

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

February 11, 2016

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

Planning Commission members present – Mike Owens Chair; Will Berkley (departed at 3:48 PM); Patrick Brewer; Mike Cravens; David Drake; Carolyn Plumlee; Carolyn Richardson; Joe Smith and Bill Wilson. Karen Mundy and Frank Penn were absent.

Planning Staff members present – Director James Duncan; 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, Division of Fire and Emergency Services and Tracy Jones, Department of Law.

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time to several staff members and other persons in the audience.

- II. **APPROVAL OF MINUTES** – There were no minutes to consider at this time.

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

1. DP 2016-8: PATCHEN PLACE SUBDIVISION, UNIT 1, LOT 4 (4/3/16)* - located at 2800 and 2890 Richmond Road.
(Council District 5) **(Wheat & Ladenburger)**

The Subdivision Committee Recommended: **Postponement**. There are some questions regarding the proposed access to Gribbin Drive and compliance with Richmond Road Ordinance requirements.

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. Department of Environmental Quality's approval of environmentally sensitive area (steep slope area).
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. Identify the location of the stormwater control features on the plan.
12. Resolve the timing of the proposed building conflict with the 12' utility easement identified.
13. Indicate timing of the removal of the existing access apron on Gribbin Drive.
14. Discuss drive-through uses for parking calculations (i.e., restaurants).
15. Discuss the need for reciprocal parking and access for the development.
16. Discuss timing of compliance with Richmond Road Ordinance requirements.
17. Discuss proposed access to Gribbin Drive.
18. Discuss drive-through aisles, vehicle stacking and potential conflicts.

Representation – Kevin Phillips, Endris Engineering, was present on behalf of Roger Ladenburger, Wheat & Ladenburger who represents the applicant, and requested postponement of DP 2016-8: PATCHEN PLACE SUBDIVISION, UNIT 1, LOT 4 to the February 25, 2016, 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. Cravens, seconded by Ms. Plumlee and carried 9-0 (Mundy and Penn absent) to postpone DP 2016-8: PATCHEN PLACE SUBDIVISION, UNIT 1, LOT 4 to the March 10, 2016, Planning Commission meeting.

2. DP 2015-114: BROOKHAVEN SUBDIVISION (AMD) (1/31/16)* - located at 2434 and 2450 Nicholasville Road & 100 Malabu Drive. (Council District 4) **(Banks Engineering)**

Note: The Planning Commission postponed this item at their December 10, 2015 and January 14, 2016, meetings. The purpose of this amendment is to increase the buildable area for Buildings A, B & C and to revise the parking and circulation.

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

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding parking compliance for proposed restaurant uses and outdoor site features (from the previous plan), including the orientation of Building C with respect to the street.

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 street frontage and area in right-of-way information.
11. Delete note #9.
12. Denote height of buildings, in feet.
13. Correct note #8.
14. Correct parking statistics for retail uses and restaurant seating.
15. Discuss restaurant parking denoted for Buildings A, B & C.
16. Discuss loss of outdoor site features for Building C compared to current plan.
17. Discuss orientation of Building C with respect to Surfside Drive.
18. Discuss stormwater management requirements.

Representation – Jacob Walbourn, attorney, was present representing the applicant. He said that they had a very productive meeting with the staff, and everyone believes that it would be beneficial for this item to go through the Subdivision Committee process again. Therefore, they would like to request postponement of DP 2015-114: BROOKHAVEN SUBDIVISION (AMD) to the March 10, Planning Commission meeting.

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

Action - A motion was made by Ms. Plumlee, seconded by Ms. Richardson and carried 9-0 (Mundy and Penn absent) to postpone DP 2015-114: BROOKHAVEN SUBDIVISION (AMD) to the March 10, 2016, Planning Commission meeting.

3. DP 2016-7: BEAUMONT FARM, UNIT 1, SECTION 5, LOT 10 (4/3/16)*- located at 980 Midnight Pass.
(Council District 10) **(Abbie Jones Consulting PSC)**

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. 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. Clarify vicinity map.
10. Addition of sidewalks on property to street right-of-way.
11. Clarify sidewalks (if any) from sides or rear of building.
12. Delete note #9.
13. Delete notes #12 & #13 and renumber general notes.
14. Addition of "conditional zoning restrictions" on plan.
15. Clarify and expand sidewalk width near entrance canopy locations identified in front of structure, to the approval of the Bike & Pedestrian Planner.
16. Clarify height and use of proposed building in the rear (between pool and conference room).
17. Relocate proposed access point, across from Lake Crest Circle, to the originally approved location, per ZDP 2014-67.

Representation – Abbie Jones was present representing the applicant. She explained that this item was listed on the Consent Agenda, but changes have recently been made to the development plan. She requested postponement of DP 2016-7: BEAUMONT FARM, UNIT 1, SECTION 5, LOT 10 to the March 10, 2016, Planning Commission meeting.

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

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

Action - A motion was made by Mr. Wilson, seconded by Ms. Plumlee and carried 9-0 (Mundy and Penn absent) to postpone DP 2016-7: BEAUMONT FARM, UNIT 1, SECTION 5, LOT 10 to the March 10, 2016, Planning Commission meeting.

4. DP 2016-12: LOUDON PARK ADDITION, BLOCK 2, LOTS 3-10 (4/3/16)*- located at 720 Bryan Avenue, 130 and 138 Loudon Avenue. (Council District 1)
(S. Mark McCain, RLA)

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

The Subdivision Committee Recommended: Postponement. There were some questions regarding the plan's compliance with the Adaptive Reuse criteria contained in Article 8-21(o)(4) of the Zoning Ordinance

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 plan title.
11. Denote Final Record Plat information on plan or in title block.
12. Provided the Planning Commission makes a finding that the plan complies with Article 8-21(o)(4) of the Zoning Ordinance.
13. Clarify required parking generator for proposed restaurant use.
14. Clarify whether gates will be installed for all access points off Loudon Avenue.
15. Discuss proposed use for fenced area on east end of 138 Loudon Avenue.
16. Discuss proposed access for 130 Loudon Avenue.
17. Discuss area proposed for public art.
18. Discuss adaptive reuse proposed for 138 Loudon Avenue.
19. Discuss adaptive reuse proposed for 720 Bryan Avenue relative to Article 8-21(o)(4) of the Zoning Ordinance.

Representation – Mark McCain was present representing the applicant, and requested postponement of DP 2016-12: LOUDON PARK ADDITION, BLOCK 2, LOTS 3-10 to the March 10, 2016, Planning Commission meeting.

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

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson and carried 9-0 (Mundy and Penn absent) to postpone DP 2016-12: LOUDON PARK ADDITION, BLOCK 2, LOTS 3-10 to the March 10, 2016, Planning Commission meeting.

5. PLAN 2016-4F: GREENDALE HILLS, UNIT 2-C (4/3/16)* - located at 2930 Spurr Road (a portion of).
(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. Department of Environmental Quality's approval of environmentally sensitive area (sinkhole area).
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. Resolve non-buildable area plan notes per Article 6-11(a)(4)(g) 1 & 2 of the Land Subdivision Regulations
10. Resolve shaded area as a sinkhole-related non-buildable area.
11. Resolve tree protection/tree canopy areas on property.

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2016-4F: GREENDALE HILLS, UNIT 2-C to the March 10, 2016, Planning Commission meeting.

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

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

Action - A motion was made by Mr. Berkley, seconded by Mr. Cravens and carried 9-0 (Mundy and Penn absent) to postpone PLAN 2016-4F: GREENDALE HILLS, UNIT 2-C to the March 10, 2016, Planning Commission meeting.

6. DP 2016-11: TURFLAND MALL (TRACT 2 & OUTLOT D) (AMD #26) (4/3/16)*- located at 2033, 2097 and 2195 Harrodsburg Road. (Council District 11) **(EA Partners)**

Note: The purpose of this amendment is to revise the building and parking layout and to create two outlots.

The Subdivision Committee Recommended: Postponement. There are some concerns about the proposed uses on the outlots, pedestrian and vehicular movement and the lack of any new water quality features.

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. Denote location of existing storm sewer in southeast corner of property.
11. Denote building heights in feet on plan.
12. Addition of contour intervals and source on plan.
13. Dimension existing and proposed driveway widths.
14. Clarify building line along R-5 zone, per previously approved development plan.
15. Denote bearings for property line at southwest mall entrance.
16. Addition of missing dimensions to existing Staples building.
17. Dimension existing Health Care building.
18. Dimension building on proposed eastern outlot.
19. Discuss use of proposed western outlot.
20. Discuss pedestrian connections internally and to public right-of-way.
21. Discuss lack of pedestrian amenities and public space.
22. Discuss the number of proposed drive-throughs and associated pedestrian and vehicular conflict.
23. Discuss the lack of pedestrian access to the Emerson Center.
24. Discuss stormwater management planned for the development.
25. Discuss vehicular stacking for drive-throughs.

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2016-11: TURFLAND MALL (TRACT 2 & OUTLOT D) (AMD #26) to the March 10, 2016, 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. Cravens, seconded by Ms. Richardson and carried 9-0 (Mundy and Penn absent) to postpone DP 2016-11: TURFLAND MALL (TRACT 2 & OUTLOT D) (AMD #26) to the March 10, 2016, Planning Commission meeting.

7. DP 2004-66: KINGSTON HALL, UNIT 1 (4/18/16)* - located at 2175 & 2301 Russell Cave Road. **(EA Partners)**
(Council District 12)

Note: This property requires the posting of a sign and an affidavit of such. The Planning Commission originally approved this Preliminary Subdivision Plan/Preliminary Development Plan on September 9, 2004, and granted a one-year extension on September 8, 2005, 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 parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of greenspace, greenways and bike/pedestrian facilities.
6. Department of Highways' approval of access and improvements to Russell Cave Road.
7. Clarify plan title.

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

8. Urban Service Area fencing and landscaping as required by zone-to-zone screening and A-R buffering be provided prior to construction of infrastructure.
9. Minimum setback to Russell Cave Road to be no less than 50 feet.

On September 13, 2012, the Planning Commission reapproved this development plan, subject to the original conditions, and adding the following condition:

10. Denote cemetery location and "50' No Disturbance" zone per Article 3-7 of the Zoning Ordinance.

Note: This plan was certified by the Commission's secretary on February 1, 2013, and the Commission's approval has since expired. The applicant has recently requested a reapproval of this plan.

The Subdivision Committee Recommended: **Postponement**. The staff is unsure whether the requirements of the Capacity Assurance Program are now required for this plan.

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2004-66: KINGSTON HALL, UNIT 1 to the March 10, 2016, Planning Commission meeting.

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

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson and carried 9-0 (Mundy and Penn absent) to postpone DP 2004-66: KINGSTON HALL, UNIT 1 to the March 10, 2016, Planning Commission meeting.

8. DP 2007-141: NEWMARKET PROPERTY, UNIT 8 (4/18/16)* - located at 1501 Deer Haven Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: This plan requires the posting of a sign and an affidavit of such. This plan was approved by the Planning Commission at its December 13, 2007, 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 parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscape buffer.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Approval of street names and addresses per e911 staff.
8. Addition of sanitary sewer force main easement.

On December 13, 2007, the Planning Commission made a finding that this development plan complies with the EAMP Compliance report, for the following reasons:

1. The proposed single family development is an allowable use, and is within the density recommended by the EAMP.
2. The applicant has designed this development to be consistent with previously approved plans fronting Polo Club Boulevard in this and adjoining units.
3. The EAMP requires Polo Club Boulevard on the subject property, which has been built and dedicated, as required.

