

Minutes
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION AND ZONING ITEMS

March 13, 2008

- I. **CALL TO ORDER** - The meeting was called to order at 1:35 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Randall Vaughn, Chair; Linda Godfrey; Frank Penn; Ed Holmes; Carolyn Richardson; Joan Whitman; James Mahan; Lynn Roche-Phillips (arrived at 1:36); Mike Cravens; Lyle Aten and Neill Day (arrived at 1:48 p.m.).

Planning Staff Present – Chris King, Director; Bill Sallee, Barbara Rackers, Jimmy Emmons, Tom Martin, Cheryl Gallt, Chris Taylor, and Denise Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Jeff Neal, Traffic Engineering; Bob Carpenter, Division of Building Inspection; Ed Gardner, Department of Law; Captain(s) Bill Woodward and Charles Bowen, Division of Fire & Emergency Services; and Betty Kerr and Amelia Armstrong, Division of Historic Preservation.

- II. **APPROVAL OF MINUTES** – None at this time.

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

- a. PLAN 2008-28F: LAKEVIEW ISLAND, UNIT 3 (THE LANDINGS) (5/15/08)* – located at 2414 Lake Park Road.
(Council District 5) **(Foster – Roland)**

Representation – Gary Roland, Foster – Roland, was present representing the applicant, and requested postponement of PLAN 2008-28F to the April 10, 2008, Planning Commission meeting.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Aten, and carried 9-0 (Roche-Phillips and Day absent) to postpone PLAN 2008-28F to the April 10, 2008, Planning Commission meeting.

Note: Ms. Roche-Phillips arrived at this time.

- b. PLAN 2007-52P: TUSCANY, UNIT 5 (3/13/08)* - located at 1970 Winchester Road (a portion of).
(Council District 6) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2007-52P to the April 10, 2008, Planning Commission meeting.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Day absent) to postpone PLAN 2007-52P to the April 10, 2008, Planning Commission meeting.

Note: The next two items were heard simultaneously.

- c. PLAN 2008-24F: THOMAS COMMUNICATIONS, INC., UNIT 1-C (WALNUT GROVE ESTATES) (5/15/08)* –
located at 2236 Walnut Grove (a portion of). (Council District 12) **(EA Partners)**

- d. PLAN 2008-25F: THOMAS COMMUNICATIONS, INC., UNIT 1-D (WALNUT GROVE ESTATES) (5/15/08)* –
located at 2236 Walnut Grove (a portion of). (Council District 12) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2008-24F and PLAN 2008-25F to the April 10, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 10-0 (Day absent) to postpone PLAN 2008-24F and PLAN 2008-25F to the April 10, 2008, Planning Commission meeting.

- e. DP 2007-100: KINGSTON HALL, UNIT 2 (EAST BRIDGEFORD LAND & DEV. CO.) (AMD.) (7/1/08)* – located at 2356
Newtown Pike (a portion of). (Council District 12) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2007-100 to the April 10, 2008, Planning Commission meeting.

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

Citizen Comments – Michael Owens, residing at 3184 Newtown Pike, was present. He stated that he agreed with the postponement request made by the petitioner.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Day absent) to postpone DP 2007-100 to the April 10, 2008, Planning Commission meeting.

- f. DP 2008-27: SYLVIA TAYLOR MILBURN PROPERTY (AMD.) (5/15/08)* - located at 767 and 771 Lane Allen Road.
(Council District 10) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2008-27 to the April 10, 2008, Planning Commission meeting.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Day absent) to postpone DP 2008-27 to the April 10, 2008, Planning Commission meeting.

- g. PLAN 2007-201F: NDC PROPERTY, UNIT 1-A, LOT 16 (WELLINGTON) (AMD.) (3/13/08)* – located at 249 Ruccio Way.
(Council District 9) **(Strand Associates)**

Representation – Sara Tuttle, Strand Associates, was present representing the applicant, and requested postponement of PLAN 2007-201F to the April 10, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 10-0 (Day absent) to postpone PLAN 2007-201F to the April 10, 2008, Planning Commission meeting.

- h. PLAN 2008-9P: HILLENMEYER PROPERTY (AMD.) (4/17/08)* - located on Lucille Drive and Sandersville Road.
(Council District 2) **(VanderWier and Associates)**

Staff Comments – Mr. Martin stated that the staff had received a letter from the applicant, requesting postponement of PLAN 2008-9P to the April 10, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Aten, seconded by Ms. Whitman, and carried 10-0 (Day absent) to postpone PLAN 2008-9P to the April 10, 2008, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, March 6, 2008, at 8:30 a.m. The meeting was attended by Commission Members: Neill Day, Lyle Aten, James Mahan, Randall Vaughn, and Mike Cravens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Chris Taylor, Cheryl Gallt, and Tom Martin; as well as Ed Gardner, Department of Law; Captain(s) Bill Woodward and Charles Bowen, Division of Fire & Emergency Services; and Bob Carpenter, Division of Building Inspection. 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. NO DISCUSSION ITEMS – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria: (1) the petitioner agrees with the Subdivision Committee's recommendation as listed on this agenda, and
(2) no discussion of the item or of the Committee's recommendation is desired by the Commission, and
(3) no one present at this meeting objects to the Commission acting on the matter without discussion.

*Note: Items mentioned at this time are noted as "**Sounded Items**" in these minutes.*

- a. DP 2008-29: MILLER AND BIRD, UNIT 1-A, BLOCK D, LOT 1 (AMD.) (WENDY'S) (5/15/08)* - located at 2575 Nicholasville Road. (Council District 4) **(JR Miller and Associates)**

Note: The purpose of this amendment is to construct a new 3,500 square-foot restaurant.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.
4. Urban Forester's approval of the tree preservation plan.

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

5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Waste Management's approval of refuse collection.
7. Approval of street names and addresses per e911 staff.
8. Label as an "Amended Development Plan."
9. Clarify extent of concrete area on rear of property.
10. Clarify interior landscape area conflict with building envelope.
11. Clarify interior landscape areas in site statistics.
12. Remove signs from plan face, and add a note referencing Article 17.
13. Resolve building size and building envelope conflict with interior landscaping areas.
14. Denote resolution of stormwater requirements.

(Sounded Item)

Representation – Harvey Johnson, JR Miller and Associates, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-29.

Action - A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 10-0 (Day absent) to approve DP 2008-29, subject to the conditions as listed by the staff.

- b. DP 2008-21: DENTON FARM, PHASES 3 & 4 (AMD.) (4/24/08)* – located at 3900-4070 Richmond Road.
(Council District 7) **(Strand Associates)**

Note: This plan requires the posting of a sign and an affidavit of such. The purpose of this amendment is to revise the single family lot layout for Phases 3 & 4, to increase the number of condominium units, and to update site statistics.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.
4. Urban Forester's approval of the tree preservation plan.
5. Division of Waste Management's approval of refuse collection.
6. Addition of recorded street names, to the approval of e911 staff.
7. Addition of note number 26 and detention basin information from previous plan.
8. Revise Planning Commission certification.

(Sounded Item)

Representation – Carol Goes was present representing the applicant. She stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-21. She then submitted the required signed affidavit and photograph for the record.

Action - A motion was made by Mr. Cravens, seconded by Mr. Aten, and carried 10-0 (Day absent) to approve DP 2008-21, subject to the conditions as listed by the staff.

- c. DP 2008-09: BOSTON ROAD DEVELOPMENT, LLC, LOT 3 (MINOR AMD.) (4/24/08)* - located on Dylan Place just off Boston Road south of Man O' War Boulevard. (Council District 9) **(Roberts Group)**

Note: The following plan proposes to reduce the amount of parking designated in excess of the required by increasing the number of restaurant seats on the property. The applicant is also requesting to remove note number 18.

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

1. Denote correct plan designation in title.
2. Correct site statistics.

(Sounded Item)

Representation – Bob Cornett, Roberts Group, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-09.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Richardson, and carried 10-0 (Day absent) to approve DP 2008-09, subject to the conditions as listed by the staff.

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- d. DP 2008-32: FURCOLOW PROPERTY (GREENHOUSE APTS.) (AMD. #3) (5/15/08)* - located at 3543 Tates Creek Road. (Council District 4) **(Wheat and Ladenburger)**

Note: The purpose of this amendment is to convert the existing clubhouse into one residential unit.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.
4. Environmental Planner's approval of environmentally sensitive areas.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Approval of street names and addresses per e911 staff.
7. Addition of Tates Creek Road and Macadam Drive cross-sections.
8. Label floodplain information and steep slopes.
9. Correct date information.
10. Delete previous design FIRM information.

(Sounded Item)

Representation – Roger Ladenburger, Wheat and Ladenburger, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-32.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Richardson, and carried 10-0 (Day absent) to approve DP 2008-32, subject to the conditions as listed by the staff.

Note: Mr. Day arrived at this time.

- e. DP 2008-33: INTERCHANGE SERVICE CENTER, LOT 2-A (AMD.) (5/15/08)* - located at 2290 Elkhorn Road. (Council District 6) **(Wheat and Ladenburger)**

Note: The purpose of this amendment is to add buildable square footage.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.
4. Urban Forester's approval of the tree preservation plan.
5. Division of Waste Management's approval of refuse collection.
6. Approval of street names and addresses per e911 staff.
7. Clarify "existing and proposed" floor area.
8. Delete sign from plan face.
9. Revise note number 8 to the approval of the Division of Traffic Engineering.
10. Revise note number 7 to the approval of the Division of Traffic Engineering.

(Sounded Item)

Representation – Roger Ladenburger, Wheat and Ladenburger, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-33.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Aten, and carried 11-0 to approve DP 2008-33, subject to the conditions as listed by the staff.

- f. DP 2008-28: PATCHEN VILLAGE (AMD.) (5/15/08)* - located at 153 and 154 Patchen Drive. (Council District 7) **(Carman and Associates)**

Note: The purpose of this amendment is to revise parking between buildings 1, 5 and 6; to add buildable area; and to revise site statistics.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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.

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

3. Building Inspection's approval of landscape buffers.
4. Division of Fire's approval of emergency access and fire hydrant locations.
5. Approval of street names and addresses per e911 staff.
6. Place site statistics within a box.
7. Dimension proposed plaza.
8. Denote number of seats in restaurant in parking statistics.

(Sounded Item)

Representation – Chris Howard, Carman and Associates, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-28.

Action - A motion was made by Ms. Whitman, seconded by Mr. Aten, and carried 11-0 to approve DP 2008-28, subject to the conditions as listed by the staff.

- g. PLAN 2008-31P: LEXINGTON HOUSING AUTHORITY – 898 GEORGETOWN ROAD (5/25/08)* –
located at 898 Georgetown Road. (Council District 1) **(Sherman/Carter/Barnhart)**

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Environmental Planner's approval of environmentally sensitive areas (sinkholes).
9. Revise plan status and add standard notes.
10. Addition of lot information and dimensions.
11. Kentucky Transportation Cabinet's approval of the access to Georgetown Road right-of-way.
12. Addition of dimensions to the cross-section "D-D" or half-section.
13. Delete certification.
14. Document compliance with Article 4-5(b) of the Land Subdivision Regulations.

