

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

January 12, 2017

- I. **CALL TO ORDER** - The meeting was called to order at 1:33 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present – Bill Wilson, Chair; Carolyn Richardson; Karen Mundy; Carolyn Plumlee; Joseph Smith; Will Berkley; Patrick Brewer and Mike Owens. Frank Penn, Mike Cravens and David Drake were absent.

Planning Staff members present – Jim Duncan; Bill Sallee; Tom Martin; Cheryl Gallt, Denice Bullock; Chris Bronczyk and Brandi Peacher. Other staff members in attendance were: Doug Burton and Vaughan Adkins, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; Betty Kerr and Amelia Armstrong, Division of Historic Preservation; and Tracy Jones and Andrea Brown, Department of Law.

- II. **APPROVAL OF DECEMBER 8, 2016, MINUTES** - A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 8-0 (Cravens, Drake and Penn absent) to approve the minutes of the December 8, 2016, minutes.

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

1. **BALL HOMES, INC. ZONING MAP AMENDMENT & THE PENINSULA**

- a. PLN-MAR-16-00016: BALL HOMES, INC (1/12/17)* – petition for a zone map amendment from Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 67.58 net and gross acres, and to a High Density Apartment (R-4) zone, for 22.01 net (22.18 gross) acres, located at 478 and 480 Squires Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The Plan encourages infill, redevelopment and adaptive reuse that respects the area's context and design features (Theme A, Goal #2a), providing well-designed neighborhoods (Theme A, Goal #3); protecting the environment (Theme B); working to achieve an effective and comprehensive transportation system (Theme D, Goal #1); providing for accessible community facilities and services to meet the health, safety and quality of life needs of residents and visitors (Theme D, Goal #2); protecting and enhance natural landscapes that give Lexington its unique identity and image (Theme D, Goal #3); compact and contiguous development within the Urban Service Area (Theme E, Goal #1); and encourages development of vacant and underutilized parcels (Theme E, Goal #3). Additional policy statements in the Plan are also relevant to the proposed zone change request.

The petitioner proposes a combination of Planned Neighborhood Residential (R-3) and High Density Apartment (R-4) zoning for the subject property in order to develop a mixture of single-family, townhouse and multi-family residential dwelling units, for a residential density of 7.11 dwelling units per acre. The subject site is also the location of a proposed middle school.

The Zoning Committee Recommended: **Approval**.

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed Planned Neighborhood Residential (R-3) zone and High Density Apartment (R-4) zone is in substantial agreement with the 2013 Comprehensive Plan for the following reasons:
 - a. The Comprehensive Plan recommends *Growing Successful Neighborhoods* (Theme A, and Chapter 3), which encourages expanding housing choices that addresses the market needs for all of Lexington-Fayette County's residents (Goal #1b.); encourages infill, redevelopment and adaptive reuse that respects the area's context and design features (Goal #2a); and providing well-designed neighborhoods, including neighborhoods that are connected for pedestrian and various modes of transportation (Goal #3 and #3b.). The petitioner has proposed a mixture of residential dwelling unit types, including single-family, townhouses and multi-family dwelling units to meet the needs of the community at a density of 7.11 units per net acre. The corollary development plan also depicts the connection of collector streets and a shared-use path (Easthills Trail) between the Squires Trail and Jacobson Park.
 - b. The 2013 Plan recommends *Protecting the Environment* (Theme B and Chapter 4) by encouraging sustainable use of natural resources (Goal #2b.) and management of green infrastructure, which includes the protection of environmentally sensitive areas before development occurs. The petitioner has agreed to maintain a 25 foot buffer along the FEMA Special Flood Hazard Area (100-year floodplain) near the water's edge of Reservoir #4. This will protect the shoreline, reduce the risk of stormwater impacts to the reservoir, and help maintain a healthy ecosystem around one of Lexington's drinking water reservoirs.

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- c. The 2013 Plan recommends *Improving a Desirable Community* (Theme D and Chapter 6) by working to achieve an effective and comprehensive transportation system (Goal #1); providing for accessible community facilities and services to meet the health, safety and quality of life needs of residents and visitors (Theme D, Goal #2); and protecting and enhancing natural landscapes that give Lexington its unique identity and image (Theme D, Goal #3). The petitioner has worked to incorporate the planned share-use trail, preserve the aesthetic beauty of the area, and accommodate a Fayette County Public Schools middle school site. The school site will provide open space and serve as a focal point for the neighborhood.
- d. The 2013 Plan recommends compact and contiguous development within the Urban Service Area (Theme E, Goal #1) and encourages development of vacant and underutilized parcels (Theme E, Goal #3), both of which are being met by the petitioner's proposal within the Urban Service Boundary.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00040: The Peninsula, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restrictions are recommended for the subject property:
 - a. Along the boundary of the subject property which is shared with Kentucky American Water (Reservoir #4), there shall be a twenty-five (25) foot buffer area established from the 2014 FEMA D-FIRM Special Flood Hazard Area (coincident with the twenty-five (25) foot floodplain setback required by Article 19 of the Zoning Ordinance). Within the buffer area:
 - (1) accessory structures, fences and play structures shall be prohibited;
 - (2) existing trees with a 3" caliper, or greater, shall be preserved, except for dead, diseased, hazardous trees or invasive species. Trees meeting these criteria;
 - (3) may be removed only with the written consent of the Division of Environmental Services, if deemed to be necessary for the overall health of this environmentally sensitive area.

This buffer restriction is appropriate and necessary for the subject property in order to more fully protect the adjacent reservoir and to more fully implement the principles of the 2013 Comprehensive Plan.

- b. PLN-MJDP-16-00040: THE PENINSULA (1/12/17)* - located at 478 and 480 Squires Road.
(EA Partners)

Note: The Planning Commission postponed this item at their December 15, 2016, meeting.

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the lack of information and the proposed stormwater basins for the single family residential area.

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

1. Provided the Urban County Council rezones the property R-3 & R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Complete typical required townhouse development information proposed (group residential or fee simple).
9. Denote that phasing of the development shall be determined at the time of the Final Development Plan and/or Preliminary Subdivision Plan.
10. Denote significant tree protection areas on plan.
11. Revise note #10 relative to the single family area.
12. Denote that there shall be a tree protection/conditional zoning buffer area along the reservoir that corresponds with the 25' floodplain setback.
13. Denote: The re-alignment of Squires Road and access to the existing residential lots shall be resolved at the time of the Final Development Plan and/or Preliminary Subdivision Plan.

Representation present – Nick Nicholson, attorney, requested a two-week postponement.

Citizen Comments – Nathan Billings, attorney, was present representing the neighborhood. Although he and his clients were frustrated by the timing of this request, given last month's discussion, he said they were in agreement with the postponement request.

Action - A motion was made by Mr. Brewer, seconded by Ms. Mundy and carried 8-0 (Cravens, Drake and Penn absent) to postpone PLN-MAR-16-00016: BALL HOMES, INC. to the January 26, 2017, meeting.