On July 14, 2011, this plan was reapproved by the Planning Commission, subject to four conditions:

1. Addition of second Planning Commission certification (referencing today's date).
2. Correct note #4.
3. Revise limits of plan to permit construction of street stub in right-of-way.
4. Addition of proposed overhead electric utility easement.

Note: The Plan was certified on May 14, 2008, but the Preliminary Subdivision Plan portion of this property has since expired. The applicant is now requesting a reapproval of that portion of the plan.

The Subdivision Committee Recommended: **Reapproval**, subject to one condition:

1. Addition of a second Planning Commission certification (referencing Planning Commission's reapproval date).

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2007-141: NEWMARKET PROPERTY, UNIT 8 to the March 10, 2016, 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. Richardson and carried 9-0 (Mundy and Penn absent) to postpone DP 2007-141: NEWMARKET PROPERTY, UNIT 8 to the March 10, 2016, Planning Commission meeting.

9. DP 2012-80: NEWMARKET PROPERTY, PHASE 1, UNIT 6 (AMD) (4/18/16)* - located at 1501 Deer Haven Lane (a portion of). (Council District 12) **(EA Partners)**

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

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to amend the lot standards and increase the number of lots by 28. The Planning Commission originally approved this plan at their October 11, 2012, 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 protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Delete either note #9 or #16 (redundant).
9. Correct note #4 to reference Article 16 of the Code of Ordinances.
10. Revise amendment note to include lot increase and development standards.
11. Resolve note #13 relative to new school development across Polo Club Boulevard.

Note: The Plan was certified on January 31, 2013, but the Commission's approval of the Preliminary Subdivision Plan portion of this plan has since expired. The applicant is now requesting a reapproval of that portion of the plan.

The Subdivision Committee Recommended: **Reapproval**, subject to one condition:

1. Addition of a second Planning Commission certification (referencing Planning Commission's reapproval date).

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2012-80: NEWMARKET PROPERTY, PHASE 1, UNIT 6 (AMD) to the March 10, 2016, 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. Berkley, seconded by Mr. Smith and carried 9-0 (Mundy and Penn absent) to postpone DP 2012-80: NEWMARKET PROPERTY, PHASE 1, UNIT 6 (AMD) to the March 10, 2016, Planning Commission meeting.

10. DP 2004-67: KINGSTON HALL, UNIT 2 (EAST BRIDGEFORD LAND & DEVELOPMENT COMPANY) (5/3/16)* - located off Newtown Pike. (Council District 12) **(EA Partners)**

Note: This property requires the posting of a sign and an affidavit of such. The Planning Commission originally approved this Preliminary Subdivision Plan/Preliminary Development Plan on September 9, 2004, and granted a one-year extension on September 8, 2005, 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 parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of greenspace, greenways and bike/pedestrian facilities.
6. Department of Highways' approval of access and improvements to Newtown Pike.
7. Clarify plan title.
8. Provide fencing and the A-R landscape buffering prior to construction of infrastructure.
9. Denote: Temporary access from the boulevard to the 20-acre tract (Lot 1) will be abandoned at the time of the connection of the boulevard to the adjoining property.

The Planning Commission reapproved this item on September 13, 2012, subject to the original conditions, adding the following conditions:

10. Denote area designated for the regional pump station per the EAMP to the approval of the Division of Water Quality and relocate detention basin on Lot 1, as necessary.
11. Identify location of as-built detention basin on Lot 2.
12. Delete Section "H-H" from Lot 1 & Lot 2, prior to certification.

This plan was certified on March 26, 2013, but that's been more than three years since the Commission's approval. Thus, the Preliminary Subdivision Plan portion of this combined plan has since expired. The applicant has requested a reapproval of this plan.

The Staff Recommends: **Reapproval**, subject to the following condition:

1. Addition of a second Planning Commission certification (referencing Planning Commission's reapproval date).

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2004-67: KINGSTON HALL, UNIT 2 (EAST BRIDGEFORD LAND & DEVELOPMENT COMPANY) to the March 10, 2016, Planning Commission meeting.

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

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

Action - A motion was made by Ms. Plumlee, seconded by Ms. Richardson and carried 9-0 (Mundy and Penn absent) to postpone DP 2004-67: KINGSTON HALL, UNIT 2 (EAST BRIDGEFORD LAND & DEVELOPMENT COMPANY) to the March 10, 2016, Planning Commission meeting.

11. DP 2012-89: NEWMARKET PROPERTY, PHASE I, UNIT 10 (5/3/16)* - located at 1501 Deer Haven Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: This property requires the posting of a sign and an affidavit of such. The Planning Commission originally approved this plan on February 14, 2013, 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 preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Provided the Planning Commission makes a finding that the plan complies with the provisions of the EAMP.
9. Denote the area of storm water management improvements proposed for the adjacent Unit 6 property.
10. Addition of 10' tree protection areas on rear of Lots 30, 31, 33 and 34.
11. Delete duplicated note #15.
12. Revise lot numbering to relocate proposed Lots 147 and 148 (not between Lots 23 & 24).

This plan was certified on March 26, 2013, but that's been more than three years since the Commission's approval. Thus, the Preliminary Subdivision Plan portion of this combined plan has since expired. The applicant has requested a reapproval of this plan.

The Staff Recommends: **Reapproval**, subject to the following condition:

1. Addition of a second Planning Commission certification (referencing Planning Commission's reapproval date).

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2012-89: NEWMARKET PROPERTY, PHASE I, UNIT 10 to the March 10, 2016, 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. Cravens, seconded by Mr. Smith and carried 9-0 (Mundy and Penn absent) to postpone DP 2012-89: NEWMARKET PROPERTY, PHASE I, UNIT 10 to the March 10, 2016, Planning Commission meeting.

12. PLAN 2015-137F: BOONESBOROUGH MANOR SUBDIVISION, UNIT 1 (AMD) (1/31/16)* - located at 5354 Athens-Boonesboro Road. (Council District 12) **(Fred Eastridge/Wes Witt)**

Note: The Planning Commission postponed this item at their December 10, 2015 and January 14, 2016, meetings. The purpose of this amendment is to create Section 2, Lot 1 and dedicate Doe Run Trail right-of-way.

The Subdivision Committee Recommended: **Postponement**. The acceptance of a private street into the public system must follow a formal procedure, including review by the Chief Administrative Officer prior to Planning Commission consideration. Documentation of that review has not yet been provided to the staff.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).
9. Addition of Athens-Booneboro Road cross-section.
10. Denote building line for Lot 1, Section 2.
11. Addition of maintenance note per Article 5-4(g).
12. List all private utility providers per Article 5-4(e).
13. Denote Council Resolution accepting the street as public right-of-way.
14. Discuss right-of-way along the front of Section 2, Lot 1.

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

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant's representative, requesting postponement of PLAN 2015-137F: BOONESBOROUGH MANOR SUBDIVISION, UNIT 1 (AMD) to the March 10, 2016, Planning Commission meeting.

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

Action - A motion was made by Ms. Richardson, seconded by Ms. Plumlee and carried 9-0 (Mundy and Penn absent) to postpone PLAN 2015-137F: BOONESBOROUGH MANOR SUBDIVISION, UNIT 1 (AMD) to the March 10, 2016, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, February 4, 2016, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Mike Owens, Carolyn Plumlee and Joseph Smith. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee; Tom Martin; Traci Wade; Cheryl Gallt; Denice Bullock; Kelly Hunter; Dave Jarman; Scott Thompson; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; Chris Schnelle, Division of Police; and Mike Sanner, 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 were 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 remaining 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 these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2016-2F: PATCHEN PLACE SUBDIVISION, UNIT 1 (4/3/16)* - located at 2800 and 2890 Richmond Road.
(Council District 5) **(Endris Engineering)**

Note: The purpose of this plat is to show the reconfiguration from three lots to four lots; to dedicate the service road right-of-way and create new utility easements.

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. Addressing Office's approval of street names and addresses.
 4. Urban Forester's approval of tree protection area(s) and required street tree information.
 5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 6. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 7. If approved, denote date and ordinance of Gribbin Drive right-of-way closure, or revise plan boundaries.
 8. Resolve compliance with the Richmond Road Landscape Corridor Ordinance.
2. PLAN 2016-3F: BOONESBOROUGH MANOR SUBDIVISION, BLOCK A, UNIT 1 (AMD) (4/3/16)* - located at 5355 Athens-Boonesboro Road. (Council District 7) **(Vision 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.

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

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. Department of Environmental Quality's approval of environmentally sensitive area (steep slope area).
 7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Addition of street tree information, as applicable.
 9. Addition of tree protection note for steep slopes areas, per Article 26-8 of the Zoning Ordinance.
3. DP 2016-9: HAMBURG PLACE MALL, UNIT 1, PARCEL 3 (AMD) (4/3/16)*- located at 2309 Sir Barton Way.
(Council District 6) **(Vision Engineering)**

Note: The purpose of this amendment is to add building floor area, and revise the parking and vehicular circulation.

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. Document compliance with "required interior landscaping" requirements (in site statistics) per Article 18-3(b)(1) of the Zoning Ordinance (verify 5% calculations).
4. DP 2016-10: COVENTRY (BELMONT FARM) (LOT 4) (4/3/16)*- located at 2470 Remington Way.
(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 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. Department of Environmental Quality's approval of environmentally sensitive areas.
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. Reference waiver approved by the Planning Commission on January 14, 2016 (PLAN 2016-1F), on plan.
12. Denote: Hazardous waste transporters and haulers will not be authorized to use this facility.
13. Denote water quality measures relative to the Royal Spring Aquifer and approval by the Royal Spring Wellhead Protection Committee, prior to plan certification.
14. Resolve timing of landscaping (residential buffering) needed in greenway/detention area, prior to occupancy.

In conclusion, Mr. Sallee said that the item identified on the Consent Agenda could be considered for conditional 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 9-0 (Mundy and Penn absent) to approve the items listed on the Consent Agenda, as recommended by the Subdivision Committee and staff.

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

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)

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

- 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. DEVELOPMENT PLANS

- a. DP 2014-13: GROWTH PROPERTIES (AMD) (7/10/14)* - located at 100 Goodrich Avenue.
(Council District 3) **(Vision Engineering)**

Note: The Planning Commission indefinitely postponed this item at their July 10, 2014, meeting. The purpose of this amendment is to depict a single family residence at 100 Goodrich Avenue, the line separating it from the B-1 zone, and to revise plan notes.

The Subdivision Committee Recommended: Postponement. There are concerns regarding the suitability of the proposed single family use and the historic storm water flooding conditions.

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

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping 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. Correct typographical errors throughout plan notes.
9. Restore access restrictions from previous note #11.
10. Discuss need to establish a finished floor elevation for proposed residence on 100 Goodrich Avenue.
11. Discuss possible 25' building line at 100 Goodrich Avenue.

Staff Presentation – Mr. Martin introduced the amended final development plan DP 2014-13: GROWTH PROPERTIES (AMD), located at 100 Goodrich Avenue. He directed the Commission's attention to a rendering of this plan to orient them to the location of the subject property and the nearby street system. He indicated that the subject property is located at the corner of Nicholasville Road and Goodrich Avenue, near Southland Drive. He said that within the general area the uses include a restaurant, a hotel and a convenience store/gas station. He then said that when this area was originally developed, the property consisted of B-1 at the front of the property and R-3 at the rear, and the subject lot has remained vacant for many years. He said that at one time the vacant lot was approved for a parking area, but the purpose of this amendment is to depict a single family residence at 100 Goodrich Avenue.

