

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
SUBDIVISION ITEMS**

**May 14, 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; Patrick Brewer; Karen Mundy Carolyn Plumlee; Joseph Smith; Bill Wilson; and Frank Penn. Will Berkley; Carolyn Richardson and David Drake were absent.

Planning staff members present - Bill Sallee; Barbara Rackers; Tom Martin; Cheryl Gallt; Kelly Hunter, Dave Jarman and Denice Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; 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 there were no minutes to be considered at this time.

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

1. DP 2015-29: POOLE & JEFFERSON PROPERTY (BRUCE GLEN PROPERTY) (AMD) (7/5/15)\* - located at 3390 Richmond Road. (Council District 7) **(Midwest Engineering)**

Note: The purpose of this amendment is to revise the parking and circulation on Lot 1A and to add square footage on Lot 1B.

The Subdivision Committee Recommended: **Postponement**. There is a significant difference between the plan and the improvements already on the subject site.

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. 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. Addition of bearings and distances for entire property.
11. Correct plan title.
12. Denote name and address of developer on plan.
13. Addition of record plat designation.
14. Clarify area of amendment on vicinity map.
15. Dimension existing access points, driveways and walkways.
16. Denote construction access point location.
17. Denote height of building in feet.
18. Denote use of existing and proposed buildings.
19. Denote both required and proposed parking.
20. Addition of notes #2, #4, #12 & #13 from previous development plan (DP 99-39).
21. Correct Purpose of Amendment note.
22. Discuss existing vehicular use area adjacent to Cove Lake, Unit 2.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of DP 2015-29: POOLE & JEFFERSON PROPERTY (BRUCE GLEN PROPERTY) (AMD) to the June 11, 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. Wilson, seconded by Mr. Brewer, and carried 8-0 (Berkley, Richardson and Drake absent) to postpone DP 2015-29: POOLE & JEFFERSON PROPERTY (BRUCE GLEN PROPERTY) (AMD) to the June 11, 2015, Planning Commission meeting.

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2. DP 2015-30: HIGH POINT SUBDIVISION (MONON, INC.) (7/5/15)\* - located at 1123 Winchester Road.  
(Council District 5) **(Myke Robbins)**

The Subdivision Committee Recommended: **Postponement.** There are concerns that the proposed use may not be allowed in the B-3 zone.

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. 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. Addition of building heights in feet.
10. Denote name and address of developer on plan.
11. Addition of contour intervals.
12. Addition of tree protection plan and tree canopy information.
13. Denote name and address of plan preparer on plan.
14. Remove new pavement/parking areas within 3' of side property lines.
15. Identify interior landscaping areas on the face of plan.
16. Delete parallel parking spaces proposed next to existing building.
17. Dimension entrance details.
18. Discuss compliance with Art. 8-20(b)(28) for proposed uses.
19. Discuss apparent drainage area in rear of property.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of DP 2015-30: HIGH POINT SUBDIVISION (MONON, INC.) to the June 11, 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. Smith, and carried 8-0 (Berkley, Richardson and Drake absent) to postpone DP 2015-30: HIGH POINT SUBDIVISION (MONON, INC.) to the June 11, 2015, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, May 7, 2015, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Joe Smith, Carolyn Plumlee, Frank Penn 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 Gallt, Kelly Hunter, Denice Bullock and Dave Jarman, as well as Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; C.D. Schnelle, Division of Police and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

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

**Criteria:**

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

**Requests can be made to remove items from the Consent Agenda:**

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

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At the request of the Chair, Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval for all of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2015-39F: TUSCANY, UNIT 8-B (7/5/15)\* - located at 1080 Haddrell Point.  
(Council District 6)

(EA Partners)

The Subdivision Committee 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. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Addition of no parking area on right-of-way adjacent to Lot 91, per PLAN 2012-101P.
10. Denote driveway location restrictions for Lots 45 & 107.
11. Clarify note #14.
12. Addition of address of basin in note #7.
13. Resolve 10' access to HOA area between Lots 62 & 63.

2. PLAN 2015-46F: DOZIER PROPERTY, UNIT 1 (7/28/15)\* - located at 3581 Harrodsburg Road.  
(Council District 10)

(Eagle Engineering)

The Subdivision Committee 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. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Denote: There shall be only one single family dwelling unit per lot on Lots 1-10.
10. Addition of property owner's drainage maintenance note per Art. 5-4(g).
11. Addition of date of plan preparation in title block.
12. Revise note #10 to the approval of the Division of Engineering.
13. Addition of utility providers on plan.
14. Increase font size for plan notes and certifications.

3. PLAN 2015-47F: DOZIER PROPERTY, UNIT 2 (7/28/15)\* - located at 3581 Harrodsburg Road.  
(Council District 10)

(Eagle Engineering)

The Subdivision Committee 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. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Denote: Lot 16 shall be developed in accordance with the approved final development plan.
10. Addition of property owner's drainage maintenance note per Art. 5-4(g).
11. Addition of date of plan preparation in title block.
12. Revise note #10 to the approval of the Division of Engineering.
13. Addition of utility providers on plan.
14. Denote: There shall be only 1 single family dwelling unit per lot on Lots 11-15.
15. Complete sidewalk in cul-de-sac right-of-way.

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16. Increase font size for plan notes and certifications.
4. DP 2015-28: HAMBURG PLAUDIT PLACE, LOT 3 (AMD) (7/5/15)\* - located at 1863 Plaudit Place.  
(Council District 6) **(Interplan)**

Note: The purpose of this amendment is to construct a 700 sq. ft. addition at the rear of the restaurant.

The Subdivision Committee 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.
5. DP 2015-31: BEAUMONT FARM, UNIT 1, SEC. 4, LOTS 3 & 7 (7/5/15)\* - located at 3052 Beaumont Centre Circle & 973 Midnight Pass. (Council District 10) **(EA Partners)**

The Subdivision Committee 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. 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. Locate pedestrian connection(s) to public street right-of-way from new building.
12. U: A consolidation plat must be certified and recorded prior to issuance of a Zoning Compliance permit.
13. Resolve details of vehicular use area screening necessary adjacent to Lakecrest Circle by increasing the landscape buffer to 5'.
14. Denote service road access easement cross-section, including curb and gutter.

In conclusion, Mr. Sallee said that the items identified on the Consent Agenda could be considered for approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission, or the audience, in order to permit further discussion.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Berkley, Richardson and Drake absent) to approve the items listed on the Consent Agenda, as recommended by the Subdivision Committee.

- B. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 8-0 (Berkley, Richardson and Drake absent) to approve the release and call of bonds as detailed in the memorandum dated May 14, 2015, from Barry Brock, Division of Engineering.
- C. 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)

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- (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 2015-36F: ASHLAND PARK, INC. SUBDIVISION, UNIT 12, LOT 3 (AMD) (7/5/15)\* - located at 508 Clinton Road. (Council District 5) **(2020 Land Surveying)**

**Note:** The purpose of this amendment is to reduce the building line setback to match the minimum requirement of the Single Family Residential (R-1C) zone.

The Subdivision Committee Recommended: Postponement. It is unclear whether the proposed 30' building line fully complies with Article 5-4(d)(6) of the Subdivision Regulations.

Should this plan be approved, the following conditions 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. Addressing Office's approval of street names and addresses.
4. Relocate north arrow and orient north to the top of the page.
5. Addition of responsibility note for maintaining the drainage.
6. Addition of a 15' KU easement on the rear of this lot.

Representation – Richard Murphy, attorney, was present representing the applicant. He indicated that he was consulting with his clients when the Commission called earlier for postponement requests. He said that, at 11 o'clock that day, they had received a revised staff recommendation of disapproval, which is different from the original recommendation of postponement. They are requesting additional time to respond to this change, as well as evaluate the new information and confer with his clients to determine what the impact will be. Mr. Murphy requested postponement of PLAN 2015-36F: ASHLAND PARK, INC. SUBDIVISION, UNIT 12, LOT 3 (AMD) to the June 11, 2015, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. Linda Allin, residing at 504 Clinton Road, was present, and indicated that there were a number of opposing residents present and they would prefer to settle this issue at today's hearing by allowing the Commission to hear their objections. They requested that this case be heard that day.

Planning Commission Questions – The Chair asked for staff comments as to why the staff's revised recommendation was given to Mr. Murphy late in the morning. Mr. Saltee said that he and Mr. King had been in consultation with the Law Department since the Subdivision Committee meeting a week ago, which concluded with the completion of the revised staff report this morning. He then said that the basic issue associated with this plat is the same as it was at the Subdivision Committee meeting last week. Still, the staff had no objection to postponing this request.

Mr. Penn asked if any new information had come in since Subdivision Committee meeting to make the staff change their recommendation from postponement to disapproval. Mr. Saltee replied that the issue is the same as it was at last week's Subdivision Committee meeting, and there has been no new plan submittal since the Committee meeting.

The Chair clarified that nothing had changed since the Subdivision Committee meeting and the one issue with this request is the building line setback. Mr. Saltee replied affirmatively.

Mr. Murphy indicated that, with the new staff revised recommendation being given to them just a couple of hours before the hearing, it made it extremely difficult for them to make an informed decision as to how his clients wanted to move forward, as well as how to respond to it. He said that it is a fundamental issue of fairness to his clients to approve the postponement request and indicated that this would allow them to speak on this recommendation outside the chamber.

Mr. Brewer said he understood the difficult situation that had been placed on Mr. Murphy's clients; but as it was stated, nothing has changed with this application, with the exception of the staff's recommendation. He then said that the issue is still the same and asked if there is any new information that can be presented. Mr. Murphy said that the staff had articulated some legal issues last week at the Subdivision Committee meeting, and they were hoping that the staff would have recommended approval of this request. He then said that trying to respond to a recommendation of disapproval places them in a bad position, without the additional time being granted. Mr. Brewer said he understood, but he was trying to balance out their request with the number of residents from the

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neighborhood who were present for this case. Mr. Murphy indicated that he understood, noting that the applicants also have their builder and their designer, as well as their engineer present to speak to this case.

Mr. Wilson said that, the issue was, there are new legal issues that have been presented since the last Subdivision Committee meeting, and asked the staff to respond. Mr. Sallee said that the staff were not attorneys, but had just finished researching all of the sections of the Land Subdivision Regulations, and there were some items today that had not been discussed by the staff with the Subdivision Committee last week.

