

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

May 8, 2008

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

Planning Staff Present – Chris King, Director; Bill Sallee, Barbara Rackers, Tom Martin, Cheryl Gallt, Chris Taylor, and Denice Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Bob Carpenter, Division of Building Inspection; Rochelle Boland and Ed Gardner, Department of Law; Captain Charles Bowen, Division of Fire & Emergency Services; and Tim Queary, Division of Streets, Roads and Forestry.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Godfrey, seconded by Mr. Penn and carried 8-0 (Holmes, Aten, Roche-Phillips absent) to approve the minutes of the March 13, 2008, meeting.

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

Note: The next two items were acted on simultaneously.

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

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

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2008-24F and PLAN 2008-25F to the June 12, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Ms. Godfrey, and carried 8-0 (Holmes, Aten, Roche-Phillips absent) to postpone PLAN 2008-24F and PLAN 2008-25F to the June 12, 2008, Planning Commission meeting.

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

Representation – Rory Kahly, EA Partners, was present representing the applicant and requested an indefinite postponement of DP 2007-100.

Action - A motion was made by Mr. Penn, seconded by Ms. Godfrey, and carried 8-0 (Holmes, Aten, Roche-Phillips absent) to indefinitely postpone DP 2007-100.

- d. DP 2008-66: MARSHALL PROPERTY, UNIT 2 (6/25/08)* - located at 3000 Leestown Road (McConnells Trace). (Council District 2) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2008-66 to the June 12, 2008, Planning Commission meeting.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 8-0 (Holmes, Aten, Roche-Phillips absent) to postpone DP 2008-66 to the June 12, 2008, Planning Commission meeting.

Note: Mr. Holmes arrived at this time.

- e. DP 2008-51: PALUMBO PROPERTY (GARDEN SPRINGS, UNIT 1-S) (AMD. #8) (6/12/08)* - located at 820 Lane Allen Road. (Council District 10) **(Foster - Roland)**

Representation – Gary Roland, Foster - Roland, was present representing the applicant, and requested postponement of DP 2008-51 to the June 12, 2008, Planning Commission meeting.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 9-0 (Aten and Roche-Phillips absent) to postpone DP 2008-51 to the June 12, 2008, Planning Commission meeting.

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

- f. PLAN 2008-9P: HILLENMEYER PROPERTY (AMD.) (5/8/08)* - located on Lucille Drive and Sandersville Road.
(Council District 2) **(VanderWier and Associates)**

Staff Comments – Mr. Martin stated that the staff had received a letter from the applicant, requesting postponement of PLAN 2008-9P to the June 12, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Day, seconded by Ms. Whitman, and carried 9-0 (Aten and Roche-Phillips absent) to postpone PLAN 2008-9P to the June 12, 2008, Planning Commission meeting.

- g. DP 2008-60: BLACKFORD TOWN CENTER (7/12/08)* - located at 6600 Man O' War Boulevard.
(Council District 12) **(Rob Sims)**

Staff Comments – Mr. Martin stated that the staff had been notified by the applicant, requesting postponement of DP 2008-60 to the June 12, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 9-0 (Aten and Roche-Phillips absent) to postpone DP 2008-60 to the June 12, 2008, Planning Commission meeting.

- h. PLAN 2008-44F: HIGH MOUNT SUBDIVISION, UNIT 1, BLOCK A, LOT 17 (AMD) (6/12/08)* – located at 2932 Candlelight Way. (Council District 5) **(CBC Engineers and Associates)**

Staff Comments – Mr. Martin stated that the staff had made an attempt to contact the applicant, as well as their attorney, but there was no response back from either one; therefore, it's the staff's recommendation that this item be postponed to the June 12, 2008, Planning Commission meeting.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 9-0 (Aten and Roche-Phillips absent) to postpone PLAN 2008-44F to the June 12, 2008, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, May 1, 2008, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Lyle Aten, James Mahan, Linda Godfrey and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Jimmy Emmons, Traci Wade, Denise Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Rob Johnson, Frank Boateng and Cindy Deitz; as well as Rochelle Boland, Department of Law; Captain Charles Bowen, Division of Fire & Emergency Services; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

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

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

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria:

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

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

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

Planning Commission Comment – Mr. Vaughn noted that the consent agenda had been previously submitted to the Planning Commission, and referred to Mr. Sallee for the Consent Agenda.

Staff Presentation – Mr. Sallee thanked Mr. Vaughn, and said that there are five items appearing on the Consent Agenda (a copy of the Consent Agenda is attached as an appendix to these minutes). He noted that of the five items listed, there are four final development plans (three being amended) and one minor plan.

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

At this time, Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the Planning Commission Meeting Agenda:

1. Page 6, Item d. DP 2008-65: MAHAN PROPERTY APARTMENTS (AMD.) - located at 4500 Man O' War Boulevard.
2. Page 7, Item f. DP 2008-67: HAMBURG PLACE FARM, SIR BARTON OFFICE PARK, LOT E (AMD.) - located 2452 Sir Barton Way.
3. Page 7, Item g. DP 2008-68: HAMBURG PLACE MALL, UNIT 2 (AMD.) - located 1924 Pavilion Way.
4. Page 8, Item i. DP 2008-13: GOO GOO CAR WASH – located at 1537 North Limestone.

He noted that the following item is a minor plan:

5. Page 8, Item a. PLAN 2007-212C: BIG SPRING SUBDIVISION, SECTION 2, LOTS 15 & 16 (AMD.) - located at 5920 and 5940 Winchester Road.

In conclusion, Mr. Sallee said that the five items listed on the Consent Agenda have been recommended for conditional approval by the Subdivision Committee. At this time these items can be considered for approval by the Commission, unless there is a request for an item to be removed.

Planning Commission Comments - Mr. Vaughn asked if there were any audience members present wishing to speak to these items, to which there was no response. Mr. Vaughn then asked if the Planning Commission would like to review any of the items listed on the Consent Agenda, to which there was no response.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 9-0 (Aten and Roche-Phillips absent) to approve the items listed on the consent agenda:

1. DP 2008-65: MAHAN PROPERTY APARTMENTS (AMD.) - located at 4500 Man O' War Boulevard.
2. DP 2008-67: HAMBURG PLACE FARM, SIR BARTON OFFICE PARK, LOT E (AMD.) - located 2452 Sir Barton Way.
3. DP 2008-68: HAMBURG PLACE MALL, UNIT 2 (AMD.) - located 1924 Pavilion Way.
4. DP 2008-13: GOO GOO CAR WASH – located at 1537 North Limestone.
5. PLAN 2007-212C: BIG SPRING SUBDIVISION, SECTION 2, LOTS 15 & 16 (AMD.) - located at 5920 and 5940 Winchester Road.

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

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

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

1. Preliminary Plans

- a. PLAN 2007-52P: TUSCANY, UNIT 5 (5/8/08)* - located at 1970 Winchester Road (a portion of).
(Council District 6) **(EA Partners)**

Note: The Planning Commission postponed this plan at its April 12, 2007; May 10, 2007; June 14, 2007; July 12, 2007; August 9, 2007; September 13, 2007; October 11, 2007; November 8, 2007; December 13, 2007; January 17, 2008; February 14, 2008; March 13, 2008; and April 14, 2008 meetings.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Denote entrances across Sir Barton Way.
7. Addition of conditional zoning restrictions.
8. Discuss the timing of dedication of Winchester Road right-of-way per preliminary development plan note.
9. Discuss turning lane on Winchester Road and Sir Barton Way.
10. Discuss tree preservation along building line on Sir Barton Way.