Mr. Martin said that there is a long history of stormwater problems in the general vicinity, which has certainly impacted this lot, as well as many other lots on Goodrich Avenue. He then said that when the hotel was approved, a FEMA Letter of Map Revision was completed that reduced the size of the floodplain. However, the existing stormwater problem remained in this area. He explained that Goodrich Avenue was platted in 1927, and at that time, it is believed that a stormwater inlet and pipe were installed to direct the water toward Southland Drive. He said that over the years the water would overflow the stormwater inlet and would cross the vacant lot toward Southland Drive, creating a serious flooding event for the nearby properties. He then said that, in part, this was due to a wall that acted as a dam impeding the flow of water. Mr. Martin said that several things have been improved with the development of the hotel, including the removal of the wall and the installation of superior stormwater facilities on the hotel property. This allows the stormwater flow to be directed toward the creek on Southland Drive.

Mr. Martin said that, when the staff first reviewed this amendment, the primary concern was the suitability of the proposed single family use on the vacant lot. He then said that, with the historic storm water flooding conditions, the applicant withdrew the application and continued working with the various agencies in an effort to figure out the best way to address the water problems crossing the vacant lot, while providing a safe home. He said that the applicant met with the Division of Planning, Division of Engineering and the Division of Water Quality, and it was stressed to the applicant that part of the water problem was the stormwater overflow on Goodrich Avenue and the impact the water has on the vacant lot. He then

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

said that the development of the hotel has helped with some of the water problem along Southland Drive, but it has not helped the problem on Goodrich Avenue.

Mr. Martin directed the Commission's attention to the rendering and explained that the applicant is proposing to install a swale on the subject property on the Nicholasville Road side of the lots, which will collect the overflow water coming off Goodrich Avenue; then redirect it to the rear of the property, where an additional feature would be installed to spread out and dissipate the water toward the basin. The water will no longer be concentrated in one area. He said that the applicant is maintaining the control to deal with the water on the subject site. He directed the Commission's attention to the overhead projector and explained that the diagram demonstrates the construction of the house and the overflow swale.

Mr. Martin then directed the Commission's attention to the staff handout, and briefly explained that the following conditions are typical sign-off requirements from the different Divisions of the LFUCG; and the remaining conditions are "cleanup" items that will be addressed prior to the plan being certified.

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. 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. Correct typographical errors throughout plan notes.
9. ~~Restore access restrictions from previous note #11~~ Denote there shall be no access from the B-1 property across this lot.
10. ~~Discuss need to establish a finished floor elevation for proposed residence on 100 Goodrich Avenue~~ Denote a finished floor elevation for the proposed residence on 100 Goodrich Avenue to the approval of the Division(s) of Engineering and Water Quality.
11. ~~Discuss possible 25' building line at 100 Goodrich Avenue~~ Denote a 30' building line to match the front yard setback in the adjoining lots.
12. An easement minor subdivision plat shall be recorded prior to certification, creating the necessary drainage easement(s) to address the storm water overflow.
13. Denote that no Certificate of Occupancy shall be issued until the overflow swale and associated storm water controls are constructed and approved by the Division(s) of Engineering and Water Quality.
14. Detailed design geometry of the overflow swale shall be denoted on the development plan to the approval of the Division of Engineering.

Mr. Martin pointed out that the overflow swale is not a finished product, and the applicant will need to provide detailed design geometry of the overflow swale to the approval of the Division of Engineering (condition #14). He then said that this condition is rare and not normally done, but for this situation it is needed. In addition, there will be no Certificate of Occupancy issued until the overflow swale and the storm water controls are constructed and approved by the Division of Engineering and the Division of Water Quality (condition #13). He added that an easement minor subdivision plan needs to be recorded prior to certification, creating the necessary drainage easement(s) on this property to address the storm water overflow (condition #12).

Mr. Martin said that, as for the future house, the applicant will need to denote a finished floor elevation for this residence. He explained that the finished floor elevation would be contingent upon the exact geometry that is approved by the Division of Engineering (condition #10). He then said that the applicant had proposed a 20' building line along Goodrich Avenue; but to maintain the historic setting of the area, the staff believes the applicant will need to denote a 30' building line in order to match the front yard setbacks of the adjoining lots (condition #11). He said that since this lot was approved as a parking area, a condition was added to prevent access to Goodrich Avenue. However, with this amendment, a condition was added to denote that there shall be no access from the B-1 property across this lot (condition #9).

With that being said, Mr. Martin noted that the staff could answer any questions regarding the staff recommendation or about this final development plan listed on today's agenda.

Commission Questions – The Chair asked if the builder, not the seller or current owner, would be responsible for constructing the overflow swale. Mr. Martin replied affirmatively and said that the house is an integral part of the storm water solution.

Mr. Berkley asked if there is floodplain on the subject property. Mr. Martin replied negatively, and said that the Letter of Map Revision had reduced the floodplain boundary, and now it is more in line with the 1992 study that shows the floodplain near the railroad tracks. Mr. Berkley then asked if the swale would become a floodplain and if there is any risk to the house. Mr. Martin replied no and said that there is no floodplain in this area.

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Representative – Matt Carter, Vision Engineering, was present representing the applicant. He said that when the Hampton Inn was constructed, it was discovered that the 12-inch storm line coming out of the basin was compacted solid, preventing any water flow. With the 12-inch pipe and wall, the water had no place to flow. He then said that they upsized the 12-inch pipe to a 15-inch pipe, which allows more water flow, and removed the wall. To date, the basin has had no flooding problem. Mr. Carter said that they are in agreement with the staff revised recommendation and requested approval.

Audience Comments – Neal McCafe, property manager for the B-1 portion of the property, was present on behalf of Germond Properties. He asked what will be the impact on the detention basin with this proposed development and if there will be any impact to B-1 portion of this area.

Tenlee Tarrier, residing at 99 Goodrich Avenue, was present. She said that the detention basin does seem to be working a lot better since the hotel has added the new pipes. However, there is still a concern with the flooding on Goodrich Avenue. She directed the Commission's attention to a series of photographs taken in 2015 and gave a brief description of each. She explained that, before the development of the hotel, during a flood event, the subject property would become completely submerged under water. She said that, with the existing storm water problem on Goodrich Avenue and the City not planning on fixing the sewer lines, she is concerned that when this area does flood, the water will impact another part of the property on Goodrich Avenue. She then said that there are three storm water inlets on Goodrich Avenue. She indicated that these inlets are within 10' of each other, and each of these inlets is connected to the same pipe; so when the system becomes overwhelmed, the over flow of the water floods the subject property, the street and the sidewalks.

Ms. Tarrier directed the Commission's attention to the rendering, and pointed out the location of her house, as well as the location of the three inlets on Goodrich Avenue. She said that when there is massive flooding on Goodrich Avenue, it is due to the size of the three inlets and the inlets becoming clogged with leaves. She said that if the swale works, then she is in support of this request; but she would hate for someone to purchase this lot, only to realize that the property floods. She said that the applicant indicated that they would raise the house, but this property is at least 2' lower than the adjacent houses; and with the amount of water, the lower elevation and storm water problems in the same area, she does hope that the swale will work.

Commission Questions – The Chair asked for additional information to be provided about the inlets and the other storm water pipes. Mr. Carter explained that the detention basin backs up to the property line; and as far as this request impacting the basin, the water is already flowing toward the basin. He then said that the location of the swale will be in the same area as the water naturally flows. The only difference there will be a house to the right of the swale. He then said that, as far as flood elevation for the house, the finished floor elevation will be 2' higher than what the 100-year flood event predicts.

Mr. Carter said that there are two inlets in the road, and the third inlet could be located on Ms. Tarrier's property. He then said that the problem with the inlets is that they are too small, and they do get clogged up from the leaves. There is definitely a problem on Goodrich Avenue, and they had hoped that the City would come in and supply a new catch basin and lines. He indicated that he had seen Ms. Tarrier cleaning out the inlets, and he suspects that the property owners of this lot might be doing the same.

Mr. Wilson asked what will happen if the swale fails. Mr. Carter replied that the swale will be located in the area where the water is already flowing, so it will work better. He said that right now the land is uneven; but once the swale is constructed; there will be a low-lying depression to collect the water before it moves on to the basin. The swale will not solve the problem of the water collecting on Goodrich Avenue; but, rather it, will create an area for the water to gather before it reaches the basin.

Mr. Wilson asked who's responsible for the inlets and pipes on Goodrich Avenue. Mr. Carter replied that it's the City's infrastructure, so they would be responsible for replacing those inlets and pipes. He then said that the City is aware of the problem, but they have no plan to upgrade the system at this time.

The Chair asked if it was the applicant's intention to build the house and the swale. Mr. Carter said that the swale would be installed after the house is built. He then said that, for this lot, there would additional geometry to construct the width and side slopes of the swale. He added that before the Certificate of Occupancy is issued, the swale would have to be certified that is constructed and functions as it was designed.

Ms. Plumlee asked if the swale would be made of concrete. Mr. Carter replied negatively, and said that the swale would be a grassy ditch with at least a 1 to 1.5 percent slope from the road to the basin. He then said that there could not be anything placed in the swale, such as air conditioning units or trees that would obstruct the flow of the water.

The Chair asked for additional information on future plans for the inlets on Goodrich Avenue. Mr. Newman said that he is not aware of any plans for the City to upgrade the inlets or storm water system on Goodrich Avenue. He then said that they had met with the Division of Water Quality, who confirmed that there is no foreseeable plan for the improvements to the infrastructure on Goodrich Avenue. He added that, historically, this property has been the path

for the overflow; so they instructed the applicant to demonstrate that they could safely continue to convey the water and not impact this property or the neighboring properties.

Mr. Wilson asked if the City is not planning on doing anything about those inlets, the City would at least clean out the inlets. He asked what a home owner should do to ensure that the inlets are functioning correctly; otherwise, the street will be flooded. Mr. Newman said that an avenue for the home owners to take is to contact the Division of Streets and Roads, who maintains the streets, and possibly the Division of Water Quality for storm water structures. Mr. Wilson confirmed that the home owners should contact the Division of Streets and Roads. Mr. Newman suggested that the home owners contact LexCall to file an incident report when they observe that the inlets are clogged. He then said that LexCall will direct those reports to the appropriate Division for maintenance. Ms. Tarrier said that this problem is not a once a year event, but occurs every single month. She indicated that they do call LexCall, and the inlets are cleaned out; but the leaves just clog up the inlets again. She explained that the area in front of the subject site is a low point on Goodrich Avenue, so everything drains to these inlets; and she does not know who to call to address this issue.

Mr. Drake asked, as far as the Planning Commission is concerned, what Ms. Tarrier wants. He then asked if she is requesting the Commission to approve or disapprove the applicant's request. Mr. Tarrier said that she believes that a house on the subject property would be nice, but she needs guidance from the Commission with the storm water problem on Goodrich Avenue. She asked if the Commission could place this street on a "list" to be addressed. Mr. Drake said that that is not within the Commission's purview. The Chair said that hopefully with this issue being aired, people are listening.

Bud Feigel, a resident of the area for 38 years, as well as President of WGPL Neighborhood Association, was present. He thanked the staff for their help and said that the WGPL Neighborhood Association is in support of this request. He understands the applicant's proposal and he requested that the Commission approve this request.

Mr. Cravens commented that the swale is much more exaggerated than what is normally done for new houses, and it should remove the water from the street much faster.