Mr. Cravens said he saw reason in not postponing this and in light of the new disapproval recommendation and the fact that the Subdivision Committee did not see the new reasons for disapproval, as well as the Commission having just received the revised staff report, he agreed with postponing PLAN 2015-36F: ASHLAND PARK, INC. SUBDIVISION, UNIT 12, LOT 3 (AMD) to be fair to the applicants. The Chair asked how long the applicant wanted to postpone this request, to which Mr. Murphy requested to the Commission's next Subdivision meeting in one month.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy to postpone PLAN 2015-36F: ASHLAND PARK, INC. SUBDIVISION, UNIT 12, LOT 3 (AMD) to the June 11, 2015, Planning Commission meeting. The vote on the motion tied 4-4 (Brewer, Plumlee, Owens and Wilson opposed; Berkley, Richardson and Drake absent).

The Chair indicated that since there was a tie vote that motion failed, and asked legal counsel if this case would move forward. Ms. Jones replied affirmatively.

Planning Commission Comments - The Chair said that time limits will be imposed, if necessary and will be 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.

Staff Presentation – Mr. Sallee directed the Commission's attention to the amended final record plat for Ashland Park, Inc. Subdivision, Unit 12, Lot 3, located at 508 Clinton Road. He noted that the staff had received one letter concerning this request and had placed it at the Commission's seats, as well as entered it into the record. The staff had also provided three exhibits regarding this request that would help orient them to the issues associated with this final record plat.

Mr. Sallee directed the Commission's attention to the zoning atlas on the overhead projector, and oriented them to the surrounding area. He briefly explained that the subject property is located on Clinton Road, very close to Cochran Road. He said that Clinton Road is parallel to Adair Road and Bristol Road, which are two cul-de-sacs just off Hart Road, noting that Clinton Road crosses Hart Road to "T" into Prather Road. He added that Clinton Road is also parallel to Culpepper Road to the east, and further east is Chinoe Road. He noted that Chinoe Road is signalized intersections with Cochran Road, Hart Road, Cooper Drive and Fontaine Road.

Mr. Sallee directed the Commission's attention to a series of aerial photographs on the overhead projector to further orient them to the subject property and the surrounding street system toward the north. He explained that, in looking at the closer aerial view of the subject property, there is an existing single family home already built on the subject lot and there are two mature trees in the lot's yard.

Mr. Sallee then directed the Commission's attention to the rendering of this plat, and said that the purpose of this amendment is to reduce the building setback from 50' to 30'. He explained that the minimum setback allowed in the R-1C zone is 30', and the subject property has well over the minimum lot size requirement and has lot frontage of 80 feet. This frontage is far in excess of the current minimum R-1C requirement of 60 feet. He further explained that, when reviewing the approved 1956 plat for this property, it does show that the properties on the northern side of Clinton Road were approved with a 50' building line; whereas, the lots on the southern side of Clinton Road were approved with a 60' building line. He noted that the four lots at the corner of Clinton Road and Cochran Road were platted with a 20' side street side yard along Cochran Road. He said that at the intersection of Clinton Road and Prather Road there were two more lots that were platted in this same manner, one of which has since been subdivided. These side street side yards no longer meet the current zoning regulations, which require a minimum 30' setback.

Mr. Sallee explained that that there are other lots in the Ashland Park area that have a similar note on their plat, but this plat has two rather unusual notes on it that read: "*Any lot transferred shall have a minimum width and area*"

*substantially the same as shown on this plat, and only one principal building will be permitted on any lot,” and “House plans must be approved by the subdivider.”*

Directing the Commission's attention to Exhibit 3, Mr. Sallee said that the interpretation of the first note is the key to reviewing this subdivision plat, and the reason for this can be found under two sections of the Land Subdivision Regulations. He noted that Article 6-4(e) reads: *“Lots for residential or non-residential use shall meet the minimum standards required by the Zoning Ordinance.”* He said that the existing plat and the proposed plat meet the standard for the 30' setback, which does comply with the minimum R-1C requirement. The reason the Land Subdivision Regulations are important is that the Commission's review of a subdivision plat is ministerial in nature. This means that if a plat meets the requirements of the Subdivision Regulations, then the Commission should approve that plat and the Commission is obligated to approve such a plat.

Mr. Sallee said that the staff's review of this plat questions whether this plat fully complies with the Land Subdivision Regulations. There is one Article in the Land Subdivision Regulations that the staff had questioned as to whether or not this request complied, and the staff did raise this issue with the Subdivision Committee last week. He explained that Article 5-4(d)(6) of the Land Subdivision Regulations requires the developer and his engineer to *“show front yard setback as required by the Zoning Ordinance; or, if more restrictive, as desired by developer.”* He said that what the staff had wrestled with was - what was the desire of the original developer. He then said that with the two unusual notes being on the 1956 plat, the question was how the first note should be interpreted. The applicant's interpretation of the first note is that it means the “minimum lot area,” but the staff does not see the word “area” as being qualified in the note. The question at hand was what “area” is involved.

Directing the Commission's attention to Exhibit 2, Mr. Sallee said that the staff had demonstrated the buildable area for all lots in this general area, in addition to showing the proposed changes to the subject property. He then said that the exhibit also indicates the changes that were made to Lots 11, 18 and 25. He explained that since 1956, Lots 11 and 18 had been subdivided, resulting in their buildable area slightly decreasing; and on Lot 25 the buildable area had also been changed, as the setback has been reduced from 60' to 45'. He added that Lot 25 is a reflection of what the applicants are now proposing for their property.

Mr. Sallee said that, in reviewing the buildable area, the staff is not sure that the proposed change to the building line is in agreement with the Land Subdivision Regulations since this would result in a 40 percent reduction for the front building line. He then said that, historically, a 25 percent reduction in the front setback is the most that has been granted for a lot in this area at any one time, not counting the two corner lot splits.

Mr. Sallee said that the staff reviewed other sections of the Land Subdivision Regulations to see if they could help inform the interpretation of this note. Directing the Commission's attention to Exhibit 3 (Article 2-3(c)(1)), he said that the staff has no authority to review or modify platted building setbacks; as only the Planning Commission can do this. He explained that a Corrected Amendment Plat can not include a change to the building line because that would be considered a material change and would require a Major Subdivision Plan. He added that the only exception to this rule would be that permitted by Article 2-3(c)(3) for Administrative Action Amended Plats. He said that an Administrative Action Amendment would result from a requested variance from a Zoning Ordinance requirement that is granted by the Board of Adjustment, such as for changes to the front yard setback.

Directing the Commission's attention to Exhibit 4, he said that the staff reviewed Article 1 of the Land Subdivision Regulations for further guidance. He said that, even if one were concerned that Articles 5-4(d)(6) and 6-4(e) were somehow in conflict with each other, Article 1-12 of the Land Subdivision Regulations clarified that *“the more restrictive ordinance, regulation, or law shall govern.”* Routinely, the staff informs citizens that the more restrictive provision would be the one that is applicable. He then said that the purpose of Article 1-1 of the Land Subdivision Regulations is that one of the intents for the Land Subdivision Regulations is to promote harmonious developments in our subdivision. For whatever reason, building lines were deemed to be under the purview of the Planning Commission, unless the Board of Adjustment approves a variance, and not the planning staff.

Mr. Sallee concluded by saying that the staff's interpretation is that even though both the proposed plat and the existing plat meet section 6-4(e) of the Land Subdivision Regulations, the proposed plat does not meet Article 5-4(d)(6) of the Land Subdivision Regulations. He said that they believe the viewing of that note indicates it is not consistent with the developer's original intent for restrictions on the lot area furthered by the fact that the developer wanted to review house plans on the lots. He said, should the Commission agree with Mr. Murphy's interpretation, and not the staff's, the recommendation of the Technical Committee (listed on the agenda) would include conditions to accompany an approval of this plat. However, the staff is recommending disapproval of the applicant's request, for the following reasons:

1. Article 5-4(d)(6) of the Land Subdivision Regulations requires the developer and his engineer to “show front yard setback as required by the Zoning Ordinance, or if more restrictive, as desired by developer.” In 1956, this developer (Ashland Park, Inc.) added restrictive notes to this plat, added more restrictive building lines to the lots in this unit, and required housing plans to meet their approval prior to construction.
2. The proposed amendment reduces the front building setback by 40%, and is not in keeping with the development restrictions imposed by the original developer of this subdivision (Unit 12).

3. Amendments to front building lines are not automatically allowed to meet the minimum requirement of the Zoning Ordinance; but, rather, are subject to review and approval by the Planning Commission by Article 2-3(c)(1) of the Land Subdivision Regulations. This is consistent with the basic intent of the adopted Subdivision Regulations (found in Article 1-12).

Planning Commission Questions – The Chair said that, in reviewing Exhibit 2, Lot 25 shows the building line encroachment and asked if anything had been built on that lot. Mr. Sallee said that, from the comments made at the Subdivision Committee meeting last week, even though that plat shows the building line being changed, there have been no front yard additions made. The Chair then asked if that front building setback is 50 feet. Mr. Sallee replied that the staff believed the building's actual setback on that lot is 60 feet.

Applicant Questions – Richard Murphy, attorney, was present representing the applicants. He asked if the staff is determining that the intent of the developer is largely from the note placed on the 1956 plat. Mr. Sallee replied that it would be from both notes appearing on the 1956 plat. Mr. Murphy asked for clarification as to which notes the staff was referencing. Mr. Sallee pointed out the following notes on the plat:

*“Any lot transferred shall have a minimum width and area substantially the same as shown on this plat, and only one principal building will be permitted on any lot;”*

*and “House plans must be approved by the subdivider.”*

Mr. Murphy asked, if it were not for these two notes, the staff would give greater consideration to a recommendation of approval for the plat. Mr. Sallee said that certainly these two notes are an indication of what, or maybe why, the developer made a more restrictive requirement than what the staff is presuming what was allowed by the Zoning Ordinance in 1956.