Staff Presentation – Mr. Martin presented the preliminary development plan for Tuscan, Unit 5 (PLAN 2007-52P), and said that the subject property is located on the south west corner of the Winchester Road and Sir Barton Way intersection. He said that the applicant is proposing a connection off of Sir Barton Way, which will then connect to War Admiral Way and loop around to Bel Sheba Way near the commercial development.

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Mr. Martin stated that the staff had received an amended submission from the applicant; and in reviewing their proposal, the applicant is showing a cul-de-sacs throughout the subject site, as well as a cul-de-sac being parallel to Winchester Road. They are also showing a right-in and right-out from Sir Barton Way. He then said that the applicant is proposing 23 townhomes in the lower portion of the property, while the remaining portion will be developed as duplexes, resulting in a total of 135 dwelling units.

As it is noted on the agenda, Mr. Martin said that this request had been postponed several times due to an on-going discussion between the applicant and the staff. He said that the staff had reviewed their revised plan and presented it to the Subdivision Committee, at which time the issues of concern were addressed. He directed the Commission's attention to the previously submitted revised recommendations, and said that one of the staff's concerns was the area along Winchester Road. He said that this area is being proposed for a homeowner's association (HOA), and there was concern as to the relationship with the extension of the right-of-way, the turning lane and the landscape buffer along Winchester Road, noting that at the Subdivision Committee meeting these concerns were discussed. He then said that there was also a concern with the right-in and right-out off of Sir Barton Way; however, the staff, as well as Traffic Engineering, has agreed that the right-in and right-out will be adequate.

Mr. Martin then directed the Commission's attention to the requested waiver of the Land Subdivision Regulations, and stated that the applicant had originally requested to omit the sidewalk along the northern portion of the subject site (adjacent to Winchester Road), and in its place they would connect the southern sidewalk to Sir Barton Way. He said that the proposed internal sidewalk would end just before the HOA area, noting that there will be no residential units along Winchester Road. Mr. Martin said that the staff had spoken with Traffic Engineering and others, and it was determined that there was no need for the additional right-of-way along Winchester Road. He said that with this determination, condition number 9 could be deleted; however, those initial concerns with condition number 9 had led the staff to discuss the potential conflicts of the sidewalk and the utilities along Winchester Road. He said the utilities exist in the state right-of-way; and as far as the LFUCG is concerned, there is not a conflict with the right-of-way, but there could be a conflict with the Kentucky Transportation Cabinet, which led to the new condition number 9.

In reference to the waiver request, Mr. Martin said that the applicant did not want to construct approximately 610 feet of sidewalk along the northern portion of the property. He said that the staff had reviewed their request, and did recommended approval of the plan; however, there were some concerns with the pedestrian connection to Sir Barton Way. He said that even though the omission of the sidewalk will not impact public safety, the staff is recommending that the connection not be made directly toward Sir Barton Way, but rather toward the pedestrian crosswalk at the signalized light on Winchester Road. He then said that the staff is also recommending that the applicant construct a 4' sidewalk along the Winchester Road frontage. This will provide the necessary vital link for the subject property and surrounding developments.

In conclusion, Mr. Martin noted that the staff is recommending approval of the applicant's request, subject to the listed conditions. He said that Mr. Sallee will be presenting a report on the overall system, and he will explain how the staff came to their conclusion.

Mr. Sallee directed the Commission's attention to the larger view of the Tuscany project and illustrated the reasoning behind the staff's recommendations. At this time, he oriented the Commission to the existing preliminary development plan, identifying existing and proposed streets, including Winchester Road and Sir Barton Way. He noted that Unit 5 is located at the southwest corner of this intersection.

Mr. Sallee said that the waiver request is for the northern side of the cul-de-sac, which is parallel to Winchester Road. He said that the staff is recommending approval of the waiver, if the applicant constructs a 4' sidewalk along the Winchester Road right-of-way line. He then said that at the time the preliminary development plan was approved, there were existing farm roads on the subject property that had been anticipated for a pedestrian pathway. Mr. Sallee illustrated the location of these farm roads, noted in yellow on the map, and said that there is an existing farm road toward the southwest portion of Tuscany that connects to Unit 4. He said that Unit 4 has been recorded and perhaps home construction has commenced at this point. He said that the only existing sidewalks in this area are along Sir Barton Way, as well as in Unit 4. The farm roads would not directly connect to these areas, but there are proposed streets that will provide a connection. He said that the staff is presuming that sidewalk construction would be an ordinary condition for these street connections, whether or not they are a local or collector streets.

Mr. Sallee then said that there is no sidewalk along the frontage of Winchester Road because it is a state highway. He said that the staff believes it is very feasible to consider that Tuscany, Unit 5 would provide a pedestrian sidewalk, just adjacent to the right-of-way on the private property. He then said that there is a conditional zoning restriction attached to this area that requires a 50' building line along Winchester Road, which will allow plenty of room to construct a 4' sidewalk. The other option would be to construct the sidewalk along the state highway (Winchester Road); but the Planning Commission cannot enforce this option, only the State Transportation Cabinet can. He said that this is the reason the staff is recommending that the sidewalk be built on the private property instead as a condition to this waiver approval. He then said that this would only entail a small piece of frontage on Winchester Road, and it is important to note that there is an 11-acre parcel that is zoned Agricultural Urban (A-U). In conclusion, Mr. Sallee said that even if the entire pedestrian system of

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Tuscany were put in place, to some degree it is unknown as to when (or if) this particular link could be made across the agricultural parcel.

Mr. Martin then directed the Commission's attention to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Denote entrances across Sir Barton Way.
7. Addition of conditional zoning restrictions.
8. Remove all references to a final development plan on this preliminary subdivision plan.
9. Turning lane information and any required improvements on Winchester Road are to be to the approval of the Kentucky Transportation Cabinet.
10. Identify tree preservation area and new landscaping proposed along building line on Sir Barton Way.
11. Identify landscape planting proposed between cul-de-sac and Winchester Road right-of-way, to demonstrate that no conflicts will exist with existing utilities in the existing utility easement.
12. Denote: No final record plat is to be filed until compliance with Article 4-5(b) of the Land Subdivision Regulations is documented.
13. Provided the Planning Commission grant a waiver to Article 6-8 of the Land Subdivision Regulations.

Mr. Martin noted that most of the above conditions are standard, but the reason behind condition number 8 being modified is based upon a technical aspect. He said that this request is a preliminary plan and at some point in the future there will be a record plat for this property. He also said that there will be a need for an infrastructure plan, as well as the need for a final development plan showing the townhouses.

Mr. Martin then said that condition numbers 10 and 11 are also revised, which this is in reference to the identification of the TPA and new landscaping along Sir Barton Way (condition number 10); and the area between the sidewalk and the Winchester Road right-of-way (condition number 11), is an important piece of the waiver request. He noted that the applicant understands that it is very important to have landscaping along Sir Barton Way and Winchester Road, and they have indicated there will be an adequate amount of landscaping in this area.

Referring to the waiver report, Mr. Martin said that the applicant has stated that by removing the sidewalk there will be an increase in the greenspace area, which would create an innovative design. He noted that the staff's approval of the waiver request is contingent upon the applicant heavily landscaping this area.

In conclusion, Mr. Martin said that the staff recommends approval, for the following reasons:

1. Provided the landscaping is installed adjacent to the U.S. 60 right-of-way, granting this waiver meets the requirements of Article 1-5(b) of the Land Subdivision Regulations for innovative design by increasing green space in the development.
2. Granting this waiver will not negatively impact pedestrian safety or the overall function of the internal pedestrian system, provided an alternative sidewalk is constructed.

The staff recommends approval of this waiver, subject to the following conditions.

- a. The proposed sidewalk connection to Sir Barton Way should angle northeast, providing the connection at the traffic signal for Winchester Road and Sir Barton Way.
- b. That the applicant construct a 4' sidewalk on their property adjacent to the right-of-way line along the Winchester Road frontage, to the approval of the Pedestrian Planner.

