

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

August 14, 2008

- I. **CALL TO ORDER** - The meeting was called to order at 1:40 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Randall Vaughn, Chair (arrived at 1:50 p.m.); Neill Day; Ed Holmes; Carolyn Richardson; Joan Whitman; Lynn Roche-Phillips; Mike Cravens; and Frank Penn.

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

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Roche-Phillips, seconded by Mr. Penn and carried 7-0 (Vaughn absent) to approve the minutes of May 8, 2008; June 10, 2008 and June 26, 2008.

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

- a. **DP 2008-79: CARDINAL HILL HOSPITAL (AMD.) (8/14/08)*** - located at 1826, 1832 and 2050 Versailles Road.
(Council District 11) **(Carman & Associates)**

Representation – John Carman, Carman & Associates, was present representing the applicant, and requested postponement of DP 2008-79 to the September 11, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 7-0 (Vaughn absent) to postpone DP 2008-79 to the September 11, 2008, Planning Commission meeting.

- b. **PLAN 2008-28F: LAKEVIEW ISLAND, UNIT 3 (THE LANDINGS) (9/28/08)*** – located at 2414 Lake Park Road.
(Council District 5) **(Foster – Roland)**

Representation – Dick Murphy, attorney, was present representing the applicant. He said that at the July meeting, there was a discussion pertaining to the location of the sewer line, and it was suggested that the lot be reconfigured, which would then eliminate the need for the waiver request. He then said that the applicant has met with the staff to revise the plan; and at that time, it was determined that the requested waiver is not needed, nor is it required for the Planning Commission to take action. Mr. Murphy said that the applicant had requested the continued discussion; therefore, they are requesting to withdraw the continued discussion portion of PLAN 2008-28F.

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 7-0 (Vaughn absent) to withdraw the continued discussion for PLAN 2008-28F.

Mr. Murphy clarified that this does not withdraw the entire plan, only the continued discussion portion related with the requested waiver.

- c. **DP 2008-77: MICHAEL GENTRY PROPERTY (AMD.) (8/14/08)*** - located at 3292 Richmond Road.
(Council District 7) **(Vision Engineering)**

Representation – Matt Carter, Vision Engineering, was present representing the applicant, and requested an indefinite postponement of DP 2008-77.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 7-0 (Vaughn absent) to indefinitely postpone DP 2008-77.

Note: Mr. Vaughn arrived at this time.

- d. **DP 2008-104: RED MILE SQUARE, TRACT D, PARCEL 3 (10/9/08)*** - located at 1151 Unity Drive.
(Council District 11) **(Midwest Engineers)**

Representation – Andy Holmes, Midwest Engineers, was present representing the applicant, and requested postponement of DP 2008-104 to the September 11, 2008, Planning Commission meeting.

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Action - A motion was made by Mr. Penn, seconded by Ms. Roche-Phillips, and carried 8-0 to postpone DP 2008-104 to the September 11, 2008, Planning Commission meeting.

- e. PLAN 2008-71P: HAMPTON SPRINGS (AMD.) (8/14/08)* - located at 4574 Harrodsburg Road (a portion of).
(Council District 10) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2008-71P to the September 11, 2008, Planning Commission meeting.

Citizen Comment – Keith Messinger, residing at 2460 English Station Drive, was present on behalf of JL and Wanda Hatter, who own property located at 2433 English Station Drive. He noted that 11 years ago, this particular property had attempted to gain access through a private easement that would cross the Hatters' property; however, at that time, this case was presented to the courts, which had then overturned the Commission decision. He then noted that the staff has received that information. He said that they are in agreement with the postponement recommendation.

Action - A motion was made by Mr. Cravens, seconded by Ms. Whitman, and carried 8-0 to postpone PLAN 2008-71P to the September 11, 2008, Planning Commission meeting.

Note: The next two items were acted on simultaneously.