(Sounded Item)

Representation – Mark McCain, Sherman/Carter/Barnhart, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2008-31P.

Action - A motion was made by Mr. Aten, seconded by Ms. Whitman, and carried 11-0 to approve PLAN 2008-31P, subject to the conditions as listed by the staff.

- h. DP 2008-43: BLUEGRASS ASPENDALE (AMD.) (5/27/08)* - located at 563 Breckenridge Street.
(Council District 1) **(Sherman/Carter/Barnhart)**

Note: The purpose of this amendment is to reconfigure the building envelope areas and the parking layout.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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. Urban Forester's approval of the 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. Add amendment to title.
9. Review by the Technical Committee.

(Sounded Item)

Representation – Mark McCain, Sherman/Carter/Barnhart, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-43.

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

Action - A motion was made by Ms. Whitman, seconded by Ms. Godfrey, and carried 11-0 to approve DP 2008-43, subject to the conditions as listed by the staff.

- i. DP 2008-31: MAN O' WAR DEVELOPMENT, UNIT 2-A, LOT A-18 & LOT A-19 (AMD.) (5/15/08)*- located at 1925 Justice Drive. (Council District 6) **(Summit Engineering)**

Note: The purpose of this amendment for Lot A-19 is to revise parking and circulation.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.
4. Urban Forester's approval of the tree preservation plan.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Approval of street names and addresses per e911 staff.
9. Clarify plan as a "Final Development Plan" for A-18 and A-19 (only) in title block.
10. Identify latest development plan information for adjacent Malone's restaurant property.
11. Addition of site statistics for Preliminary Development Plan portion.
12. Clarify note number 9.
13. Graphically depict compliance with Article 12-7(b) of the Zoning Ordinance.
14. Denote approval of dimensional variance (50' setback) prior to certification.
15. Clarify required 50' setbacks (B-6P zone).
16. Clarify purpose of amendment note.
17. Add vicinity sketch.

(Sounded Item)

Representation – Matt Williams was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-31.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 11-0 to approve DP 2008-31, subject to the conditions as listed by the staff.

- j. PLAN 2008-27F: BLUESKY INDUSTRIAL ESTATE, TRACT B, BLOCK B, LOT 2 AND LEDFORD SEBASTIAN PROPERTY, SECTION 1, BLOCK A, LOTS 1-6 (5/15/08)* – located at 430 and 530 Blue Sky Parkway. (Council District 12) **(Endris Engineering)**

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Resolve the difference between the base map and that shown for 360 Blue Sky Parkway.

(Sounded Item)

Representation – John McClure, Endris Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2008-27F.

Planning Commission Comments and Questions – Mr. Penn asked if the moratorium has been lifted on additional sewers for the Blue Sky Parkway. Mr. Martin said that the applicants' request is to re-lot the existing property that is developed. He said that the applicant is not proposing any new construction; but if there should be new construction, the applicant would need to address the moratorium issue.

Action - A motion was made by Mr. Day, seconded by Ms. Whitman, and carried 11-0 to approve PLAN 2008-27F, subject to the conditions as listed by the staff.

- k. PLAN 2006-215F: B.M. COLE ESTATES AND W.M. SHELBY SUBDIVISION, UNIT 2 (AMD.) (6/15/08)* – located at 651 New Circle Road and 1509 Colesbury Circle. (Council District 1) **(Endris Engineering)**

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

Note: The Planning Commission originally approved this plan on December 14, 2006, 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 and required street tree information.
4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree preservation areas.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Remove floodplain easement and add D-FIRM information.
8. Denote: This plan shall be developed in accordance with the approved final development plan.

Note: The applicant now requests reapproval of this plan.

The Staff Recommended: Reapproval, subject to the previous conditions.

(Sounded Item)

Representation – John McClure, Endris Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2006-215F.

Action - A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 11-0 to reapprove PLAN 2006-215F, subject to the conditions as listed by the staff.

- I. DP 2008-26: HAMBURG PLACE MALL, UNIT 2, LOT B-4 (AMD. #28) (5/15/08)*- located at 1915 Star Shoot Parkway. (Council District 6) **(Barrett Partners)**

Note: The purpose of this amendment is to add 8,500 square feet of buildable area and to revise the associated parking for Lot B-4.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.
4. Urban Forester's approval of the tree preservation plan.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Approval of street names and addresses per e911 staff.
9. Addition of provided interior landscaping statistics.
10. Complete P-1/B-6P zoning boundary (display with dashed lines).
11. Clarify bounds of drainage easement.
12. Clarify off-street parking requirements (gross floor area) for the B-6P and P-1 zones.

(Sounded Item)

Representation – Tony Barrett, Barrett Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-26.

Action - A motion was made by Mr. Holmes, seconded by Ms. Whitman, and carried 11-0 to approve DP 2008-26, subject to the conditions as listed by the staff.

- m. DP 2008-20: THE LANDINGS (AMD.) (4/28/08)* – located at 2414 Lake Park Drive. **(Foster – Roland, Inc.)**
(Council District 5)

Note: The Planning Commission postponed this plan at its February 14, 2008, meeting. The purpose of this amendment is to add seven two-bedroom units and associated off-street parking.

The Subdivision Committee Recommended: Postponement. There were questions regarding compliance with minimum off-street parking requirements.

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

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.

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

3. Building Inspection's approval of landscape buffers.
4. Urban Forester's approval of tree preservation area.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Waste Management's approval of refuse collection.
7. Approval of street names and addresses per e911 staff.
8. Addition of building dimensions.
9. Addition of typical parking spaces.
10. Addition of required development notes per Article 21 of the Zoning Ordinance.
11. Addition of parking lane dimensions.
12. Addition of all easements.
13. Clarify proposed building layout.
14. Add Lake Park Drive cross-section.
15. Discuss compliance with off-street parking.
16. Discuss building and lake conflict.
17. Discuss existing and proposed floor area ratio and lot coverage.

(Sounded Item)

Representation – Gary Roland, Foster - Roland, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-20.

Staff Comments – Mr. Martin noted that prior to the meeting, the staff had presented a handout with the revised recommendation for DP 2008-20 to the Commissioners. He said that the staff had met with the project engineer on several occasions to discuss a math error with the off-street parking calculations. This plan now meets the minimum off-street parking requirements of the Zoning Ordinances, and it can now be approved. The staff is recommending approval, subject to the following revised recommendations:

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 landscape buffers.
4. Urban Forester's approval of tree preservation area.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Waste Management's approval of refuse collection.
7. Approval of street names and addresses per e911 staff.
8. Addition of building dimensions.
9. Addition of typical parking spaces.
10. Addition of required development notes per Article 21 of the Zoning Ordinance.
11. Addition of parking lane dimensions.
12. Addition of all easements.
13. Clarify proposed building layout.
14. Add Lake Park Drive cross-section.
15. ~~Discuss~~ Denote compliance with off-street parking.
16. ~~Discuss~~ Resolve building and lake conflict.
17. ~~Discuss~~ Denote existing and proposed floor area ratio and lot coverage.

Action - A motion was made by Mr. Cravens, seconded by Mr. Aten, and carried 11-0 to approve DP 2008-20, subject to the revised conditions as listed by the staff.

- n. PLAN 2008-26F: THE GLEN AT LOCHDALE, UNIT 1, BLOCK C, LOT 1 (AMD.) (5/15/08)* – located at 3652 Winthrop Drive. (Council District 9) **(EA Partners)**

Note: The purpose of this amendment is to change the detention basin maintenance responsibility note.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Building Inspection's approval of landscape buffers and required street tree information.
3. Approval of street names by e911 staff.
4. Denote: This property shall be developed in accordance with the approved final development plan.
5. Remove note number 5.
6. Resolve street trees and landscaping buffer along the frontage of Winthrop Drive at the time of the final development plan.

(Sounded Item)

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

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2008-26F.

Citizen Comments – Bruce Simpson, attorney, was present on behalf of the developer. However, Mr. John Veith and Mr. Jamie Coldiron, property owners in the area are requesting to be notified at the time a final development plan is submitted to the staff. He then said that Mr. Veith and Mr. Coldiron would like to discuss the connectivity, among other issues, at that time.

Planning Commission Comments – Ms. Godfrey said that their request would be noted in the minutes, and asked if a note should be added to provide notification to the interested parties. Mr. Kahly said that the zoning development plan (ZDP 2007-111) will be the next item on the agenda, and a note could be added to the recommendation at that time to provide notification to the adjacent properties.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 11-0 to approve PLAN 2008-26F, subject to the conditions as listed by the staff.

- o. ZDP 2007-111: THE GLEN AT LOCHDALE, UNIT 4 (AMD.) (3/13/08)* - located at 3600 and 3652 Winthrop Drive.
(EA Partners)

Note: The Planning Commission indefinitely postponed this plan at its September 27, 2007, meeting, pending the zoning decision by the Urban County Council. The Urban County Council approved the zone change request at its December 4, 2007, meeting. The Planning Commission postponed this plan at its January 17, 2008, and February 14, 2008, meetings.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-1; 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. Building Inspection's approval of landscaping.
5. Urban Forester's approval of tree inventory map.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Addition of building dimensions.
8. Addition of zone-to-zone screening.
9. Discuss connection to R-4 property to the east.

(Sounded Item)

Representation – Rory Kahly, EA Partners, was present representing the applicant. He noted that the Council had approved the zone change for this property, and said that they have met with the staff and they believe condition number 9 could be changed to read: "Resolve the connection to the R-4 property to the east," and a new condition number 10 could be added to read: "Provide notification to the adjacent properties to the east."

Planning Commission Comments – Mr. Vaughn said that the Subdivision Committee had recommended approval, subject to the 9 conditions listed by staff. He then asked for clarification to the condition numbers 9 and 10. Mr. Kahly said that condition number 9 could be changed to read: "Resolve the connection to R-4 properties at the final development plan," and a new condition number 10 could read: "Provide notification to the adjoining properties." Mr. Martin added that condition number 9 should read: "Resolve connection to R-4 property to the east at the time of the final development plan." Mr. Kahly indicated his agreement.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Aten, and carried 11-0 to approve ZDP 2007-111, subject to the conditions as listed by the staff, changing condition number 9 to read: "Resolve connection to R-4 property to the east at the time of the final development plan," and adding a 10th condition to read: "Provide notification to the adjacent property owners to the east."

- p. PLAN 2007-159F: LEXINGTON INDUSTRIAL FOUNDATION, UNIT 2 (AMD.) (5/25/08)* - located at 2029 & 2037 Buck Lane. (Council District 2)
(Midwest Engineers)

Note: The Planning Commission originally approved this plan on August 9, 2007, subject to the following conditions:

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

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

4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Correct site statistics for the street right-of-way.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Denote 25' floodplain setback.

