

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
SUBDIVISION ITEMS**

**July 12, 2018**

- I. **CALL TO ORDER** - The meeting was called to order at 1:32 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

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

Planning Staff members present – Jim Duncan; Tom Martin; Hal Baillie; Cheryl Gallt and Denice Bullock. Other staff members in attendance were Vaughan Adkins, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Captain Greg Lengal and Captain Joshua Thiel, Division of Fire & Emergency Services; Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 8-0 (Forester absent) to approve June 14, 2018.

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

- a. **PLAN 78-253F: MARY JANE GALLAHER** - located between West Second and Third Streets (aka 451 W. Second Street), LEXINGTON, KY  
Council District 1

Note: The Planning Commission approved this plan at their January 18, 1979, meeting, subject to the following conditions:

1. Provided the Planning Commission grants waivers for access-street frontage (Article 5.15).
2. Addition of utility easements as recommended by the utility companies.
3. Addition of street address.
4. Addition of building lines (discuss and define front, side, and rear yards).

The Planning Commission granted the waiver to Article 5.15 of the Land Subdivision Regulations (requiring a lot to abut an approved street) under the powers granted the Planning Commission by the Land Subdivision Regulations Article 6.41 for the following reasons:

1. The physical location of this property relative to the developed portion of the lot to which it is attached renders it of no substantial benefit or use to the total property.
2. The division of the property to permit construction of a one or two family residence will not be detrimental to the public good. No traffic, drainage or other problems will result from the proposed subdivision.
3. The construction of a public or private street to serve this one property would constitute an undue hardship in the such a street would be an excessive requirement given the location of the property and the nature of the proposed development.

On January 20, 1983, *Northside Neighborhood Association, ET AL. V. Mary Jane Gallaher, ET AL* (No. 79-CI-374), Judge Meade, Fayette Circuit Court, reversed the Planning Commission's decision citing that there was not substantial evidence on which to grant the variance.

Citizen Comments – Wayne Collier, attorney, requested a one-month postponement to have additional time to further request documents to investigate the history of this property and perhaps resolve the issue with this property.

Bruce Simpson, attorney, was present representing the Northside Neighborhood Association, Inc. He explained that the Northside Neighborhood Association had filed a lawsuit in 1979 to contest the prior decision made by the Planning Commission that allowed the subdivision of property located at 444 W. Third Street. He said that the matter was subject to litigation with the final decision being made by the Fayette Circuit Court in 1983. The Fayette Circuit Court decided that the Planning Commission had erred by allowing the property to be subdivided and reversed the Planning Commission decision. Mr. Simpson said that, at this point, it does not matter how much more research is done because the question before the Planning Commission is to comply with a 1983 court decision to reverse the prior Planning Commission decision. He added that even though everybody in the government received notice of the court decision no action was taken by the Planning Commission to undue their erroneous decision as determined by the court. The Planning Commission needs to take the appropriate action through the records of the Fayette County Clerk's Office to denote that the plat is invalid per the provisions of a lawful court order, which was not appealed by the property owner. He said that this matter had been decided 35 years ago, there is no need to delay it any further and the Planning Commission must comply with the court order. Mr. Simpson said that the applicant could file an application with the Division of Planning to seek the Planning Commission approval to subdivide the property or go back to Circuit Court to litigate the effectiveness of the prior court decision. There is no reason to postpone this matter or delay the Planning Commission's compliance with a court order any further.

Staff Comment – Ms. Jones explained that there is a 1983 court order and it appears all the records did reverse the 1979 decision made by the Planning Commission to subdivide this property. The staff does not know what happened after the court order was made but the plat was recorded subdividing the property and now the staff is trying to figure out the best method to rectify the situation and the staff's solution is to revoke the plat. However, this property is owned by an estate and the estate has questions that need to be addressed, which is the reason for the postponement request. Additional time

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

would not change the staff's recommendation and it would be up to the Planning Commission to approve the postponement request.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Penn and carried 8-0 (Forester absent) to deny the postponement request of **PLAN 78-253F: MARY JANE GALLAHER**.

- b. **PLN-MJSUB-18-00017: EASTLAND PARKWAY SUBDIVISION, TRACT 1-C, BLOCK B, LOT 2 (9/2/18)\*** - located at 1540 EASTLAND PARKWAY, LEXINGTON, KY  
Council District 6  
Project Contact: ECSI

Note: The Subdivision Committee recommended postponement at their July 5, 2018, meeting.

The Technical Committee and Staff Recommends: Approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Urban Forester's approval of tree preservation plan and required street tree information.
5. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
6. Denote access point for construction vehicles on plan.
7. Denote name and address of public utility companies.
8. Denote maintenance responsibility note for the existing and proposed access easement.
9. Addition of access easement cross-section for Lots 1 & 2.
10. Addition of cross-section for New Circle Road ramp.
11. Clarify "\*\*\*" denoted on plan.
12. Discuss the need for two utility and sanitary sewer easements through Lots 2 and 3.
13. Discuss proposed access easement vs. public street.
14. Discuss note #11 about detention on each lot.
15. Discuss sanitary sewer easement on Lot 5.
16. Discuss access spacing with existing and proposed lots and existing access easement.
17. Discuss access to frontage road on Lot 6.

Representation present – Fred Eastridge, ECSI, requested a one-month postponement of this request to continue working on the access easement to the adjacent property.

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 8-0 (Forester absent) to postpone **PLN-MJSUB-18-00017: EASTLAND PARKWAY SUBDIVISION, TRACT 1-C, BLOCK B, LOT 2** to the August 9, 2018, meeting.

- c. **PLN-MJDP-18-00047: CAVE HILL PLACE TOWNHOMES (AMD) (8/5/18)\*** - located at 2236 CAVE HILL LANE, LEXINGTON, KY  
Council District 10  
Project Contact: Vision Engineering

Note: The Planning Commission postponed this item at their June 14, 2018, meeting. The purpose of this amendment is to revise the entrance and parking.

The Subdivision Committee Recommended: Postponement. There were some questions regarding the proposed location of the access.

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. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
5. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Clarify parking requirement.
10. Discuss proposed shift in access point.
11. Discuss solid waste service.

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

Representation present – Matt Carter, Vision Engineering, requested this item be withdrawn because his client is no longer seeking to relocate the access point.

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

Action - A motion was made by Mr. Penn, seconded by Ms. Plumlee and carried 8-0 (Forester absent) to withdraw **PLN-MJDP-18-00047: CAVE HILL PLACE TOWNHOMES (AMD)**.

**IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, July 5, 2018, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Carolyn Plumlee, Frank Penn, Mike Owens and Headley Bell. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Jim Duncan, Traci Wade; Tom Martin; Cheryl Gallt; Hal Baillie; Denice Bullock; Keyu Yan; Captain Greg Lengal, Division of Fire & Emergency Services; and Andrea Brown and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

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

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

- a. **PLAN 2013-64F: LAKEVIEW ESTATES, UNITS 2B & 2E (AMD) (9/25/18)\*** - located at 519 LAKETOWER DRIVE LEXINGTON KY.  
Council District 5  
Project Contact: Barrett Partners

Note: The purpose of this amendment is to subdivide one lot into eight lots. The Planning Commission originally approved this plan on July 11, 2013, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Clarify notes for Lot 2 relative to acreage.
8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
9. Terminate floodplain setback at property line.
10. Provided the Planning Commission makes a finding on the use of the proposed access easement as sole access to these lots.

As part of the Planning Commission's approval on July 11, 2013, the Commission also made a finding on the use of the proposed access easement as sole access to these lots. The approved findings for appropriateness of access easements as sole access for certain lots are as follows:

1. Allowing these townhouse lots to be accessed only via an access easement is appropriate for the proposed development and is consistent with the previously approved final development plan.
2. The use of the access easement will not negatively impact public health and safety, which is consistent with the intent of the Land Subdivision Regulations.

The Planning Commission reapproved this plan on August 22, 2013, subject to the original conditions with the following additional condition:

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

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

The applicant is now requesting a reapproval.