- f. PLAN 2008-24F: THOMAS COMMUNICATIONS, INC., UNIT 1-C (WALNUT GROVE ESTATES) (8/14/08)* – located at 2236 Walnut Grove (a portion of). (Council District 12) **(EA Partners)**

- g. PLAN 2008-25F: THOMAS COMMUNICATIONS, INC., UNIT 1-D (WALNUT GROVE ESTATES) (8/14/08)* – 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 September 11, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Mr. Vaughn, and carried 8-0 to postpone PLAN 2008-24F and PLAN 2008-25F to the September 11, 2008, Planning Commission meeting.

- h. PLAN 2008-76F: BOGIE ESTATE, LOT 1 (9/11/08)* - located at 5846 Old Richmond Road.
(Council District 12) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2008-76F to the September 11, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Holmes, seconded by Ms. Whitman, and carried 8-0 to postpone PLAN 2008-76F to the September 11, 2008, Planning Commission meeting.

- i. DP 2008-88: BEAUMONT FARM, UNIT 1, SECTION 1 (A PORTION OF) (9/11/08)* - located at 3100 Beaumont Centre Circle. (Council District 10) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2008-88 to the September 11, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Vaughn, seconded by Ms. Whitman, and carried 8-0 to postpone DP 2008-88 to the September 11, 2008, Planning Commission meeting.

- j. PLAN 2008-102C: GESS FAMILY PARTNERSHIP, LTD PROPERTY (10/29/08)* - located at 400 and 950 Chilesburg Road (a portion of). **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2008-102C to the September 11, 2008, Planning Commission meeting.

Action - A motion was made by Ms. Roche-Phillips, seconded by Ms. Whitman, and carried 8-0 to postpone PLAN 2008-102C to the September 11, 2008, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, August 7, 2008, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Mike Cravens 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, Denice Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Jimmy Emmons, Traci Wade and Frank Boateng; as

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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.

Planning Commission Comments – Mr. Day stated that at this time he would like to turn the meeting over to Mr. Vaughn. Mr. Vaughn thanked Mr. Day for standing in his place in his absence.

- 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.

At this time, Mr. Sallee identified the following items appearing on the Consent Agenda, and also oriented the Commission to the location of these items on the Planning Commission Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. Page 4, Item f. PLAN 2008-104F: HOLLYWOOD TERRACE SUBDIVISION, LOT 1 AND A PORTION OF LOTS 2 & 3 (AMD.) (10/29/08)* - located at 920 Bates Creek Road. (Council District 3) **(Wes Witt)**
2. Page 4, Item g. PLAN 2005-173F: BELMONT FARM, UNIT 4-B (COVENTRY) (10/16/08)* - located at 2450 Georgetown Road (a portion of). (Council District 2) **(EA Partners)**
3. Page 5, Item h. PLAN 2005-174F: BELMONT FARM, UNIT 4-C (COVENTRY) (10/16/08)* - located at 2450 Georgetown Road (a portion of). (Council District 2) **(EA Partners)**
4. Page 5, Item i. PLAN 2005-175F: BELMONT FARM, UNIT 4-D (COVENTRY) (10/16/08)* - located at 2450 Georgetown Road (a portion of). (Council District 2) **(EA Partners)**
5. Page 5, Item j. PLAN 2007-82F: SHARKEY PROPERTY, UNIT 3 (10/19/08)* – located at Towne Square Park. (Council District 2) **(EA Partners)**
6. Page 7, Item e. DP 2008-102: ESTES PROPERTY, LOT 1 (10/9/08)* - located at 3294 Richmond Road. (Council District 7) **(LS Design Group)**
7. Page 7, Item f. DP 2008-103: CARE INN OF LEXINGTON (AMD.) (WHITE & CURLESS PROPERTY, TRACT 3) (10/9/08)* - located at 2770 Palumbo Drive. (Council District 7) **(Midwest Engineers)**
8. Page 8, Item h. DP 2008-105: OVINGTON & RAGLAND (HARRELL'S CAR WASH) (10/9/08)* - located at 2632 Richmond Road. (Council District 7) **(CDP Engineers)**

Mr. Sallee said that the items listed on the Consent Agenda could be considered for approval by the Commission, unless there was a request for an item to be removed.