Mr. Murphy asked if, he owned a vacant lot in this area that had never been built upon, and he conveyed 40' to one neighbor and 40' to the other neighbor, creating larger lots for them, would that be allowed under the notes on this plat. Mr. Sallee responded that he was unsure, but he could say that there are two lots that appear to have one house built across them. Mr. Murphy said that, essentially that increased the size of the lots.

Representation – Mr. Murphy presented his exhibit packet regarding this request and said that he was representing Linda and Wayne Bussell, who live at 508 Clinton Road. Along with his clients, Lynn Pedigo, Pedigo Design; Greg Padgett, Padgett Construction, Inc.; and Justin Drury, 2020 Land Surveying were also present for today's hearing.

Mr. Murphy provided a brief history regarding his clients, and said that Mr. Bussell is a practicing attorney, as well as a retired veteran/Lieutenant Colonel from the US Army Reserve. He said that he is not telling the Commission this information to gain any special or extra treatment, but they want the Commission to give equal treatment as they would give with any other applicant that had come before the Commission with similar circumstances. He then said that Mrs. Bussell retired from the Legislative Research Commission, where she wrote Worker Compensation legislation for the state of Kentucky. Mr. Murphy said that his clients became interested in this house due to their long relationship with the previous property owners, Jack and Libby Mattingly. He noted that Mr. and Mrs. Bussell had helped to take care of the Mattingly's, who are now both deceased. He said that his clients inherited the Mattingly house and wants to make a considerable investment in this house through improvements and additions. He then said that his clients are using the best designer, contractor and engineer from the community in order to add value to the house and the neighborhood as a whole. Mr. Murphy said that the house was built in 1957, and since that time there have been very few updates made to it.

Directing the Commission's attention to a series of photographs, Mr. Murphy gave a brief description of each (a copy of each of the mentioned items is attached as an appendix to these minutes) and explained that the driveway width is very narrow. With the elevation change, it is very difficult to maneuver a vehicle in and out of the rear garage without scraping the vehicle against the brick wall. He then said that if a vehicle parks in the driveway, the width is not enough to open the doors, making it a difficult situation. Mr. Murphy said that his clients want to place a front entry garage on their property, very similar to other houses in the area. He then said that this would eliminate the narrow driveway and would provide more area to the rear of the property. He added that on some lots, even though it may not be permitted, properties have circular driveways or concrete pads in the front portion of the property. He said that he is not criticizing these properties because this shows how to make good use of those properties. He then said that over the years this and other neighborhoods have changed and evolved since this plat was recorded in 1956.

Directing the Commission's attention to the final record plat, he said that this plat was recorded in 1956; and according to Article 8-7(h) of the Zoning Ordinance, this request does meet the minimum front yard setback of 30 feet for the R-1C zone. He then said that, in the Land Subdivision Regulations, Article 6-4(e) states: “Lots for residential or non-residential use shall meet the minimum standards required by the Zoning Ordinance,” which this request does. He added that Article 5-4(d)(6) of the Land Subdivision Regulations denotes what must be shown on a plat (the setback); and the developer has the option to make a greater setback than what is required by the Zoning Ordinance, which had been done on this request. Mr. Murphy said that Article 1-14: Definition of Words -

defines a developer as being *"An individual, partnership, corporation or other legal entity or agent thereof, which undertakes the activities covered by these regulations. Inasmuch as the subdivision plan drawings are merely a necessary means to the end of assuring satisfactory development, the term "developer" includes "subdivider", "owner", "builder", etc., even though the persons and their precise interests may vary at different project stages."* He said that according to the language found under Article 1-14, they have the right to file an amended plat. He then said that he is representing the property owners of this lot, and they are defined as the developer under Article 1-14 of the Land Subdivision Regulations. He added that they have the right to file a subdivision plan and they have the right to show the setback that is being proposed. Mr. Murphy said that the Ordinance was not just valid in 1956, but it is valid today; and it allows the property owners, which is the developer according to Article 1-14, to file this request.

Mr. Murphy said that the staff had referenced two plat notes earlier in their presentation, and one of those notes reads: *"House plans must be approved by the subdivider."* He said that this lot is certainly still part of a residential subdivision, and the original subdivider is not in existence. He then said that, if all plans must be approved by the subdivider, every renovation over the past 40 years would be in violation of this section. He added that he does not believe that it was what the staff was referring to or indicating; but, rather, was referring to the intent that this is a residential subdivision, which they fully agree with.

Mr. Murphy directed the Commission's attention to the plat note that reads: *"Any lot transferred shall have a minimum width and area substantially the same as shown on this plat, and only one principal building will be permitted on any lot."* He explained there are three parts to this note, which include the following:

1) There should only be one residential building on the lot.

Mr. Murphy said that there is no question that they are complying with the 1<sup>st</sup> part of the note because this request is only to remodel the house.

2) The minimum width and area.

Mr. Murphy said that the exact same lot boundary line is being used as on the 1956 plat. They are not changing one square inch on this plat; it will still be 80' wide, 200' deep, and 1600 sq. in size. He said that the discussion at the Subdivision Committee meeting was about the buildable area being increased. The note on the plat states that there shall be a minimum width and area, but it makes no reference to the buildable area whatsoever. He said that they are proposing a slight increase to the front buildable area and an increase in width for the utility easement at the rear, per Kentucky Utilities' recent request. He then said that, in reviewing the plat language, they are not changing the lot width or the area, although many people in this area have.

Mr. Murphy noted that, in reviewing the deed restrictions for this property, it was stated in 1956 in Item 3, that *"any dwelling/house upon the property hereby conveyed shall face Clinton Road; and no part of any wall thereof shall be placed within fifty (50) feet of the front property line thereof;"* and Item 7 reads: *"the above stated restrictions, terms and conditions shall be bonding for a period of not less than thirty (30) years from July 1, 1956,"* which since expired in 1986. He said that the deed restrictions, Items 3 and 7, have expired; but when reviewing Item 8 for the utility easements, that clause is permanent. He then said that the developer clearly intended that the easements in this subdivision would be permanent, but the building lines could be modified after 30 years, which has since expired. This in itself expresses the intent of the developer (Ashland Park, Inc.), as do the deed restrictions that were listed by Ashland Park, Inc.

Mr. Murphy said that it was mentioned at the Subdivision Committee meeting that back in the 80s, the Subdivision Regulations were running out for a lot of the older subdivisions, and people were concerned with what could happen in the neighborhoods. He then said that, a previous Planning Commission and Council enacted the ND-1 Overlay zone, which allows a way for a neighborhood to petition the government to place Design Standards on that neighborhood that are specific criteria for new construction or additions within that area. He added that the criteria can include such items as the slope of the roof, the use of vinyl material, height of the building and so forth. He said that his client is an Officer of the Shiners Hospital Neighborhood Association, which is the organized neighborhood association for this area. He recalls that the ND-1 Overlay zone had been discussed, but was turned down by the neighborhood. He then said that the ND-1 Overlay zone is still available today; and if the neighborhood believes that a change in the setback is a threat, they can apply for the zone change with the government, since the deed restrictions have expired.

Mr. Murphy said that, according to case law, *Synder vs. Ownsboro* is a reminder that this request is a subdivision case and is not a discretionary matter. He then said that reviewing a subdivision plat is similar to reviewing plans to obtain a building permit for structural, mechanical and electrical work. This request meets all of the requirements set by the Land Subdivision Regulations. He said that the compatibility of the request with the rest of the neighborhood can not be taken into account because that is outlined in the Zoning Ordinance. He then said that if a request complies with the requirements of the Land Subdivision Regulations, then the Planning Commission is required to approve the plat.

Directing the Commission's attention to a series of subdivision plats, Mr. Murphy explained that, in 2001, the amended final record plat for Ashland Park, Inc., Unit 12, Lot 25 (505 Clinton Road) was approved by the Planning Commission to decrease the front building line from 60' to 45' and to create the 4' access easement in favor of Lot 24. This plat was signed by Mr. Sallee after the Commission's approval. He then said that this request was not deemed to be in disagreement with the plat note, and it was shown to be in compliance with the Zoning Ordinance. He then explained that, similarly in 1999, an amended final record plat for Ashland Park Subdivision Unit No. 8 (on Cooper Drive) was approved by the Planning Commission to change the building line from 55' to 45'.

Mr. Murphy continued, noting that, in 2005, the Board of Adjustment had approved variances to reduce the required front yard setback along Hart Road on Lot 1 from 30' to 15"; and in 2001, the Board of Adjustment approved variances along Cochran Road to reduce the side yard setback from 30' to 7.5'. He said that they were not edible to apply for a variance from the Board of Adjustment because they are not going below the minimum 30' front setback.

Mr. Murphy said that, in the past, the Planning Commission had gone by the letter of the law and decided that subdivision plats that follow the Zoning Ordinance requirements are going to be approved. He then said that, in 2003, the Planning Commission approved two lot splits – one at the corner of Cochran Road and Clinton Road; and the other at the corner of Clinton Road and Prather Road. It was clear that the minimum width, as well as the lot size had been reduced when these lots were subdivided. He said that the Planning Commission found these requests to be in conformance with the Zoning Ordinance and approved them. He continued pointing out that the Planning Commission approved at least 8 more lot splits for properties in this general area (a copy of each of the mentioned items is attached as an appendix to these minutes). He made note that the Planning Commission also approved a change to the building line for two lots in the Lansdowne Subdivision, on Hildeeen Drive and on Nantucket Drive. He said that this type of request is routine and it is proper to reduce the size and width of a lot, but they are not requesting that from the Commission. Rather, they are requesting to change the setback line, which is not mentioned in either of the two existing plat notes whatsoever.

In conclusion, Mr. Murphy said that they understand the opposition that comes with these types of requests. However, the change has been thought out, it will be well done and will have the utmost quality - not like some of the changes that have already taken place. He said that if the staff's interpretation is to prevail, then the front setback of a lot can never be changed. He then said that if the setback is shown on the plat, then it's the staff interpretation that that setback is set in stone. If it was the intent of the developer to have this restriction 100 years ago, then it can't be changed today. There is nothing in the plat notes to prevent the building setback to be changed, but there is a note for the width and area. He said that the staff mentioned that the area of the lot can be increased if there was a consolidation, but they are not requesting that.