The Subdivision Committee Recommends: **Reapproval**, subject to the conditions previously approved by the Planning Commission on August 22, 2013, changing the following condition:

3. ~~Building Inspection's~~ Landscape Examiner's approval of landscaping and landscape buffers.

- b. PLN-MJDP-18-00050: CHESAPEAKE EQUINE (AMD) (9/2/18)\* - located at 1024 GREENDALE ROAD, LEXINGTON, KY  
Council District 2  
Project Contact: EA Partners

Note: The purpose of this amendment is to add a picnic shelter and increase the lot coverage by 390 square feet.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Addressing Office's approval of street names and addresses.
3. Department of Environmental Quality's approval of environmentally sensitive areas.
4. Depict onsite conditions.
5. Resolve compliance with VUA requirements in Article 18 of the Zoning Ordinance.
6. Resolve pedestrian access to the proposed picnic shelter.

- c. PLN-MJDP-18-00051: SUNNY SLOPE, UNIT 1-A (AMD) (9/2/18)\* - located at 3765 WINTHROP DRIVE, LEXINGTON, KY  
Council District 9  
Project Contact: EA Partners

Note: The purpose of this amendment is to increase the lot coverage by 250 sq. ft. for a storage building, add four carports, revise the parking layout, reflect the release of the sanitary sewer force main easement along Waveland Museum Lane and to revise Note #12 permitting the Division of Engineering to approve the construction access locations.

The Subdivision Committee Recommends: **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. Department of Environmental Quality's approval of environmentally sensitive areas.
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. Addition of conservation greenway note.
10. Resolve construction vehicle access and transferring authority to the Division of Engineering to alter access.

- d. PLN-MJDP-18-00052: RICE, BRENT & HAFLEY PROPERTY (THE HUMAN BEAN) (AMD) (9/2/18)\* - located at 1946 HARRODSBURG ROAD, LEXINGTON, KY  
Council District 11  
Project Contact: The Roberts Group

Note: The purpose of this amendment is to denote redevelopment of the property.

The Subdivision Committee Recommends: **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. 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. Delete 100' residential setback.

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

11. Addition of steep slope note.
12. Replace "Forest" with "Tree Canopy" on face of plan.
13. Clarify applicability of restrictive notes to this site.
14. Correct note #7, per Article 21-6(a)(14) of the Zoning Ordinance.

Mr. Martin indicated that **PLAN 2013-64F: LAKEVIEW ESTATES, UNITS 2B & 2E (AMD)** requires the Planning Commission to make a finding on the use of the proposed access easement as sole access to these lots. The approved findings for appropriateness of access easements as sole access for certain lots are noted on today's agenda.

Mr. Martin noted 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: Ben Blyton, 626 Blue Ash Drive, requested **PLN-MJDP-18-00052: RICE, BRENT & HAFLEY PROPERTY (THE HUMAN BEAN) (AMD)** be removed to allow further discussion.

Commission member requesting full discussion: There were none.

Action - A motion was made by Ms. Mundy, seconded by Mr. Bell, and carried 8-0 (Forester absent) to approve the items listed on the Consent Agenda, as presented, to include the findings for appropriateness of an access easements as sole access for certain lots as noted on today's agenda for **PLAN 2013-64F: LAKEVIEW ESTATES, UNITS 2B & 2E (AMD)** and remove **PLN-MJDP-18-00052: RICE, BRENT & HAFLEY PROPERTY (THE HUMAN BEAN) (AMD)** to allow further discussion.

**B. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Forester absent) to approve the release and call of bonds as detailed in the memorandum dated June 14, 2018, from Barry Brock, Division of Engineering.

**C. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items were 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 Subdivision Committee no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

## 1. **DEVELOPMENT PLAN**

- a. **PLN-MJDP-18-00052: RICE, BRENT & HAFLEY PROPERTY (THE HUMAN BEAN) (AMD) (9/2/18)\*** - located at 1946 HARRODSBURG ROAD, LEXINGTON, KY  
Council District 11  
Project Contact: The Roberts Group

Note: The purpose of this amendment is to denote redevelopment of the property.

The Subdivision Committee Recommends: 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. 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.