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried unanimously to approve the following items listed on the consent agenda:

1. PLAN 2008-104F: HOLLYWOOD TERRACE SUBDIVISION, LOT 1 AND A PORTION OF LOTS 2 & 3 (AMD.) - located at 920 Bates Creek Road.
2. PLAN 2005-173F: BELMONT FARM, UNIT 4-B (COVENTRY) - located at 2450 Georgetown Road (a portion of).
3. PLAN 2005-174F: BELMONT FARM, UNIT 4-C (COVENTRY) - located at 2450 Georgetown Road (a portion of).
4. PLAN 2005-175F: BELMONT FARM, UNIT 4-D (COVENTRY) - located at 2450 Georgetown Road (a portion of).
5. PLAN 2007-82F: SHARKEY PROPERTY, UNIT 3 - located at Towne Square Park.
6. DP 2008-102: ESTES PROPERTY, LOT 1 - located at 3294 Richmond Road.
7. DP 2008-103: CARE INN OF LEXINGTON (AMD.) (WHITE & CURLESS PROPERTY, TRACT 3) - located at 2770 Palumbo Drive.

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8. DP 2008-105: OVINGTON & RAGLAND (HARRELL'S CAR WASH) - located at 2632 Richmond 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 2006-75P: PATCHEN WILKES, UNIT 2B (10/30/08)* - located at 1811 Winchester Road (a portion of).
(Council District 6) **(EA Partners)**

Note: The Planning Commission originally approved this plan on May 11, 2006, and approved it for an extension on May 10, 2007, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping, arterial screening and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Greenspace Planner's approval of the treatment of greenways/bike trails.
7. Discuss the connection to Charleston Drive.
8. Show spacing from the alley to the school entrance.
9. Show the cross-section with median.
10. Show alley radius from "F-F" to "B-B" sections.
11. Identify the school connections (pedestrian access).
12. Provided the Commission grants a waiver to Article 6-8 of the Land Subdivision Regulations to allow the centerline horizontal curve radius to be 35', and to allow reduced right-of-way dimensions.
13. The notation of a public passageway easement adjacent to the right-of-way, detailing the primacy of the LFUCG over utility easements in this area.
14. All interior curb radii are to be increased to a minimum of 40'.

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 presented the preliminary development plan to the Commission, and said that the subject property is located at 1811 Winchester Road. Referring to the currently approved development plan, he briefly oriented the Commission to the street system that included Charleston Drive connecting to Winchester Road, noting that at the rear of the property is Crawford Middle School. He noted that there are 143 single family lots and those lots will be served by the proposed street system, as well as the alley way.

Mr. Martin stated that this item was previously approved by the Planning Commission on May 11, 2006, and approved for an extension on May 10, 2007, subject to the 14 conditions listed on the agenda. As for the approved conditions listed, the Planning Commission also approved a waiver to Article 6-8 of the Land Subdivision Regulations (condition number 12). He then said that the waiver request allows the proposed street to be consistent throughout the development, in a Neo-Traditional Style. The key to that waiver request would allow the pattern of the street to be narrow and small. He noted that this issue was discussed thoroughly throughout the review of the applicant's request, as was the turning radius, and it was agreed that a the waiver request was necessary for this development.

In conclusion, Mr. Martin said that the staff is recommending reapproval of the applicant's request, including approval of the waiver request.

Planning Commission Questions – Mr. Vaughn confirmed that both the Division(s) of Fire and Waste Management have accepted the modifications to the streets. Mr. Martin replied yes, noting that there was a lengthy discussion between both entities.

Mr. Penn asked if the waiver request would keep the streets the same as the remaining development. Mr. Martin responded that it would be consistent with the rest of the development. Mr. Sallee commented that the staff is

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unsure if there are any other portions of the Patchen Wilkes development that have been granted waivers for their streets, with the exception of the alley system. Mr. Penn said that he was under the impression that the tight turning radius would function as an alley, and asked for clarification. Mr. Martin said that they are similar; but he would need to refer that question to the applicant.