Planning Commission Question – Mr. Holmes asked if the proposed sidewalk will connect to the existing sidewalks in the area. Mr. Martin said that the staff is hoping the sidewalks will eventually connect along the arterial roads.

Representation – Rory Kahly, EA Partners, was present representing the applicant. Referring to the revised conditions, he said that condition numbers 1 through 7 are agreeable; but as for condition number 8, he asked if the staff wanted the townhouses that are shown on the plan not to be a part of this request. Typically townhouses are shown on a final development plan. He then asked for clarification with condition number 8. Mr. Sallee said that the townhouses could remain if the plan was converted to a preliminary development plan or they could be removed, leaving the plan as a preliminary subdivision plan.

Mr. Kahly asked for further explanation because the certifications are on the plan, and the title block reads as a final development plan. Mr. Sallee said that this plan was originally filed with the staff as a preliminary subdivision plan and not as a final development plan. He said that the staff is willing to amend this plan to also become a preliminary development plan, but not as a final development plan.

Mr. Kahly asked if condition numbers 10 and 11 are to list the buffer areas or if it will be required to show screening on the plan. Mr. Martin said that since the applicant is willing to provide more landscaping in these

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areas, then the landscaping needs to be clearly identified and denoted along the Winchester Road and Sir Barton Way frontages. Mr. Kahly confirmed that this area is the buffer area. Mr. Martin agreed, and said that from the Subdivision Committee meeting, the applicant had stated there would be additional landscaping in this area; therefore, the staff wants it to be identified on this plan. Mr. Kahly said that at the Subdivision Committee meeting there was discussion about placing plank fencing and shrubs along Sir Barton Way, noting that this development would be very similar to the Beaumont Centre area, going toward Man O' War Boulevard.

Mr. Kahly then noted that he was agreeable to condition number 12; but as for condition number 13, they would prefer to withdraw the waiver request. He said that they have always been willing to discuss a system along Winchester Road, but they should not be the only ones who are involved in that discussion. He then said that if this is to link their residential area to the rest of Tuscany and the Hamburg area, then that will be done through the internal street connection. If this is to make a connection to Patchen Wilkes, then there will be crosswalks at the intersections. He said that if something is going to be done for the entire Winchester Road area, then he believes the owners along Winchester Road should be included, not just one developer. Mr. Kahly said that they will withdraw the waiver request, and they will construct the street as required by the ordinance. He said that they will provide landscape screening on the cul-de-sac along Winchester Road.

In conclusion, Mr. Kahly said that he is at a loss when it comes to condition number 8. He said that this request was filed as a preliminary subdivision plan a year ago, and for a few months now, the townhouses are being shown on the plan. He then said that through the changes that were made, they believed they had done what was required for this to be a final development plan. He said that just because it did not say final development plan at the time it was submitted, he does not understand why it is being pulled now. He then said that he does not understand why an additional filing would be required when the same identical layout is being shown.

Mr. Kahly said that they are in agreement with condition numbers 1 through 7, 10, 11 and 12, and requested that condition numbers 8, 9 and 13 be deleted.

Staff Comments – Referring to condition number 8, Mr. Martin said that the applicant's request was not originally filed as a final development plan, nor do the revisions made constitute a final development plan. He said that the staff would be more comfortable with a final development plan being filed prior to construction of these townhouses.

As for condition number 9, Mr. Martin said that it was not due to the turn lane being necessary, but rather that the right-of-way is adequate to construct a turn lane. He said that there is not a need for any additional right-of-way; therefore, that issue has been resolved, but the need for a turn lane still remains.

Mr. Martin concluded by saying that the applicant has every right to withdraw the waiver request.

Petitioner's Comments – Mr. Kahly said that it is his understanding that the requirements for arterials could not be forced upon the developers. He said that there is a turn lane already on Winchester Road leading to Sir Barton Way, and the Subdivision Committee expressed that they did not want a second turn lane. He then said that he is still at a loss as to why this issue is being presented. Mr. Kahly then asked if they will need the approval of the state in order for this request to be certified. Mr. Martin said that the recommendations speak to that issue, and it will be required to obtain the approval of the KDOT for any improvements that are needed. He said that it is the Kentucky Transportation Cabinet's jurisdiction to state whether or not a turn lane is needed, which is the reason behind condition 9 being added.

Planning Commission Comments and Questions – Mr. Vaughn recapped the discussion, and said that the applicant is withdrawing their waiver request; therefore, condition number 13 can be deleted. He then said that the applicant has stated that they are in agreement with condition numbers 1 through 7, 10, 11 and 12, and requested that condition numbers 8 and 9 be deleted.

Mr. Cravens said that he is confused with the turn lane issue, and asked if staff wanted more room in that area. Mr. Martin said that it has been determined that no additional right-of-way is necessary to accommodate any improvements; but should any improvements be needed, then it would be through the approval of KTC.

Mr. Cravens then asked if the Transportation Cabinet has reviewed the area. Mr. Martin said that KTC would determine whether the turn lane is needed. Mr. Cravens then asked why condition number 9 was added, because it only confuses the issues. Mr. Martin said that it is standard procedure to add that condition, particularly for arterial streets involving turn lanes. He said that this issue falls under the State's jurisdiction.

Mr. Cravens then asked Mr. Kahly if he understood that explanation. Mr. Kahly replied that he did.

Mr. Penn asked if the staff still required the proposed sidewalk connection to Sir Barton Way to be angled northeast providing the connection at the traffic signal for Winchester Road and Sir Barton Way, since the waiver request had been withdrawn. Mr. Martin said that that would no longer be necessary because that condition was

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associated with the waiver request. He said that the applicant will only be required to construct the internal sidewalk within the development.

Mr. Cravens noted that Mr. Kahly was confused with condition number 8, and asked how the original plan was filed with Staff. Mr. Sallee said that the plan was originally filed only as a preliminary subdivision plan. Mr. Cravens then asked why Mr. Kahly believes this is a final development plan. Mr. Kahly said that when they resubmitted this plan a few months back, the plan changed from duplexes to a mixture of duplexes and townhomes. There had been discussion with the staff as to what was needed, such as accesses, setbacks, lot lines and so forth. He then said that his office had placed "Final Development Plan" within the title block, along with certifications on the plan, and this is the first time he has heard that this request does not qualify as a final development plan. Mr. Cravens said that this plan was not filed as a final development plan; but, rather, it had evolved into a final development plan. Mr. Kahly agreed, and said that after the discussions with the staff, and the resubmission of the plan; it had become a final development plan.

Ms. Godfrey said that if this plan changed to a preliminary development plan then the applicant would need to resubmit the plan in more detail in order for it to become a final development plan. Mr. Sallee said that the staff's expectation would be that the final development plan would only need to identify the townhouse portion of this plan.

Mr. Cravens asked if the other part (townhouses) is a final development plan. Mr. Sallee said that it is being shown as a final development plan in the title block. He continued that the staff is asking for the words "Final Development Plan" to be removed, or change the title to "Preliminary Development Plan." Mr. Cravens then asked if the townhouses are new. Mr. Sallee said that the townhouses were not part of the original submission.

Action - A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 9-0 (Aten and Roche-Phillips absent) to approve PLAN 2007-52P, subject to the conditions as listed by the staff, deleting condition number 13.