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9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Delete 100' residential setback.
11. Addition of steep slope note.
12. Replace "Forest" with "Tree Canopy" on face of plan.
13. Clarify applicability of restrictive notes to this site.
14. Correct note #7, per Article 21-6(a)(14) of the Zoning Ordinance.

Staff Presentation - Ms. Gallt directed the Commission's attention to the final development plan, and briefly explained the proposed request. She indicated that the Subdivision Committee had recommended approval of the proposed request, subject to the conditions listed on the agenda.

Representation – Richard Murphy, attorney, along with Erik Merlino, The Roberts Group, was present representing the applicant. Mr. Murphy noted that the development plan requires notice be sent to the surrounding property owners anytime this site redevelops (note #5). His client had received a few phone calls about the type of restaurant and the neighbors voiced their concerns with having another fried food restaurant in the area, but this request will be a coffee shop. Mr. Murphy indicated that the applicant was in agreement with the staff's recommendation and requested approval.

Citizen Comments - Mr. Blyton indicated his agreement with the proposed development plan and stated his desire to be notified of any future changes.

Staff Comment – Mr. Martin explained that, regardless of the type of changes, any major and minor redevelopment on this site requires that notification be sent to the surrounding property owners.

Commission Questions – There were none.

Action - A motion was made by Mr. Owens, seconded by Ms. Plumlee and carried 8-0 (Forester absent) to approve **PLN-MJDP-18-00052: RICE, BRENT & HAFLEY PROPERTY (THE HUMAN BEAN) (AMD)**, as recommended by the Subdivision Committee.

## 2. **PLAT REVOCATION**

Note: The following plan was requested for revocation pursuant to KRS 100.285.

- a. PLAN 78-253F: MARY JANE GALLAHER - located between West Second and Third Streets (aka 451 W. Second Street), LEXINGTON, KY  
Council District 1

Note: The Planning Commission approved this plan at their January 18, 1979, meeting, subject to the following conditions:

1. Provided the Planning Commission grants waivers for access-street frontage (Article 5.15).
2. Addition of utility easements as recommended by the utility companies.
3. Addition of street address.
4. Addition of building lines (discuss and define front, side, and rear yards).

The Planning Commission granted the waiver to Article 5.15 of the Land Subdivision Regulations (requiring a lot to abut an approved street) under the powers granted the Planning Commission by the Land Subdivision Regulations Article 6.41 for the following reasons:

1. The physical location of this property relative to the developed portion of the lot to which it is attached renders it of no substantial benefit or use to the total property.
2. The division of the property to permit construction of a one or two family residence will not be detrimental to the public good. No traffic, drainage or other problems will result from the proposed subdivision.
3. The construction of a public or private street to serve this one property would constitute an undue hardship in that such a street would be an excessive requirement given the location of the property and the nature of the proposed development.

On January 20, 1983, *Northside Neighborhood Association, ET AL. V. Mary Jane Gallaher, ET AL* (No. 79-CI-374), Judge Meade, Fayette Circuit Court, reversed the Planning Commission's decision citing that there was not substantial evidence on which to grant the variance.

Staff Presentation - Mr. Martin directed the Commission's attention to the plat revocation, and briefly oriented them to the subject property.

Law Department – Ms. Jones briefly explained that the reason the staff brought this item to the Commission in this fashion was due to the unusual circumstance surrounding this property. She said that staff believes the best alternative is to correct what should have been reversed when the court order was enacted 35 years ago. She said that the staff

has reviewed the records and the plat is in the County Clerk's Office as if the lot was subdivided; however, the judge's order stated that he was reversing the Planning Commission decision to approve the subdivision of the lot. The staff does not know and cannot answer why this was not addressed 35 years ago, but from the staff's perspective, this request will accomplish what needs to be done to reflect the records.