Action - A motion was made by Mr. Cravens, seconded by Mr. Berkley and carried 9-0 (Mundy and Penn absent) to approve DP 2014-13: GROWTH PROPERTIES (AMD), subject to the revised conditions, as presented by the staff.

2. MINOR SUBDIVISION PLAN

- a. PLAN 2016-7C: BIG RUN INDUSTRIAL PARK, UNIT 3 (1/15/17)* - located at 550 & 560 Stone Road and 291 Gold Rush Road. (Council District 10) **(MLH Civil Engineers, PLLC)**

Note: The purpose of this minor amendment is to consolidate four lots into two and alter property boundaries and to dedicate right-of-way, as shown on the approved development plan (DP 2015-117).

The staff is referring this plan to the Commission under Article 3-4(e) of the Land Subdivision Regulations.

Staff Presentation – Ms. Gallt introduced a minor subdivision plan for property located at 550 & 560 Stone Road and 291 Gold Rush Road. She directed the Commission's attention to a rendering of this plan to orient them to the location of the subject property and the nearby street system. She said that the subject property is just off Stone Road between New Circle Road and Pasadena Drive.

Ms. Gallt briefly explained that on December 10, 2015, the Planning Commission approved a development plan to add two buildings to this site. During that time, the staff had also discussed the need for additional right-of-way and improvements to Stone Road in front of this location. Now the applicant has submitted a minor amendment to consolidate the four lots into two and alter the property boundaries, as well as dedicate that right-of-way, as shown on the previously approved development plan (DP 2015-117).

Ms. Gallt directed the Commission's attention to the handout. She said that the staff had reviewed the applicant's request, and 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. Addressing Office's approval of street names and addresses.
4. Revise certification titles to match Article 3-4(f) of the Land Subdivision Regulations.
5. Denote date of Planning Commission consideration, on plat.
6. Denote timing of physical improvements to Stone Road, on plat.

Ms. Gallt briefly explained that conditions #1-3 are typical sign-off requirements from the different Divisions of the LFUCG; and the remaining conditions are "cleanup" items that will be addressed prior to the minor plan being certified.

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

Representation – John Hunt, MLH Civil Engineers, was present representing the applicant. He said that, as far as the timing of the road improvement, those improvements will be done prior to the buildings being completed. He then said that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2016-7C.

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 Ms. Plumlee and carried 9-0 (Mundy and Penn absent) to approve PLAN 2016-7C: BIG RUN INDUSTRIAL PARK, UNIT 3, as presented by the staff.

- b. PLAN 2016-10E: CHANCELLOR SUBDIVISION (THE SPRINGS), LOTS C1, C2 & D (1/27/17)* - located at 2020, 2030 and 2040 Harrodsburg Road. (Council District 10) **(Vision Engineering)**

Note: The purpose of this minor amendment is to add an access easement between three lots.

The staff is referring this plan to the Commission under Article 2-3(c)(2) of the Land Subdivision Regulations, since three lots are affected by the proposed access easement.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Revise certification titles to match Article 3-4(f) of the Land Subdivision Regulations.
5. Denote date of Planning Commission consideration, and revise Commission Certification as if for a major plat.

Staff Presentation – Ms. Gallt introduced the minor subdivision plan for properties located at 2020, 2030 and 2040 Harrodsburg Road. She directed the Commission's attention to a rendering of this plan to orient them to the location of the subject property and the nearby street system and uses. She said that the subject property is located along Harrodsburg Road, near Lane Allen Road and Mitchell Avenue.

Ms. Gallt then said that the purpose of this minor amendment is to add an access easement between three lots. However, under Article 2-3(c)(2) of the Land Subdivision Regulations, access crossing multiple lots is prohibited; therefore, the staff is referring this plan to the Commission for their consideration. She noted that this request does match the development plan that was previously approved.

Ms. Gallt directed the Commission's attention to today's agenda, and said that staff is recommending approval, briefly explaining that conditions #1-3 are typical sign-off requirements from the different Divisions of the LFUCG; and the remaining conditions are "cleanup" items that will be addressed prior to the minor plan being certified.

Representation – There was no representation present for today's meeting.

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 Ms. Richardson and carried 9-0 (Mundy and Penn absent) to approve PLAN 2016-10E: CHANCELLOR SUBDIVISION (THE SPRINGS), LOTS C1, C2 & D, as presented by the staff.

- B. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Cravens, seconded by Ms. Plumlee, and carried 9-0 (Mundy and Penn absent) to approve the release and call of bonds as detailed in the memorandum dated February 11, 2016, from Barry Brock, Division of Engineering.

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

1. C 2016-1: SUBCARRIER COMMUNICATIONS, INC. – an application for a 199-foot replacement tower at 3347 Haley Pike.

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

1. That the tower be located on the site as shown on the site layout; and, unless an engineer, registered in the state of Kentucky, can verify that a lattice tower is preferable to a steel monopole for structural purposes as it relates to height, the tower is to be a steel monopole, as opposed to the proposed lattice structure. Should the tower exceed 200 feet (to include any lightning arrestors), that it be lighted as required by the Federal Aviation Administration (FAA).
2. That the proposed tower meet all requirements of Article 25, other than the height-to-yard ratio, if that requirement is waived by the Planning Commission.
3. That any applicable permits (e.g., grading, building and/or occupancy) be obtained prior to construction from the applicable Divisions of the Urban County Government.

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

Audience Comments - Mr. Murphy informed the Commission that Mr. Carroll Ware, resident of 3713 Haley Road, must leave the meeting at 2:30 p.m. He then said that Mr. Ware had requested to speak to the Commission first to make comments regarding his opposition to this case. The Chair acknowledged the request.

Mr. Ware said that his family has a farm in this area, which he had just purchased a little over a year ago. He then said that for him to purchase his farm there were a lot of requirements to comply with to preserve and maintain the rural agricultural nature of this part of town. He said that his father was raised in this area, before the interstate was built, and they understand that there is an existing cell tower on the subject site. He said that the interstate is already being lit up and a cell tower over 200 feet will require lights to be added to the structure, making it more visible, even from Winchester Road and more of a visual nuisance. He said that he is concerned with the safety of the tower because if it should fail, it would fall on one of three people's properties.

Commission Questions - The Chair asked how far Mr. Ware lives from the subject site. Mr. Ware indicated that there is one property between his property and the tower, perhaps $\frac{3}{4}$ of a mile away.

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, one of which was only in opposition should the tower have lights, and distributed them for their review.

Ms. Rackers began by saying that this is an application made by Subcarrier Communications, Inc. to construct a 195-foot replacement tower, with a 4-foot lightning arrestor (total 199 feet), located at 3347 Haley 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 approximately 1,700 feet north of Winchester Road. She said that the applicant is proposing to replace the existing 160-foot (guyed) tower on the property that was originally constructed in the 1960s. She then said that the applicant wants to replace the existing tower with a 195-foot tower with 4-foot lightning arrestor. She added that the existing tower only has two wireless service carriers and the purpose of this application is to augment service in the area by providing four antennae. She explained that there have been two previous cellular tower applications in the Rural Service Area, both of which were in the northern part of the county, and both were disapproved by the Commission. She said that there is a need to upgrade the service in the northern part of the county and this application will allow that to happen. Ms. Rackers said that the existing tower is not strong enough to accommodate two more carriers, so the proposed tower is to be structurally larger and stronger. She directed the Commission's attention to the overhead projector, and explained that the current tower is a guyed tower with two antenna array; whereas, the new tower is proposed to be a lattice tower with the typical type of "birds nest" antenna array at the top. She said that the base of the new tower would be 18 feet across, and the width at the top of the tower would be 4 feet across. She said that generally the tower of choice is a steel monopole due to its stability; however, the applicant stated that if a steel monopole were to be used, the height of the tower would need to be increased above 200 feet to accommodate what needs to be done in this area. She then said that the staff questioned the applicant's justification because there are several monopole towers in Fayette County that are 195 feet or less in height that contain up to four sets of antennae. She noted that the staff does not have any expertise in this area, so that issue will need to be addressed by the applicant's engineer or another engineer licensed in the State of Kentucky.

Ms. Rackers said that, should the Commission approve this request; the existing tower will be deconstructed and removed once the new tower is operational. She directed the Commission's attention to an aerial photograph, and said that the new tower would be located within the existing compound, although not in the same location as the existing tower. She then said that the compound is nearly central to the property, and is bounded by farm fencing on three sides, with the fourth side open to the remainder of the farm.

Ms. Rackers said that Subcarrier Communications, Inc. owns this land and it was probably created through a deed years ago before the 10 or 40-acre rule was enacted. She then said that with this application the applicant proposes to enlarge the equipment area by about 425 square feet and match the existing chain link fence with the new chain link with three strands of barbed wire at the top for security purposes. She added that since the existing tower was constructed prior to Article 25 requirements, one of the conditions of approval is to screen the equipment area and base of the tower. She said that had the new tower mirror the existing tower (match it in height, location and construction), screening would not be required, as it is an existing condition. She then said that currently there is a 1:1 height-to-yard ratio for towers in the A-R zone; and the existing tower, as it stands now at 160 feet, does not meet the height-to-yard ratio on any side. She added that with the tower location being moved closer to the property line and the size increasing, it will become even more nonconforming. Once the new tower is constructed, the height-to-yard ratio will be closer to a 3:1 height-to-yard ratio, which is what typically allowed in all zones except for residential and agricultural. She said that, without a variance, the replacement tower would be limited to replacement in kind and would need to remain in the same location and stay the same height. She explained that a similar situation occurred in the Urban Service Area in 2013, and said that because the tower did not meet the height-to-yard at its existing height that requirement was waived by the Commission. She then said that, with the 2013 case, the staff and Planning Commission believed that that request was justified; and the staff believes it is the same situation for this application and justified as well.

Ms. Rackers said that the land use recommendation for the property comes from the 1999 Rural Land Management Plan, which recommends Core Agricultural and Rural Land Use (CARL). She then said that this recommendation was carried on through the 2001 and 2007 Comprehensive Plans, which had very specific goals and objectives that addressed the need to provide essential services to Fayette County citizens. The 2013 Plan does not specifically state the same language as the

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2001 and 2007 Comprehensive Plans, but it does support cell towers, making the early goals and objectives still relevant. She said that the 2013 Plan is more generalized, but it does provide a level of support in the themes, goals and objectives and text of the Plan. She added that the 2013 Plan also discusses the provision and expansion of wireless services; specifically it states that co-location should be encouraged to minimize the negative visual impact of these towers. She said that, although this seems counterintuitive and contradictory, the construction of a new, taller and more substantial tower would serve their need to provide added service, including enhanced 911 and other emergency service access, but would actually minimize negative visual impact because fewer towers would be needed. This is consistent with the *2007 Comprehensive Plan* objective, which is still relevant, of improving and developing essential public and private facilities and services in existing neighborhoods where these are non-existent or inadequate. She said that this application is consistent with Chapter 2 of the 2013 Plan, which encourages co-location for each site to minimize the need for additional towers, as well as being consistent with Article 25 of the Zoning Ordinance.

Ms. Rackers said that the Uniform Application states that the proposed tower meets both the locational criteria and the design standards of Article 25, and it will not interfere with public safety radio systems. She said that it was the applicant's contention that it will not alter the essential character of the surrounding area, because it is a replacement tower and will be located in the same area. However, the staff disagrees with this statement, as the new tower will be much more visible than the existing tower. The staff is therefore recommending a steel monopole because it will provide a lower profile and would be more typical of the ones that are generally constructed now. She said that the staff has no expertise in how a tower should be designed or as to its structural stability, so asked for an engineer to be present to testify and explain why the monopole would need to be taller than 200 feet and therefore need to be lighted.

