

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

September 10, 2015

- I. **CALL TO ORDER** - The meeting was called to order at 1:33 p.m. in the 3rd floor Conference Room, Phoenix Government Building 101 East Vine Street, Lexington, Kentucky. The meeting was relocated from its advertised location at 200 East Main Street, Lexington, Kentucky, due to a meeting schedule conflict.

Planning Commission members present – Mike Owens, Chair; Mike Cravens; Carolyn Plumlee; Bill Wilson; Will Berkley; David Drake; Karen Mundy; Joseph Smith; Carolyn Richardson; Frank Penn and Patrick Brewer (departed at 3:50).

Planning Staff members present – Director Chris King; 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, Department of Law.

- II. **APPROVAL OF MINUTES** – 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.

- a. **PLAN 2015-67P: COPPER CREEK SUBDIVISION** (9/4/15)* - located at 1850 Old Higbee Mill Road (a portion of).
(Council District 9) **(EA Partners)**

Note: The Planning Commission postponed this item at their August 13, 2015, meeting.

The Subdivision Committee Recommended: **Postponement**. There are still concerns with the proposed street alignment and the lack of tree protection area(s).

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Discuss tree stands and need for tree protection areas.
11. Discuss proposed street alignment and "B-B" cross-section proposed.
12. Discuss proposed H.O.A lotting and the spirit of Art. 6-4(g) of the Land Subdivision Regulations prohibiting double frontage lots.
13. Discuss screening and maintenance of same adjacent to Wyndam Hills West.
14. Discuss extent of waivers that are necessary (sidewalk, etc.).
15. Discuss Comprehensive Plan recommendation for streets along greenway areas.
16. Discuss proposed Lot #26 (for future development).

Representation – Richard Murphy, attorney, was present representing the applicant, and requested postponement of **PLAN 2015-67P: COPPER CREEK SUBDIVISION** to the October 8, 2015, Planning Commission meeting. He said that they submitted a new plan to the staff, who had indicated that more information was needed; so they are in agreement to postpone this request one month. He thanked the staff for informing many of the people that were interested in this request that it would be postponed, and apologized to anyone in the audience who did not receive word that this item was being postponed.

Discussion – The Chair asked if anyone in the audience wished to discuss this request for postponement. The audience indicated that they could not hear what the Commission or the applicant's representation was saying. Mr. King directed the audience to Page 1, Item a, and said that Mr. Murphy had made a request to postpone **PLAN 2015-67P: COPPER CREEK SUBDIVISION** for one month.

The Chair asked for Mr. Murphy to repeat the reason for the postponement request. Mr. Murphy responded by saying that they had submitted a new plan to the staff and the staff informed them that additional information was needed for their review; therefore, they agreed to the postponement. He then said that they thanked the staff for informing many of the people who were interested in this case.

The Chair asked if anyone in the audience had questions regarding this postponement. In response to an audience member, Mr. Murphy said that the new plans were filed with the staff, and he believed that those plans could be found on the City's website. Mr. Martin indicated that if the new plans are not listed on the website, they would be soon.

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

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 11-0 to postpone PLAN 2015-67P: COPPER CREEK SUBDIVISION to the October 8, 2015, Planning Commission meeting.

- b. DP 2015-74: CAVE HILL TOWNHOMES (11/1/15)* - located at 2236 Cave Hill Place.
(Council District 10)

(Vision Engineering)

The Subdivision Committee Recommended: Postponement. There are questions regarding missing information (Article 21-7 of the Zoning Ordinance), whether or not this is intended to be a group residential project, and the parking requirements for the proposed development.

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 record plat designation (Cabinet A, Slide 328).
11. Addition of existing and proposed easements.
12. Document lot coverage, floor area and open space in site statistics.
13. Addition of zone-to-zone screening information.
14. Addition of maintenance note for common area.
15. Discuss the need for tree protection areas.
16. Discuss plan status (preliminary vs. final).
17. Discuss compliance with Article 9 requirements.
18. Discuss required parking generator and numbers provided (bedrooms/units).

Representation – Matt Carter, Vision Engineering, was present representing the applicant, and requested postponement of DP 2015-74: CAVE HILL TOWNHOMES to the September 24, 2015, Planning Commission meeting. He indicated that this would allow additional time to meet with the staff, as well as the neighborhood, before the next 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 Ms. Plumlee and carried 11-0 to postpone DP 2015-74: CAVE HILL TOWNHOMES to the September 24, 2015, Planning Commission meeting.

- c. DP 2015-38: MASTERSON STATION CENTER, (CITATION VILLAGE) (AMD) (9/10/15)* - located at 2601 Leestown Road.
(Council District 2)

(EA Partners)

Note: The Planning Commission postponed this item at their August 13, 2015, meeting. The purpose of this amendment is to revise the proposed development.

The Subdivision Committee Recommended: Postponement. There were some questions regarding compliance with the required Big-Box Design Guidelines and the Storm Water Manual.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Clarify required parking generator for outlots 1 and 2.
13. Department of Highways' approval of access (State Road).

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

14. Discuss compliance with the Big-Box standards.
15. Discuss compliance with mitigation as required by the Engineering Manuals.
16. Discuss proposed access to Citation Boulevard and Leestown Road.
17. Discuss status of stone wall along Leestown Road.
18. Discuss access to bank and outlot.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of DP 2015-38: MASTERSON STATION CENTER, (CITATION VILLAGE) (AMD) to the October 8, 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 Ms. Plumlee and carried 11-0 to postpone DP 2015-38: MASTERSON STATION CENTER, (CITATION VILLAGE) (AMD) to the September 10, 2015, Planning Commission meeting.

- d. DP 2015-55: BLUEGRASS BUSINESS PARK, LOT 4 (PEMBERTON FARM) & BURKE, HOCKENSMITH & MAGGARD PROPERTY, UNIT 5 (AMD.) (9/10/15)*- located at 2151 and 2221 Georgetown Road.
(Council District 2) **(Arnold Consulting)**

Note: The Planning Commission postponed this item at their July 9, 2015 and August 13, 2015, meetings. The purpose of this amendment is to revise the development of the property.

The Subdivision Committee Recommended: **Postponement.** The applicant still has not clarified the provision of sanitary sewer service to the proposed development, and resolved the access proposed to future lots.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Division of Water Quality's approval of crushed rock/recycled asphalt surface for equipment storage areas and dust control measures.
12. Kentucky Transportation Cabinet's approval of access to Georgetown Road.
13. Dimension all proposed buildings.
14. Clarify labeling for street cross-sections shown.
15. Clarify bounds of proposed storm water detention areas.
16. Correct plan title.
17. Denote all proposed and existing easements.
18. Clarify uses proposed in I-1 zone (to prevent a "machinery storage yard").
19. Demonstrate compliance with Art. 21-4(e)(2) of the Zoning Ordinance, prior to certification.
20. Change street/access easement information to match previous plan, or discuss the phasing of construction.
21. Discuss phasing of development.
22. Discuss details of Boyd Drive access to Georgetown Road, including timing of full construction, and previous development plan.
23. Discuss fencing and use (display area) shown.
24. Discuss easement conflict with proposed building and resolution of same.
25. Discuss sanitary sewer service status for the property.
26. Discuss Royal Spring Aquifer protection measures.
27. Discuss recorded stormwater easement conflict with proposed Jaggie Fox Way southern access location.
28. Discuss notes #12 & #15.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of DP 2015-55: BLUEGRASS BUSINESS PARK, LOT 4 (PEMBERTON FARM) & BURKE, HOCKENSMITH & MAGGARD PROPERTY, UNIT 5 (AMD.) to the October 8, 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.

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

Action - A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 11-0 to postpone DP 2015-55: BLUEGRASS BUSINESS PARK, LOT 4 (PEMBERTON FARM) & BURKE, HOCKENSMITH & MAGGARD PROPERTY, UNIT 5 (AMD.) to the October 8, 2015, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, September 3, 2015, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Joe Smith, Mike Owens, Will Berkley, Carolyn Plumlee and Frank Penn. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Jim Duncan, Tom Martin, Traci Wade, Cheryl Gallt, Denice Bullock, Kelly Hunter and Dave Jarman, as well as C.D. Schnelle, Division of Police; Captain Greg Lengal and Josh Theil, Division of Fire & Emergency Services 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 – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

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

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

At 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 most of these items, and the staff recommended reapproval for the remaining item. (A copy of the Consent Agenda is attached as an appendix to these minutes).

- a. PLAN 2015-89F: JERRICO, INC., LOT 3 (AMD) (11/1/15)* - located at 2900 Palumbo Drive.
(Council District 7) **(Strand Associates)**

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

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
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. Complete site statistics.

- b. PLAN 2015-90F: COONS PROPERTY, UNIT 10 (AMD) (11/1/15)* - located at 4251 Saron Drive.
(Council District 8) **(Rich Design Studios)**

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

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
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. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

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

- c. DP 2015-68: HAMBURG PLACE FARM, SIR BARTON OFFICE PARK, LOT E (AMD) (11/1/15)* - located at 2424 Sir Barton Way. (Council District 6) **(HDR Engineers)**

Note: The purpose of this amendment is to add 1,000 sq. ft. of buildable area to an office building.

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. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Clarify configuration and floor area of "second floor addition" on the 3-story structure.
9. Addition of dimensions for new addition, and existing building.
10. Correct note #7 to reference "Chapter 16 of the Code of Ordinances."

- d. DP 2015-69: BRYAN PROPERTY (11/1/15)* - located at 1810 Bryant Road. (Council District 6)

(Vision 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 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
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. Depict property in bold solid lines.
12. Revise building location to meet 25' required setback adjacent to A-U property.
12. Denote height of building in feet.
13. Addition of building floor area (square footage) for hotel.
14. Label required building line.
15. Correct note #6 in reference to "Chapter 16 of the Code of Ordinances."
16. Delete unlabeled dash lines going through building.
17. Addition of note #12 (conditional zoning) from previous plan.
18. Delete cul-de-sac cross-section.
19. Correct zoning on plan face.

- e. DP 2015-70: SEBASTIAN PROPERTY, UNIT 2 (AMD) (11/1/15)* - located at Trailwood Lane. (Council District 2)

(EA Partners)

Note: The purpose of this amendment is to revise the townhome development, reflect partial street closures and to remove a boulevard street cross-section.

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. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

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

12. Label and denote trail on plan.
13. Remove note #14 and document compliance with Article 8-10(o)(3) prior to certification.

- f. DP 2015-71: JERRICO, INC., LOT 3 (AMD) (11/1/15)* - located at 2900 Palumbo Drive.
(Council District 7) **(Strand Associates)**

Note: The purpose of this amendment is to add building floor area and parking on Lot 4.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. 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 name and address of owner and developer on plan.
 11. Addition of record plat designation in title block.
 12. Add note for Art. 19 of the Zoning Ordinance.
 13. Clarify note #17 making reference to the previous development plan (DP 2004-46).
- g. DP 2015-73: ZANDALE SHOPPING CENTER & GREENLEAF MOTOR LODGE (AMD) (11/1/15)* - located at 2220 and 2280 Nicholasville Road. (Council District 4) **(Branstetter Carroll)**

Note: The purpose of this amendment is to revise the parking, building layout and circulation on Lots 1 and 3.

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. Correct sequence and numbering of notes.
 11. Reinstate 8,169 sq. ft. of "retail bay" space into Zandale parking statistics, from previous plan (DP 2015-2).
 12. Correct total floor area (sq. ft.) in existing shopping center and resulting parking provided.
 13. Clarify required versus provided parking for Lot 3 uses.
 14. Denote location of construction access to Lot 3.
 15. Resolve landscaping and buffering between Lot 3 and the existing residential zone.
 16. Resolve continuity of pedestrian access to Lowry Lane from Lot 3.
 17. Resolve dumpster location next to residential zone.
- h. DP 2015-77: COONS PROPERTY, UNIT 11, LOT 2 (11/1/15)* - located at 4268 Saron Drive and 978 Chas Drive.
(Council District 8) **(Palmer Engineering)**

Note: The purpose of this amendment is to revise the building layouts and reconfigure the parking.

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.

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

9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Remove curb and gutter from entrance aprons.
11. Resolve possible need for additional parking on Lot 2B.

Mr. Sallee directed the Commission's attention to DP 2015-78, and briefly explained that the Commission must make a finding that the plan meets the (Adaptive Reuse Project) requirements of Article 8-21(o)(c)(3) of the Zoning Ordinance. He indicated that the staff had previously distributed copies of this finding, just prior to today's hearing, for the Commission to review.

- i. DP 2015-78: LOUDON PARK (SLONE PROPERTY) (11/1/15)* - located at 780 N. Limestone.
(Council District 1) **(Mark McCain, RLA)**

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. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
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. Denote final record plat information on plan, per Art. 21-6(b) of the Zoning Ordinance.
10. Denote final record plat information for adjoining property, per Art. 21-6(b) of the Zoning Ordinance.
11. Denote height of building on plan.
12. Denote proposed use in site statistics.
13. Denote lot coverage and floor area ratio site statistics, per Art. 21-6(b) of the Zoning Ordinance.
14. Document parking location(s) and Ordinance compliance prior to plan certification.
15. Provided the Planning Commission makes a finding that the plan meets the requirements of Article 8-21(o)(c)(3) (Adaptive Reuse Project) of the Zoning Ordinance.
16. Resolve access to, or parking along, North Limestone Street.
17. Resolve compliance with Central Sector Small Area Plan recommendations relative to North Limestone Street orientation.

- j. DP 2014-64: SOUTH BROADWAY PLACE (PHASES IIA & IIB), LYNN GROVE ADDITION (AMD) (12/2/15)* - located at 107, 116, 118, 201 & 203 Simpson Avenue; 1100-1110 Prospect Avenue; and 99-103 & 109-119 Burley Avenue.
(Council District 3) **(Barrett Partners)**

Note: The purpose of this amendment is to revise the development of South Broadway Place, Lynn Grove Addition Townhouse (R-1T) area and redevelopment of R-4 areas of Lynn Grove Addition. The Planning Commission approved this plan at their September 11, 2014, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Denote street cross-sections through Export Street and Simpson Avenue.
11. Denote existing easements on face of plan.
12. Revise notes to include all relevant notes from approved plan.
13. Denote source of contour data on plan.
14. Resolve compliance with note #24 on approved plan prior to plan certification.
15. Resolve compliance with note #25 prior to issuance of a building permit.

Note: The applicant now requests approval of a one-year extension of the Commission's prior approval.

The Staff Recommends: **Approval of a one-year extension**, subject to the conditions previously approved at the September 11, 2014, Planning Commission meeting.

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

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. Brewer, seconded by Ms. Richardson and carried 11-0 to approve the items listed on the Consent Agenda, as recommended by the Subdivision Committee, to include making a finding that DP 2015-78 meets the requirements of Article 8-21(o)(c)(3) (Adaptive Reuse Project) of the Zoning Ordinance.

IV. LAND SUBDIVISION ITEMS – continued....

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

The procedure for these hearings is as follows:

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

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

1. FINAL SUBDIVISION PLANS

- a. PLAN 2015-91F: FRITZ FARM, LLC & DMK DEVELOPMENT GROUP (11/1/15)* - located at 4210 Nicholasville Road.
(Council District 4) **(HDR Engineers)**

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 notes #3, #5 and #11.
10. Correct Man o' War Boulevard cross-section.
11. Delete survey note #2.
12. Clarify survey note #6.
13. Remove existing access reference from plan.
14. Provide a list of private utility providers on plan.
15. Provided the Planning Commission grants a waiver to Art. 4-7(d)(1) & 6-6 of the Land Subdivision Regulations.

Staff Presentation – Mr. Martin directed the Commission's attention to the final record plat for Fritz Farm, LLC & DMK Development Group, located at 4210 Nicholasville Road. He oriented the Commission to the plan rendering, and briefly explained that the subject property is located at the southeast corner of Nicholasville Road and Man o' War Boulevard.

Mr. Martin said that the Planning Commission recently approved a development plan at this location for an assisted living facility. He explained that the assisted living facility would be utilizing an access easement on the east boundary of the property that crosses the adjoining Pax Christi Church property, as well as access from Man o' War Boulevard via a new right in/right out point. The applicant is now requesting to subdivide the property, creating two lots. The largest lot (Lot 1) would be 6.2 acres in size and the smaller lot (Lot 2) would be 4.8 acres in size, which would be subject to the standard record plat conditions. He said that the Nicholasville Road access easement has been removed through a recorded deed, and this plat would reflect that removal as well as the new access location to serve this site.