Commission Questions – Mr. Penn asked why the judge reversed the Planning Commission decision. Ms. Jones explained that when this lot was subdivided into two lots, the middle lot had no access to a roadway, which is not allowed because that would create a land-locked parcel. As part of the plat, an access easement was granted to W. Second Street through a lot that is now owned by a different person, not the parent tract that was owned by the applicant at that time. In addition, the access easement did not meet the width requirement of 20' so the Planning Commission granted a "variance" which is similar to what is now called a "waiver" to decrease the width from 20' to 12' from W. Second Street. The "variance" meant that the middle lot would no longer be landlocked and the Planning Commission subdivided the parent lot into two lots. Ms. Jones explained that Judge Meade had a problem with the property being subdivided and with the Planning Commission making the decision to grant the variance when that should have been addressed through the Board of Adjustment. She said that there are some cases where the Planning Commission can grant a variance or a conditional use permit in conjunction with a zone change, but there was no zone change on this property. Judge Meade believed that the Planning Commission did not have enough substantial evidence to allow the property to be subdivided or grant the access easement so he reversed the Planning Commission's decision. Judge Meade did not express in the court order this request should be taken back to the Planning Commission.

Mr. Wilson cautioned the citizens who would be speaking on this case to refrain from mentioning the legal issues associated with property, because the Planning Commission is not prepared to deal with those issues. The Law Department has already advised the Planning Commission as to what their duty's are as stated in the Statute. He said that any type of legal arguments would need to be addressed to the Law Department or to Fayette Circuit Court.

Citizen Comments – Wayne Collier, attorney, was present representing Jayne Tannenbaum, who is the appointed successor personal representative for the Estate of Fred Kissling. He said that the question today was not what happened in the past; but rather can the Planning Commission take action on this request; and if so, in what manner they can take action. Mr. Collier distributed an exhibit binder and affidavit to the Planning Commission and the staff, then directed the Planning Commission's attention to the overhead to orient them to the site.

Mr. Collier said that the Planning Commission's agenda indicated that the Planning Commission has chosen to revoke the subdivision plat based upon KRS 100.285. He then said that this Statute is very narrow, in terms of the scope, as to who can have a plat revoked and under what circumstances. There are two criteria that must be met; otherwise, the Statute suggests filing action in Circuit Court.

Mr. Collier gave a brief statement of the main points from each of the following criteria:

KRS 100.285 allows for the revocation of a subdivision plat if there is a planning commission:

The requirements are as follows:

- All persons owning land comprising a subdivision must apply to the planning commission, including all dedications of public facilities, easements and rights-of-way.
- Before any plat shall be revoked, all owners shall, as part of their application for revocation, state under oath that no person has purchased a lot shown on the plat.
- A revocation shall become effective only upon a notation on the margin of the recorded plat stating that such plat has been revoked and the date of such vote of revocation; such notation shall be signed by the chairman, secretary, or other duly authorized officer of the commission; and
- A written approval of such revocation filed with the commission, duly signed by each entity to which an offer of dedication of any public or private facility, easement or right-of-way was made on the plat.

Mr. Collier then explained that KRS 382.440, Subsection 1, indicates the necessary notice given to a property owner following a court decision, as well as the need to file a lis pendens on a property, or a formal notice of pending legal action, with the Circuit Court. This would specify the potential impact of ownership rights of any future property owner. He stated that if any prospective owner were to seek to purchase the property with the lis pendens filed, the individual(s) would be informed of the legal action in process, and that the decision made by the Court could impact the ownership rights or result in the property in question to become not salable at the time. He added, as per the Statutes, that if a lis pendens is not filed on the property within the necessary timeframe that any action taken by any court shall not affect the right, title or interest of a subsequent purchaser. Mr. Collier said that should the Planning Commission revoke the plat, KRS 382.440 states that the Planning Commission cannot act on the rights of a subsequent purchaser, which in this case is his client. He then said that the two Statutes work together and are consistent by saying the property owners cannot revoke the plat if the lots are sold, or someone who has filed an action with the Circuit Court cannot revoke the plat if there is no lis pendens.

Mr. Wilson indicated that some of the comments being made are more of a legal issue and asked why Mr. Collier believed the Planning Commission should not consider this case as a ministerial decision.