Ms. Rackers said that in considering the relationship of the application to Article 25: Telecommunication Towers, the staff finds the following:

1. The site is not located in a floodplain.
2. The site is not environmentally sensitive or a geologic hazard area.
3. The site is not within 1,200 feet of an historic district or landmark.
4. The adjoining streets are not State-designated Scenic Byways.
5. The proposed 199-foot tower does not meet the required height-to-yard ratio of 1:1 along any of its property lines; however, it does not meet that requirement at its 160-foot height. The existing tower was erected on the property prior to current Zoning Ordinance requirements. Unless replaced with a tower that is the same type and height and in exactly the same location, a height-to-yard ratio variance must be granted to allow the new construction (in effect, a waiver by the Planning Commission of the height-to-yard ratio requirement).
6. The requirement that the accessory structures meet the required 25-foot distance from any adjoining residential zone does not apply, as the property is completely surrounded by A-R zoning. The nearest residential structure is located at least 650 feet from the tower site.
7. The location does not appear to interfere with traffic circulation, access, storm drainage, or other requirements of the Zoning Ordinance.
8. There is adequate space for the required fence and landscaping between the equipment compound perimeter and the property boundary; however, there is currently no screening around the (security) fenced area, which is a requirement of Article 25. The existing tower was constructed prior to current regulations, which is the likely explanation for the lack of landscaping. Because a new, taller, more substantial tower is being constructed (and not on the same footprint as the existing), the property must come into compliance with Article 25, which requires a 5-foot landscape buffer around the tower and equipment area with the appropriate plant material, as well as a privacy fence if a hedge is not used.
9. This site is not subject to a development plan; therefore, no amendment is needed.
10. Although a lattice tower is permitted in the Agricultural Rural (A-R) zone, a steel monopole would be preferred due to its lower profile. However, it was stated by the applicant's attorney that a steel monopole would have to be taller than 200 feet, which would then require lighting. It was believed that because the existing tower is not lighted, any lighting required by the FAA would be more detrimental to the rural character of the area than the lattice tower design; therefore, the lattice design was chosen.
11. The lot was created prior to the 40-acre minimum lot size in the A-R zone, likely for the purpose of constructing the existing tower. It is not subject to a long-term lease, as it is a lot in and of itself, as noted in the LFUCG GIS system as well as PVA (Property Valuation Administrator) records.
12. The proposal to construct a new tower and to increase its height is for the purpose of co-location, thereby eliminating the need for additional towers in the area, which is encouraged by the Zoning Ordinance.

Ms. Rackers said that the staff is recommending approval of this application, subject to the following conditions:

1. That the tower be located on the site as shown on the site layout; and, unless an engineer, registered in the state of Kentucky, can verify that a lattice tower is preferable to a steel monopole for structural purposes as it relates to height, the tower is to be a steel monopole, as opposed to the proposed lattice structure. Should the tower exceed 200 feet (to include any lightning arrestors), that it be lighted as required by the Federal Aviation Administration (FAA).
2. That the proposed tower meet all requirements of Article 25, other than the height-to-yard ratio, if that requirement is waived by the Planning Commission.
3. That any applicable permits (e.g., grading, building and/or occupancy) be obtained prior to construction from the applicable Divisions of the Urban County Government.

Commission Questions – Ms. Plumlee asked if the tower is serviced by an asphalt road. Ms. Rackers indicated that the road does not have to be paved unless Article 25 requires that, as it is an existing farm road.

Mr. Drake asked if the monopole requirement does necessitate a height greater than 200' with lighting if the staff recommendation would remain. Ms. Rackers said that that would be up to the Commission to decide. She then said that the residents of this area do not want lights and the staff would prefer a monopole. If the tower must be taller than 200' it would require lighting.

Mr. Brewer said that the existing tower is non-conforming and this application would make the new tower even more non-conforming in multiple ways. He then said that the applicant is pushing back on the one thing that staff is recommending, which is that this be a monopole and not a lattice tower. Ms. Rackers said that the applicant stated that they would use a monopole tower, but the tower would need to be 215' tall and would require lighting. Mr. Brewer said that this is too nice of an area to have a lighted cell tower. Ms. Rackers explained that there would only be blinking lights on top of the tower, and possibly at night. Mr. Brewer said that the tower could still be seen even without lighting. He then said that there are other monopole towers in Lexington that have been approved for the same number of carrier antennae as this one would have, and asked if there is no reason as to why the applicant is requesting more carriers. Ms. Rackers indicated that Mr. Walbourn could provide more information regarding that question, but said that the applicant has requested 4 wireless cell antennas, as well as 3 other antennas for E-911 and emergency services, which had only just been made known to her.

The Chair asked what "equipment area" means. Ms. Rackers directed the Commission's attention to the aerial photograph, and explained that the area that looks concrete would be enlarged by 425 square feet. The Chair then asked, in reference to the height-to-yard ratio and the position of the new tower, how far away the two buildings are that are in close proximity to this site. Ms. Rackers said that the tower is only moving a few feet from its current spot and the two buildings are more like 100' from the proposed tower location.

Representation – Mr. Jacob Walbourn, attorney, was present on behalf of Subcarrier Communications. He said that the staff, as always, has done an excellent job in reviewing this application and had asked a lot of relevant questions after the submission of the application. He then said that they had tried to work out several of the issues. He added that some of the issues will be addressed, but some will not. He said that he will defer to the guidance of the Commission and explain what his client is proposing and what they are willing to do. He then said that, as a threshold matter, no one wants this tower lighted, including his client. They prefer to keep the tower under 200 feet. The threshold for FAA lighting is 200 feet, and this tower will be 195 feet with 4-foot lightning arrestor. He indicated that the 4-foot lighting arrestor also counts towards the FAA requirement, for a total of 199. He said that as long as the tower is 199 feet or under, there is no lighting required on the tower.

Mr. Walbourn said that, as the Commission is aware from other applications, there is a desperate need to improve cell service on the north side of Fayette County. He then said that his client currently houses two wireless carriers on this site, Verizon and AT&T, and they are over capacity on their equipment now and they are maxed out on what they can do. He added that Subcarrier Communications, Inc. would like to upgrade their equipment, but the additional weight would not be supported by the current tower. He said that the current tower was constructed in the 60s; his client obtained the tower in the mid-90s, and has been using it as a cell tower ever since.

Mr. Walbourn said that, taking to heart the Zoning Ordinance's preference for co-location, they believed that replacement of an existing tower would be a better choice than constructing a new tower at a different location. He then said that they are making about a 25 percent increase in height for about a 650 percent return on what can be done. The facility that they are proposing will hold four carriers, which will include the two existing carriers, and adding two more (Sprint, who has already made a commitment, and possibly T-Mobile). He explained that they would also be providing equipment for the enhanced 911 system and indicated that they have received two requests from the Department of Homeland Security, in order for them to locate certain equipment at this site, as well as the Coast Guard for them to have radio communication through their VHF channel.

Mr. Walbourn distributed several handouts to the Commission, and provided the required documentation for the sign posting (affidavit and photo). He said that he is not a structural engineer and that Ms. Rackers had identified the issue as to why they are proposing a lattice tower instead of a monopole tower. He then said that he contacted his client, and they indicated that the tower won't support the equipment that they need. He construed that to mean structural support and that is the answer he gave to the staff. As it turns out, that is not entirely accurate; it is not a structural issue, but rather an equipment facing issue. Each tower that is approved is individually engineered and there are requirements that must be complied with. He said that under the federal regulations, the tower is required to be engineered to withstand certain things; and, most importantly, the tower must be engineered not to fall on anything. He explained that items that must be considered for the antenna load include the weight of the equipment, as well as extreme weather events, such as miles per hour of wind and ice. He said that they submitted the proposed lattice tower because they know the lattice tower can support all of the equipment they need under 200 feet. He said that he was not sure if this could be done on a monopole tower. He said that having a separate engineer design the monopole tower would be an additional expense. However, he has provided two affidavits from a registered engineer in Kentucky and Subcarrier Communications, Inc. that address their reasons for using a lattice tower. He then said that there is a safety issue with the current tower if additional carriers are added. He explained that lattice towers and monopole towers are different and said that the proposed tower must be able to handle four different antennas, which would ultimately increase to seven; it would have to provide a ladder for climbing and handle the additional equipment, which a lattice tower would. He said that, in reviewing a report on the KY Bridges Project in Louisville, there was a debate as to whether or not to install toll booths or use a series of closed circuit television cameras. He said that the City of Louisville elected to install the closed circuit television cameras, and this requires the installation of several different towers. He then said

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that the area along the riverfront in Louisville is considered an historic area on both sides of the river. So as part of the KY Bridges Project, there was a concern with the impact of towers on the historic view/shed in downtown Louisville. He said that both the Indiana and Kentucky State Historic Preservation Offices ultimately preferred a lattice tower to a monopole tower, despite initially preferring monopole towers.

Mr. Walbourn directed the Commission's attention to the overhead projector and said that, while it is generally true the bottom of the monopole is bigger, a lattice tower allows more light through, and it starts to fade out more quickly and blend with the surroundings. He then said that he understands that no one wants a cell tower, but the existing tower has been here for more than 50 years. The tower is not structurally damaged and it is certainly safe, it just doesn't look good. He said that the monopole tower is held by guyed wire and it takes up a larger area, while the lattice tower has a slimmer design. He then said that if it is the Commission's preference to have a monopole, they do not object, but monopoles are more expensive and there is more engineering work at the frontend due to structural concerns. However, they are concerned whether a monopole tower, under 200 feet in height, can house the equipment that is needed. He said that his client has stated that they would seek approval for a monopole tower, but the height of the tower would need to be 215 feet. He then said that they do not prefer that route because anything over 200 feet would have to be lighted and it would be expensive to install the equipment and maintain it.

Mr. Walbourn said that they believe this is a good proposal because it embraces what Article 25 advises us to do. He then said that rural Fayette County has very important view sheds, and we would like to protect those. He added that this is an area with an existing tower and they are virtually locating the new tower in the same place. He added that because they are making these edits to the site they also have to come into compliance with Article 25, which they do not object to. This tower has been on site for 50 years, and at that time there were no tower requirements in the Zoning Ordinance. Now there are screening requirements, and they are more than happy to comply with those requirements. He said that they believe this will eliminate the need for many other towers in this area. He explained that the proposed tower is a larger tower but a relatively smaller increase in height for a dramatic increase in coverage and service.

Mr. Walbourn said that he understood that there was opposition in the audience, so he would like to reserve his time and the Commission's time until after the audience members speak. He then said that the applicant was in agreement with the staff's recommendations, and requested approval of the lattice tower. He added that if the monopole tower is important to the Commission, they would request approval up to 215 feet to ensure that the equipment would be accommodated. .

Planning Commission Questions – Mr. Berkley said that there are two carriers on the tower, and asked how many secondary carriers are on the tower. Mr. Walbourn replied that there are no other and currently AT&T and Verizon have equipment on the tower. Mr. Berkley verified that the monopole would require 215 feet, and Mr. Walbourn responded that that would be their request.

Mr. Berkley then said that one of the considerations is simply the cost of the monopole tower versus the lattice tower, and there would be a 650 percent return. Mr. Walbourn said that the 650 percent return is not necessarily a monetary figure. He then said that they have two antennae right now and they will increase to seven, which is 350 percent. He cannot speak to whether that comes out dollar for dollar because he does not have the leasing information, but presumably it would increase the lease. He said that they do not object to the increased cost of the monopole tower, because each type of tower has different expenses in place, such as materials. He then said that lattice towers are a little more difficult to engineer than a monopole tower. The cost is not the reason for their request.

