Lot 2 and the shared driveway is located on Lot 1. Ms. Gallt replied affirmatively, and explained that this property was originally developed as condominium units and said that, in order for the townhouses to be sold, the property had to be subdivided, as a requirement of the bank. She then said that should this property be subdivided, the staff wanted more clarification as to who would be responsible for maintenance of the access easement.

Representation – Richard Murphy, attorney, was present representing Molly Lewis, who is the property owner for one of these units. He said that these units were constructed in 2007 & 2008 as condominium units, and his client is in the process of selling one of the units. He then said that, with the recent recession, condominium units are very hard to finance with a bank, which is the reason his client is requesting to subdivide this property. Mr. Murphy said that there would be no changes on the ground. His client is in the process of dissolving the condominium association, and the term "condominium" would be changed to "duplex." He then said that both of these buildings front on Old Park Avenue. The shared driveway is located on Lot 1, and it leads to the rear of these lots where the garages have been built on Lot 2. He said that they would be noting the access easements on the final record plat, and on the private deed restrictions showing that both parties would be using the shared driveway, as well as be responsible for one of the garages at the rear.

Mr. Murphy said that the applicant is in agreement with the staff's recommendations; and as for condition #13, this duplex was built prior to the implementation of the Capacity Assurance Program, and he is confident that this property is grandfathered into that program. He said that, as for condition #12, he understands the staff's concerns; but his client is on a deadline to close on this property; and the appraiser can not appraise the property

until after the plat has been recorded. Mr. Murphy requested that the Commission approve this request, deleting condition #12.

Planning Commission Questions - Mr. Penn asked, since the access easement is on one property and the garages are located on the other property, if these properties will share the responsibility. Mr. Murphy said that documentation is being written to assign each garage to one of these units; and as for the driveway, both properties will share in its the maintenance responsibility.

Mr. Cravens asked if the proper fire separation rating was provided between these two units. Mr. Murphy indicated that, to his understanding, yes it was.

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

Planning Commission Question – Mr. Wilson asked if it was appropriate to remove condition #12. Mr. Sallee responded that that would be within the Commission's purview. He added that the staff has no objection to removing condition #12 since this is only a one-lot division, and the likelihood of additional easements being needed by Technical Committee participants would be very unlikely.

Action - A motion was made by Mr. Wilson, seconded by Mr. Smith and carried 11-0 to approve PLAN 2015-20F: WOODLAND PARK SUBDIVISION (AMD), subject to the conditions, as presented by the staff, deleting condition #12 and changing condition #13 to read: "Resolve possible need for the Division of Water Quality's approval of the Capacity Assurance Program requirements."

- e. PLAN 2015-21F: WATTS FARM, TRACT 4, LOT 1 (AMD) (5/26/15)* - located at 435 Redding Road.
(Council District 4) **(Vision Engineering)**

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

The Subdivision Committee made no recommendation.

The Staff Recommends: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Label as Lot 1A & 1B, or equivalent.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Correct bearing and/or distance of rear property line on larger lot.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Addition of dashed lines for adjacent property.
11. Review by Technical Committee prior to plan certification.

Staff Presentation – Ms. Gallt directed the Commission's attention to the amended final record plat for Watts Farm, Tract 4, Lot 1, located at 435 Redding Road. She oriented the Commission to the location of the subject property on the displayed rendering of the plat, and explained that the Commission had recently approved the zone change on this property in order to have a restaurant and a decrease in the size of this retail center. She then said that the purpose of amendment is to subdivide one lot into two lots for the free-standing restaurant to be constructed on 435 Redding Road.

Ms. Gallt said that the staff had reviewed this application and is recommending approval, subject to the conditions listed on today's agenda. She briefly explained that conditions #1-9 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" item that will be addressed prior to the plan being certified. She added that since this request was submitted as a late file, the Technical Committee will be reviewing this proposal on March 25th.

Representation – Matt Carter, Vision Engineering, was present representing the applicant. He said that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2015-21F.

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

Action - A motion was made by Mr. Berkley, seconded by Ms. Richardson and carried 11-0 to approve PLAN 2015-21F, subject to the conditions as presented by the staff.

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

2. DEVELOPMENT PLANS

- a. DP 2015-15: CLAYS MILL CENTER, UNIT 1-B, BLOCK B, LOT 2 (AMD) (5/3/15)* - located at 3348 Clays Mill Road. (Council District 9) **(CMW)**

Note: The purpose of this amendment is to increase the building square footage and revise the parking layout.

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and 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. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Depict boundary of property in solid lines.
11. Denote record plat designation in title block.
12. Dimension sidewalks, off-street parking area and drive-through lane.
13. Denote construction access point on plan.
14. Denote height of building in feet.
15. Identify all existing and proposed easements.
16. Clarify building envelope with dashed lines and differentiate from parking lot area.
17. Addition of missing information from previous plan.

Staff Presentation – Ms. Gallt directed the Commission's attention to the amended development plan for Clays Mill Center, Unit 1-B, Block B, Lot 2, located at 3348 Clays Mill Road. She oriented the Commission to the location of the subject property on the rendering of the plan, and explained that there are commercial uses already located on this property that include a fast food restaurant and a retail building to the rear of the site. She then said that the purpose of this amendment is to demolish the fast food restaurant in order to increase the restaurant building's square footage and also revise the parking layout.

Ms. Gallt said that the Technical Committee and Staff met on February 25th, and recommended approval of DP 2015-15, subject to the conditions listed on today's agenda. She briefly explained that conditions #1-9 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" item that will need to be addressed prior to the plan being certified.

Planning Commission Questions – The Chair asked if the building size is increasing, if that would make the parking and drive-through lane decrease. Ms. Gallt said that the staff wants to ensure that the correct dimensions are shown on the plan, which is why condition #12 had been added.

Representation – Brad Boaz, CMW, was present representing the applicant. He said that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2015-15.

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

Action - A motion was made by Mr. Brewer, seconded by Ms. Mundy and carried 11-0 to approve DP 2015-15: CLAYS MILL CENTER, UNIT 1-B, BLOCK B, LOT 2 (AMD), subject to the conditions as presented by the staff.

- b. DP 2015-16: TATTERSALLS SQUARE, LOT 2 (AMD) (5/3/15)* - located at 867 South Broadway. (Council District 11) **(CMW)**

Note: The purpose of this amendment is to renovate and expand the building area and revise the parking and circulation on Lot 2.

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Approval**, subject to the following conditions:

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

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

3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Provide property's record plat designation in title block.
11. Dimension drive entrances and sidewalks.
12. Denote height of building in feet.
13. Correct note #9.
14. Discuss internal vehicular access.

Staff Presentation – Mr. Martin directed the Commission's attention to the amended development plan for Tattersalls Square, Lot 2, located at 867 South Broadway. He oriented the Commission to the location of the subject property on the rendering of the plan, and explained the surrounding street system and the uses that are in the general vicinity. He said that the existing access point is located off South Broadway and extends to the rear of the site. He then said that the purpose of this amendment is to renovate and expand the building area and revise the parking and circulation on Lot 2.