Mr. Collier said that there is no statutory basis for the Planning Commission to act on unless an action was filed in the Circuit Courts, which is an option under the Kentucky Revised Statutes. He gave an example of a zone change, and said that the Planning Commission's decision can be appealed through the Court of Appeals. The Court of Appeals states that the practitioners in this area of the law should take heed and those representing the protesters of zone changes can more thoroughly protect their client's interest by filing notices of lis pendens. He said that a lis pendens was never filed with the courts so the neighborhood cannot interfere with the property owner's rights.

Mr. Collier said that the Planning Commission needs to ask does the Commission have the right to revoke this plat; have all the criteria been satisfied, and if revoked, will there be other impacts beyond a simple revocation. In this case, due to the passage of time, revoking the plat does have an impact. He added that in order to avoid any problems, KRS 100.285 indicates not to revoke the plat if land transfers have been made.

Mr. Collier then said that all the issues with this case are legal and the neighborhood association can ask a judge to revoke the plat versus having the Planning Commission take action.

Mr. Wilson said that he if could turn back time he would ask Judge Meade why he did not tell the Commission what they need to do for this case. He understood Mr. Collier's arguments, but the Planning Commission is not comprised of lawyers.

Bruce Simpson, attorney, was present representing the Northside Neighborhood Association. He said that this proceeding is not about which lawyer, in terms of their advice and their arguments, should the Planning Commission follow, because the Planning Commission has their own legal counsel to advise them. The arguments that Mr. Collier has made belong in the Circuit Court and the Planning Commission has no jurisdiction to decide the legal issues. The staff's recommendation is to comply with the 1983 court order so there is no need to have this hearing.

Mr. Simpson said that KRS 100.285 was not before the Planning Commission, but rather the decision made by the Circuit Court due to the Planning Commission approving the subdivision of the lot. The courts have the power, pursuant to the appeal statute, to reverse the decision of the Planning Commission. He said that KRS 100.285 was not valid because this matter has already been heard and has been set aside as being voided. The only thing required at this point is for the Planning Commission to comply with the court order, which has not been done for 35 years. He said that there is a valid court order, it was not appealed through the courts, and it is presumed to be valid, unless it is set aside. He then said that it is Mr. Collier's right to have this case set aside, but the Planning Commission is under an affirmative obligation from a valid court decision to comply with that decision. This is not ministerial, it is an obligation and the court can order the Planning Commission to comply and sanction the Commission for not complying.

Mr. Simpson said that the legal arguments that had been mentioned are inappropriate at this time, and should be made in circuit court. After the Planning Commission approved the subdivision, the Northside Neighborhood Association filed an appeal to Fayette Circuit Court in February 1979. The next month the property owner, despite the fact that there was a valid appeal pending, had the plat recorded. The plat should have been corrected, but it wasn't. He said that the same family has controlled this property for 60 years and the current owners can attempt to subdivide the property again, as well as file with the courts. He said that the Planning Commission has no authority to interpret or decide on the arguments made by Mr. Collier or cases cited by Mr. Collier. At this point, the law states that this plat has been voided since 1983, and the Planning Commission must comply with the provisions of that order, which is what the Law Department has advised the Planning Commission to do. The appropriate forum for Mr. Collier's client is to challenge that decision in the courts.

Mr. Simpson requested that the Planning Commission comply with the order and have the County Clerk's Office enter a note on the plat indicating it has been voided without effect.

Mr. Wilson asked if the Law Department has heard any argument that would change the staff's recommendation. Ms. Jones indicated that the staff's recommendation is not changing, and said that the Planning Commission must comply with the court order, which states, "The action of the Commission in subdividing the property is reversed." She then said that the 1983 court order has not been appealed and it has not been altered. This is an unusual situation because the Planning Commission granted the subdivision, but once the Courts became involved, it took the Planning Commission in a different direction in terms of what the Commission can do. She said that for whatever reason the court order was not documented appropriately.

Commission Questions – Mr. Brewer asked what role does the Commission play. Ms. Jones replied the Planning Commission needs to comply with the court order. Mr. Brewer then asked what needs to be done to comply with the court order. Ms. Jones indicated that under KRS 100.285 the plat needs to be revoked. She said that the plat revocation would not be under the application provision, but rather the plat would be revoked because of the court order.

Mr. Penn asked how was the title of the property obtained when the access easement was revoked. Ms. Jones said that the access easement was not revoked and that is part of the complexity of this case. She said that the

Planning Commission approval was reversed by the courts. The problem that has been created is the court order was never effectuated on the ground or in the County Clerk's Office. The plat is still the same even though the court reversed the Commission's decision.

Mr. Berkley said that the access easement shown on the plat was ruled as not being an appropriate legal access easement. Ms. Jones replied affirmatively, and said that without an access easement the lot could not be subdivided. She then said that the Planning Commission approved the subdivision of the lot and approved the variance to decrease the width of the access easement, which was inappropriate. If the access easement was not possible, then the subdivision of the lot would not be possible either. She reiterated that the court document states that "The action of the Commission in subdividing the property is reversed."

Ms. Mundy said that a lis pendens is typically used in a foreclosure situation, but is also used when the court takes possession of a property until the courts makes a final decision. She then said that, for this situation, there would not be need for a lis pendens to be filed because the courts never took possession of the property. Ms. Jones replied that a lis pendens was far outside of her knowledge and this is not the type of issue that the Planning Commission wants to be determining today. She then said that she does not know when a lis pendens is required and when it is not required, but they do know one was not filed with the courts.

Mr. Wilson said that the arguments made during this case would need to be made through the courts. The Planning Commission functions include legislative, judicial and ministerial reviews. He then said that the ministerial review is the one that the Planning Commission has the least amount of control over.

Mr. Berkley said that if the access easement were not legitimate the subdivision of the lot would not happen.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy and carried 8-0 (Forester absent) to approve the plat revocation for **PLAN 78-253F: MARY JANE GALLAHER.**

## V. COMMISSION ITEMS

- A. **ELECTION OF OFFICERS** – Mr. Wilson said that the Commission's By-laws state that at the first regular meeting in July, the Commission shall elect a Chairperson, Vice-Chairperson, Secretary, and Parliamentarian. He indicated that the Nominating Committee discussed the slate of officers at the last work session and is ready to present its slate for consideration by the Planning Commission. Nominations may also be made from the floor.

The current officers are as follows:

|                  |   |                 |
|------------------|---|-----------------|
| Chairperson      | - | William Wilson  |
| Vice Chairperson | - | Frank Penn      |
| Secretary        | - | Carolyn Plumlee |
| Parliamentarian  | - | Karen Mundy     |

Ms. Plumlee indicated that the Nominating Committee made the following recommendation:

|                  |   |                 |
|------------------|---|-----------------|
| Chairperson      | - | William Wilson  |
| Vice Chairperson | - | Frank Penn      |
| Secretary        | - | Carolyn Plumlee |
| Parliamentarian  | - | Karen Mundy     |

Action - A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 8-0 (Forester absent) to approve the Planning Commission's Slate of Officers, as presented by the Nominating Committee.

- B. **DELEGATION OF SECRETARY'S DUTIES** – The Chair said that the Commission's past procedure for carrying out the Secretary's duties, except for signing minutes, has been to delegate that authority to the Director of the Division of Planning and his staff.

Action - A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 8-0 (Forester absent) to delegate the Secretary's duties, with the exception of signing minutes, to the Director of the Division of Planning and his staff.

## VI. STAFF ITEMS

- A. **WORK SESSION** – Mr. Duncan reminded the Commission that the next Work Session is scheduled for Thursday, July 19<sup>th</sup>.

## VII. AUDIENCE ITEMS – There were none.

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

VIII. **NEXT MEETING DATES**

|                                                                                                            |                       |
|------------------------------------------------------------------------------------------------------------|-----------------------|
| Work Session, Thursday, 1:30 p.m., 3 <sup>rd</sup> Floor Phoenix Building.....                             | July 19, 2018         |
| Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) .....               | July 25, 2018         |
| <b>Zoning Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....     | <b>July 26, 2018</b>  |
| Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) .....              | August 2, 2018        |
| Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....                    | August 2, 2018        |
| <b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers..... | <b>August 9, 2018</b> |

- X. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 2:47 PM.

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William Wilson, Chair

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Carolyn Plumlee, Secretary

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