2. Final Subdivision Plans

- a. PLAN 2007-201F: NDC PROPERTY, UNIT 1-A, LOT 16 (WELLINGTON) (AMD.) (5/8/08)* – located at 249 Ruccio Way. (Council District 9) **(Strand Associates)**

Note: The Planning Commission postponed this plan at its October 11, 2007; November 8, 2007; December 13, 2007; February 14, 2008; March 13, 2008; and April 14, 2008, meetings. The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: Disapproval, for the following reasons:

1. Article 1-11 of the Land Subdivision Regulations requires that "plans filed pursuant to these subdivision regulations shall be required to comply with applicable zoning ordinances or other Urban County ordinances."
2. Article 6-7 of the Zoning Ordinance states: "Pursuant to KRS 100.203(8), Planning Commission or the Urban County Council may, as a condition to granting a map amendment, restrict the use of the property affected to a particular use, a particular class of use, or a specified density within those permitted in a given zoning category..."
3. The subject property is restricted in use to "a hotel or motel." The subdivision of this lot would allow separate ownership, separate operation, separate signage and a second hotel or motel at this location. Thus, the proposed subdivision of property is in conflict with the approved conditional zoning restrictions.

Staff Presentation – Mr. Sallee presented the amended final subdivision plan for property located 249 Ruccio Way, as well as the approved development plan for Wellington Way to the Commission. Referring to the approved development plan, he briefly oriented them to the location of this site, and said that to the east of the subject property is the New Circle Road and Nicholasville Road interchange. The subject property is just west of the Northfork-Southern Railroad, which crosses over both New Circle Road and West Reynolds Road. Mr. Sallee noted that West Reynolds Road is a collector street, and it extends from Clays Mill Road to Nicholasville Road.

Mr. Sallee stated that the subject property is located on Ruccio Way, and is very near the railroad overpass that goes over New Circle Road. He then said that the subject property is currently zoned B-3, and it is subject to conditional zoning restrictions. At this time, Mr. Sallee presented two photographs to the Commission, the first photograph showing the property as viewed from the south. He noted that there are two access points leading into the subject property, and the building toward the front of this lot is the existing hotel. He then noted that there is a pool located centrally on the property. The second photograph is a view from the north, and he said that on the lower portion of the photograph is where New Circle Road is located. He said that only 55 percent of the property has been developed. The land to the east is vacant, but the land to the west is in an industrial zone, which already has some existing buildings in this area.

Mr. Sallee said that this plat proposes to subdivide the property into two sections: the front lot will correspond to the current improvements of the property, and a rear lot has been noted on the plan as Lots 16-A and 16-B. He

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said that there is a proposed access easement from Ruccio Way that will serve the rear vacant lot on the site. He noted that the proposed access easement corresponds to the drive aisle noted in the previous photographs.

Mr. Sallee directed the Commission's attention to the final development plan, which has been approved for a two-phase development. He said that the first phase has been completed with the construction of the hotel and off-street parking. The second phase of construction proposes another building having a "U" shape, with off-street parking surrounding the building. The parking will separate the proposed building from the vacant land, as well as the industrial building immediately to the west. He noted that the development of the second phase will be adjacent to New Circle Road. He then noted that the final development plan for this property was certified in 2002.

Mr. Sallee then directed the Commission's attention to the excerpts from the Land Subdivision Regulations and Zoning Ordinance, and said that in reviewing the Land Subdivision Regulations, Article 1-13, it states that subdivision plans are required to comply with applicable zoning regulations or other Urban County Ordinances. He said that it was previously mentioned that the subject property is zoned B-3, and it is subject to conditional zoning restrictions. Those restrictions appear on the preliminary development plan for the overall Wellington development, noting that there are four areas within this overall development that are subject to these restrictions. To the west of the subject property is the P-1 zone, and this area is associated with the Ashland Avenue Baptist Church. He said that the P-1 zone is restricted to the type of uses that are allowed in this area. He then said that the R-3 area is closest to Clays Mill Road and is bounded by Wellington Way, as well as Post Road, noting that there is a density restriction for this area. Immediately to the west of the subject lot is the I-1 zone, and in this area, Mr. Sallee reviewed the type of uses that are otherwise prohibited.

Mr. Sallee stated that the subject property is zoned B-3; and under the conditional zoning restrictions for this site, it is restricted to a hotel or motel use, as well as permitted accessory uses. He said that it is the staff's concern that if the property were to be subdivided, the use of this property would exceed a hotel or motel use. The staff does not believe this request would support the conditional zoning restrictions that are in place for this property, which calls for only a single hotel or motel.

Mr. Sallee directed the Commission's attention to the Zoning Ordinance, and said that conditional zoning restrictions are authorized by state law, as well as being recognized in the Zoning Ordinance.

In conclusion, Mr. Sallee said that the staff is concerned that if this lot is subdivided, it would allow separate ownership, separate operation, separate signage and a second hotel or motel use at this location, noting that it would be independent of the first building. He said that the staff does not believe that this request meets the requirements for Article 1-13 of the Land Subdivision Regulations, and this is what led the staff to recommend disapproval to the Subdivision Committee in October 2007. When the Subdivision Committee had originally reviewed the applicant's proposal, they had made a similar recommendation for disapproval of this plan to the Planning Commission. He said that the supporting findings for that recommendation are as listed on the agenda, which he briefly reviewed with the Commission.

Planning Commission Questions – Mr. Vaughn asked what the individual restrictions are nearby for the P-1 area. Mr. Sallee said that the P-1 zone is restricted to 9 different types of uses, to include churches, Sunday schools, community centers, athletic clubs, schools for academic instruction, technical trade schools, kindergartens and nursery schools - while swimming pools, tennis courts, soccer fields and other similar non-commercial recreational uses are allowed as an accessory use. He further said that parking lots and structures are accessory or conditional uses, and satellite dishes are also permitted as accessory uses.

Ms. Godfrey clarified that the second lot has been approved for construction of a second structure, such as a hotel use. Mr. Sallee said that it is the staff's position that the hotel at this location is allowed to construct a second building. He said that there is more than one hotel or motel that has multiple buildings on a single property already in the community, and that is why the staff had recommended approval of the development plan that is currently certified. He then said that the staff's concern is if the property were to be subdivided, then that restriction would no longer be enforceable.

Petitioner's Presentation – Ashley Ward, and Steve Ruschell, attorneys, were present representing the applicant. Mr. Ward said that they are requesting that the Planning Commission approve their proposal to subdivide this one lot into two lots. He said that the issue for this proposal is whether or not the Zoning Ordinance only allows a single hotel or multiple hotels owned by a single entity, or are there limitations to the type of use allowed in the B-3 zone for that particular parcel. He said that some of the limitations include a restaurant, bank or daycare, but what is allowed is a hotel or motel. He then said that subdividing the property does not change the zoning for the property, it only means the property is still subject to the conditional zoning restrictions. He said that it does not mean there can only be one hotel or motel on that property.

At this time, Mr. Ward provided several exhibits explaining that Exhibit 1 is the final development plan that has already been approved for the construction of two buildings in two different phases. He then said that the first building has been completed and is in operation as a Homewood Suites Hotel. It is important to understand that the Planning Commission and the staff have already approved the second building to be constructed on the

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property, which will be a hotel. He said that if the concern is that subdividing the property will increase the impact for a use that is not wanted, the property has already been approved for a 4-story structure containing 120 rooms, which is larger than what is existing on the property today. Mr. Ward said that even without a subdivision, they are authorized to build what had been already approved with regard to the land use. He said that the property owner can go forward with the construction of Phase 2; however, they are seeking to subdivide parcel F into two lots. At this time, he distributed Exhibit 2A (an aerial photograph of the property) to the Commission, noting that the greenspace area would be the area that would become a separate parcel. He said that the back parcel would still be subject to the same conditional zoning restrictions as the front parcel, which is a hotel or motel use. He then said that they are not requesting a zone change or requesting that the conditional zoning restrictions be changed; rather, they are requesting that this property be subdivided into two separate parcels. He noted that the building cannot be any larger than what has been approved on the final subdivision plan. Mr. Ward stated that in reviewing the aerial photograph, there is a road already coming off of Ruccio Way that will provide an access easement to the rear parcel. He noted that the plans have already been approved to build the second structure, so the question is whether the zoning prohibits the Commission from subdividing this parcel. He said that subdividing a parcel is a ministerial action of the Commission.