Mr. Holmes asked if the alleys will be maintained through a home owners' association or if it will be considered public. Mr. Martin said that it's understood that the main street system is public and the alley is to be private, and the home owners' association would maintain that area.

Ms. Roche-Phillips confirmed that this request was approved in 2006, and then again in 2007, with the associated waiver request attached. Mr. Martin responded that it was, indeed.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2006-75P. He noted that the alleys will be consistent with the remaining portion of the development. He then noted that all but two lots will be served by the alley system and the waiver was associated with those streets. He said that the development is designed in the Neo-Traditional Style, such as what is being used in Charleston, SC.

Planning Commission Comments – Mr. Vaughn stated that this item is a reapproval request, and it is to be subject to the 14 conditions listed on the agenda, which includes the waiver request.

Staff Comment – Referencing a previous question, Mr. Sallee noted that there were waivers granted previously for the utility strips in the other section of Patchen Wilkes subdivision.

Action - A motion was made by Mr. Cravens, seconded by Ms. Whitman, and carried 8-0 to reapprove PLAN 2007-103F, subject to the previous conditions listed, and granting the waiver, as noted in condition number 12.

- b. PLAN 2008-2P: CALUMET TERRACE SUBDIVISION, LOTS 8 AND 9 (10/3/08)* - located at 1332 Viley Road.
(Council District 11) **(CMW)**

On January 17, 2008 the Planning Commission approved this plan, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffer and required street tree information.
4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree protection area (TPA).
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Environmental Planner's approval of environmentally sensitive areas (sinkholes and steep slopes).
9. Addition of private access easement note.
10. Addition of zoning information on adjacent property.
11. Denote lot lines as solid.
12. Correct plan title.
13. Delete extraneous information.
14. Complete Board of Adjustment's approval information.
15. Denote: An amended final record plat dedicating the public improvements shall be certified prior to the issuance of a building permit.
16. Delete 25' building line on side yards.
17. Denote: Document compliance with Article 4-5(b) of the Land Subdivision Regulations regarding the Improvement Plan Progress Report prior to filing an amended final record plat.

The applicant is revising the plan to meet the Planning Commission's requirements. However, the geometrics of the cul-de-sac at the end of Seine Road do not match exactly the Land Subdivision Regulations Requirements. As such, the applicant has requested a waiver of the Land Subdivision Regulations to permit the design requested. The staff has heard favorable comments from the Division of Traffic Engineering on the proposal, but will present a full report to the Commission at the meeting.

Staff Presentation – Mr. Martin stated this item was originally approved by the Planning Commission, and the applicant was now requesting a waiver to Article 6-8(a) of the Land Subdivision Regulations.

Mr. Martin directed the Commission's attention to the submitted plat, and oriented them to the intersection of Viley Road and Versailles Road. He said that on the previous plat, the applicant had planned to create a hammerhead cul-de-sac for Seine Road that is currently a stub street at the rear of the subject property. At that time, a waiver was granted for substantial completion and it did not have to be built. He said that the

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only requirement was for the applicant to submit a preliminary subdivision plan showing the construction of the public improvement.

Mr. Martin noted that the applicant has already received Board of Adjustment approval for a conditional use permit for a church facility in a residential zone. He said that during the course of working with the Board of Adjustment and the surrounding neighbors, the applicant modified the cul-de-sac design, which is the reason for this continued discussion. He then said that when this request was approved, the staff envisioned a hammerhead cul-de-sac at the rear; however, it was during the process of the applicant working with the Board of Adjustment, Division of Fire and Division of Waste Management that the design modification was proposed. He said that the proposed modification works well for the Church; in addition, it recognizes the neighboring spring fed pond, and the impact that it could cause if the standard hammerhead cul-de-sac were to be used. Since the modification to the cul-de-sac changed the standard design, it will require the waiver to Article 6-8(a). The staff is recommending approval of that waiver, for the following reasons:

1. Construction of a standard hammerhead cul-de-sac would require extensive redesign of the applicant's site and would constitute an undue hardship on the applicant.
2. The modified design does not negatively impact public health and safety.