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

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

Mr. Martin directed the Commission's attention to the waiver report (condition #15), and said that the applicant has requested a waiver to Art. 4-7(d)(1) & 6-6 of the Land Subdivision Regulations in order to coordinate the construction of the public sanitary sewer system to serve the property. He then said that, as part of the improvement plan process, the applicant must document that the public infrastructure has been provided that is required for a subdivision prior to the recordation of a Final Record Plat. He added that what is significant with this waiver request is that the public sewer system must be installed to both of these lots through a lift station. He explained that the steep topography of the site, as well as Man o' Boulevard, are both factors that significantly impact the design and construction of the sanitary sewer system. He said that the collection system will be private until such time that it is connected to the public sewer system.

Mr. Martin said that the Planning and Engineering staff have reviewed the applicant's waiver request and can recommend approval of the requested waiver, for the following reasons:

1. Granting the requested waiver will not adversely affect public health and safety, as the sanitary sewer system will be constructed and approved prior to occupancy of the assisted living facility.
2. Not granting the requested waiver would constitute an exceptional hardship to the applicant, by requiring the construction of a gravity system that could be accepted into the public sanitary sewer system.

This recommendation is made subject to the following requirements:

- a. Prior to certification of the Final Record Plat, denote private sewer easements and notes regarding maintenance and/or replacement of the sanitary sewer lines, to the approval of the Divisions of Engineering and Water Quality.
- b. Denote: No Zoning Compliance Permit and no Certificate of Occupancy shall be issued for Lots 1, 2, 3 or 4 until sanitary sewer service is provided to the site meeting the requirements of the Kentucky State Plumbing Code and accepted by the Division of Engineering and the Division of Water Quality.

Mr. Martin concluded by saying that the responsibility for the sewer lines and lift station maintenance, repair or replacement will be that of the private property owner(s) and not Lexington-Fayette Urban County Government.

Planning Commission Question - Mr. Penn asked if the house on the outlot has access to the private sewer. Mr. Martin said that the Johnson property does not need that connection since it is already sewered.

Representation – Mark McIntosh, HDR Engineers, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested approval of PLAN 2015-91F.

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

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 11-0 to approve PLAN 2015-91F, as presented by the staff.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 11-0 to approve the requested waiver to Art. 4-7(d)(1) & 6-6 of the Land Subdivision Regulations, as presented by the staff.

- b. PLAN 2015-92F: COONS PROPERTY, UNIT 11, LOT 2 (AMD) (11/1/15)* - located at 4268 Saron Drive and 978 Chas Drive. (Council District 8) **(Palmer Engineering)**

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

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).
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Provided the Planning Commission grants a waiver to Art. 4-7(d)(1) of the Land Subdivision Regulations.

Staff Presentation – Mr. Hunter directed the Commission's attention to the amended Final Record Plat for Coons Property, Unit 11, Lot 2, located at 4268 Saron Drive and 978 Chas Drive. He oriented the Commission to the rendering of this Final Record Plat, and briefly explained that the subject property is located off Man o' War Boulevard, near Tates Creek Road. The purpose of the amendment is to subdivide one lot into two lots.

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

Mr. Hunter said that the Subdivision Committee recommended approval of this plan, subject to the conditions listed on today's agenda. He briefly explained that conditions #1-7 are standard sign-off requirements from the different divisions of the LFUCG; and the remaining item is in regard to a waiver to Art. 4-7(d)(1) of the Land Subdivision Regulations.

Waiver Request - Mr. Martin directed the Commission's attention to the waiver report (condition #8), and said that the applicant has requested a waiver to 4-7(d)(1) of the Land Subdivision Regulations for substantial completion. He explained that granting this waiver would allow the plat to be recorded prior to the completion of the public sanitary sewer line to serve the property. He then said that this property is governed by an amended development plan, which is listed on today's agenda; and for this particular lot, the applicant is proposing a Professional Office and Medical Facility on Lot 2.

Mr. Martin said that once the lot is created, it would then be transferred, allowing the development of the commercial use and the required sanitary sewer to be coordinated together, as the site develops. He then said that there are two sanitary sewer easements on this property, so the sewer line itself would be fairly short in length. He added that in order for financing and the transfer of ownership to go through, the applicant needs to record this final record plat.

Mr. Martin said that the different divisions of the LFUCG have reviewed the applicant's waiver request and can recommend approval of the requested waiver, for the following reasons:

1. The requested waiver would relieve an exceptional hardship for the applicant by allowing the financing and transfer of the subject property in a timely manner, which will allow the proposed development to proceed in a timely fashion.
2. Granting the waiver will not negatively impact public health and safety, as the completion of public improvements for the proposed lot will be completed with the construction of the proposed professional office building.

Mr. Martin then said that this recommendation is made subject to the following additional requirement:

- a. Denote: There shall be no issuance of a zoning compliance permit until the sanitary sewer system has been constructed and accepted by the Division of Engineering and the Division of Water Quality.

Planning Commission Question – Mr. Penn asked if there is a pump station involved. Mr. Martin replied negatively, and said that it is a very short gravity line.

Representation – Stephanie Blane, Palmer Engineering, was present representing the applicant. She said that they are in agreement with the staff's recommendations, and requested approval of PLAN 2015-92F.

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

Action - A motion was made by Ms. Richardson, seconded by Mr. Brewer and carried 11-0 to approve PLAN 2015-92F, as presented by the staff.

Action - A motion was made by Ms. Richardson, seconded by Mr. Brewer and carried 11-0 to approve the requested waiver to Article 4-7(d)(1) and Article 6-2(a), as presented by the staff.

- c. PLAN 2015-93F: ASHLAND PARK, INC. SUBDIVISION, NO. 12, LOT 3 (AMD) (11/1/15)* - located at 508 Clinton Road. (Council District 5) **(2020 Land Surveying)**

Note: The purpose of this amendment is to reduce the building line setback from 50' to 41'.

The Subdivision Committee Recommended: Postponement. The Planning Commission disapproved a similar plan amendment earlier this year, due to existing notes on the parent plat.

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.

Staff Presentation – Mr. Sallee directed the Commission's attention to the amended final record plat for Ashland Park, Inc. Subdivision, No. 12, Lot 3, located at 508 Clinton Road. He distributed several handouts to the Commission members and noted that, included in those handouts was the staff report for PLAN 22015-36F and two staff exhibits, both of which had been presented at the May 14, 2015, meeting. He then noted that the Commission had received the section of the Zoning Ordinance that outlines the allowable provisions for averaging across the front building line where a wall is not parallel to the building line, as well as a schematic of the front elevation and floor plans that were distributed at the Subdivision Committee meeting. Mr. Sallee directed the Commission's attention to the zoning atlas and the pictometry for the site and oriented them to the surrounding area. He indicated that the subject property is located within the block next

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

to Adair Road, which is bounded by Culpepper Road, Cochran Road and Prather Road. He then directed the Commission's attention to a photograph that was presented at the May 14th meeting, noting that the line shown in the picture illustrates the location of where the proposed building line would have been, and explained that the line would be closer to the street than with this request.

Mr. Sallee directed the Commission's attention to the plan rendering, and said that the purpose of this amendment is to reduce the building setback from 50' to 41', which would be 11' further from Clinton Road than what was previously requested. He briefly explained that the subject property is zoned Single Family Residential (R-1C) and requires single family detached houses on lots at least 60' wide and 8,000 sq. ft. in size. He said that the property is 200' deep and 80', wide and the frontage far exceeds the current minimum R-1C requirement of 60 feet. He then said that the 50' building line also exceeds the minimum requirement of 30' for the R-1C zone. Mr. Sallee said that the discussion from the May meeting was the proposed 30' building line, and that request was denied by the Planning Commission. He then said that, since that time, the applicant has revised their submission, only asking for a 9' change to the building line versus the 20' that was previously presented to the Commission.

Mr. Sallee said that, at the Commission's May meeting, the staff spent a great deal of time reviewing two notes appearing on the 1956 plat, which includes: "*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.*" He then said that the original subdivider was deceased; therefore, that part of the note is no longer applicable. However, with the other note, the staff believed that the proposed reduction of the building line to 30' was not in keeping with the developer's original intention for this part of the subdivision. The staff felt it was too drastic of a change. It was cited to be a 40 percent change to the front setback, and it was far in excess of any other similar property or changes to front setbacks that exist in this particular area. He said that this prompted the staff to initially recommend postponement; but, in the end, the staff changed their recommendation to disapproval. He said that the first reason for disapproval was that Article 5-4(d)(6) of the Land Subdivision Regulations requires the developer and his engineer to "show the front yard setback as required by the Zoning Ordinance; or, if more restrictive, as desired by the developer." The staff and the applicant debated what was meant by "desired by the developer." He said that the second reason for disapproval was that 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). He noted that the current proposal is more in the line of a 20% reduction, rather than 40%. He added that the third reason for disapproval (was that with these amendments the Planning Commission must approve such changes under the Land Subdivision Regulations the changing of a building line is not something in the Land Subdivision Regulations that is delegated to the staff. The Planning Commission must approve any change to a building line on a plat, unless there is a variance granted by the Board of Adjustment. In this case, no such variance is associated with this plat.

Mr. Sallee said that the staff had reviewed this current request and believes that the same conditions that were forwarded to the Technical Committee, back in May, are applicable to this request. He then said that, should this plan be disapproved, the same reasons for disapproval should be considered - with the noted exception in finding #2, adding that the percentage would be changed from "40%" to "20%." He said that it must be recognized that this is a change to the plat request that was presented in May, which prompted the staff to prepare an additional exhibit (3). He said that, under the averaging provisions of Art. 15-2(a)(5) of the Zoning Ordinance, a 45' building line would allow the proposed garage addition. He directed the Commission's attention to the staff exhibit and briefly explained that a portion of the house that is proposed to be closer than 45' to the street is shown in orange. The portion of the yard that is behind the 45' building line, that would remain, if this plat were to be approved, is shown in green. He said that there is a porch proposed at the front between these two portions shown by the green "X", and added that porches are allowed to project up to 8' across the building line, under a different section of the Ordinance. It appears to the staff that a 24' 4" addition 4'^{1/2} in front of that line is smaller than the 26' 1'^{3/4} by 5' yard behind a 45' setback line, and shown in the green area. The staff believed that at 45' building line would allow the proposed garage that the applicant presented at the Subdivision Committee meeting last week.

Mr. Sallee said that should the Planning Commission approve this request, 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.

Mr. Sallee then said that the staff would also recommend one additional condition:

6. Revise the building line to 45'.

In conclusion, Mr. Sallee said that the staff does not believe that this application is materially different from the application submitted in May; and this is why the same recommendation, with the one change, was forwarded to the Planning Commission.

Planning Commission Questions – Mr. Brewer asked if the recommendations that were being presented to the Commission were the same ones from the first application. Mr. Sallee replied affirmatively. Mr. Brewer then asked if the exhibit was the staff's and not the applicants. Mr. Sallee said that exhibit #3 was presented to the Subdivision Committee

at their September 3rd meeting; and what the staff reviewed was the need for a 41' building line versus anything else. He then said that the staff believes a 45' building line would allow the proposed addition, while creating a lesser change than what is being proposed.

Mr. Penn asked what the staff's recommendation would be. Mr. Saltee said that the staff's recommendation is not changing. However, should the Commission approve this request the five conditions listed on the agenda should be considered, adding a sixth condition. He then said that, in speaking with the applicant just prior to today's meeting, it is uncertain as to whether they are agreeable to the sixth condition.

Mr. Brewer confirmed that, as of now, the staff is still recommending disapproval. Mr. Saltee replied affirmatively. Mr. Brewer asked, should the Commission decide to move this request forward, what would be the staff's recommendation for the sixth condition. Mr. Saltee replied that the sixth condition should read: "Revise the building line to 45'."

Representation – Mr. Richard Murphy, attorney, along with Lynn Pedigo, Pedigo Design, were present representing Linda and Wayne Bussell, who own 508 Clinton Road. He then said that they appeared in front of the Commission in May of this year requesting a change to the building line from 50' to 30', which the Commission disapproved. Since that time, his clients and Ms. Pedigo designed an alternative version that moves the garage back without interfering with the structural wall of the house. This change has resulted in the setback going from 50' to 41' (18% change), versus the original setback from 50' to 30' (40% change).

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. This in conjunction with the location of the neighbor's retaining wall, makes it difficult for his clients to access the rear of the property. He indicated that this request is not being done on a whim, and said that his clients are retired and they want to reside in this house for the rest of their years. This is what has led to the redesign of the proposal that is being presented to the Commission.

Mr. Murphy said that this request meets the Zoning Ordinance requirements as well as the Land Subdivision Regulations. He directed the Commission's attention to the applicant's exhibit and briefly oriented them to the information provided in the exhibit book. He noted that the layout of the Ashland Park Inc. Subdivision No. 12 plat is the 1956 plat, which shows his client's property on Lot 3 with a 50' setback and a 60' setback on the opposite side of the street. He said that the Zoning Ordinance - Article 8-7(h) - requires a minimum front yard setback of 30', which they would have. He then said that, in looking at the definitions, "developer" is defined as the "*subdivider, owner or builder, etc., even though the persons and their precise interests may vary at different project stages.*" He added that his clients are the owners; and under the Land Subdivision Regulations, the owner is defined as the same as the developer. Any discussion concerning the front yard setback as desired by the developer is defined to include as desired by the owner. He said that this section of the regulations cannot possibly be used to prohibit a change to the setback as requested by the owner since the owner is defined to be the same as the developer.

Mr. Murphy said that in reviewing the plat note from the 1956 rendering, it reads that "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." This request complies with every part of this note. He said that there is only one principal building on the lot, and the area and the width of the lot will be exactly the same as it has been.

Mr. Murphy said that the staff had made and what the developer had intended what was an important point in their presentation; and there are two parallel universes as to how land uses are governed. He then said that the first is what the Planning Commission governs public regulations and zoning; the other is private deed restrictions that are imposed, neither impacts the other. He said that, in reviewing the original deed for this property, the intent of the developer states that "*any dwelling house upon the property hereby conveyed shall face Clinton Road; and no part of any wall thereof shall be placed within 50' of the front property line thereof.*" He then said that the deed also stated that "*the above-stated restrictions, terms and conditions shall be binding for a period of not less than 30 years from July 1, 1956.*" These restrictions were given a set life because developers knew conditions would change. He said that they believe it is irrelevant to try to figure out what the developer's intentions were, but rather the Zoning Ordinance should be looked at concerning the public requirements for setbacks. He said that the intention of the original developer was to keep the 50' setback for only 30 years, which ended 29 years ago. Mr. Murphy said that, when the deed restrictions ended, the neighborhood could have applied for an ND-1 Overlay zone, which places design standards, such as building line setbacks, windows and so forth, on the neighborhood. He noted that the neighborhood stated that they are working toward applying for an ND-1 Overlay zone; but until that time, his clients are entitled to a decision based on how the Zoning Ordinance reads today, not how it might read in the future. There is a concern with setting a precedent, but they believe that this would encourage a positive precedent by allowing home owners to renovate and spend money on their homes.

Mr. Murphy directed the Commission's attention to case law, Snyder vs. Ownsboro, and asked if a Planning Commission can turn down a plat, not a zone change, because of the neighborhood's concerns. He then said that in the case of Snyder vs. Ownsboro, the Court of Appeals said that statute states that "*specific standards shall be set forth rather than mere broad generalizations with regard to health, safety, morals and general welfare or the use of such flexible terms as most advantageous development.*" He then said that Snyder vs. Ownsboro continued

to state that *"mere generalization of matters to be considered in approval of subdivision plats is not sufficient; there must be rules and regulations constituting specific standards to be applied in determining whether approval is to be granted."* He added that Synder vs. Ownsboro also states that *"approval of subdivision plats is a ministerial act."* Mr. Murphy said that ministerial act means that if the request complies with the Zoning Ordinance and the Land Subdivision Regulations, then the Planning Commission is required to approve that plat. He then said that he understands that he is in front of a group of people who believe they have the discretion to approve or disapprove anything, but unfortunately that is not how the State of Kentucky law reads. He added that the Commission could delegate the approval or disapproval of plats to the staff or a hearing officer because it is simply a matter (much like complying with the building codes) as to whether or not the plat complies with the standards. He said that approving subdivision plats is a ministerial act in the State of Kentucky and there have been several other cases where the Court of Appeals has cited that neighborhoods' concerns on aesthetics cannot be looked at - only whether or not the plat meets the regulations and requirements.