Referring to Exhibit 3, Mr. Ward said that the Ordinance #143-97 states that Highway Service Business (B-3) zoning, Tract F, shall be restricted so as to limit uses to a hotel or motel and permitted accessory uses as set forth in the Lexington-Fayette Urban County Zoning Ordinance. He said that this ordinance does not say this is restricted to only one hotel or motel use, nor does it say it is limited to only one operator of the hotel or motel. The staff has interpreted the ordinance to limit the use to one hotel and one operator. He said that zoning within a B-3 zone allows for several different uses; but as for this request, a hotel or motel use is permitted.

He noted that exhibit 4 is Civil Action No. 97-CI-1324, the Agreed Judgment and Order of Dismissal, and said that this property was the old Reynolds Tobacco Company, which was owned by the National Development Council. He said that in an effort to create a use for the community, litigation was entered into the Fayette Circuit Court; and out of this case the ordinance was established. He said that everything built in this area had arisen out of that lawsuit between the National Council for Community Development versus LFUCG and several other entities. The judgment stated that this zoning "shall be subject to a conditional zoning restriction which limits uses to a hotel or motel and permitted accessory uses." The ordinance was then adopted after the agreed judgment was issued. He noted that after that time, there was an amended judgment, as well as a covenant restrictions that had been placed on the property, but it only indicated that Tract F shall be used as a hotel or motel use, and this property cannot be rezoned for any another type of use - it must stay with the title as a hotel or motel use. He noted that exhibit 6 is the Declaration of Covenants, Conditions and Restrictions.

Mr. Ward stated that the staff was correct in saying that a subdivision has to be in conformity with the zoning requirements. In reviewing Article 1-11 of the Zoning Ordinance (exhibit 7), he said that the definition stated that "words in a singular number include the plural; words in the plural number include the singular," which means if the word is singular then it can be interpreted as plural and if it is plural then it can be singular. He said that ordinance number 143-97, as well as the Agreed Judgment and Order of Dismissal, states that this is limited to a hotel or motel use; it does not say it is limited to a single hotel or motel use. He then said that it is limited to the type of use, as in there cannot be a daycare center, dog kennel, restaurant, and so forth.

Referring to Article 8-20(b) of the Zoning Ordinance, Mr. Ward then stated that there are 26 principal uses allowed in the B-3 zone. He said that the applicant is only allowed to have one type of use out of these 26 uses, which stems from the past judgment. He then said that in the list of principal uses, hotel and motel are listed and they are not the plural form of the word. He said that the staff has taken this to mean only one is allowed. If this is true, then the B-3 zone at the corner of Winchester Road and Interstate 75 is not in compliance due to the several hotels and motels in this area.

Mr. Ward then referenced the affidavit of Mary Jo Ruccio (exhibit 7), and said that Ms. Ruccio was the project manager and she was actively involved in the litigation, and the negotiations, as well as being involved in the subdivision of this property. He then said that the affidavit also states that Ms. Ruccio was familiar with the on-going negotiations that led to the Agreed Judgment and Order of Dismissal signed by Judge Payne. The affidavit further states that it was Ms. Ruccio's personal knowledge that Tract F was limited to a hotel or motel use, but there was not a limitation or intention that only one hotel or motel could be built on the subject tract of land. He said that there was no indication as to the number of lots or the number of hotels or motels that could be placed on Tract F. He then said that the affidavit does indicate that this issue was discussed, it was understood and it was agreed upon that the zoning for Tract F was limited to a hotel or motel use to the exclusion of the other uses that may have been allowed under the B-3 zone.

In conclusion, Mr. Ward stated that since 1987, applicants have come before the Planning Commission requesting that their properties be subdivided under the existing zoning. He said that when compiling this information (exhibits 9 through 16) there have been no less than 32 subdivided lots approved by the Planning Commission. At this time, he noted that the staff has certified that information, and he gave a brief description of each zone/section within the NDC Property/Wellington area. He then said that the properties were only subdivided and the existing zone remained the same. In total there have been a total of 32 subdivided plats in

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front of the Planning Commission, which all had been approved by the Commission. He said that each zone has limitations and those limitations have to be met. He then said that the applicant is willing to meet those limitations, and all they are requesting is for the Commission to approve the subdivision of the property in order to provide a separate hotel or motel use, which is consistent with the zoning regulations.

Planning Commission Comments and Questions – Mr. Vaughn asked if the staff has exhibits 1 through 16. Mr. Sallee responded that all of the exhibits were not submitted, at this time. Mr. Ward then submitted the following documents for the record:

Exhibit 1 – is the approved preliminary development plan (PLAN 2001-15P).

Exhibit 2 – is the pending subdivision plan (PLAN 2007-201F).

Exhibit 3 – is Ordinance #143-97

Exhibit 4 – is the Fayette County Court Action No. 97-CI-1324

Exhibit 5 – is the Fayette County Court Action No. 97-CI-1324 (AMD).

Exhibit 6 – is the Declaration of Covenants, Conditions and Restrictions.

Exhibit 7 – is the Zoning Ordinance, as adopted by the Urban County Council on December 15, 1983, and amended through November, 2007.

Exhibit 8 – is the affidavit of Mary Jo Ruccio.

Exhibits 9 through 16 – are the development plans within the NDC Property/Wellington area, as well as a letter of certification from Mr. Sallee, Planning Manager, that has been notarized by Cheryl Gallt.

Ms. Godfrey asked what the economic or social changes are in this area that supports the applicant's request. Mr. Ward said that they are not requesting a zone change for this property, so there are no economic or social changes in that respect; but according to the market, a hotel or motel is needed. He said that the development plan has been approved by the Planning Commission, which will allow 120 more rooms to be constructed. He then said that the applicant does believe there is an economic reason to have an additional hotel or motel in this area. The applicant wants the opportunity to subdivide the property and allow it to stand alone, as a hotel or motel. Mr. Ward said that as long as they are in the proper zone, the subdivision of this property is appropriate, just as it has been done with the nearby properties.

Staff Rebuttal Comments – Mr. Sallee stated that Mr. Ward posed the question as to whether or not the conditional zoning restrictions for a hotel or a motel use are the same as one hotel or motel use. He said that in reviewing Article 1-11 of the Zoning Ordinance, it states that "when not inconsistent with the context, words used in the present tense include the future; words used in the singular number include the plural; words in the plural number include the singular." He then said that how this statement begins is most important for this case, as to whether or not a hotel or motel use is the same as one hotel or motel use.

Mr. Sallee then said that with regards to how this particular plat had been reviewed in comparison to the others plats in the Wellington area, there has been no development or subdivision plan approved in the Wellington area contrary to the conditional zoning restrictions that have been in effect on this property for over 10 years. In fact, parcel F, as it has been described, is the only area restricted to a single use. He said that the other restrictions mentioned were regarding residential density, prohibited uses or allowable uses; but no other area in the entire 400 + acres is restricted to one use.

Planning Commission Comments and Questions – Ms. Godfrey agreed that the applicant's property is restricted to one use, but asked if the applicant has approval to subdivide the property, isn't it true that the use will not be changed. Mr. Sallee replied that the development plan is in effect, and that a hotel or motel is defined (in Article 1-11 of the Zoning Ordinance) as "a building or group of buildings containing individual living or sleeping units that are designed for temporary occupancy of guests." He noted that a motel has a similar definition.