This recommendation is subject to the following additional requirements:

- a. The wooded natural area at the northeast corner of the subject property shall be maintained and preserved, with only minimal alteration allowed as needed to accommodate the construction of the hammerhead turnabout and the nearby detention basin.

Planning Commission Questions – Mr. Vaughn said that the waiver report listed a condition related to the wooded natural areas, and asked how this would be mapped out on the plan. Mr. Martin said that the Board of Adjustment has a map showing a better view of that information. He then said that the construction would impact this area, and that is why the staff is requesting the applicant to minimize the alteration to that area of the subject site.

Representation – Brian Hill, CMW, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2008-2P. He noted that there is a farm fence located on the subject site, and it was determined by Jim Rebmann and Tim Queary that nothing can be done inside the fenced area, except for drainage. He said that there are tree stands in the area, but they cannot touch anything within the fenced area.

Planning Commission Questions – Mr. Vaughn asked if condition number 17 addresses the waiver or if an 18th condition should be added. Mr. Martin said that condition number 17 is associated with the waiver request; therefore, if the Planning Commission grants the waiver then condition number 17 is being imposed.

Mr. Penn asked if the detention basin will drain toward the wooded area, and if the pond will be impacted. Mr. Hill said that in reviewing the Board of Adjustment submittal, the outflow does miss the pond. He then said that the owner of the pond has stated that he did not want the outflow to enter his pond; but later he voiced a concern as to whether or not the pond would be viable without that flow. He said that they had come to an agreement to reroute the outflow toward his pond, and the only disturbance through the tree stand will be with the outflow.

Mr. Penn commented that, as a farmer who has ponds and lakes on his land, it does not take much to change the composition of that water.

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 8-0 to approve PLAN 2008-2P, subject to the conditions listed by staff, granting the waiver request also, subject to the conditions listed by staff.

2. Final Subdivision Plans

- a. PLAN 2008-44F: HIGH MOUNT SUBDIVISION, UNIT 1, BLOCK A, LOT 17 (AMD) (8/14/08)* – located at 2932 Candlelight Way. (Council District 5) **(CBC Engineers and Associates)**

Note: The Planning Commission postponed this plan at its April 14, 2008; May 8, 2008; June 12, 2008; and July 10, 2008, meetings. The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: Postponement. There were questions regarding access to the home, driveway and drainage easement conflicts, and the street cross-sections.

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

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

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2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street names by e911 staff.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Complete Major Subdivision and Development Plan application.
7. Place site statistics within a box.
8. Addition of frontage dimension.
9. Addition of adjacent property information.
10. Complete the location of the property on the vicinity map.
11. Addition of building lines.
12. Adjust plat size to 17X22.
13. Remove Kentucky Utilities note.
14. Correct Planning Commission certification.
15. Resolve street cross-section for Candlelight Way.
16. Discuss access to duplex units.
17. Discuss driveway/drainage easement conflict.

Staff Presentation – Ms. Gallt presented the proposed final record plat to the Commission. She said that the subject property is located at 2932 Candlelight Way, which is located off Old Mount Tabor Road, between Bates Creek Road and Alumni Drive.

Ms. Gallt stated that the purpose of this amendment is to subdivide one duplex lot into two lots by using the common wall as the separator. Referring to the final record plat, she said that when the duplex was designed, it was done with the main door leading into the duplex, and then each of the two duplex units would be accessed through two inner doors opposite each other. She then said that the staff was concerned with the access only being through the one door, so the applicant had created a pedestrian easement from the front sidewalk into the "lobby" area.

In conclusion, Ms. Gallt said that the staff is recommending approval of the applicant's request, 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. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Complete Major Subdivision and Development Plan application.
7. Place site statistics within a box.
8. Addition of frontage dimension.
9. Addition of adjacent property information.
10. Complete the location of the property on the vicinity map.
11. Addition of building lines.
12. Adjust plat size to 17X22.
13. Remove Kentucky Utilities note.
14. Correct Planning Commission certification.
15. Resolve street cross-section for Candlelight Way.
16. ~~Discuss~~ Identify all pedestrian access easements to the duplex units.
17. ~~Discuss driveway/drainage easement conflict.~~ Addition of access maintenance note, including a prohibition against blocking the shared entrance to the units.
18. Denote the lack of a firewall separation between the units on plan face.

