

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

May 10, 2018

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

Planning Commission members present – Bill Wilson; Will Berkley; Headley Bell; Patrick Brewer; Mike Cravens; Karen Mundy; Mike Owens; Carolyn Plumlee; and Frank Penn. Larry Forester and Carolyn Richardson were absent.

Planning Staff members present – Jim Duncan; Traci Wade; Tom Martin; Hal Baillie; Cheryl Gallt and Denise Bullock. Other staff members in attendance were Vaughan Adkins, Division of Engineering; Stephen Parker, Division of Traffic Engineering; Captain Joshua Thiel, Division of Fire & Emergency Services; Roger Daman, General Services and Tracy Jones and Andrea Brown, Department of Law.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 9-0 (Forester and Richardson absent) to approve the minutes of the April 12, 2018, meeting.

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

- a. **PLN-MJDP-18-00017: PAPPERT PROPERTY (AMD)** (6/3/18)* - located at 2811 SPURR ROAD, LEXINGTON, KY
Council District 12
Project Contact: EA Partners

Note: The Planning Commission postponed this item at their April 12, 2018, meeting. The purpose of this amendment is to revise the layout and add townhomes.

The Subdivision Committee Recommended: **Postponement**. The proposed plan does not meet the conditional zoning restrictions.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Discuss spacing of local street from Spurr Road and the need for a waiver.
13. Discuss access to the pump station.
14. Discuss irregular shape of Lot 5.
15. Discuss compliance with approved conditional zoning restrictions (MAR 2005-40).

Representation present – Rory Kahly, EA Partners, requested a one-month postponement of this request to consider the feasibility of the project.

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

Action - A motion was made by Mr. Owens, seconded by Mr. Brewer and carried 9-0 (Forester and Richardson absent) to postpone **PLN-MJDP-18-00017: PAPPERT PROPERTY (AMD)** to the June 14, 2018, meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, May 3, 2018, at 8:30 a.m. The meeting was attended by Commission members: Carolyn Plumlee, Frank Penn, Mike Owens, Headley Bell and Will Berkley. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Stephen Parker, Division of Traffic Engineering. Staff members in attendance were: Jim Duncan, Traci Wade; Tom Martin; Cheryl Gallt; Hal Baillie; Denise Bullock; Captain Greg Lengal & Captain Joshua Thiel, Division of Fire & Emergency Services; Andrea Brown and Tracy Jones, Department of Law and Roger Daman, General Services. 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.

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

2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

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

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

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

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

Ms. Wade announced the following agenda items appearing on the Consent Agenda:

1. **PLN-MJSUB-18-00013: HILLENMEYER PROPERTY EAST (AMD) (7/1/18)*** - located at 745 & 803 GREENDALE ROAD AND 2566 SANDERSVILLE ROAD, LEXINGTON, KY
Council District 2
Project Contact: EA Partners

Note: The purpose of this amendment is to reflect the RML-Citation (PLN-MJDP-16-00007) zone change and revise the lot layout.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Landscape Examiner's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan and required street tree information.
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 8. Greenspace Planner's approval of the treatment of greenways and greenspace.
 9. Resolve proposed trail location within greenway.
 10. Resolve timing of construction of Sandersville Road relative to the adjoining property.
2. **PLN-MJDP-18-00029: PENINSULA (A PORTION OF) AND SQUIRES APARTMENTS (7/1/18)*** - located at 440 AND 480 SQUIRES ROAD (A PORTION OF), LEXINGTON, KY
Council District 7
Project Contact: EA Partners

Note: The purpose of this amendment is to revise the building type, the parking and clubhouse layout.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Dimension pools on plan.
13. Dimension mail kiosk (building) on plan.
14. Dimension garage buildings on plan.
15. Resolve parking lot location on east side of Squires Circle.
16. Resolve on-site lighting.

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

3. PLN-MJDP-18-00030: ETHINGTON & ETHINGTON PROPERTY, TRACT 1 (AMD) (7/1/18)* - located at 4145 AND 4235 HARRODSBURG ROAD, LEXINGTON, KY
Council District 10
Project Contact: Vision Engineering

Note: The purpose of this amendment is to depict the development of Lots 2 & 3.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Landscape Examiner's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Department of Environmental Quality's approval of environmentally sensitive areas (sinkholes).
 7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 9. Division of Waste Management's approval of refuse collection locations.
 10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 11. Denote: A Geotechnical Report for identified sinkhole areas shall be submitted to the Division(s) of Environmental Quality and Planning prior to plan certification.
 12. Board of Adjustment's approval of the requested B-1 variance prior to certification of the plan.
 13. Denote architectural details for commercial buildings façade on Harrodsburg Road frontage shall comply with exhibit on file with the Division of Planning and Building Inspection.
 14. Resolve note #11 and scope of proposed landscaping.
4. PLN-MJDP-18-00031: INDIAN HILLS SUBDIVISION, UNIT 1, BLOCK "A," LOTS 8, 9 & 10 (AMD) (7/1/18)* - located at 3090, 3094 AND 3098 HARRODSBURG ROAD, LEXINGTON, KY
Council District 10
Project Contact: CDP Engineers

Note: The purpose of this amendment is to establish the final layout to Unit 1, Block A, Lots 9 and 10 and to depict proposed improvements per the P-1 zone, establish a landscape screening detail and continue a 10' landscape easement established on Lot 8 (DP 2004-25).