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

2. BERNARD JEFFERY AND PATRICIA M. QUEEN ZONING MAP AMENDMENT & QUEEN ESTATE

- a. PLN-MAR-16-00020: BERNARD JEFFERY AND PATRICIA M. QUEEN (1/29/17)* – petition for a zone map amendment from Light Industrial (I-1) zone to a Highway Service Business (B-3) zone, for 0.21 net (0.47 gross) acres, and from a Wholesale and Warehouse Business (B-4) zone to a Highway Service Business (B-3) zone, 0.45 net (0.79 gross) acres, for properties located at 411 Chair Avenue and 410 DeRoode Street and 603, 607, 615, 617, and 619 S. Broadway.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A), protecting the environment (Theme B), creating jobs and prosperity (Theme C), improving a desirable community (Theme D) and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The Newtown Pike Extension Corridor Small Area Plan, adopted by the Planning Commission in January 2003, recommends Retail/Office Mixture, including a residential component future land use for the subject properties. The Plan also makes more general recommendations for streetscape improvements such as wide sidewalks along South Broadway, developing major intersections as gateways, encouraging commercial development along key corridors and at major intersections, enhancing community services and improving access to jobs.

The petitioner proposes B-3 zoning and plans to construct a 10,550 square-foot structure and associated off-street parking.

The Zoning Committee Recommended: **Approval**.

The Staff Recommends: **Postponement**, for the following reasons:

1. The proposed Highway Services Business (B-3) zone is inappropriate for the subject property for the following reasons:
 - a. The B-3 zone does not permit a possible residential component or mixed-use development as recommended by the Newtown Pike Extension Small Area Plan, which remains an active plan while the roadway project is on-going.
 - b. The allowed uses in the B-3 zone are not appropriate along a Oliver Lewis Way at this major gateway within our community. Uses such as hotels, automobile and other vehicle sales/display/rental/repair establishments, car washes, adult entertainment, etc. should not be located at this intersection and are often restricted by the Planning Commission and Council during zone change requests.
 - c. The petitioner should consider the mixed-use zones (MU-1, MU-2, or MU-3), or the B-1 zone for this location, as they would be considered appropriate for the site and actually offer a wider range of land uses than the proposed B-3 zone.
 2. The proposed development, as depicted, may create a neighborhood business opportunity, but many of the allowed land uses in a B-3 zone would be out of character with the surrounding area and could have a negative impact on the adjoining land uses.
 3. There have not been any unanticipated changes of an economic, physical, or social nature within the area that have substantially altered the basic character of the area since the Comprehensive Plan was adopted in 2013 that would support the requested zone change application. The construction of Oliver Lewis Way is a significant investment in the transportation network for the urban county that has improved access for many in the vicinity and has been planned for and anticipated since the 1970s, does not constitute an unanticipated change of this sort (emphasis added).
- b. PLN-MJDP-16-00047: QUEEN ESTATE (1/29/17)* - located at 411 Chair Avenue and 410 DeRoode Street and 603, 607, 615, 617, and 619 S. Broadway. **(EA Partners)**

Note: The Planning Commission postponed this item at their December 15, 2016, meeting.

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

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
6. Denote that compliance with the Newtown Pike Extension Design Ordinance shall be determined at the Final Development Plan.
7. Denote height of building in feet.
8. Denote building/lot line conflict shall be resolved at the Final Development Plan.
9. Revise "floor area" site statistics, and add floor area ratio statistics.
10. Add general information about tree sizes at diameter of breast height, per Article 26 requirements.

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11. Addition of conditional zoning restrictions, if any.
12. Resolve right-of-way on Chair Ave. at time of the Final Development Plan.

Representation present – Rory Kahly, EA Partners, requested a postponement to the February 9th meeting.

Citizen Comments - There were no audience members present to speak to this request.

Action - A motion was made by Ms. Mundy, seconded by Mr. Smith and carried 8-0 (Cravens, Drake and Penn absent) to postpone **PLN-MAR-16-00020: BERNARD JEFFERY AND PATRICIA M. QUEEN** to the February 9, 2017, meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, January 5, 2017, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Carolyn Plumlee, Will Berkley, Joe Smith and Mike Owens. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Steve Parker, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee; Tom Martin; Traci Wade; Denise Bullock; Chris Bronczyk; Cheryl Gallt; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; Chris Schnelle, Division of Police and Tracy Jones and Andrea Brown, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

A. CONSENT AGENDA – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

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

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

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

Mr. Sallee announced the following agenda items appearing on the Consent Agenda:

- a. **PLN-MJSUB-16-00022: MEADOWTHORPE COMMUNITY BUSINESS CENTER, UNIT 1 (AMD) (1/29/17)* - located at 1447 Antique Drive. (Council District 2)**
(Endris Engineering)

Note: The Planning Commission postponed this item at their December 8, 2016, meeting. The purpose of this amendment is to delete note #4 from the previous plan regarding the required parking space; and to reflect the release of an easement on Lot 1 and to create an easement as shown.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s).
 6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 7. Correct the numbering on plan notes.
 8. Correct note #3 to indicate Planning Commission's approval of a dimensional variance.
 9. Complete or revise easement release information, prior to recordation.
 10. Resolve the need for off-street parking easement near the intersection of Antique Drive and N. Forbes Road.
- b. **PLAN 2015-136F: TUSCANY, UNIT 10 (MEETING STREET) (3/15/17)* - located at 2625 Sir Barton Way. (Council District 6)**
(EA Partners)

Note: This plan was approved by the Planning Commission at its December 10, 2015, meeting, subject to the following conditions:

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

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

5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
9. Delete "right-of-way" from Meeting Street label.
10. Incorporate notes from Preliminary Subdivision Plan regarding the planned multi-use trail.
11. Denote proposed uses on Lot 2 (per Preliminary Subdivision Plan).

Note: The applicant now requests a reapproval of this plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the same conditions as previously required by the Commission.

- c. PLAN 2005-173F: BELMONT FARM, UNIT 4-B (COVENTRY) (3/16/17)* - located at 2450 Georgetown Road (a portion of).
(Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on July 14, 2005, and it was reapproved on July 13, 2006; July 12, 2007 and August 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of street names and addresses by e911 staff.

Note: This plan was certified on November 4, 2005, meeting all conditions of approval. The applicant now requests reapproval of the plan, subject to the previous conditions.

The Subdivision Committee Recommended: **Reapproval**, subject to the same conditions as previously required by the Commission, adding one additional condition:

6. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

- d. PLAN 2005-174F: BELMONT FARM, UNIT 4-C (COVENTRY) (3/16/17)* - located at 2450 Georgetown Road (a portion of).
(Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on July 14, 2005, and it was reapproved on July 13, 2006 and July 12, 2007 and August 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of street names and addresses by e911 staff.
6. Urban Forester's approval of tree preservation plan.