Representation – Don White, attorney, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of PLAN 2008-44F.

Planning Commission Questions – Ms. Roche-Philips asked how wide the sidewalk easement is for each property owner. Mr. White said that it is between 3 to 4 feet on each side, noting that it begins in the center of the sidewalk and extends outward.

Action - A motion was made by Ms. Whitman, seconded by Ms. Richardson, and carried 8-0 to approve PLAN 2008-44F, subject to the revised conditions listed by staff.

3. Development Plans

- a. DP 2008-80: CHEVY CHASE SUBDIVISION, UNIT 19, LOT 7 (WM. T. BURKE PROPERTY) (8/14/08)* - located at 1136 Providence Lane. (Council District 5) **(Foster – Roland)**

Note: The Planning Commission postponed this plan at its June 12, 2008 and July 10, 2008, meetings.

The Subdivision Committee Recommended: Postponement. There were questions regarding the location of the utilities and a utility pole, the landscape buffer and the required notice mailing to nearby property owners.

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

1. Provided the Urban County Council rezones the property R-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree preservation plan.
6. Approval of street names and addresses per e911 staff.
7. Delete note numbers 1 and 2.
8. Addition of standard development plan notes.
9. Correct site statistics.

Citizen Comments – Rosalina Harris, residing at 1140 Providence Lane and Susan Lewis, residing at 1134 Providence Lane were present. Ms. Harris requested that DP 2008-80 be postponed until the September 11, 2008, meeting. She said that they had just become aware of changes to the development plan that will be affecting their property, and they need time to consider those changes.

Ms. Lewis stated that the changes include the orientation of the garage, which results in the garage running along the adjacent property line. She said that this will cause a loss of light and ventilation, and will disturb the view of that area. She noted that the current plan is not the same plan that was presented in the beginning.

Petitioner Comments – Mr. Murphy stated that the applicant is opposed to the postponement request, and said that the plan before the Planning Commission is virtually the same plan that was previously submitted to the Board of Adjustment. He said that the garage is at the same location, and the only difference is that the garage will be moved 6 feet off of the side property line and 2 feet off of the rear property line. He noted that the deadline for this plan will be expiring soon.

Mr. Penn commented that this item should be heard by the full Commission. Ms. Roche-Phillips concurred, and requested that this case be moved to the full hearing portion of the agenda in order to review it in more detail. Ms. Richardson also thought this item should be a full discussion. The Planning Commission members agreed, and there was no motion made to postpone consideration of this item.

Staff Presentation – Mr. Taylor presented the proposed development plan, said that the subject property is located at 1136 Providence Lane, which is between Duke Road and Romany Road. He said that the subject property is zoned R-2, and the applicant is proposing to build a duplex (2-unit townhouse) with the garage located in the rear of the property.

Mr. Taylor directed the Commission's attention to the original submittal, as well as the two revised submittals. He said that the staff had received the original submission on the 10th; and at that time, the plan illustrated the garage being on the right rear corner of the property. When this item was presented to and approved by the Board of Adjustment on July 25, 2008, changes had occurred on the plan that consisted of revisions to the front building line, and the side and rear yard setbacks; in addition to changes to the easements. Prior to this meeting the staff had received another revised plan from the applicant, and those revisions proposed several changes to the development of the duplex and the garage, which is closer to what was approved by the Board of Adjustment.

Mr. Taylor said that the Subdivision Committee had originally recommended postponement of the applicant's request; however, with the revisions made to the plan, the staff is now recommending approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree preservation plan.

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6. Approval of street names and addresses per e911 staff.
7. Delete note numbers 1 and 2.
8. Addition of standard development plan notes.
9. Correct site statistics.
10. Document compliance with Article 15-6(a)(3) of the Zoning Ordinance (size of all accessory structures).
11. Identify building line at 22' from right-of-way, per Board of Adjustment approval of dimensional variance.
12. Denote conditions of approval and date of Board of Adjustment approval of dimensional variance (front yard).
13. Relocate garage and carports to a 6' setback from property lines, per site plan approved by the Board of Adjustment.

In conclusion, Mr. Taylor directed the Commission's attention to the Certificate of Land Use Restriction, and noted that there are four additional conditions that were placed on this property by the Board of Adjustment.

Planning Commission Questions – Mr. Vaughn said that the Subdivision Committee had recommended postponement of this plan due to questions regarding the location of the utilities and a utility pole, the landscape buffer and the required notice mailing to nearby property owners, and asked if those issues had been addressed. Mr. Taylor said that the applicant had addressed the utility easement and the landscape buffer; but as for the required notice, the applicant would need to address that issue themselves.

Mr. Penn asked if the revised plan shows the 22' right-of-way that the Board of Adjustment had approved. Mr. Taylor replied that it does show the 22' setback.

Ms Roche-Phillips clarified that the Board of Adjustment had approved the side yard setback going from 6' to 2'. Mr. Taylor responded that that was correct, and added that condition number 1 on the Certificate of Land Use Restrictions states that "the property shall be developed in accordance with the submitted site plan dated 7-25-08, or as approved by the Planning Commission, indicating that a front yard setback of at least 22' will be provided." Ms. Roche-Phillips then asked what the required setback is. Mr. Taylor said that Article 15-6 references the location, height and size of accessory buildings, and 1.5' is required for accessory structures, such as the garage.

Petitioner Presentation – Mr. Murphy was present along with Doug Walton, Chas Hite and Myke Robbins, all representing William Burke, who is the owner of the subject site. He commented that a few months back the Council had approved the zoned change for this property from R-1C to R-2. He then commented that they were aware that they would need the Board of Adjustment's approval for the variance to the front yard setback.

At this time, Mr. Murphy submitted the illustration that was shown at the Board of Adjustment hearing, and said that originally they had requested a 15' building line, but the Board approved a 22' building line. He then said that the properties in the area have been converted into townhouses, each having a different setback. At the Board of Adjustment hearing, they had shown there would be 6' along the side of the house, and what was submitted to the staff indicates the 2' setback.

Mr. Murphy then presented two photographs to the Commission, and said that the first photograph depicts the existing townhouses on Providence Lane. He said that the townhouses in the picture are similar to what the applicant plans to build, noting that the garage is to the rear, whereas, the townhouses on the opposite side have the garage in the front of the townhouse. The second picture that Mr. Murphy presented is an aerial view of the subject property. He noted the location of the proposed townhomes, as well as the existing townhomes. He then explained how the layout of the subject site would be; for example, the garage would not be a front entry garage. Mr. Murphy said that the applicant is proposing to pull the garage out from the property line, which leaves 2' on the rear and 6' on the side. He said that this will help to achieve more open area in front of the garage. He then said that, under the Zoning Ordinance, 1.5' feet is required for both the rear and side lines.

Mr. Murphy stated that on the original plan, the applicant had shown the garage being at the right rear of the property; and the reason this design was changed was due to KU's request for the 15'X15' easement along the right rear, which is where a transformer is located. He said that with their request the garage had to be oriented a different direction, which provides a safer exit onto Providence Lane. He then said that there was a question regarding the utilities, and along the eastern side of the property there is a utility line. He then said that they will abide with KU's request, but they would rather leave the existing utility line as is and observe all the electric codes necessary. Nevertheless, that issue will be resolved with KU.

Mr. Murphy then stated that as far as the notification is concerned, this request was postponed at the June meeting due to the 14-day requirement not being done, but they had then posted the notification well within the time required for the July meeting.

Mr. Murphy said that during the zone change, the applicant had pointed out the character of Chevy Chase area, and the applicant wants to continue that character with his proposal. He said that Mr. Foster of Foster-Roland

had originally built the existing townhouse in the area, and Mr. Burke has retained Foster-Roland to develop his proposal. In conclusion, Mr. Murphy said that they believe that with the modification previously mentioned, their proposal is on compliance with the regulations, and requested approval.