Mr. Murphy directed the Commission's attention back to the applicant's exhibit and briefly explained to them that there have been a number of properties within the general area that have made changes to their building lines. He said that in 2001, the Planning Commission approved 505 Clinton Road to change their building line from 60' to 45'. He then said that in 1999, the Planning Commission approved two properties on Cooper Drive to change their building line from 55' to 45'. He continued, noting that the staff had said that a lot cannot be reduced in size; however, in 2005, the Planning Commission had approved the subdivision of one lot and a portion of another lot into three lots at the corner of Culpepper Road and Hart Road. With this case, in the same year, the Board of Adjustment had also approved a variance to change the building line from 30' to 15'. He added that in 2001, the Planning Commission also approved the subdivision of one lot into three lots at the corner of Cochran Road and Ridgeway Road, and the Board of Adjustment also approved a variance allowing the side yard line to be changed from 30' to 7.5'. Mr. Murphy said that if their building line was 30', then they could request a variance down to 15' from the Board of Adjustment; but they are not eligible because the building line is 50'. He said that they are not requesting to go below 30', but rather they are asking to reduce the building line to what the Zoning Ordinance already allows. He then said that since the Zoning Ordinance already allows a 41' building line they cannot seek the Board of Adjustment's approval. He continued noting that the staff had mentioned that the size of the lot cannot be reduced; but in reviewing the past final record plats that were approved by the Planning Commission, that very thing had been approved for corner lots in this area. Mr. Murphy said that building lines are not only changed in the Ashland Park area, but also in the Lansdowne area. He then said that in 2011, the Planning Commission approved the reduction of the building line from 45 to 40' at the corner of Lansdowne Drive and Nantucket Drive; and in 2012, had approved the reduction in the building line to 30' at the corner of Hildean Drive and Sherwood Drive. He noted that the minimum setback allowed per the Zoning Ordinance is 30'.

In conclusion, Mr. Murphy said that he has been practicing law for a number of years; and as long as these types of requests meet the Zoning Ordinance requirements, he does not recall any of them being turned down. He then said that, under the law, this request is allowed per the Zoning Ordinance, which is why his clients had originally requested 30' at the May meeting. He added that there are no deed restrictions prohibiting this type of request from being approved; and there have been many similar cases, in the Ashland Park area, that have been approved by the Planning Commission. They are requesting the same thing that many people have already been granted in the past. Mr. Murphy indicated that they understand the depth of emotion with the neighbors and his clients; but this request, a reduction to 41', is allowed per the Zoning Ordinance.

Planning Commission Questions - Mr. Brewer asked if the new design would be using part of the existing house. Mr. Murphy replied yes, and said that part of the house would be taken down to the structural wall, but it is not a complete tear down.

Supporters' Comments - The Chair asked if anyone in the audience wished to speak in support of this request. There was no response.

Objectors' Comments - The Chair asked if anyone in the audience wished to speak in opposition to this request. Monica Kern, 505 Clinton Road, was present in opposition. She said that Clinton Road is one of the prettiest areas in Lexington. She then said that there are different varieties of house styles and building materials; but what gives it its cohesive, uniform looks are the large lots, big yards and the uniform setbacks. She added that the uniform setbacks on both sides are its primary visual feature.

Ms. Kern said that, by granting approval of the reduced setback, it will, at best, create one house with a front-facing garage, in the middle of the block, that sticks out farther than any other house. This would take away from the visual appeal of the area, making it a distraction from the neighborhood's character. She then said that, at the worst, it would create a precedent for more house renovations and more lots being subdivided. She indicated that the neighbors are not happy with those lots that are already subdivided, and they do not want more lots to be approved. Clinton Road will become less desirable, and increasingly crowded, destroying its unique character.

Ms. Kern said that the first time this request was submitted, the Planning Commission unanimously rejected it, primarily because of the unusual note on the plat, which states that the developer had intended for this lot to remain unchanged. She then said that the current proposal is requesting a smaller reduction to the setback; however their original objections

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to the first request apply to this proposal as well. She added that even a 20% reduction to the front yard is still substantial and it contradicts the note on the 1956 plat.

Ms. Kern said that the vast majority of houses on Clinton Road have had renovations, additions and even a complete rebuild since the neighborhood was established in 1956. She then said that with all of these changes, the original setbacks on each lot were observed. She added that the neighborhood is not opposed to the applicants renovating their house; but they believe there are alternative designs that can be used, while preserving the front yard setback and the original character of the street.

Ms. Kern said that a simple argument just offered by Mr. Murphy was the alleged precedent already started with 505 Clinton Road. She indicated that she was heartsick with the thought of her property being used to make a point with this proposal. She then said that, prior to purchasing her home, the previous property owners were approved in 2001 for variance to reduce the building line setback to 45'. However, that reduction was not implemented by the previous owners and it will never be. She said that when her family decided to renovate their home, they purposely chose to build the addition toward the rear of the property, keeping the original façade and setback unchanged.

Ms. Kern said that at the May meeting it was implied that the neighborhood should have implemented the ND-1 Overlay zone if they did not want any changes made to the setback. She then said that the reason they did not pursue the ND-1 Overlay is because they did not know the deed restrictions came with an expiration date. She added that since the May meeting, they have created a Steering Committee to oversee the ND-1 Overlay process. They have met with the different governmental divisions; they are currently conducting the architectural surveys, and will be scheduling neighborhood meetings to inform the neighborhood of this process. She said that the neighbors in this area have been supportive of the ND-1 Overlay because it would preserve the original setbacks of this area.

Ms. Kern said that, even though the process takes several months, she is confident that they will have the necessary support of the neighborhood in implementing the ND-1 Overlay. She then asked that the Planning Commission reject this request for the same reasons that were presented at the May meeting. This would then allow the neighborhood the opportunity to submit the ND-1 Overlay application for approval.

Linda Price, 501 Clinton Road, was present. She said that they believe the 1956 plat is a covenant that was established for the area by the developer. She then said that the first homeowners, as well as the current homeowners, valued the size of these lots, the street vista, and the front yard setbacks. They had the expectation that the setback would not change and the intent of the developer should be valued and remain.

Ms. Price said that Mr. Murphy had presented evidence of several homes in the general area where the setback had changed or the lots were subdivided, and this neighborhood does not want the same outcome to happen to Clinton Road. She then said that, if the reduction in the setback is allowed, many of the corner lots (including their own) could be subdivided, and they do not want that to happen. This is contrary to the intent of the developer, and she asked that the Commission consider that.

Ms. Price said that they just received the schematics of this proposal; and even though they are not builders, designers or even architects, they believe that the desires of the property owners can be accomplished without changing the front yard setback. She added that there may be a design challenge, but the property owners can achieve what they want without changing the whole street.

Ms. Price requested that the Planning Commission consider not changing the setback because it would have a negative impact on this area.

Objection - For the record, Mr. Murphy registered his objection with the introduction of the alternative architectural designs for his client's house. He said that the alternative architectural design is not relevant. The Chair noted his objection.

Objector's Comments (cont.) - John Price, 501 Clinton Road, was present. He directed the Commission's attention to the applicants' floor plan, and explained the location of the existing walls and the proposed additions. He said that in looking at the drawing, the right side of the house sits at the 50' building line, and the proposed garage sits beyond the 50' building line. He then said that at the last meeting it was mentioned that the applicant wanted a garage that would fit an SUV. He indicated that they measured their SUV, and it measures 17'. This garage is being proposed with a width of 24'4", at a depth of 28'5/8", with approximately 12' of space left.

Mr. Price indicated that the neighborhood had come up with a way that all could agree on regarding what's going to happen, and explained how they redesigned the applicant's plans to keep everything behind the 50' building line, while maintaining everything inside. He said that these lots are 200' deep with a setback of 131'. He then said that there is 70' to the rear, and everyone is tangled up with a garage that is 9' beyond where it should be. He indicated that they do not care what the applicants do with their property, just as long as the setbacks are kept.

Catherine Donworth, 512 Clinton Road, was present. She said that her concern with the reduction in the setback is a safety concern. She then said that Clinton Road is a unique street; and many families, including their children, spend a

great deal of time in their front yards. She indicated that her children play in the front yards, and any change to the building line would prevent her watching her children.

Ms. Donworth said that there are many houses on Clinton Road that have remodeled; and not one of these houses has changed the building line setback. She doesn't see why this house would be allowed to change the entire character of the street.

Gerry Calvert, 427 Clinton Road, was present. He indicated that his property is at the corner of Cochran Road and Clinton Road; and after he suffered a heart attack, he subdivided the property just in case his family needed the empty lot for financial reasons. Since that time, the lot has been undeveloped. He then said that these people, who inherited this house, now want to come in and change the house, changing the character of the entire neighborhood. He asked if the Planning Commission could imagine looking across the street at a four-car garage in a neighborhood where they planned to spend their entire life. He said that they purchased their home in 1985, and they plan to spend the rest of their life in their house. He then said that they have remodeled their house, and the outside of the house is the same and the setbacks have not been changed.

Mr. Calvert said that they want to live in their house based upon the regulations that were imposed when they purchased their home, and he believes that everyone in this neighborhood wants to do the same thing. He indicated that there are four families, two of which were present (Mr. Cravens and Mr. Beck); who have lived on Clinton Road since the beginning. They purchased their dream home based upon the 1956 plat. Mr. Calvert indicated that one of the neighbors, Ms. Swinford, residing at 308 Clinton Road, could not be present for today's meeting. He said that Ms. Swinford asked him to read her letter of objection to this proposal into the record.

Dear Planning Commission,
I have lived at 308 Clinton Road for 56 years, longer I expect, than anyone living on this street. I will be 90 years old in October, not in the best of health. When my late husband, CW Swinford, built our house in 1958, it was with the expectation that this neighborhood would keep its integrity and remain attractive and uniform for the rest of our lives. That is the type of property homeowners accepted when they bought the large lots and built their houses here. When my late husband Dickson Bartest (2nd husband) and I were married in 1989, the large back yards were cherished by the homeowners up and down the street. Now several of the lots, the one next door to me, 311 Clinton Road, have been divided in order to make one large lot into two. Now comes a worse situation at 508 Clinton Road; and as I understand it, the plan is to remodel the house and build a garage in the front yard, altering the setback line of the street. I think such a plan would be wrong, would drastically change the character of the neighborhood, a substantial change to the character of the neighborhood. Property values would soon be devalued if this is allowed to happen. One variance opens the door for another, and pretty soon the neighborhood has changed from family - friendly to other types of properties, where everyone comes and goes from inside their garages and no one speaks or communicates with their neighbors. One of the charms of Chevy Chase, during all of the years I have lived here in Lexington, is that neighbors care for and communicate with each other, respecting each other's property and holding to the original plans to the neighborhood's style. The lovely yards are part of the charm that values this neighborhood. There are several houses in the neighborhood, which are in the process of being remodeled, but no one whom I am aware has planned for a garage in their front yard or the addition of anything that is adverse to the neighborhood style like going toward the street. I strongly oppose this proposed addition and would vote against it if a vote was put forward. I pray that this new proposal is not approved.

Mr. Calvert said that he was speaking on behalf of four people who have lived in this neighborhood from the beginning.

Linda Allin, residing at 504 Clinton Road, was present. She said that listening to all of this is so frustrating, and these homeowners have every reason to be frustrated and confused. She then said that there has been no conversation between the homeowners and the applicants. She added that every little thing that they have learned has been through these public quorums. They come to the public quorums, they see the plan; and their lawyer is speaking for them every single time. She said that the applicants do not live in the neighborhood; it is an empty house, and they inherited the property. She then said that she would like to speak for these wonderful neighbors because all are good people. The applicants are good people, but there has been no communication - not all summer, not last spring and she does not believe she has said five words to the applicants since December. She said that she would like to apologize to each of the Planning Commission members because they are put into this situation. She then said that this is a neighborhood, not a commercial transaction or a business deal. These people are saying they would like to retire in this home and they value the neighborhood; but they are not speaking to them, and she is not the least bit surprised the applicants are not present. There has been no communication.

Forrest McCloskey, residing at 300 Clinton Road, was present. He said that his family has lived in this area for 40 years; and with all of the development, good or bad, most people, if not all, have stayed with the covenant. He said that he does not want to speak to the design of the plan because that is between the applicants and their designer. However, in looking at the design, he indicated that their proposal is a little bit much, because they are using both the front and rear yards to accommodate their needs. He said that he is not sure if renovation would be considered as a tear down, but

practically every room in this house will lose its utilities at some point. Mr. McCloskey said that the issue is the setback, not the design of the house. He then said that the setback for this area is 50' and it should remain 50'. He added that the garage needs to be shifted back and utilize the rear yard.

Mark Jeter, residing at 409 Clinton Road, was present. He said that his family had purchased their home in 1994, and it has been a wonderful place to raise a child. He echoed the neighbors' concerns, and said that there would be proper consideration if there were not 70' in the rear yard to work with. He added that 70' of space is more than enough room to accommodate the applicants' needs.

John Van Nagell III, residing at 304 Clinton Road, was present. He asked how amazing it is that you have a street with all of these people who will come down to speak to this proposal. He then said that this would be a great city if this happened all the time. He added that his family has lived in their home for 12 years, and the neighbors are wonderful. He understands that the Planning Commission has a tough decision; but he wanted to point out that there are dwindling gems in Lexington, and requested the Commission to deny this request.

Petitioner's Rebuttal – Mr. Murphy said that there is a lot of emotion concerning this request; and, like any neighborhood, the residents should be proud of where they live. He then said that what they are proposing is legal and non-threatening to this neighborhood.

Mr. Murphy said that there was a statement that the setback violates the 1956 plat note; however, the note reads "*any lot transferred shall have minimum width and area substantially the same as shown on this plat and only one principal building will be permitted on any lot.*" He said that they comply with every single portion of this note because they will still have the same width and the same area as it has now.

Mr. Murphy said that the view of the street had been mentioned, and the concern is that the neighbors would not be able to see the sidewalk or the children playing. He then said that having a garage with a setback of 41' will not impact the view of the sidewalk; but, rather, the trees on Clinton Road impede the view of the sidewalk. He added that, as staff had stated, porches are allowed to project 8' into the required front yard. This means that, since this lot has a 50' setback, his clients do not need the Commission's approval to construct an enclosed porch across the entire width of this house at a depth of 42' from Clinton Road. He added that a porch would not block anyone's view any more than a garage would.

Mr. Murphy indicated that he had distributed two examples of nearby houses with front-facing garages for the Commission to review. He said that as far as aesthetics are concerned, the Courts of Appeals have ruled that that cannot be taken into consideration. They believe their design would be aesthetically pleasing to the neighborhood, and would accommodate his clients' needs.

Mr. Murphy said that it was mentioned by some neighbors that his clients inherited this house, noting that was true, but they inherited it from their cousin. He then said that his clients have lived in this area for over 30 years and have been a part of this neighborhood, as well as part of the neighborhood association. He added that his clients were in this house for 15 years taking care of their cousin when they were needed. He said that some neighbors stated that his clients have no connection to this area, they don't live here, and they don't have any business coming to the Commission because they inherited the house. He then said that yes his clients inherited the house because the Mattinglys cared for their cousins and they wanted them to have the house so they could retire here.

Mr. Murphy concluded by requesting the Commission to approve this request, noting that they are legally entitled and asked to be treated as any others that have submitted these same types of request.

Opposition Rebuttal - Ms. Kern said that Mr. Murphy stated that this application met all of the regulations, but that is not the issue with this case. She then said that it was also stated that the deed restrictions are not to last more than 30 years; but, to her, that statement does not necessarily mean those restrictions have expired. Rather the restrictions would still apply to this day or longer.

Ms. Kern said that Mr. Murphy argued that Synder vs. Ownsboro stated that there should be specific standards when making a decision, and aesthetics cannot be looked at; but they are agreeing over the specific standards such as the setbacks originally prescribed on the plat.

Ms. Kern said that, regarding the argument concerning the front-facing garage, no one ever said that this area does not have front-facing garages; and by her own count, there are 15 front-facing garages on Clinton Road. However, there is only one case in which the garage extends past the house into the front yard area, but none of these garages goes past the original setback.

Ms. Kern indicated that the neighborhood feels strongly about keeping the original setback in place, and they are pursuing the ND-1 Overlay zone to keep the original character intact.

Staff Rebuttal – Mr. Sallee said that Mr. Murphy referred to the existing note on the plat, which states that "*Any lot transferred shall have a minimum width and area.....*" and he is asking the Commission to interpret this note as meaning "lot area," which is a valid interpretation. He then said that, at the May meeting, the staff believed that the word

"area" was unqualified, and could also be interpreted as an open space area; and if so, the building line is directly impacted.

Mr. Sallee then said that many of the plats that were referenced by Mr. Murphy do not show these types of notes or are subject to the deed restrictions that have expired. He added that those that appear on the subject plat are still governing each of these lots.