Mr. Berkley asked if typically, across the state, the average number of carriers on a pole are 2.7. Mr. Walbourn said that that is probably accurate.

Mr. Brewer asked why the height needs to be 215 feet if the tower is a monopole. Mr. Walbourn said that he is not an expert, but the antenna arrays at the top of the tower (bird's nests) must be at a certain height to get the service, and he believes that the height starts at 165 feet. He explained that on the monopole the birds nest is a very tight circle versus on a triangular tower where the equipment requires three separate mounting faces. He said that both styles are narrow at the top but as the lattice tower comes down the width expands, allowing more carriers, versus the monopole tower, which is one solid structure; it has less of a difference in width from the top to the bottom. Mr. Walbourn said that his client has not engineered the tower, noting that it is possible for it to come under 200 feet and that would be their preference as well because they do not want the lighting equipment. He then said that his client's concern would be (based upon his client's experience) that the more equipment that is placed on the tower, the more facing room is need for that equipment. He added that his clients would like the flexibility to be able to get as much of the equipment on it as possible. He said that this is good for his client in terms of rent, but it's also good for the community in terms of lesser need for towers in the area.

Mr. Berkley said that he does not know how long the staff report has been available. Mr. Walbourn said that he received the staff report late Tuesday. Mr. Berkley said that it seems to him that there is not enough information to make a determination, if the monopole tower has not been engineered, which is what the staff has requested. Mr. Walbourn said that they received the staff's request on Tuesday. Mr. Berkley suggested that this item be continued until that information can be received. The Chair said that before a request to continue this item is made, there are others who have questions and concerns.

Audience Comments - Richard Murphy, attorney, was present representing Jim and Susan Thornberry and Joe and Brenda Everman, who live in the general vicinity. He said that Ms. Everman was present, but Mr. and Mrs. Thornberry could not

attend today's meeting. He added that Mr. Everman and Mr. Ware also could not attend today's meeting due to recovering from surgery.

Mr. Murphy directed the Commission's attention to the staff photograph exhibit and pointed out the location of the current tower, and said that the height of the tower is about 160 feet, very close to the Thornberrys' barn. He then said that the Evermans' barn is also very close to the existing tower and they use their barn all the time. Mr. Murphy said that the first thing that pops out is the height-to-yard ratio, and this tower does not meet the 1:1 ratio that is required. He then said that should this tower fail, the tower will fall onto one of his clients' property. Making the tower taller, whether its 30 feet or 40 feet more, just increases the risk, and this is the #1 reason his clients are concerned with this application.

Mr. Murphy directed the Commission's attention to a PowerPoint presentation, and said that the existing structure is a guyed tower that is about 160 feet tall. It's on a non-conforming lot that is approximately 1.43 acres in size. He then said that the tower was constructed prior to 1990, it is about 50 years old, and there are three existing structures and related equipment on site. He added that the proposed tower is not a guyed tower. The staff's recommendation is a steel monopole, which is the preferred type; and the other (what is proposed) is a lattice tower, which is a much wider tower.

Mr. Murphy said that there are a couple of things that were not provided on the ground with the existing facility. He then said that the existing tower will be totally removed and it was mentioned in the presentation that the new tower would be located on the same lot, but in a slightly different location. He noted that Article 25-11 of the Zoning Ordinance states that *"any existing cellular antenna towers that were constructed prior to the adoption of these regulations shall be considered permitted uses and shall be subject to these regulations in the event the cellular tower is to be removed. These regulations shall also apply to existing facilities if a tower is replaced and/or augmented to increase the height more than 50%."* He said that the existing tower is being removed and is being replaced with a totally new one. The height is increasing, so it is subject to the new application requirements that are provided in this Article.

Mr. Murphy said that the applicant has failed to comply with the Zoning Ordinance. He then said that the applicant has stated that since this is an existing tower, it is not necessary to comply with the Zoning Ordinance. However, the tower is being torn down and a new tower constructed.

Mr. Murphy said that when siting a new tower, the applicant must prove that they have tried to co-locate on other towers in the area. He then said that the applicant must show their attempts to co-locate the carriers on existing towers in the area before requesting a new tower to be constructed. The applicant has not demonstrated their attempts because they have cited this is an existing tower. Similarly, they must document radio frequency analysis, which has not been submitted with the application.

Mr. Murphy said that there are other towers in the general area and the applicant has not submitted a search area, within which the tower is located, and a radio frequency map (also required). He then said that the applicant has requested this to be waived due to the replacement of the existing facility. He added that this is an existing tower, but it will not be after the new tower is constructed.

Mr. Murphy said that, because this site is in an agricultural zone, another set of standards comes into play with this application. He then said that the Zoning Ordinance states that when there is no adequate alternate site, then site in a residential or an agricultural zone may be permitted. The applicant has not submitted documentation showing that there is no alternative site out of the agricultural zone.

Mr. Murphy said that the 1:1 height-to-yard ratio is very important to his clients, and the Zoning Ordinance states that it shall be required. He then said that a reduction in the height-to-yard ratio may be permitted, if no other location for the tower can be found. He added that one of the criteria for granting a waiver is that the safety of the surrounding properties must be taken into consideration as well.

Mr. Murphy said that the applicant has failed to meet the requirements for residential and agricultural zones, which are the least preferred zones for cell tower sites. He then said that the applicant has not done the required radio frequency mapping; and the 1:1 height-to-yard ratio and the lot itself are non-conforming. He added that the applicant may have not created this lot, but they cannot possibly meet the 1:1 height-to-yard ratio. There are too many barns and houses in the general area to request a waiver for this requirement.

Mr. Murphy said that Winchester Road, just down from Haley Road, has been designated as the beginning of a Kentucky Scenic Byway. He then said that Article 25-4(d) of the Zoning Ordinance, states that towers should not be located within a scenic byway, or in the view shed; and if it is approved, any wireless communication along a state and/or federally designated scenic byway, or within a scenic view corridor, shall be located on an existing tower structure or utility pole, or shall be designed as an alternative tower, as described in Art. 25-3. He added that, more importantly, the base of the tower and any supporting equipment shall be located either 300 feet from the right-of-way or beyond the view shed of the designated scenic byway, whichever is greater. He said that the equipment at the base of the tower cannot be visible from the scenic byway, and there is no waiver provision on that requirement. He then said that the federal regulations define a "View Shed" as everything in the line of sight. He said that, even though Haley Road is not a scenic byway, his clients have indicated that the current tower is visible from Winchester Road.

Mr. Murphy said that they believe this application should be disapproved for the following reasons:

1. Since the applicant proposes to remove the existing tower, any new tower is subject to the zoning regulations in Article 25.
2. Applicant has failed to provide documentation of attempts to locate its facility on an existing structure.
3. Applicant has failed to provide required radio frequency mapping analysis.
4. Applicant's non-conforming lot cannot meet the required 1:1 height-to-yard ratio
5. Applicant's tower and supporting equipment is contained within the view shed of a scenic byway.
6. Applicant's proposal fails to include required landscape buffering.

Mr. Murphy said that, in the event the Commission should approve this request, they are asking for the following conditions to be added:

1. That the proposed tower be located on the site as shown and constructed as a steel monopole tower rather than a lattice type.
2. That the monopole tower, like numerous others within Fayette County containing multiple providers, be constructed under the 200-foot FAA requirement so as to avoid lighting, in order to minimize any negative visual impact on the surrounding properties.
3. Fencing and landscape buffering in accordance with Article 25-(i) of the Zoning Ordinance.

Mr. Murphy said that they understand that the staff is recommending approval, and the applicant's engineer's certification has noted that the lattice tower is preferred. They disagree, and said that if he were to ask several civil engineers what is the preferred style to building a bridge over the Kentucky River, each one would have a different opinion. He then said that the tower should be a monopole unless it is demonstrated that a monopole tower simply would not work. The applicant has not demonstrated that a monopole tower would not work, but rather has mentioned cost. He indicated that a tower can be made out of different grades of steel, and the Commission should know this before making a decision. Mr. Murphy said that he believes that the Commission has enough information to turndown this application. He then said that his clients prefer no change at all; but, if approved, they desire a steel monopole tower under 200 feet without lighting. He added that this property is too small to do what they are requesting, and his clients are concerned with the 1:1 height-to-yard ratio should the tower fail.

Planning Commission Questions – Mr. Brewer asked if Mr. Murphy had discussed with his clients that this might result in another tower on the other side of their property. He understands that his clients want the tower below 200 feet, and it's clear that no one wants lights; but if the applicant is willing to use a monopole tower, if his clients would accept that or if they feel this request should just be disapproved. He said that there are compelling arguments for both sides and his tendency at this point is to recommend disapproval, but he also understands this area's need for service in this area. The result of disapproval may be two more towers not in their back yard, but in a neighbor's back yard. Mr. Murphy said that part of the problem is that they did not see a radio frequency or a co-location study done to say there would be more towers if this request is not approved. He then said that they do not have enough information; and without that, they are requesting the Commission to disapprove this request.

Brenda Everman, 3323 Haley Road, was present. She said that her family purchased their property knowing the cell tower was there. She had done a lot of research on the health and safety of the tower, and she knew that there were only two carriers on the tower. It concerns her that they plan to increase the carrier size to seven because that does present health hazards. She added that they are also concerned with the safety of their livestock since they do wander the area.

Ms. Everman said that she is not sure if the Commission had received their petition of opposition, but all of the neighbors have signed it. She then said that the tower is an eyesore and it can be seen from Winchester Road and definitely from Haley Road. She added that they would prefer the tower not to be there; but if that's not the case, have it be the least visible, possibly with no lights.

Mr. Wilson asked if the staff had any recommendations on the stealth of the tower. Ms. Rackers said that that was a consideration and the neighbors indicated that they want a monopole tower. She then said that that request was not noted in the staff report; but if the applicant is willing, a stealth tower would be acceptable.

The Chair asked if there was an expert witness present. Mr. Walbourn replied negatively.

The Chair said (knowing this site was built some time ago) that Article 25 of the Zoning Ordinance requires the driveway to be paved.

Mr. Cravens asked what happens should the tower fail. Mr. Walbourn said that, in the event of tower failure, they are designed to crumple downward onto themselves. Mr. Cravens then asked if that is the monopole or lattice. Mr. Walbourn replied that all towers are designed this way should there be a structural failure. He said that the taller towers, such as those between 2,500 and 3,000 feet, must always be guyed towers but they are all designed to crumple down on to themselves. Mr. Cravens asked if there are examples of this. Mr. Walbourn said that there are examples of cell tower failures on YouTube.

Rebuttal – Mr. Walbourn said that he disagrees with Mr. Murphy's comments and it's not that he does not understand his clients' position. He then said that people are not wild about cell towers but they are wild about cell phones. He added that cell phones are a public utility and service must be provided. He said that when the Commission declines a cell tower application, their remedy is to go to federal court and say this tower is absolutely necessary. He then said that in this part of

town, in this area of Lexington, it is absolutely necessary. He added that he wanted to be clear about one other thing, noting that this is not a threat, nor is he being cold hearted; but there will be a tower at this site. If this application is not approved, the tower will not be removed because that would hurt service in this area, which they desperately cannot afford to do. He said that they are proposing to modernize the tower and provide a gigantic return on service for a marginal increase in size. He then said that they understand the concerns with the height-to-yard ratio; and he was curious to know when those barns were constructed because this tower has been here for a very long time. Again, it is not that he doesn't understand their concerns, but he believes building a modern tower on this site could be a benefit, not a detriment to the neighbors. .