Note: This plan was certified on November 4, 2005, meeting all conditions of approval. The applicant now requests reapproval of the plan, subject to the previous conditions.

The Subdivision Committee Recommended: **Reapproval**, subject to the same conditions as previously required by the Commission, adding one additional condition:

7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

- e. PLAN 2005-175F: BELMONT FARM, UNIT 4-D (COVENTRY) (3/16/17)* - located at 2450 Georgetown Road (a portion of).
(Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on July 14, 2005, and it was reapproved on July 13, 2006 and July 12, 2007, and August 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of street names and addresses by e911 staff.
6. Urban Forester's approval of tree preservation plan.

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

Note: The applicant now requests reapproval of the plan, subject to the previous conditions.

The Subdivision Committee Recommended: **Reapproval**, subject to the same conditions as previously required by the Commission, adding one additional condition:

7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

- f. DP 2015-74: CAVE HILL TOWNHOMES (2/28/17)* - located at 2236 Cave Hill Place.
(Council District 10)

(Vision Engineering)

Note: The Planning Commission postponed this item at their December 8, 2016, meeting. This plan was approved by the Planning Commission at its September 24, 2015, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Addition of existing and proposed easements (per Cab "I" Sld 120 & DP 89-133).
11. Document lot coverage, floor area in site statistics per Art. 21 of the Zoning Ordinance.
12. Complete tree protection areas information per Art. 26.
13. Correct plan title by adding "Amended".
14. Revise construction of sidewalks along Cave Hill Lane.
15. Denote landscape buffer from previous DP 89-133: WELLS PROPERTY.

Note: The applicant now requests a reapproval of this plan.

The Staff Recommends: **Reapproval**, subject to the same conditions as previously required by the Commission.

- g. PLN-MJDP-16-00054: PROVIDENCE PLACE/INTERSTATE SERVICE CENTER, UNIT 6, LOT 2A (AMD) (2/19/17)* - located at 1935 Stanton Way. (Council District 12)

(Palmer Engineering)

Note: The purpose of this amendment is to redevelop Lot 2A of the property for a new hotel.

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. Denote review by the Royal Springs Aquifer Committee prior to certification.

Mr. Sallee stated that the items identified on the Consent Agenda could be considered for conditional approval at this time by the Commission, as has been recommended, unless there was a request for an item to be removed from consideration by a member of the Commission, or the audience, to allow greater discussion. (A copy of the Consent Agenda is attached as an appendix to these minutes).

Audience members requesting full discussion: There were none.

Commission member requesting full discussion: There were none.

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

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- B. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Owens, seconded by Ms. Mundy, and carried 8-0 (Cravens, Drake and Penn absent) to approve the release and call of bonds as detailed in the memorandum dated January 12, 2017, from Barry Brock, Division of Engineering.
- C. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (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. PLN-MJDP-16-00055: COMMUNITY VENTURES PROPERTIES (2/19/17)* - located at 225 Midland Avenue.
(Council District 1) **(Carman & Associates)**

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the resolution of notes 12, and 14-20, which affect the timing and design of the development, and off-street parking 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. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Dimension residence roof/top terrace and event terrace.
13. Denote: There shall be no building permit issued for Building B until an amended Final Development Plan is approved by the Planning Commission.
14. Dimension "existing building" on plan.
15. Discuss resolution of notes 12, and 14-20.
16. Discuss proposed Midland Avenue Access.
17. Discuss residential parking requirements (as B-2 zone requirements are not permitted in the B-2A zone).

Staff Presentation – Mr. Martin presented the staff's exhibit and report on the final development plan (PLN-MJDP-16-00055), which included the following revised recommendation:

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.

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11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~12. Dimension residence roof/top terrace and event terrace.~~
- ~~13. Denote: There shall be no building permit issued for Building B until an amended Final Development Plan is approved by the Planning Commission.~~
- ~~14. Dimension "existing building" on plan.~~
- ~~15. Discuss resolution of notes 12, and 14-20.~~
- ~~12-16. Discuss~~ Revise the proposed Midland Avenue Access and improvements to US 60, to the approval of KYDOT and the Division of Traffic Engineering.
- ~~17. Discuss residential parking requirements (as B-2 zone requirements are not permitted in the B-2A zone).~~
13. Denote: Buildings A & B shall be constructed in substantial conformance with rendering the Exhibit on file with the Divisions of Planning and Building Inspection.
14. Correct note #14 to read: "Midland Avenue right-of-way improvements shall be coordinated with the Design and construction of the Town Branch Commons Trail".
15. Correct note #17 to read: "Two-way movement of Lewis Street must be approved by the Urban County Council."
16. Denote: A consolidation plat must be certified and recorded prior to the issuance of a building permit for Buildings A, B & C.
17. Denote: Lewis Street improvements on the cross-section.
18. Provide 1/2 section improvements to Withrow Alley to the approval of the Division of Traffic Engineering.

Commission Comments & Questions – Ms. Mundy asked if there was an existing sewer line running through Building A. Mr. Martin replied that the sewer line run through Building B, and the applicant will need to release the easement and relocate the line, which can be done with a minor plat or as part of the consolidation plat.

The Chair said that Lewis Street is a one-way street, but asked which direction traffic is going. Mr. Martin indicated that the flow of traffic is toward Midland Avenue.

Representation – Jason Morgan, attorney, indicated that the applicant was in agreement with the staff's revised recommendation, and requested approval.

Citizen Comments - There were no audience members present to speak to this request.

Commission Comments – The Chair commented that he was impressed with the architectural design of this proposal and hopes that this development comes to fruition.

Action - A motion was made by Mr. Brewer, seconded by Ms. Richardson and carried 8-0 (Cravens, Drake and Penn absent) to approve **PLN-MJDP-16-00055: COMMUNITY VENTURES PROPERTIES**, as recommended by the staff.

2. **MINOR SUBDIVISION PLAN**

- a. **PLN-MNSUB-16-00058: FAIRLAWN & W.J. HAYDON SUBDIVISION** - located at 1217, 1313 & 1317 North Limestone and 100 Withers Avenue. (Council District 1) **(2020 Land Surveying)**

Note: This is a consolidation plat involving these four lots. If recorded as proposed, it would result in a change in the use of 1217 N. Limestone from a principal use to a conditional use. Therefore, the staff is referring this plan to the Planning Commission under -3-4(e) of the Land Subdivision Regulations.