Note: The applicant now requests a continued discussion for the purpose of increasing the number of lots.

The Staff Recommended: Reapproval, subject to the previous conditions.

Staff Comments – Mr. Martin noted that no one was present on behalf of the applicant, and said that the applicant had requested a continued discussion of this plan for the purpose of increasing the number of lots by two. He then said that this request was presented to the Subdivision Committee, and it was recommended for reapproval. He then noted that the staff believed this item could have been sounded, had the plan been represented earlier in the meeting.

Action - A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 11-0 to reapprove PLAN 2007-159F, subject to the conditions as listed by the staff.

- q. DP 2007-91: LEXINGTON INDUSTRIAL FOUNDATION, UNIT 2 (AMD.) (5/25/08)* - located at 2024 & 2037 Buck Lane. (Council District 2) **(Midwest Engineers)**

Note: The Planning Commission originally approved this plan on August 9, 2007, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, sanitary sewers and floodplain information.
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 preservation plan.
5. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Environmental Planner's approval of environmentally sensitive areas (sinkholes).
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Solid Waste's approval of refuse collection.
9. Approval of street names and addresses per e911 staff.
10. Identify dimensions of building addition.
11. Addition of adjacent property information.
12. Revise vicinity map and north orientation.
13. Denote all existing and proposed easements, including sanitary sewer easement.
14. Denote 25' floodplain setback (rear line).
15. Denote: Access easement shall be landscaped to the standard(s) of a public street.

Note: The applicant now requests a continued discussion regarding a proposal for increasing the number of lots and revising the development.

The Staff Recommended: Approval, subject to the previous conditions.

(Sounded Item)

Staff Comments – Mr. Martin noted that DP 2007-91 is related to the previous request (PLAN 2007-159F), and said that this item appears as a continued discussion to show the new lotting pattern that is associated with PLAN 2007-159F.

Action - A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 11-0 to approve DP 2007-91F, subject to the conditions as listed by the staff.

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

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments

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

- Commission discusses and/or votes on the plan

1. Final Subdivision Plans

- PLAN 2007-175P: TUSCANY, UNIT 3 (AMD.) (5/25/08)* - located at 1970 Winchester Road (a portion of).
(Council District 6) **(EA Partners)**

Note: The Planning Commission originally approved this plan on November 8, 2007, 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 and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Greenspace Planner's approval of the treatment of greenways.
7. Environmental Planner's approval of environmentally sensitive areas.

Note: The applicant now requests a continued discussion regarding redefining the property boundary for Unit 5.

The Staff Recommended: Approval, subject to the previous conditions.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He noted that there was an error in the title of the plan and it should read: PLAN 2007-175P, Tuscany, Unit 3. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2007-175P.

Planning Commission Comments and Questions – Mr. Penn asked what the purpose of this request is. Mr. Sallee said that the reason this plan is before the Commission is due to the adjacent properties being approved for a final development plan. He said that the unit boundaries that were established prior to that approval did not match the adjacent units. He noted that some of the land on the development plan had been incorporated into the former unit, and he said that it is staff's understanding the purpose of this request is to have those units' boundaries match. This is what prompted the adjacent plan needing to be resolved, in terms of street and lotting pattern.

Mr. Holmes asked for clarification regarding the continued discussion note. Mr. Kahly said that the continued discussion was a requirement from the February 14, 2008 meeting, which was when the four-plexes (DP 2008-15: Unit 2) were approved. He said that the approval of four-plexes meant that PLAN 2007-175P and PLAN 2005-215F had to be brought back to the Commission as continued discussion items. He then said that the approval of those four-plexes had created a boundary change on both PLAN 2007-175P and PLAN 2005-215F, resulting in those plans needing to be modified. Mr. Kahly stated that today's discussion will allow those plans to have the same boundaries as each other.

Mr. Vaughn stated that it is the Commission's consensus to have this case moved to the full hearing portion of the agenda to review it in more detail.

Staff Presentation – Mr. Martin presented both the amended preliminary plan (PLAN 2007-175P) and the final record plat (PLAN 2005-215F) to the Commission. He stated that the staff believes these two requests should be reviewed side by side, in order to get a better understanding of the applicant's request, and to show how the changes being made will affect the boundaries of each plan.

Mr. Martin directed the Commission's attention to PLAN 2007-175P, and briefly oriented them to the surrounding street systems, which includes Pascoli Place and Old Rosebud. He also illustrated the subdivision layout, noting that Unit 3 (PLAN 2007-175P) is a single family area.

Mr. Martin said that the Planning Commission had recently approved Unit 2 (DP 2008-15) at the February 14, 2008, meeting; and with that approval, it had created a need for a change at the intersection Coroneo Lane and Pascoli Place. Referring to PLAN 2005-215F, Mr. Martin provided a closer view of the intersection, noting where the proposed four-plexes are located. He explained that in order for DP 2008-15 to meet the requirements of the Zoning Ordinance, the applicant had to adjust the boundary on PLAN 2007-175P, which resulted in the change of the lotting pattern and a cul-de-sac.

Mr. Martin stated that the Subdivision Committee had reviewed the applicant's request and recommend approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

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

2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Greenspace Planner's approval of the treatment of greenways.
7. Environmental Planner's approval of environmentally sensitive areas.

He noted that there was a second error on the agenda, and said that this is a continued discussion regarding redefining the property boundary for Unit 3, not Unit 5. In conclusion, Mr. Martin said that the applicant's request is in reference to the boundaries being shifted to accommodate the four-plexes; and in doing this, there will be a change in the lotting pattern and a cul-de-sac. He then noted that PLAN 2005-215F will reflect the same boundary shift.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2007-175P.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Mahan, and carried 11-0 to approve PLAN 2007-175P, subject to the conditions as listed by the staff, and noting the corrections to the title and to the note.

- b. PLAN 2005-215F: TUSCANY, UNIT 2 (5/27/08)* - located at Pascoli Place and Coroneo Lane.
(Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on August 11, 2005, and then reapproved this plan on August 10, 2006, 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. Urban Forester's approval of tree preservation plan.
5. Approval of street addresses by e911 staff.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: There shall be only one dwelling unit per lot.

Note: The applicant now requests reapproval of this plan.

The Staff Recommended: Reapproval, subject to the previous conditions.

Staff Presentation – Mr. Martin directed the Commission's attention to PLAN 2005-215F, and said that this is the final record plat that reflects the changes previously discussed. He then said that the Subdivision Committee had reviewed the applicant's request, and it was recommended for reapproval, 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. Urban Forester's approval of tree preservation plan.
5. Approval of street addresses by e911 staff.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: There shall be only one dwelling unit per lot.

He noted that condition number 7 had been carried over from an older plan, and it could now be deleted from the recommendations, noting that this condition is inappropriate for the development of the four-plexes.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2005-215F.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 11-0 to reapprove PLAN 2005-215F, subject to the conditions as listed by the staff, deleting condition number 7.

- c. PLAN 2005-277F: GESS PROPERTY, UNIT 4-G (5/27/08)* - located on portions of 4040 and 4044 Todds Road
(off of Jouett Creek Drive). (Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on October 13, 2005, and then reapproved this plan on February 8, 2007, subject to the following conditions:

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of street addresses by e911 staff.
6. Urban Forester's approval of tree preservation plan.
7. Greenspace Planner's approval of the treatment of greenways/bike trails.
8. Addition of exaction information.
9. Show 30' access easement as per PC "L" SLD "361".

Note: The applicant now requests reapproval of this plan.

The Staff Recommended: Reapproval, subject to the previous conditions.

Staff Presentation – Mr. Martin directed the Commission's attention to PLAN 2005-277F, and said that this a reapproval of a final record plat for property located off of Todds Road, noting that Unit 4-G is in reference to the greenspace area located on the subject site. He then said that this request was previously approved by the Planning Commission; but it has not been certified as of yet, which requires the Planning Commission to reapprove the request again.

Mr. Martin said that there was an issue with the utilities, and whether or not there would be a need for an easement to loop the circuit so that there would be a proper connection. He then said that since that time that issue has been resolved between Kentucky Utilities and the developer. Mr. Martin noted that PLAN 2005-277F is linked to PLAN 2007-176F (Unit 4H) through a condition that requires that the certification of the final record plat be resolved prior to the approval of PLAN 2007-176F. He said that this condition reflects the timing issue and dedication of this greenway.

Mr. Martin stated that previously there had been a considerable amount of discussion regarding the cross-section on Unit 6, as well as the identified wetland areas. He submitted the site impact map study completed by Red Wing Ecological Services, Inc. for this development, and said that according to the map, the impact areas are well outside the construction zone. He then said that this request is for a greenspace area, and eventually it will be owned and maintained by the LFUCG.

In conclusion, Mr. Martin said that this request was previously approved by the Planning Commission, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of street addresses by e911 staff.
6. Urban Forester's approval of tree preservation plan.
7. Greenspace Planner's approval of the treatment of greenways/bike trails.
8. Addition of exaction information.
9. Show 30' access easement as per PC "L" SLD "361".

Planning Commission Comments and Questions – Mr. Aten asked what the character of the design was along the Interstate 75 corridor. Mr. Martin said that the area along the interstate will be a greenway that is to be dedicated to the Lexington-Fayette Urban County Government, noting that the staff is unaware of the specific design character. Mr. Aten then asked what the width of the greenway area is. Mr. Martin said that the width will range between 60 to 70 feet. Mr. Aten asked if it will be landscaped; and, if so, who will implement it. Mr. Martin replied that there will be landscaping, and it will eventually be deeded over to the LFUCG.

Mr. Holmes asked if the greenway acts as a buffer. Mr. Martin said that it may function that way, but the intent is to have it reflect the natural topography of the area, as opposed to an actual buffer.

Representation – Rory Kahly, EA Partners, was present representing the applicant. In reference to a previous question, he said that in the beginning there was a 30-foot access easement left on the land to provide access to the undeveloped land farther to the south. He said that once the land is developed and the properties are recorded, the lots will be fronting upon the greenway. This will provide a connection to Units 3, 5, 6 and 11. With regards to what will be placed on the greenway, or how it will be maintained, it will be up to the LFUCG and the homeowners association.

Planning Commission Comments and Questions – Mr. Aten asked if the LFUCG will be designing the greenway. Mr. Kahly replied yes, and said that this is land that was required to be greenspace and it will be dedicated to the City. He said that the note on the plan states that this land will be maintained by the developer until the LFUCG takes control of it, and at that time the design concept will come into play. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2005-277F.

Citizen Opposition – Mr. John Tucker, who owns property on Chilesburg Road, was present. He asked if the stormwater runoff will be feeding into the wetland system. Mr. Kahly replied that it would. Mr. Tucker said that the stormwater runoff is why he is present at the hearing.