Mr. Walbourn said that he understands the debate about monopole and lattice, and they mean no disrespect to the Commission by not having an engineer present; but they did not know a monopole would be a condition until the Tuesday before today's meeting. He then said that his clients live in New Jersey; and with the short notice of getting the staff report, it is difficult to make arrangements for everyone to be present. If it is the Commission's will, they believe the Commission has enough information to approve this request. He said that they have demonstrated more than enough to be granted approval; however, if the Commission wants to delay this request 2 weeks, this would allow them to research how tall a monopole would be. It is not just that they want this approval, but there is a desperate need for cell service in the northern part of the County. He said that E-911 had contacted his client about this tower, not vice versa; and E-911 needs to enhance the facility in this area of town. He then said that people are very dependent on cell service; and some rely on their cell phones to conduct business, access the internet and so forth because they do not have a home phone. He added that towers are needed and they have to go somewhere for the cell phone technology.

Mr. Walbourn said that, as for the comment about another tower being nearby, if this application is denied, there will be a tower nearby to host greater ability and provide better coverage. He then said that the current tower has two carriers that are maxed out, and no more equipment can be added to this tower. Again if the Commission wishes, they will investigate the monopole; but he believes that the information that was provided to the Commission is sufficient, particularly the view shed. The lattice tower demonstrates a fairly inoffensive way to accomplish this, and he can guarantee that the proposed tower will not be taller than 200 feet.

Planning Commission Questions – Mr. Drake said that to obtain a cell tower location, an applicant must look for an existing structure to determine if that could accommodate additional antennae. He then said that Subcarrier Communications, Inc'. plan is to have additional carriers on this structure, and asked if those carriers had asked to be placed on this tower. Mr. Walbourn replied that is correct and said that Sprint and T-Mobile, as well as the Division of E-911 and the Coast Guard, all have contacted his clients, requesting additional locations. This is what led to the first exhibit in the applications, and he explained that the structural engineering report states that if more weight is added, it cannot be guaranteed that the tower would be structurally sound. This is how the application started. He said that they consider this a co-location request and it is replacement of a tower for that purpose. He then said that should they totally remove the tower and build a new tower within the same footprint, they would not need the Commission's approval to increase the tower height. They would only have to comply with Article 25. He then said that they are in front of the Commission because they do not want to take down the existing tower, which would hurt the service in this area, while the new tower is being built.

Mr. Drake then said that his client intends to use this site regardless. Mr. Walbourn replied that is correct.

Mr. Brewer said that it was mentioned that there is a huge demand in this area and that there will be other towers. He asked if there is data to substantiate this claim. Mr. Walbourn said that it is his client's representation that this is true. He then said that Mr. Murphy has presented a map showing the existing facilities in the area and a single tower can only accommodate so much coverage. He added that there may not be a high concentration of residential houses in this area, but the interstate travel places a high demand on this area. He said that the evidence to offer the Commission is that his clients are stating that they are over capacity and they are receiving phone calls/requests to add more.

Mr. Brewer said that, from the evidence he had heard, this application should be disapproved. He believes the staff's review took in the balance of the needs of the community and came up with a compromise. He asked if it is the staff's sense that this tower is required due to the amount of traffic that is not being served. Otherwise, it will never happen because of the 1:1 height-to-yard ratio. Ms. Rackers replied affirmatively, and said that that is the way it was on Duke Road in Chevy Chase. She said that that tower was 125 feet tall on a tiny B-1 lot, across from a residential area and it didn't meet the height-to-yard ratio requirement at that height. She then said that when the tower height was increased to around 180 feet with a new tower, the staff did consider this to be a replacement tower and that is how this application was reviewed. She added that even though there will be new construction of a tower, the new tower is replacing an existing tower on this site. She said that the closest tower to the proposed tower is near Cleveland Road and I-64, which is at least a mile away. She then said that the Commission has been told numerous times that coverage and capacity are based on a certain distance between the towers. She added that each tower cannot be further than 2 to 4 miles apart from each other to be able to provide adequate coverage. If someone wants to co-locate on a tower, there has to be a tower to co-locate on; and the existing Haley Road tower will not hold the additional weight. There are no other towers in the area, unless it's the one that is a mile and half away, which may already be at capacity. She said that to co-locate, the tower must be tall enough and strong enough to hold the antennae. She then said that a water tower or a silo could do it; but if there is nothing around to provide co-location, then it can't be accommodated.

Audience Rebuttal – Mr. Murphy said that the discussion that has taken place illustrates the point he was trying to make. He then said that under the requirement to file a Uniform Application for cellular towers, you have to present engineering studies.

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

These studies include a radio frequency study and a co-location study. It has to be based on engineering studies - not because there have been a lot of calls received from carriers. He then said that there has been discussion about these towers being 2 to 4 miles apart. There are towers within the area that are close and there has been no demonstration that those towers cannot take the additional antennas. Maybe they can't; and maybe everything that has been said has been an assumption, but actually true. We don't know that, and the purpose of the Uniform Application is to demonstrate what is needed and not needed. He said that since this has been called a replacement tower, that information is not available. He then said that, the fact is that the Zoning Ordinance clearly states that if a tower is being removed, it is treated as a new application, and it must demonstrate all of the required items to the Commission.

Mr. Murphy said that the quandary the Commission is finding themselves in is that the data has not been presented. He then said that his client had asked if the antennae could be placed on the two or three television towers that are along Winchester Road. Maybe they can and maybe they can't. He doesn't know because he is not an engineer and there is no engineering study to say that. He said that the Uniform Application has not been done properly, and what was submitted to the Commission was not sufficient to place this new, taller tower on this site. He indicated that without the full application with all of the necessary information, this is just an assumption being made. He said that a Uniform Application must be based upon engineering principles, and this application has not been and is not sufficient. He then said that it is not good enough to say that one engineer prefers a lattice tower. He said that the information the neighbors received showed a monopole tower; and no matter the cost, the tower should be a monopole tower, unless it is demonstrated that a monopole tower simply won't work in the physical sense. He then said that the applicant has not provided an engineer's certification stating that a monopole tower will not work, but that a lattice tower will work. Again, the studies that would answer all of these questions have not been provided; and it is not their responsibility to provide that information, it is the applicants responsibility. With that being said, Mr. Murphy said that he believed that this application should be turned down.

Planning Commission Questions – Mr. Berkley said that it seems to him that Article 25-11 of the Zoning Ordinance, as it pertains to this site, raises the question of whether it is really an existing facility or a new facility, because the old facility is being taken down and actually moved. Ms. Jones, Law Department, said that this situation is a little bit unusual because it is an existing facility; it exists right now, and it is being used to provide cell service. However, what the Commission has heard is that the replacement of that facility will be the taking down of that tower and moving it a few feet. She said that the way the Ordinance is written, that could be based upon the fact that this is considered a total replacement, which kicks in some other items in the Ordinance. She then said that, as the staff had explained, the way the Commission handled the Duke Road cell tower, it was a similar situation and may explain why the Commission does not have some of the information that is normally presented. However, she sees a problem with determining how the Commission will evaluate this case, because as we know from past experience with cell towers, that coverage is mandated. So should the Commission disapprove this application, then there should be very good reasons as to why, particularly if there is a lack of coverage. She then said that as to whether or not there is enough information here is undetermined; but there would be an argument either way, which is confusing. She said that there is an existing facility that will be entirely removed; and there is an interpretation as to whether or not this is a new facility, which kicks in other items in the Ordinance. Ms. Jones said that this application can be interpreted both ways, and the Commission is going to have to grapple with that. She indicated that this application gives her some pause, and she understands that the facility is on site and has been used as a cell tower. It is not a case of an existing tower that was used for something else and now being used to provide coverage. She said that removing the existing tower and installing a different tower at a slightly different location may be enough to kick in the Ordinance requirements. She then said that since this could be treated as new construction, she is not sure what the best way is to deal with this case.

Mr. Berkley said that he often calls these types of cases the grandfather clause. He then said that he needed to leave the meeting in a few minutes; and for the reasons that have been mentioned, such as the lack of engineering for a monopole, he recommended that this item be continued to the next meeting.

Staff Rebuttal – Ms. Rackers said that if the Commission requested to continue this case, the applicant must agree because the application is beyond the 60-day deadline. She then said that at the end of January the applicant had agreed to postpone this request and today is beyond the deadline. She added that the Commission can ask for a continuance, but it may not happen.

Ms. Rackers said that, as for the driveway, it does have to be paved from Haley Road back to the tower. She then said that for co-location to occur there must be something strong enough for the antennae to co-locate on. She also said that federal law prohibits health hazards to be used as testimony and that argument cannot be taken into consideration. She added that the closest tower is located at Cleveland Road and I-64, and it is a mile and half away from this site. The applicant could check to see if that tower could co-locate there, but it is undetermined that it would take care of the problem.

Ms. Rackers said that it is the staff's opinion that this application is considered a replacement tower, very similar to the Duke Road site. She then said that this is the reason why the staff had recommended approval of this application with the information that was available with regard to the height-to-yard ratio. The towers are designed and engineered to collapse into themselves, not to fall over.

Ms. Rackers said that this part of Winchester Road at Haley Road is a Scenic Corridor, and is not a designated State Scenic Byway.

Commission Questions – Mr. Wilson said that some of this sounds ministerial in the sense that the Commission might “win the battle, but lose the war” if this case goes to court. He then said that he heard that it depends on interpretation as to whether or not this is a new facility or a replacement facility. He agreed with Mr. Berkley and suggested that this item be continued until additional information is available.

Mr. Berkley asked if the applicant was agreeable to continue this item. Mr. Walbourn replied affirmatively, and said that they considered this request to be a replacement tower, as did the staff, which is why they felt they met all of the requirements. He then said that if the question is whether a monopole be supported, then he is willing to continue to the next meeting to thoroughly vet this issue; but if it is about some of the other issues, such as the radio frequency map, then there is not enough time to have that information available in a timely manner. He said that if the Commission wants to thoroughly vet the monopole issue, then he is agreeable to the postponement. However, he is concerned that this would be treated as a new application when the staff and he have treated this as a replacement application. He expressed that that is a tall order, and he is not confident that he can accommodate it.

Ms. Rackers said that the radio frequency analysis is generally submitted with an application, and there is no way to interpret those studies; so even if the staff had that study on hand it would not tell the Commission anything. She then said that the map is not to scale and only shows a general area, and it would not provide any information to the staff or the Commission other than showing that service will improve with the new facility. She added that it does not show specific properties or indicate distance; it is just a reference with pixels of color showing coverage before and after tower construction.

Ms. Richardson asked if the Commission has the authority to actually determine from Article 25 whether or not this is a new or replacement tower. Ms. Jones replied affirmatively and said that she could not say that it wouldn't be challenged by someone who does not agree with the Commission's decision.

Note: Mr. Berkley departed the meeting at this time.

Mr. Brewer said that, if the applicant is agreeable, there is a possibility that this item could be continued, which would allow experts to give testimony on the items that are said to be missing from this application. He then said that it may be better if the property owners (his clients) were to compromise on something that they could live with rather than rolling the dice and waiting. Mr. Murphy asked for time to confer with his clients.

Mr. Cravens said that he lives 250 feet from a cell tower, and to him this is a replacement tower. He then said that the tower near him blends into the scenery, and he does not even think about it until one of these cases comes before the Commission. He added that, as staff has stated, the Commission could have the radio frequency information but that is just delaying this request. He said that he believes this is a replacement tower and indicated that the lattice tower can be seen through, whereas the monopole is more solid. He is in support of moving this request forward.