The Staff Recommends: Disapproval of the consolidation of 1217 North Limestone into the lot at 1313 North Limestone, for the following reasons:

1. A conditional use would be established without the prior approval of the Urban County Board of Adjustment. The existing single family detached residence at 1217 North Limestone would become a "parish house" if consolidated into the 1313 North Limestone property. Board of Adjustment approval of this conditional use must be accomplished before this change in lotting is accomplished.
2. The church's long-term plan for the property at 1217 North Limestone Street is for off-street parking. This land use for a church is only allowed under a Conditional Use Permit by the Board of Adjustment (under Article 8-7(d)(1) of the Zoning Ordinance). No such permit has been approved at this time.
3. This consolidation is premature, given that an anticipated application to the Board of Adjustment has not yet been made by the Total Grace Missionary Baptist Church. The Commission can't anticipate whether any future Conditional Use Permit will be approved by the Board of Adjustment for this location.

The Staff Recommends: Approval of the consolidation of 1317 North Limestone and 100 Withers Avenue into the lot at 1313 North Limestone, subject to the following conditions:

1. Addressing Office's approval of street addresses.
2. Urban County Traffic Engineer's approval of street cross-section information shown.
3. Remove Lot 1 (at 1217 North Limestone) from this plat, and its consolidation, prior to recording.
4. Revised consolidation notes to renumber Parcels, accordingly, prior to certification.
5. Denote date of Planning Commission approval on this plat, prior to certification.

Staff Presentation – Mr. Sallee presented the staff exhibits, which included several email correspondence, Articles 3, 8-5 and 8-7 of the Zoning Ordinance, and the staff's report on the minor consolidation plat (PLN-MNSUB-16-00058), which included the following recommendations listed above.

Mr. Sallee suggested that, without a church representative being present, consideration of this item be continued to the February 9, 2017, meeting. He had spoken with the church's contractor, prior to today's meeting.

Commission questions – The Chair agreed that continuing this item would be appropriate.

Representation – David McMullen, general contractor for Total Grace Church, briefly gave a description of what the church is proposing for the subject properties.

Commission Comments & Questions – The Chair asked if the applicant has conferred with the staff as to what can be done on this site. Mr. McMullen indicated that they would like to demolish a house for additional parking. The Chair said that, with the church representative not being present, it has put Mr. McMullen in a disadvantage and agrees with the staff to continue this request for one month. This would allow the representative of the church to be present to address the issues and concerns with this proposal.

Mr. Owens asked if the staff's concerns have been expressed with the applicant. Mr. Sallee replied affirmatively and said that on January 10th the staff expressed to the applicant that they were reluctant to recommend that the Planning Director sign this minor plat for the reason outlined on today's agenda. He then said that there is a zoning issue and there is a presumption of the Board of Adjustment approval for some of the church's planned improvements. By consolidating this lot with the other lots, it not only creates the zoning issue, but should the church be denied by the Board, the applicant would need to come back to the Commission to request a subdivision of the lot, should they want to dispose of that property. He said that from the staff's perspective, that is unnecessary, until the decision from the Board of Adjustment is known. Mr. Sallee said that he had told Mr. LeDet that this is a timing issue because the Board of Adjustment application has not been submitted yet.

The Chair said that it would be appropriate to continue this request one month to allow more information to come forward. He said that the Commission would like to help the church out, but at the same time, there are laws to abide by.

Citizen Comments - There were no audience members present to speak to this request.

Action - A motion was made by Ms. Richardson, seconded by Mr. Smith and carried 8-0 (Cravens, Drake and Penn absent) to continue PLN-MNSUB-16-00058: FAIRLAWN & W.J. HAYDON SUBDIVISION to the February 9, 2017, meeting.

- b. PLN-MNSUB-16-00059: SARA W. GREGG PROPERTY (FLORACLIFF NATURE SANCTUARY) - located at 8030 Elk Lick Falls Road. (Council District 12) **(Abacus Engineering)**

Note: This is a Retracement Minor Subdivision Plat for a tract in the Rural Service Area. The staff is referring this plan to the Planning Commission under Article 3-4(e) of the Land Subdivision Regulations.

The applicant has filed this minor plat for property located at 8030 Elk Lick Falls Road southwest and immediately adjacent to the Floracliff Nature Sanctuary. The staff can recommend that the Commission approve this plan, but only if a few revisions are made to this plat prior to recordation.

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

1. Addressing Office's approval of street addresses.
2. Urban County Traffic Engineer's approval of street cross section and access.
3. Denote that any additional building or structures shall require the Health Department's approval of the existing septic tank system.
4. Resolve and/or denote the discrepancies in the dimensions and acreage as shown on the plat versus the deed.
5. Denote date of Planning Commission approval on this plat, prior to certification.

Staff Presentation – Mr. Martin presented the staff's report on the Retracement Minor Subdivision Plat (PLN-MNSUB-16-00059), which included the recommendations as noted on today's agenda. This plan is being presented to the proposed dedication of right-of-way along Elk Lick Falls Road.

Representation – Tommy Lambdin, Abacus Engineering, indicated that the applicant was in agreement with the staff's recommendation.

Citizen Comments - There were no audience members present to speak to this request.

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

Action - A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 8-0 (Cravens, Drake and Penn absent) to approve **PLN-MNSUB-16-00059: SARA W. GREGG PROPERTY (FLORACLIFF NATURE SANCTUARY)**, as recommended by the staff.

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

A. SRA 2016-4: AMENDMENT TO ARTICLE 4-7 OF THE LAND SUBDIVISION REGULATIONS - to alter the allowable sureties acceptable by the Urban County Government.

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Text ~~dashed through~~ indicates a deletion, and text underlined indicates an addition to the existing Land Subdivision Regulations.)

4-7(d)(9) PERFORMANCE / WARRANTY SURETY - The developer shall post a combination performance and warranty surety, which shall be both to ensure the completion of public improvements, as indicated by the punch list, and for the repair of infrastructure that is found to be defective due to improper workmanship or defective materials.

4-7(d)(9)(a) ACCEPTABLE SURETIES – Acceptable sureties shall generally be an irrevocable letter of credit or insurance bond in favor of the Urban County Government from a bank with offices in Lexington-Fayette County. For sureties less than \$5,000, cash, certified check, or money order are acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety are acceptable.

4-7(d)(9)(b) DETERMINATION OF THE AMOUNT OF THE SURETY - The total amount of the combination surety shall be ten percent (10%) of the total cost of the installed infrastructure, including roads, sanitary sewer system and storm water facilities, plus one hundred percent (100%) of the cost of the items included on the punch list of incomplete work. Where the sanitary sewer pumping station has been constructed, and all pumping equipment installed, but electrical service has not been provided to the facility, the entire cost of the pumping station shall be included in the surety. The cost of roads, sanitary sewers, storm water facilities and the punch list items shall be based upon the unit cost of each construction item which is a part of the plan. The unit costs for public improvement construction items shall be determined ~~annually in conformance with the procedure established in the Procedures Manual and shall be available from~~ by the Division of Engineering. The surety shall also include an additional twenty percent (20%) of the amounts listed above to provide for inflation and administrative costs, should the surety be called; and the Urban County Government must cause the work to be constructed or repaired, as appropriate.