Mr. Tucker stated that the Code of Ordinances, Article 7, Section 16-73 reads that it is unlawful to discharge any type of pollutants into a stream, and the type of pollutant is the sediment running off the buildings. He asked at what point is there enough runoff to no longer acknowledge a wetlands, but rather a creek instead. He then said that there is already flooding in this area; there are illegal builds, and now the stormwater levels will be increasing. By approving this request it will only add more runoff, which will create an increase in flooding. In conclusion, Mr. Tucker stated that the current EPA Consent Decree is supposed to be addressing these issues, and asked how the Commission can continue to allow these illegal discharges. He said that there is already an increase of flooding on property owners' land, and said that this is creating another burden on the taxpayers of Lexington.

Stanley Crockett, residing at 853 Chilesburg Court, was present. He said that they had a plot of land directly in front of their home that was supposed to be turned over by Ball Homes to the LFUCG 3 years back. He said that the City is maintaining the land, but it is still owned by Ball Homes. He does not believe Ball Homes will turn over a piece of land to the City. Mr. Crockett then said that there was a 200-foot setback area established for a greenspace area, but now it has condominiums built on it. He believes that this greenspace area will eventually have homes, condos or something built on it because Ball Homes will not give up this land. In conclusion, Mr. Crockett said that in watching the development of the Gess property, the applicant is not abiding by the 9 conditions listed on the agenda. He said that it is time for the Planning Commission to do one of two things, and that is to either work for the people or work for the builders.

Waveline Crockett, residing at 853 Chilesburg Court, was present. She requested that the applicant needs to show proof of whether or not there are violations on the property. She believes there are violations that have not been taken care of, and she believes the applicant is aware of this issue. She said that the Planning Commission needs to ask the applicant; and if there are violations, they need to take care of those violations before anything else is done.

Planning Commission Comments and Questions – Ms. Roche-Phillips asked if this piece of land is what is left over from the development. Mr. Martin replied that it is. Ms. Roche-Phillips then clarified that there will not be any new homes built on the multi-use trail. Mr. Martin said that this area is being proposed as a greenspace area for the City. Ms. Roche-Phillips then said that the greenspace would help the stormwater problems in the area. Mr. Martin said that the staff would hope it would. Ms. Roche-Phillips said that this request would help the situations for those properties downstream because there will be no additional homes or impervious surfaces added. She then said that she would like to include in the motion for approval to ask the City to review impervious surfaces, just in case there are any type of improvements made to the trail. She said that the trail, greenspace and green infrastructure are the most cost effective and least expensive to the taxpayers when it comes to remediating the stormwater problems.

Mr. Penn asked who requested for this greenspace to be turned over to the City - it the developer or the city. Mr. Martin said that it was required for the greenspace to be dedicated to the City and the plat condition was to ensure proper timing. He said that this is why a condition for certification of this plat was attached to the approval of PLAN 2007-176F. The developer has no financial interest in keeping this property, and the staff has a concern with the timing of the dedication of the properties.

Mr. King said that once this property is part of the LFUCG, then the Greenway Coordinating Committee will review these issues relating to the future use, the maintenance and the environment within those greenways.

Ms. Roche-Phillips said that condition number 1 speaks to the Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information, and asked if sanitary sewers should be listed on the agenda. Mr. Martin said that condition number 1 is a standard condition; and even though there may not be a sewer system serving the property, it may come into play eventually. He said that the Urban County Engineer will sign off on the mylar once the circumstances have been reviewed.

Mr. Aten asked if Engineering has carefully reviewed this request considering the comments made by the surrounding property owners. Mr. Martin said that he was unable to answer that question. Mr. King then said that

it would be inappropriate for the planning staff to answer that question, but a staff member from the Division of Engineering could possibly address that question.

Mr. Aten said that there have been several discussions regarding this issue, and there is a concern with the stormwater runoff. He asked what emphasis Engineering has given this issue. Mr. Newman, Division of Engineering, said that, to the best of his knowledge, the stormwater design has been constructed in accordance with the Water Quality and Stormwater Manual, as far as the detention basins and water quality are concerned. He said that he is not aware of any problem associated with this particular plat.

Mr. Aten said that there has been comment contrary to what has been said. Mr. Newman said that Mr. Tucker had stated that he has flooding problems; but there is a creek that runs through his property, as well as an associated floodplain.

Mr. Aten asked if the improvements have been implemented and installed, such as the flood control for the environmental conditions. Mr. Newman said that with regards to stormwater quantity control, it has been; but the quality control within the greenway area is part of the mitigation plan and the 404 Army Corps. of Engineers permits. The 404 Army Corp. of Engineers permit cannot be implemented until the permit has been issued.

Mr. Penn clarified that the LFUCG would not accept this property until all mitigation plans are in place, nor could the developer convey the property until all permits are in place. He asked at what point the City would accept the property and at what point the City is liable. Mr. Newman said that when the LFUCG accepts the property, it is dictated by extent of the construction and how long it will take to get the property into its final form. He said that any outstanding permit issues could come into play at that time. Mr. Penn said that the permits would need to be resolved before the LFUCG accepts the property. Mr. Newman said that he could not speak to that question because he is not involved at that point. Mr. Penn asked if Engineering is involved with the signoff of the plats. Mr. Newman replied yes, for construction plans and final record plats. Mr. Penn asked if that included mitigation. Mr. Newman replied that that was correct.

Ms. Godfrey clarified that the mitigation plan is on hold due to circumstances that are outside of the Division of Engineering's control. Mr. Newman said that that was correct. Ms. Godfrey then said that the Greenway Plan should help mitigate some of the problems since the mandated mitigation has been placed on hold. Mr. Newman said that the mitigation plan cannot be implemented until the Army Corps. of Engineers issues the 404 permit. He said that Ball Homes had requested to begin the mitigation process, but their request was denied. Ms. Godfrey said that the Division of Engineering has nothing to do with this plan being on hold; and as for PLAN 2005-277F, the greenway should help with the flooding problems in the area. Mr. Newman said that that was correct. Mr. Vaughn commented that this issue reflects back to Ms. Roche-Phillips comments made earlier.

Ms. Roche-Phillips asked if the subject site is currently vegetative. Mr. Newman said that he was unsure what the condition is on the subject site. Ms. Roche-Phillips then asked if the staff knew what the conditions were. Mr. King said that Cindy Deitz, Greenspace Planner, would know those conditions, but she was not present due to an illness.

Mr. Vaughn said that PLAN 2005-277F is related to the greenway area on the subject site, and the Commission should not lose focus of what is being presented.

Mr. Mahan said that there is a concern with townhomes being built on this greenway, and asked if a condition could be added to the recommendation that will prevent any structures being built on this portion. Mr. King said that there is no intent to build any structures on the greenway because it has been designated as a greenway area since the beginning. He said that the Planning Commission could add a note to the plan stating that this area is for greenway area only, and no structure or dwelling units will be permitted. Mr. Mahan said that he would support that condition since it would help with the concerns from the surrounding property owners. He said that the greenway area will help with the flooding problems and this will become a valuable asset to the community.

Mr. Vaughn said that it has been recommended to add a condition that reads: "No dwelling units are permitted within the greenway area."

Ms. Roche-Phillips asked if there will be a utility easement within this area or is it exclusively a greenway area. Mr. Martin said that it is a greenway, and there are times when easements are necessary for the provision of utilities. He said that there will be required utility easements before that could happen. This is one of the reasons why this plat has been on hold, but since that time it has been resolved. He then said that if the easements were not resolved, the applicant would need to come before the Planning Commission to establish those easements.

Mr. Vaughn stated that it has been suggested to add an additional condition to require no dwelling to be constructed.

Ms. Roche-Phillips said that to ensure the long-term utility of the greenspace and to help the stormwater control issues, the Greenspace Coordinating Committee should consider limiting any type of impervious surface coverage along the greenway strip. She then said that from what was presented today, the Planning Commission needs to minimize the amount of impervious surfaces. Ms. Roche-Phillips suggested that some type of note be added to the plat that reflects the use of impervious surfaces. Ms. Whitman commented that that could prevent a bike trail from being proposed for this area. Mr. Mahan suggested using gravel for the bike trails. Ms. Godfrey said that this is a greenway and the Commission should not limit this area.

Mr. Vaughn directed the Commission's attention to the proposed condition number 10 that reads: "Denote: No dwelling units are to be located on the property." He then said that Ms. Roche-Phillips made a good point, but the Planning Commission should remain flexible. Ms. Roche-Phillips said that that is the whole point and the Planning Commission should be locked into this decision. She said that there are other ways to accommodate a bike trail other than using impervious surfaces, and she believes it is worth noting to the Commission. Ms. Godfrey said that there is a greenway plan, as well as a manual, and those details can be found in that manual. She said that the Greenspace Coordinating Committee has done an incredible job of addressing the greenway, and it would be inappropriate to dictate anything to them.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Mahan, and carried 11-0 to reapprove PLAN 2005-277F, subject to the conditions as listed by the staff, adding a condition number 10 to read: "Denote: No dwelling units are to be located on the property."

A recess was declared at 3:00 p.m. and the meeting re-convened at 3:10 p.m.

3. Development Plans

- a. DP 2008-22: LOCHMERE ESTATES (MAPLE RIDGE) (AMD.) (4/24/08)* – located on Lochmere Place.
(Council District 6) **(Eagle Engineering)**

Note: This plan requires the posting of a sign and an affidavit of such. The purpose of this amendment is to modify the access point to one lot.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.
4. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
5. Approval of street names and addresses per e911 staff.
6. Correct exaction information for 45 buildable lots.
7. Place site statistics within a box.

Representation – Jason Banks, Eagle Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-22. He then submitted the required signed affidavit and photograph to staff.

Citizen Opposition – Mr. John Tucker, who owns property on Chilesburg Road, was present. He stated that there have been changes made to the roadway and property, and asked why the Environmental Engineer is not listed on the recommendations. He said that this site collects the stormwater runoff coming from the Gess property, which is part of the illegally built retention basin. He then said that he does not care if the developers build, but he is receiving more stormwater runoff on his property.

Planning Commission Comments - Mr. Vaughn stated that this case should be moved to the full hearing portion of the agenda in order to review this request in more detail.

Staff Presentation – Mr. Martin directed the Commission's attention to DP 2008-22, and said that the purpose of this amendment is to slightly modify two lots, and to provide access onto a private street (Lochmere Place). He said that the property owner (Lot 40) had requested this access be provided for the purpose of a driveway. He then said that this will also provide a quicker access to Lochmere Lane, and on down to Chilesburg Road.

Mr. Martin then presented the overall development to the Commission, and briefly oriented them to the surrounding street systems, which included Chilesburg Road, Hayes Boulevard and Todds Road. He noted that Chilesburg Road is between the Gess Property and the subject site. The purpose of this amendment is to change the lotting pattern for two lots in order to provide a driveway access for the property owner on Lot 40.

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

Mr. Martin said that this request was presented to the Subdivision Committee, and it was recommended for 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 parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscape buffers.
4. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
5. Approval of street names and addresses per e911 staff.
6. Correct exaction information for 45 buildable lots.
7. Place site statistics within a box.