Ms. Whitman asked how different this request is from subdividing a residential lot. Mr. Sallee said that most residential lots are for single family or duplex units, and the Zoning Ordinance restricts those uses to either one or two units per lot. He said that for most cases, the subdivision is almost always approved before the individual construction of the dwelling units. In this case, although the other building has not been constructed, it has been approved on the development plan.

Mr. Holmes asked if it would be allowed for the applicant to add another building on the lot without it being subdivided. Mr. Sallee replied that the building is approved on the development plan for construction; therefore, he believed the applicant could proceed to Building Inspection for a building permit.

Mr. Vaughn said that the development plan has been approved for two buildings on one lot, which Mr. Sallee verified. Mr. Vaughn then asked what the original date of certification was, to which Mr. Sallee responded that the development plan submitted by Mr. Ward is dated for the year 2000; whereas the staff's rendering is dated in the year 2002. He said that to the staff's knowledge, this plan has not been amended since 2002.

Mr. Holmes clarified that, as the development plan stands, the applicant can add a second building. Mr. Sallee replied that the applicant is approved for one additional building on the property. Mr. Holmes then asked if the

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approved development plan would not be permitted if the property is subdivided. Mr. Sallee said that the development plan would remain in effect, regardless of the Commission's action on this request today.

Mr. Day asked that if this property is subdivided into two lots, would the applicant need to come before the Commission with a new development plan meeting the required conditions. Mr. Sallee said that if the Commission were to approve this request, then the applicant would not need to resubmit a revised development plan.

Ms. Godfrey said that without the subdivision of this land, the applicant can build the additional building and lease the property to another entity. Mr. Sallee said that the other building would be eligible for additional wall signage, but it would not be permitted an additional free-standing hotel sign. He then said that as to whether or not the additional building could be leased, a lease is required to be based upon a subdivision plat, and the staff is not sure the applicant could separately lease the additional building without this subdivision.

Petitioner's Comments – Mr. Ward commented that the staff was correct in saying that the most up-to-date development plan is the 2002 version, and he requested that his submission be amended to include the staff's updated version from 2002.

Planning Commission Questions – Mr. Cravens asked if there would be two owners if the property is subdivided. Mr. Ward said that that could be possible; and if it is subdivided, it creates an opportunity for the applicant to sell, lease or keep the property as is. Mr. Cravens clarified that the second parcel could be under the same ownership as the first parcel. Mr. Ward replied yes. Mr. Cravens then commented that it would give the current owner more options to work with, to which Mr. Ward agreed.

Planning Commission Comments - Ms. Godfrey said that this is not a request for a zone change, and the applicant is requesting to subdivide the parcel into two lots. She asked if this would require the same KRS standards for findings. Mr. Gardner replied that it would not. He said that there is no issue as to whether or not the plat is in agreement with the Comprehensive Plan;; the issue is that there is a requirement that when a subdivision has been requested that it comply with the zoning of the property. The argument is what does a hotel or motel mean, and the language that came from the 1997 judgment (Fayette County Court Action No. 97-CI-1324); the ordinance (#143-97) that was approved by the Council; as well as the Declaration of Covenants, Conditions and Restrictions, lays that language out; and the Planning Commission must interpret that language based upon the testimony given by both sides. He said that findings are not required by statute; but if this decision today were to go before a judge in the future, then the findings may be helpful.

Mr. Penn said that he understands that the use is not being changed nor is the zoning of the property. He said that he believes that this is "splitting hairs" and perhaps he is missing the fundamental reasoning; but if the use is the same, then how can it cause harm.

Action - A motion was made by Mr. Mahan, seconded by Ms. Godfrey, and carried 9-0 (Aten and Roche-Phillips absent) to approve PLAN 2007-201F, for the following reasons:

1. The approval of the subdivision plat meets the subdivision regulations, and is consistent with the approved final development plan.
2. The subdivision plat does not violate the Zoning Ordinance, as the use shall remain as a hotel or motel use.

A recess was declared at 3:10 p.m. and the meeting re-convened at 3:20 p.m.

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

Note: The Planning Commission postponed this plan at its March 13, 2008; and April 14, 2008, meetings.

The Subdivision Committee Recommended: Postponement. There were questions regarding the street frontage, the need for a waiver for lot access, and timing of the submission with the corollary development plan.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Addition of engineer's name.
9. Addition of reciprocal parking note.
10. Addition of existing sanitary sewer easements.
11. Discuss access easement.

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12. Provided the Planning Commission grants a waiver to Article 6-8 of the Land Subdivision Regulations regarding street continuity.
13. Discuss lot frontage.

Staff Presentation – Ms. Gallt directed the Commission's attention to the revised conditions submitted by the staff, and briefly oriented them to the subject site. She said that the property is currently zoned R-4, and the applicant wants to subdivide 5 acres of the land in order to remove the tennis court and build 7 townhomes on this property. She then said that the Subdivision Committee and staff had discussed the applicant's request, and the staff now recommended approval, subject to the following revised 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 landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Addition of engineer's name.
9. Addition of reciprocal parking note.
10. Addition of existing sanitary sewer easements.
11. ~~Discuss access easement.~~ Correct access easement to scale and eliminate any conflict with approved development plan.
12. Provided the Planning Commission grants a waiver to Article 6-8 of the Land Subdivision Regulations regarding street continuity.
13. ~~Discuss lot frontage.~~ Correct building line to scale.

She noted that Lake Park Road dead ends at the subject property, and the staff would request that the building lines be adjusted to create the separate lot.

Waiver Report – Mr. Martin stated that the applicant has requested to subdivide a portion of the property at the edge of Lake Park Road. He said that Lake Park Road stubs into the existing apartment area, and the applicant is requesting to remove the tennis court in order to create 7 additional townhomes. He noted that the Planning Commission recently approved a development plan on the subject property.

Mr. Martin then stated that the Land Subdivision Regulations require a stub street be terminated in a cul-de-sac or create some other type of turnaround; otherwise, it should continue onward. He said that Lake Park Road has existed since the early 70s when the property was developed. The street has 50 feet of right-of-way, 26 feet of pavement and an 8-foot utility strip, as well as a 4-foot sidewalk. Directing the Commission's attention to the aerial photograph, he said that Lake Park Road has a knuckle type cul-de-sac, which then stubs into the subject property ending at the tennis court, which is where the 7 townhouses would be built.

In conclusion, Mr. Martin said that the staff agrees with the applicant in that requiring the termination cul-de-sac would create an unnecessary hardship, and it would interfere with the current access to the existing apartment complex. He said that the parking would be reduced, which would create an even greater non-conforming situation for the apartment complex. He noted that the access was reviewed in conjunction with the Divisions of Fire and Waste Management; and since there is a development plan controlling the property, the staff is comfortable with approving the waiver request.

Planning Commission Questions and Comments – Ms. Godfrey asked if this request was listed on the postponements due to the turnaround issue, because she did not recall reviewing it. Mr. Martin said that that was correct. He said that this item had been recommended for postponement, due to questions concerning the lot frontage and the access easement for both properties. He said that for a period of time an access easement was not being shown. The building lines were located at an odd angle, and the scale of the plat had to be properly shown. Mr. Martin noted that the development plan had also been postponed for a length of time, as well, due to the parking situation, which has since been resolved. He said that the primary purpose for the postponement recommendation was due to the access into both properties, as well as the lack of lot frontage originally proposed. He then said that the staff is comfortable with the revised submission.