4-7(d)(9)(c) SURETY FOR PRIVATE STREETS - All private street improvements (excepting only the final course of asphalt and possibly the sidewalks) shall be constructed in compliance with the approved improvement plan before the final subdivision plan is recorded. For the final course of asphalt only, the developer shall be permitted to post a surety in favor of the final maintenance association responsible for the private street, and shall note such requirement on the final plat of the property. For any sidewalks not yet constructed, the developer shall be permitted, at the time of recordation of the final plat, to post a surety in favor of the final maintenance association responsible for the private street, as long as it is also in favor of the Urban County Government. This shall not be construed to hold the Urban County Government responsible for the construction of such sidewalks other than to the extent of the funds provided by the surety; and neither this, nor any action by the Urban County Government relative to the enforcement of the required construction of such sidewalks and/or the surety, therefore, shall be construed as acceptance of responsibility by the Urban County Government for the construction, maintenance or dedication of such sidewalks as public infrastructure. The amount of the surety for the private street shall be 10% of the cost of the installed private street plus 100% of the cost of the final course of asphalt. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate. When private streets are permitted, the surety that is submitted in favor of the Urban County Government for the infrastructure shall not include an amount equal to the surety for private streets. The amount of the surety for the sidewalks shall be 100% of the cost of the construction of the sidewalks. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate.

4-7(e) CERTIFICATION OF PLANNING COMMISSION APPROVAL AND RECORDING - Within one (1) year of the Commission's approval, or conditional approval, unless a time extension has been granted prior to the expiration date, the following steps shall be completed, or else the Commission's approval, or conditional approval, becomes null and void: (1) The developer shall fully comply with any conditions of approval placed on the plan by the Commission and shall submit the completed original plan drawing to the Division of Planning; (2) The plan shall be certified by the Commission's Secretary if it is in conformance with all requirements; (3) The plan shall be recorded in the plat records of the Fayette County Clerk by the Division of Planning at the developer's expense; and (4) Required copies shall be made of the recorded plan by the Division of Planning at the developer's expense.

4-7(f) RECORDING OF A PORTION OF A FINAL PLAN - The Division of Planning shall be authorized to permit a developer to record a final plan that has been approved or conditionally approved by the Commission in smaller land increments than depicted on the final plan. For any such developer's request, the Division of Planning shall review the proposal with the

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Division of Engineering to ensure that no problems in provision of streets, storm drainage, or sanitary sewers would result. In any disputed cases, the request will be forwarded to the Planning Commission for final judgment.

4-7(g) NO OCCUPANCY PERMIT - No person shall allow occupancy of any building until the Division of Building Inspection has verified that the private utilities (water, electricity, telephone, and, where applicable, sanitary sewers, access to a public street or private street or access easement, stormwater infrastructure, and natural gas), or public sanitary sewer pumping station, are completed in such a fashion that such utilities are available for use on the property in question.

4-8 COMPLETION OF PUBLIC IMPROVEMENTS - Public improvements that were not completed prior to certification of the final plan by the Urban County Engineer shall be completed in conformance with the approved improvement plan and with the submitted schedule for completion. In the event the public improvements are not completed as provided in the schedule for completion, or repaired as required, the Urban County Engineer shall, in writing, advise the Planning Commission, which shall have the authority to call the surety posted in favor of the Urban County Government and cause the work to be constructed or repaired, as appropriate.

4-8(a) PRE-FINAL INSPECTION AND FIRST REDUCTION IN THE SURETY - Within thirty (30) days of the certification of the final plan by the Urban County Engineer, the Division of Engineering shall inspect the public improvements. If the Division of Engineering finds that portions of the work on the public improvements that were included in the punch list have now been completed, a first reduction in the surety shall be permitted, when so requested by the developer. The reduction in the surety shall equal the cost of those punch list items that are found to be complete.

4-8(b) ADDITIONAL REDUCTIONS OF SURETY - Additional reductions in the amount of the surety will be permitted. The surety may be reduced only at times provided below. In all cases, the Division of Engineering shall retain the amount of the surety for inflation and administration until the release of the surety. No reduction will be permitted after the completion date has passed, and no reduction will alter the original completion or termination date of the surety.

(1) SECOND REDUCTION - When requested by the developer, a second reduction shall be allowed one year from the Urban County Engineer's certification of the final plan. Within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total amount of the cost of the stormwater facilities, plus the value of all punch list items that are found to have been completed during the first year.

(2) THIRD REDUCTION - At the end of the second year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to the value of the items that are found to have been completed in the second year. If the final course of asphalt has been applied for at least one year, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

(3) FOURTH REDUCTION - At the end of the third year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total cost of the sanitary sewer and pump station facilities plus the value of any items that are found to have been completed in the third year. If the final course of asphalt has been applied for at least one year, and if a previous reduction for the final course of asphalt has not been taken, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

4-8(c) COMPLETION OF UTILITIES AND FINAL COURSE OF ASPHALT - ~~Only when all utilities have been installed, the base courses of the roadway have been completed for at least one year and the project engineer has certified the same to the Division of Engineering, shall the developer install the final course of asphalt. Any defective areas of the base courses of pavement must be identified by the project engineer and corrected or reconstructed, including removal of portions of the pavement in order to obtain a uniformly compacted base prior to the installation of the final surface. Completion of utilities and final course of asphalt shall be in conformance with the current edition of the Procedures Manual. Upon installation of the final surface, the amount of the surety may be reduced by an amount equal to 10% of the cost of the base courses; but in no case shall the reduction be more than 10% of the cost of the final surface.~~

4-8(d) RENEWAL OF THE SURETY - When requested by the developer, the Urban County Engineer shall renew the surety for uncompleted items for one additional year, beyond the three years otherwise provided. As a condition of renewals for sureties older than 4 years, the Division of Engineering will require recalculation of the amount of the surety based on the current unit prices. ~~Any further renewals or extensions of the surety may only be granted by the Planning Commission upon a finding that there are conditions that prevent the timely completion of the public improvements. As a condition to the extension or renewal, the Planning Commission may require recalculation of the amount of the surety when there has been a significant increase in the cost of the items that are not completed.~~

4-8(e) FINAL REDUCTION / RELEASE OF SURETY - When the developer has completed all required improvements, and the final course of asphalt has been applied for at least one year, the developer may request a final release of the surety. When so requested, the Division of Engineering will conduct a final inspection within thirty (30) days. Upon determination by the Division of Engineering that all improvements have been properly constructed in conformance with the requirements of these

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Subdivision Regulations, the Zoning Ordinance, the Division of Engineering Technical Manuals and the Division of Engineering Standard Drawings, the Urban County Engineer shall, in writing, notify the Planning Commission, which shall release the surety.

4-8(f) Surety Forfeitures – If a surety is forfeited or called by the Urban County Government, the Corporation, Corporation Principal(s) or developer will be prohibited from submitting a surety to the Urban County Government for a period of three years from the date of forfeiture.