Mr. Murphy said that part of the government's obligation is to be consistent in its interpretation of the law. He then said that, in the past, the Planning Commission had made accurate and correct actions when approving the subdivision of other lots within this unit. He added that those past actions were not done in error, but were done correctly. He requested that the Planning Commission approve their request to allow them to make a slight change, similar to the ones that were allowed in the past.

Supporter's Comments – The Chair asked if anyone in the audience wished to speak in favor of this request. Greg Padgett, Padgett Construction, Inc. was present. He said that they have been working with the applicants for quite some time, and great caution was taken during the planning process to ensure that the construction and look of the new garage would be in-keeping with the existing construction and neighborhood.

Lynn Pedigo, Pedigo Design, was present. She said that she has provided renovations and additions throughout the Ashland Park and Chevy Chase Neighborhoods and has tried to keep them tasteful. She then said that her designs provide needed changes to the house, while at the same time, keeping the houses' original character intact. She added that house designs from the 1950s are not how people live today and explained that the location of the rear garage blocks the entire view of the back yard. She said that people do not entertain in the front yard or gather on the front porch. People would rather have the privacy of the back yard, and that is what they are trying to provide for the applicant. This design also eases the burden of trying to enter and exit the rear of the house through the garage, by making it more accessible to the property owners. Ms. Pedigo said she understands the neighbors' fear, and said that the proposed plan can be provided to them, if necessary. She said that they have taken great care and caution in preserving the original integrity of the house.

Objector's Comments - The Chair asked if anyone in the audience wished to speak in opposition of this request. Linda Allin, residing at 504 Clinton Road, said that she has lived in this area for 17 years. She said that she and her family have tremendous respect for the Bussell and everyone who is involved with this request, and she knows that Mr. and Mrs. Bussell have good reasons in their hearts for wanting to do this request. Ms. Allin noted that she had distributed letters of opposition and photographs to the Commission for their review, and they have also looked at the overall neighborhood design. They believe that the intent of the developer may have evolved over the years, but the intent to have the setbacks as shown on the plat has not changed.

Ms. Allin read a letter of opposition into the record and noted the following objections: (A copy of the mentioned letter is attached as an appendix to these minutes).

1. *The proposed setback changes at 508 Clinton Road from 50' to 30' represent 40% of the front yard, a very large area.*
2. *The impact to odd numbered homes would be much greater with their current 60-foot setback – this would take away half the front yard.*
3. *The current setbacks are a distinctive feature of Clinton Road and give a harmonious appearance to the street.*
4. *The visual line of sight of this feature allows you to see from one end to the other, making it a very friendly and safe neighborhood. It also encourages neighbors to interact with one another.*
5. *The street is made up of older homes – a prime location for “flippers” who have no attachment to the area. The setback reduction will encourage these investors to tear down and divide these lots.*
6. *The planning staff explained that there is a precedent at 505 Clinton Road; that is confusing because 505 Clinton is and always has been set back at 60 feet.*
7. *Moving setbacks to 30 feet will have a negative impact on property values on Clinton Road and the surrounding area.*
8. *A change in the setback could destroy the many Ash trees, another distinctive feature. The Ash trees line much of the 500 block. Homeowners have been told that these are from the original Henry Clay estate (Please see photos provided).*
9. *At the 5/7 Committee meeting, the Bussells' attorney provided justification for the Bussells' wanting a garage in front of the house. The neighbors are confused with the reason he cited that former owner, Libby Mattingly, had to stop driving earlier than she liked because it was difficult for her to pull into the driveway. Libby had many people looking after her in her later years (she lived into her 90s). All of them drove down the driveway, including a larger truck into the back yard to remove a larger tree.*
10. *The Bussells' attorney also stated that this would impact “only one lot,” 508 Clinton Road, yet he cited a few precedents on other streets where a setback variance was allowed. We are very concerned that this will establish a precedent for Clinton Road that builders and “flippers” will cite in the future. It wouldn't end with 508 Clinton Road.*
11. *A larger number of homeowners on Clinton Road have been very vocal in their objections and concerns about the proposed variance. This is evidenced by numerous emails, calls and visits with the Allins and the Prices and by our attendance at these meetings. A record of emails and signature can be provided.*

Monica Kern, 505 Clinton Road, was present in opposition. She said that she was surprised to hear about her property having the 50' setback identified on the plat. She then said that, as far as she knew, there had never been a change to her lot's front setback. She directed the Commission's attention to two photographs of her property, and said that she is sympathetic and understands what the applicant is going through with their garage situation. She explained that her property was previously renovated to add a first floor master bedroom, and they reoriented their garage at the rear of their house. She then said that they had no interest in changing the look of the house or harming the look from the street, so the front façade was not changed and the construction was done at the rear of the house. She said that Clinton Road is a beautiful area, and many people have commented that this is one of the prettiest streets in Lexington. She then said that what makes Clinton Road so beautiful are the larger lots. The houses are not “cookie cutter;” but, rather, the houses have different types of architectural styles and the uniform setback line that creates a harmonious aesthetic to the neighborhood. Ms. Kern said that if the Planning Commission were to approve the applicant's request, it would alter the appeal of the street and would negatively impact the property values. She then said that the neighborhood is not opposed to renovation or rebuilding in general; and for those houses that did make changes, they stayed behind the setback that was previously established to remain in character with the neighborhood.

Ms. Kern added that, during the Subdivision Committee meeting, the applicants' attorney suggested that if the neighborhood wanted to preserve the setback, then they should have applied for a ND-1 Overlay. She does not recall this conversation during the meeting with the Shiners Neighborhood Association; and the neighborhood did not realize that restrictions could expire over time, or that there was a possibility to make this type of change to the neighborhood. She said that if the overlay could be passed in time she would apply for the zone change. In conclusion, she requested the Planning Commission to disapprove this request to help preserve the character of this neighborhood.

Linda Price, 501 Clinton Road, was present and indicated that she is a member and an officer of the area's neighborhood association. She said that it was previously noted by Mr. Murphy that there have been exceptions to changing the setback for properties in Lansdowne and surrounding areas; but they are here addressing the Clinton Road area, and trying to preserve this neighborhood only. She then said that if the Commission grants this request it will have a substantial impact and will set a precedent for this area in the future. She added that her property is the corner lot and it could be subdivided into three lots without a variance being approved. This type of request would substantially change the character of this area, and they do not want this type of request to be allowed. She said that they believe the Clinton Road plats reflect a covenant with the original builder, and it has not been changed since 1956. She then said that the other property owners have abided by the plat restrictions and invested money by buying their homes on Clinton Road. She added that they are not arguing that having a front garage would be nice, because there are other houses that also have front garages. But they want the applicants to come up with a different plan that would not alter the front setback, since it defines the character of Clinton Road

and this neighborhood. She said that the neighbors can look out their front windows and see their children playing up and down the street. She then said that if this request were to be approved, then the neighbors could no longer monitor their children through their front windows.

Ms. Price said that the applicants' driveway has never been a significant problem in the past. They measured their driveway, and the distance between the side of the house and the wall is 12', and the asphalt of the driveway is 9' wide, along with the turnaround at the rear. She then said that the standard car width is 6.5' wide, and they believe that there is sufficient room for any car to maneuver.

In conclusion, Ms. Price said that they believe the plats a covenant and requested that the Planning Commission disapprove the applicants' request so that the character of the neighborhood is not impacted.

Jerry Calvert, 427 Clinton Road, was present. He said that his family has lived in this area since 1985, and they were close to the previous home owners, as well as everyone in this neighborhood. He then said that over the years he has seen many changes in this neighborhood, but those changes were done with the community getting together and discussing what was being proposed. He noted that the corner lots in this area stand to gain if this request is allowed, but they want this neighborhood to remain the same. He said that if the applicant had come to the neighbors, as it has been done in the past, this could have been "worked out." He then said that when the other properties made changes, the neighborhood came together and devised a plan.

Mr. Calvert asked how large this garage will be, and if it will be 4, 5 or 10-car garage across the front of their house. He then asked what will happen to the back yard if they give KU 15' for the easement. He said that they will only lose 2.5 feet of their rear yard, because that easement is divided between two rear yards. This neighborhood has great character, and there is hardly a month that goes by people do not come to his home and ask if his property is for sale. People like this neighborhood because of its character and because the neighbors work together. He said that this neighborhood has families with young children, as well as people who are retired. In most communities this creates a problem, but not in this community because everyone works together. He then said that he can watch the children play in this neighborhood because of the setback that was established in the beginning. He added that it was not just the developer who established the setback for this area, but it was also the City of Lexington. He said that the City may not have signed off on the deed restrictions, but they did sign off on the plat. He then said that all of the changes made in this area have been to the rear yard, not the front yard. He added that Ms. Kern was not even aware that they could build further into the front, but she is being used as an example as to why the applicants should be able to change their setback and the character of the neighborhood.

Mr. Calvert said that the three documents that allow Mr. and Mrs. Bussell to claim ownership of this property are: 1) Jack and Libby Mattingly purchased this property in 1960, and in the deed it contained the plat that is being referred to today; 2) in 2006 Jack Mattingly passed away; and in 2013 Libby Mattingly passed away, at which time Libby Mattingly willed the property to Mr. and Mrs. Bussell; and 3) in over 50 years of practicing law, he had never seen a will that contained a reference to the plat, in which was being given to the Bussells. He said that Mrs. Mattingly was one of the most vocal people when it concerned this neighborhood and its character. He then said that the most reasonable solution to this matter, a win-win for everyone, including the applicants, is for the Commission to deny this request and force the neighborhood to talk and allow the neighbors to have a role in the decision before coming back to the Commission for approval.

Catherine Donworth, 512 Clinton Road, was present and said that her property is adjacent to the subject site. She said that her family purchased their property in 2008 for its location and the character of the street. Her primary concern is a safety issue. She explained that the houses on Clinton Road have a very large setback that allows people to see up and down the street, which is very unique; and if this request is approved and the garage is built, it would hinder her view of the street and she believes it would not be right.

Ann Donworth, residing at 405 Clinton Road, was present and said that her family purchased their home in March of this year; and one of the reasons they purchased their home is for their growing family. She said that it's a great house and area to raise children, and the atmosphere is still a "50s" neighborhood. She then said that her property also has a tight turn at the rear of the property, so she is sympathetic and understands what the applicant is experiencing, but these are huge lots and there is plenty of room to make an alternative design.

Forest McCloskey, residing at 300 Clinton Road, was present. He indicated that he is a retired architect and one thing he has learned is that if a mistake was made, there is a solution, and that solution does not have to be heard by the zoning board by requesting a variance. He then said that, as a designer and an architect, he learned to never put an elevation at the front of a house with a bunch of garage doors. He added that in most cases garages have destroyed the neighborhoods. He recommended that this application be disapproved because the designer received an "F" in design school and this project needs to start over. He then said that the setback lines are always checked, and from the beginning the intent of this proposal was to move it forward. Mr. McCloskey said that he likes this neighborhood and did not want to see this proposal go forward.

Michael Genovese, 525 Clinton Road, was present. He said that he tends to be pretty sympathetic to what the applicants are wanting to do with their property; but there is one thing his family has learned since they purchased their home, the homeowners are also buying into the needs of the area, and not just their property.

Mr. Genovese said that this is a public attempt to solve a private problem concerning a small driveway and the lack of a turning radius at the rear. He then said that the applicants' attorney had cited other properties in this area with garages at the front; but, to him, those properties are not relevant regarding redesign of the setback. He added that there may be other solutions that have not been explored, but he believed that this request will create other problems. He said that, even though this proposal meets the letter of the law, people are concerned with this proposal setting a precedent to this neighborhood, as well as to Clinton Road with such a dramatic change being proposed to this area. He said that he has not heard any compelling reason for it, and this request will reverberate as more houses are being redone. This type of change is not worth making.

John Van Nagell, residing at 304 Clinton Road, was present. He said that he has lived in this area for 12 years. He believes there has been some great discussion today, and it has given the residents a lot to think about concerning the future of this neighborhood. He said that there is not a month that goes by that someone is not contacting him to sell his home. He then said that what frightens him the most about the decision today is not so much about this property, but rather, what it will allow developers to do.

John Price, 501 Clinton Road, was present and said that there are 55 houses on Clinton Road; and out of 55 homes, there are 54 homes who have invested in the plat and the situation. He then said that now there is some who inherited, through an estate, a home that does not work for them. He added that they found a loophole, in the form of the deed restrictions, that has since expired; and now they have hired the best lawyer in town, and they will change the situation. He said, with all due respect, the 54 people who have played the game right ask that the Commission step up and help them in the decision they made.

Jane Farmer, 509 Clinton Road, was present. She said that, when she first moved to this street 15 years ago, there were smaller houses in this area. The neighbors would build up and out toward the rear making their homes larger, never changing the front. She then said that her grandchildren visit her and she wants to stay in her house as long as she can.

Petitioner's Rebuttal – Mr. Murphy said that everyone that is present today cares about the neighborhood, and there are many reasons why his clients are seeking this request. He then said that Mr. and Mrs. Bussell are human beings who care about this property. He added that Mr. and Mrs. Mattingly had one daughter who did not survive them, and his client is first cousin to the Mattingly's. He said that, yes, his clients did inherit this property; but they have a close connection to the Mattingly's and this house. He then said that his clients are not flipping this house, they are not developers; they are people who have a big emotional attachment to the Mattingly's and to the house. Mr. Murphy said that they did not come to acquire house to demolish it, but rather, they engaged the people with the best reputation in design and construction for Lexington.

Mr. Murphy said that there are many reasons as to why his clients are requesting this change. It's not just because of the driveway, or the width of the driveway, but there are interior (floorplan) reasons as to why this renovation needs to go toward the street, which is not relevant to the Commission's decision. He then said that he wanted the Commission to know that there are good reasons as to why his clients chose this type of design. He added that the designer knew the history of these requests and was aware that, as long as this request meets the minimum requirements of the Zoning Ordinance, the Planning Commission would approve the request. Mr. Murphy indicated that, as with any remodeling project, there will be a lot of money spent on the improvement. It will not be decreasing the property values in this area by one penny. He said that this is a plat for one lot, and it will only impact the setback for one property. He said that, as far as the corner lots are concerned, some of those lots have already been subdivided; but his clients are not planning to subdivide their lot, nor are they planning to sell to a developer.

Mr. Murphy said that, regarding the increase of the KU easement, KU specifically stated that the 10' increase would be on his client's property – and on no other property. He then said that to say that this should be a community decision where everyone can agree on the issue, is not accepting the real world. He added that his clients have not been keeping their request a secret; and since it had not been done in the past, they were not aware that it was a requirement to have a neighborhood meeting in order to request a plat approval to change the front yard setback from the Planning Commission. He indicated that the residents of this area spoke to their concerns, and these types of requests can bring up issues, which is why he mentioned the ND-1 Overlay zone. He said that the deed restrictions have expired, and nothing can be done about that. However, if it is a concern with the residents, there is a way to deal with those issues; and that is through the ND-1 Overlay zone process. In conclusion, Mr. Murphy said that his clients want to make a change to their plat, which has been done elsewhere in this neighborhood, and has been approved by the Planning Commission. Those previous properties did not decrease the property values, and this request will not result in any problems. He wants his clients to be treated like any other applicant making a similar request to the Planning Commission.

Opposition Rebuttal – Jerry Calvert asked the Commission if this change is really needed and if it is something that is absolutely necessary. If so, shouldn't the applicants be out talking to the neighbors to see what the neighbors could do

to help? He then said that Mr. Murphy indicated that this house will not be flipped, and a substantial amount of money will be invested; but how do the neighbors know this? He asked if anyone has seen the design plans, showing the number of proposed garages. He then asked if this request will encourage developers to come into this neighborhood, buying other properties to make changes that were not intended according to the plat. He said, what are they going to say, this plat expired 25 years ago, an agreement between the City and the developer and all future buyers of property in this neighborhood. Mr. Calvert said that the best way to resolve this issue is for the applicant to get together with the neighborhood and resolve the problem and work out issues, if needed.

Mr. Murphy indicated that his client's are proposing a two car garage.

Staff Rebuttal – Mr. Sallee directed the Commission's attention to the Page 12 of the Applicants' Exhibits, and said that Mr. Murphy indicated that he (Mr. Sallee) had certified a plat that reduced the building line to 45' in this area. Mr. Sallee added that he would like to read, for the Commission, what is just above his signature since there was an implication that he had approved that plat. Mr. Sallee read: "I do hereby certify that this plat was approved by the Planning Commission at its meeting on February 8, 2001 and is now eligible for recording." He added that, should this plat be approved today, either he or Mr. King would, at some point in time, have the same certification on this plat.

Mr. Sallee said that earlier Mr. Murphy made a comment as to the staff saying the building lines were "set in stone" by what has been presented to the Commission. He then said that he had told Mr. Murphy around the time of the Subdivision Committee meeting, that what is unique about this plat is the combination of the Article 5 section in the Land Subdivision Regulations and the two notes that appear on the plat. He added that the two notes on the plat are somewhat unusual from other plats. The staff is not sure if these types of notes were or were not common during this era, but that is certainly what is unusual about the subject plat.

Mr. Sallee said that Mr. Murphy told the Commission that, during the staff's presentation, the staff had said the Planning Commission could increase the area of a lot. This was one question that Mr. Murphy had asked the staff at the conclusion of their presentation. Mr. Sallee noted that his exact words were that he "did not know," but what he did go on to say is there is indication from the aerial photography that at least two of these lots had been built over and those are Lots 17 & 18 that appear on the exhibits submitted.

Planning Commission Questions – Mr. Wilson said that the letter of the law says that the applicants can do what they are requesting, but the spirit of the law indicates that there are some conflicts. He then said that, in reading the staff's recommendation, it states: "*Even if one were concerned that Articles 5-4(d)(6) and 6-4(e) were somehow in conflict with each other, Article 1-12 of the Subdivision Regulations would provide some guidance: "Whenever these regulations, or subdivision plans approved in conformance with these regulations are in conflict with other local ordinances, regulations, or laws, the more restrictive ordinance, regulation, or law shall govern and shall be enforced by appropriate local agencies"*". He asked if that was the staff's interpretation. Mr. Sallee replied affirmatively, and said that was a point that was made earlier in the staff's original presentation.

Discussion - Ms. Plumlee thanked the neighborhood residents for coming out and for voicing their concerns. She said that it's clear that the neighbors like where they live and they have a love for their street, and the Planning Commission appreciated that sentiment. She suggested that the neighborhood proceed toward an ND-1 Overlay zone to avoid this type of situation in the future.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Penn, to disapprove, PLAN 2015-36F: ASHLAND PARK, INC. SUBDIVISION, UNIT 12, LOT 3 (AMD), for the three reasons presented by the staff.

Discussion of Motion – Mr. Brewer said that originally the staff's recommendation was for postponement, and now the staff's recommendation is for disapproval. He then said that he is very torn because the letter of the law allows this to be done; but he was swayed more by the spirit of the law, based on the look and feel of this neighborhood. This was the critical factor in his vote.

Mr. Brewer noted that with the last case that had a negative motion, the Parliamentarian said that that was inappropriate. Mr. Wilson said that parliamentary procedure will allow a negative motion, but it is not preferred. He then said that the preferred way is to make a motion in a positive fashion, supporting the staff's recommendation for disapproval as opposed to simply disapproval of the request. He asked, with the motion on the floor, as it relates to this particular issue, how they would be voting because this is one of the times the motion can become particularly confusing. Mr. Brewer said that that is exactly why he asked the question, and said that the Commission may want to reconsider the motion on the floor in order to not have any further questions. Mr. Penn said that that is why he hesitated before he seconded the motion. He said that if Ms. Plumlee wants to rephrase the motion on the floor, he was agreeable to that.

Action – An amended motion was made by Ms. Plumlee to support the staff's recommendation for disapproval, as presented.

Mr. Penn seconded the motion, and asked if the Chair wanted any further discussion. The Chair said that further discussion was allowed.

Discussion of Motion – Mr. Penn said that he had also hesitated to second the motion because he was in favor of postponing this request for one month to see if the applicant could submit a different plan than was presented at the Subdivision Committee meeting. He then said that he is familiar with this street, and he likes the area. He believes that the applicant would not knowingly harm the looks of this area and that there are other options that could be done. He said that he does not know the architect, but he knows the builder; and they are not involved in anything that would cause harm to a neighborhood. He then said that if something isn't broken, then "why fix it," which is why he was inclined to support the motion on the floor.

Mr. Cravens believed this to be a little too much of a setback reduction. He said that a building line can be encroached upon 5 feet, or a porch can be built 8 feet across the building line. However, this is a reduction of 20 feet in the middle of the block; and a garage should be less noticeable. He said that the Commission members did not see a site plan; and had a site plan been presented, it could have provided them with more insight. With that being said, Mr. Cravens said that he would be supporting the motion on the floor.

The Chair concurred with the Commission members who had spoken, and said that there are Land Subdivision Regulations that support the staff's recommendation. He said that quality and design is not the issue with this proposal; rather the issue was the setback involved. At the time this area was developed, there was a definite intent to have a more restrictive setback. He believed that the applicant's proposal would definitely hurt the neighborhood, as far as its character is concerned. He said that the neighborhood would be compromised, and that is something he would not like to see.

The motion carried 8-0 (Berkley, Richardson and Drake absent).

*Note: The Chair declared a brief recess at 3:22 p.m. The meeting reconvened at 3:28 p.m.*

- b. PLAN 2015-37F: KINGSTON HALL, UNIT 2 (EAST BRIDGEFORD LAND & DEVELOPMENT CO.) (AMD) (7/5/15)\* -  
located at 1150 Providence Place. (Council District 12) **(EA Partners)**

The Subdivision Committee Recommended: Postponement. There were questions regarding a conflict with the required fencing and the 50' buffer areas required adjacent to the Urban Service Area (Art. 23A-2(f)(1)), and the origin of the 22' storm sewer easement on Lot 3.

Should this plan be approved, the following conditions 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. Denote parent plat N-704.
7. Delete note #7.
8. Revise note #4 to remove reference to a Preliminary Subdivision Plan.
9. Provided the Planning Commission makes a finding regarding the access easement's adequacy as sole access to Lot 2 (Art. 6-8(m)).
10. Denote that this property is located in the Royal Spring Aquifer recharge area.
11. Discuss conflict with required fencing and the 50' buffer areas required adjacent to Urban Service Area (Art. 23A-2(f)(1)).
12. Correct labeling on the easement depicted on Lot 3.

Staff Presentation – Mr. Martin directed the Commission's attention to the amended final record plat for Kingston Hall, Unit 2 (East Bridgeford Land & Development Co.), located at 1150 Providence Place. He oriented the Commission to the location of the subject property on the displayed rendering, and explained that the subject site is on Providence Parkway, just off Newtown Pike, north of Interstate 64 & 75. He then said that the purpose of this amendment is to subdivide one lot into two lots. He explained that there is an access easement on the adjacent property that will be extended to serve the subject property. He said that there is a conflict with required fencing and the 50' landscape buffer areas that are required along the Urban Service Boundary (condition #11).

Mr. Martin said that the entire tract is over 78 acres and the applicant will be subdividing this lot into one 78.48-acre lot and one 2-acre lot. He then said that the purpose of the 2 acre lot will be for construction of the required EAMP sanitary sewer pump station. He added that the pump station will be designed to serve the Expansion Area, which will allow numerous older pump stations that have been identified within this community to be taken off line. He said that with this being in the Expansion Area exactions were required to ensure that the pump station would be built by LFUCG in the future.

Mr. Martin said that the Subdivision Committee reviewed this final record plat and recommended its postponement. The main concern, at that time, was the conflict with the required fencing and the 50' buffer areas required adjacent to the Urban Service Area (Art. 23A-2(f)(1)), and question about the origin of the 22' storm sewer easement on Lot

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

3. He directed the Commission's attention to the list of conditions noted on today's agenda, and briefly explained that conditions #1-4 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 said that, with regard to condition #11, the staff was informed that the applicant is willing to remove the conflict with the required fencing and the 50' buffer by relocating the access easement.

Mr. Martin said that Article 6-8(m) of the Land Subdivision Regulations requires that the Planning Commission make a finding to approve lots which have their sole access via an access easement rather than via a public or private street. He then said that this is a future site for a government facility; and the access easement would be utilized by government employees only, who will ensure that the pump station functions and is maintained as intended, to provide the required and improved sanitary sewer service to the citizens of Fayette County. This will not be a public access easement whatsoever, and there should be some type of security measures that will be taking place on site.

Mr. Martin said that with the applicant addressing the main concern for the postponement, the staff can now offer the following finding for consideration by the Commission. He then said that the finding for appropriateness of an access easement, as sole access, for certain lots is as follows:

1. Allowing this new lot to be served by the proposed 20-foot access easement will allow government personnel access to a sanitary sewer pump station that is an essential governmental facility, providing for the health and safety for the public consistent with the intent of the Land Subdivision Regulations.

Planning Commission Questions – The Chair asked if the access easement will snake back and forth as indicated on the rendering. Mr. Martin replied negatively and said that the staff is demonstrating the area where the conflict occurs.

The Chair then asked for clarification on condition #11 and whether this issue can be resolved. Mr. Martin said that the applicant was agreeable to remove the conflict, and it can be changed to read: "Resolve conflict with required fencing and the 50' buffer areas required adjacent to Urban Service Area (Art. 23A-2(f)(1))."

Representation – Rory Kahly, EA Partners, was present representing the applicant. He indicated that they were in agreement with the staff's recommendations, and requested approval.

Planning Commission Questions – Mr. Penn asked if the access would go through the adjacent Hospice property. Mr. Kahly replied negatively, and said that the access for the pump station would run parallel the narrow portion of Lot 3 outside of the 50' buffer area. Mr. Penn then asked if the detention basin would be altered. Mr. Kahly again replied negatively. Mr. Penn then asked if the access can be constructed, while retaining the buffer and the detention basin. Mr. Kahly said that he is not familiar with the engineering of the detention basin, but they are agreeable to keep it out of the buffer area and have this ready for the City to take over. He then said that the engineers would have to figure out what works best to access this area. Mr. Penn said that condition #11 would need to remain as "resolve." The Chair agreed.

The Chair asked if the applicant is agreeable with the access easement relocation and the required 50' buffer. Mr. Kahly replied affirmatively.

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 Mr. Wilson to approve PLAN 2015-37F: KINGSTON HALL UNIT 2 (EAST BRIDGEFORD LAND & DEVELOPMENT CO.) (AMD), as presented by the staff, changing condition #11 to read: "Resolve conflict with required fencing and the 50' buffer areas required adjacent to Urban Service Area (Art. 23A-2(f)(1))" and recognizing the findings for appropriateness of an access easement, as presented by the staff.

Discussion of Motion – Mr. Penn said that this request is not sitting well with him, the reason being is where the pump station could have been located. He then said that, from what he understood, to keep the sewer lines within the Urban Service Area the lines would need to be deeper, which would cost much more. He added that by placing the pump station at this location, the Commission needs to be very aware of the location of the trunk lines and the lines outside the Urban Service Area; it would be taken on face value that this would service the Economic Development areas when the other pump stations area taken off line on Russell Cave Road. Mr. Kahly said that he is not aware of what DWQ goals or plans are for the sewer's alignment. He then said that all he knows is that they have asked the developer for the 2 acres. Mr. Penn said that he would be voting for this request under that assumption.

The Chair said that being outside the Urban Service Area doesn't happen often; but if he is correct, the Bluesky Parkway and the Bluegrass Airport trunk lines were in a similar situation; and to take of care of those areas, the capacity was made only for those specific needs.

Ms. Plumlee asked if the Commission was assuming that or if a condition should be added. The Chair said that he does not believe it is tied to this at this time.

The motion carried 8-0 (Berkley, Richardson and Drake absent).

- c. PLAN 2015-38F: LOCAL ENTERPRISES (7/5/15)\* - located at 4595 Tates Creek Road.  
(Council District 4) **(EA Partners)**

The Subdivision Committee 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. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Delete reference to note #10.
10. Discuss access to Lot 2.
11. Discuss timing of public improvements and dedication.
12. Discuss required provision of sanitary sewer service, per the Subdivision Regulations.

Staff Presentation – Mr. Martin directed the Commission's attention to the final record plat for Local Enterprises, located at 4595 Tates Creek Road. He oriented the Commission to the site and the surrounding area on the plan rendering, and briefly explained that the subject property abuts the Fayette and Jessamine County lines, and also borders the Urban Service Area. Veterans Park is located east of the subject site and is accessed just off Tates Creek Road. He then said that the nearby street system does include access from Lauderdale Drive to Boca Lane, which intersects with Henderson Drive. He added that Lauderdale Drive connects into Jessamine County, and Henderson Drive is planned to as well.

Mr. Martin said that the applicant is proposing to subdivide this property into two lots that will consist of the largest (Lot 1) being 7.34 acres in size and the smaller one (Lot 2) at 1.63 acres. He noted that Lot 2 is restricted to no development, until such time that the Planning Commission approves a final development plan or a preliminary subdivision plan for that lot. He then said that the Planning Commission recently reapproved a preliminary subdivision plan that depicted Henderson Drive extending into Jessamine County, and continuing the street system into the subject property, ending in a cul-de-sac. At that time this plan was originally approved, there was a lot of discussion concerning the landscape buffer needed along the county line.

Mr. Martin said that the applicant has requested several waivers based on hardship, and their primary justification is the existence of the county line that separates the property jurisdictionally, but not physically, from the parent tract in Jessamine County. He then said that the applicant is creating this plat in order to purchase Lot 1 and develop 23 single family lots – what, in essence, is a "take down" plat. He noted that, according to the Land Subdivision Regulations, a "take down" plat is a minor plat and requires a minimum of 10 acres in Fayette County. He said that because this tract is part of a larger parent tract located in Jessamine County, it does not and can not meet the 10-acre requirement for Fayette County. However, the applicant has submitted a Preliminary Subdivision Plan that demonstrates how they intend to develop the property in Fayette County prior to developing the new single family lots. He said that, in this case, it would require waivers to Articles 4-7(d)(1); 4-7(d)(9); 6-2(a); 6-4(c) & 6-6(b) of the Land Subdivision Regulations, pertaining to the required provision of public improvements, specifically sanitary sewer facilities to a subdivision prior to the recordation of a Final Record Plat. In addition, a waiver to the lot frontage requirements in Article 6-4(c) is being requested for Lot 2. Mr. Martin explained that there is a sanitary sewer easement that can be utilized on Lot 1, which would provide sanitary sewer service; and with the previously approved Preliminary Subdivision Plan for this property that has been certified, the normal progression would require the infrastructure to be completed, followed by submittal of a final record plat to dedicate that infrastructure and begin to build the single family homes. Mr. Martin said that the applicant is requesting a waiver to the frontage requirements on Lot 2 (Lauderdale Drive) in Fayette County. He explained that legal frontage is measured at the building line in the R-3 zone; the applicant does have frontage on Lot 2, and the waiver is not necessary.

Mr. Martin said that the staff is recommending approval of the requested waivers 4-7(d)(1), 4-7(d)(9), 6-2(a) & 6-6(b), for the following reasons:

1. Granting these requested waivers will not adversely affect public health and safety, as the properties are currently governed by an approved and certified Preliminary Subdivision Plan with restrictive notes.
2. Not granting these waivers would constitute an exceptional hardship to the applicant, for many of the reasons outlined in their letter, dated May 6, 2015.

Mr. Martin then said that the staff is recommending disapproval of the requested waiver of Article 4-7(b), for the following reasons:

1. The waiver is not necessary as the lot, technically, has frontage along Lauderdale Drive, as measured at the building line, as required in the Land Subdivision Regulations.

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

2. The requested waiver does not meet the intent of the Land Subdivision Regulations in protecting public health and safety, as its approval would not provide access required to this site for Lexington-Fayette County service providers.

Mr. Martin said that this recommendation is made subject to the following requirements:

- a. Denote: Access shall be provided to Lot 2 from Lot 1, or from Lauderdale Drive in Fayette County.
- b. Denote building line (20' min.) from Lauderdale Drive on Lot 2.

Mr. Martin said that, even though the subject property is not physically split, it is jurisdictionally split, as if a wall had been created between Fayette and Jessamine County. He said that, as far as Fayette is concerned, access must be provided for the emergency vehicles and service providers, which is the reason behind condition "a" noted on the waiver report.

Mr. Martin directed the Commission's attention to the agenda and briefly explained that conditions #1 through #8 involve standard sign-off conditions from the different divisions of the LFUCG; and the remaining condition is a "cleanup" item that will be addressed prior to the plan being certified. He said that, as for the three discussion items, the conditions listed on the waiver report would resolve the staff's concerns.

Planning Commission Questions – The Chair asked, if the Commission grants the requested waiver, if conditions #10, #11 and #12 could be deleted. Mr. Martin replied affirmatively. Mr. Saltee suggested that, in lieu of deleting conditions #10 and #11, to replace them with conditions "a" and "b" listed on the waiver report. The Chair confirmed that conditions "a" and "b" would replace conditions #10 and #11; and condition #12 would be removed.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He indicated that they were in agreement with the staff's recommendations, until the staff defined condition "a" listed on the waiver report. He explained that, in speaking with the staff, they said that there was legal frontage on Lauderdale Drive; and if the applicant added a building line, then that waiver would not be needed. He said that he thought that issue was resolved in deleting condition "a." He then said that the staff is now asking for an access easement to be provided to Lot 2 from Lot 1 or from Lauderdale Drive. This request would create a problem. He then said that the area between Lot 2 and Lauderdale Drive is an established Homeowners Association lot for what was Unit 7. He added that access and the sanitary sewer easement were not provided but were accepted on one of the private lots. He said that Lot 2 is part of the larger tract in Jessamine County and is being used by the Jessamine County owner. He then said that he does not know if that piece of ground, although it's located in Fayette County, will ever have to be accessed from the Fayette County side. He noted that if they were to place anything on Lot 1 to Lot 2, they would not want it to be permanent, only temporary, just until the Final Record Plat was submitted dedicating the 23 approved lots and the public street system. They do not want an access easement going through those lots to a non-buildable Lot 2. He said that this is not part of the whole development, and it was never contemplated that they would have to take it. He then said that they would rather have the waiver approved without Lot 2 having access because it is still part of the larger Jessamine County property, as opposed to hindering Lot 1 with an access easement.

Planning Commission Questions – The Chair asked if the applicant was agreeable to the remaining conditions as noted on the waiver report. Mr. Kahly replied affirmatively, and said that the sanitary sewer easement is there and it will be needed to serve the 23 units. He then said that they just need to transfer the property from the larger tract, located mostly in Jessamine County, to Ball Homes for them to build on the 7+ acre (Lot 1) site. He added that they believed that the waiver and the acceptance of the Lauderdale Drive frontage would remove the access easement as well, so they are at a disadvantage.

Mr. Penn said that he is confused, and asked if the reason for doing this plat is to purchase the property. Mr. Kahly replied affirmatively. Mr. Penn said that the word "take down" does not register with him. Mr. Kahly indicated that the land would be transferred. Mr. Penn said that if the plat must be done before everything else, it's convoluted from the normal process, and asked if this is being treated in the same way as a remnant lot. Mr. Kahly said that had this been the only piece of ground left of a property only in Fayette County, and the area around it had been lotted out, there would be a deed of record that could say the purchase from the parcel "known as deed exhibit A and B," then it could be transferred. He then said that this piece is part of a larger piece in Jessamine County, and the owner can transfer it over. The Commission does not normally see minor plats because they are often 10 acres or more in size; and for this application, there is not that much land remaining. He said that Ball Homes is taking Lot 1, and the Jessamine County tract (remaining) will be using Lot 2.

The Chair said that it sounds as if the applicant is saying access does not need to be provided to the Fayette County property. Mr. Kahly replied affirmatively.

Mr. Cravens asked what will happen to the lot that is touching Lauderdale Drive. Mr. Kahly said that Lot 2 is a smaller lot and it touches Lauderdale Drive at a point, and the plans for that lot are "a site specific agreement between the two counties." He then said that Jessamine County will be providing the sewer connection, as well as a storm water basin that will be released into Fayette County. Mr. Cravens then asked if there would be houses built on Lot 2. Mr. Kahly replied negatively, and said that there would be no development.

Mr. Penn asked if access to Lot 1 should come through the Jessamine County side. Mr. Kahly replied affirmatively.

The Chair asked if Henderson Drive can provide access to Lot 2. Mr. Kahly said that Henderson Drive will be providing access to Lot 1, which is what the applicant is purchasing; and it will continue on, stubbing into the Jessamine County line. He then said that since access will be provided to Lot 2 from the Jessamine County side, they would rather not have the access easement across Lot 1.

The Chair asked for staff's comments concerning this issue. Mr. Martin explained that non-buildable plats are minor plats and the staff has never approved a minor plat without some type of access or lot frontage being provided - even if those lots are not developable. He then said that since there is a jurisdictional boundary, access is necessary to Lot 2 from Fayette County, and it should meet the typical requirements.

The Chair asked for clarification on the smaller lot, which is Lot 2, whether it has frontage on Lauderdale Drive. Mr. Martin said that Lot 2 has frontage; it is a mathematical frontage because there is a point that touches Lauderdale Drive. The Chair then asked if there is enough area to provide access. Mr. Martin replied that the staff does not know if there is enough room on the ground to provide access.

Mr. Sallee suggested that that Division of Fire provide their insight on the request for Lot 2 not being accessed from Fayette County. Captain Lengal said that it's his understanding there will not be any buildings or structures on the larger lot. Mr. Kahly replied that the larger lot will be developed and the smaller lot will not. Captain Lengal said that if there are homes on these lots, then emergency vehicles will need access to those homes. However, if the smaller lot will not have any structures, then emergency vehicles can access that lot through Jessamine County and backtrack to the smaller lot. He said that he sees no reason to access a lot if it is not buildable. The Chair replied that that makes sense.

Mr. Wilson asked if there was an emergency, such as a fire or a person was injured, who would receive that service call. Captain Lengal said that if that situation was on the Fayette County side, then the Lexington Fire Department would be called. Mr. Wilson replied that Lexington Fire Department would not be able to access that lot. Captain Lengal said that he would need to have to revisit the site to be sure. Mr. Martin said that the Lexington Fire Department could access the lot through the HOA lot if there were a brush fire or other emergency. He then said that the staff's concern is for this request to meet the Subdivision Regulations and provide access. He added that if access is to be provided, that type of request can be modified in the future as the property develops. However, with the timeline being unknown, and the jurisdictional boundary, this request could remain "as is" for many years. This is why the staff was recommending the access easement.

The Chair asked if the staff is still making the current recommendation, to which Mr. Martin replied affirmatively. Mr. Sallee asked if there is a note on the submitted plat concerning access to Lot 2. Mr. Martin said that Lot 2 is restricted from non-development until such time that a preliminary subdivision or development plan is approved by the Commission. He then said that the staff could strengthen the language by listing additional conditions if there is no access from Fayette County.

Mr. Brewer said that this request is complicated by the county line, and it seems a little silly to have an access when it is not needed. He then said that from what was described, the staff's concern is connectivity between the two lots. He asked, for this request to move forward, if this is something that can be denoted now, or at later time or if this is the final time frame. Mr. Sallee said that part of the issue is: 1) this could be the final time for the Commission to review this request for Lot 2; and 2) having no ability to control how the access is provided from the Jessamine County side, there needs to be a "backup" should this lot be purchased in the future, and then request to be developed. He then said that there is the possibility that access could be provided across Lauderdale Drive; and until the future of the smaller lot is known, it is important to have access provided from the larger lot to the smaller lot. This will ensure that there is not a lot that can not be accessed by Fayette County service providers. He said that if there were ever a housing development proposed on the smaller lot, then the staff wants the Division of Solid Waste to be able to service that area, regardless of the location of the public streets. He then said that it is possible that the Commission could see a future development on the smaller lot, and that is the real concern with this proposal. The smaller lot may not always be a non-developable parcel.