Mr. Martin said that the Technical Committee and Staff met on February 25th, and recommended approval of DP 2015-16, subject to the conditions listed on today's agenda. He briefly explained that conditions #1-9 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" items that will be addressed prior to the plan being certified. He directed the Commission's attention to condition #14, and explained that there is an access easement shown on the plan, along with notes that pertain to this easement. He said that the private access easement shown on the rendering serves the entire property, but it is noted as being part of Lot 1. He then said that the staff was concerned that Lot 2 is proposing three accesses onto the access easement, but after consulting with the Traffic Engineering staff, they suggested that one of these accesses be closed. He added that the notes that are shown on the rendering relate to the access easement, but these notes are out of date and need to be clarified to reflect the correct lotting pattern. Mr. Martin said that the staff believes that this issue can be resolved with the applicant.

Planning Commission Questions – The Chair said that the staff had pointed out three accesses on the rendering, but it looks as if there is a 4th access shown. Mr. Martin replied affirmatively, and said that the primary concern with the staff is the amount of traffic that would be generated from Lot 2 onto the access easement, as well as the proximity of the first access point to South Broadway. The Chair asked how many accesses are "on the ground." Mr. Martin replied that there are two existing access points on Lot 2.

The Chair then asked what the purpose of this amendment is. Mr. Martin said that the applicant is proposing three restaurants and a beauty salon in the former convenience store.

Representation – Brad Boaz, CMW, was present representing the applicant. He said that they are proposing three accesses (for Lot 2) on the rendering; but after speaking with Traffic Engineering, they are agreeable with removing the additional access, leaving only two accesses onto the easement. In reference to the development plan notes, he asked for more clarification as to what the staff was looking for. Mr. Martin said that, over time, the lotting pattern on this property has changed, and the staff would like the development plan notes to clearly reflect the current lotting conditions for this development.

Planning Commission Questions – Mr. Penn asked if the change in uses would generate more traffic on this development. Mr. Boaz said that they did not have the traffic analysis done for this change of use. He then said that they already have one restaurant coming to this site, but they are not sure what the other two restaurants would be. It would be difficult to say what the traffic generator would look like at his point.

Mr. Penn then asked if all of these uses would fit under the 8,000 sq.-ft building footprint. Mr. Boaz replied negatively, and said that, post construction, the building would be 8,400 sq. ft.; and as for the existing building footprint, he did not have that information. He added that the parking requirement is being met as there is reciprocal parking throughout the entire development.

The Chair asked if the applicant was agreeable to removing one of the access points. Mr. Boaz replied affirmatively. The Chair then asked if the second access into the development would be removed, which would leave three remaining accesses, to which Mr. Boaz replied it would.

Mr. Martin said that, in reference to Mr. Penn's previous question, the current square footage for the convenience store is a little over 5,000 sq. ft. and the applicant is proposing an increase to 8,400 sq. ft.

Mr. Penn asked if the development meets the parking requirements, to which Mr. Martin replied affirmatively.

Mr. Brewer asked which access point will be removed. Mr. Boaz pointed out on the rendering which accesses will be removed. The Chair noted that the second access, on the left, from South Broadway would be removed. Mr. Boaz said that they are required to provide 59 parking spaces and they are providing 75 spaces.

The Chair asked if it would be appropriate to change condition #14 to read: "Resolve access notes on the development plan and remove the second access point from South Broadway." Mr. Martin replied that it would and said that that would be very specific, or the Commission could change the language to read: "~~Discuss~~ Resolve internal vehicular access."

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

Action - A motion was made by Ms. Mundy, seconded by Mr. Cravens and carried 11-0 to approve DP 2015-16: TATTERSALLS SQUARE, LOT 2 (AMD), subject to the conditions, as presented by the staff, changing condition #14 to read: "Resolve internal vehicular access."

- c. DP 2015-17: ADAMS PROPERTY (AKA: BRIGHTON 3050 & CADENTOWN SUBDIVISION, LOT 10) (AMD) (5/3/15)* - located at 2985 Liberty Road, 3050 Helmsdale Place and 852 Campbell Lane.
(Council District 6) **(EA Partners)**

Note: The purpose of this amendment is to incorporate 2985 Liberty Road into the development and to add parking and dumpster location.

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and 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. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Correct B-1 area required parking (49 spaces).
11. Addition of grease trap notes on plan.
12. Revise note #7.
13. Discuss impact on indentified wetland area, and timing of Army Corps and DOW permits.
14. Discuss need to provide pedestrian connection between the existing and proposed apartment buildings.
15. Discuss proposed access to public right-of-way.

Staff Presentation – Mr. Jarman directed the Commission's attention to the amended Final Development Plan for Adams Property (A.K.A Brighton 3050 & Cadentown Subdivision, Lot 10) (AMD), located at 2985 Liberty Road, 3050 Helmsdale Place and 852 Campbell Lane. He said that the purpose of this amendment is to renovate and expand the building area and revise the parking and circulation on Lot 2. He oriented the Commission to the location of the subject property on the rendering of the development plan, and explained the layout of the surrounding street system and the uses that are in the general vicinity.

Mr. Jarman said that the Technical Committee and Staff met on February 25th, and recommended approval of DP 2015-17, subject to the conditions listed on today's agenda. He then said that, just prior today's hearing, the staff received additional information from the Division(s) of Engineering and Water Quality about identified wetlands and sanitary sewers, and can revise the recommendations accordingly. He directed the Commission's attention to the staff handout and said that the staff is still recommending approval. He briefly explained that conditions #1-9 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" items that will be addressed prior to the plan being certified.

1. Urban County Engineer's acceptance of drainage, and 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. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.

7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
- ~~9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.~~
- ~~9.~~ 10. Correct B-1 area required parking (49 spaces).
- ~~10.~~ 11. Addition of grease trap notes on plan.
- ~~11.~~ 12. Revise note #7.
- ~~13. Discuss impact on identified wetland area, and timing of Army Corps and DOW permits.~~
- ~~12.~~ 14. Discuss need to provide a pedestrian connection between the existing and proposed apartment buildings.
- ~~13.~~ 15. Discuss proposed access to public right-of-way.
- ~~14.~~ Denote on plan the wetland area per the approved 2002 and 2009 development plans.

Mr. Jarman said that the remaining item listed that needed to be addressed was condition #12, and this deals with the intersection of Liberty Road and Old Todds Road/Old Bryant Road. He then said that there are two existing right-of-way entrances that are not ideal for this area. He explained that the first entrance is located too close to Liberty Road, and Traffic Engineering is discouraging this entrance due to possible complications with the traffic flow to Liberty Road.