Mr. Sallee said that Article 1 of the Land Subdivision Regulations defines "developer" as *"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 asked the Commission to consider the last part of Article 1, as to what the "project stages" of a subdivision are. He said that Article 4-9 of the Land Subdivision Regulations has simplified the stages or procedure for a major subdivision plan; and in looking at 16th step, the final plan must meet all requirements, be certified and recorded within one year of Commission approval. This was done for this subdivision in 1956. He added that, since that time, the only listed step left is the release and call of bonds (step #17).

Planning Commission Questions – Mr. Wilson said that Mr. Murphy had indicated that this application was a ministerial act, and asked if that has any implications with regard to what the Commission can and cannot do. Ms. Jones replied that it does, but the question is how the Commission would interpret the note, and whether or not the note on the plat has some bearing, along with the staff report, under Article 5-4(d)(6) of the Land Subdivision Regulations. She said it is either what is listed in the Zoning Ordinance or what is more restrictive. She said that the question is really if the note on the plat makes this request more restrictive; if it does, then the Commission must make a decision. She then said that the staff has said that they believe it does; and if it was just ministerial, it would be much easier. But because of the note on the plat, it becomes a matter of interpretation.

Mr. Wilson said that the people of this community presented their objections to this plan. He asked if Mr. Murphy's clients had a chance to review any of the alternative design plans that moved the garage back to retain the setback. Mr. Murphy said that Ms. Pedigo had designed several alternatives, including one design that did not require a change to the setback. However, the problem is the structural wall that is going through half the house at the rear. He said that the house is not being torn down; but due to the structural wall, it should be because it poses a problem. He then said that his clients have great emotional value for this house, and they should not be required to tear down the house in order to accommodate today's needs. He said that his clients do not want to pave the entire back yard since there is still a problem with getting into the back yard due to the wall adjacent to the driveway.

Mr. Drake said that Mr. Murphy's clients are asserting their rights that exist per the Zoning Ordinance, but based on what the staff had stated, there is some latitude for discretion or interpretation on the part of the Commission. Ms. Jones replied that that was not exactly the case. She said that if there was no issue at all regarding the plat, then the Commission's decisions regarding subdivision plats are ministerial in nature. She then said that what has brought this to the Commission is Article 5-4(d)(6) of the Land Subdivision Regulations, which states that front yard setbacks are controlled by the Zoning Ordinance or are more restrictive, as desired by the developer. She added that the note on the plat has raised the issue of whether this means it's more restrictive than what is listed in the Zoning Ordinance. This is the decision that the Commission must make, which takes this application out of the ministerial area and places it in a discretionary area.

Mr. Drake then asked if the 30-year expiration date is not consequential. Ms. Jones said that the deed restrictions do not make a difference, and the Commission cannot enforce those restrictions anyway.

Mr. Penn said that he is not comfortable with a neighborhood making a design plan for another applicant and it is out of the realm of good planning or good community government. He then said that he feels this application has changed some since the May meeting, but the question is whether or not it is in violation. He indicated that he was concerned with the Commission getting into designing someone's house plans, which is not the Commission's responsibility. He said that he appreciated the neighborhood coming down to speak on this request, but the Commission has gotten way off from what needs to be reviewed.

Mr. Brewer said that ministerial issues have been addressed, but asked how is "developer," "subdivider," and "owner" is to be interpreted, and if the current property owners have the same rights as a developer; if that is the case, then it is clear what direction the Commission should go. Ms. Jones said that she agrees with the staff rebuttal comments and she does not interpret the definition of "developer" as being the current property owner. Mr. Brewer asked for more clarification to the definition because he did not understand how this definition does not apply to property owner. Mr. Sallee said that, in looking at the last part of the definition, "persons and their precise interests may vary at different project stages;" so the question for the developer is if the subdivision project is still alive, or has the subdivision project (Ashland Park, Unit 12) ended some time ago. Mr. Brewer then asked at what point would the property owner be considered as the developer. Mr. Sallee said that through the subdivision process, the Subdivision Regulations recognize that the ownership of pieces of a development can change over time. One interpretation is that the regulations identify that different units, or the entire development, can be sold. He said that according to Mr. Murphy, under this definition, the property owner could still have this considered as a project stage in a subdivision.

Mr. Brewer said that it seems that the staff and the applicant have compromised at 45', but the neighborhood clearly does not want any request that violates the setback. He then said that he is not comfortable with anyone telling a property owner what they can or cannot do on their property. He added that, on one hand, he could side with the neighborhood; but, on the other hand, he could side with the applicant. He said that if the ND-1 Overlay was in place there would be no discussion on this request.

Mr. Cravens said that Article 15 speaks to averaging building lines and asked if the property owner could build the garage with only a permit. Mr. Sallee replied not in this case. He said that the current building line is 50'; and because the addition would be at 41', it would exceed the 5' limit that is noted in Article 15.

Mr. Cravens then asked if the garage was only 5' over, if that would be approved through the Division of Building Inspection. Mr. Sallee replied affirmatively, if the addition over the 50' building line were 5' or less, and the average setback was 50' or less. Mr. Cravens said that whatever happens today, the applicant could obtain a permit from Building Inspection to build at 45'. Mr. Sallee replied not without the approval of the plat. He said that a portion of the building could be as close as 45'; as long as the entire front wall averaged at 50'. This would not be the addition that was shown to the Committee though; but, in theory, an addition would be possible.

Ms. Plumlee asked if the staff is still recommending disapproval. Mr. Sallee said that the staff's recommendation did not change from the previous recommendation. He then said that should the Commission recommend approval, since the plat is different from the original version, they should add a condition stating that the building line is set at 45' rather than the requested 41'. Ms. Plumlee thanked the neighborhood for attending today's meeting and said that it is obvious that they care about this community, and that is what makes Lexington neighborhoods unique. She hopes that a decision can be made to make both the applicant and the neighbors happy.

Ms. Mundy asked, if #6 was added to revise the building line to 45', if they could average the building line. Mr. Sallee replied affirmatively, and said that under that provision of Article 15, the building line could be averaged.

Mr. Berkley indicated that there has not been enough evidence presented to show a hardship. He said that there is at least 150' of area to the rear; and other than the load-bearing wall, he does not understand why the applicant cannot use that space. He added that he does not even like the staff's option.

Mr. Drake said that it is not the Planning Commission's purview to design buildings for applicants.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Berkley, to disapprove PLAN 2015-93F: ASHLAND PARK, INC. SUBDIVISION, UNIT 12, LOT 3 (AMD), for the reasons presented by the staff.

The motion carried 11-0.

Note: A recess was declared by the Chair at 3:50 p.m. and the meeting re-convened at 3:55 p.m.

- d. PLAN 2015-101F: SEBASTIAN PROPERTY, UNIT 1, SECTION 3 (11/24/15)* - located at 2828 Leestown Road. (Council District 2) **(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. Provide address for off-site detention.
10. Complete "X-X" cross-section.
11. Correct plan title.
12. Review by Technical Committee prior to plan certification.
13. Discuss timing of construction and dedication of Peaks Mill on subject property.
14. Discuss possible need for traditional "non-building" notes, and deletion of condition #8 (above).

Staff Presentation – Mr. Hunter directed the Commission's attention to the final record plat for the Sebastian Property, Unit 1, Section 3 for property located at 2828 Leestown Road. He oriented the Commission to the plan rendering, and briefly explained that the subject property is located on Leestown Road, near White Oak Trace. He indicated that some of the neighborhoods in the general vicinity include the Masterson Station Subdivision and the Meadow Oaks

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

Subdivision, as well as the nearby Masterson Station Park. The purpose of this request is to create the new lot and dedicate 30' of right-of-ways.

Mr. Hunter said that the Subdivision Committee recommended approval of this request, subject to the conditions listed on today's agenda. He briefly explained that conditions #1-8 are standard sign-off requirements from the different divisions of the LFUCG; and conditions #9-12 can be considered "cleanup" items that will be addressed prior to the plan being certified. He directed the Commission's attention to conditions #13 and #14, and said that there is a need to discuss the timing of construction and dedication of Peaks Mill on the subject property, as well as to discuss the possible need for traditional "non-building" notes, and the deletion of condition #8 (above). He explained that the applicant does not require documentation from the Division of Water Quality; therefore, condition #8 can be removed.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and they support deleting condition #8. He then said that this site has three separate stand-alone pieces; and they would be submitting a final record plat dedicating Peaks Mill and the single family lots, which would resolve condition #13.

Planning Commission Questions – The Chair confirmed that condition #13 is resolvable, to which Mr. Kahly replied affirmatively. The Chair then asked if the staff mentioned removing condition #8. Mr. Hunter said that deleting condition #8 is part of the discussion item (condition #14) noted on today's agenda. The Chair confirmed that condition #8 could be deleted. Mr. Hunter agreed.

Mr. Sallee explained that condition #14 came out of the last Subdivision Committee meeting, and said that it was intended as an "either/or" situation. He said that by adding the "non-building" notes to the plan, this would allow the Commission to continue to review this site, which would then allow condition #8 to be deleted. However, if those notes are not added to the plan, then condition #8 would need to remain listed as part of the staff's recommendation.

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. Smith and carried 11-0 to approve PLAN 2015-101F, as presented by the staff, changing conditions #13 and #14 to "Resolve."

Note: Mr. Brewer left the meeting at this time.

- e. PLAN 2015-77F: HAMBURG EAST, TRACT 4 (9/10/15)* - located at 2575 Polo Club Boulevard.
(Council District 12) **(Vision Engineering)**

Note: The purpose of this plat amendment is to subdivide one lot into two lots and dedicate right-of-way. The Planning Commission approved this plan at their August 13, 2015, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote exaction information, to the approval of the Division of Planning.
8. Denote that a Transfer of Development Rights has been approved for this location.
9. Identify floodplain, floodplain setback and denote panel information.
10. Clarify Man o' War Boulevard cross-section.
11. Change future right-of-way label to dedicated right-of-way and provide Fitzgerald Court cross-section.
12. Resolve timing of construction of Fitzgerald Court and dedication.
13. Correct certification notes for public improvements.
14. Denote drainage easement for Lot 4A to the approval of Engineering.

Note: The applicant is now requesting a waiver for to Art. 4-7(d)(1) & 6-6 of the Land Subdivision Regulations for the substantial completion of the sanitary sewer.

Staff Presentation – Mr. Martin directed the Commission's attention to the final record plat for Hamburg East, Tract 4, located at 2575 Polo Club Boulevard. He said that the Planning Commission previously approved this plan at their August 13, 2015, meeting, subject to the conditions listed on today's agenda. The applicant is now requesting a waiver to Art. 4-7(d)(1) & 6-6 of the Land Subdivision Regulations for substantial completion of the sanitary sewer improvements.

Mr. Martin directed the Commission's attention to the plan rendering, and briefly oriented them to the layout of the subject property. He said that the subject site is at the Man o' War Boulevard and Polo Club Boulevard signalized intersection across from the new Costco development. He explained that this is the same site where the Planning Commission

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

previously approved the increase in density for the apartment complex (DP 2015-58). He said that at the August 13th meeting, the Commission had discussed a portion of Old Fitzgerald Court, a local street, that would be constructed in conjunction with the proposed apartment development. He then said that, with the approved development plan, the Commission had also granted a waiver for the right-in and right-out on Polo Club Boulevard into the apartment complex.

Mr. Martin said that early on, the staff and the applicant had discussed whether this site needed a waiver to Article 4-7(d)(1) & (2) of the Land Subdivision Regulations, which governs the infrastructure improvements. He explained that there are aspects of the regulations that allow a waiver to the substantial completion requirement, which would allow the plat to be recorded prior to the completion of the public sanitary sewer line needed to serve this property. He said that this is for a large development of 264 units, a club house and 397 parking spaces; and the applicant does intend to construct Old Fitzgerald Court as part of the public improvements. He then said that when the construction of Fitzgerald Court is completed, it will be dedicated and recorded as Section 2 of the final record plat.

Mr. Martin said that the staff is recommending approval of the requested waiver of Article(s) 4-7(d)(1), and 4-7(d)(2), for the following reasons:

1. The requested waiver would relieve an exceptional financial hardship for the applicant by allowing the transfer of the subject property in a timely manner. This waiver will still allow the proposed development to proceed in an expeditious manner.
2. Granting the waiver will not negatively impact public health and safety, as the completion of public improvements for the proposed lot will be completed with the construction of the proposed apartment complex, but prior to any occupancy.

Mr. Martin then said that this recommendation is made subject to the following additional requirement:

- a. There shall be no issuance of a zoning compliance permit until the sanitary sewer system has been constructed and accepted by the Division of Engineering and the Division of Water Quality.

Representation – Nick Nicholson, attorney, was present representing his client. He explained that they would be bonding 100% of the sanitary sewer line; and this request would allow the plat to be recorded and the property transferred. This would result in permitting the development of the site and the construction of the required sanitary sewer to be coordinated together. He said that they are in agreement with the staff's recommendations, and requested approval of PLAN 2015-77E.

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

Action - A motion was made by Mr. Berkley, seconded by Mr. Cravens and carried 10-0 (Brewer absent) to approve the requested waiver to Art. 4-7(d)(1) & 6-6 of the Land Subdivision Regulations, as presented by the staff.

2. DEVELOPMENT PLANS

- a. DP 2015-57: LEESTOWN OFFICE PARK (AMD) (9/10/15)* - located at 161 and 181 Leestown Center Way.
(Council District 2) **(Banks Engineering)**

Note: The Planning Commission postponed this item at their August 13, 2015, meeting. The purpose of this amendment is to revise the residential development of Lots 4 & 5.

The Subdivision Committee Recommended: **Postponement**. The parking for P-1 uses has not been relocated as was discussed at the Technical Committee meeting.

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. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
10. Revise required parking (Lots 4 & 5) in site statistics.
11. Clarify topographical contours and elevation information.
12. Correct Building "C" square footage in site statistics.
13. Discuss pedestrian access to individual building entrances.
14. Discuss existing tree protection areas.
15. Discuss notes #20 - #23 on certified plan that have been omitted.

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

16. Discuss need for conditional use permit for parking in R-4 zone to meet P-1 requirements, and the need for revising note #23 accordingly.
17. Discuss possible relocation of building on Lot 4 to accommodate P-1 parking.

Staff Presentation – Mr. Jarman directed the Commission's attention to the amended development plan for Leestown Office Park, located at 161 and 181 Leestown Center Way. The purpose of this amendment is to revise the residential development of Lots 4 & 5. He oriented the Commission to the plan rendering, and briefly explained that the subject property is located at the intersection of Leestown Road and New Circle Road. He said that Leestown Center Way comes off of Leestown Road in two directions and ends in a "knuckle" cul-de-sac at the back of the subject property. He then said that Lots 1 through 3 are zoned Professional Office (P-1), and the buildings have been constructed; Lots 4 and 5 are zoned High Density Apartment (R-4), and the applicant is proposing an assisted living facility in five buildings.

Mr. Jarman said that Subdivision Committee had recommended postponement of the applicant's request because the parking for the P-1 uses had not been relocated, as was discussed at the Technical Committee meeting. He then said that on September 8th, the applicant filed a revised version of this plan with the staff, addressing the parking for P-1 uses that had been discussed at the July 29th Technical Committee meeting. He added that the revised submission also addressed two of the conditions identified by the Subdivision Committee at their meeting on August 6th. Based upon the new information on this submittal, the staff can now offer the Planning Commission a revised recommendation for this Final Development Plan. The staff is recommending 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. 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. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
10. Revise required parking (Lots 4 & 5) in site statistics.
- ~~11. Clarify topographical contours and elevation information.~~
- ~~12. Correct Building "C" square footage in site statistics.~~
11. ~~13. Discuss Denote~~ pedestrian access to Leestown Center Way from individual building entrances.
- ~~14. Discuss existing tree protection areas.~~
12. ~~15. Discuss notes #20 – #23 on certified plan that have been~~ Resolve need for all applicable notes previously omitted.
13. ~~16. Discuss need for Denote that a conditional use permit for parking in an R-4 zone to meet P-1 requirements shall be obtained prior to the issuance of a Zoning Compliance Permit, and/or a Certificate of Occupancy, and the need for revising revise note #23 #20 accordingly.~~
- ~~17. Discuss possible relocation of building on Lot 4 to accommodate P-1 parking.~~
14. Denote that the easement in conflict with the building must be relocated and/or released.
15. Clarify plan status, deleting "Preliminary" Plan from title block.
16. Delete note #15.

Mr. Jarman briefly explained that conditions #1-9 are standard sign-off requirements from the different divisions of the LFUCG; and the remaining conditions can be considered "cleanup" items that will be addressed prior to the plan being certified.

Representation – Jason Banks, Banks Engineering, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested approval of DP 2015-57.

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

Action - A motion was made by Ms. Richardson, seconded by Mr. Wilson and carried 10-0 (Brewer absent) to approve DP 2015-57, as presented by the staff.

- b. DP 2015-30: HIGH POINT SUBDIVISION (MONON, INC.) (9/2215)* - located at 1123 Winchester Road.
(Council District 5) **(Myke Robbins)**

Note: The Planning Commission postponed this item at their August 13, 2015, meeting. The applicant had requested that this item be placed on the August 13th docket for consideration by the Commission, at which time the Planning Commission postponed this item at their meeting.

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

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.

Statement from the Chair – The Chair asked if the applicant was present for DP 2015-30, and there was no response. He indicated that there has been no satisfactory communication with the applicant, suggested that this item be postponed, and asked if the staff concurs. Mr. Sallee indicated that the staff is in agreement, and said that the reason for postponement is due to the lack of representation from the applicant for today's meeting.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to postpone DP 2015-30: HIGH POINT SUBDIVISION (MONON, INC.) to the October 8, 2015, Planning Commission meeting, due to the lack of representation at this meeting.

- c. DP 2015-75: FAYETTE MALL (AMD #13) (11/1/15)* - located at Nicholasville Road and E. Reynolds Road.
(Council District 9) **(WD Partners)**

Note: The purpose of this amendment is to revise the parking and building layout for an outlot at Fayette Mall.

The Subdivision Committee Recommended: **Postponement.** There is inadequate parking being shown for the proposed amendment.

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. Correct purpose of amendment note.
11. Denote plan as 13th amendment.
12. Remove logo of previous engineering firm in title block.
13. Correct building floor area reduction proposed, in site statistics.
14. Discuss the proposed reduction in parking.

Staff Presentation – Mr. Jarman directed the Commission's attention to the 13th amended development plan for Fayette Mall, located at the corner of Nicholasville Road and E. Reynolds Road. The purpose of this amendment is to revise the parking and building layout for an outlot at Fayette Mall. He oriented the Commission to the plan rendering, and briefly explained that the subject property is located in front of Macy's, in the northeast corner of the Fayette Mall property.

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

Mr. Jarman said that the Subdivision Committee had recommended postponement of the applicant's request due to the inadequate parking being shown for the proposed amendment. He then said that on Sept 4th, the applicant filed a revised submission of this plan, addressing the issue of inadequate parking that was being shown for the proposed amendment, as well as addressing several of the conditions identified by the Subdivision Committee at their meeting on September 3rd. Based upon the new information contained on this submittal, the staff can now offer the Planning Commission a revised recommendation for this Final Development Plan. The staff is recommending approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~10. Correct purpose of amendment note.~~
- ~~11. Denote plan as 13th amendment.~~
- ~~12. Remove logo of previous engineering firm in title block.~~
- ~~13. Correct building floor area reduction proposed, in site statistics.~~
10. 14. Discuss Reduce the proposed reduction in compact-space parking by re-establishing three spaces at the northeast corner of the building.
11. Dimension proposed building and denote height.

Mr. Jarman briefly explained that conditions #1-9 are standard sign-off requirements from the different divisions of the LFUCG; and the remaining two conditions can be considered "cleanup" items that will be addressed prior to the plan being certified.

Planning Commission Questions – Mr. Wilson asked if this request would reduce the shared parking that is allowed for Fayette Mall. Mr. Jarman replied affirmatively. Mr. Wilson said that during the holiday shopping season, people park their cars all over the Fayette Mall property, including the area where the proposed building will be constructed. Mr. Jarman replied affirmatively. Mr. Wilson said that Fayette Mall parking is considered shared. Mr. Jarman indicated that the parking will be reciprocal throughout and said that that is the nature of parking in a Planned Shopping Center (B-6P) zone.

The Chair said that there was discussion at the Subdivision Committee meeting concerning the access in and out of this lot, and asked if that issue had been resolved. Mr. Jarman replied affirmatively, noting that Traffic Engineering had made a request to close one of the traffic aisles, which the applicant had done on the revised submittal.

Representation – Andy Shaw, WD Partners, was present representing the applicant. He said that, since the orientation of the building had been changed, coming up with three additional parking spaces in the northeast corner has become problematic. However, placing the parking spaces on the east side of the building puts the parking spaces in closer proximity to each other. He asked that condition #10 be changed to read: "Reduce the number of proposed reduction in compact-space parking by re-establishing up to three full-size parking spaces at the northeast corner of the building on the site, for a total of 179 spaces. With that being said, he noted that they are in agreement with the staff's recommendations, and requested approval of DP 2015-75.

Planning Commission Questions – The Chair asked if Mr. Shaw could reread his proposal to change condition #10. Mr. Shaw requested that condition #10 be changed to read: "Reduce the number of compact-space parking by establishing up to three full-size parking spaces on the site, for a total of 179 spaces." The Chair then asked if they can meet this condition. Mr. Shaw replied affirmatively, indicating up to three. Mr. Sallee said that the staff would offer one edit to Mr. Shaw's suggestion; deleting "up to" in the revised language, which would then read: "Reduce the number of proposed compact-space parking by re-establishing ~~up to~~ three full-size parking spaces on the site, for a total of 179 spaces." The Chair asked if Mr. Shaw could make that work, which Mr. Shaw indicated that they could make that work.

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. Wilson, seconded by Mr. Penn and carried 10-0 (Brewer absent) to approve DP 2015-57, as presented by the staff, changing condition #10 to read: "Reduce the number of proposed compact-space parking by re-establishing three full-size parking spaces, for a total of 179 spaces".

- d. DP 2015-3: MAN O' WAR DEVELOPMENT, UNIT 2A (HARLEY DAVIDSON) (AMD) (11/24/15)* - located at 2073 Bryant Road. (Council District 6)
(Summit Engineering)

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

Note: The purpose of this amendment is to add a 6,000 sq.-ft. 2-story building. The Planning Commission approved this plan at their January 15, 2015, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Remove purpose of amendment note from title block and place on drawing.
10. Addition of height of building, in feet.
11. Identify dimensions of canopies on proposed building.
12. Addition of owner/developer's name and address on plan.
13. Addition of record plat (Cab. L, Sl. 224) information in the title block.
14. Addition of surrounding property owner information on plan.
15. Correct owner's certification.
16. Clarify extent of pavement and parking proposed on the rear of the property.
17. Correct notes # 6 & 14.
18. Resolve status and timing of all easements needing to be released.

Note: The applicant is now requesting a continued discussion of this plan, in hope of increasing the allowable floor area by 1,200 sq. ft., and adding the three additional required parking spaces.

The Subdivision Committee Recommended: Postponement. There were concerns with the number of conditions that had not been addressed since the January 15, 2015 Planning Commission meeting.

Should this plan be approved, it should be subject to the original conditions approved by the Planning Commission on January 15, 2015, with two additional conditions:

19. Correct Purpose of Amendment note.
20. Document compliance with interior landscaping requirements of Article 18, prior to plan certification.

Staff Presentation – Mr. Hunter directed the Commission's attention to the amended development plan for Man o' War Development, Unit 2A (Harley Davidson) (AMD), located at 2073 Bryant Road. He oriented the Commission to the plan rendering, and briefly explained that the subject property is located in front of Interstate 75, near Pleasant Ridge Drive and Man o' War Boulevard.

Mr. Hunter said that the Planning Commission previously approved this plan at their January 15th meeting, subject to the conditions listed on today's agenda. He then said that the purpose of the amendment, at that time, was to add a 6,000 sq.-ft., 2-story building. The applicant is now requesting a continued discussion of this plan, in hope of increasing the allowable floor area by another 1,200 sq. ft., and adding three required parking spaces. He said that the Subdivision Committee reviewed the applicant's request and recommended postponement of this plan, due to the number of conditions that had not been addressed since the January 15, 2015 Planning Commission meeting. He then said that the Subdivision Committee also added two more conditions: to correct the Purpose of Amendment note and to document compliance with the interior landscaping requirements of Article 18, prior to plan certification.

Mr. Hunter said that after the September 3, 2015, Subdivision Committee meeting, the staff was able to complete the review of the applicant's new submission on this development plan. It has resolved several of the conditions associated with the Commission's original approval last January. As a result, the staff can now recommend approval of the applicant's request, subject to the following revised recommendations:

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.~~
5. 8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~9. Remove purpose of amendment note from title block and place on drawing.~~
- ~~10. Addition of height of building, in feet.~~
- ~~11. Identify dimensions of canopies on proposed building.~~
- ~~12. Addition of owner/developer's name and address on plan.~~

- ~~13. Addition of record plat (Cab. L, Sl. 224) information in the title block.~~
- ~~14. Addition of surrounding property owner information on plan.~~
- ~~15. Correct owner's certification.~~
- ~~16. Clarify extent of pavement and parking proposed on the rear of the property.~~
- ~~17. Correct notes # 6 & 14.~~
- 6. 18. Resolve status and timing of all easements needing to be released.
- 7. 19. Correct Purpose of Amendment note.
- 8. 20. Document compliance with interior landscaping requirements of Article 18, prior to plan certification.

Mr. Hunter briefly explained that conditions #1-5 are standard sign-off requirements from the different divisions of the LFUCG; and, with the exception of two conditions, the remaining conditions can be considered "cleanup" items that will be addressed prior to the plan being certified.

Representation – Morgan Dye, Summit Engineering, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested approval of DP 2015-3.

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

Action - A motion was made by Mr. Penn, seconded by Ms. Plumlee and carried 10-0 (Brewer absent) to approve DP 2015-3, as presented by the staff.

- C. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 10-0 (Brewer absent) to approve the release and call of bonds as detailed in the memorandum dated September, 2015, from Barry Brock, Division of Engineering.

3. **FINAL SUBDIVISION PLANS** *(continued)*

The I/R Planner has forwarded the following plan to the Planning Commission for consideration in order to facilitate the certification of an approved Final Record Plat.

- f. PLAN 2015-79F: NOLI CDC CORP. & CLIFFORD PROPERTY (9/10/15)* - located at 128-146 York Street.
(Council District 1) **(Randy Martin)**

Note: The Planning Commission approved this plan at their August 13, 2015, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Correct the zoning in the site statistics.
9. Increase font sizes for most information on plat.
10. Denote building line per the PUD-2 zone requirements.
11. Delete blanket utility easement note.
12. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

Note: The applicant has requested a continued discussion for a plan approved by the Planning Commission on 8/13/15. The plan has been revised to include four additional lots in a PUD-2 zone.

The Staff Recommends: Approval, subject to the conditions originally approved by the Commission on August 13, 2015.

Staff Presentation – Mr. Martin directed the Commission's attention to NoLi CDC Corporation & Clifford Property, for properties located at 128-146 York Street. He said that the Planning Commission previously approved this plan at their August 13th meeting, subject to the conditions listed on today's agenda. He then said that this item is being presented to the Commission under the provisions of the Infill and Redevelopment section of the Zoning Ordinance, which allows the Infill and Redevelopment planner to "walk-on" this request for the Commission's consideration to facilitate the certification of an approved Final Record Plat.

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

Mr. Martin said that the applicant had originally submitted this request to request subdivision approval for eight lots; but due to the number of issues with that plan, they reduced the number of lots to four. Since the Commission approval of the four lot subdivision last month, the applicant has resolved those initial issues and is ready to move forward with the original eight lot proposed.

Mr. Martin said that the staff is recommending approval, subject to the conditions originally approved by the Commission on August 13, 2015.

Representation – Kristofer Nonn, architect on behalf of surveyor Randy Martin, was present representing the applicant. He indicated that they were in agreement with the staff's recommendations, and requested approval of PLAN 2015-79F.

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

Action - A motion was made by Ms. Richardson, seconded by Ms. Mundy and carried 10-0 (Brewer absent) to approve PLAN 2015-79F, as presented by the staff.

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

- a. CT 2015-1: SKYWAY TOWERS, LLC & CELLCO PARTNERSHIP (dba Verizon Wireless) – an application for a 199-foot cell tower at 4279 Huffman Mill Pike.

Recommendation

This proposal meets all the technical requirements of Article 25 with regard to siting a tower. The property, which appears to be the only one not under PDR protection that is within the search ring; that is large enough to accommodate the tower and related equipment; and that meets the height-to-yard ratio and screening requirements with no 100-year floodplain other than along the northern property line, is in an area of Fayette County that is being actively pursued for protection under the PDR program. Although the lease area seems to be in the most logical location on the subject property, the tower will be visible from miles around. From a visual observation of the Iron Works Pike/Russell Cave Road/Huffman Mill Pike area, the Clear Channel Radio towers can be seen from a distance of at least 2.5 miles, and their profile is much less than that of the proposed tower. The staff therefore recommends that the applicant use an alternative tower design, which is recommended by Article 25 for towers along Scenic Byways or that are in the view shed of a Scenic Byway. This is not to be a "monopine" or any other type of tower disguised as a tree, as there are no trees of that height that are natural to the area or even the state of Kentucky. A design that is context-sensitive to the rural area, such as a silo (either attached to one of the barns or not) or a faux water tower that can be built to blend in with the area is the preferred alternative and therefore the staff's recommendation.

Alternative designs have been used across the nation (even around the world) to mitigate the negative visual impact of cellular towers. An alternative design was used for a cellular tower in the Bates Creek Road corridor to disguise its function (a church tower that was constructed to look like part of the church building, which contains the actual cellular tower). This was done to protect the view shed along Bates Creek Road and its surrounding neighborhoods. A similar type of design, appropriate to the rural area, is recommended for the subject property. An architectural feature that would blend with the character of the rural area/farm land would minimize the visual impact of what many surrounding property owners believe would be a negative, overwhelming presence in the area and would provide the needed service as well.

Conditions for Approval:

1. That the tower be redesigned as an alternative, context-sensitive tower (such as a silo or a faux water tower that would be appropriate to and would blend in with the rural area). This would lessen its visual impact on the surrounding rural area, which contains an historic rural settlement; two state-designated Scenic Byways; and three archaeological sites, two of which are on the National Register of Historic Places, the other of which is eligible for that designation.
2. That the tower be surrounded by an 8-foot security fence, as well as a 5-foot landscape buffer area that contains both a 6-foot tall hedge and evergreen trees, as shown on the submitted site plan, and as required by Article 25. The area surrounding the equipment cabinet is to be screened from view of surrounding property owners and the Huffman Pike roadway.
3. That the tower (whatever its design), accessory equipment cabinet and lease area be maintained on a regular basis by the owner of the facility so as to have minimal impact on surrounding properties.

Staff Presentation – Ms. Rackers directed the Commission's attention to the next item on today's agenda, and noted that the staff had received several letters of opposition and distributed them for their review.

Ms. Rackers began by saying that this is an application made by Skyway Towers, LLC and Cellco Partnership (dba Verizon Wireless) to construct a 190-foot monopole cellular tower with a 9-foot lightning arrestor, located at 4279 Huffman Mill Pike. She directed the Commission's attention to the overall map of the area, to orient them to the surrounding properties and the nearby roadways. She explained that the proposed cell tower would be located just off Huffman Mill, near Russell Cave Road and Iron Works Pike.

Ms. Rackers directed the Commission's attention to the site plan, and explained that the applicant wants to lease 10,000 sq. ft. of land in order to construct a cell tower. She said that the cell tower would be approximately 1,600 feet from Huffman Mill Pike and a little over 250' from the property line. She then said that the North Elkhorn Creek, as well as FEMA floodplain is located just to the north of the proposed cell tower, along the property line. She added that there would be access to the lease area through a 20-foot wide easement (currently used as a farm road) containing a 12-foot wide asphalt-paved road, which will be in place prior to construction of the tower.

Ms. Rackers said that inside the lease area the applicant is proposing to have an equipment area that would be 4,900 square feet (70 x 70) in size. She then said that this compound will be graveled and will be enclosed by an 8-foot wooden privacy fence for security purposes, which is in accordance with Article 25 of the Zoning Ordinance. She added that, additionally, there will be a 6-foot hedge around the fenced area, as well as evergreens planted every 15 feet on center within a 5-foot landscape buffer, also in accordance with Article 25 requirements.

Ms. Rackers explained that the FAA (Federal Aviation Administration) requires towers over 200 feet tall to be lighted; but since the height of this tower is just under the FAA threshold, it does not require lights and will not be lighted. However, it will comply with all other FAA and FCC regulations. She said that each cell tower site is limited on the amount of calls that can be handled, and there needs to be a way for calls to be handed off from tower to tower. She then said this area does have poor coverage; and according to the Radio Frequency Map, this area is shown to have a very poor level of coverage. In looking at the map, the area between Russell Cave Road and Newtown Pike is shown to be a "red" area, which indicates very poor service. Construction of this tower would provide better service to this area for the general public, as well as enhanced 911 emergency service users. Ms. Rackers said that Verizon intends to allow for future co-location of additional carriers, which is why they are requesting the tower to be 190' in height. She then said that the nearest tower is located almost 4 miles to the southeast, on Swigert Avenue between Paris Pike and Russell Cave Road; and to the north is almost 3 miles away, near the Fayette County and Bourbon County line. Ideally, to provide adequate cell phone coverage, the distance between towers should be 1 to 2 miles of each other.

Ms. Rackers said that the *2013 Comprehensive Plan* is policy based, as opposed to parcel based, and land use decisions are based upon the goals and objectives as well as the policy statements of the Plan. She then said that there is not a land use recommendation for this site other than what was contained in the *2007 Comprehensive Plan*, which is Core/Agricultural and Rural land use. She explained that there is a policy statement in the *2013 Comprehensive Plan* that all community facilities should be available to all citizens, which includes utilities. This underscores the 2007 objective of providing essential public and private facilities to areas within the county that have inadequate or no service at all. Ms. Rackers said that this property is north of Maddoxtown, which is an historic rural settlement in the northern section of Fayette County. She then said that between 2003 and 2006, the Center for Historic Architecture and Preservation, which is part of the University of Kentucky's College of Design, conducted a study on seventeen rural settlements in Fayette County. They made findings, as well as recommendations for each of these settlements; and one of the findings for several properties within Maddoxtown was that they were eligible for listing on the National Register of Historic Places or Register or for a local H-1 designation. Since that time, no one has pursued either one of these recommendations.

Ms. Rackers said that cell towers are federally regulated; and, because of this, the National Historic Preservation Act of 1966 requires a Section 106 review to be conducted. She then said that both the Division of Historic Preservation and the Kentucky Heritage Council (State Office of Historic Preservation), as well as the National Environmental Protection Agency performed both an historic and archaeological studies for the properties within a ½-mile radius of this site. She then said that all three of these agencies determined that there is no adverse impact from the proposed tower or on properties within the ½-mile radius. Ms. Rackers said that the Office of State Archaeology (located in the University of Kentucky's College of Arts and Sciences) stated that within approximately one mile of the proposed tower site there are three archaeological sites – the Mt. Horeb Earthwork, the Adena Earthwork and Peter Village. She then said that the Office of State Archaeology staff was concerned with the negative impact the tower would have on the view shed from each of these sites. She added that the negative visual impact has also been cited by several property owners in the vicinity, and it is one reason for their request for disapproval of the proposed tower. She said that it cannot be denied that the tower will be seen from miles around, as are the radio towers that are associated with the Clear Channel Radio station. She said that this proposal will have more of a profile than the Clear Channel Radio Station, as seen from Russell Cave Road. She then said that the Clear Channel Radio Station towers have become part of the landscape of the area, as will this tower eventually; and it probably will not have any more of a negative impact than the Clear Channel Radio Station. Ms. Rackers said that the neighbors' concerns are valid, but towers do tend to become part of the landscape.

Ms. Rackers said that, in 2011, the Kentucky Office of Historic Preservation conducted a Section 106 Review for a cell tower request on Iron Works Pike. This site is adjacent to Maddoxtown and much closer than this current proposal. She then said that the State Preservation Office cited that *"This resource (referencing the Maddoxtown Baptist Church – the only property in the community deemed eligible for National Register designation) is within the view of four guyed wire radio towers that range in height from 400 feet to about 150 feet. The proposed tower is a 190-foot monopole tower with a limited profile against the horizon. While partially visible, a new tower will have no impact on the features of this resource that contribute to its historic significance. Also, the trees around the site minimize the view of the existing towers and would do the same for a new tower of a lesser height. Therefore, a determination of No Adverse Effect has been recommended for this resource."* She said that the staff believes the same would apply in this case, as the height of the proposed tower is the same as the previously proposed tower (Iron Works Pike), and it will be even further from Maddoxtown than the one that was proposed in 2011.

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

Ms. Rackers said that a radio frequency analysis determines the search area for a cell tower location, and once that area has been identified, one of the search parameters is to look for tall structures suitable for co-location to provide adequate coverage. She then said that there were no such structures found within the search area. She noted that the Clear Channel Radio towers were reviewed, but were found to be inadequate for the determined need, based on their distance from the search area. She said that the fire station on Huffman Mill was also considered, in an effort to comply with the directive of Article 25 that government properties be considered first for tower location; however, it was also outside the designated search area. Ms. Rackers said that there are several properties in the general vicinity that are under PDR protection, which effectively precludes their consideration for a cell tower to be constructed. She then said that there are other properties in the area that are less than 40 acres in size; and with a long-term lease, based on KRS 100, the lease area would constitute a subdivision and would take the size even further below the minimum 40-acre requirement of the A-R zone. She said that the other property owners within the search area were unwilling to work with Verizon to allow a tower on their property; so the subject property was chosen due to its location, size, and topography. In addition, the property owner was willing to negotiate an agreement with the applicant. She said that, according to the Radio Frequency Map, this tower will be providing much needed service for this area and will help to close that gap.

Ms. Rackers said that the proposed request does not need, nor has the applicant requested, any variances to the Zoning Ordinance or waivers to the Land Subdivision Regulations. She then said that the subject property is large enough to allow the required 1:1 height-to-yard ratio for the A-R (Agricultural Rural) zone. She added that landscape screening will be provided, as required by Article 25. She said that that when an application is submitted, the staff considers the relationship of the application to Article 25 (Telecommunication Towers), which is outlined in the following:

1. The site of the lease area is not located in a floodplain, nor is it in an environmentally sensitive or a geological hazard area, either of which would immediately preclude its location on the property as proposed; however, there is 100-year FEMA floodplain associated with the North Elkhorn Creek along the northern property line of the parent tract, approximately 158 feet to the north of the lease area. Both Article 25 and Article 19 (Floodplain and Erosion Control) require that structures be a minimum of 25 feet from the designated floodplain. The proposal therefore complies with this requirement.
2. The site is not within 1,200 feet of an historic district or landmark, although according to the Office of State Archaeology at the University of Kentucky, it is within view of three designated archaeological sites, two of which are on the National Register and the other eligible for listing. It is also within view of a rural settlement/community that has been recommended by the University of Kentucky's College of Design for either listing on the National Register of Historic Places or for a local H-1 designation. It has been noted by the Division of Historic Preservation that Maddoxtown, which is a little over a mile to the south, is eligible for listing on the National Register of Historic Places. However, it was also noted by Historic Preservation in their Section 106 Review (based on the requirements of the National Historic Preservation Act of 1966 [as amended]), as well as the Kentucky Heritage Council and the National Environmental Protection Act (NEPA) reviews (both of which contained a Section 106 Review), that locating a monopole tower on the subject property would have no adverse impact on any surrounding properties within a ½-mile radius with regard to historic or archaeological resources.
3. Although Huffman Mill Pike is considered an historic turnpike, it does not have either Scenic Corridor or Kentucky Scenic Byway designation, as do Russell Cave Road and Iron Works Pike, both of which are in close proximity to the site (Iron Works being 1.5± miles to the south of the proposed tower site and Russell Cave being about 1.7 miles from the site). The designated lease area is approximately 1,600 feet from the Huffman Mill Pike roadway and will be screened at its base by a fence and trees. There are also mature trees on the perimeter of the property along the northern and western property lines, as well as along a portion of the southern property line. Nonetheless, because of its height, the tower will be seen from all three roadways, as well as from the Maddoxtown community, which, at first glance, seems to contradict Article 25; however, regardless of where it is located in the area (i.e., on this property or elsewhere), being a 190-foot tall structure, it will be visible from these Scenic Byways and from a much greater distance than just from the immediately surrounding roadways. That being the case, the tower is proposed to be constructed in such a way as to minimize its profile (gray steel monopole), thereby reducing its potential negative visual impact, which is a requirement of Article 25 regarding location of cellular towers near Scenic Byways.
4. The proposed location will not interfere with traffic circulation, access, storm drainage, or other requirements of the Zoning Ordinance, nor should it interfere with the use of the property as a farm. The question did arise, though, with a previous tower application in the vicinity, as to whether or not the proposed tower would interfere with the radio transmission signals from Clear Channel Radio, which is not something the staff either had or currently has the expertise to assess. According to the applicant's attorney from the previous case, information provided by their radio frequency expert confirmed that the tower would not create a dead zone for the radio station or other radio transmissions, which is stipulated by Article 25. The proposed tower is a greater distance from the radio station, which should indicate that, if the previous tower would not provide interference, this tower should not provide any type of interference or create a dead zone for radio communication purposes.
5. The proposed 190-foot tower meets the required height-to-yard ratio of 1:1 along all property lines, even with the 9-foot lightning arrestor. There are no height limitations for structures in the A-R zone; therefore, the tower does not require a height variance as such. With a 1:1 height-to-yard ratio, including the lightning arrestor, the distance from all property lines should be at least 199 feet. The distance to the northern property line, which is the nearest property line to the proposed tower, is approximately 254 feet.
6. The tower's proposed location on the property is the most logical with regard to screening, as buildings and trees already exist on the property to provide a visual buffer to surrounding properties with regard to the base of the tower and the lease area.

7. There is a 40-acre minimum lot size in the A-R zone. According to KRS 100, a lease area, in effect, constitutes a subdivision; and in Article 25 it states that the lease area for a tower and equipment may not take the parent tract below the minimum lot size of the zone. The subject property contains a little over 123 acres; therefore, the 10,000 square-foot lease area will not take the parent tract below the minimum lot size of the A-R zone, whether a plat is recorded for public record or not; and approval of the cell tower, as proposed, will not create a conflict with either Article 25 or KRS 100. Typically, the Division of Planning has not required that a plat be submitted to accommodate a lease area – regardless of the zone in which it is located. Although an occasional plat may have been recorded to accommodate a lease area for a cellular tower, the terms of the lease would dictate how that is handled for public record purposes. And although many of the sites have addresses unique to the cell tower site, e-911 requires this for provision of emergency service access.
8. The property is located in the Agricultural Rural (A-R) zone, where a monopole tower is permitted if there are no other sites in the immediate vicinity that are available or that would adequately serve the needs of the industry. A monopole tower is also permitted in a residential zone if there are no other sites in the immediate vicinity that are available or that would adequately serve the needs of the industry. There are only two zoning categories within or even near the search area submitted by the applicant - A-R and R-1D (Single Family Residential).
9. The applicants' development team approached several property owners in an attempt to locate the tower on non-PDR properties, but was unsuccessful. The fire station on Huffman Mill was also considered (per Article 25 requirements), but is outside the search area and would therefore not provide the needed coverage. According to the applicants' attorney, the subject property is the most feasible location for the tower within the designated search area.
10. The proposal to construct a tower of this height will allow for future co-location of other carriers, which is encouraged by the Zoning Ordinance.
11. The accessory structures meet the required 25-foot distance from any adjoining property line; furthermore, the closest residential structure is located more than 1,000 feet from the tower site.
12. This site is not subject to a development plan; therefore, no amendment is needed.

Ms. Rackers said that, although the technical requirements of Article 25 are being met, it is not an ideal situation. She then said that even though this tower will close the gap in service between Newtown Pike and Russell Cave Road; and with the Section 106 Reviews stating there would be no adverse impact, a tall monopole does not fit either the historic or the rural context of the area.

Ms. Rackers said that there are existing trees that would provide screening for part of the year, because much of this is deciduous in nature and would not screen the entire height of the tower. She then said that the pine trees that are being proposed could possibly reach 60' in height; but even when mature, these trees will not reach the height of the proposed tower. She added that although this application does meet all of its technical requirements, it is contrary to the intent of Article 25, which is to preserve the character of the area, no matter if it's in a residential or a rural area. For this reason the staff is recommending an alternative design, such as a silo (either attached to one of the barns or not) or a faux water tower that can be built to blend in with the area. These alternative designs would fit in with the rural area and would hopefully be more acceptable to the neighbors.

Ms. Rackers presented a series of photographs to illustrate the different types of alternative design that could be used, and gave a brief explanation of each. She noted that the following conditions should be considered as conditions for approval:

1. That the tower be redesigned as an alternative, context-sensitive tower (such as a silo or a faux water tower that would be appropriate to and would blend in with the rural area). This would lessen its visual impact on the surrounding rural area, which contains an historic rural settlement; two state-designated Scenic Byways; and three archaeological sites, two of which are on the National Register of Historic Places, the other of which is eligible for that designation.
2. That the tower be surrounded by an 8-foot security fence, as well as a 5-foot landscape buffer area that contains both a 6-foot tall hedge and evergreen trees, as shown on the submitted site plan, and as required by Article 25. The area surrounding the equipment cabinet is to be screened from view of surrounding property owners and the Huffman Mill Pike roadway.
3. That the tower (whatever its design), accessory equipment cabinet and lease area be maintained on a regular basis by the owner of the facility so as to have minimal impact on surrounding properties.

Planning Commission Questions – The Chair asked where the proposed location of the tower is within the search area. Ms. Rackers directed the Commission's attention to the overhead projector and indicated the location of the proposed tower. Mr. Penn then asked for clarification as to why the PDR properties, within this area, were not considered. Ms. Rackers explained that the PDR properties would not be eligible since the tower is a commercial use.

The Chair noted that Article 25-9(b) of the Zoning Ordinance states the following:

"The Chairman shall have the power to limit repetitive testimony and shall exclude irrelevant testimony and evidence. It should be noted that testimony regarding the environmental effects of radio frequency emissions is considered irrelevant and shall not be permitted."

Statement from the Chair - With that being said, the Chair said that the Planning Commission cannot consider any radio frequency testimony; therefore, there was no need to bring this issue forward when discussing this request.

Representation – Mr. David Pike, attorney, was present on behalf of the applicant. He said that they recognized the importance of expediency, and they believed that they had designed an approach that would allow their presentation to be completed within the allocated time. He thanked the Planning staff for their time and the amount of work that was placed into

presenting the necessary documentation concerning this case. He said that these types of cases are complex due to the state and federal overlays and the degree of documentation that is required to ensure that, not only the local regulations are being complied with, but the federal regulations as well. Mr. Pike said that the documentation that is required by both state and federal laws has been submitted to the Planning Commission for their consideration. He then said that there are no variances from the Zoning Ordinance or waivers from the Land Subdivision Regulations being requested nor do they need any for this application.

Mr. Pike said that they previously distributed an informational notebook to the Commission and would be presenting a PowerPoint presentation on that information, noting that a copy of this information had also been given to the attorneys in the audience for their review. He directed the Commission's attention to the overhead projector, and gave a brief summation of their presentation.

Mr. Pike said that it is important to give a clear legal overview of the case, but naturally the Commission should rely on their legal counsel for any advice on the subject matter that will be presented to the Commission. He then said that this type of case is different from any other zoning case that the Commission will ever hear. It's different because the rules at the first level are set at federal level; and, secondly, cell towers are set at a comprehensive and distinct state statutory level that establishes a different approach that must be taken with these cases from all other types of deliberations that may be considered. He directed the Commission's attention to Tab S. He said that there several federal statutes and cases, and that cell towers fall under the Sixth Federal Circuit Court. Laws vary by federal circuit, and the laws are very favorable to the applicants in cell tower cases. He then said that the Sixth Circuit Court of Appeals has adopted what is referred to as the Omnipoint standard, which is the least restrictive and least demanding on applicants. In short, it does not require the applicant to rule out every possible site within the search area. He said that all that is required of the applicant is to make a good faith effort in examining sites that meet the criteria, which include: less sensitive sites; alternative system designs; alternative tower designs and placement of antennae on existing structures (co-location). He said that the applications for construction of a telecommunication system can only be denied when the evidence is based upon substantial evidence under federal law. It is important to note that according to federal law, in cell tower cases, sustainable evidence is a different animal than it is with conventional zoning issues based upon the federal overlay. He said that when reviewing evidence, items that cannot be used as substantial evidence include lay opinion or unsupported opinion. He then said that aesthetic concerns cannot be used as substantial evidence when denying a cell tower application. He added that the Sixth Circuit Court of Appeals has rejected the following arguments because they are not based on substantial evidence:

- Generalized expressions of concerns with "aesthetics";
- Claims that the tower is unsightly are generalized expressions of aesthetic concerns - the same objection could be made by any resident in any area in which a tower is placed;
- General concerns that the tower is ugly or unwanted near an individual's residence are not sufficient; anyone who opposes a tower in their back yard can make the same claim.

Mr. Pike said that this is based upon the overarching parameters of the Telecommunications Act of 1996 and its effect in preemption of selected levels at local review. He then said that federal law prevents locale zoning authority prohibiting an applicant from providing wireless service. He added that that prohibition of service occurs any time an applicant has filed an application for a facility and is denied, even though they have proven that there is a significant gap in coverage within an area and have conducted an inquiry in the feasibility of alternative facilities. He said that service cannot exist when the applicant presents evidence of a significant gap in its own coverage, all of which they have done. He said that they would present that evidence for this application.