In conclusion, Mr. Martin clarified that through the normal review of plans, part of the standard conditions is to list the Environmental Planner's approval; however, at the request of Mr. Rebmann that condition was not listed as part of the approval. He said that that condition is not required to be listed since the purpose of amendment is only to modify the two lots in order to provide a driveway access. This amendment is not affecting any other issue that may exist prior to this change.

Planning Commission Comments and Questions – Mr. Vaughn asked if there is an EAMP Compliance Report associated with this request. Mr. Martin noted that the staff had submitted the EAMP Compliance Report to the Commissioners, and he said that the staff agrees that the proposed changes to the development plan do not constitute a significant change in the overall compliance of the property.

Representation – Jason Banks, Eagle Engineering, was present representing the applicant. He noted that the purpose of this amendment is to change the access point for Lot 40. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-22.

Citizen Opposition – Mr. John Tucker, who owns property on Chilesburg Road, was present. He said that he is not against the change in the driveway, but any plan that has an environmentally sensitive area on the site should have the Environmental Engineer's sign off of approval. He said that time and time again he has proven there are violations of the wetlands, and this particular piece of property dumps stormwater runoff into the Gess property. Mr. Tucker said that there are plans being approved without the Environmental Engineer being listed as a sign-off. He asked at what point do the citizens of Lexington need to stand up and say they are not paying for this mistake down the road. He then said that he does not care if the area is built; just he doesn't want the stormwater runoff being funneled onto his land. There are concerned citizens present, and they feel this area is a mess. He said that the Stormwater Manual states if there is an environmentally sensitive area on a property that plan needs to be reviewed again. He then said that any proposed plan on Chilesburg Road needs to be reviewed by an environmental engineer because, they can specifically state what is wrong in that area.

Planning Commission Comments and Questions – Mr. Vaughn recapped the hearing, noting that the required affidavit for this property was previously submitted to the staff. He said that the purpose of this amendment is to modify the access point to one lot, and this plan has been recommended for approval, subject to the seven (7) conditions listed on the agenda. He noted that there is an EAMP Compliance Report that was also previously submitted by the staff, and in that report the staff agrees with the applicant that the proposed changes to the development plan do not constitute a significant change in the compliance of the property.

Mr. Penn clarified that the Environmental Engineer had requested to be deleted from the recommendations. Mr. Martin said that during the Technical Committee meeting, the Environmental Planner (Mr. Rebmann) felt it was unnecessary for him to be listed on the conditions recommended for this plan. He is not the Environmental Engineer.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 11-0 to approve DP 2008-22, subject to the conditions as listed by the staff, including the acceptance of the EAMP Compliance Report for the reasons noted by the staff.

- b. DP 2008-30: MANCHESTER DEVELOPMENT, LLC (AMD.) (5/15/08)* - located at 855-941 Manchester Street.
(Council District 2) **(Pohl, Rosa, Pohl Architects)**

Note: The purpose of this amendment is to add an existing building to the industrial mixed use development; add off-street parking; and delineate future Phase 2.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

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 landscape buffers.

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4. Urban Forester's approval of the tree preservation plan.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Environmental Planner's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Approval of street names and addresses per e911 staff.
10. Clearly define Phase 1 and Phase 2 portions of the plan, including site statistics.
11. Label "Interior Area" as "Interior Landscape Area" in site statistics.
12. Clarify note regarding 20' front yard variance (along Manchester Street).
13. Denote as an "Amended Final Development Plan" in plan title.
14. Document off-site parking arrangements, as necessary.
15. Provided the Board of Adjustment grants approval of the nightclubs prior to certification, or revise the uses accordingly.
16. Denote Manchester Street improvements.

Staff Presentation – Mr. Emmons said that since the Subdivision Committee meeting, the staff had received a revised plan from the applicant, which further clarified issues that were of some concern to the staff. He said that one of the main changes made to the plan is that the plan is now separated into three phases. The applicant requests that Phase 1 and Phase 2 have the ability to obtain building permits from this development plan, while Phase 3 is conceptual only. The staff is recommending approval of the revised plan, subject to the 16 conditions listed on the agenda. He said that the changes to the plan are clarifications rather than wholesale changes from what the Subdivision Committee had reviewed.

Planning Commission Comments - Mr. Vaughn stated that he had attended the Subdivision Committee meeting, and at that time, there was concern with the applicant's request. He said that he is comfortable with the staff's recommendation; and unless other members would like to review this request, it could be a sounded item. Mr. Aten said that due to the discussion at the Subdivision Committee meeting, he believes this case should be moved to the full hearing portion of the agenda in order to review this request in more detail.

Staff Presentation – Mr. Emmons directed the Commission's attention to the final development plan, and briefly oriented them to the surrounding street systems, which included Manchester Street and Pine Street. He noted that this is an amended plan for property located 855-941 Manchester Street, and the Planning Commission had previously approved a plan that incorporated the existing building that is to be rehabilitated. He said that this is an industrial mixed use project, and most of the project is currently within the I-1 zone; but with the approval of the development plan, there can now be additional uses provided on the site. He stated that the purpose of this amendment is to add an existing building to the industrial mixed use development; add off-street parking; and delineate future Phases.

Mr. Emmons presented a PowerPoint presentation to the Commissioners and briefly oriented them to the changes on the development plan.

- Slide 1. is a view of the overall development plan, noting that the surrounding system include Versailles, Manchester Street and Pine Street.
- Slide 2. is a view of the large structure in the middle that was on the original development plan that is being proposed for multiple uses; the two-story structure proposed for residential use; the building attached to the large structure is part of the amendment, which will add an existing building to the industrial mixed use development; and the area toward Rupp Area is where the future Phase 2 will be located.
- Slide 3. is a closer view of the area being added to the development plan.
- Slide 4. is a view of the applicant's submitted final development plan.

Note: Ms. Roche-Phillips departed at this time.

Using the applicant's submittal, Mr. Emmons explained the different phases of the development (slide 5). He said that Phase 1 (highlighted in yellow) encompasses what was previously approved by the Commission, as well as depicting the addition of the existing building to the industrial mixed use development, plus the first portion of the parking. He noted that the area highlighted in pink is the future development of Phases 2 and 3. He said that the way the development plan is set up, the applicant would be able to obtain building permits, as well as begin the development for Phases 1 and 2, while Phase 3 remains conceptual only.

Mr. Emmons then presented the remaining PowerPoint presentation to the Commissioners, noting that slide 6 is a view of the overall development, and slide 7 is a closer view of the Phase 1 development plan. He said that the existing building located at 899 Manchester Street has approximately 60,000 square feet of underground space. This will provide an area of parking that will enter from or exit onto Manchester Street. He said that the uses for this property, as well as the proposed building, will include such uses as a nightclub; but in order for this to happen, the Board of Adjustment will need to grant approval for indoor recreation, wholesale or retail, and retail uses.

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Mr. Emmons then directed the Commission's attention to slide 8, and said that the Phase 2 parking area will be incorporated into the Phase 1 parking area, which will then provide 60 additional parking spaces. He then noted that the Phase 3 portion of the project will not be completed until the Newtown Pike Extension is finished; and at that time the applicant will need to bring in an amended development plan to the Commission for approval (slide 9). Mr. Emmons said that the Phase 3 portion is proposing to construct an additional building, as well as add more parking above Phase 1 and Phase 2. He said that the conceptual design of Phase 3 will be a multi-story building where the parking will be located at the corner of Newtown Pike and Manchester Street (slide 10).

Mr. Emmons then illustrated the site statistics (slide 11), and said that with the revised plan, the applicant has clearly delineated the difference between each of the phases. He said that when comparing each of phases, Phase 1 has 66,228 square feet of existing buildable area that will be used for the mixed use portion; Phase 2 will be adding 30 parking spaces; and as for Phase 3, it will provide 61,949 square feet of buildable area (slide 12). He then said that there was a concern with the overall parking for this development, and the minimum parking requirements for Phase 1 ranges between 127-145 parking spaces, depending upon the type of use. The applicant is showing 138 parking spaces on the development plan, plus there is the possibility of an off-site agreement for parking. He said that Phase 2 does not have any additional requirements for parking, but the applicant will be adding 30 extra spaces, which will give a total of 168 parking spaces. As for Phase 3, the minimum parking requirements range between 252 and 270, and the applicant's is providing 88 more parking spaces, which gives a total of 256 parking spaces for this entire project. This includes the off-site agreements, as well. He said that the off-site agreements are important for this project because the required parking will be dependent upon the types of uses that are proposed.

In conclusion, Mr. Emmons said that the staff is recommending approval of the applicant's request, 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 landscape buffers.
4. Urban Forester's approval of the tree preservation plan.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Environmental Planner's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Approval of street names and addresses per e911 staff.
10. Clearly define Phase 1 and Phase 2 portions of the plan, including site statistics.
11. Label "Interior Area" as "Interior Landscape Area" in site statistics.
12. Clarify note regarding 20' front yard variance (along Manchester Street).
13. Denote as an "Amended Final Development Plan" in plan title.
14. Document off-site parking arrangements, as necessary.
15. Provided the Board of Adjustment grants approval of the nightclubs prior to certification, or revise the uses accordingly.
16. Denote Manchester Street improvements.

Mr. Emmons noted that conditions numbers 1 through 9 are standard conditions, and condition numbers 10 through 13 are for clarification purposes. He said that the applicant would need to document the off-site parking arrangements, as necessary to reflect the type of uses that will be on the subject site. If the off-site parking arrangements are not necessary, condition number 14 would become null and void. He then said that the Board of Adjustment would need to grant approval of the nightclub prior to certification, or they would need to revise the uses accordingly, per condition number 15. If the development plan changes, either on the applicant's part or if the Board of Adjustment does not approve the conditional uses being shown, then this plan can be revised to reflect the uses that are allowed, noting that the Commission would not need to grant further approval if that should happen. Finally, condition number 16 reflects the improvements to Manchester Street, which are a continuation of the already existing improvements toward Pine Street. He said that the improvements are not necessarily widening the road, but rather provide improvements to the sidewalk. The road and sidewalk are at the same grade, and the improvements will create a more defined separation between the pedestrian and vehicular traffic through the use of planters and landscaping. He said that this will also help beautify the corridor and at the same time will make it more pedestrian friendly.

Planning Commission Comments and Questions – Mr. Vaughn said that the purpose of amendment is to add an existing building to the industrial mixed use development and asked where is that reflected on the development plan. Mr. Emmons said that the building located at 899 Manchester Street is an existing building that is being added to the mixed use development plan.

Representation – Clive Pohl of Pohl, Rosa, Pohl Architects, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-30.