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Landscape Examiner's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 9. Division of Waste Management's approval of refuse collection locations.
 10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 11. Addition of owner's/developers name and address.
 12. Remove existing building line on Lots 9 and 10 and denote that the amended final record plat must be recorded prior to certification of the development plan.
 13. Addition of all dimensions to structure on Lot 10.
 14. Denote record plan designation for Lots 9 and 10.
 15. Correct site statistics to reflect proposed parking on Lots 9 and 10 as depicted.
 16. Resolve stormwater management for all lots.
5. PLN-MJDP-18-00032: MEADOWTHORPE COMMUNITY BUSINESS CENTER (7/1/18)* - located at 1447 ANTIQUE DRIVE, LEXINGTON, KY
Council District 2
Project Contact: Vision Engineering

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

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

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

5. Urban Forester's approval of tree preservation plan.
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 9. Division of Waste Management's approval of refuse collection locations.
 10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 11. Remove incorrect zone notation on plan face.
 12. Resolve Antique Drive improvements.
6. PLN-MJDP-18-00035: SULLIVAN PARK & DEVEREUX SUBDIVISION (7/1/18)* - located at 135, 137 & 139 AMERICAN AVENUE AND 112, 114, 116 & 118 BURLEY AVENUE, LEXINGTON, KY
Council District 3
Project Contact: Barrett Partners

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Landscape Examiner's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 7. Greenspace Planner's approval of the treatment of greenways and greenspace.
 8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 9. Division of Waste Management's approval of refuse collection locations.
 10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 11. Denote compliance with Article 15-7 and denote graphically on plan as appropriate.
 12. Document compliance with open space requirements.
 13. Resolve increased screening for dumpster relative to adjoining Single Family Residential (R-1C zone) property.
7. PLN-MJDP-18-00037 (AKA DP 2007-22): LITTLE PROPERTY, UNIT 1-A, LOT 14 (7/24/18)* - located at MACKINWOOD DRIVE AND ALLENRIDGE POINT, LEXINGTON, KY.
Council District 12
Project Contact: Midwest Engineers

Note: The Planning Commission originally approved this plan on March 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 parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Approval of street names and addresses per e911 staff.
8. Addition of bearings and distances.
9. Addition of conditional zoning restrictions.
10. Correct note number 4.
11. Verify the uses of the property for parking calculations.
12. Identify access to property across the street.

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

The Subdivision Committee Recommended: **Reapproval**, subject to the conditions previously approved, replacing conditions #3 & #4 and adding the following new condition:

3. ~~Building Inspection's~~ Landscape Examiner's approval of landscaping and landscape buffers.
7. ~~Addressing Office's~~ Approval of street names as per e911 staff and addresses.
13. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

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

Audience members requesting full discussion: There were none.

Commission member requesting full discussion: There were none.

Action - A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 9-0 (Forester and Richardson absent) to approve the items listed on the Consent Agenda, as recommended by the Subdivision Committee.

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

The procedure for these hearings is as follows:

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

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

1. FINAL SUBDIVISION PLAN

- a. PLN-MJSUB-18-00016: GOODPASTOR & GOODWIN PROPERTY (SUNSET ACRES) (JAMES K. & SUSAN D. THORNBERRY PROPERTY) (AMD) (7/1/18)* - located at 3459, 3501, 3513 HALEY ROAD, LEXINGTON, KY
Council District 12
Project Contact: Thoroughbred Engineers

Note: This development plan requires the posting of a sign, and an affidavit of such. The purpose of this amendment is to subdivide three lots (211.26 total acreages) into five lots (Tract 1B-49.97 acres; Tract 2B-40.04 acres; Tract 3B-40.54 acres; Tract 4B-40.00 acres and Tract 5B-40.71 acres) in an A-R zone.

The Subdivision Committee Recommended: Postponement. There were some questions regarding the plan format, missing information and waivers that are needed.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Urban Forester's approval of tree protection area(s) and required street tree information.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Combine the two plan sheets into one plan sheet (24"X36" maximum size).
8. Addition of access easement note per the Land Subdivision Regulations.
9. Addition of easement maintenance note per Article 5-4(g) of the Land Subdivision Regulations.
10. Denote all non-buildable areas.
11. Denote adjacent property with dashed lines.
12. Correct owner's certification.
13. Correct Engineer/Surveyor certification.
14. Correct Planning Commission certification.
15. Denote Health Department approval for septic tank required at the time of building permit.
16. Denote KYDOT's approval of proposed access to Lot 5B (Haley Road).
17. Correct plan title and label as amended.
18. Remove old property line information from plan.
19. Remove consolidation symbol from plan.
20. Remove side yard setback from plan.
21. Discuss waiver to required frontage for Lots 1B and 4B per Article 6-4(c) of the Land Subdivision Regulations.
22. Discuss waiver of Article 6-4(j)(2) of the Land Subdivision Regulations pertaining to street construction.