The Subdivision Committee made no recommendation.

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed text amendment is a timely improvement to the Land Subdivision Regulations that will improve compliance with the public improvements requirements of the regulations.
2. The proposed text amendment is consistent with the public health and safety provisions inherent in the Land Subdivision Regulations.

Staff Presentation – Mr. Martin indicated that the Planning Commission continued consideration of this item from the December 8, 2016, meeting due to concerns with the proposed language that was presented on the staff report and how the unit prices were calculated. He added that Doug Burton Director, with the Division of Engineering, was present to address those concerns from the Commission.

Mr. Burton said that due to a scheduling conflict he was not able to attend the December 8th meeting, but he did have the opportunity to watch the video recording of the meeting, and he was since able to speak with Mr. Cravens and Mr. Wilson about their concerns.

Mr. Burton said that, as the language reads now, the unit prices are generated at a conference that is held every December with the construction industry. He explained that the unit prices have not been adjusted for several years because the Urban County Government does not have the negotiating power that the development industry does. This means the unit prices were being based on unit prices that we as a government entity could not acquire. He then said that if a contractor puts out a bid for an item, that contractor has the power to negotiate a lower bid; whereas, the LFUCG does not have that ability. Mr. Burton said that several years ago it was determined that using bids for small public construction projects could determine the real unit price that is used through the Division of Engineering and other departments. He then said that the Division of Engineering uses eight different contractors to attain the lowest bid for any project that needs to be done.

Mr. Burton said that how the unit prices are determined for the sureties is through averaging the prices of the different contractors that they use. He explained the reason this process is being done this way is because should the Division of Engineering ever need to call a 20 year old surety to finish a project that the developer did not complete, that surety would be based on unit prices from 20 years ago, which would create a huge financial gap. This change would allow the unit prices to be more competitive and allow a surety to be renewed every 4 years. The Division of Engineering has not yet called a surety, but if that were to happen, that surety would be subjected to the newer unit prices, not the original unit price when it was first opened. He said that the proposed language will help protect the LFUCG and the tax payers from old unit prices by being able to obtain competitive prices and complete projects that the developers did not finish.

Commission comments – The Chair said that Mr. Cravens was not present for today's hearing, but he wanted to extend his appreciation in providing them a one-on-one tutorial as to what this proposed change meant. He also extended the Commission's apologies to Ms. Adkins, who was caught up in the confusion at the December 8th meeting.

Citizen Comments - There were no audience members present to speak to this request.

Commission questions – The Chair asked if the Subdivision Committee had reviewed the text amendment. Ms. Plumlee replied negatively. The Chair asked if the Committee would like time to review the proposed changes or move on. Ms. Plumlee replied that the Commission should move on. The Chair indicated that he was ready for a motion on this request.

Mr. Owens indicated that he was not present for the December 8th meeting; therefore, he would be abstaining from voting on the motion.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Smith and carried 8-0 (Brewer and Owens abstained; Cravens, Drake and Penn absent) to approve **SRA 2016-4: AMENDMENT TO ARTICLE 4-7 OF THE LAND SUBDIVISION REGULATIONS** - to alter the allowable sureties acceptable by the Urban County Government, as recommended.

Commission Comments – The Chair said that one of the things the Commission has noticed on the next two items, the only difference between the two staff reports was the property address, everything else was identical. He asked if these request could be presented together, but acted on separately. Ms. Jones said that these items could be heard simultaneously, but the Commission would need to allow each applicant to speak on their behalf, as well as to take a separate motion on each application.

Note: The next two items were heard simultaneously.

- B. BOAR 2016-1: DEAN AND LAURA MAY** – an appeal to the Planning Commission of the denial of a permit by Board of Architectural Review, for property at 407 N. Limestone.

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

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested exterior alterations, based on the design guidelines established by the local Historic Preservation Commission. It is also consistent with past actions of the Board in determining acceptability of the type of replacement window proposed.

- C. BOAR 2016-2: PERRY SHOLES** – an appeal to the Planning Commission of the denial of a permit by Board of Architectural Review, for property at 401 N. Limestone.

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

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested exterior alterations, based on the design guidelines established by the local Historic Preservation Commission. It is also consistent with past actions of the Board in determining acceptability of the type of replacement window proposed.

Staff Presentation – Ms. Peacher presented the staff's reports on the Board of Architectural Review Appeals for Dean and Laura May (BOAR 2016-1) and Perry Sholes (BOAR 2016-2). (A copy of the staff reports are attached as an appendix to these minutes).

Commission Comments & Questions – Mr. Berkley asked if replacing a window would require a building permit. Ms. Peacher indicated that she did not know the answer. Mr. Berkley said that, if a permit was not obtained, the applicants would not know they were located within the H-1 Overlay. He asked how would a property owners go about finding what zone they were in.

Mr. Owens said that the Commission has reviewed other cases in the past and the issue of using vinyl material. He then said that vinyl is typically not allowed in the H-1 Overlay zone. Ms. Peacher replied affirmatively. Mr. Owens asked why was vinyl siding approved for these townhomes. Ms. Peacher said that from her observation of the BOAR meeting, vinyl in 1989 was considered a modern material and was not seen in the same fashion as it is seen today. She then said that vinyl was approved in 1989, but since that time, the staff has learned that vinyl is not an appropriate material, it does not hold up over time and it is a detriment to the overall character of the historic district.

Mr. Owens asked if the staff knew why vinyl siding would be allowed and not a vinyl window. Ms. Peacher indicated she did not know.

Appellant's Presentation – Ms. Laura May, 407 N. Limestone, indicated that no one made them aware that their property was within the Historic Overlay zone. She said that the vinyl windows retain the same size and style as the original windows and removing them would create a financial hardship.

Commission Comments & Questions – Ms. Mundy asked if Ms. May ever looked at her PVA records. Ms. May replied negatively. Ms. Mundy said that the PVA tax record information would denote the zone of this the property is within an H-1 Overlay. Ms. May said that, even if she seen H-1 Overlay on the tax record, she still would not know what that meant. Ms. Mundy said that she understood, but the tax record would have told her that her property is within an overlay area. Ms. May said that the tax record does not describe what an H-1 Overlay zone means. Ms. Mundy said that that should have prompted a question. Ms. May said that she would have to plead ignorance because she had no idea that would have meant anything.

The Chair asked where Ms. May was from. Ms. May replied Bowling Green, Kentucky.

Mr. Owens asked if Ms. May owns 407 N. Limestone. Ms. May replied affirmatively. Mr. Owens asked if she was associated with 401 N. Limestone. Ms. May said that, with the exception of being in the same row of townhouses, she was not associated with 401 N. Limestone. Mr. Owens asked if Ms. May was representing 401 N. Limestone, as well. Ms. May replied negatively. The Chair said that Mr. Sholes was representing 401 N. Limestone and he would speak after Ms. May's testimony. Mr. Owens said that the reason he was asking was due to the language on each of the staff reports being identical, as if the reports were cut and pasted. Mr. Owens asked how this issue came up if the homeowners were not aware of being in the H-1 Overlay zone. Ms. May said that no one said anything to her family but many of the townhomes were being renovated. She then said that they replaced their windows around April, and then they appeared in from of the BOAR in September.

Appellant's Presentation (cont.) – Mr. Perry Sholes, 401 N. Limestone, indicated that he believed that the chain of events that started this appeal came from his contractor investigating installing a driveway in the back of his townhome. At that time, his contractor was informed that the townhouse was within a Historic Overlay zone. He then said that prior to that time, they had no idea that the townhomes was within the H-1 District and as for looking at the tax document, that form would not have given him any information since he was relying on the realtor for any important information such as being within an H-1 District.

Mr. Sholes said that the owners of these townhomes are trying to make this area appear better, and they have made mistakes throughout this process. He then said that he did not intentionally use the wrong material, but replacing the vinyl windows would be significant cost him, which he cannot afford.

Mr. Sholes requested that the Planning Commission consider what they have done for this neighborhood, as well as the property to better represent the city.

Commission Comments & Questions – Mr. Owens asked if the renovations required permits. Mr. Sholes explained that the only items that required a permit were a fence and the driveway in the back of the building. He then said that with the exception of issues with the access easements, they did receive approval from the Historic Preservation staff for the fence project. Mr. Owens then asked when did the fence receive approval. Mr. Sholes replied late July. Mr. Owens asked, other than the vinyl material, were windows replaced with the same style. Mr. Sholes replied affirmatively.

Ms. Richardson asked how many windows were replaced. Ms. Mays said that she replaced eight windows in total on the upper and lower levels. Mr. Sholes said that he replaced seven windows on the lower level only. Ms. Richardson then asked if the applicants investigated what the cost would be to replace the vinyl windows. Ms. May said that she only knows what the vinyl windows cost, but she is expecting the wood windows would be more. Mr. Sholes said that that the windows cannot be repaired since the previous windows have been removed, so he is expecting replacing the vinyl windows with wood windows would be significantly more.

Mr. Berkley said that when the townhomes were originally approved vinyl material was permitted. He said that in looking at a picture of 401 N. Limestone, vinyl material was used in the front, the side and on the soffit and asked if that was correct. Ms. May replied affirmatively. Mr. Berkley then asked the vinyl material is not just on the back. Mr. Sholes replied that was correct, adding that the storage units in the rear are also vinyl material.

Historic Preservation Presentation – Ms. Kerr submitted into the record the Certificate of Appropriateness application, Article 13 of the Zoning Ordinance (Historic Preservation section) and the Design Guidelines.

Ms. Kerr said that installing windows does not facilitate a permit. She then said that informing people that they are within a Historic District, H-1 is listed in the land designation on any documents, such as property taxes. She then said that this area was designated as a Historic District in 1985 and all Historic Districts have an official sign at the outer edge of each neighborhood to inform the public and homeowners that they are within a certain Historical area.

Ms. Kerr gave the brief history of vinyl material, and said that these townhomes were built in the 90s so at that time, the townhomes were initially approved, the townhomes were approved and built with wood material on everything. In 1998, the previous property owners submitted an application to the BOAR to cover certain parts of the townhomes with vinyl material, but not windows.

Ms. Kerr said that, throughout the years, vinyl material had been considered by the Board, as recently as 2008-2009. She then said that the Design Guidelines and the issue of allowing vinyl had been thoroughly vetted, resulting in the Board's decision to not allow vinyl material in the Historic District. This change was adopted in 2010 and has remained in effect to the present.

Ms. Kerr indicted that she does have several photographs of the subject properties to show to the Commission, if needed. She concluded by requesting that the Planning Commission uphold the BOAR decision by disapproving this request.

Commission Comments & Questions – Ms. Richardson asked how many townhomes have replaced the wood windows with vinyl windows. Ms. Kerr said that there are a total of seven townhomes. Two of which are being presented to the Commission today, one that will not be appealing the Board's decision, and four remaining.

Ms. Richardson then asked if the remaining four townhomes are under the same ownership. Ms. Kerr replied that two of the townhomes are under the same ownership, the remaining five are independently owned.

Mr. Berkley asked, when the staff evaluates an application, does the staff consider the period of the home. Ms. Kerr replied affirmatively. Mr. Berkley said that these townhomes were built in the 90s; and at that time, vinyl material was permitted for new construction, but not renovations. It is confusing to allow one and not the other. He then said that when considering the time these townhomes were built, vinyl material fits with that time period. Ms. Kerr said that the builder could have requested to use vinyl material, but they did not, they chose all wood for this townhouse design. That decision set forth the overlay review process and the type of materials that would be approved for future projects. She said that current projects, whether newer or older buildings, are being reviewed under the current standards. She then said that, in 2010, the Boards made a countywide decision to prohibit the introduction of vinyl material within a designated historical area.

Mr. Berkley said that vinyl was allowed on the townhouses after the construction was constructed. He then said that the staff had stated that vinyl was not allowed on remodeling, so why did the Board not consider that to be remodeling. Ms. Kerr said that the Board did allow vinyl to be considered in remodeling structures up through 2009, but in 2010, the Board prohibited that type of material. Mr. Berkley said that he could understand how an out of town homeowner would be confused with this process.

Ms. Richardson asked if the photographs were taken prior to the installation of the vinyl windows. Ms. Kerr said that the pictures were post installation and were part of the staff's exhibits at the BOAR meeting. She then said that the staff does have current photographs should the Commission wish to review those. Ms. Richardson then asked if the photographs shown in the staff's exhibit were a mixture of pre and post installation of the windows. Ms. Kerr said that the pictures are what the staff generated for the BOAR hearing. Ms. Richardson then asked if windows shown in the pictures were the vinyl windows, not the original windows. Ms. Kerr replied affirmatively.

Mr. Owens asked if the windows were like for like, as far as the style. Ms. Kerr said that the windows no longer have the wood surrounds, the nuances of the sashes themselves share a similar division of the lights but it lacks the forms of the wood mutton. She then said that the windows are missing the definition of what defines the historic character of the structures. This is the reason vinyl is no longer considered in the Historic District.

Citizen Comments - There were no audience members present to speak to this request.

Appellant's Rebuttal – Ms. May said that, in looking at the staffs photographs, 407 windows are the same color and the same size as the original windows and from the street a person would only notice that the windows are neatly maintained.

Mr. Sholes said that there is no neighborhood association for the townhome so there is another missing link that would have helped with getting this type of information. He then said that he does not how a person who is moving into a structure that was built in 1990 would think to stop about permits. Three people, who are well educated, had perfectly good intensions to improve their properties, all made the same mistakes. They installed the windows before being informed about the restrictions. He said that he agrees that there could have been ways for the homeowners to find out more information, but during a renovation, there are no clear signs to say that a certain action was a violation.

Commission Comments and Questions – Mr. Brewer said that the Commission has dealt with this type of appeal several times in the past and reading the BOAR minutes, even the members clearly recognize the ban on vinyl windows is antiquated and should be revisited, if not revoked. He asked why this issue hasn't been fixed and if it is possible, vinyl should be revisited within a specific time frame to allow the homeowners the ability to keep the windows. He then said that, from what he is hearing at today's hearing and from what is noted in the BOAR minutes, this is something that should probably be changed. If this issue were to change in the near future, it would not be appropriate to make the homeowners incur the cost of removal and replacing those windows. He then said that if the issue of vinyl was not changing and the Board really believes vinyl should be prohibited that is a different matter. However, there is enough indecision and uncertainty to allow some latitude.

Mr. Brewer said that ignorance of the law is no excuse, and given the rules that are in front of them, he does not believe that the Commission can do anything but agree with the BOAR decision and deny both applications. He then said that he believes the rules are wrong and need to be changed.

Mr. Owens asked if there is a need to acquire a building permit for the replacement of windows. Ms. Peacher said that a permit is not required.

Ms. Mundy asked if the staff would be agreeable with adding trim around the windows. Ms. Kerr replied that the staff cannot authorize such a changed. She then said that the windows would still not be in compliance with the Design Guidelines and would need to be presented to the BOAR. She then said that the issue is not vinyl versus wood, or trying to make something look older than it is, but rather the issue is the integrity of the material and the integrity of the design features that are successful in the proper scale, materials, setting and so forth of the overall design. She said that by picking and changing a piece of that feature can sometime end up with neither fish nor fowl.

Mr. Berkley asked if the BOAR had any debates regarding the use of vinyl. Ms. Kerr said that periodically the Design Review Guidelines are a review across the board on all topics. Vinyl was substantially talked about it, and she did not want anyone's perception to be that the decision made in 2010 was done lightly or without very substantive discussion. It was indeed not an outdated decision, but very quiet forward thinking decision. She then said that vinyl was so substantially thought about and nothing in the staff's perception of the process has been a substantive change that has had any number of people saying that this issue needs to be revisited, and she is not saying that it shouldn't be or couldn't be. There were a couple of BOAR members that stated that vinyl was a complicated situation and they would like to revisit the topic on windows. She said that two of the members were part of the process between 2008 and 2010 and they took part in the evaluation and voted unanimously to prohibit vinyl. That decision does not negate the member's comments at the current time. She then said that everyone works very diligently through the process to have a set of regulations that can be consistently and fairly applied to all applications. Then every application is reviewed on a case by case basis.

Mr. Owens said that the Commission has reviewed several of these types of applications over the years. The Design Guidelines states no vinyl for the Historic District and Historic Overlay zone. He then said that he may not agree with that rule, but he has always sided with that rule. He added that in most situations vinyl is not appropriate for this area, but in this situation these townhomes are not old or a historic building. These townhouses were approved to have vinyl on the siding, soffit, boards and so forth and this request is not an unapproved type situation. He said that had the Board unapproved the vinyl in the past he would not be waffling as much, but the Board did approve the vinyl before. He then said that the vinyl windows are consistent with the large part of the construction for the townhouses. He added that he drove by the townhouses and from the street no one would recognize that these windows were vinyl.

Mr. Owens said that the Commission reviews requests and some of the time, the staffs reasoning for an application does this create a hardship. For this situation it does create a hardship on the appellants if the BOAR decision is upheld. At this point, he indicated that he is waffling to the other side.

The Chair said that he agrees with what everyone has said and the conflict that he has is on one hand the law is pretty clear, but the other hand is the financial hardship on the appellant.

The Chair then said that the Commission was allowed to hear both of these applications together, but the motion would need to be separate. Ms. Jones replied affirmatively, and said that the findings can be the same.

Action - A motion was made by Mr. Owens, seconded by Ms. Mundy and carried 6-2 (Smith and Wilson opposed; Cravens, Drake and Penn absent) to approve the appeal for **BOAR 2016-1: DEAN AND LAURA MAY**, based on the following reason:

1. The property was originally built in 1990 and a Certificate of Appropriateness was issued in 1998, which permitted vinyl rear facades and vinyl soffits.
2. Although the wood windows are normally required in a historic district, vinyl was permitted elsewhere on the specific property when the Certificate of Appropriateness was issued in 1998.
3. The property owners installed windows that, although vinyl, generally reflected the shape and size of the original wood windows, which construction was completed in 1989.

Action - A motion was made by Mr. Owens, seconded by Ms. Mundy and carried 6-2 (Smith and Wilson opposed; Cravens, Drake and Penn absent) to approve the appeal for **BOAR 2016-2: PERRY SHOLES**, based on the following reason:

1. The property was originally built in 1990 and a Certificate of Appropriateness was issued in 1998, which permitted vinyl rear facades and vinyl soffits.
2. Although the wood windows are normally required in a historic district, vinyl was permitted elsewhere on the specific property when the Certificate of Appropriateness was issued in 1998.
3. The property owners installed windows that, although vinyl, generally reflected the shape and size of the original wood windows, which construction was completed in 1989.

D. AMENDMENT TO THE 2017 MEETING & FILING SCHEDULE

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson and carried 8-0 (Cravens, Drake and Penn absent) to adopt the amendment to the Official Meeting and Filing Schedule for 2017, as presented by the staff.

- A. WORK SESSION** – Mr. Duncan indicated that the next Work Session is scheduled for January 19, 2017, and would be held on the 3rd floor of Phoenix Building. He noted that Jonathan Hollinger, Mayor's Office, would be presenting the upcoming events and status associated with the Town Branch Commons; and Greg Butler, Greenspace Commission, would be updating the Commission members with the findings from the greenspace survey that was conducted this past fall.

Mr. Duncan said that the reason the Work Session was being held in the Phoenix Building is to launch the 2018 Comprehensive Plan, which will be branded as "Imagine Lexington." He briefly explained that this location is allowing four different booth type settings and would allow more of a one on one interaction between the staff and Commission members to allow question and answer type interaction. He indicated that even though there will be no specific discussions on any one item, the Work Session will merely present the information gathered so far and explain how everything will be laid out in preparation of the Goals and Objectives of the 2018 Comprehensive Plan update.

VII. STAFF ITEMS - There were none.

VIII. AUDIENCE ITEMS – There were none.

IX. NEXT MEETING DATES

Planning Commission Work Session , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	January 19, 2017
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	January 25, 2017
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	January 26, 2017
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	February 2, 2017
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	February 2, 2017
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	February 9, 2017

- X. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 3:30 PM.

William Wilson, Chair

Carolyn Plumlee, Secretary