Planning Commission Questions and Comments – Mr. Penn asked for clarification regarding the location of the off-site parking arrangements. Mr. Pohl referred the question to Mr. Barry McNeese, owner and developer of the property. Mr. McNeese said that they have secured two additional off-site parking areas on the southern portion of the development along Manchester Street. He then said that immediately adjacent to their parking lot there is an off-site agreement to provide 30 additional parking spaces, noting that they are in the process of purchasing another parcel that will provide another 20 parking spaces.

Mr. McNeese stated that have a contract with a company to provide solar pedestrian flashers for both sides of Manchester Street, which will help assist the traffic from the south to the north. He said that the installation of the flashers should happen within four to six weeks.

Mr. Penn asked where the pedestrian traffic will cross Manchester Street. Mr. McNeese said that pedestrians will be able to cross at the corner of Pine Street and Manchester Street through the help of flashers, noting that there will also be striping showing the crosswalk.

Mr. Day asked if there will be stop signs provided at the intersection of Manchester Street and Pine Street. Mr. McNeese said that that issue had been discussed in the beginning; but with the Newtown Pike Extension being connected, the stop signs would not be as effective. He said that the Kentucky Department of Transportation deemed that stop signs were not the best option in keeping the traffic moving. He then said that through conversation with the Division of Traffic Engineering and the Department of Transportation, the best solution would be to install the crosswalk flashers.

Mr. Day said that he has been at the intersection of Pine Street and Manchester Street when it is backed up and asked if it would be possible to install the stop signs. Mr. McNeese said that it had been discussed, and through those conversations it had evolved into using a less restrictive flow to slow down the traffic.

Mr. Vaughn said that he and his friends had attended a night-time event at the facility. They had parked at the easternmost lot on Pine Street, and they did not use the cross walk. He said that Maxwell Street is a one-way street, while Pine Street is a connector street to Newtown Pike; and he noted that the traffic has a tendency to turn right. His concern was coming out of that first parking lot, crossing Manchester Street and having to be aware of the traffic turning right from Pine Street. He then said that they need to be aware of the precaution measure needing to take place to protect the public. Mr. Vaughn said that it was mentioned that an additional piece of property was purchased to provide more parking to the east of Pine Street, and asked when this would be addressed. Mr. McNeese said that an important item to consider with this development is that they are providing 30 additional spaces adjacent to the subject site, as well as more parking spaces coming on line soon. He said that they are trying to find a realistic solution to large parking generators, and their goal is to create a venue to invite not only vehicular traffic, but pedestrian traffic. They believe the solar pedestrian flashers and the crosswalks will be the step in the right direction. He noted that more than 50 percent of the parking is on the same side as the buildings.

Mr. Pohl then said that condition number 16 relates to the improvements to Manchester Street. At the Subdivision Committee meeting it was noted that there would be lighting provided, particularly at the crosswalk. He said that that seemed to provide assurance to the Committee members that there would be a safe crosswalk for pedestrians.

Additional Comments – Mr. Pohl stated that the conceptual building is intended to be a landmark or an amenity to Lexington as one enters from the Newtown Pike Extension. He said that they are providing an environmentally friendly, pedestrian friendly area that is keeping within the Newtown Pike Extension objective. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-30.

Action - A motion was made by Mr. Penn, seconded by Mr. Mahan, and carried 10-0 (Roche-Phillips absent) to approve DP 2008-30, subject to the conditions as listed by the staff.

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT – A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 10-0 (Roche-Phillips absent) to approve the release and call of bonds as detailed in the memorandum dated March 13, 2008, from Rice Lear, Division of Engineering.

Note: Chairman Vaughn recused himself for the following item, and left the meeting. Ms. Godfrey took over as Chair.

- VI. COMMISSION ITEMS - The Chairman will announce that any item the staff would like to present will be heard at this time.

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- A. **BOAR 2007-3: ALLEN R. FOSTER** (3/13/08)* – an appeal of the denial of a Certificate of Appropriateness to allow a deck to remain as built in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 129 Ransom Avenue.

Note: The Planning Commission postponed this request at its January 17, 2008 and February 14, 2008, meetings.

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, specifically Guidelines 14-4 and 39-2, as they apply to the deck at 129 Ransom Avenue and the subsequent loss of green space in the rear yard.
2. If a Certificate of Appropriateness had first been requested for the deck, as is required by Article 13 of the Zoning Ordinance for any exterior change to a property in an historic district; and if a permit had been requested from the Division of Building Inspection, as is required by Article 5 of the Ordinance, this situation would likely have been averted.

Staff Presentation – Ms. Rackers stated that this appeal is being made by Allen R. Foster for property located at 129 Ransom Avenue, which is within the Aylesford Historic District. She directed the Commission's attention to the area map, and briefly oriented them to the surrounding street systems, which included Old Vine Street and East Main Street, noting that the subject property is situated between East High Street and Old Vine Street.

Ms. Rackers stated that this is an appeal of a denial of a Certificate of Appropriateness to allow an 18' by 18' wooden deck to remain at the rear portion of the house. She said that the deck was built without a Certification of Appropriateness or a building permit, and now the appellant is requesting to allow the deck to remain as is. She then said that if the appellant had applied for the COA then perhaps the outcome would have been different as there would have been input from the Board of Architectural Review. She noted that when requesting a building permit this would have triggered the process of obtain a COA from the Board of Architectural Review.

Ms. Rackers said that the appellant was aware of the process because prior to the construction of the deck they had obtained a COA for the demolition and construction of the garage. She said that when the Historic Preservation Inspector inspected the garage, they had already built the deck. She then said that a stop order was not issued since the deck was completed, but the appellant was told they would need a Certification of Appropriateness for the deck. The appellant applied for the Certificate of Appropriateness, and their case was heard at the May 9, 2007, Board of Architectural Review meeting. At that hearing, the Historic Preservation staff had reported that the rear stoop/steps to the house had been removed, and an 18' by 18' deck was installed. She noted that the deck was made out of pressure treated wood, and it extended into the rear yard. She said that the Historic Preservation staff had also reported that the deck was not built accordingly to the guidelines, in particular, the deck is too massive and it dominates the rear yard. She then said that they recommended that the deck be 12' by 18,' which would be in scale with the existing house.

Ms. Rackers stated that there are six Design Guidelines that had been cited in the staff's presentation to the Board of Architectural Review, in particular Guidelines 14-1 and 39-2. She said that Guideline 14-1 states: "Historic green areas and spaces of a site should be retained and maintained" and Guideline 39-2 states: "Porches and decks should be compatible in scale and materials with the principal structure and with adjacent and surrounding buildings." She then said that Mr. Foster was present at the Board of Architectural Review hearing, and he had stated that he owns the property, but his son lives there and he had constructed the rear deck. Mr. Foster had acknowledged that there was no permit or COA obtained, and he believed that the deck was included in the permit and COA for the garage. Ms. Rackers then said that it should be noted that there was no deck shown on the site plan when the appellant had submitted the application for the COA for the garage. At the Board of Architectural Review hearing, the appellant contended that the deck cannot be seen from the street; and because there is commercial property toward the rear, it will not take away from the character of the neighborhood or the historic district.

Ms. Rackers then said that the only comments made by the Board of Architectural Review were that the deck was too large, and property owners within an historic district should be aware of the regulations, and what permits are needed. She said that the Board of Architectural Review had voted unanimously to disapprove the appellant's request, and advised him to work with the staff to come up with a design for a smaller deck. She then said that Mr. Foster had decided to appeal the Board's decision and submitted a letter of appeal. In that letter, the appellant had stated that the Board had acted in an arbitrary manner, and that a 12' by 18' deck was an arbitrary figure.

Ms. Rackers stated that prior to her completing the staff report, she had visited the site and it does seem to violate the guidelines. She said that the deck takes up most of the green space to the rear and it is larger than what would be expected. At this time, Ms. Rackers directed the Commission's attention to a photograph of the subject site. She said that in viewing the back yard, the deck extends nearly to the front of the garage and the driveway extends over to the side property line, leaving only a small portion of green space.

Mr. Aten asked where Ransom Avenue is located. Ms. Rackers said that Ransom Avenue is to the front of the house.

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In conclusion, Ms. Rackers stated that when the staff had reviewed this appeal, it was determined that the Board of Architectural Review did not act arbitrarily, and their decision was consistent with past cases. She also said that the Planning staff could not find any flaws in Historic Preservation's decision; therefore, the staff is recommending that the Board's decision remain, based upon the appellant failing to follow proper procedures in obtaining the building permit or the COA and the fact that the deck appears to violate the design guidelines.

Planning Commission Comments and Questions – Ms. Godfrey confirmed that the appellant did not apply for a building permit or a Certificate of Appropriateness. Ms. Rackers said that that was correct. She then said that applying for a building permit is required by Article 5 of the Zoning Ordinance and applying for a Certificate of Appropriateness is required by Article 13 of the Zoning Ordinance. Ms. Godfrey then asked if this had not been heard by the Board of Architectural Review, would Building Inspection have made a decision on the deck. Ms. Rackers noted that the appellant had violated two Articles from the Zoning Ordinance. Ms. Godfrey clarified that there was a violation with two separate Articles from the Zoning Ordinance. Ms. Rackers agreed.

Mr. Penn asked if the deck is free standing or attached to the house. Ms. Rackers said that she was not sure, but she thought it was attached to the house. Mr. Foster clarified that the deck was not attached to the house, but that it abuts the house.

Ms. Whitman asked if the back yard dimensions are known. Ms. Rackers said that that is unknown, and referred the question to Mr. Foster. Mr. Foster said that the lot size is 60' by 150.' Ms. Whitman then asked what the dimensions are for the rear of the house to the edge of the property. Mr. Foster replied that the rear portion is approximately 40 feet.

Division of Historic Preservation Presentation - Amelia Armstrong, Historic Preservation Specialist, was present. She submitted into the record the Certificate of Appropriateness Application, the May 9, 2007 Board of Architectural Review minutes, Article 13 of the Zoning Ordinance (Historic Preservation section), as well as the Design Guidelines. She then presented the following PowerPoint presentation to the Planning Commission, and gave a brief description of each slide.

Slide 1- is a view of the subject site, front façade.

Slide 2 – is a view of the garage that was removed, noting that it was 18' by 21.' She said that the appellant had requested to increase the size to 24' by 27.

Slide 3 – is a view of the 18' by 18' deck that abuts the house.

Slide 4 – is a view of the garage area after demolition was completed, as well as the edge of the deck on the right.

Slide 5 – is a closer view of the deck.

Slide 6 – is the back view of the deck looking toward the house, noting that there are no steps leading into the yard.

Slide 7 - is another back view of the deck (picture taken in February 2008), noting that this time there are steps leading into the yard.

Slide 8 – is a side view of the deck with the garage on the left.

Slide 9 – is a view of the subject site taken from the neighbor's property.

Slide 10 – is the site plan that was submitted in May 2007.

Ms. Armstrong stated that during the site inspection for the garage, she had discovered the construction of the deck. She then told the property owner that they needed to apply for a permit from both the Division of Historic Preservation and Building Inspection. She said the Board of Architectural Review had deemed the deck to be too massive and it took up too much green space. Ms. Armstrong said that this is an "as built" situation, and not necessarily a new proposal, so the staff is limited as far as the ramifications are concerned. If the staff could have reviewed the appellant's request prior to construction, then a suggestion could have been made on the size of the deck.

Planning Commission Comments and Questions – Mr. Penn confirmed that the application was submitted after the fact. Ms. Armstrong said that she became aware of the deck during the site visit for the garage construction. She said that the previous pictures were taken prior to the construction of the garage, and at that time it was noted that the deck was built before the garage. She then left notice for the appellant to contact the Division of Historic Preservation regarding the deck. Once the appellant had contacted their office, the staff then notified him that he needed to submit an application to obtain the approval from the Board of Architectural Review.

Mr. Aten asked, hypothetically, if this were a ground terrace, with benches and furniture, if that would cause a problem. Ms. Armstrong said that if this were a paved area, the staff would review the application and present the case to the Board of Architectural Review, who then makes a decision. She said that the staff would only weigh in on certain issues, for example the amount of green space being left. Mr. Aten then said that there are several issues to consider, and asked if the primary problem is the green space. Ms. Armstrong said that the back yard space is the primary problem. She noted that the staff reviews all four sides of the structure desiring to retain as much green space as possible. Mr. Aten said that this is an extension of the living space, whether it is green or other. Ms. Armstrong said that the staff reviews all four sides of the structure and then determines how much green space will be removed through the use of hardscaped or built environment. She said that the staff is concerned with retaining a certain amount of green space in order to keep the character of that yard. Mr. Aten said that that could also be the ground or open usable outdoor space. He then said that his main objection to this

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case is the architectural issue rather than the visual concern of the area. Ms. Armstrong clarified that open space is an area that is not actually built or an enclosed area, and green space is how much yard is left. Mr. Aten said that open space can be anything, such as buildings or paving and not necessarily grass. Ms. Armstrong said that the Design Guidelines interpret green space as anything not covering the grass. She said that open space is interpreted as anything that provides cover over the grass, such as the examples previously provided.

Ms. Godfrey said that the Design Guidelines and the scale of the deck is only one part of the issue. She said that the other issue is that the appellant had violated two Articles of the Zoning Ordinance. She then said that regardless of the scale of the deck, there is a question as to why the Ordinance was not followed. Ms. Armstrong agreed.

Mr. Mahan said that it was mentioned that a 12' by 18' deck would have been more appropriate. Ms. Armstrong said that she is unsure where those dimensions had come from. She said that the staff did not have the opportunity to review the appellant's request, and the Board of Architectural Review had deemed the 18' by 18' deck to be too massive. If the deck size were made smaller than 18' by 18', the appellant could resubmit an application to the Board of Architectural Review. Mr. Mahan asked if the deck were to be made smaller could it be seen from the street. Ms. Armstrong said that it would not matter if the deck was arranged a different way because the staff reviews all four sides of the structure when making a determination. Mr. Mahan asked if there would be no issue if the deck was 12' by 18'. Ms. Armstrong said that it would be better if the deck were to hug the house because that would leave more yard space, noting that the area between the actual garage and the deck has been affected the most.

Mr. Cravens said that guideline 14-4 reads: "Historic green areas and spaces of a site should be retained and maintained." He said that this guideline does not reference as to how this should be done. There are no ratios to reference and asked if this number is made up by the staff. Ms. Armstrong said that the guidelines refer to the 14 different historic districts, and the idea is to retain the green space. She said that when guideline 14-4 is applied, the staff determines if the project is taking up more green space than what the yard allows.

Ms. Richardson asked if there are fines applied for violating the Ordinance. Ms. Armstrong replied yes, and said that it would depend upon the end process and what Building Inspection will do.

Representation – James Amato, attorney, was present representing the applicant. He submitted "Findings of Fact" to the Commissioners, and said that before a decision is given concerning the violation the Ordinance, he encouraged the Commissioners to listen their testimony.

Mr. Amato said that there was a building permit and COA approved for a project in the back yard, which included both the garage and the deck. He said that they take great umbrage with what they call the guidelines because as the Commission can see there are no guidelines. He then said that the guidelines are vague, and they can be interpreted in any way, not to mention that the guidelines are arbitrary. In this case, they believe the Board of Architectural Review had emphasized how arbitrary, how capricious, and how vague these terms are. He said that you do not need a legal interpretation for the term "massive" because it is arbitrary. He asked what massive means, and said that the deck was not massive to the person who built it or to the people who look at it. He then said that to see the deck you will need to fly over the property because it cannot be seen from the street. At this time, Mr. Amato submitted letters of support to the Commissioners and said that the property owners on each side of the appellant are in support of the deck. He said that the staff has proven that the term massive is arbitrary by saying a deck size of 12' by 18' is not massive, but a deck that is 18' by 18' is. Mr. Amato noted that the guidelines are so vague that the words "massive" or "not massive" are not listed. He noted that there are several buildings in the neighborhood where the home owners have constructed decks. He then noted that no one from the neighborhood has appeared in front of the Board of Architectural Review or the Planning Commission to protest the deck construction.

Mr. Amato stated that the staff had indicated that if a different procedure had been followed then the deck would have been approved, and asked if this deck would be torn down due to a procedural matter. He said that the issue is the term "massive," and whether or not this ruins the character of the neighborhood. He said that the Board of Architectural Review always gets themselves into trouble when using the words too tall, too big or too massive, when this should be determined through the eyes of the beholder. Mr. Amato gave the example of a building being approved by the Planning Commission, for a 14-floor building at the corner of High Street and Broadway. He said that when the case was heard by the Board of Architectural Review it was turned down, resulting in the building not being built. At this intersection the surrounding buildings are much taller than what was being proposed at that time. He said that when terms such as massive, too big or too tall are used within a historic area, then those are not guidelines.

Mr. Amato said that there is nothing wrong with this deck, and there is green space on both sides of the deck, as well as a 40' green space area toward the rear. He said that the garage is not interference because it is part of the landscaped area. He then asked for the Planning Commission to review those items and determine that the word massive is vague in itself. In conclusion, Mr. Amato said that they had obtained the proper permits, as well as the COA to demolish and reconstruct the garage and the deck. He then said that at the time the permits were established the deck was not being built, but the procedure was being followed. Once the permits were obtained then the building inspector comes into play.

At this time, Mr. Amato introduced Mr. Hoagland, former UCG Building Inspector, and asked him to describe to the Commission the accepted procedure for revising a building permit. Mr. Hoagland said that if there is already a permit established for the property then most of the time it is not a problem to add a deck. He said that since this property is within the H-1 district then the Certificate of Appropriateness was required. If the appellant had shown the deck on the original drawing, it probably would have been approved. He said that it is hard for a building official to tell someone all they need to do is meet the construction strength of the deck. Mr. Hoagland said that this particular deck is well built and well over the requirements for residential construction; the size of the deck may sound large, but there is a 2' bench area on all sides of the deck. The 2' seating area, along with the table and other items, restrict the size of the deck. He said that normally the process is not an issue, but because this property is within an H-1 area, and the deck was not shown on the original drawing then this has created a problem.

In conclusion, Mr. Hoagland stated that he came into this situation after the deck was built. He said that he had spoken with Ms. Armstrong to find out exactly what was needed, and submitted the appropriate paper work. He then said that the residential inspector had inspected the deck, and noted that it was well within the guidelines for residential construction. He believed the deck would have been approved if the correct process was observed. He noted that as far as the construction of the deck, there is not an issue; however, with the downtown redevelopment, decks and patios will become an issue in the future. He said that people will hesitate to come to the downtown area if there will be problems such as this.

Planning Commission Comments and Questions – Ms. Godfrey asked if the requirements of Article 5 made any difference in this case. Mr. Hoagland said that the appellant did not obtain a Certificate of Appropriateness for the deck. He said that it was after the fact that the appellant had applied for the COA, and that is why the building permit was not released. He then said that in most cases this would not be an issue but the property was within the H-1 area. Ms. Godfrey asked if a property is not within the Historic District and a decision is made to add another structure, if the appellant does not have to obtain a building permit. Mr. Hoagland said that if a property owner is building a garage outside the H-1 area and decides to build a deck then it would not be an issue to submit a revised site plan to Building Inspection for approval, after the fact. Ms. Godfrey clarified that this is done after the fact. Mr. Hoagland replied yes it is. Ms. Godfrey further clarified that if she lived outside the H-1 area, and obtained a permit to build one thing but decided to build something else then a permit would be issued after the fact, even though it is in violation of Article 5 of the Zoning Ordinance. Mr. Hoagland said that the second permit would still need to be obtained, but there are a lot of times property owners do not know a permit is needed for a deck. He said that since this property is within the H-1 area, it has created a problem. He said that if this same type of deck was built in another neighborhood outside the H-1 area, then it would be allowed. The property owner or contractor would only need to pay for the second permit. He said that in most cases a permit is needed for any type of structure placed in your yard, and many do not know this is a requirement.

Allen Foster was present, and said that the deck was built without a permit, but there was a permit for the garage. He said that in the past he has always been able to attach a deck to a garage permit and pay the difference. He said that this is the first time dealing with the H-1 area, and he did not realize that it was different from any other area. He then said that he does not know how to interpret words like "massive" or "scope" to create an acceptable design for an area. Mr. Foster said that they had built the deck because they thought they would be able to attach the deck to the garage permit, just as it has been done in the past.

At this time, Mr. Amato submitted the following pictures to the Commissioner's, and gave a brief description of each:

Photograph 1 – is a view of a larger structure in the area that dominates the site.

Photograph 2 – is a view of the subject property (on right), showing no sign of the deck being seen from the street.

Photograph 3 – is a view of the right side of the subject property, showing a green space area next to the area where the deck is built.

Photograph 4 – is a view of the deck.

Photograph 5 – is a closer view of the deck. The photograph shows the grassy area and the trees leading toward the fence line.

Photograph 6 – is a view of the of the subject property taken from the adjacent property. This photograph shows the amount of screening on the side of the deck.

Photograph 7 – is a view of the rear portion of the yard that will be green space area, noting that this area is off the rear of the deck.

Photograph 8 – is a view of an existing deck on another property within the area. The deck is the same scale and the same material as the appellant's deck.

Photograph 9 – is a view of a house on Central Avenue. This photograph shows a deck that is about the same square footage as the appellant's deck.

Photograph 10 – is another view of the house located on Central Avenue. This photograph shows how large the deck is, and it also shows that the deck is the same width of the house.

Referring to the letters that were previously submitted, Mr. Amato said that Evelyn Littrell stated that she has property a few houses from the appellant's house and she is enthusiastic about the deck. She also stated that, in her opinion, the deck is by no stretch of the imagination either too massive or out of scale with the neighborhood.

Mr. Amato then said that Susan Armstrong, residing at 135 Ransom Avenue, had written that she had owned a home that is two doors down from the Foster property and she believes the deck should not be considered too massive or out of scale for the neighborhood. She further stated that she had personally inspected Mr. Foster's deck and finds nothing wrong with it, and she likes it very much to the point where she would like to have one just like it.

Mr. Amato stated that Gerald and Melissa Thompson, residing at 131 Ransom Avenue had written the following letter:

"Dear members of the Planning Commission:

It has come to our attention that the Board of Architectural Review has decided that they think that the deck, which Allen Foster has built at 129 Ransom Avenue, is "too massive and out of scale" for the neighborhood. We live right next door to Mr. Foster's property, and we do not agree with the Board of Architectural Review's determination. We think that the deck is perfectly in scale with the neighborhood, and in no way qualifies as 'too massive.'"

In conclusion, Mr. Amato stated that Arthur Salomon, Stuart Properties, LLC, had written a letter to convey how pleased they are that Mr. Foster has invested the time, energy and financial resources necessary to build the deck on the rear of the residence. Mr. Salomon further stated that they have property interest in the four-plex, which is located next door (127 Ransom Avenue) to Mr. Foster's property. He said that they are pleased that someone has taken upon themselves to make a sizeable investment in the neighborhood.

Division of Building Inspection – Bob Carpenter, Building Inspector, Sr., was present. He clarified that a building permit was never issued for the deck, but there was a permit issued for the garage, noting that the remodeling of the interior was also included in that permit. He said that the procedure is to allow the applicant to remedy the problem prior to citing them, which includes the permit being amended.

Planning Commission Comments and Questions – Mr. Holmes asked if the building permit can be amended, after the fact. Mr. Carpenter replied yes, and said that the square footage is added onto the original permit, and a new building permit is often issued.

Staff Questions – Ms. Rackers asked if when a structure is within the H-1 district, would the permit be amended without sending it through the Board of Architectural Review process. Mr. Carpenter replied no, and said that anything within the H-1 district has to have a Certificate of Appropriateness before it is permitted. He said that any expansion on the original permit would need to be approved by the Board of Architectural Review.

Division of Planning Rebuttal - Ms. Rackers clarified that during her presentation, she did not say that if the appellant had gone through the process the result would have been different - it may have been different. At least it would have had the benefit of a review. She said that one of the Board of Architectural Review comments was that the deck was too big, whether or not the appellant had obtained the permit. She then said that an 18' by 18' deck is out of scale with the house. It may not be out of scale with the neighborhood, but it is out of scale with the house. She said that 12' by 18' is proportional (i.e. is a 2:3 proportion), and it is not an arbitrary figure.

Ms. Rackers then said that Article 5-2(a) of the Zoning Ordinance states the following:

"No building or other structures shall be erected, moved, added to, or structurally altered; nor shall any of said activities be commenced without a building permit therefore, issued by the Division of Building Inspection."

She said that Mr. Carpenter did say that the appellant can add onto the permit after the fact, but not within an H-1 district; that would have triggered the process for a Certificate of Appropriateness from the Board of Architectural Review.

Division of Historic Preservation Rebuttal - Ms. Armstrong said that the Design Guidelines are not written arbitrarily, but are written broadly to reflect each individual project. She said that the H-1 process requires a review prior to construction, which includes the details for the mass, scale and design. She then said that the staff does review decks, quite often; and during those reviews the mass, scale and the amount of coverage is looked at. The Board of Architectural Review did not disapprove the appellant's deck because it was already built; rather, they had disapproved their request because as an as-built structure, it does not meet the guidelines. Ms. Armstrong requested that the Commission uphold the Board of Architectural Review decision by disapproving the appellant's request.

Planning Commission Comments and Questions – Ms. Whitman asked if the deck had been 12' by 18' then would the Board of Architectural Review have approved that request. Ms. Armstrong said that the staff would have recommended approval, but the decision depends on the Board of Architectural Review.

Mr. Holmes said that there is evidence of other decks in the area, and asked if the Board of Architectural Review had approved those requests. Ms. Armstrong said that not all of them were approved by the Board of Architectural Review, as many were done predating the H-1 District.

Mr. Penn commented that it was said that the 2 to 3 ratio would have been approved, and asked if that scale is in the Design Guidelines. Ms. Armstrong said that the guidelines are written broadly, and dimensions are not set. Mr. Penn said that this is something the Board of Architectural Review would interpret themselves; this has nothing to do with the guidelines, but rather the way the Board of Architectural Review interprets those guidelines. Ms. Armstrong said that that is not necessarily true. She said that the request is weighed with the mass and the scale of the structure, and everything is taken into consideration. Mr. Penn said that the 2 to 3 ratio would be consistent. Ms. Armstrong said that the guidelines are reviewed broadly to what is actually on site. Mr. Penn said that in reviewing the Design Guidelines, he cannot find where it stated the ratio number. Ms. Armstrong again said that the guidelines are written very broadly, and the staff does not set the dimensions. She said that an appellant will submit a proposal to the staff, and then the staff will review that proposal and compare it to the surrounding area. Mr. Penn said that he does not understand how the public can interpret the guidelines. Ms. Armstrong said that if the appellant had come forth with the deck, then they could have guided him as to what could be approved per the Design Guidelines.

Mr. Holmes said that the 2 to 3 ratio was referred to previously in the hearing, and asked if this ratio is in the Design Guidelines. Ms. Rackers said that the 2 to 3 ratio is a normal proportion, and it is not in the guidelines. She said that that Board of Architectural Review refers to mass, and scale and whether or not a proposal is in scale with the property. The 18' by 18' size is a 1 to 1 ratio where 12' by 18' is a 2 to 3 ratio. She said that this figure is not arbitrary because it is a direct proportion of something that is typical, normal and of proportional dimensions.

Petitioner's Rebuttal – Mr. Amato said that from the previous testimony, it proves that the guidelines are arbitrary, capricious and vague; and a reasonable person cannot interpret the guidelines. He asked that the Planning Commission apply the fairness doctrine to this case. The appellant has put a lot of money into this property, and his son did not intentionally subvert the process. He noted that the permit was obtained from Building Inspection and the Board of Architectural Review for the garage, and it was assumed that at the end of the project the permit for the deck could be included.

Planning Commission Comments and Questions – Mr. Cravens said that when designing a deck, it is generally done to the size of the living room and/or kitchen. He said that a deck will hold the same items as does a living room or kitchen; for example, tables, chairs, grills, etc. He then said that an 18' by 18' deck, especially with the seating area, would be an adequate size. In reviewing the site plan, it appears that there is still enough room for vehicles to enter the garage; and as for the permitting process, he believes that there are several decks that did not register for a permit. Mr. Cravens said that he supports the appellant in this case.

Mr. Penn asked if the new Design Guidelines will help the public to understand what "scale" is. Ms. Kerr, Historic Preservation, said that one of things that will help facilitate the situation is the architectural illustrations and photographs. She said that the new Design Guidelines will show both written and visual text to help with the understanding of what is needed. Mr. Penn said that understanding the guidelines has been the issue this entire time, and the guidelines need to be more user friendly. Ms. Kerr said that she believes the new guidelines will be more help in interpreting what is needed.

Mr. Gardener said that the appellant's attorney has made a reference to the guidelines being arbitrary, and the Board's decision being capricious. He said that the Ordinance does not require the Planning Commission to determine the Board of Architectural Review was arbitrary and capricious. He then said that the Planning Commission is applying the same guidelines as did the Board of Architectural Review. If the Commission should side with the Board of Architectural Review, then the findings have been provided; but if the Commission should side with the appellant then those findings can be provided by the Law Department.

Action - A motion was made by Mr. Day to approve BOAR 2007-3 and to adopt the following findings of fact, based on the evidence presented in today's hearing and the review of the record of the BOAR case related to 129 Ransom Avenue:

1. The deck constructed at the subject property is not in violation of the Design Guidelines adopted by the Historic Preservation Commission because:
 - a. The deck does not unduly remove existing green space from the property; and
 - b. The deck is not out of proportion to the house and garage located on the property.
2. The appellant did not follow the required procedure to obtain a Certificate of Appropriateness or a building permit, as he should have done; but the building permit may be amended to permit the deck at its built size.

This motion is to approve the appeal based on the Findings of Fact and grant a Certificate of Appropriateness for the deck at 129 Ransom Avenue.

The motion was seconded by Mr. Mahan, and carried 8-1 (Vaughn recused; Godfrey opposed; Roche-Phillips absent)

Note: Chairman Vaughn returned to the meeting at this time.

- B. EPA CONSENT DECREE** – In view of the EPA Consent Decree, Mr. Penn suggested that at the April 17, 2008 work session, the Commission should discuss the possible effects that this will have on the Planning Commission, the Zoning Ordinance and their standard procedures. He then requested that this item be placed on the April 17, 2008 work session agenda.

Mr. Vaughn said that in light of recent events, as well as the discussions and debates among the Commissioners regarding past cases, it would be appropriate to place the EPA Consent Decree on the April 17, 2008, work session agenda. He said that he agrees that the Ordinance and procedures need to be discussed. He then said that he would like to appoint a Committee to review the EPA Consent Decree.

Mr. King said that the Commission could authorize the Chair to proceed to appoint that Committee, administratively, at today's meeting, which they proceeded to do.

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 10-0 (Roche-Phillips absent) to add the EAP Consent Decree to the April 17, 2008 work session meeting; as well as appoint a Committee to review the EPA Consent Decree.

VII. STAFF ITEMS – Staff items, if any, will be considered at this time.

- A. UPCOMING WORK SESSION** – Mr. King reminded the Commissioner members of the upcoming work session on March 20, 2008. He said that there will be a discussion regarding digital billboards, and the staff will provide a full update concerning the Infill and Redevelopment Task Force activities.

Mr. King then said that Management Partners has made a number of recommendations for the Planning Commission, and those recommendations will be presented the Commissioners at the work session as well.

- B. APA AUDIO CONFERENCE** - Ms. Rackers said that there will be an APA audio-conference in the Division of Planning Conference Room on Wednesday, March 19, 2008, beginning at 4:00 p.m. The title of this conference is "Confronting NIMBYS" and will count toward training credit for the Planning Commission members, as well as staff. She said that if any Commissioners would like to attend this course to contact her by Tuesday, March 18, 2008.

Mr. Vaughn asked if the APA audio-conference is receiving participation from Commissioners. Ms. Rackers said that both the Planning Commission and Board of Adjustment members attend the audio conference. She noted that Ms. Roche-Phillips has brought her class, and people who need credit for AICP have also attended. She then noted that the attendance for the training courses are increasing.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. NEXT MEETING DATES -

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 20, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	March 26, 2008
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers	March 27, 2008
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	April 3, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	April 3, 2008
Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2nd Floor Council Chambers	April 10, 2008

- X. ADJOURNMENT** - There being no further business, the meeting was adjourned at 4:53 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary

CT/CG/TM/JE/BR/BS/DB

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