Mr. Pike said that per the Chair's reminder, any issues pertaining to health or environmental concerns cannot be considered, as that is expressly preempted by the Federal Communications Communication and its regulatory powers. He then said that it is also important to note that this is not just another construction; but, rather, this is a utility transmission construction, as surely as a telephone or power line would be. He said that there is no question that under Kentucky law (both KRS 100.987(2) and KRS 278.010(3)), and also direct PSC (KY Public Service Commission) supervision of this utility as a registered utility, in the event that the Commission approves this request, that approval recommendation must be filed with the KY Public Service Commission because a cell tower is a regulated utility. Mr. Pike said that this application is different from all other types of construction and should be viewed as such. He directed the Commission's attention to Tab W, and said that they have provided an extensive amount of KY cases that have reinforced that interpretation and that legal conclusion.

Mr. Pike directed the Commission's attention to the staff report, and said this application has not requested, nor does it need, a variance of the Zoning Ordinance or a waiver to the Land Subdivision Regulations. He then said that this site meets the setback requirements, it is not in a floodplain or located on an environmentally sensitive or geological hazard area, and it is not within 1,200 feet of a historic district or landmark. He then said that there have been multiple reviewing bodies that reached the conclusion that this site will have no adverse impact on historic or archaeological resources. They have exhausted all possible co-location alternatives, even outside of the search area, but none were suitable. He said that they would prefer to co-locate because it is cheaper and quicker, and they would not need the Commission's approval. There are no other alternatives, and they have submitted evidence of expert testimony. Those same experts were present should the Commission have questions on their conclusions.

Mr. Pike said that cellular towers and wireless communications facilities are permitted in this A-r zone, and it is important to note that the entire search area is agriculturally zoned. He then said that the question as to whether or not this would be a preferred zone is completely irrelevant because this is the only zone that the tower could be located in and provide wireless

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service in this vicinity, filling the coverage gap that has been proven to exist. He added that, in reviewing the site map, it noted that no variances or waivers are being requested or required. The site map also indicates that the site design is in full compliance with the LFUCG Article 25 of the Zoning Ordinance. He said that this cell tower will be a 190' monopole with a 9' lightning arrestor and, despite comments made or protest letters that have been received, there are no guy wires associated with this tower. He then said that they have worked hard to configure this site so that aviation lightning is not required for this tower, which has been determined by the Federal Aviation Administrative (FAA) and the KY Airport Zoning Commission.

Mr. Pike said that, as far as the setbacks are concerned, this site meets all requirements - unlike past applications that have come before the Planning Commission. He then said that this tower is approximately 199' in height, and the setbacks are between 250' to over 2,000' to the next property line. He added that the nearest residential structure is over 1,000' away; and Russell Cave Road is 1.5 miles away and the closest point on Iron Works Pike is 1.8 miles away. He said that from a setback perspective, they have not only met the terms of the regulations, but they have vastly exceeded them.

Mr. Pike said that, as far as the radio frequency need, their experts are present should there be any questions. He then said that they had previously submitted two reports with the staff and they have tendered an additional report that is located under Tab C. He explained that the most recent report is the "dropped calls" analysis report, and it simply reinforces their findings that were previously submitted to the staff. Those key findings include evidence to show that there is a critical coverage gap at this location. The coverage gap can only be filled if a tower of this required height is built within the search area. He said that the parameters include spacing capabilities and interference, and issues with the network. He then said that, as part of this report, they demonstrated that there are no suitable co-locations available; and, indeed, they are already on most of the nearby towers and still cannot provide adequate service in this area. Mr. Pike said that, based upon all of that evidence, there is also a capacity gap in coverage, which provides further RF justification for this proposed construction. He then said that they have shown the scope of deficiency, and with this tower the coverage gap will be filled most sufficiently. Mr. Pike said that, as for alternative locations, there are no other locations. He said that, according to their experts, moving the site outside of the search area is not a solution. This site would serve only Fayette County - not the surrounding counties, as has been stated in the protest letters that the Division of Planning has received.

Mr. Pike said that this entire area is zoned for agricultural uses, and any issues as to whether or not the best zone was chosen are irrelevant. He then said that the Site Acquisition Report was also submitted, and all they are required to do is meet the Omnipoint standards. He noted that much of this search area is ruled out by the LFUCG Zoning Ordinance. He said that a tower cannot be constructed in a floodplain; the parcel must be at least 40 acres and PDR properties are prohibited. This leaves a limited number of alternatives that meet the requirements of Omnipoint standards. He added that the Site Acquisition Report details each parcel in the search area and what that analysis determined as a suitable area.

Mr. Pike said that, as part of the statutory requirement, they had submitted the County Tower Map, which shows all cell towers within Fayette County. He then said that they had modeled all of the surrounding towers, and had determined that there are no towers within their search area that they are not already deployed on. The existing towers that they are currently co-habiting cannot fill in the coverage gap.

Mr. Pike said that they had submitted a Planning Review by Marshall Slagle, FAICP, who cited a variety of factors, such as the excellent setback and the fact that this request complies with the Zoning Ordinance and the Land Subdivision Regulations, as well as the Comprehensive Plan. He then said that the LFUCG prefers monopole structures; and, according to Mr. Slagle's report, monopole structures provide the best stealth alternative design. Monopoles have the lowest visual cross-section of any type of tower. It is a less massive structure, it is flat grey in color, and its design allows the cables to run inside the interior portion of the structure. He added that Mr. Slagle's report also cites that the LFUCG Ordinance prefers monopoles.

Mr. Pike said that, under federal law, the aesthetic concerns cannot be used and are not substantial evidence to deny a cell tower application. He then said that there have been arguments regarding PDR properties and being able to see the tower; but that is not a valid objection and, legally, it cannot be considered. He added that this type of example would be the ultimate example of using "aesthetics" as a justification to deny a cell tower. More significantly, if this Commission were to take that position, they would have immediately prohibited the provision of wireless service because that argument would be the case for any tower placement in this part of Fayette County. This is not an available argument; and if it is used as one, it's automatically an effective prohibition of service.

Mr. Pike said that the Planning Review process speaks to stealth facilities, and how something emulates something else that is comparable. He then said that this would work if the appropriate size and contexts were associated with it. He noted that the staff had suggested silos and water tanks because it matched the surrounding views, but the size of the silos and water tanks cannot be matched because silos and water tanks are not 190' in height. He said that as far as using a tree design, both the staff and Mr. Slagle agree that this would be a horrific idea at this location. He then said that a tree would be several times the height of any other tree in this area; and it would dramatically increase the visual cross-section. Therefore, it is their view that the other types of facilities, such as a silo or a water tank, would suffer from the same issues. He said that the cell tower would look odd, based on the height, compared to what it is supposed to look like and replace. He then said that should the Commission deploy a monopole at this location, they would propose the top to be 2.5' wide with a base width of 5.5'. He added that if they choose to deploy either a water tower or a silo, these would be at least 35' wide at the top and at least 40' wide at the base. He said that in order to make a tower a stealth facility, the top of the cell tower would need to go from 2.5' wide to 35' wide, with the base increasing from 5.5' wide to 40' wide, at the best. He said that it is their view that making the tower more massive and more visible is not an appropriate solution. He indicated that they are not saying that the tower would

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not be seen, but they have conducted a photo simulation and concluded that, based upon the topography of the land and the natural landscape in the area, the tower would not be visible from many areas.

Mr. Pike said that, according the Tower Height Map, within a 5-mile radius from this location there are 17 FCC licensed towers; and of these, only two towers are shorter than what they are proposing. This means that there are 15 towers that are taller than what they are suggesting. He said that the registered height within a 5-mile radius is 286,' which is 96' taller than what they are proposing in order to fill in the critical coverage gap.

Mr. Pike said that, regarding the property values, their findings conclude that a cell tower structure would not decrease the value of property or create a negative influence in the value of those properties. He then said that property values are not grounds for denying this request; and KRS 100.9865(19) requires the applicant to consider the likely effects of the installation on nearby land uses and values, which they have done by employing an expert appraiser. Mr. Pike said that the tower and foundation design, as required by state statute, have been submitted; and, as it is shown, this tower is over-engineered because they recognize the sensitivity of this request. He then said that the tower has been designed as a 0-foot fall tower, which means that, in the unlikely event of a failure, the tower is designed to buckle or kink on itself and not hit the ground. He noted that with the setback being greater than 1:1, the nearest property line is more than 250', which is considerable, since the tower's height is only a little more than 190' tall.

Mr. Pike said that they have submitted a Geotechnical Report, that stated that the necessary boring of the land has been completed in order to design an appropriate foundation for the tower. They have also submitted a letter from the State Historic Preservation Office (SHPO), stating that there will be no adverse impact on the historical properties or archeological sites in this area. He then said that, if the Commission were to rule that the fact the tower can be seen from a historical or archeological site as a basis to turn down this request; then, by definition, the Commission has prohibited the provision of wireless service for any tower of similar in height in this section of Fayette County.

Mr. Pike said that there are no environmental concerns in siting this tower and they had submitted the National Environmental Policy (NEPA) Review Report into the record. He then said that they have documented that there is no floodplain in this area, as well as documented the notice requirements as stated in Article 25 of the Zoning Ordinance. Mr. Pike said that 70 percent of 9-1-1 calls are made from wireless phones; put that data with the reports from the Center for Disease Control (CDC), 44.1 percent of all adults live in households with only wireless phones, and 54.1 percent of all children live in households with only wireless phones. It is vital for this company to provide uninterrupted, clear and reliable coverage. He added that this cannot be achieved at this time unless the Commission allows this tower to be constructed.

Mr. Pike said that, according to the proposed findings of fact, the tower meets all federal, state and local requirements for cell tower construction. The binding element is whether the tower should be redesigned as an alternate, context-sensitive tower. He said that they should not be required to redesign the tower because any choice in the tower using "aesthetics" as a justification is in violation of the federal courts. He added that any stealth alternative would create a more massive and more noticeable tower; and if this Commission lists as a requirement that a stealth facility should be deployed, then they would construct a stealth silo at the same height as the tower. He said that it is their belief that the lease at this location meets all the acreage requirements; and if there were any thoughts that this request would create a separate 40-acre parcel, then they would convert the lease over to an easement.

Planning Commission Questions – Mr. Wilson asked if the tower has to be lit. Mr. Pike said that they understand that in agricultural areas, people prefer not to have a flashing light on these towers. He then said that by configuring this tower at the proposed height, they do not need to use a light. Mr. Wilson asked if ground lighting could be used. Mr. Pike said that ground lighting is not required, and they can stipulate that there would be no lights. He added that the only signage on this tower would be what is required by federal and state requirements, such as emergency numbers, the property owner and so forth.

Mr. Berkley said that this tower will be a co-locational tower. He asked if will there be other carriers added and if the number of carriers impacts the height of the tower. Mr. Pike said that this tower is preconfigured for multiple carriers, meaning three additional carriers can be placed on this tower. He then said that other applicants cannot readily permit another tower in the immediate vicinity without exhausting the co-location options on this tower. This tower has been preconfigured for that purpose, and the site plans show future radio areas for them at the base. Mr. Berkley then asked if this tower will be strictly wireless. Mr. Pike replied that there will be fiber optic and electric lines running to the tower, but the actual providers will be licensed FCC wireless providers.

Mr. Penn said that his GPS receives information from satellites, and asked how long the service life is for cell towers. Mr. Pike responded indefinitely, and explained that a GPS is receiving information from a cell tower, which is a function that indicates where technology has gone. He said that he uses a satellite phone; and most of the time calls are dropped and data is lost. He then said that at the end of the day, the only way (based on current physics) to provide the type of wireless service that has resulted in over half of the kids at home with no land line is with the trestle system. He then said that during his career, he has helped hundreds of these sites to be permitted, and people have always shown concern as to what happens if the tower becomes unused. He indicated that he has never taken a tower down or ever heard of a tower coming down.

Mr. Penn asked if the applicant is co-locating on the nearby towers. Mr. Pike said that they are co-located on many of the nearby towers. Mr. Penn then asked if the WLAP radio towers could be used for co-location. Mr. Pike said that the wireless lines cannot co-locate on the radio towers because those towers are AM broadcast, which means those towers are electrified.

Mr. Penn said that there are four towers within this area that the applicant is not on. Mr. Pike agreed. Mr. Penn then asked where the closest tower could be co-located, noting that his concern is with the statement that the applicant is co-locating on all of the surrounding towers. Mr. Pike indicated that he didn't say all, but they were co-located on many of the towers in that part of the county.

Ms. Plumlee said that fiber optics was mentioned. She asked if those would need to be underground and where they would come from. Mr. Pike said that typically their goal is to use fiber optics; and for this location they would be using either phone or fiber, which would come up the access roadway since it is a utility roadway. He then said that they will have a back-up generator so that they will have electrical service at this location.

The Chair said that, in reading over the applicant's material, it mentioned that there is off-loading from existing sites due to the other towers being at full capacity. He then said that it seems that the search ring is very narrow and asked why the search ring isn't larger. Mr. Pike said that this tower is primarily designed as a coverage site because there is a clear gap in being able to provide coverage at the frequencies that they have purchased under the FCC license and what the customers are relying on them to provide. He then said that in order to fill in that gap, the tower must be located on an equal distance basis to ensure that it is not too close to other sites; otherwise, this tower will interfere with those towers. He added that the advantage of this site that is key is that they not only fill in the gap; but this new site will cover part of the terrain that those other sites are striving to fill but are not meeting in the middle. He noted that by picking up part of that terrain, they reduce the overcapacity taxing on those other sites. The primary effect is to provide the coverage, and the capacity off-load is the secondary effect. He said that if the Commission would like further justification on the search area, he could ask his expert to come forward. The Chair indicated that would not be necessary, and said that, over the years, it seemed that a tower has always been proposed at the center of the search ring.

The Chair said that the location of the proposed tower is on a hill. Mr. Pike said that the proposed tower is located in the middle of a field on higher terrain. The Chair then said that the applicant is willing to use an alternative design, if necessary, and asked, since the proposed tower would be on higher terrain, if it was possible that the height of the tower could be reduced. Mr. Pike said that the RF Report indicated that this would be the minimum height at this location to meet what is needed.

Mr. Pike made note that they introduced a copy of the applicant's exhibit into the record, and provided each of the Commission members a copy. He then said that they listed a variety of expert witness and they have adopted his summary is accurate, as well as their own written submission as being their testimony here today.

The Chair reminded the audience members that the Planning Commission cannot consider any radio frequency testimony; therefore, there was no need to bring this issue forward.

Supporters – There were none.

Opposition – Marie Yoshida, 4468 Mt. Horeb Pike, was present. She said that they fell in love with this area, and purchased approximately 268 acres of land in 2004. She then said that her family wanted to protect this area, so they entered their entire farm into the PDR Program. Protecting this area from development is for the children and will be part of their legacy. Ms. Yoshida said that the targeted goal for the PDR Program is 50,000 acres and, as of now, the PDR Program has 28,801 acres. She then said that development in the city is everywhere but the north side of the Lexington, and the north end needs to be protected to keep its historical nature in pristine condition. Ms. Yoshida said that the cell tower will be placed on a concrete block in front of or near historical sites, such as the barn that Man o' War was born in or Civil War cemeteries. She said that if a cell tower is placed in the area, the surrounding farms will not join the PDR Program. She asked that the Commission consider denying this request to help protect the PDR Program.

Dan Rose, attorney, was present on behalf of Mt. Brilliant Farm, located at 3314 Huffman Mill Pike, Lexington, KY. He said that the Commission can legally deny this request, even though the applicant's attorney is trying to say the Commission has no legal authority in denying this application. He then said the Sixth Circuit can be overruled through the appeals process and he asked the Commission not to be restrained by what Mr. Pike has said during his arguments. Mr. Rose said that the construction of the tower will damage significant historical view in the vicinity. He then said that Man o' War was foaled in a barn directly across the road from the proposed entrance of this cell tower site. He added that his clients have spent an enormous amount of money to restore this barn, as well as to restore a cemetery of several famous race horses that are buried near this barn. Mr. Rose distributed several photographs to the Commission, and gave a brief explanation of each. He explained that their reasons are not about the aesthetics of this area, but rather it concerned the historical integrity of this area, specifically the horse industry. He added that for this reason alone the Commission can deny this application.

Mr. Rose said that Mr. Pike had stated that federal law applies to cell towers, and the applicant is a public utility, which is correct. He then said that Mr. Pike had also stated that cell towers have power of eminent domain, which means that the government can come in and condemn any property that they need to build this facility. The cell tower does not have to be built at this location. He then said that it was mentioned that the construction is constrained by the PDR properties in this area. Neither the PDR Program nor the Zoning Ordinance trumps the power of eminent domain on behalf of the public utility. Furthermore, the PDR Program can be amended by an agreement between the parties to the documents. He said that he understands everyone's concerns, and ideally no one would want this tower in any part of this area; but if it does have to be built, then PDR-protected properties should be considered to have a less adverse impact on the overall area. He then said that

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the applicant has ruled out all PDR properties and properties that do not comply with the Land Subdivision Regulations. He added that they believe that the applicant should be required to review all of the properties in this area; and, if needed, exercise their power of eminent domain to ensure less of an impact for the overall area.

Mr. Rose submitted a letter from Mr. Bill Justice, Justice Real Estate, and explained that Mr. Justice specializes in farm and estate sales in Fayette County. He said that, according to Mr. Justice, the location of a cell tower in the agricultural area would, in fact, have an adverse impact on the property values within that area. This contradicts the earlier testimony given by Mr. Pike. Mr. Rose then submitted a petition into the record, and said that there are 40 residents and employees of this area who are in opposition to this application. He noted that he has obtained 14 additional letters from residents, who live in this area, opposing the location of this tower.

Mr. Rose said that the applicant needs to reevaluate this area and consider all available options with regard to other possibilities in locating a cell tower in this area, to include PDR-protected properties, in order to have less of an impact on the historic monument sites. He then said that the Commission has valid reasons to deny this application, and he encouraged them to do so.

Janice Schrack, 4989 Mr. Horeb Pike, was present. She indicated that her family has lived in this area for the last 55 years, and said that they understand about having restrictions. She explained that if an historic stone fence falls down, it cannot be removed, and even though there are historical trees at their driveway blocking their view of the road, those cannot be removed either. Ms. Schrack said that Mr. Pike had stated that there are dropped calls in this area, but AT&T and Verizon do not have dropped calls.

Bob Barton, 4095 Huffman Mill Pike, was present. He indicated that he lives and farms with in the search area, and said that there are nine cell towers in the area from the Fayette/Scott County line over to the Clark County line. He then said that this area has good cell coverage for all carriers. He added that Mr. Pike is correct that by installing this cell tower - his coverage will go from three bars to five bars. He said that, in looking at the map he presented, there is a mile radius around Maddoxtown, where there are 27 homes, and asked what the actual coverage area is that this tower will serve. He said that, in researching this issue, the minimum cell tower height, without any obstructions, will be 22 miles of coverage.

Mr. Barton then said that part of what he read spoke to camouflaging the tower, but a 199' tower cannot be camouflaged in the country, especially on the bank of the Elkhorn Creek. He added that he is not saying that the tower would fall over; but if it did, it would end up in the creek due to its close proximity. He said that camouflaging a tower that is similar to a 14-story building will be hard to do. He indicated that they are not against the coverage, but they are against the cell tower. He said that they are making a big deal out of camouflaging the base of the tower; but they are not worried about the base, they are worried about the tower itself. Mr. Barton said that there is an alternative, there is already an existing cell tower that is located in the search area. He then said that it is an old two-way radio tower that has been there for forty years. He added that the radio tower already has underground utilities, guy wires, an access road, a storage unit, and there is a fence around the base; it's a good strong tower. He asked the property owners if they would be agreeable to allow the applicant to use the tower, and they agreed that it would be a great idea. He said again that they are not against the coverage, they just do not want the tower to be built on the banks of the Elkhorn Creek.

Mr. Barton said that he spoke to Michael Quagliano (the owner) about placing his farm in the PDR Program, and Mr. Quagliano told him that his farm was second on the PDR list, so he has an alternative way. He then said that he hopes that the Commission turns this application down to allow both parties to go through with their alternative solutions.

Allison Buckley, Wyatt, Tarrant & Combs, was present on behalf of Golden Age Farm, 854 Paynes Mill Road, Versailles, KY. She said that her clients own 5335 Russell Cave Road, which is across the road from the proposed cell tower. She indicated that her firm had submitted a letter of opposition just prior to today's hearing, and said that their client is concerned with the visual impact that this tower will have on the horse industry and the agricultural area, and is out of character with this area. She then said that they believe the alternative site analysis is not complete in reviewing this application. She added that Article 25 of the Zoning Ordinance states that a tower can be built in an agricultural zone, but only when there are no other alternative sites. She said that the section of the application showing alternative sites is not complete because it does not detail out why those other properties were inadequate regarding this request.

Ms. Buckley said that, with regards to coverage, this tower will not completely resolve the gap issue; and her clients are afraid that if this proposal were to be granted, it would allow more towers to be constructed in this area. She then said that Michael Quagliano has said that he has begun the PDR process; and, if that is the case, then this land owner would be double dipping.

Ms. Buckley asked the Commission to either deny or postpone this request to allow more time to gather information as to why alternative sites were not available; or, at the very minimum, they would support the alternative designs that the Commission had recommended.

Dr. Naoya Yoshida, 4468 Mt. Horeb Pike, was present. He indicated that he is a 4th generation horse breeder, and his family has bred horses for 147 years. The reason his family moved to Kentucky from Japan was the environment, and they are worried about this request. He then said that he understands that development will occur, but the charm of Kentucky should be protected to bring more people here. From the view of the farmer or the horse breeder, it is not easy to coexist with development. He gave an example of how Mr. Quagliano has been constructing a house, and building barns, and said that

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that type of construction does disturb and could harm the horses on his property. Dr. Yoshida said that he is concerned with how the tower will block the view from his property, as well as disrupt the natural areas that should be protected. He asked that the Commission deny this request. He said that if the property owners were to come together and discuss issues such as this, then together they could find a solution.

James Slaughter, DMV, 4301 Huffman Mill Pike, was present. He distributed several photographs to the Commission, and said that his family lives on the northeast side of the subject property. His land is protected through the PDR Program and is strictly used for agriculture. He then said that Huffman Mill Pike and its surrounding area is enjoyed by thousands of people each year not only by Lexington residents, but from around the country. He indicated that this past May, there were 1,865 runners from 38 states and other countries visiting this area to run a marathon. He said that during the World Equestrian Games in 2010, there were people from 26 countries competing in the endurance race that passed through the exact location of this cell tower proposal. This area attracts many people, to include anglers, cyclists and many more.

Dr. Slaughter said that his property backs up to the Elkhorn Creek, and there is a 100' difference in elevation along the creek in some areas, especially where the proposed tower would be located. He then said that Article 25 of the Zoning Ordinance states: "*no cellular tower shall be constructed on land that is environmentally sensitive or a geological hazardous area*". He said that the proposed tower will be constructed on a slope that is a little over 200' from and 100' above the Elkhorn Creek. He then said that there would be dirt moved during the construction phase and asked if they should be concerned about Elkhorn Creek becoming contaminated. He added that the geotechnical report from the boring(s) in this application indicated that there is limestone that is hard and moderately to slightly weathered below 6' of shale that is light grey. This same shale can be seen in the cliff below. He added that during a hard rain, water comes out of its palisades.

Dr. Slaughter said that there are several other locations on Mr. Quagliano land that the tower could be placed. He then said that Mr. Pike had stated that the nearest property is 1,500' east of this site; however, their home is approximately 500' downhill from this proposed tower. With the tower being at a higher elevation, it will appear taller than 199'. He added that Article 25-1 of the Zoning Ordinance states that the intent of this section of the Zoning Ordinance is "to provide for cellular telecommunication towers in appropriate locations throughout the community at sites that provide adequate cellular telecommunication service while protecting the public, preserving the character and value of surrounding property, and protecting the view from residential areas." He said that in speaking with a few realtors that specialize in farm land sales in the Bluegrass area, they spoke to the devaluation of this area. He said that he purchased his property 18 years ago and raised a family here, and they take great pride in the hard work they have done to make this their home. He said that he and his family asked that the Commission disapprove this application.

Tony Lacy, 4351 Mt. Horeb Pike, was present. He said that he moved here from Ireland in 2001 and received his citizenship not long after that. He then said that he sold his land back home and purchased land here in Kentucky. He explained that his property has a direct view of the location where the proposed tower would be constructed. He said that the northern end of Lexington is one of the most important areas of the Bluegrass; this cell tower will place a scar, just not on the landscape, but this entire area. He added that many property owners, who had invested everything they have into the horse industry, did not purchase in this area only to have a cell tower built here.

Jennifer Ryall, Kentucky Heritage Council, was present. She said that they are a neutral party, but as a result of the concerns from the residents of this area, as well as the State Office of Archaeology, they sent a letter that reopens the Section 106 process of the National Historic Preservation Act, in order to reconsider the concerns regarding the natural resources. In response to a question from Mr. Drake, Ms. Ryall explained that she is affiliated with the Kentucky Heritage Council, and under Section 106 of the National Historic Preservation Act, they are reviewing this project as it relates to cultural resources.

Appellants' Rebuttal – Mr. Pike said that wireless communications do not have eminent domain authority, and the LFUCG Law Department can confirm that fact. He then asked if any of the realtors who submitted letters concerning the property values were present. There was no response. Mr. Pike then expressed his objection in the consideration of any material concerning that issue since they are not present for cross examination. He said that the Commission should rely on their attorney concerning that matter.

Mr. Pike said that it is not popular to say you're here citing the federal government in Kentucky, but it is a fact that every lawyer in this room and all of the participants are sworn to follow the law. He then said that it's not what they want it to be, but what it is. He added that they are all sensitive to the concerns that have been voiced, but at the end of the day the law is clear - you cannot use lay testimony as substantial evidence to overturn a cell tower application. He said that there has not been a bit of expert testimony submitted that the Commission can consider. He then said that they have documented every component for their case with expert testimony that is in compliance with federal law and its requirements. He added that, ultimately, all of these objections would apply to any placement within this search area because they are all based on seeing the structure. Mr. Pike said that the Planning Staff and the people who were involved have indicated that the tower can be seen from significant distances. If that is the case, then the objections would apply to any placement within the search area. He said that if the Commission used those issues as a basis for its decision, then the Commission has prohibited the provision of wireless services, which has been demonstrated with no opposing expert testimony of any type. He said that this is not a popular thing to say, but it's the law and it's a fact.

Mr. Pike clarified that this cell tower will not cover 22 miles, and the rough radius of the service area would be a maximum of 4 miles, which has been documented in their submittal. He then said they have modeled the location near the fire house to

include the lightweight paging tower that could not possibly accommodate the hundreds of pounds of equipment that is necessary for a wireless deployment.

Mr. Pike said that they are not naïve, and they understand that people do not want a cell tower next to them. He then said that none of this alters the fact that they have an obligation to their customers to provide service in this area. He added that the federal government has set down the Telecommunications Act through the federal court cases that are binding of what the proof requirements are associated with cell towers applications. He said that they have not only met those requirements, but they have exceeded them.

Mr. Pike concluded by saying that he had a host of experts in the audience who would be glad to respond to any Commission questions; but at the end of the day, there is absolutely no substantial evidence on the opposing side that the Commission could consider, under the terms of the binding cases, that would serve as a reason in turning down this request.

Opposition Rebuttal – Mr. Rose said that Mr. Pike had stated that there was no substantial evidence provided, but one of the first things he had said was they did not consider any of the other properties in the search area that are already in the PDR Program. He then said that there is nothing to prevent a property owner that has PDR on their property from negotiating with Mr. Pike's client. He added that the PDR agreement could be modified to allow a cell tower on their property, but Mr. Pike has refused to consider those properties.

Mr. Rose said that while there may be a need to have a cell tower in this area for their service needs, Mr. Pike's client needs to reconsider the other properties that are part of the PDR Program to determine if there is a more suitable location that would have a less adverse impact in terms of the aesthetic value, or the historical significance, such as the Man o' War barn.

Mr. Rose said that there is substantial evidence that they have not met their obligation in considering all available alternatives; and the Commission does have a legal basis for denying this request.

Staff Rebuttal – Ms. Rackers indicated that property that is already in the PDR Program cannot have a cell tower on the property, because that is considered "double dipping" which is not allowed. It would have to be one or the other.

Ms. Jones said that, with regard to the PDR Program: first, there is not a PDR easement on the subject property where the cell tower is being proposed. If there is an application, and if the cell tower is approved for this site, the application would be withdrawn because cell towers would be a prohibited use under the PDR easement. She then said that it is 100 percent clear; and even though Mr. Rose indicated that there could be negotiations, it's a fact that PDR requirements cannot be renegotiated. They never have and she does not believe it would ever happen – at least, any time soon. She said that if a property already has a PDR easement, a cell tower is listed as a prohibited commercial activity use and is not permitted on that farm. She added that, just to be clear, this is how the PDR Program is handled, that is what the easement says, and that is how that would be controlled.

Planning Commission Questions – Mr. Penn asked, if Mr. Pike is correct, why the Commission was hearing this case. Ms. Rackers said that it is required by Kentucky State Law. Mr. Penn then said that this is a public hearing to allow people to voice their concerns and asked if the Planning Commission has the power to make a decision one way or the other. Ms. Rackers explained that the Public Service Commission does not get involved anymore. Previously, the Planning Commission made a recommendation and the Public Service Commission overruled the Commission much of the time. She then said that Kentucky State Law was revised to give the Commission the authority to act on a cell tower application.

Mr. Penn said that Mr. Pike had implied that the Commission has no choice in this matter, which really concerned him. He then said that Mr. Pike had also noted that certain reasons for concern are not applicable. Ms. Rackers said that the Commission cannot deny service to an area. Mr. Penn asked what kind of decision the Commission can make on this application. Ms. Rackers said that according to KRS 100, the Commission can either approve or disapprove the request. However, federal law probably trumps that decision, but she was unsure about that. Ms. Jones said that the Commission has the power to approve or disapprove this application. She then said that Mr. Pike's testimony, regarding to the case law in the Sixth Circuit Court, is informing the Commission what they can base their decision on and what is considered substantial evidence. She added that Mr. Pike is correct – that in cases where there have been generalized statements about aesthetics or how things might look, or there are generalized statements without any kind of authority behind their justification; if the Commission relies on those generalized statements, one of two things can happen. The application can be appealed, and the Courts can reverse the Commission's decision because they did not rely on substantial evidence; or if the Commission makes a decision, however the decision was made, to disapprove the application, and that effectively denies providing coverage of necessary service to an area that is not allowed either. Mr. Jones said that Mr. Pike is not saying the Planning Commission has no authority; but the Commission needs to be careful, in their reasoning, with whatever decision they make.

Mr. Drake asked, if the Public Service Commission no longer has a regulatory impact, then who does. Ms. Jones said that the Public Service Commission has deferred these cases to the local government to handle the location of the cell towers; and once the locations are determined, then the Public Service Commission will monitor the tower operations.

Mr. Wilson said that Mr. Pike made it very clear that the Commission could not substantially consider lay advice and asked if there was ample time to consider the expert advice when the application was filed. Ms. Jones replied affirmatively, and said that all of the Kentucky State statutes and Zoning Ordinance requirements were met for this hearing.

The Chair asked for confirmation and said that, according to the Zoning Ordinance, the Commission has the ability to conditionally approve, postpone, disapprove or take no action. Ms. Jones replied that was correct; but should the Commission postpone this request, Kentucky statutes provide that the Commission must act on this request within 60 days of the application being submitted, unless there is an agreement with the applicant, which has already occurred once. She then said that by operation of law, that would not be permissible at this point.

Note: The Chair declared a brief recess at 6:35 p.m. The meeting reconvened at 6:45 p.m.

Action - A motion was made by Mr. Penn, seconded by Ms. Plumlee and carried 9-1 to disapprove (Drake opposed; Brewer absent) CT 2015-1: SKYWAY TOWERS, LLC & CELLCO PARTNERSHIP (dba Verizon Wireless), based upon the following findings:

1. There is not adequate exploration of alternative locations in the potential search ring to provide the necessary coverage.
2. There is not adequate consideration of negative significant interest in the cultural and historic resources, based on the testimony given by the representative of the Kentucky Heritage Council.

B. WORK SESSION – Mr. Sallee reminded the Commission members that they do not have a work session on September 17, 2015.

VII. STAFF ITEMS – There were none.

VIII. AUDIENCE ITEMS – There were none.

IX. NEXT MEETING DATES

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	September 23, 2015
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	September 24, 2015
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	October 1, 2015
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	October 1, 2015
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	October 8, 2015

X. ADJOURNMENT - There being no further business, the Chair adjourned the meeting at 6:50 PM.

Mike Owens, Chair

Will Berkley, Secretary