Mr. Vaughn asked if there is a particular geometry in reviewing cul-de-sacs, hammerheads and so forth. Mr. Martin replied that there is a standard cross-section that is required by the Land Subdivision Regulations. Mr. Vaughan clarified that the cross-section is not being modified. Mr. Martin agreed, and said then referred the Commission to Article 6-8(m) of the Land Subdivision Regulations, which shows the access easement standards. He noted that the applicant does not want to build the required cul-de-sac, which is the reason for the waiver request. He said that both the Division of Fire and the Division of Waste Management are in agreement with this waiver.

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Mr. Holmes asked if there is adequate space for a fire truck to make a turnaround. Mr. Martin said that the Division of Fire has deemed the parking lot to be adequate for the larger vehicles.

Petitioner's Presentations – Gary Roland, Foster – Roland, Inc., was present representing the applicant. He noted that this is request subject to the development plan that was previously approved by the Planning Commission, and they intend to develop this area in accordance with that plan. He said that they will be subdividing this property for financial reasons and this will not have any effect as to what will be on site. He then stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2008-28F.

Action - A motion was made by Mr. Penn, seconded by Mr. Mahan, and carried 9-0 (Aten and Roche-Phillips absent) to approve PLAN 2008-28F, subject to the revised conditions as listed by the staff, and to approve the waiver to Article 6-8(b) of the Land Subdivision Regulations for the following reasons:

1. Requiring the construction of a cul-de-sac would require extensive physical changes to the existing parking lot that is currently providing adequate access for the provision of emergency and other public services and would therefore constitute a hardship for the applicant.
2. Granting the waiver will not negatively impact public health and safety because, as constructed, the combination of the existing parking lot and the "knuckle" in Lake Park Road already provides adequate maneuverability for service vehicles.

Note: The next four items were heard simultaneously.

- f. PLAN 2005-280F: GESS PROPERTY, UNIT 5-C (7/22/08)* - located on portions of 4040 and 4044 Todds Road (off of Jouett Creek Drive). **(EA Partners)**

Note: The Planning Commission originally approved this plan on October 13, 2005; and reapproved this plan on February 7, 2007, subject to the following conditions:

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

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

The Subdivision Committee Recommended: Reapproval, subject to the previous conditions.

- g. PLAN 2005-281F: GESS PROPERTY, UNIT 5-D (7/22/08)* - located on portions of 4040 and 4044 Todds Road (off of Jouett Creek Drive). **(EA Partners)**

Note: The Planning Commission originally approved this plan on October 13, 2005; and reapproved this plan on February 7, 2007, subject to the following conditions:

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

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

The Subdivision Committee Recommended: Reapproval, subject to the previous conditions.

- h. PLAN 2005-282F: GESS PROPERTY, UNIT 5-E (7/22/08)* - located on portions of 4040 and 4044 Todds Road (off of Jouett Creek Drive). **(EA Partners)**

Note: The Planning Commission originally approved this plan on October 13, 2005; and reapproved this plan on February 7, 2007, subject to the following conditions:

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

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4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of street addresses by e911 staff.
6. Urban Forester's approval of tree preservation plan.
7. Addition of exaction information.
8. Correct street cross-sections.

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

The Subdivision Committee Recommended: Reapproval, subject to the previous conditions.

- i. PLAN 2005-283F: GESS PROPERTY, UNIT 5-F (7/22/08)*- located on portions of 4040 and 4044 Todds Road (off of Jouett Creek Drive). **(EA Partners)**

Note: The Planning Commission originally approved this plan on October 13, 2005; and reapproved this plan on February 7, 2007, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
5. Approval of street addresses by e911 staff.
6. Urban Forester's approval of tree preservation plan.
7. Greenspace Planner's approval of the treatment of greenways/bike trails.
8. Addition of exaction information.
9. Correct street cross-sections.
10. Correct adjacent property information.
11. Show 30' access easement as per PC "L," SLD "361".
12. Demonstrate compliance with Article 23A-2(f) of the Zoning Ordinance.

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

The Subdivision Committee Recommended: Reapproval, subject to the previous conditions.

Staff Presentation – Mr. Martin noted that Units 5-C through 5-F will be reviewed simultaneously and briefly oriented the Commission to the layout of the Gess property that included the street systems within the area. He then noted that the staff had previously handed out the revised conditions to the Commission for each of these requests.

Mr. Martin stated that the Planning Commission had originally approved these plans on October 13, 2005; and reapproved the plans on February 7, 2007. He oriented the Commission to each individual unit, noting that Unit 5-F is a greenway. He said that the remaining units are for single family residential development in an EAR-2 zone, and there is a portion of each unit that has already been recorded. He then said that the items identified in the rendering are the lots remaining and these are the sections that need to be reapproved.

Mr. Martin then stated that, in light of previous circumstances, the staff had reviewed these plans and added an additional condition for Unit 5-E and Unit 5-F. He said that the condition reads as follows: "Applicant shall document either evidence of a Section 404 Water Quality Permit and relief from the Corps of Engineers "Cease and Desist" Order for this Unit or sufficient evidence that this Unit does not require a Section 404 Water Quality Permit prior to certification." He then said that a portion of Unit 5-F, which is the greenway area, does have a small portion that will be impacted, as does Unit 5-E. He noted that the greenway area will become the property of LFUCG.

In conclusion, Mr. Martin said that the staff is recommending reapproval of these plans, subject to the revised conditions listed on the staff's handout.

Petitioner's Presentations – Rory Kahly, EA Partners, was present representing the applicant. He then stated that the applicant is in agreement with the staff's revised recommendations, and requested reapproval of PLAN 2005-280F, PLAN 2005-281F, PLAN 2005-282F and PLAN 2005-283F.

Planning Commission Questions – Mr. Penn complimented the staff on their presentation of these Gess Property plats. He then asked where the storm water runoff is directed on these plans. Referring to the overall layout of the Gess Property, Mr. Kahly pointed out the greenway area that will be used to collect the storm water runoff. Mr. Penn then asked if most of the storm water runoff is being collected by the current detention ponds. Mr. Kahly agreed, and said that everything drains to Chilesburg Road.

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

Citizen Comments – Mr. John Tucker, who resides in the area on Chilesburg Road, said that he has corresponded with the Kentucky Division of Water. They had informed him that the applicant's 401 Water Quality Permit has expired, and it needs to be recertified. He asked Mr. Kahly if this is true. He then asked if Mr. Newman (Division of Engineering) knows about this issue.

Mr. Tucker said that he is not sure how long the certification has been expired, but as it was stated to him, it has been a while. He then said that the developments could have been approved while being in direct violation of the Clean Water Act, which refers to the EPA Consent Decree.

Mr. Tucker then said that he believes anything that is done in this area will come back on the citizens of Lexington, and asked that these requests be postponed until further information could be obtained.

Planning Commission Questions – Mr. Penn asked for an explanation as to what the 401 Water Quality Permit is. Mr. Newman said that the 401 Water Quality Permit is similar to the 404 Army Corps of Engineers Permit. He said that these permits will address water quality issues in relation to the impact to streams and wetland areas.

Mr. Penn then asked if these four requests need a 401 Water Quality Permit. Mr. Newman said that for the unrecorded portion of the plans, they do not. He said that the 401 Water Quality Permit would address the construction activities within and around the identified streams and wetland areas.

Mr. Penn then asked if it would be germane to place this condition on these plans, to which Mr. Newman responded that it would not hurt.

Mr. Holmes asked if the State notified the staff of the expiration of a 401 Water Quality Permit. Mr. Newman replied that they had not, but the staff could follow up with the DOW and the developer as to what the status is, as well as the impact of the work proposed.

Mr. Vaughn asked if the applicant would need to re-apply to the DOW if the permit has expired. Mr. Newman said that he believed the applicant would need to either apply for a reapproval for the existing permit or apply for a new permit.