Staff Presentation - Mr. Martin directed the Commission's attention to the final record plat, and briefly explained the proposed request. He indicated that the staff was recommending approval, subject to the following revised conditions:

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

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

2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Urban Forester's approval of tree protection area(s) and required street tree information.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
- ~~7. Combine the two plan sheets into one plan sheet (24"X36" maximum size).~~
- ~~8. Addition of access easement note per the Land Subdivision Regulations.~~
- ~~9. Addition of easement maintenance note per Article 5-4(g) of the Land Subdivision Regulations.~~
- ~~7.~~ 10. Denote all non-buildable areas.
- ~~8.~~ 11. Denote adjacent property with dashed lines.
- ~~9.~~ 12. Correct owner's certification.
- ~~10.~~ 13. Correct Engineer/Surveyor certification 300' setback on Lots 1B & 4B.
- ~~11.~~ 14. Correct Planning Commission certification.
- ~~15.~~ ~~Denote Health Department approval for septic tank required at the time of building permit.~~
- ~~12.~~ 16. Denote KYDOT's approval of proposed access to Lot 5B (Haley Road).
- ~~17.~~ ~~Correct plan title and label as amended.~~
- ~~13.~~ 18. Remove old property line information notations from plan.
- ~~14.~~ 19. ~~Remove consolidation symbol from plan~~ Addition of Urban County Engineer Certification.
- ~~15.~~ 20. Remove side yard setback from plan.
- ~~16.~~ 21. Discuss Provided the Planning Commission grants the requested waiver to required frontage for Lots 1B and 4B per Article 6-4(c) of the Land Subdivision Regulations.
- ~~22.~~ ~~Discuss waiver of Article 6-4(j)(2) of the Land Subdivision Regulations pertaining to street construction.~~

Mr. Martin then presented the Staff Report and Findings for a Waiver of Land Subdivision Regulations for Article 6-4(c) Subdivision Regulations, pertaining to the required street frontage for the subdivision of three Agricultural Rural (A-R) lots into five lots.

The Staff Recommended: **Approval of the requested waiver**, for the following reasons:

1. Granting the requested waiver will not adversely affect public health, welfare and safety as the lots are limited to agricultural use and will not be utilized by the general public on a consistent basis.
2. Granting the waiver is consistent with the intent of Article 1-5(a) of the Land Subdivision Regulations for Exceptional Hardship.
3. Granting the waiver is consistent with Article 6-4(j) of the Land Subdivision Regulations governing subdivisions in the A-R zone.

This recommendation was made subject to the following additional requirements:

- a. The existing driveways to be utilized as the access easements shall be reconstructed to the approval of the Divisions of Traffic Engineering and Engineering prior to certification of the final record plat.
- b. Maintenance responsibilities for the access easements shall be denoted on the final record plat.

Findings for appropriateness of access easements as sole access for certain lots:

1. Allowing each of the single lots to be accessed only via the access easement is appropriate for the proposed subdivision and consistent with Article 1-5(a) the Land Subdivision Regulations.

Commission Questions – Mr. Penn asked if the access easement would serve both lots. Mr. Martin explained that the existing driveway serves the front properties and would also serve the rear lots. As far as the maintenance of the driveway, the staff believed all parties would be responsible for the maintenance and that should be denoted on the final record plat, as noted on the waiver request. Mr. Penn then asked if the maintenance of the access easement would be the responsibility of both properties. Mr. Martin replied affirmatively.

Representation – Kurt Hesselback, Thoroughbred Engineering, indicated that the applicant was in agreement with the staff's recommendation, as well as the recommendation made on the waiver report. He submitted documentation for the posting of a sign, and an affidavit for the record. He also presented a series of photographs of the property and gave a brief description of each.

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

Commission Questions – Ms. Plumlee asked if the property owners would maintain the driveway. Mr. Hesselback replied affirmatively, and added that a note could be placed on the final record plat indicating that both property owners would mutually share the responsibility of the access easement.

Ms. Mundy asked if a new condition should be added concerning the maintenance of the access easement. Ms. Wade indicated that the waiver report does include a condition for the maintenance responsibilities.

Mr. Cravens said that it should be made clear which property owners are responsible for which access easement. Mr. Hesselback said that the responsibility would only pertain to the lots that use the access. Mr. Wilson asked if the final

record plat would indicate which lots are responsible for which access easement. Ms. Wade replied that the staff would design a note indicating which lots are responsible for which access easement. Mr. Hesselback said that typically there is a reference in the deed.

Action - A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 9-0 (Forester and Richardson absent) to approve **PLN-MJSUB-18-00016: GOODPASTOR & GOODWIN PROPERTY (SUNSET ACRES) (JAMES K. & SUSAN D. THORNBERRY PROPERTY) (AMD)**, as recommended by the staff.

Action - A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 9-0 (Forester and Richardson absent) to approve the findings for the waivers of Article 6-4(c) Subdivision Regulations, pertaining to the required street frontage for the subdivision of three Agricultural Rural (A-R) lots into five lots, as recommended by the staff.

2. DEVELOPMENT PLANS

- a. PLN-MJDP-18-00018: EAST SEVENTH STREET ADDITION (6/3/18)* - located at 661 MAGNOLIA AVENUE, LEXINGTON, KY
Council District 1
Project Contact: Element Design

Note: The Planning Commission postponed this item at their April 12, 2018, meeting.

The Subdivision Committee Recommended: Postponement. There are some questions regarding the proposed use(s), required parking and lack of required information.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Remove extraneous architectural information from plan.
11. Denote FAR per Article 21 of the Zoning Ordinance.
12. Correct Note #6.
13. Addition of entire property to development plan.
14. Correct plan title.
15. Denote height of proposed building in feet.
16. Denote adjoining property zoning classification.
17. Addition of topographic information and source.
18. Addition of Planning Commission certification.
19. Addition of Owner's certification.
20. Denote owner/developer information.
21. Addition of street cross-section.
22. Denote dumpster location.
23. Discuss proposed use(s) and required parking generator.
24. Discuss proposed use for remainder of property and access.

Staff Presentation - Mr. Martin directed the Commission's attention to the final development plan, and briefly explained the proposed request. He indicated that the staff was recommending approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. ~~Remove extraneous architectural information from plan~~ Clarify parking requirement – 1 per 600 square feet.