Representation – Rena Wiseman, attorney, and Rory Kahly, EA Partners was present representing the applicant. Ms. Wiseman directed the Commission's attention to the rendering, and said that the entrance that the staff is concerned about is part of Old Bryant Road right-of-way, and the lot that this entrance stubs into is under a different ownership. She then said that on past submittals the entrance has been shown on each of those renderings; and this rendering is keeping the layout consistent. She added that, given the existing circumstances in this area, this entrance is not ideal; but it does allow traffic to enter and exit the site. Ms. Wiseman said that the applicant is in agreement with the staff's revised recommendations, and requested approval of DP 2015-17, deleting condition #12.

Planning Commission Questions – Ms. Mundy asked if there is a second entrance onto the adjacent parcel for emergency vehicles. Ms. Wiseman replied affirmatively, and pointed out the two connections on the rendering.

Ms. Plumee asked if the staff was agreeable to resolving condition #12. Mr. Sallee replied affirmatively, but said he was unsure as to how the Traffic Engineering staff felt about this. Ms. Kaucher said that the staff had expressed their concern with the location of the first entrance. She then said that they would not prefer it, although it is already an improved access point for this lot.

Mr. Penn expressed that "two wrongs don't make a right" and asked if there is a way to fix the access. Ms. Kaucher replied not without eliminating the access completely. Mr. Penn then asked if the staff is worried about people making a left turn into the site would create a back-up on Liberty Road. Ms. Kaucher said that the staff is worried that there would not be sufficient storage prior to the intersection. Mr. Penn asked if Speedway has three access points directly across from this site, to which Ms. Kaucher replied that was correct. Mr. Penn said that he can not believe this area was developed over the years and now suddenly the staff has a concern with the access. He then said that this is why he does not agree with building such sites one piece at a time because at some point "someone has to pay the piper." He added that now Traffic Engineering is saying that they don't like it but they guess it is necessary, which really bothers him. He said that everyone needs to think toward the future, because if traffic will be backing up on Liberty Road just after three cars, it will be an imposition to the residents of this area. Ms. Kaucher said that the traffic on Liberty Road will not be as impacted, but the traffic coming from the site onto Liberty Road will likely be impacted and will back up.

Mr. Cravens asked if there is a secondary access point out of the site along Helmsdale Place. Ms. Kaucher replied that that was correct.

Ms. Richardson asked if there would be a sidewalk connection. Ms. Wiseman explained that that there would be an internal sidewalk and crosswalks between the two developments.

The Chair informed the Commission that the conditions on the staff's revised handout has been incorrectly numbered and said that there are 14 listed conditions.

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

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 11-0 to approve DP 2015-17: ADAMS PROPERTY (AKA: BRIGHTON 3050 & CADENTOWN SUBDIVISION, LOT 10) (AMD) subject to the conditions, as presented by the staff, deleting condition #12.

- d. DP 2015-19: SOUTH FARM MARKETPLACE, LOT 3 (AMD) (5/3/15)* - located at 100 Marketplace Drive.
(Council District 9) **(GRW)**

Note: The purpose of this amendment is to add a drive-through lane, revise the parking lot and dumpster layout, and to add notes.

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and 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. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Denote record plat designation on plan.
11. Clarify area of amendment on vicinity map.
12. Addition of topography information in area of amendment.
13. Dimension walkways, parking area, ingress and egress.
14. Denote height of building in feet.
15. Delete note #2 in general notes.
16. Remove gray shading on plan.
17. Clarify the number of parking spaces on Lot 3.

Staff Presentation – Ms. Gallt directed the Commission's attention to the amended development plan for South Farm Marketplace, Lot 3, located at 100 Marketplace Drive. She oriented the Commission to the location of the subject property on the rendering displayed of the plan, and explained about the surrounding street system and the uses that are located in the general vicinity. She said that the purpose of this amendment is to add a drive-through lane on the McDonald's restaurant lot, which would then also change the parking lot layout and dumpster location.

Ms. Gallt said that the Technical Committee and Staff met on February 25th, and recommended approval of DP 2015-19, subject to the conditions listed on today's agenda. She then said that on March 4th, the applicant provided a revised submission to the staff, addressing several of the conditions identified at the Technical Committee meeting. Therefore, the staff can now offer the Planning Commission a revised recommendation about the requirements for this Development Plan.

The Staff Recommends: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and 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. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
- ~~9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.~~
9. ~~10.~~ Delete record plat designation on plan and leave information shown in title block.
- ~~11. Clarify area of amendment on vicinity map.~~
- ~~12. Addition of topography information in area of amendment.~~
- ~~13. Dimension walkways, parking area, ingress and egress.~~
- ~~14. Denote height of building in feet.~~
- ~~15. Delete note #2 in general notes.~~
- ~~16. Remove gray shading on plan.~~
- ~~17. Clarify the number of parking spaces on Lot 3.~~
10. Revise purpose of amendment note.

Ms. Gallt briefly explained that conditions #1-8 are standard sign-off requirements from the different divisions of the LFUCG, and the remaining conditions are "cleanup" items that will need to be addressed prior to the plan being certified.

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

Representation – Nick Jerdone, GRW, was present representing the applicant. He said that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2015-19.

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

Action - A motion was made by Mr. Berkley, seconded by Mr. Brewer and carried 11-0 to approve DP 2015-19: SOUTH FARM MARKETPLACE, LOT 3 (AMD), subject to the conditions, as presented by the staff.

- e. DP 2014-80: PROVIDENCE PLACE, TRACT 3, LOTS 5A & 5B (AMD) (5/26/15)* - located at 1201 Providence Place Parkway. (Council District 12) **(Milestone Design)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to revise the development of Lot 5A.

The Planning Commission approved this item at their October 9, 2014 and December 11, 2014, meetings, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage and 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. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Provided the Planning Commission makes a finding that the development plan complies with the EAMP.
10. Denote exaction information to the approval of the Division of Planning.
11. Clarify that Lots 5A & 5B were not created by the Plat in Cabinet N, Slide 521.
12. Screening will be consistent with the previous development plan.

Note: The applicant now requests a continued discussion for this plan, to increase the office building's floor area.

The Subdivision Committee made no recommendation.

The Staff Recommends: Approval, subject to the original conditions previously approved by the Planning Commission.

Staff Presentation – Mr. Martin directed the Commission's attention to the amended development plan for Providence Place, Tract 3, Lots 5A & 5B, located at 1201 Providence Place Parkway. He oriented the Commission to the location of the subject property on the rendering shown of the plan, and explained the surrounding street system and the uses that are in the general vicinity. He said that the applicant has requested a continued discussion for this plan, to increase the office building's floor area by a little over 500 sq. ft. He then said that, even though the floor area is increasing, it would not impact the parking or access into the site; and the plan still complies with the EAMP requirements, according to the staff's handout.

Mr. Martin said that the Planning Commission approved this item at their October 9, 2014 and December 11, 2014, meetings, subject to the conditions listed on today's agenda. He then said that the staff is still recommending approval of the applicant's request, subject to the original conditions previously approved by the Planning Commission. He added that the staff did contact Dr. Poole about this change, and she had no issues with the applicant's request.