Ms. Godfrey clarified that there only two plans being affected by the 401 Water Quality Permit and the 404 Water Quality Permit, and those are Units 5-E and 5-F. Mr. Newman said that the 401 Permit would cover the entire area, which is similar to the 404 Army Corps of Engineers Permit. He said that in order to obtain the 404 Permit, the 401 Permit must be applied for as well.

Mr. Day asked if the Army Corps of Engineers requirements and the State of Kentucky requirements are similar, or is one stricter than the other. Mr. Newman said that they are similar, but each one has a distinct program. He said that he does not know what the terms of the permit were at the time it was issued.

Ms. Godfrey asked if an additional condition should be added to the entire plan that will document evidence of the 401 Permit. Mr. Newman said that that would be appropriate.

Mr. Vaughn asked if the staff was comfortable with adding the new condition. Mr. Martin said that the staff was comfortable with adding the additional condition to all four plans. He said that the condition should read as follows:

"The applicant shall document either evidence of a State Section 401 Permit or sufficient evidence that this Unit does not require a Section 401 Permit prior to certifications."

Action - A motion was made by Mr. Penn, seconded by Ms. Godfrey to approve the following:

PLAN 2005-280F, subject to the 8 conditions listed by staff, adding the following:

9. The applicant shall document either evidence of a State Section 401 Permit or sufficient evidence that this Unit does not require a Section 401 Permit prior to certifications."

PLAN 2005-281F, subject to the 8 conditions listed by staff, adding the following:

9. The applicant shall document either evidence of a State Section 401 Permit or sufficient evidence that this Unit does not require a Section 401 Permit prior to certifications."

PLAN 2005-282F, subject to the 8 conditions listed by staff, adding the following:

9. Applicant shall document either evidence of a Section 404 Water Quality Permit and relief from the Corps. Of Engineers "Cease and Desist" Order for this Unit or sufficient evidence that this Unit does not require a Section 404 Water Quality Permit prior to certifications.
10. The applicant shall document either evidence of a State Section 401 Permit or sufficient evidence that this Unit does not require a Section 401 Permit prior to certifications.

PLAN 2005-283F, subject to the 12 conditions listed by staff, adding the following:

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13. Applicant shall document either evidence of a Section 404 Water Quality Permit and relief from the Corps. Of Engineers "Cease and Desist" Order for this Unit or sufficient evidence that this Unit does not require a Section 404 Water Quality Permit prior to certifications.
14. The applicant shall document either evidence of a State Section 401 Permit or sufficient evidence that this Unit does not require a Section 401 Permit prior to certifications.

Director's Comments – Mr. King suggested that the Commission add both new conditions to all plans, and then if those conditions do not apply, there will be appropriate documentation.

Mr. Vaughn said that there is a motion and a second on the floor to approve the four plans currently before the Commission, subject to the listed conditions, and adding the conditions as noted by Mr. King.

The motion carried 9-0 (Aten and Roche-Phillips absent).

3. Development Plans

- a. DP 2007-151: OVERBROOK LAND COMPANY (7/3/08)* – located at New Circle Road and Liberty Road. (Council District 6) **(Vision Engineering)**

Note: The Planning Commission originally approved this plan on December 13, 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 landscape buffer.
4. Urban Forester's approval of tree preservation areas.
5. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Solid Waste's approval of refuse collection.
8. Approval of street names and addresses per e911 staff.
9. Correct plan title.
10. Delete extraneous information.
11. Denote: All customer required parking to be marked.
12. Provided the Board of Adjustment grants approval of parking within a Professional Office (P-1) zone.
13. Consolidation plat to be recorded prior to certification of development plan.
14. Denote access and road improvements to Liberty Road.
15. Denote building height and type of uses proposed.
16. Kentucky Transportation Cabinet's approval of access and improvements to New Circle Road.

Note: The applicant now requests a continued discussion to revise the building layout, building size and parking circulation.

The Subdivision Committee Recommended: Approval, subject to the previous conditions.

Staff Presentation – Mr. Taylor briefly oriented the Commission to the applicant's request, and said that the subject property is located at the northwest corner of New Circle Road and Liberty Road. He said that a portion of the property is zoned P-1, while the rear of the property is zoned I-1.

Mr. Taylor said that this particular plan was approved by the Planning Commission, and now the applicant is requesting to increase the buildable square footage of this proposed car dealership and to incorporate an additional lot that was previously excluded from the original recommendations.

Mr. Taylor then said that the Subdivision Committee recommended approval of the applicant's request, subject to the 16 conditions previously distributed. He said that Traffic Engineering had informed the staff that KDOT is now interested in having more pedestrian sidewalks in this area since the corner lot is now part of the applicant's request. He then said that the staff has revised condition number 16 to read: "Kentucky Transportation Cabinet's approval of access and improvements to New Circle Road, including pedestrian facilities."

Planning Commission Questions – Mr. Vaughn clarified that condition number 16 is being revised to include pedestrian facilities, to which Mr. Taylor agreed.

Petitioner's Presentations – Matt Carter, Vision Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's revised recommendations, and requested approval of DP 2007-151.

Action - A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 9-0 (Aten and Roche-Phillips absent) to approve DP 2007-151, subject to the conditions as listed by the staff, revising condition

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number 16 to read: "Kentucky Transportation Cabinet's approval of access and improvements to New Circle Road, including pedestrian facilities."

- C. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 9-0 (Roche-Phillips and Aten absent) to approve the release and call of bonds as detailed in the memorandum dated May 8, 2008, from Rice Lear, Division of Engineering.

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

- A. **UPCOMING WORK SESSION** – Mr. King noted that the month of May has two work sessions scheduled, and said that there will be a lengthy discussion regarding digital billboards, as well as a report given from the Ad Hoc Committee concerning the EPA Consent Decree at the May 29th work session; therefore, the staff suggests that the May 15, 2008, work session be cancelled.

Action - A motion was made by Mr. Mahan, seconded by Ms. Richardson, and carried 9-0 (Roche-Phillips and Aten absent) to cancel the Commission's work session scheduled for May 15, 2008.

With regard to the EPA Consent Decree, Mr. King asked the Commission if they would like the staff to make an inquiry as to whether or not this portion of the work session could be broadcast on GTV-3.

Mr. Penn said that he would encourage the staff to find out that information. He said that this is not just an informational session, but rather how business will be done in the future. The Ad Hoc Committee realizes that this is a work in process, and there will be a lot of input from the community as to how things will operate. He then noted that at the May 29th work session; there will be people present to explain this situation to the best of their knowledge. Mr. King said that the staff will make every effort to have that portion of the work session broadcast. He then reminded the Commission, that since this will be a work session, no official action can be taken during that time.

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

- A. **APA AUDIO CONFERENCE** - Mr. King informed the Commission that there will be an APA audio-conference in the Division of Planning Conference Room on Wednesday, May 21, 2008, beginning at 4:00 p.m. The title of this conference is "Community-Based Brownfields Redevelopment" and will count toward 1.5 hours of training credits for the Planning Commission members, as well as staff.
- B. **OTHER** - Mr. King informed the Commission that Ed Gardner will no longer be assigned as legal counsel for the Planning Commission. He said that the staff would like to thank Mr. Gardner for his time, and the staff appreciates the high quality of legal help that he has given.

Mr. King then welcomed Rochelle Boland, who has been assigned as legal counsel for the Planning Commission. Mr. Vaughn concurred and said that they are glad to have Ms. Boland.

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

IX. **NEXT MEETING DATES** -

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers (this was cancelled).....	May 15, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	May 22, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	May 28, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	May 29, 2008
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	June 5, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	June 5, 2008
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	June 12, 2008

- X. **ADJOURNMENT** - There being no further business, the meeting was adjourned at 4:02 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary