

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

July 8, 2021

- I. **CALL TO ORDER** - Due to the COVID-19 State of Emergency, this meeting is being held via live video teleconference pursuant to 2020 Senate Bill 150, and in accordance with KRS 61.826.
- II. **ATTENDANCE** – Chair Larry Forester called the meeting to order at 1:30 p.m. **via video teleconference** from the Division of Planning, 7th Floor, 101 E. Vine Street, Lexington, KY 40507. Planning Commission Members present **via video teleconference** were: Headley Bell, Zach Davis, Larry Forester, Janice Meyer, Bruce Nicol, Frank Penn, and Graham Pohl. Absent were Ivy Barksdale and Anthony de Movellan. Planning staff members present **via video teleconference** were Jim Duncan, Director; Traci Wade, Tom Martin, Hal Baillie, Cheryl Gallt, Lauren Hedge, Scott Thompson, Stephanie Cunningham, Debbie Woods, and Kenna Johnson. Other staff members present were: Stephen Parker, Division of Traffic Engineering; Hillard Newman, Division of Engineering; Captain Greg Lengal, Division of Fire and Emergency Services; Kristan Curry, Environmental Quality and Public Works; Bettie Kerr, Amelia Armstrong, and Barry Dennis, Historic Preservation; and Tracy Jones, Department of Law.
- III. **APPROVAL OF MINUTES** – A motion was made by Mr. Bell, seconded by Mr. Nicol, and carried 7-0 (Barksdale and de Movellan absent) to approve the minutes of the May 13, 2021, and June 10, 2021, meetings.

III. POSTPONEMENTS OR WITHDRAWALS

- a. **PLN-FRP-21-00028: BLUEGRASS BUSINESS PARK (PEMBERTON FARM) (AMD) (8/30/21)*** - located at 2200 & 2201 INNOVATION DR., LEXINGTON, KY.
Council District 2
Project Contact: EA Partners, PLC

Note: The purpose of this plat is to dedicate additional right-of-way for Innovation Drive.

The Subdivision Committee Recommended: Disapproval. There were questions regarding the required closure of the temporary access per the certified Preliminary Subdivision Plan/Final Record Plat. Establishing a permanent access to Georgetown Road (US 25) is not in compliance with required access spacing established by Article 6-8(q) of the Land Subdivision Regulations.

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.
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 & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Provided the Planning Commission grants a waiver of Article 6-8(q) of the required intersection spacing.
10. Denote this property is located in the Royal Springs Aquifer Recharge Area.

Note: The applicant has requested a waiver of Article 6-8(q)(2)(c) of the Land Subdivision Regulations with regard to intersection and access spacing guidelines.

Applicant Representation: Branden Gross, attorney, stated that the applicant had received the staff's revised recommendation, and would like to request a one-month postponement in order to allow additional time to review the staff's concerns.

Action: A motion was made by Mr. Penn, seconded by Mr. Pohl, and carried 7-0 (Barksdale and de Movellan absent) to postpone **PLN-FRP-21-00028: BLUEGRASS BUSINESS PARK (PEMBERTON FARM) (AMD)** to the August 12, 2021, meeting.

- b. **PLN-MJSUB-21-00001: BELMONT FARM, UNIT 7 (COVENTRY) (AMD) (7/4/21)*** - located at 2418 HUNTLY PLACE, LEXINGTON, KY.
Council District 2
Project Contact: Banks Engineering

Note: The Planning Commission postponed this item at their May 13, 2021, and June 10, 2021, meetings. The purpose of this amendment is to convert townhomes to detached single-family homes.

The Subdivision Committee Recommended: Postponement. There were questions regarding potential driveway conflicts near the 3-way intersection of Huntly Place and Minister Place.

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

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

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

2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Change lot numbers to match previously certified Preliminary Subdivision Plan.
11. Clarify area of amendment on vicinity map.
12. Remove "proposed" from street name where lots have been recorded.
13. Denote location of construction access.
14. Addition of listing of private utilities.
15. Addition of driveway location for school.
16. Discuss alternative access for proposed detached single family lots facing Huntly Place.

Applicant Representation: Greg Smorstad, Banks Engineering, stated that the applicant would like to request a one-month postponement in order to continue discussing options for the property.

Action: A motion was made by Ms. Meyer, seconded by Mr. Pohl, and carried 7-0 (Barksdale and de Movellan absent) to postpone PLN-MJSUB-21-00001: BELMONT FARM, UNIT 7 (COVENTRY) (AMD) to the August 12, 2021, meeting.

- c. PLN-MJDP-21-00030: GREATHOUSE PROPERTY (THE VILLAGE AT GREAT ACRES) (AMD) (8/30/21)* – located at 2731 & 2751 LEESTOWN RD., LEXINGTON, KY.
Council District 2
Project Contact: Barrett Partners, Inc.

Note: The purpose of this amendment is to revise the development plan to include the apartments and commercial development.

The Subdivision Committee Recommended: **Postponement.** There are questions regarding proposed access locations.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. United States Postal Service Office's approval of kiosk locations or easement.
13. Denote Board of Adjustment approval of Building H accessory parking in the R-3 zone.
14. Discuss proposed access spacing on Ruby River Drive.
15. Discuss proposed frontage and access for Townhouses 4, 5, 6, 7, 8, and 9.
16. Discuss proposed structure and access drive aisle on north side of Building D.
17. Discuss relocation of traffic circle and proposed access on Lucille Drive.
18. Discuss timing of CLOMR and proposed trail location.

Applicant Representation: Richard Murphy, attorney, requested a one-month postponement of this item in order to allow the applicant time to meet with the Divisions of Planning and Traffic Engineering staff to discuss proposed access changes.

Action: A motion was made by Mr. Pohl, seconded by Mr. Davis, and carried 7-0 (Barksdale and de Movellan absent) to postpone PLN-MJDP-21-00030: GREATHOUSE PROPERTY (THE VILLAGE AT GREAT ACRES) (AMD) to the August 12, 2021, meeting.

- IV. **LAND SUBDIVISION ITEMS** – The Subdivision Committee met on Thursday, July 1, 2021, at 8:30 a.m. The meeting was attended by Commission members Ivy Barksdale, Headley Bell, Anthony de Movellan, Jan Meyer, and Frank Penn. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Stephen Parker, Division of Traffic Engineering. Staff members in attendance were: Jim Duncan; Traci Wade; Tom Martin; Hal Baillie; Cheryl Galt; Lauren Hedge; Samantha Castro; Scott

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Thompson; and Stephanie Cunningham; Captain Greg Lengal, Division of Fire and Emergency Services; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following notes automatically apply to all plans listed on this docket (unless a waiver of any section is granted by the Planning Commission).

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

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

Criteria:

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda, and
- (2) the Petitioner agrees with the Subdivision Committee recommendation and 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.

Ms. Wade announced the following agenda items appearing on the consent agenda:

- a. PLAN 2016-71P: TUSCANY, UNIT 11 – located at 1970 WINCHESTER ROAD (A PORTION OF), LEXINGTON, KY.
Council District 6
Project Contact: EA Partners, PLC

Note: The Planning Commission originally approved this plan on July 14, 2016, 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. 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 and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Denote record plat information for adjacent properties if available.
10. Denote easement for street tree planting.
11. Resolve future of adjacent greenway.
12. Resolve potential floodplain crossing for pedestrians and vehicular options.
13. Reduce the number of lots to 100.

Note: The applicant now requests an extension of the Planning Commission's previous approval.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions as listed.

- b. PLN-MJDP-18-00096: FAYETTE INDUSTRIAL PARK, BLOCK A, LOT 3 located at 130 W. Tiverton Way – located at 130 W. TIVERTON WAY, LEXINGTON, KY.
Council District 9
Project Contact: Vision Engineering

Note: The Planning Commission originally approved this plan on December 13, 2018, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. 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. Clarify number of seats in purpose of amendment note.
10. Denote location of stormwater detention.

Note: The applicant now requests reapproval.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions as listed.

- c. PLN-MJDP-20-00064: BEAUMONT FARM, UNIT 1, SECTION 5, LOTS 9 & 10 - located at 960 MIDNIGHT PASS, LEXINGTON, KY.
Council District 10
Project Contact: Vision Engineering

Note: The Planning Commission originally approved this plan on March 11, 2021, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. United States Postal Service Office's approval of kiosk locations or easement.
12. Resolve location of parking spaces adjacent to northeast entrance to property and width of access.
13. Clarify breakdown of parking spaces in site statistics.
14. Document open space provided with square footage breakdown exhibit.

Note: The applicant now requests a continued discussion in order to increase building square footage on the property.

The Subdivision Committee Recommended: **Approval**, subject to the original conditions as listed.

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

Audience members requesting full discussion: There were none.

Action: A motion was made by Mr. Penn, seconded by Mr. Bell, and carried 7-0 (Barksdale and de Movellan absent) to approve the items on the consent agenda as listed.

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

The procedure for these hearings is as follows:

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

Note: Requests for additional time, stating the basis for the request, must be submitted to The 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. **PRELIMINARY SUBDIVISION PLAN**

- a. PLN-MJSUB-21-00003: COPPER CREEK SUBDIVISION (WYNNDAL DEVELOPMENT, LLC PROPERTY) (8/30/21)* - located at 4296 STEAMBOAT & 1750 OLD HIGBEE MILL RD., LEXINGTON, KY.
Council District 9
Project Contact: EA Partners, PLC

Note: The purpose of this amendment is to clarify access to the greenway.

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

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

1. The adopted *Greenspace Plan* identifies the need for urban greenspace sites and linkages between such locations in order to create a network of corridors, trails, and open spaces throughout the city. Connections between natural areas, parks and open spaces support the healthy functioning of the local ecosystem and makes it more feasible and attractive to travel within the city by bicycle and on foot (*Greenspace Plan*, adopted in 1994, pages 36-41).
2. Areas along S. Elkhorn Creek were identified in the adopted *Greenspace Plan*, and the subsequent *Greenway Master Plan*, for a proposed park and trail linkages (*Greenspace Plan*, Appendix C-1, and *Greenway Master Plan*, P-14: South Elkhorn Greenway Trail, adopted in 2002, page 4-62 and 4-63).
3. A shared-use trail was constructed from Waverly Park to Steamboat Road, and is planned to continue across Steamboat Road into the S. Elkhorn Creek greenway. This urban greenspace linkage was depicted on the approved and certified Preliminary Subdivision Plan from 2015, and subsequent Final Record Plats which were recorded in 2017.
4. The planned trail connection on the north side of Steamboat Road to the greenway is part of a shared-use trail linking parks and greenways throughout the southwestern quadrant of the City of Lexington. It is an important connection in the trail system that should not be lost.
5. The topography of the land surrounding the planned greenway access and shared-use trail is steep and any reduction in the width of the access lot or access easement may result in the trail not being able to be constructed in a manner that meets ADA requirements.
6. The single-family home built on Lot 1 was not constructed in conformance with the approved building permit, and a concrete driveway has been poured that crosses the property line and encroaches about 18 feet into the access to the greenway.

Staff Presentation: Ms. Wade directed the Commission's attention to the preliminary subdivision plan. She explained the proposed request, noting that the purpose of the amendment was to adjust access to a greenway, which is planned to be dedicated to the LFUCG.

Ms. Wade stated that 25 lots were created with the approval of the Planning Commission for this property in 2015, with access provided to the greenway via a lot. The applicant is now requesting access to the greenway via an easement, which would cross a single family lot.

Ms. Gallt provided background on the subject property, noting that the subdivision was approved in 2015; platted in 2017; and construction of single family homes began in 2019. In July 2020, a consolidation plat was filed. The certified preliminary subdivision plan, from 2015, depicts the greenway access as a lot leading to the greenway, with an additional pedestrian access on the south side of Steamboat Road to the existing Waverly Park. During the Planning Commission review in 2015, a connection between Waverly Park and the proposed greenway was requested of, and agreed to by, the developer. A greenway note was added to the plan, indicating the intent of the developer to dedicate the greenway to the LFUCG for protection of the environmentally sensitive area and to construct a multi-use trail.

Ms. Gallt explained that the consolidation plat, which was filed in 2020, proposed to consolidate the greenway lot access to the adjacent single family lot. A building permit was also requested at that time, which included a house with a driveway access extending from the front of the house to Steamboat Road. The staff reviewed the consolidation plat, determined that it did not meet the approved preliminary subdivision plan, and requested that the applicant withdraw it. The applicant, however, proceeded with home construction and encroached onto the greenway access lot, which was a deviation from the approved plan. The staff received a revised consolidation plat in April 2021; as part of the review of that plat, staff conducted a site visit, and learned that the driveway had been constructed across the platted lot line and the planned greenway access. Ms. Gallt reiterated that the side-entry driveway was not constructed according to the building permit, which included a front-entry driveway. In addition, there was not enough space on the single family lot to accommodate vehicle entrance into the garage without encroaching onto the greenway access.

Ms. Wade explained, with regard to the greenway access, how and why greenways and access to such greenways were a part of the planning policy and adopted Plans for the community. Ms. Wade stated that the 1994 Greenspace Plan laid out urban and rural scenarios for developing a connected greenway system within the community. In 2002, the Planning Commission adopted the Greenway Master Plan, which identified the actual locations for greenways and linkages. The Greenway Master Plan proposed the South Elkhorn Greenway Trail to extend from Veterans Park, along the greenway, to Waverly Park near the subject property. The Bike and Pedestrian Master Plan noted that implementation of the Greenway Master Plan would provide health, environmental, economic, access and mobility, and safety benefits for residents and the community. Ms. Wade stated that, in addition to the plans that recommended the greenway access for the subject property, Article 6 of the Land Subdivision Regulations notes that, "standards exceeding the minimum requirements may be provided by the developer, or required by the Commission." In 2015, the applicant proposed a plan that was in excess of the minimum required standards, and the Planning Commission approved that plan.

Ms. Wade stated that, in reviewing the subject plan, the staff has found that the proposed link to the greenway would not be sufficiently wide enough to allow construction of the trail, since the side-entry garage and driveway were constructed on that portion of the property. She reminded the Commission that the Land Subdivision Regulations call for a minimum of a ten (10) foot easement for greenway access, but the current configuration of the house and driveway do not allow enough space for an easement of that width. Staff has determined that a connection to the greenway does still need to be

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provided, in accordance with several adopted plans, and it should remain in the approved location; a ten (10) foot shared-use trail requires more space than the minimum ten (10) foot easement; the existing lot has 25' of frontage along Steamboat Road, but only seven (7) feet remain unencumbered by driveways, so the property does not meet the Land Subdivision Regulations. If the greenway access is consolidated to Lot 1, the future homeowner would be responsible for the maintenance of the trail; and the proposed plan does not meet the needs of the community. Ms. Wade stated that there is an approved preliminary subdivision plan, plat, and construction plan for the property that meet the regulations, and the applicant is now requesting an amendment that provides less access, and does not uphold the agreements that were approved previously. For these reasons, and those findings as listed on the agenda, the staff and the Subdivision Committee recommended disapproval of this plan.

Applicant Presentation: Bruce Simpson, attorney, stated that the applicant began development on the subject property in 2015. The property was already zoned, so the Planning Commission approved a preliminary subdivision plan. At that time, the applicant volunteered to provide access to the greenway, as well as across the street to Waverly Park. The applicant also paid for the construction of the trails and installed a crossing over South Elkhorn Creek.

Mr. Simpson stated that the applicant began to experience problems with tree branches and other debris blocking the creek, which resulted in flooding, complaints from some of the neighbors, and citations with fees. To avoid those issues in the future, the applicant removed the path across the stream, which he considered an "attractive nuisance." The applicant does intend to donate the land to LFUCG for use as a greenway with a trail.

Mr. Simpson explained that, as the applicant began construction on the house adjacent to the trail, he realized that the front-entry driveway accessed the street very near a large storm sewer drainage inlet in the street. Since the applicant owned both lots, he made a change in the field in order to create a side-entry garage instead. Mr. Simpson opined that this type of change occurs frequently during the construction process, and it should only require an updated plan filed with Building Inspection, and an approved consolidation plat. The applicant could also convey an access easement from the greenway access lot to the parcel on which the house was constructed.

Mr. Simpson stated that the applicant contends that the preliminary subdivision plan, as filed, is in compliance with the Subdivision Regulations, and the Planning Commission should be able to approve it. He said that the Planning staff was "trying to make this plan different when it is not," since the staff's recommendation of disapproval was largely based on the Greenway Master Plan. Kentucky law expressly states that Comprehensive Plans, of which the Greenway Master Plan is an adopted element, are not a consideration for subdivision plans. The applicant contends that this is a ministerial decision, and, if the plan is in compliance with the Land Subdivision Regulations and Zoning Ordinance, it should be approved. Mr. Simpson stated that the staff referred to the ability of the Planning Commission to apply a discretionary requirements, but those are not objective regulations that must be met.

Mr. Simpson said, with regard to the staff's concerns that the house on the subject property was not constructed according to the building permit, that a site plan had been submitted that showed the new configuration. The applicant does not believe that lack of adherence to a building permit can be used as a basis to disapprove a subdivision plan. Mr. Simpson stated that the applicant also believes that requiring a property owner to provide more than the required trail width, with no limitations and without compensation, "amounts to an impermissible taking" that would not withstand constitutional scrutiny.

Al Gross, EA Partners, stated in response to questions from Mr. Simpson that he had been a licensed engineer for over 40 years, and that his firm had filed "quite a few" subdivision plans with the Division of Planning. He said that he believed that this preliminary subdivision plan is in compliance with all of the applicable regulations.

Mr. Simpson stated that the Greenway Master Plan was an important document, but it was aspirational in nature. The applicant believes that the proposed ten (10) foot access easement for the trail, to be dedicated to LFUCG, would help to further that plan. As a further "commitment of good will," the applicant has proposed to widen the dedicated portion of the easement, and possibly consolidate it with the larger open space lot. Mr. Simpson concluded by stating that the applicant believes the current plan is "entitled to approval", but the applicant is willing to make those amendments to the plan as a good will gesture, even though they are not legally required.

Commission Questions: Mr. Penn asked if a seven (7) foot easement could be made ADA compliant. Mr. Simpson answered that "no one had any objections about ADA compliance," when the applicant originally constructed the trail. He said that the applicant's proposal was the best they could do at this point. Mr. Penn stated that constructing the home with a side-entry driveway cut off the trail, and the applicant was aware of that, but was now proposing consolidation as a solution. He asked if the applicant expected LFUCG to accept a trail donation that was only seven (7) feet wide. Mr. Simpson responded that the applicant does not have to dedicate the trail, but he is willing to do so. He said that this is an "imperfect situation," and that the community would have trail access "if the city ever does the work," to construct the trail.

Mr. Nicol asked why the applicant could dedicate only seven (7) feet of trail, as opposed to ten (10) feet. Mr. Simpson answered that the driveway to the home was existing, and there was not sufficient space for a ten (10) foot trail. Mr. Nicol asked if the applicant would consider dedicating a portion of the driveway to the trail, and using signage to mark it. Mr. Simpson asked if the Commission would consider taking a brief recess in order for him to confer with the applicant. Chairman Forester replied that that was not an option.

Mr. Gross stated, with regard to Mr. Penn's question, that ADA compliance does not refer to the width of a trail, and that "seven (7) feet of trail would be just as ADA compliant as ten (10) feet." He noted that the grade differential would be the major challenge, explaining that the increase in width toward the rear of the trail area was provided to allow for switchbacks to decrease the grade. With regard to Mr. Nicol's question, he said that it should be possible for the limiting edge of the driveway to be used as part of the trail. Mr. Gross noted that his greatest concern was the construction of the trail before a viable stream crossing was installed, which could be a safety hazard.

Mr. Simpson stated that he had received word from the applicant that he could add the additional three (3) feet to the trail dedication, over the constructed driveway.

Mr. Scott Thompson, Bike and Pedestrian Planner stated, for clarification, that the grade change from the sidewalk to the creek was roughly 10%, while the maximum slope for ADA compliance is 8%. He added that a creek could be spanned at the water level with a low-water crossing, or using a bridge. Mr. Thompson said that staff's concern was constructability; while a narrower trail width could possibly be accommodated, a large portion of the driveway would likely need to be demolished in order to construct the trail. He said, with regard to Mr. Simpson's comment, that there are a lot of trails that need to be built, but a great deal of money is being dedicated to improving the trail system and this is an important access point. The applicant's current plan could severely impact the cost and constructability of this portion of the trail.

Mr. Nicol asked Mr. Thompson if it was feasible for the applicant to reconfigure the driveway to dedicate three feet to the trail. Mr. Thompson answered that the width is necessary for the construction of the trail, rather than for the finished width. He noted that a trail of less than 10 feet in width is not desirable, but the long narrow portion would not be constructable without reconfiguring the driveway and drainage systems, and the dedication of construction easements from property owners.

Mr. Nicol asked if there was a specific width that would accommodate the trail and the construction process. Mr. Thompson noted that the width was originally proposed to be twenty-five (25) feet; minimum trail width is ten (10) feet, but at least twenty-one (21) feet would be required to accommodate drainage areas. He added that the driveway fall was also different from that of the proposed trail, and that difference would need to be accommodated. Mr. Thompson explained that, once construction costs become too prohibitive, trails will not get constructed.

Citizen Comments: Ms. Lao stated that she and her husband were the pending homeowners on the property, and that they would like to have some certainty about the timeline of the process and when the home could be occupied. She said that they were willing to work with the applicant and the Planning Commission.

Petitioner Rebuttal: Mr. Simpson stated that Mr. Thompson's comments "underscored his (Mr. Simpson's) point about the permissive regulation that allows the Planning Commission impermissible powers to require a private property owner to give up all this land for the trail." He said that the applicant contends that the preliminary subdivision plan, as presented, complies with the Subdivision Regulations, and believes that it is therefore entitled to be approved.

Staff Rebuttal: Ms. Wade stated, with regard to Mr. Simpson's assertion that the plan was in compliance with the Subdivision Regulations, that the staff does not agree, because of the discretionary regulation that the Planning Commission chose to apply in requiring access to the greenway in 2015. The Planning Commission used that discretion at that time to determine that twenty-five (25) feet of width was necessary to accommodate the greenway and shared-use trail in this environmentally sensitive location, and the applicant agreed to do it. Ms. Wade said that it was difficult to justify that the government was asking for something extraordinary, when the applicant agreed to it. She said that, often, one decision is made and other decisions flow from it. In this case, the applicant agreed to a particular trail and access configuration, and LFUCG made other decisions based on that plan. The engineering and construction plans should have been developed based on the subdivision plan, but constructing a house with a driveway that went straight into a storm inlet was a decision that was made by the applicant. Now, the applicant is requesting that the government give up something that was agreed to by both parties, because of a decision that was made in the field. Ms. Wade said that she did not believe that was fair to the community, which would suffer the loss of access to a portion of the greenway network. She added that the seven (7) feet of trail that was proposed was simply not sufficient to meet the minimum.

Ms. Wade stated, with regard to Mr. Simpson's comments about the low-water crossing, that the approval for the crossing was granted to the applicant, not for use as an amenity, but to serve as a construction access for the subdivision. The crossing was depicted on the subdivision plan at that time as a "haul road," not a trail or shared-use path. Ms. Wade said that the applicant then determined, without consulting anyone at LFUCG to see if it would meet the community's needs, that the crossing could be used as part of the trail system. The haul road was built at a steep slope for trucks, not for use by pedestrians.

Ms. Wade said that the existing preliminary subdivision plan would meet the community's needs, and, in 2015, the applicant agreed that it met their needs as well. She added that the staff does not believe it would be fair to ask the government to absorb the cost and losses of the applicant's decision to change plans in the field.

Commission Comments: Mr. Pohl stated that he was in total agreement with the staff's recommendation of disapproval.

Mr. Penn stated that, at the Subdivision Committee meeting, he was not aware of the background of this plan. The Committee would prefer not to send plans forward with a recommendation of disapproval, but it was obvious in this case

that the applicant was not willing to work with the staff to resolve their differences, so it would have to be decided based on the facts presented at this meeting.

Action: A motion was made by Mr. Pohl, seconded by Mr. Bell, and carried 7-0 (Nicol abstained; Barksdale and de Movellan absent) to disapprove PLN-MJSUB-21-00003: COPPER CREEK SUBDIVISION (WYNNDAL DEVELOPMENT, LLC PROPERTY), for the reasons provided by staff.

3. DEVELOPMENT PLANS

- a. PLN-MJDP-21-00016: BEAUMONT FOREST, UNIT 1, LOT 4B (AMD) – located at 2409 MEMBERS WAY, LEXINGTON, KY.
Council District 10
Project Contact: Banks Engineering

Note: The purpose of this amendment is to add a canopy and revise access to the site.

Note: This plan was originally filed as a major amendment to a final development plan on April 2, 2021. During the initial review by staff, there was some confusion as to the purpose of the amendment and the scope of the site changes. Subsequently, it was determined that the plan would qualify as a minor amendment to the final development plan. Since that is a more expeditious process, the applicant agreed to the change in plan status and resubmitted it on June 21, 2021. However, when the plan was under certification review by staff, it became apparent that an error had been made because a new access point is proposed in addition to the other changes described in the purpose of amendment note. This proposed new access point can only be approved on a major amendment by the Planning Commission. After further consultation with the applicant's engineer and because of the small scope of the proposed changes, it was determined that the development plan would be referred to the Planning Commission for review and action in this instance.

The 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. 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. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Denote canopy height in feet, on the face of the plan.

Staff Presentation: Mr. Martin directed the Commission's attention to the amended final development plan and briefly explained the proposed request. He stated that this plan was filed on April 2, 2021, as a major development plan; subsequently, staff determined through their application review process that the plan could be classified as a minor, to which the applicant agreed. When the final plan was submitted some time later for certification, staff discovered that there had been a misunderstanding of the scope of the proposed changes. The applicant is proposing to add a canopy, adjust parking, and adjust the existing access point, all of which can be accomplished by a minor development plan. The applicant is also proposing, however, a new exit access point, which elevates the plan to major status and requires approval by the Planning Commission. A major development plan would normally have been reviewed by the Technical Review Committee and the Subdivision Committee prior to Planning Commission consideration; however, based on the misunderstanding between the staff and the applicant and the minor nature of the change in the access point, the staff agreed to expedite the process and present the plan at this meeting, rather than requiring all of the typical reviews.

Mr. Martin stated that the staff was recommending approval of this plan, subject to the conditions as listed on the agenda addendum.

Applicant Presentation: Greg Smorstad, Banks Engineering, stated that the applicant appreciated the staff's willingness to expedite this plan, and he requested approval.

Citizen Comments: No citizens were present to comment on this item.

Action: A motion was made by Mr. Pohl, seconded by Mr. Davis, and carried 7-0 (Barksdale and de Movellan absent) to approve PLN-MJDP-21-00016: BEAUMONT FOREST, UNIT 1, LOT 4B (AMD), subject to the seven conditions as listed.

- b. PLN-MJDP-21-00029: HIGHWOOD CENTER, LOT 2-A (WAL-MART) (AMD) (8/30/21)* – located at 500 WEST NEW CIRCLE RD., LEXINGTON, KY.
Council District 1
Project Contact: Carlson Consulting Engineers

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

Note: The purpose of this amendment is to add building square footage and revise parking spaces and circulation.

The Subdivision Committee Recommended: **Postponement.** The plan does not meet Article 21 or 26 of the Zoning Ordinance.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire services features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. United States Postal Service Office's approval of kiosk locations or easement.
12. Depict boundaries of property with solid dark line for entire development.
13. Additions of bearings and distances on entire development.
14. Addition of record plat information for all parcels in the entire development (removing parcel information).
15. Addition of plan name or owners on adjacent properties.
16. Addition of topography lines and elevations.
17. Addition of dimensions for driveways, walkways and parking spaces.
18. Addition of dimensions on access points to property.
19. Addition of dimensions for all buildings.
20. Addition of height of building and canopy in feet.
21. Addition of site statistics from previous plans, replacing parcel information with public record cabinet/slide information.
22. Clarify building square footage for Lot 2-A.
23. Addition of all easements and clarify Note #16.
24. Correct Note #12 to read as per previous plan.
25. Addition of Notes #13, 16 and 17 from previous plan.
26. Addition of tree protection plan per Article 26 of the Zoning Ordinance.
27. Document review by the Royal Springs Aquifer committee.
28. Document compliance with Article 12-8(h) of the Zoning Ordinance for Multi-Modal Accommodations.
29. Simplify purpose of amendment note.
30. Addition of street address on all buildings/lots.
31. Document compliance with Article 21-7(7)(b)(3) of the Zoning Ordinance with account with Lynn Imaging at (859) 255-1021.

Staff Presentation: Ms. Gallt directed the Commission's attention to the amended final development plan and briefly explained the proposed request. She stated that the applicant had submitted a revised plan, along with building elevations, to address the 31 conditions that were presented to the Subdivision Committee.

Ms. Gallt stated that the staff was now recommending approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire services features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. United States Postal Service Office's approval of kiosk locations or easement.
- ~~12. Depict boundaries of property with solid dark line for entire development.~~
- ~~13. Additions of bearings and distances on entire development.~~
- ~~14. Addition of record plat information for all parcels in the entire development (removing parcel information).~~
- ~~15. Addition of plan name or owners on adjacent properties.~~
- ~~12.16. Addition of topography lines and elevations.~~
- ~~13.17. Addition of dimensions for driveways, walkways and parking spaces.~~
- ~~18. Addition of dimensions on access points to property.~~

- ~~14.19.~~ Addition of dimensions for all buildings on the development plan.
- ~~20.~~ ~~Addition of height of building and canopy in feet.~~
- ~~15.21.~~ Addition of site statistics box from previous plans. ~~replacing parcel information with public record cabinet/slide information.~~
- ~~16.22.~~ Clarify building square footage for Lot 2-A.
- ~~23.~~ ~~Addition of all easements and clarify Note #16.~~
- ~~24.~~ ~~Correct Note #12 to read as per previous plan.~~
- ~~25.~~ ~~Addition of Notes #13, 16 and 17 from previous plan.~~
- ~~17.26.~~ Addition of tree protection plan per Article 26 of the Zoning Ordinance.
- ~~27.~~ ~~Document review by the Royal Springs Aquifer committee.~~
- ~~18.28.~~ Document compliance with Article 12-8(h) of the Zoning Ordinance for Multi-Modal Accommodations for entire property.
- ~~29.~~ ~~Simplify purpose of amendment note.~~
- ~~19.30.~~ Addition of street address on all buildings/lots including adjacent property.
- ~~31.~~ ~~Document compliance with Article 21-7(7)(b)(3) of the Zoning Ordinance with account with Lynn Imaging at (859) 255-1021.~~

Applicant Presentation: Dean Carlson, Carlson Consulting Engineers, thanked the staff for their willingness to assist with getting this plan ready for Planning Commission review. He asked, with regard to condition #18, if the applicant should provide information for the entire shopping center, or just for the Wal-Mart parcel. Ms. Gallt responded that multi-modal information for the Wal-Mart parcel would be sufficient. Ms. Wade added that the concept for the B-6P zone involves one plan for the entirety of a center, which ties the anchor to the outlots and depicts the multi-modal connections for the area. The applicant would only need to provide that information for the Wal-Mart parcel.

Citizen Comments: No citizens were present to comment on this item.

Action: A motion was made by Mr. Bell, seconded by Mr. Davis, and carried 7-0 (Barksdale and de Movellan absent) to approve PLN-MJDP-21-00029: HIGHWOOD CENTER, LOT 2-A (WAL-MART) (AMD), with the 19 conditions as listed in the revised staff recommendation.

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Penn, seconded by Ms. Meyer, and carried 7-0 (Barksdale and de Movellan absent) to approve the release and call of bonds as detailed in the memorandum dated July 8, 2021, from Matt Hughes, Division of Engineering.

V. COMMISSION ITEMS

- A. BOAR 2021-2: JESSICA AND GARY HOUCK** – an appeal to the Planning Commission of the Board of Architectural Review (BOAR) decision to disapprove the Certificate of Appropriateness with respect to replacing the windows on the front and rear of the structure using aluminum frames with glass between the grids for the property located at 255 Delmar Avenue, in the Bell Court Historic District.

Mr. Baillie entered the following items into the record:

- Case review provided by the Division of Historic Preservation
- Article 13 of the Zoning Ordinance (Historic Preservation section)
- Design Guidelines adopted by the Planning Commission

Mr. Baillie presented a PowerPoint presentation, and provided a description of the applicant's appeal. He indicated that the staff was recommending **disapproval and that the decision of the BOAR be upheld**, for the following reasons:

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

Historic Preservation Presentation: Ms. Kerr stated that, when projects are completed without obtaining a Certificate of Appropriateness (COA), the Historic Preservation staff is unable to review the existing conditions, evaluate whether the materials were original to the house, and/or determine whether the historic elements could be repaired and retained, which is always the best outcome. She requested that the Planning Commission uphold the BOAR decision by disapproving this request.

Appellant Presentation: Jessica Houck, appellant, stated that the windows she chose were characteristic of the neighborhood. She said that she understood the issues with the brick mould, and that she had spoken to the window company and they could make changes to the upper sash and move the muntins outside the glass. Ms. Houck stated that she would be willing to make those changes in order to satisfy the requirements of the BOAR. She noted that, had she known that the property was located in a historic district, she would have followed the proper procedure.

Staff Rebuttal: Ms. Kerr explained that the scale of the replacement windows was not historically accurate, so the windows do not appear similar to others in the neighborhood. With regard to the muntins, she said that the window company would likely add a glued, exterior element to line up with the snap-in muntin, rather than achieving a true divided-light window.

Ms. Houck noted that the window company had offered to replace just the top of the window and/or remove the muntins altogether. Ms. Kerr explained that the scale of the windows would still be off. She said that, had the appellant come forward to discuss window options prior to installation, the staff could have assisted in choosing a product that would have been in compliance. She added that there were also problems with the removal of the historic brick mould, and it would not be appropriate to try to negotiate those issues at this meeting.

Ms. Houck stated that she had some discussions prior to the BOAR hearing with Ms. Armstrong, but she was not given an opportunity at the hearing to try and seek a resolution to the issue. She said that she was told to appeal to the Planning Commission, which she has done.

Ms. Armstrong stated, with regard to the windows, that she had spoken with the appellant and the window installer about the need to install milled brick mould, rather than the extruded product that is typically applied with vinyl replacement windows. She added that she and Ms. Houck had several conversations about the home, but they had not discussed the need for the windows to have the appropriate vertical scale, since Ms. Houck was still in discussions with the installer at that point in the process.

Mr. Baillie explained that this was an appeal of the decision made by the BOAR, so the Planning Commission would need to focus their decision on determining whether the BOAR erred in that decision. He noted that, if the Planning Commission chose to deny this appeal, the appellant would still have the opportunity to work with Historic Preservation staff outside of this meeting.

Commission Comments: Mr. Nicol stated that he would vote to uphold the decision of the BOAR. He noted that the appellant had several options, and urged her to work with the Historic Preservation staff to address the problems.

Mr. Davis stated that he had pulled the real estate listing from the sale of the home in October 2020, noting that the H-1 status was disclosed in the property remarks, as well as on the Seller's Disclosure.

Mr. Nicol stated that it was important to note that the H-1 status was properly disclosed, and that those appeals should not be brought to the Planning Commission.

Action: A motion was made by Mr. Nicol, seconded by Mr. Pohl, and carried 7-0 (Davis abstained; Barksdale and de Movellan absent) to disapprove BOAR 2021-2: JESSICA AND GARY HOUCK, for the reasons provided by staff.

B. BOAR 2021-3: RAY PERRY – an appeal to the Planning Commission of the the Board of Architectural Review (BOAR) decision to disapprove the Certificate of Appropriateness with respect to the installation of vinyl siding for the property located at 347 Oldham Avenue, in the Aylesford Historic District.

Mr. Baillie entered the following items into the record:

- Case review provided by the Division of Historic Preservation
- Article 13 of the Zoning Ordinance (Historic Preservation section)
- Design Guidelines adopted by the Planning Commission

Mr. Baillie presented a PowerPoint presentation, and provided a description of the applicant's appeal. He indicated that the staff was recommending disapproval and that the decision of the BOAR be upheld, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested exterior alterations, based on the Design Guidelines established by the local Historic Preservation Commission. It is also consistent with past actions of the Board in determining the use of vinyl siding.

Historic Preservation Presentation: Ms. Kerr stated, with regard to the existence of other properties within the Aylesford Historic District that have vinyl siding, that those structures likely had vinyl siding in place at the time of the H-1 designation in 1998. She noted that, as those structures need repair, they would not be able to replace the siding with vinyl, since it is now prohibited.

Appellant Presentation: Kimberlee Perry, appellant, stated that she and her husband had purchased the subject property in November, 2020, for her son to use as a residence while attending the University of Kentucky. They live in Franklin County and are not familiar with the Lexington real estate market, so they relied on a local realtor, Jaryd Brady, to assist them. Ms. Perry said that they were misled by their realtor during the transaction, and they have since filed a complaint with the Real Estate Commission. She spoke with the general counsel for the Real Estate Commission, who agreed that her agent had engaged in misconduct and would face repercussions for failing to disclose that the property was in an H-1 overlay zone. Ms. Perry stated that she and her husband were not made aware that the subject property was in an H-1 district; if they had known, they would not have purchased it.

Ms. Perry explained that vinyl siding was installed on the home following the purchase, but work was stopped once she received notice that it was in violation of the Design Guidelines. She and her husband met with Mr. Dennis on the property, who explained what needed to be done to bring the property into compliance. They returned vinyl replacement windows and a vinyl porch, and instead obtained Certificates of Appropriateness for a porch and windows that met the guidelines.

Ms. Perry read the following from the letter she received from the Division of Planning that included references from *Imagine Lexington*, the 2018 Comprehensive Plan:

"Provide flexible yet focused planning guidance to ensure equitable development of the community's resources and infrastructure that enhances our quality of life and fosters regional planning and economic development."

Ms. Perry said that the Comprehensive Plan mission statement notes that those goals should be accomplished while protecting the environment. She contends that her decision to install vinyl siding on the home was meant to protect the environment from the effects of asbestos siding, which the home inspector described as extremely friable and in need of immediate replacement. Ms. Perry provided letters from several professionals in the industry, who indicated that the vinyl siding should be allowed to remain in order to encase the asbestos.

Ms. Perry stated that other homes in the vicinity have vinyl siding, some of which is new, and she believes that the siding should be allowed to remain on the subject property. She is concerned that removal of the siding would not only impact residents in the vicinity of the property, but would also add hazardous materials to the landfill.

Ms. Perry read the following from the letter she received from the Division of Planning:

"The ultimate responsibility regarding and understanding the zoning of property falls on the potential owner."

She said that she does not agree; rather, she relied on a real estate agent to assist her in purchasing property. Ms. Perry stated that, when she was a realtor, it was her responsibility to do the due diligence and disclose potential issues to her customers, and she contends that her realtor should have done so.

Ray Perry, appellant, stated that the home directly adjacent to the subject property also has vinyl siding, which is new. He said that Historic Preservation staff asserted that he and Mrs. Perry should have seen the H-1 designation signs in the neighborhood, but he contends that they were not posted in a prominent location and he had to search for them. Mr. Perry reiterated his wife's statement that they would not have purchased the home if they had known it was in an historic district. He said that he had specifically asked the realtor if the home would require any special permits to do the proposed updates, and the realtor indicated that it would not.

Ms. Perry requested that the Planning Commission approve this appeal, and allow the home to retain the vinyl siding.

Commission Discussion: Mr. Penn asked if Ms. Perry was advised that installing vinyl siding over the asbestos was the best alternative since the asbestos could not be safely removed. Ms. Perry contacted a certified asbestos inspector as well as the EPA, and both advised that the asbestos should be disturbed as little as possible, in order to reduce the spread of fibers. Mr. Penn asked if the Mr. and Ms. Perry were aware when they bought the house that it had asbestos siding, which they answered affirmatively.

Staff Rebuttal: Mr. Dennis noted that the first recommendation of the EPA with regard to asbestos is to use a heavy coat of paint, rather than removing it. He agreed that the asbestos siding should be disturbed as little as possible, because the fibers could be very dangerous. Mr. Dennis added that installing vinyl siding over the asbestos required nails and screws, which further cracked and disturbed the material, causing additional release of fibers.

Mr. Dennis explained that concerns about the effects of asbestos and making the situation worse do not relieve citizens of their responsibility to contact Historic Preservation and obtain the proper authorization before work is done.

Commission Discussion: Mr. Nicol asked Mr. Baillie to clarify the Planning Commission's role at this point. Mr. Baillie responded that the Commission is tasked with determining whether the BOAR erred in their decision. The appellant contends that the BOAR did not judge this situation fully, given the concerns about the asbestos siding, while staff believes that the BOAR decision was correct.

Appellant Rebuttal: Ms. Perry noted that requiring removal of the new vinyl siding would expose the asbestos siding again, and she and her husband would not be able to afford to repair or replace it. She reiterated that, if she had known the home was in a historic district, she would not have purchased it, and now that she knows, she is trying to do the right thing.

Mr. Forester asked what the appellants would need to do to remedy the siding situation. Ms. Kerr answered that a solution would need to include removal of the vinyl as well as removal of the asbestos with appropriate handling. She noted that, if the asbestos was in poor condition, as the appellants attested, it likely should have been removed rather than covered. Once both the asbestos and vinyl have been removed, the house would need to be re-clad with either wood or Hardie siding.

Mr. and Ms. Perry stated that they could not afford to remove all siding and re-clad the house, so they would have to resort to leaving the asbestos. Ms. Kerr explained that the condition of the asbestos might no longer be viable as cladding on the exterior of a residence.

Ms. Perry stated, with regard to Mr. Dennis's comments that the house was wrapped in foam material before the vinyl siding was installed. Mr. Perry added that they were advised by asbestos experts to leave the original siding in place.

Commission Discussion: Mr. Nicol stated that this was an unfortunate decision, but he believed it would be appropriate to uphold the BOAR decision. He noted that there should be some additional level of review or appeal between the BOAR decision and the Planning Commission, to eliminate these difficult situations.

Mr. Davis stated that he was sorry that the appellants found themselves in this situation, and that the legally-required Seller's Disclosure was never provided to them. Mr. and Ms. Perry explained that they had requested the Seller's Disclosure, but had not received it. Mr. Davis stated that they had chosen to close on the sale without the disclosure, to which Ms. Perry responded that, around that time, her mother died, and the home purchase was not her top priority. Mr. Perry added that the real estate agent had been asked twice if there were any special permits required, and had answered no both times.

Mr. Davis said that, since Ms. Perry had a real estate license, she should have had more familiarity with the sale process than an average homebuyer. He said that realtors are not "to be the source of the information, but to be the source of the source." There are processes wherein citizens can file a complaint against a real estate professional, and bodies who judge those complaints; if violations are found to have occurred, there are processes for remedy and/or penalty. Mr. Davis opined that the BOAR made the right decision, even though it was difficult to support it given the circumstances, but the law and precedent should determine the Commission's actions.

Motion: A motion was made by Mr. Nicol, and seconded by Mr. Davis, to disapprove BOAR 2021-3: RAY PERRY, for the reasons provided by staff.

Discussion of Motion: Mr. Penn stated that he was concerned that "two or three wrongs were making a right." He said that he would support the BOAR's decision, but he would like to ensure that the Historic Preservation staff will work with the appellants to find a viable solution to safely resolve the asbestos issues.

Mr. Pohl agreed with the other Commission members, opining that the layer of insulating foam under the vinyl should provide for a solution for removal of the asbestos without disturbance. He added that he had spent a large part of his career working with historic homes, many of which had asbestos siding, and he believes that much of the concern about asbestos siding is unnecessary as long as the material does not become friable.

Action: Mr. Nicol's motion carried, 6-1 (Bell opposed; Barksdale and de Movellan absent).

Historic Preservation Comment: Ms. Kerr noted that, after the Planning Commission acts, there is a mechanism for moving to a successful outcome for all parties while upholding the Design Guidelines.

- C. ELECTION OF OFFICERS** – 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. The Nominating Committee was named at the June 11th Commission meeting and has presented its slate for consideration by the Planning Commission. Nominations may also be made from the floor.

The current officers are as follows:

Chair: Larry Forester
Vice Chair: Frank Penn
Secretary: Carolyn Plumlee
Parliamentarian: Bill Wilson

The Nominating Committee recommended the following slate:

Chair: Larry Forester
Vice Chair: Frank Penn
Secretary: Janice Meyer
Parliamentarian: Zach Davis

Action: A motion was made by Mr. Bell, seconded by Mr. Pohl, and carried 7-0 (Barksdale and de Movellan absent) to approve the slate as presented.

- D. DELEGATION OF SECRETARY'S DUTIES** – 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. The Chair will request that the Commission consider taking similar action at this time.

Action: A motion was made by Ms. Meyer, seconded by Mr. Pohl, and carried 7-0 (Barksdale and de Movellan absent) to delegate the Secretary's duties to the Director of the Division of Planning and his staff.

VII. STAFF ITEMS

- A. ARTICLE 4-5(b) IMPROVEMENT PLAN PROGRESS REPORT** - When the project engineer has completed approximately fifty percent (50%) of the infrastructure design for the development, the project engineer shall submit a preliminary report to the

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

Planning Commission informing the Commission of how stormwater, sanitary sewer and environmental conditions imposed by the Commission at the time of the approval of the preliminary subdivision plan will be addressed in the improvement plan. The report shall be distributed to the Commission at the next convenient meeting. The report is for information only, and no action by the Commission shall be taken; however, there shall be no issuance of the Notice To Proceed, as outlined in section 4-5(d), until the Planning Commission meeting is complete.

1. PLN-FRP-21-00027: NEWMARKET PROPERTY, PHASE 1, UNIT 10-B 8/30/21* - located at 4010 BUTTERMILK RD., LEXINGTON, KY.
Council District: 12
Project Contact: EA Partners, PLC

B. CANCELLATION OF UPCOMING WORK SESSION – Mr. Duncan stated that there were two work session scheduled for the month of July. The staff would recommend cancelling the July 15th work session, in order to focus on the July 29th meeting.

Action: A motion was made by Mr. Bell, seconded by Mr. Penn, and carried 7-0 (Barksdale and de Movellan absent) to cancel the July 15, 2021, work session.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. NEXT MEETING DATES

Work Session, Thursday, 1:30 p.m., 3 rd Floor Conference Room, Phoenix Building	July 15, 2021
Zoning Items Public Hearing , Thursday, 1:30 p.m., Video Teleconference	July 22, 2021
Technical Committee, Wednesday, 8:30 a.m., Video Teleconference	July 28, 2021
Subdivision Committee, Thursday, 8:30 a.m., Video Teleconference	August 5, 2021
Zoning Committee, Thursday, 1:30 p.m., Video Teleconference	August 5, 2021
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers, Government Center	August 12, 2021

X. ADJOURNMENT – There being no further business, Chair Forester declared the meeting adjourned at 4:40 p.m.

Larry Forester, Chair

Janice Meyer, Secretary

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