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

11. Denote ~~FAR per Article 21 of the Zoning Ordinance~~ no development of the remainder of Lot 23 until a final development plan is approved and certified.
12. Correct Note #6.
13. ~~Addition of entire property to development plan~~ Clarify use and size of structures on remainder of Lot 23.
14. Correct plan title.
15. ~~Denote height of proposed building in feet.~~
16. ~~Denote adjoining property zoning classification.~~
17. ~~Addition of topographic information and source.~~
18. ~~Addition of Planning Commission certification.~~
19. ~~Addition of Owner's certification.~~
20. ~~Denote owner/developer information.~~
15. 21. Addition of street cross-section.
16. 22. Denote dumpster location.
17. 23. ~~Discuss proposed use(s) and required parking generator~~ Dimension proposed structures.
24. ~~Discuss proposed use for remainder of property and access.~~
18. Discuss location of construction entrance.

Commission Questions – Mr. Penn asked if conditions #18 could be changed to resolve. Mr. Martin replied affirmatively.

Representation – Billie Motsch, Element Design, indicated that the applicant was in agreement with the staff's recommendation and requested approval.

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

Action - A motion was made by Ms. Plumlee, seconded by Mr. Cravens, and carried 9-0 (Forester and Richardson absent) to approve **PLN-MJDP-18-00018: EAST SEVENTH STREET ADDITION**, as recommended by the staff, changing condition #18 to read: "Resolve location of construction entrance."

- b. **PLN-MJDP-18-00028: TURFLAND MALL (CHICK-FIL-A) (AMD) (7/1/18)*** - located at 2025 HARRODSBURG ROAD, LEXINGTON, KY
Council District 11
Project Contact: Interplan, LLC

Note: The purpose of this amendment is to increase the square footage for the kitchen and revise the parking and circulation on the property.

The Subdivision Committee Recommended: **Postponement**, due to the number of conditions.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Correct spelling in plan title.
11. Remove "proposed" from adjacent lot.
12. Addition of insert for area of amendment.
13. Addition of insert that depicts details of proposed site improvements.
14. Addition of topography on insert.
15. Addition of existing and proposed driveways on insert.
16. Addition of walkways, parking spaces and drive lanes on insert.
17. Addition of access points for construction vehicles on insert.
18. Clarify street cross-sections and denote location on plan where the property fronts on Harrodsburg Road.
19. Dimension all buildings and locations.
20. Denote existing and proposed easements on plan on insert.
21. Combine all site statistics per handout due to revisions in the B-6P.
22. Addition of tree protection note and tree canopy statistics.

Staff Presentation - Ms. Gallt directed the Commission's attention to the final development plan, and briefly explained the proposed request. She indicated that the staff was now recommending approval, subject to the following revised conditions:

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. ~~Correct spelling in plan title~~ Dimension canopies including the height in feet.
11. ~~Remove "proposed" from adjacent lot.~~
12. ~~Addition of insert for area of amendment.~~
13. ~~Addition of insert that depicts details of proposed site improvements.~~
14. ~~Addition of topography on insert.~~
15. ~~Addition of existing and proposed driveways on insert.~~
11. 16. Addition of pedestrian walkways, parking spaces and drive lanes on insert.
17. ~~Addition of access points for construction vehicles on insert.~~
18. ~~Clarify street cross-sections and denote location on plan where the property fronts on Harrodsburg Road.~~
19. ~~Dimension all buildings and locations.~~
20. ~~Denote existing and proposed easements on plan on insert.~~
12. 21. ~~Combine~~ Correct all site statistics per handout due to revisions in the B-6P.
22. ~~Addition of tree protection note and tree canopy statistics.~~
13. Label all outlots.
14. Denote adjacent property owners and development plan reference for parcels along Lane Allen Road.

Representation – Sean Hickman, Interplan, LLC, indicated that the applicant was in agreement with the staff's recommendation and requested approval.

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

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Forester and Richardson absent) to approve **PLN-MJDP-18-00028: TURFLAND MALL (CHICK-FIL-A) (AMD)**, as recommended by the staff.

- C. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Forester and Richardson absent) to approve the release and call of bonds as detailed in the memorandum dated May 10, 2018, from Barry Brock, Division of Engineering.

VI. **COMMISSION ITEMS**

- a. **PFR 2018-1: LEXINGTON FIRE STATION NO. 19** - a Public Facility Review to add a cellular antenna site, located at 3360 Huffman Mill Pike.

SUMMARY FINDINGS: The proposed monopole cellular tower will be able to address the need for improved wireless communications for the public safety and welfare of our community now, and for years to come through future expansion.

STAFF RECOMMENDATIONS: Although AT&T plans to screen the proposed tower from the adjoining agricultural property utilizing an 8-foot privacy fence, and a vegetative buffer comprised of American Holly trees and a 6-foot tall Juniper evergreen hedge row, additional landscaping is recommended to be planted between the cellular antenna tower compound and the public right-of-way in order to buffer the improvements from those property owners across Huffman Mille Pike in the Maddoxtown Rural Settlement and those driving along this rural roadway. Such additional landscaping shall be placed to avoid future sight distance issues for the Fire Station.

Staff Presentation – Ms. Gallt presented the staff's report, and gave a brief explanation of the proposal. (A copy of the staff report is attached as an appendix to these minutes).

Ms. Gallt indicated that the location of the proposed cellular tower was selected to settle a lawsuit, which was filed in Federal Court following the Planning Commission's disapproval of a proposed new cellular tower at 1811 Iron Works Pike in December 2012.

Ms. Gallt explained that the subject site is located 3360 Huffman Mill Pike and is situated in the Rural Service Area north of the Urban Service Area boundary. The property is located on the north side of Huffman Mill Pike and to the west of Russell Cave Road. Fire Station No. 19 currently occupies the property and the proposed cellular tower will be located in the northwest corner (rear) of the property. The subject property is located within the Agricultural Rural (A-R) zone, as are the surrounding properties, several of which also include Purchased of Development Rights (PDR) easements.

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Ms. Gallt said that there remains a need to improve the wireless communication demands in this area for the public safety and welfare of the community. With new technologies and the change in customer usage, cellular service by wireless carriers is continually being upgraded and expanded to complete the essential network for personal use, agricultural operations and other businesses.

Ms. Gallt indicated that the proposed tower would be a 195-foot monopole cellular tower with a 4-foot lightening arrestor, and a walk-in equipment cabinet on a platform 45 square-feet in size. AT&T cellular tower will be constructed in such a manner as to allow future expansion via the co-location of additional carriers. AT&T plans to screen the proposed tower with landscaping, but the staff believes additional landscaping should be planted between the cellular antenna tower compound and the public right-of-way in order to buffer the improvements from those property owners across Huffman Mill Pike in the Maddoxtown Rural Settlement and those driving along this rural roadway.

Law Department – Ms. Jones said that there was no representation for this request due to it being a Public Facility Review for property owned by the Lexington-Fayette Urban County Government. She explained that KRS 100.324(4) requires the Planning Commission to review the request before a permit can be issued for the construction of the tower. The Planning Commission only reviews Public Facility Reviews to weigh in with any comments as to how they believe the request does or does not comply with the Comprehensive Plan. The Planning Commission's decision is not a binding finding, as it would otherwise be with a private cellular tower application on private property.

Ms. Jones said that the Lexington-Fayette Urban County Government is currently in litigation in Federal Court over the denial of the proposed cellular tower on private property located at 1811 Iron Works Pike. This Public Facility Review evolved out of that court case in an effort to find a suitable location on a government or public property that could be utilized instead of the Iron Works Pike location. Should the Urban County Council approve the lease for 3360 Huffman Mill Pike, which is a government property, then federal litigation for 1811 Iron Works Pike would be resolved.

Ms. Jones reminded the Commission that a Public Facility Review only allows the Planning Commission to make comments and a recommendation, and those comments and recommendation are not binding. She said that a representative of AT&T was present, as well as Roger Daman with the Department of General Services, should the Commission have any questions as to how the process was determined to narrow down the potential government properties for this cellular tower.

Commission Questions – Mr. Wilson said that even though this application is ministerial, the Commission could still call upon the audience for any thoughts on this request. Ms. Jones replied affirmatively and said that normally notices are not required for a Public Facility Review, but the city wanted to let the nearby property owners be aware of this request.

Mr. Penn asked if the Planning Commission approves this request, will the lawsuit go away. Ms. Jones replied affirmatively, commenting that should cellular towers be placed on government property there must be a lease for the compound where the base is built. She said that the lease of that area would need to be presented and approved by the Urban County Council, and should the Council approve the lease, the litigation would go away.

Mr. Penn asked why co-location was not possible on the Huffman Mill Road tower. Ms. Jones replied that she could not answer that question.

Mr. Penn said that the Comprehensive Plan recommends using co-location whenever possible. Ms. Jones replied affirmatively.

Mr. Brewer said that there is another tower relatively close to this area and asked why that tower could not be used for co-location versus constructing another tower. Mr. Daman said that the staff was told a tower was needed for this area, but co-location on the nearby tower was not possible. He indicated that Fire Station No. 19 was the only government facility within this search radius so several LFUCG staff members and AT&T representatives met on site to determine the placement of the tower on this property.

Mr. Brewer confirmed that the staff was told co-location was not an option. Mr. Daman replied affirmatively. Mr. Brewer asked who made that decision. Mr. Daman replied AT&T spoke with the Law Department. Ms. Jones said that she was not involved in this case, but the attorneys who were involved relied on the information given to them by AT&T as to what was needed in terms of providing the mandated service under federal law. As for co-location, Mr. Pike could address that in more detail.

David Pike, attorney, was present representing AT&T, said that this proceeding is a Public Facility Review, which is very different from a cellular tower application; and each type of application has different standards that must be followed. The most common misconception with cellular towers is the public believes that communication companies like to build these towers. If AT&T could co-locate they would obtain an electrical permit and deploy their services, which is cheaper, easier and faster. They would not need to request this Public Facility Review and this application would not be presented to the Commission. Mr. Pike said that not only do they have a statutory and regulatory imperative to try to co-locate, but it is the practical and smarter business move so if they can co-locate they would do it.

Mr. Pike said that the cellular tower that is subject to the federal lawsuit is over a mile and half outside of the search area and deployment there would not solve the communication problem or fill in the coverage gap. He then said that the other Huffman Mill Pike site had the same issues as the site involved in the lawsuit. There is an increasingly challenge to serve the smaller

and smaller areas with these towers as a practical matter based on the capacity demands placed on these towers in a prosperous and growing community, such as Lexington. He reiterated that if they could co-locate on an existing tower, they would have done so versus laboring with the Law Department to find a solution to the federal litigation. This site is the only available public property in this vicinity that will provide the appropriate coverage. He then said that public properties are preferred under the Comprehensive Plan and the LFUCG regulations. Considering the issue of aesthetics in connection with the deployment of a cellular tower is specifically prohibited under the circuit law, as the Commission is well aware from the prior cases under the terms of Cellco Partnership vs. Franklin County 553F Sub838 and other cases.

Mr. Pike said that other co-location alternatives would be the radio broadcast towers across Huffman Mill Pike from this site. However, due to the repairs and other work needed, that tower would cause extensive delays that would frustrate the requirements of their FCC license. He then said that this tower would be one of the first sites in this community to deployed FirstNet coverage. He explained that FirstNet coverage is the national standard that has been developed for first responders to have a scalable readily available and secure direct link with all other first responders. This system is one of the directives and suggestions from the 9/11 Commission after the terrorist attacks, and the US government has selected AT&T to be the provider and Kentucky has opted into this system. To be able to provide continuation coverage that is reliable with FirstNet and the other services is critical for first responders and customers.

Mr. Pike then said that the other co-location alternatives would be the existing tower on the Mt. Brilliant Farm. However, placing a tower at that location was not possible due the property being part of the Purchase of Development Rights Program (PDR). He added that the PDR staff has stated that cellular towers cannot be deployed on PDR property so this site is not a legal option.

Citizen Comments – Knox Van Nagell Pfister, J.D., was present on behalf of Mr. Brilliant Farm. She voiced her concerns with the proposed cellular tower request, as well as submitted a letter outlining those concerns into the record. (A copy of the letter is attached as an appendix to these minutes)

Robert Barton, residing at 4095 Huffman Mille Pike, was present to voice his concerns concerning the proposed cellular tower. He asked if the residents of this area would be notified, should this proposal be presented to the Urban County Council. Ms. Jones replied that there would be no public notification mailed to the property owners. She said that the lease agreement would be listed on the Council docket as a business item and the dockets can be found on the city website (<https://www.lexingtonky.gov>). Mr. Barton requested that other sites be reviewed or utilize the Verizon tower.

Commission Questions and Comments – Mr. Owens asked if there had been discussions on the design of the tower. Mr. Daman replied negatively, adding that they would be open to discussing a design that would make the tower less obvious.

Mr. Owens said that other sites were reviewed, but those sites were outside the range of the applicants need. He asked if a search radius was used. Mr. Daman replied affirmatively, and said that this property was the only site that was within the radius. Mr. Pike said that a copy of the search radius was included in the application, and the search radius is about 0.35 miles out from this location. Mr. Owens confirmed that the radius from the proposed site is 0.3 miles. Mr. Pike replied 0.35 miles. Mr. Owens asked if the radius has changed in the last 8 years. Mr. Pike replied yes, based on the technology changing.

Mr. Wilson said that the staff was recommending additional landscaping and asked if this had been resolved. Ms. Wade said that the Rural Land Management Plan, which is an adopted element of the Comprehensive Plan, recommends using at grade landscaping to hide the base of the towers from the rural roadways, such as the topography of the land and the rural road canopy. She then said that for this location, there is no canopy along Huffman Mill Pike and adding trees could be an issue for the Fire Department in terms of access and site distance. The staff suggest utilizing the same type of landscaping proposed on the agricultural side of the tower between the roadway and the tower. The staff does not believe this would be onerous for AT&T to provide the additional landscaping as a visual buffer from the road.

Mr. Wilson asked if the staff recommendation was considered by the applicant. Ms. Wade indicted that AT&T did not receive the staff report until the morning of the hearing. Mr. Wilson asked if the applicant has any comments. Mr. Pike said that they do not have any objections to providing the landscaping, but it is entirely possible the landscaping may be installed outside of the leased area. They are not in the position to make that type of commitment since it is the city's property. He added that with this application being a Public Facility Review versus a cellular tower application, the Commission has the right, as part of their review, to recommend additional landscaping be installed. He noted that further discussions could be done to decide if the landscaping would be inside or outside the lease area; and if it were outside the lease area then they would need to find out if the city would be amendable to that recommendation.

Ms. Mundy said that there are residents within 50 feet of this site and asked what is the height-to-yard ratio. Ms. Wade said that height-to-yard ratio was part of the Zoning Ordinance and since this is a Public Facility Review, it does not have to follow the regulations established in the Zoning Ordinance. She then said that generally, the height-to-yard ratio is 3:1, which means the tower can be 3 times taller than the yard. For this case, the tower is 35 feet from the rear property line, 12 feet from the side property line and the tower is approximately 200 feet tall. She added that in the agricultural area the ratio suggested to be a 1:1 ratio so there would be a 200-foot distance between the tower and the property line. A tower located on this property would not meet the setback requirements of the Zoning Ordinance, nor did the tower proposed on the Iron Works Pike.

Mr. Penn said that the Iron Works Pike tower did not meet the Zoning Ordinance, and asked if two wrongs make a right. This property is too small for the proposed tower and if the Commission is going to encourage co-location, he would assume AT&T would co-locate with another carrier already in the area. He is concerned that the Commission can only voice their opinion and he believes that this request is 11 pounds of flour in a 7-pound sack. The only reason this tower fits this site is because the city owns the property. It is not fair that the residents living in the surrounding houses are not given the same treatment like any other residents in the city. He said that it bothers him not to allow a tower within 35 feet a residential area in the city, but a tower is allowed in the rural area because those houses do not matter. He said that it seems that the city is allowing this tower because they do not have to abide by the same regulations.

Ms. Mundy indicated that she agrees with Mr. Penn's comments, and she said that it seems the Commission is being forced in this situation. She then said that AT&T could co-locate with a nearby tower, and it is wrong to allow this just because the city owns the property.

Ms. Wade said that this application was not brought forward just because the property is owned by the city, but rather it is from the Planning Commission's decision to disapprove the previous cellular tower application. This tower and the proximity of the site stems from the Planning Commission's decision.

Mr. Bell asked if Ms. Van Nagell Pfister had further comments or if her questions were answered. Ms. Van Nagell Pfister hoped that Mr. Pike and she continue their conversation about possible co-locating on the existing cellular tower on Mt. Brilliant Farm. She explained that even though there are conservation easements on the farm, the tower is 500 feet from the nearest residents. She added that another options would be to use the Verizon tower, which was built in 2015 and is about a mile from the proposed site. She said that there is a lot at stake and asked that the Verizon tower be reviewed to determine the reasons why the tower cannot be used. She then said that they want to be good neighbors and they understand having dependable service, but a solution needs to be made to accommodate the community need without wrecking the quality of life for these farms.

Mr. Bell said that the Planning Commission cares about this community and Mt. Brilliant Farm is a signature of what this community represents. He then said that it was mentioned they would co-locate on another tower, if available. Mr. Pike said that whether another company owns this tower is irrelevant to them. He then said that they have a Master Lease Agreement (MLA) with every major provider in the industry and the reciprocal is there. Therefore, if they wanted to co-locate on this tower all they would need to do is to submit a document with all of the lease terms set. They have that right because even though these companies are competitors, when it comes to this issue they work together to co-locate. He said that there is no barrier when it comes to co-location with the exception to the fact the tower is in the wrong place. He then said that if any of these towers were in the right place, AT&T would use it. This particular site was not selected by AT&T, but rather the property is owned by the city, and available within the search area. What makes this unique is the fact that the city is trying to settle a federal lawsuit due to the Planning Commission's prior decision. This is the only option to settle the lawsuit; otherwise, they can proceed with the litigation. He said that he would not had selected this site, but this is the only option given to them. Mr. Pike said that they would co-locate if it was available and this is not about competing towers, but rather it is about the tower being in the wrong place.

Mr. Pike said that he will be meeting with Ms. Van Nagell Pfister later in the week regarding the existing tower, and even though Mt. Brilliant Farm does not have a MLA, if they want to co-locate with AT&T that can be discussed. He added that there is no third option and the city had multiple attorneys working on this issue for an extended period of time. This is the alternative to the pending lawsuit. Ms. Jones said that this is one of the situations that no one likes to be in. The fact of the matter is technology is out pacing what we want to see. Down the road, there may be a better option, but right there is not. This is a sticky situation because the service has to be provided to prevent catastrophic situations from happening in the future. She said that everyone values the rural land and it is important to the community; however, the towers are required and mandated by the federal government. Ms. Jones said that throughout the lawsuit the judge has allowed multiple continuations for months to allow the city time to find an alternative solution. The reason the lawsuit came about was due to the Planning Commission denying one of the possible alternatives from a private entity. If the Commission could have their cake and eat it too, the Commission would not agree with placing a tower in any area of the rural area. When the Planning Commission made their decision, it gave the Law Department some heartburn, and in turn, the city was sued. If that lawsuit goes forward, the Law Department cannot predict what will happen once the lawsuit is in the hands of the court. She said that there is a high likelihood the city will lose, and the cellular tower would be placed at 1811 Iron Works Pike. She said that other attorneys in the Law Department who work with the city facilities met with AT&T to discuss the type of service that they need to provide. Their services not only includes cellular service, but it includes data usage, computers, I-pads and now FirstNet for the first responders. Ms. Jones said that she was not directly involved in the litigation, but for months, other attorneys in the Law Department worked with Mr. Daman to resolve the location to provide the required technology on a piece of property that is owned by the city and not owned privately. This property is it; and at this point, the situation is what do we do. She said that if the Public Facility Review does not move forward then the lawsuit will and the tower will be placed at 1811 Iron Works Pike. There is not a good answer to give because a Public Facility Review is not subject to the same Zoning Ordinance regulations, as a cellular tower application would be. Alternatively, what the technology is saying the tower will be located at 3360 Huffman Mill Pike or on a private facility somewhere near this location. No one will agree with the location of the tower because it will be in the rural area and the rural area is very valuable to the community. She said that if the lease does not move forward then most likely the lawsuit will.

Mr. Penn said that when the Commission made that decision, they believed they had the ability to make that decision. Now everything has changed and people can say that decision was either good or bad. From what he remembers there was not a residential area within 35 feet of that tower. If the Commission only has two choices then perhaps the choice is to allow the lawsuit to play out in court. He added that in rethinking the Commission's first decision, this is a worse place to put a tower. He said that if the tower were allowed on the first location that would take revenue from the city. He then said that having the tower on the Fire Station property would not be a good choice because the lot is too small. Ms. Jones said that the Commission does not need to make a decision today because this is a Public Facility Review. The lawsuit has not moved forward and there is an opportunity to revisit that case.

Ms. Plumlee asked about June 17, 2018 date in the staff report. Ms. Jones said that a Public Facility Review allows 60 days for the Planning Commission to review the application. Mr. Wilson indicated that the review of this application is today's meeting. Ms. Jones said that the Planning Commission can make a recommendation for the applicant to reconsider 1811 Iron Works Pike, but they also have the right to move forward with this site and submit the lease to the Urban County Council. The Planning Commission can only make a recommendation; they cannot make a decision on a Public Facility Review.

Mr. Brewer said that the Planning Commission could only voice their opinion on Public Facility Reviews. He then said that the Planning Commission believed 1811 Iron Works Pike was not a good choice, and they believe this location is not suitable either.

Mr. Owens indicated his agreement with Mr. Brewer. He said that it was mentioned that co-location was not possible because it was not within the search radius. He expressed concern about increasingly the number of towers in the rural area just because the tower does not fit in a search radius. He voiced his dissatisfaction about the lack of discussion of an alternative tower, disguising the tower or other possible locations. He acknowledged that an antenna would likely not be allowed to be installed on the existing WLAP radio towers across the road; however, a monopole tower could possibly be installed on the site. He said that the WVLK Radio Station has existing cellular towers on their site elsewhere in our community. He believed that all possible locations have not been exhausted. He said that he appreciates Mr. Pike speaking with the representative of Mt. Brilliant Farm, but he does not believe that other possible locations have been reviewed. Mr. Owens said that he understands what the Law Department has said, but the Commission is empowered to act in relation to the Comprehensive Plan and the Zoning Ordinance. He stated that there are at least 13 Goals and Objectives that this request does not comply with. Mr. Owens submitted a handwritten list of Goals and Objectives and reasons for the record.

Mr. Wilson wanted to know why the tower at 1811 Iron Works Pike was denied, and said that it needs to be determine which of the two locations would be the better option. Mr. Owens asked if the minutes from the first case were available to review. Ms. Jones said that the Commission can certainly ask for those minutes, but since that tower was close to a horse farm in the rural area, the Commission felt that was not appropriate. She said that everything the Commission does today is in a form of a recommendation. The Planning Commission can recommend the other location be explored and discussed again or go forward with the PFR. Mr. Wilson said that he could not remember why 1811 Iron Works Pike was disapproved.

Mr. Owens said that according to the Comprehensive Plan, "the Commission has had the authority to regulate the location of cell tower to minimize negative visual effects of the cell towers, co-location of antenna should be encouraged for each site. When possible, existing structures and facilities that meet the requirements of the proposed installation should be used (water towers, church steeples, radio and television towers, tall buildings, commercial signs and others). Cell towers should not be sited in a location that might have an adverse effect on public health, safety and welfare, or might alter the essential character of an adjoining area." He then said that the Comprehensive Plan also speaks to the rural area and Scenic Byways and the Zoning Ordinance states that a cell tower shall not be located within 1,000 feet of a rural settlement (Maddoxtown) or Scenic Byways (Iron Works Pike). He believes that these reasons apply to both proposed locations.

Mr. Wilson said that the Planning Commission has already taken action on 1811 Iron Works Pike and the Law Department was in deliberations with that case when the Public Facility Review was submitted. Ms. Jones said that some of the items listed in the Comprehensive Plan have been overridden by federal case law, such as mandating and providing service. If the Commission disapproves this request based upon the reasons previous provided, those reasons may not be defensible in court. The government is exempt so it sort of does not matter.

Mr. Wilson said that the Planning Commission reviewed the first application and denied it. He then said that the Public Facility Review is ministerial and does not require the Commission to take action. Ms. Jones said that the Planning Commission does not need to take action, but they can make a recommendation. She said that when the Commission reviews a Public Facility Review, the Commission reviews the application in terms of how it does or does not comply with the Comprehensive Plan. If the Commission is in disagreement, that does not mean the request is denied or that the recommendation is binding. It does allow the Commission to make a recommendation or suggestion as it moves forward through the system; or the Commission can also do nothing.

Mr. Wilson said that if the Commission applies the Comprehensive Plan that can be overridden by the federal courts. He asked why would the Commission make a recommendation/suggestions based upon the Comprehensive Plan. Ms. Jones said that there are some things that can be done such as landscape, but a Public Facility Reviews is not binding unlike a zone change.

Mr. Brewer said that the Commission cannot change the outcome, but they can voice their opposition.

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Ms. Plumlee agreed that the Commission should voice their opinion.

Action - A motion was made by Mr. Owens to disapprove **PFR 2018-1: LEXINGTON FIRE STATION NO. 19**, due to the request not being in compliance with the Comprehensive Plan, for the following reasons:

1. Co-location of the cell tower has not been fully exhausted.
2. The location of the cell tower has not been fully exhausted.
3. Alternative or stealth towers (i.e. hidden in church steeples, water towers, tall buildings, etc) have not been fully discussed or considered.

Mr. Owens indicated that he could state other reasons why this request is not in compliance with the Comprehensive Plan. Mr. Wilson noted that those reasons could be attached to the motion.

The motion was seconded by Ms. Plumlee, and carried 9-0 (Forester and Richardson absent).

VII. STAFF ITEMS

- A. WORK SESSION** – Mr. Duncan reminded the Commission that the next Work Session is scheduled for Thursday, May 17th.

VIII. AUDIENCE ITEMS – There were none.

IX. NEXT MEETING DATES

Work Session, Thursday, 1:30 p.m., 3 rd Floor Phoenix Building.....	May 17, 2018
Zoning Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 24, 2018
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	May 30, 2018
Work Session, Thursday, 1:30 p.m., 3 rd Floor Phoenix Building.....	May 31, 2018
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	June 7, 2018
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	June 7, 2018
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 14, 2018

- X. ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 3:05 PM.

William Wilson, Chair

Carolyn Plumlee, Secretary

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