The Chair asked if Mr. Murphy could respond to Mr. Brewer's questions. Mr. Murphy said that they prefer that this application be voted down, but they also understand the Commission's point. He then said that they are agreeable with a postponement, but asked to postpone this to the March 10, 2016, meeting to allow everyone whose property is involved to be present.

Mr. Brewer said that postponing this request is in the applicant's hands, not the Commission's. He then said that the staff has certainly come up with recommendations concerning the questions that were raised, but he wanted to make sure that people Mr. Murphy is representing will be happy with the compromises that will come out of this hearing. Mr. Murphy said that he is only representing two property owners. Their number one concern is for the tower height to stay less than 200 feet and that there be no lights. He then said that, based upon the information obtained by his client, he decided that a monopole tower would be less intrusive than a lattice tower; however, the overall issue is to stay less than 200 feet.

Commission Discussion – Mr. Cravens asked if the applicant would be agreeable if a motion could be made for a monopole tower under 200 feet with no lights. Mr. Walbourn said that, worst case scenario; they could not locate as much equipment on the tower. He then said that, from his client's perspective, that would hurt their bottom line; from the Planning Commission's perspective, there would be an additional request coming in for review.

Mr. Cravens asked if the applicant would rather continue this case. Mr. Walbourn said that if the Commission wants to thoroughly investigate monopole towers, then he would be happy to continue this case, but he was concerned that there would not be enough time.

Motion - A motion was made by Mr. Wilson, seconded by Ms. Plumlee to continue C 2016-1: SUBCARRIER COMMUNICATIONS, INC to the March 10, 2016, Planning Commission meeting.

Commission Discussion – Mr. Brewer asked for more discussion. Mr. Wilson said that the applicant had agreed to continue this request. Mr. Walbourn replied that he agreed to a 2-week postponement. He said that he understood Mr. Murphy's concern, and he was sympathetic to the situation; but they have already voluntarily delayed this request once. He then said that time is money and the construction season is coming. He added that his clients need some type of resolution; therefore, he would agree to a 2-week postponement.

Mr. Wilson indicated that he would like to amend his motion and said that he assumed that radio frequencies would not be discussed at the next meeting, the primary issue being the type of tower that will be used. The Chair replied that since the hearing was closed, and a motion had been made to continue this request, he would open the floor back up to speak to specifics to this request. He then said that the opposition could address those specifics and those specifics only. Ms. Jones said that that was appropriate because it seemed the Commission was at an impasse. She said that the discussions concerning this request include the height of the tower (to remain under 200 feet) and the type of tower to be used (a monopole). She then said that she is not an engineer, nor does she want to be, so she does not know any of the reasoning behind what is needed. She added that it seems these issues are part of the question and it would be fair to limit further discussions to those issues, which would help to avoid any potential legal future quagmire. She said that since Mr. Walbourn had agreed to a 2-week extension, the continuance should be in some form of writing due to the written provisions. She then said that the Commission would be approving the continuance because the Commission cannot enforce that upon the applicant at this point. Mr. Walbourn said that he would be more than happy to provide whatever documentation is necessary, to legal satisfaction. The Chair asked if the Commission was satisfied for now as a possible continuance. There was no audible response.

The Chair said that there was a motion on the floor. Mr. Wilson said that the motion was contingent upon the documentation/unwritten notification from Mr. Walbourn. Mr. Walbourn said that he took part in the swearing of witnesses at the beginning of the meeting. He then said that, he agreed to provide evidence in writing before he leaves the chamber, if that was what the Law Department required.

Motion - Mr. Wilson amended his motion to say, upon the acceptance from the applicant's representation regarding the time frame being two weeks, which is agreeable with Mr. Walbourn, there would be a continuance on this discussion.

Mr. Brewer said that he would like to hear from Mr. Murphy. Mr. Murphy said that he understood the situation of the applicant being in the driver's seat regarding granting a continuance or not, but he was proposing a month because his clients do have medical and transportation issues that are preventing them from being present. He then said that, at the meeting in two-weeks, he was unsure if this request would even be discussed due to the number of items on the Commission's agenda. He added that with his agreement to postpone this request he was not abandoning his argument that they should have demonstrated the radio frequency need and the co-location studies because this is a new tower.

Ms. Richardson asked, if a motion was made to approve this request, if there was some reason the Commission could not make it contingent upon the applicant checking or doing whatever they have to do in order to see if a monopole cell tower, under 200 feet was possible; otherwise, if it isn't, and no one wants lights, then the only way to increase the service there is to go with the lattice tower. She asked if the Commission could stipulate that. Ms. Jones said that if that is a motion the Commission would like to make, then she suggested the Commission take a recess to make sure the motion was worded appropriately. Ms. Richardson responded by saying that that was a motion she would like to make. The Chair said that there was a motion on the floor to continue this item, which Mr. Wilson confirmed. Mr. Cravens responded that that motion had died. The Chair said that that motion has not died yet. Mr. Cravens said that there was no second. Ms. Plumlee replied that she seconded the motion. The Chair confirmed that Ms. Plumlee had seconded the motion, and said that the Commission had not had a chance to discuss anything.

Mr. Wilson said that the reason he asked for the continuance was because Mr. Murphy stated that his clients would be amendable to a tower, but that he was not sure if they were agreeable to the lattice tower. He then said that the applicant is willing to consider a lot of activities under that aegis, which is why he believed the motion was in order.

Mr. Drake asked if the Commission had the authority to impose a height limit on a tower on this site, and if the Commission could approve a monopole tower that could not exceed 200 feet. Ms. Jones indicated that the Commission could, but she was unsure if this would be a viable option to make it work in providing coverage. Mr. Drake asked if the Commission were to do this and the client could not provide service under those conditions, they would have to come back to the Commission for review. Ms. Jones replied negatively, and said that this is an engineering question; but there is the possibility, if that condition was imposed by the Commission, and the applicant could not provide service that is mandated, then they could appeal this in court, stating that they cannot meet the coverage requirements that are federally mandated due to the restrictions that were imposed by the Planning Commission. In fact, the Law Department is in litigation right now on whether or not a decision made by the Planning Commission is restricting and denying coverage. She said that this is a real muddy area and she believes that the applicant is not required to come back to the Commission to inform them that they cannot meet the restrictions imposed and still provide coverage. She said that the applicant has an option to do that; but if they choose not to, the Commission has no authority in requiring them to do that.

Mr. Drake said that the alternative would be for the applicant to go to court to get relief from the Commission's requirement. Ms. Jones said that the applicant has the opportunity to come back to the Commission, and say that they cannot meet this restriction and request to modify the tower, but they are not required to do so. She then said that the direction the applicant chooses to go would not be up to the Commission or the staff.

Mr. Drake said that he was not expecting an answer, he was just questioning as to whether or not the Commission could impose such height restrictions. He then said that it seems that the Commission can impose a restriction, but then the ball is in the applicant's court if the height restriction prevents them from meeting the coverage demands. Ms. Jones said that was

true, and said that she does not want to “get the wagon too far down the road.” She then said that if an applicant were going to make that argument in court, then there would need to be something that backs up why those restrictions could not be met.

The Chair opined that there is existing tower, and the applicant wants to increase the height; but there are non-conforming issues and those non-conforming issues should not be made more non-conforming. He then said that he had several questions and he could deal with most of those; but the one thing he had not heard testimony on or any evidence given was that a 215-foot tower is needed to support the coverage. He added that the Commission has discussed several requests over the years for monopole towers, and all of those were for 195 feet with a 4-foot lighting arrestor, totaling 199 feet with no lights. He noted that each one of these made a request for co-location, and each one was supporting the enhanced E-911 services, which is similar to this request. The Chair said that he had not heard why a lattice tower is needed in this case, as opposed to a monopole tower, which is the neighbors' preferred construction type. He then said that Mr. Walbourn had indicated that his clients could use a monopole tower, but was uncertain if the additional height would be required for coverage. He added that, as far as a monopole tower is concerned, he is in favor of staying under 200 feet.

The Chair said that there was a motion on the floor and a second to continue this case for 2 weeks. Mr. Brewer asked what the intent was for pushing this down the road. Mr. Wilson said that the only reason he suggested any type of continuance is because a cell tower is going to go in. He then said that the Commission can win the war by saying no, but ultimately the Commission will lose the battle on these cell towers because they are ministerial. He added that there seems to be some lack of knowledge on the defendants' part because it is unknown if they will accept a lattice or a monopole tower. He said that it was his understanding that it would be a pole tower; and if he had known what type of tower this was to be, the outcome may have been different. Mr. Wilson said that, as for the applicant's representation, he had stated that they are agreeable to do what needs to be done, but there is not enough information to demonstrate the engineering side of what is the best way to go. He then said that he was looking at this from the view of the two audience members who were not sure about the type of tower that will be built.

Mr. Brewer agreed and said that anyone who is involved in this situation believes that there will be a tower at this location. He then said that the applicant has stated that they do not want lights; the neighbors clearly do not want lights; and no one is pushing to go over 200 feet in height because that would kick in the FAA requirements. He said that he was agreeable to continue this case, but it seemed that at the end of the day there would be a compromise of a monopole tower below 200 feet. He then said that this was the only way to obtain a viable passage. He did not believe there would be a denial in this request because it would either end up in court or there would be a new tower a half mile away. He said that he is not saying to continue this request, but he is not sure if that is appropriate if a compromise could be reached today.

Mr. Wilson said that he was willing to withdraw the motion on the floor if the Commission believed that was the best way to go.

The motion was withdrawn by Mr. Wilson.

The Chair asked if there was discussion. Ms. Richardson suggested the Commission briefly go into recess to compose language for the motion.

Note: A recess was declared by the Chair at 4:10 p.m. and the meeting re-convened at 4:19 p.m.

Motion - A motion was made by Ms. Richardson, seconded by Mr. Brewer to approve C 2016-1: SUBCARRIER COMMUNICATIONS, INC. for the reasons provided by the staff, subject to the following conditions:

1. That the tower be located on the site as shown on the site layout to be a steel monopole, not to exceed 199 feet.
2. That the proposed tower meet all requirements of Article 25, other than the height-to-yard ratio, if that requirement is waived by the Planning Commission.
3. That any applicable permits (e.g., grading, building and/or occupancy) be obtained prior to construction from the applicable Divisions of the Urban County Government.

The motion carried 8-0 (Drake opposed; Berkley, Mundy and Penn absent).

- B. WORK SESSION** – Mr. Duncan reminded the Commission members of the upcoming APA Audio Conference that would be held February 17, 2016, in the Phoenix Building, 7th floor conference room, and the upcoming work session that was scheduled for February 18, 2016, also in the Phoenix Building, but in the 3rd floor conference room.

Mr. Duncan explained that the Work Session agenda would include the continued discussion on the Economic Land Development in the Expansion Area, and that Commerce Lexington would be making a presenting as to how they recruit jobs that are coming to Lexington and what their needs are for job development.

Mr. Duncan then said that the staff would also be speaking to the Environmental ZOTA, noting that the staff had previously handed out a draft staff report to the Commission members at the last meeting.

VII. STAFF ITEMS – There were none.

VIII. AUDIENCE ITEMS – There were none.

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

IX. NEXT MEETING DATES

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	February 24, 2016
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	February 25, 2016
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	March 3, 2016
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	March 3, 2016
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 10, 2016

- X. ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 4:22 PM.

Mike Owens, Chair

Will Berkley, Secretary