Ms. Mundy asked if a note could be placed on the plat stating that this issue must be resolved at the time of the final development plan to allow this to move forward. Mr. Kahly said that there could be a temporary access easement placed on the lot until the Final Record Plat was submitted, and it would allow the legal issue to be worked out with the applicant. Mr. Martin directed the Commission's attention to the Preliminary Subdivision Plan and explained that the path of Henderson Drive could connect to Lot 1 and on to Jessamine County. He said that a conceptual plan would be to have an access easement from Henderson Drive to Lot 2, but that would encumber one of the lots proposed for Lot 1. He then said that there are so many scenarios and unknowns at this point, and the staff wants to ensure that there is a "backup" provision in place for future access to Lot 2.

Ms. Mundy asked if a temporary easement could be placed on Lot 2, then when the Jessamine County side is developed the lot could be released. Mr. Martin said that that could be done, but Lot 2 does not exist yet and it

would have to be platted first. He then said that there needs to be an easement across the entire length of Lot 1 to Lot 2, which could then be reduced as Lot 1 is developed. It's an evolving process, and it could be dealt with as this property develops. This would ensure that there is adequate access to Lot 2 by the time the Jessamine County side starts to develop.

The Chair asked if the language in condition "a" could be changed to read "Denote: Temporary access shall be provided to Lot 2 from Lot 1, or from Lauderdale Drive in Fayette County." Mr. Martin suggested that condition "a" should read: "Denote: Resolve access ~~shall be provided~~ to Lot 2 from Lot 1, or from Lauderdale Drive in Fayette County." This would allow the staff and the applicant to work together to ensure that the access will work in the public's favor as well the developer's.

The Chair asked if the applicant would be agreeable to the staff's suggestion. Mr. Kahly said that he is hesitating because they want to close on this property this month and move forward. He then said that setting up access easements denoting a temporary easement allows the time to be setup to have it terminated. It is also cleaner and easier to remove the easement, versus going through a release or a modification of the plan. He said that they can show a temporary access easement across Lot 1 to Lot 2 and note that it would be resolved at the time of the Final Record Plat for the 23 lots. He then said that this would allow the time needed to come up with a solution, or they could encumber Lots 22 or 23 with another temporary easement until the site specific agreements or the inter-county details are resolved. Mr. Martin replied that the staff is agreeable to that suggestion. He said that it was the whole intent to have the access easement resolved through appropriate timing.

The Chair confirmed that a note would be placed on the plat to read: "Temporary access shall be provided to Lot 2 from Lot 1, ~~or from Lauderdale Drive in Fayette County~~" and resolved at the time of the Final Record Plat." Mr. Kahly replied affirmatively. Mr. Martin said that this is a Final Record Plat; therefore it would be at the time an amended Final Record Plat was submitted. Mr. Kahly said that it would be when the amended Final Record Plat came in for Lot 1. Mr. Martin indicated his agreement. Mr. Kahly responded that the note would read: "Temporary access shall be provided to Lot 2 from Lot 1, ~~or from Lauderdale Drive in Fayette County~~" and resolved at the time of the amended Final Record Plat for Lot 1."

The Chair asked if the applicant was agreeable to the remaining recommendations noted on the waiver. Mr. Kahly replied affirmatively.

The Chair reviewed the list of conditions noted on today's agenda, and said that if the Commission approves this request, the following changes would occur:

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. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Delete reference to note #10.
- ~~10. Discuss access to Lot 2.~~
- ~~11. Discuss timing of public improvements and dedication.~~
- ~~12. Discuss required provision of sanitary sewer service, per the Subdivision Regulations.~~
10. Temporary access shall be provided to Lot 2 from Lot 1 and resolved at the time of the amended Final Record Plat of Lot 1.
11. Denote building line (20' min.) from Lauderdale Drive on Lot 2.

Action - A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 8-0 (Berkley, Richardson and Drake absent) to approve PLAN 2015-38F: LOCAL ENTERPRISES, as previously stated by the Chair.

Action - A motion was made by Mr. Brewer, seconded by Ms. Plumlee, and carried 8-0 (Berkley, Richardson and Drake absent) to approve the waivers of 4-7(d)(1), 4-7(d)(9), 6-2(a) & 6-6(b), for the following reasons:

1. Granting these requested waivers will not adversely affect public health and safety, as the properties are currently governed by an approved and certified Preliminary Subdivision Plan with restrictive notes.
2. Not granting these waivers would constitute an exceptional hardship to the applicant, for many of the reasons outlined in their letter, dated May 6, 2015.

And disapproving the waiver of Article 4-7(b), for the following reasons:

1. The waiver is not necessary as the lot, technically, has frontage along Lauderdale Drive as measured at the building line, as required in the Land Subdivision Regulations.

2. The requested waiver does not meet the intent of the Land Subdivision Regulations in protecting public health and safety, as its approval would not provide access required to this site for Lexington-Fayette County service providers.

## 2. DEVELOPMENT PLANS

- a. DP 2015-32: BROOKHAVEN SUBDIVISION (AMD) (7/5/15)\* - located at 2434 & 2450 Nicholasville Road and 100 Malabu Drive. (Council District 4)  
**(Wheat & Ladenburger)**

The Subdivision Committee 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. Addition of topography information.
11. Correct (by removing original zoning in) site statistics.
12. Correct total on required parking shown in site statistics.
13. Discuss resolution of storm water detention per note #13 requirements per the approved Zoning Development Plan.

Staff Presentation – Ms. Gallt directed the Commission's attention to the amended final development plan for Brookhaven Subdivision, located at 2434 & 2450 Nicholasville Road and 100 Malabu Drive. She oriented the Commission to the location of the subject property on the displayed rendering of this development plan, and explained that the subject site is located along Nicholasville Road, between Malabu Drive and Surfside Drive. She indicated that there is a Rite Aid Drug Store at the corner of Nicholasville Road and Malabu Drive and said that the applicant wants to redevelop the remaining property for both restaurant and retail uses, as well as a hotel to the rear of the property.

Ms. Gallt said that the Subdivision Committee reviewed this development plan and recommended approval of it, 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 many of 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 through several email correspondences, with the Division(s) of Engineering and Water Quality, it was determined that since this site is being redeveloped, it would need to comply with the redevelopment guidelines of the Engineering Stormwater Manual. She noted that the staff believes that condition #13 can be deleted from the list of recommendations and this request can be approved by the Commission.

Representation – Chris Westover, attorney, was present representing the applicant. She made note that they have documentation that indicates there are no known downstream problems associated with this redevelopment proposal. She said that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2015-32.

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 8-0 (Berkley, Richardson and Drake absent) to approve DP 2015-32, as presented by the staff.

- b. DP 2005-20: NDC PROPERTY, UNIT 4, SECTION 1, LOT 1 (8/4/15)\* - located at 525 Wellington Way.  
(Council District 9)  
**(Banks Engineering)**

Note: The Planning Commission approved this plan at their February 10, 2005, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, turn lanes, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree preservation plan.
5. Greenspace Planner's approval of any bike/pedestrian facilities.
6. Division of Solid Waste's approval of dumpster location(s).
7. Approval of addresses per e-911 staff.

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

8. Environmental Planner's approval of sinkholes.
9. Revise note number 7 to develop as a Professional Office Park.
10. Correct site statistics (floor area ratio and single floor area).
11. Resolve sinkhole-related non-buildable areas' conflict with buildable areas.
12. Resolve access points along Wellington Way (no traffic conflicts).
13. Close the private median at the main entrance to the approval of Traffic Engineering.

Note: This plan was certified by the Commission's Secretary on July 8, 2005, meeting all 13 conditions. However, under Article 21-4(f) of the Zoning Ordinance, no additional building permits may be issued for this plan until the plan is reapproved by the Commission. The applicant now requests reapproval of the development plan.

The Staff Recommends: **Reapproval**, subject to the added conditions listed below:

1. Approval of addresses per e-911 staff.
2. Addition of a second Commission's certification to this plan.
3. Document Division of Water Quality's approval of the capacity Assurance Program requirements prior to plan certification.

Staff Presentation – Mr. Hunter directed the Commission's attention to the final development plan for NDC Property, Unit 4, Section 1, Lot 1, located at 525 Wellington Way. He oriented the Commission to the location of the subject property on the displayed rendering, and explained that the Commission had approved this development plan at their February 10, 2005, meeting. He said that the subject site is located between Clays Mill Road and Nicholasville Road, to the west of the Reynolds Road roundabout, and east of the Stonewall Shopping Center. It is adjacent to the Wellington Dog Park.

Mr. Hunter said that the Planning Commission previously approved this development plan to allow construct a Professional Office Park, with one access off Wellington Way, seven buildings and associated parking. Since its approval, only 1 office buildings have been constructed.

Mr. Hunter said that, in 2005, the Planning Commission had reviewed this application and approved it, subject to the conditions listed on today's agenda. He then said that the Commission's Secretary certified this development plan on July 8, 2005, once it met all 13 conditions. However, under Article 21-4(f) of the Zoning Ordinance, no additional building permits may be issued for this plan until the plan is reapproved by the Planning Commission. The applicant now requests reapproval of the development plan. He said that the staff had reviewed this application and is recommending reapproval, subject to the three conditions listed below:

1. Approval of addresses per e-911 staff.
2. Addition of a second Commission's certification to this plan.
3. Document Division of Water Quality's approval of the capacity Assurance Program requirements prior to plan certification.

Representation – Gene Alexander, Banks Engineering, was present representing the applicant. He said that the applicant is in agreement with the staff's recommendations, and requested reapproval of DP 2005-20.

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. Smith and carried 8-0 (Berkley, Richardson and Drake absent) to reapprove DP 2005-20, as presented by the staff.

## VI. COMMISSION ITEMS

- A. WORK SESSION – Mr. Sallee reminded the Commission members of the upcoming work session scheduled for May 21, 2015.

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

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

## IX. NEXT MEETING DATES

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|------------------------------------------------------------------------------------------------------------|----------------------|
| <b>Work Session</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....                     | <b>May 21, 2015</b>  |
| <b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....     | <b>May 28, 2015</b>  |
| Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) .....               | May 27, 2015         |
| Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) .....              | June 4, 2015         |
| Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....                    | June 4, 2015         |
| <b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers..... | <b>June 11, 2015</b> |

- X. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 4:18 PM.

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Mike Owens, Chair

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Will Berkley, Secretary