Representation – Doug Ernest, Milestone Design, indicated that the applicant was in agreement with the staff's recommendations, and requested approval of DP 2014-80.

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

Action - A motion was made by Mr. Penn, seconded by Mr. Smith and carried 11-0 to approve DP 2014-80: PROVIDENCE PLACE, TRACT 3, LOTS 5A & 5B (AMD), subject to the original conditions previously approved by the Planning Commission, including the approval of the EAMP compliance statement.

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

- f. DP 2014-72: COONS PROPERTY, TRACT 1 (A PORTION OF) (5/26/15)* - located at 4251 Saron Drive.
(Council District 8) **(Rich Design Studios)**

Note: The Planning Commission approved this item at their September 11, 2014, meeting, subject to the following conditions:

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 landscape buffers.
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. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Addition of exterior building dimensions.
12. Addition of canopy height information.
13. Document compliance with Article 21-4(e) of the Zoning Ordinance prior to certification.
14. Denote access to proposed open space and private park area on plan.

Note: The applicant now requests a continued discussion for this plan, to increase the lot coverage and the building floor area.

The Subdivision Committee made no recommendation.

The Staff Recommends: **Approval**, subject to the original conditions previously approved by the Planning Commission, with one additional requirement:

15. Correct building floor area on plan to match site statistics.

Staff Presentation – Mr. Martin directed the Commission's attention to the development plan for Coons Property, Tract 1 (a portion of), located at 4251 Saron Drive. He oriented the Commission to the location of the subject property on a displayed rendering of the plan, and explained the surrounding street system and the uses that are in the general vicinity. He said that the applicant has requested a continued discussion of this plan, to increase the lot coverage and the building floor area. He then said that when the staff was about to certify the plan, they noticed a slight discrepancy in these site statistic numbers. After discussing this with the applicant, their architect had intended to build a little more than what was being shown on the development plan and approved by the Commission. He said that the increase is no more than 800 sq. ft., but the Commission is required to approve any increase in square footage. He then said that this proposal is still within the requirements of the R-4 zone, and staff is still recommending approval of the applicant's request, subject to the original conditions previously approved by the Planning Commission, with one additional requirement:

15. Correct building floor area on plan to match site statistics.

Representation – Kevin Rich, Rich Design Studio, was present representing the applicant. He said that this project has moved into the construction/grading phase; and, in speaking with the staff, they are aware of the topography challenges with this project. He then said that they are providing access to the open space on the north side of the property via Saron Drive, but not a secondary access due to the constraints of the land. He requested that condition #14 be deleted or further clarified by the staff. With that said, he indicated that the applicant was in agreement with the staff's recommendations, and requested approval of DP 2014-72. Mr. Martin verified that that was correct, and said that access to the open area can be provided by the sidewalk along Saron Drive.

Planning Commission Questions – Mr. Brewer asked the total square footage of this building before the increase. Mr. Martin said that 39,650 sq. ft of lot coverage has been reported in the footprint, but the total sq. ft. was shown as being over 85,000 sq. ft. He then said that the staff could not verify how the applicant determined those numbers, which is why the staff asked for clarification. Mr. Brewer said that it is silly for the Planning Commission to waste their time on 800 square feet, but the staff noticed a significant difference in the numbers from what is actually being shown and what would be built. Mr. Martin explained that the staff had problems reconciling the square footage and the floor area ratio statistics.

The Chair asked if condition #14 could be deleted. Mr. Martin said that, with the site constraints of the property and the fact that access to the open space can not be provided other than by the sidewalk, that condition can be deleted from the list of recommendations.

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

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

Action - A motion was made by Ms. Richardson, seconded by Ms. Plumlee and carried 11-0 to approve DP 2014-72: COONS PROPERTY, TRACT 1 (A PORTION OF), subject to the original conditions previously approved by the Planning Commission, deleting condition #14 and adding one more requirement:

15. Correct building floor area on plan to match site statistics.

- C. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Cravens, seconded by Ms. Plumlee, and carried 11-0 to approve the release and call of bonds as detailed in the memorandum dated March 12, 2015, from Barry Brock, Division of Engineering.

VI. **COMMISSION ITEMS** – The Chair will announce that any item a Commission member would like to present will be heard at this time.

Note: A recess was declared by the Chair at 2:44 p.m. and the meeting re-convened at 2:59 p.m.

1. **BOAR 2015-1: MICHAEL L. WARNER** – an appeal to the Planning Commission of the denial of a permit by the Board of Architectural Review, for property at 137 S. Hanover Ave.

The Staff Recommends: Disapproval and that the decision of the BOAR be upheld, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested alterations to a property, based on the Design Guidelines established by the local Historic Preservation Commission, specifically those cited by the staff as they apply to the use of vinyl, as well as the materials allowed for fences in historic districts.
2. The interpretation made by the Board with regard to use of vinyl for fences is consistent with the disallowance of vinyl as stated in the remainder of the Guidelines. Vinyl has never been permitted in the local historic districts, even with the more recent revision in the Design Guidelines to allow a greater variety of materials to be used in building construction and, by extension, fences.
3. The reference in the Design Guidelines to use of more contemporary materials, including fiberglass (which resulted in a misinterpretation of the Guidelines by the appellant), is contained in the Design Principle for new construction and primary structures, and is not referenced in the Design Principle or Design Guidelines for fences. This is a good indication that it and, by extension, vinyl may not be used for fences, even though there is no specific language regarding preclusion of its use in the text addressing fences.

Staff Presentation – Ms. Rackers explained that this is an appeal to the Planning Commission for a decision made by the Board of Architectural Review (BOAR) in denying a Certificate of Appropriateness (COA) for property at 137 S. Hanover Avenue. She directed the Commission's attention to an aerial photograph, and said that the property in question is a two-story brick home that was built in 1921. She then said that it is located within the Ashland Park Historic District, two properties north of Fincastle Road.

Ms. Rackers said that, on December 10, 2014, the Board of Architectural Review had denied a Certificate of Appropriateness for a vinyl fence in the rear yard of the subject property. She then said that the appellant (Mr. Warner) is not the owner of the property, but is the contractor who renovated the house and property, extensively, in the spring of 2014. She added that later that year this house took first place for the 2014 "People's Choice" award for remodeled homes. She noted that there were several elements of the remodel that required the Historic Preservation's staff's, as well as the Board's, approval to obtain a Certificate of Appropriateness. She explained that one of the changes approved by the Board was for the installation of a 6-foot privacy fence. She said that the elevation drawings noted that the fence was to be made of wood, not vinyl. She then said that the Board had added a condition for the appellant to come back to either the staff or the Board for a review of the final details, which should be done prior to the project being completed. Ms. Rackers said that after the work was completed, the Historic Preservation staff performed their usual inspection of the property to determine compliance with the guidelines and any other conditions that were imposed by the Board. She then said that the staff had found that the fence in the back was made of vinyl, rather than wood.

Ms. Rackers directed the Commission's attention to a photograph of the rear view of the house, and explained that the approval for the Certificate of Appropriateness included the following changes to the property:

- Change existing asphalt driveway to pavers
- Change front walkway to pavers
- Install a new opening to accommodate a bar window
- Replace and expand the second floor deck to create a covered deck area (on ground floor)
- Replace the rear deck with a new deck
- Demolish garden shed along the south wall
- Remove the rear masonry wall
- Remove holly trees at the rear of the property
- Install a rear deck with earth below
- Install a 6-foot fence

Ms. Rackers said that the subject of this hearing today is the 6-foot vinyl fence that surrounds the rear yard and pool area. She then said that, after the Historic Preservation staff's final inspection, a Notice of Violation was sent to the property owners; and in response, they requested that the vinyl fence be allowed to remain because it had been very costly to install. She added that the property owner's contractor filed another application for the vinyl fence and that request was heard by the Board at their December 10th hearing. She said that the Historic Preservation staff presented their staff report/analysis with a recommendation of disapproval, citing the applicable Design Guidelines and Design Principles. There was a lengthy discussion between the Board and the appellant, and Mr. Warner explained the reasoning behind the use of vinyl rather than wood. Ms. Rackers said that he told the Board that that material was the property owners' material of choice, based on the options given to them by Geddes Fence & Pool Co. She then said that Mr. Warner further stated that Geddes Fence & Pool Co. explained to the property owner this type of fence would likely work better as a pool enclosure, particularly for a salt-water pool.

Ms. Rackers said that Mr. Warner did concede that the Design Guidelines generally prohibit the use of vinyl, but he thought that only applied to principal structures, not to fences. She then said that he also believed that fiberglass fences were permitted, so vinyl should also be permitted. She explained that at the December hearing Mr. Warner stated that the fence was confined to the rear yard and could not be seen from the street. However, the Chair responded that the Board cannot limit itself by only regulating what is seen from the street; but the whole property must be considered on its own, as well as an element of the entire historic district in which it is located. The Chair also stated that the Board cannot make allowances for changes to the rear yards or any other small changes that would go against the Design Guidelines. If this were allowed, that would begin to "chip away" at the neighborhood's fabric, resulting in the entire historic district being lost; and the Board is charged to preserve/maintain these areas.

Ms. Rackers said that the Chair asked the staff for clarification regarding the use of fiberglass; and, in response, Ms. Armstrong explained that that reference is in the Design Guidelines for new construction on primary structures, and is not intended for fences. She then said that Ms. Armstrong added that, throughout the Design Guidelines, vinyl is generally disallowed. She said that the Design Guidelines are broken out in to various elements such as landscaping, hardscaping, primary structures, fences, and so forth. In each one of these elements, except for fences, vinyl is not allowed. She then said that the fence design guidelines do not make a specific reference to vinyl; however, it does state that the materials that are allowed include wood, cast or wrought iron, brick, stone or woven wire. Ms. Rackers said that the Historic Preservation staff cited several Design Guidelines & Principles to support their recommendations of disapproval. The staff had also stated that the use of a vinyl fence, rather than wood, is not within the character of the Ashland Park Historic District, as the predominant materials for fences in that area are wood, iron and/or brick. The staff report concluded by stating that the use of vinyl "provides an imitation historic appearance and is suburban in character, which is not permitted for this historic urban neighborhood." She added that when the Board was discussing this case, each of the members expressed his/her agreement with the staff's assessment and voted unanimously to disapprove the application. She noted that one of the Board members recused himself since he lives were in the notification area for the property.

Ms. Rackers said that in the letter of appeal, it was noted that the Certificate of Appropriateness simply stated that the owners of the property were approved for a 6-foot privacy fence, and there was no mention of the building material, which is true. However, the elevation drawings specifically called out a wood privacy fence, which is what the Board approved. She said that the type of material was not questioned because of the notation on the elevation drawings; and if the Board would have questioned the materials to be used, they would not have allowed vinyl. .

Ms. Rackers said that, in reviewing this case, it cannot be said that either the Historic Preservation staff or the BOAR erred in their assessment regarding the Design Guidelines. She then said that, even though there is not a specific reference to vinyl in the Design Guidelines or Principles for fence, it is noted through the guidelines; and this should be some indication that vinyl is not allowed. She added that the Board's final comments specifically noted that there are no vinyl fences in the Ashland Park Historic District; and if allowed in this case, it would create a precedent and could lead to a possible "domino effect." This could result in the entire neighborhood losing its historic character due to "chipping away" of that character/fabric little by little.

Ms. Rackers said that the staff was recommending: **Disapproval** and that the decision of the BOAR be upheld, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested alterations to a property, based on the Design Guidelines established by the local Historic Preservation Commission, specifically those cited by the staff as they apply to the use of vinyl, as well as the materials allowed for fences in historic districts.
2. The interpretation made by the Board with regard to use of vinyl for fences is consistent with the disallowance of vinyl as stated in the remainder of the Guidelines. Vinyl has never been permitted in the local historic districts, even with the more recent revision in the Design Guidelines to allow a greater variety of materials to be used in building construction and, by extension, fences.
3. The reference in the Design Guidelines to use of more contemporary materials, including fiberglass (which resulted in a misinterpretation of the Guidelines by the appellant), is contained in the Design Principle for new construction and primary structures, and is not referenced in the Design Principle or Design Guidelines for fences. This is a good indication that it and, by extension, vinyl may not be used for fences, even though there is no specific language regarding preclusion of its use in the text addressing fences.

Planning Commission Questions - Mr. Drake asked when the Design Guidelines were adopted. Ms. Armstrong replied that the Design Guidelines were revised in 2010. Mr. Drake then asked if salt water pools or its corrosive effects were considered at that time. Ms. Armstrong said that, in the staff's research, they could find no real information on fencing and the difference in impact between salt water pools and regular pools. She then said that there was no discussion about converting the existing pool to salt water when the fence was being installed.

Historic Preservation Office Presentation – Ms. Amelia Armstrong and Mr. Barry Dennis, LFUCG Historic Preservation Office, were present. Ms. Armstrong submitted into the record the Certificate of Appropriateness application, Article 13 of the Zoning Ordinance (Historic Preservation section) and the Design Guidelines. She presented several photographs to the Commission and gave a brief description of each (a copy of each of the mentioned items is attached as an appendix to these minutes), as well as a brief history of the case.

Mr. Dennis said that the elevation drawings that were distributed to the Commission do note an 8-foot fence that would be made of wood. This type of material is allowable in the Design Guidelines. He then said that during the BOAR hearing there was some discussion on the type of materials that are allowed in an historic district, including the use of fiberglass. Fiberglass and vinyl are not listed in the Design Guidelines for fences, and it is therefore implied that these types of material are excluded from use in historic districts.

Mr. Dennis said that the Certificate of Appropriateness states that the property may now be considered for issuance of a building permit by the Division of Building Inspection or if a building permit is not required for the alterations requested, the work may begin. He then said that in the staff's research there were no permits issued by Building Inspection for either the fence or the deck. The only permit on file was specifically to the interior of the house.

Mr. Dennis concluded by requesting that the Planning Commission disapprove this application and uphold the decision of the BOAR.

Planning Commission Questions – Mr. Berkley asked where, in the staff's report, fences are noted. Mr. Dennis directed the Commission's attention to the Design Principles noted on page 30 of the staff report.

Mr. Drake asked if woven wire (chain link) is acceptable in the historic district. Mr. Dennis said that chain link is not acceptable and explained that woven wire is not the same and is a common historic material.

Appellant Presentation – Mike Warner was present representing the property owners. He said that the staff and Board have been wonderful in helping him. He then said that a mistake was made, and they admit they made the mistake. They never tried to hide the fence; this house took first place for the 2014 "People's Choice," and the interior and exterior portions of the house has been published in magazines. He directed the Commission's attention to the staff's photographs, and said that they are not arguing that this is vinyl; what they are arguing is that vinyl is not listed in the Design Guideline for fences. He said that the Design Guidelines reads: "Fences were typically constructed of wood, cast or wrought iron, brick, stone or woven wire. Lexington has a number of historic metal fences. Historic fences should be preserved and maintained. The construction of new fences based upon historic designs and materials is also appropriate. Cast iron or woven wire is preferable for 19th and early 20th century buildings. Wood fences are also allowed; however, it is important to keep the fence as transparent as possible so as not to obscure the view of the historic building." He said that he does not take this to be the total list of building materials, and they referenced fiberglass to bring out the point that both fiberglass and vinyl were only mentioned for principal structures, not in the fence guidelines.

Mr. Warner said that they made an honest mistake, and from a distance the vinyl fence appears to be wood. He then said that over time the building codes, requirements and guidelines have changed; and, at some point in the future these will change again. Perhaps then the types of material that can be used for fencing will be clearly referenced. He requested that the Commission overturn the BOAR decision and allow the fence to remain.

Planning Commission Questions – Mr. Penn asked what decision was made on vinyl-clad windows in the adopted 2010 Design Guidelines. Ms. Armstrong said that vinyl in general is prohibited in any historic district; however, aluminum-clad windows are allowable. Mr. Penn confirmed that the change was to allow aluminum-clad windows. Ms. Armstrong replied affirmatively.

Mr. Penn said that the house originally had a brick wall along the driveway, and he is assuming that the wall was in disrepair. Ms. Armstrong replied that the wall was covered in ivy and the homeowners chose to replace the brick wall with the fence. Mr. Penn asked if it was the Board's preference to keep the brick. Ms. Armstrong replied that that was not necessarily the case, and said that the property owners were granted a permit to replace the brick wall with a fence.

Mr. Cravens asked when the H-1 overlay was approved for this area, to which, Ms. Armstrong replied January 22, 2013. Mr. Cravens then asked, prior to that overlay being approved, if any type of material was allowed, including vinyl. Ms. Armstrong said that that was correct, adding that those cases were grandfathered in as existing conditions.

Ms. Plumlee asked if the Commission voted to uphold the BOAR decision, what would happen to the fence. Ms. Armstrong explained that the appellant would need to submit an application to the BOAR for a new fence.

Mr. Berkley asked if vinyl fences had been vetted when the Design Guidelines were revised. Ms. Armstrong said that this is the first vinyl fence that the staff and the BOAR have encountered, and throughout the entire set of design guidelines there was a "no vinyl" policy. Mr. Berkley said that vinyl is not specifically stated with regard to fences, and the way he interprets the guideline, he agreed with Mr. Warner in that it is very vague. He asked, at the time the Design Guidelines were revisited, if vinyl fences were vetted. Ms. Armstrong said that vinyl was vetted, but the Committee was not thinking to include fences. She then said that they concentrated on the type of materials for the building structure, and it was the philosophy throughout the new guidelines to have no vinyl.

Mr. Drake asked what the objection was to using vinyl. Ms. Armstrong said that it was a combination of the type of material and the look of the material, as well as an environmental component. She then said that the Design Guidelines encompass all of the historic districts, and vinyl was a material that the Committee did not want to continue using in these areas. Mr. Drake said that the environmental, health and safety aspects would argue for vinyl rather than against it, since there are energy efficient qualities with using it. Ms. Armstrong said that, as part of the Committee's discussion, they were speaking to the impact of chemicals used in vinyl leaching out from building materials, such as windows, siding, and so forth.

Mr. Cravens said that the Design Guidelines say "fences constructed of wood" and asked if any type of wood is permitted. He then asked if wood boards that resembled the style shown in the photograph would be permitted and if they could be painted white. Ms. Armstrong replied affirmatively, and explained that there have been different types of artistic wood fences used in the historic districts. Mr. Cravens asked if they could build a wooden fence to resemble the vinyl fence shown in the photograph on this property. Ms. Armstrong said that that was correct - if the fence is made of wood, it would be permitted.

Ms. Richardson asked if there are rules to follow with regard to the color of the fence. Ms. Armstrong replied negatively. Ms. Richardson then asked if the fence could be pink, to which Ms. Armstrong replied that it could - color is not regulated.

Mr. Penn said that he can not imagine using woven wire around the swimming pool, unless it was to keep out animals. Ms. Armstrong said that this is a throwback to the historic eras and a way to have older fences that are of that era. She then said that this is a way to distinguish a chain link fence and a woven fence, each of which has a different appearance. It is very rare to have an application to use woven wire; and if they do, it is generally to restore what is currently on that property.

The Chair said that the elevation drawings noted the wooden fence, and asked if it was the property owners intent to use that type of material in the beginning, then changed it to vinyl fencing. Mr. Warner said that they hired an architect to design the fence, and that firm placed a notation for the type of material on the drawing without discussing the type of material with either of the property owners, Geddes Fence & Pool Co or himself. He then said that it was an oversight on his part, and they made a mistake. It would be a hardship on the property owners if this fence were required to be taken down for installation of a wooden fence that resembled the vinyl design.

Ms. Richardson asked what the estimated cost to remove this fence and install a wooden privacy fence would be. Mr. Warner said that the cost of the vinyl fence was approximately \$9,000, and to remove and install a new fence would be an additional cost to the property owners in about the same amount as the vinyl fence.

Mr. Berkley asked if the neighborhoods were notified of the BOAR hearing. Ms. Armstrong said that that was correct. Mr. Berkley then asked if there was neighborhood opposition. Ms. Armstrong replied negatively. She added that the appellants did not obtain a building permit for the fence.

Planning Commission Comments – Mr. Brewer said that the outcome of the renovation of this house is a beautiful piece of work; the renovations are truly outstanding, and everyone involved should be complimented on this work. However, the Commission must review this case in a careful manner. He said that the elevation drawing noted a wooden fence, and that was the intent according to the application filed. He then said that a mistake was made, but a mistake is not grandfathered in. The only things that are grandfathered are those that have been present for years before the Design Guidelines changed. He added that an Historic District Overlay has the strictest guidelines for a reason, and whether or not you can see a change is still a violation of the rules and is significant to the historic district. Mr. Brewer said that whether or not a vinyl fence can be made to resemble a wood fence is irrelevant, and the argument that vinyl material was not specifically stated as being prohibited does not mean it is allowable – that is completely wrong. He then said that there are examples stated of what is allowed and asked what if someone wanted to use a broken glass fence because that material is not stated in the Design Guidelines. It's incorrect logic, and he believes it to be flawed. Mr. Brewer said that the Commission should put some credibility in their peers and colleagues sitting on the BOAR, noting that they did their due diligence and made a decision. He sees no mistake in the Historic Preservation staff's or the BOAR's assessment that would make him procedurally overrule their decision. He concluded by saying that, as far as the cost to replace the vinyl fence with wood, that is a drop in the bucket compared to what the cost of the renovation came to and what the house is worth.

Mr. Penn said that the reason he asked about the vinyl-clad windows versus the aluminum-clad windows is because of past discussions throughout the years. He then said that it is so expensive to maintain wood material and now the new Design Guideline allows white aluminum-clad windows, but not vinyl-clad windows. To him that is a pretty good indication that vinyl is not acceptable; and with the past cases regarding aluminum or vinyl-clad windows versus wood windows, it has made it more affordable to the home owner. He believes it's too big of a stretch to have prohibition of the use of vinyl go from the primary structure to the fence.

Mr. Cravens said that even with the fact that the elevation drawing notes a wood fence, plans do tend to change as the job goes forward while it's under construction. He then said that, as he reads the Design Guidelines, "no vinyl" means to him no siding or windows. Vinyl fencing is a new product and he believes that there is a "crack" in the Design Guidelines. He said that the Design Guidelines detail everything down to the last minor detail, but it does not reference the type of material allowed for a fence. To him that is a small gap in the guidelines. He said, whatever the outcome of this case, it should be an indication to add new language to state "no vinyl."

Ms. Plumlee asked, after this body makes their decision, what assurances are there to enforce that decision. She then said that enforcement must be relative to the Commission's decision, and the government should step in to enforce those decisions; otherwise, the Commission is wasting its time.

Mr. Drake said that he does not disagree with anything that had been said, but he does urge the Board to revise or amend the Design Guidelines and give vinyl fences another consideration. He then said that from an environmental, health and safety aspect, vinyl is much more preferred than wood. He added that vinyl is stable, and there are no harmful chemicals associated with the material. He said that not only do plans change, but technology changes over time and there is a risk of running behind the technology curve. In this case they are behind it. He said that the Commission must consider upholding the Design Guidelines as they exist. He then said that this troubles him, and he is torn with this issue. He added that he does not want to undermine the BOAR, but at the same time he is sympathetic to the appellant's situation.

Mr. Brewer said that, from a different perspective, if the Commission rules against this appeal, then he would encourage this discussion to be taken up with a Committee to review and determine if the guidelines should be changed. He then said that, to him, vinyl is prohibited; and he believes that if the property owners had requested vinyl, they would have been denied. He said that he does not believe this should be "legislated from the bench" to allow something that is prohibited by the existing rules.

Ms. Richardson said that there is good reason why the Design Guidelines are strict and very specific. However, she indicated that she does have a problem with the language and would like to see it rewritten. She said that, to her, the language "fences were typically" only gives suggestions" - not that it's the "golden rule" on what is the only material that can be used in an historic district. She then said that the current language is extremely misleading; and if she were to build a fence, she would not necessarily go to the Design Guidelines to review the section for windows. This is a real flaw in the current regulations; and it can and has been misinterpreted. She said that with all of these rules and strict regulations, enforcement after the fact must also be applied. Since the removal of a structure can be expensive, the Design Guidelines must be incredibly specific on what can and can not be done in an historic district. Ms. Richardson indicated that this situation really does bother her.

Mr. Berkley said that he does not believe the Commission is going against the BOAR's decision because they have not vetted this issue. He then said that the Commission knows how the BOAR feels about windows, but they do not know how they feel about fences. In response, Mr. Brewer said that the BOAR ruling gives a pretty clear statement. Ms. Rackers said that they are speaking to the BOAR decisions, not the Historic Preservation Commission. She explained that the Historic Preservation Commission creates the Design Guidelines, whereas the BOAR and the staff interpret them.

Mr. Berkley noted that the staff said that vinyl fences have never been vetted by the people who wrote these design guidelines. Ms. Rackers said that the people who wrote these are not the BOAR. Mr. Brewer replied that his point is that this issue has not been vetted. Ms. Rackers said that vinyl material had been discussed when writing the Design Guidelines. It is dangerous to human health, because of the potential of melting, creating toxic fumes, which is one of the reasons it is not allowed by the Design Guidelines.

Ms. Mundy said that her family had lived near historic Williamsburg, Virginia for a long time and vinyl fences are allowed there; and to her this says a lot. She then said that if Williamsburg, Virginia allows vinyl, then perhaps Lexington is a little behind. She added that the Design Guidelines do not truly prohibit vinyl; and if vinyl is good enough for the historic district in Williamsburg then it is good enough for Lexington.

Mr. Wilson said that he liked the fence and it looks good; and as long as he has sat on this Commission, most of the time people do not admit when they made a mistake, but rather try to cover it up. He said that he can sympathize with someone admitting they were wrong, but he is in agreement with his colleagues on both sides of the issue. He understands that there are rules to follow, but this case opens up the opportunity for this issue to be discussed. He said that, under the current Design Guidelines, he does not see any other way but to disapprove the request and uphold the BOAR decision. He thanked the appellant for making his presentation and the admission to his mistake.

The Chair said that the "People's Choice" award is just a testament of the work that Mr. Warner has done in Lexington. However, his work is not in question, but rather as it complies with the Design Guidelines for the historic district. He then said that there are H-1 Overlays for specific reasons; and in listening to both sides of the issue, he believes that there is a small crack with in the regulations when it comes to vinyl fencing. He does not know how big that crack is, and he does not know if that crack warrants an approval recommendation for this case. He said that, simply put, under any other setting, in an H-1 Overlay, the use of vinyl would not be allowed. He then said that vinyl has been discussed many times in the past, but vinyl fences were never an issue because they did not exist when the Guidelines were written. However, this is not a reason to allow this vinyl fence to remain. He said that a mistake has been made and he is sorry for the cost, but this house is within

an historic district and the Commission should adhere to the guidelines. He then said that if there are going to be historic districts, then the Commission must support the Design Guidelines and the BOAR's decision.

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

Discussion - Mr. Brewer said that this is not a review of the work that had been done on this property, nor is the vote, once the Commission takes action. He then said that, as a body, the Commission must uphold the BOAR's decision and the rules that were given. He believed it would be a worthwhile endeavor for the Historic Preservation Commission to revisit this issue, but this is neither the time nor place to make those changes. Therefore, he would make a motion to disapprove the appeal.

Action - A motion was made by Mr. Brewer, seconded by Mr. Wilson, and failed 5-6 (Cravens, Plumlee, Mundy, Berkley, Drake and Richardson opposed) to disapprove BOAR 2015-1: MICHAEL L. WARNER.

The Chair indicated that that motion failed, and asked guidance from the Parliamentarian. Mr. Wilson confirmed that the motion had failed; and according to parliamentary procedures, the original motion can not be reversed unless the Commission does something that is significant to change the motion; therefore the motion has died.

Mr. Cravens asked if the Commission can move to suspend the rules. Mr. Wilson said that if the Commission made a motion to suspend the rules it would need to have a 2/3 vote and not a majority vote.

Action - A motion was made by Mr. Cravens, and seconded by Mr. Berkley, to suspend the rules and re-consider the previous motion.

Discussion of Motion – Mr. Brewer asked if the motion on the floor is to suspend the rules in order to revisit the original motion or to make a new motion. Mr. Cravens said that he would like to make a new motion for approval. Mr. Brewer asked if the rules need to be suspended to make a new motion. Mr. Cravens replied yes, according to the Parliamentarian. The Chair indicated that that was the case, as well as and said that the Commission has been in this type situation before. Mr. Wilson replied that the Commission would need to make a motion to suspend the rules in order to make a new motion for approval; otherwise, there would need to be a significant change. He then said that the Commission can not go from disapproval to approval without suspending the rules.

Mr. Drake asked, if this motion fails, then what kind dilemma this would pose for the applicant. Mr. Wilson said that if the motion fails, then the appellant will lose his appeal with this particular body. In other words, the appellant would be allowed to do whatever he wants to do based on this body's decision because the body, in effect, has voted that the rules were nebulous and confusing. Consequently, in effect, this particular fence would be grandfathered in the H-1 overlay. Mr. Drake asked if that was the case, even without considering another motion. Mr. Wilson replied affirmatively. He then said that the appellant has actually won, right now, on the predication of the vote that was taken. Mr. Cravens withdrew his motion.

Discussion (cont.) - The Chair confirmed that the motion had been withdrawn by Mr. Cravens and asked if Mr. Berkley was in agreement. Mr. Berkley indicated affirmatively.

Ms. Jones said that the Law Department was not in agreement, because the Zoning Ordinance states that when there is an appeal, the Commission shall conduct a public hearing and vote to either approve or deny the appeal. She then said that, as the Law Department sees it, at this point, the Commission has not done either. She added that the original motion was to disapprove the appeal, in other words not agree with the appeal, and that motion failed. She said that if the motion goes in the other direction and that motion does not pass either, then the BOAR's decision would stand since the Commission voted but did not take any action with that vote.

Mr. Wilson asked for clarification to the original motion, which he interpreted as upholding the staff's and the BOAR's decision. Mr. Brewer said that his motion was to support the BOAR's decision to deny the request. Mr. Wilson asked, from a legal perspective, what that means. Ms. Jones said that the appellant, who installed the fence and has filed this appeal, wants the Commission to agree with them and not with the decision made by the BOAR. She then said that the Commission would be disapproving his appeal since his appeal was to have that decision changed. She added that the decision made by the BOAR was telling the appellant that they can not have the vinyl fence, and they disapproved the appellant's request. Then the appellant appealed the BOAR's decision to the Planning Commission, because under the Zoning Ordinance the Commission is the next body of appeal from the BOAR asking the same thing. In effect, the appellant is saying that they have been to the BOAR, procedurally, and that body has said no/disapproved their appeal. Now the appellant is coming to the Planning Commission, which is the next level; and the staff's recommendation to the Commission is to also disapprove the appeal, which would uphold the BOAR decision.

Ms. Jones said that if the Commission approves the appellant's appeal, then the Commission would be agreeing with the appellant, who is asking for the fence to remain. She then said that the Commission must look at who filed the appeal with the Planning Commission. She explained that the original motion that was made by Mr. Brewer, and seconded by Mr. Wilson was to disapprove the appeal, which had failed.

Mr. Wilson asked that once that motion failed, where that leaves the appellant now. Ms. Jones said that that is the problem. Mr. Wilson said that if the Commission did not uphold the decision made by the BOAR, and went in a different direction, that would be one thing; but they did not agree with the decision made by the BOAR. He asked, to that end, if this doesn't allow the appellant to keep the fence. Ms. Jones said that that is the question.

Mr. Brewer said that if his motion was not clear, then he needed to know what could be done to restate it. He then said that his intent with the motion, whether it was correct or incorrect, was to support the BOAR's decision to disapprove and the staff's recommendation of disapproval. He added that if that was confusing to the Commission, and someone voted unintentionally the wrong way, then this should be fixed. Mr. Drake said that that is the way he interpreted the motion. The Chair said that the Commission interpreted the motion correctly. Mr. Cravens said that the original motion failed, so there needs to be another motion to approve the appeal. Mr. Wilson said that if that is the case, the motion to suspend the rules would be in order.

Mr. Berkley said that the Zoning Ordinance uses the word "shall" which means the Commission must either approve or disapprove the appeal, which has not happened. He asked if this trumps parliamentary procedures. Ms. Jones said she believes that it does. Mr. Wilson said that no parliamentary procedures can overrule the laws of the land or the constitution. Mr. Drake confirmed that the rules do not have to be suspended, with which Mr. Wilson agreed.

The Chair asked if the Law Department would still require a motion. Ms. Jones replied affirmatively, and said that the Commission made a motion to disapprove the appeal, which had failed; now the Commission must make a motion for approval.

Action - A motion was made by Mr. Cravens, seconded by Mr. Berkley, to approve the appeal made by Michael Warner to the Planning Commission, for property at 137 S. Hanover Ave. (BOAR 2015-1), based on the information provided at this meeting.

Discussion of Motion – Mr. Drake asked if the motion on the floor does what the Commission thinks it does. Ms. Jones said that she is assuming that what the Commission wants to do is grant the appeal and allow the appellant to keep the fence. Mr. Drake confirmed that the motion on the floor is designed to keep the fence, which Ms. Jones replied affirmatively.

The motion carried 6-5 (Penn, Brewer, Owens, Wilson and Smith opposed).

Mr. Wilson said that, as it relates to parliamentary procedure, this is one of the reasons a negative motion should never be made. He then said that, essentially, nothing has been changed; but the appellant now has the opportunity to move forward.

2. **WORK SESSION** – The Chair reminded the Commission members of the upcoming work session scheduled for March 19, 2015.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **NEXT MEETING DATES**

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	March 25, 2015
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 26, 2015
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	April 2, 2015
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	April 2, 2015
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	April 9, 2015
Work Session , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	April 30, 2015

X. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 4:01 PM.

Mike Owens, Chair

Will Berkley, Secretary