Planning Commission Questions – Mr. Cravens asked if the carport is an enclosed garage. Mr. Murphy said that there will be no door on the front portion; and as for the sides of the carport and the material to be used, it has not been determined at this time. Mr. Cravens then asked if the carport has side walls. Mr. Walton said that the rear of the carport will be brick material and the sides will be open to the patio.

Ms. Roche-Phillips said that there are two trees indicated on two of the plans, and asked if those trees will remain. Mr. Murphy said that they are required to show the existing trees, and to comply with the tree canopy, but they are not sure if those trees can be maintained. Ms. Roche-Phillips said that this area is being studied for an ND-1 Overlay, and asked what the side and rear setback will be once the ND-1 Overlay is granted, and if the construction of this site will be in compliance. Mr. Sallee said that it is not known if the construction would be in compliance because the site plan is being reviewed rather than the elevation drawing. He said that he is not aware of yard requirements, other than the rear portion, being proposed for change in the ND-1 Overlay. He then said that there are restrictions being proposed for the garages and it is not known if the applicant's proposal will meet the 700' limit; at best, it would be close. Mr. Murphy pointed out that the ND-1 Overlay does require rear parking, as the applicant is proposing, but the proposed regulations are not enforceable at this time.

Citizen Comments – Susan Chestnut, residing at 1134 Providence Lane, was present. She said that the townhouses would be a good addition to the area, but they are opposed to the garage being so close to their property, as well as the material being used. She explained that if the carport is enclosed then that would limit the open space in the rear of the property. She requested that the applicant comply with the setbacks for the front and back portion of the property.

Ms. Butler, residing at 1140 Providence Lane was present. She concurred with Ms. Chestnuts' comments, and requested that this item be postponed at this time. She said that at the Board of Adjustment hearing there was no discussion with the change in the setback or the placement of the garage. She then said that the language indicates that the plan should match what is submitted to the Planning Commission for review. According to the Certificate of Land Use Restriction condition, it states that the property shall be developed in accordance with the submitted site plan dated 7-25-08, and this is not the case. Ms. Butler stated that the utility lines need to be clarified, and more time is needed to review this request.

Jeff Dunkin, President of the Chevy Chase Neighborhood Association, who resides at 423 Cochran Road, was present. He stated that the applicant and the property owners had been working together on this proposal; however, with the change in the orientation of the garage, the neighbors are now concerned with the applicant's request. He said that they were not made aware of these change at the Board of Adjustment hearing. He then said that the issue with the trees is a concern because they do not believe they are being shown accurately on the applicant's property. The adjacent neighbors believe the trees are located on their property and not on Mr. Burke's property. Mr. Dunkin said that with the ND-1 study, they would like to keep some type of uniformity to the area, and they believe these issues should be addressed before it is approved.

Petitioner's Rebuttal – In reference to the tree issue, Mr. Murphy stated that Foster-Roland stands behind the accuracy of the tree survey. He said that the ground survey has been completed, and it indicates that the trees are on the applicant's property. He then said that there have been issues as to whether or not the Butlers' fences are on their property, but what was discovered is that the adjacent property owner's fence is actually on the applicant's property, as well as the tree. The applicant has provided the survey, at their cost, and it was determined that the trees are on the applicant's property. He said that there has been no other survey submitted contesting what Foster-Roland had determined.

In reference to the garage, Mr. Murphy presented a photograph of the subject property, and said that, as shown in this picture, the Lewis property is on the right side, noting that the garage is to the rear. He then directed the Commission's attention to the approved development plan for the adjacent property, and said that there is a detention basin behind the garage at the right rear of the property. The side yard is 7' from the property line to the garage, and the rear yard is 30' from the property line to the garage. In reviewing the applicant's submittal, he said that the schematics are very similar to each other. He said that having the garage on the left side will allow a vehicle to move around easier, and it creates more screening from the adjacent property. He then said that the garage can remain open to creating a feeling of open space at the rear. Again, Mr. Murphy said that the garage will be 6' from the side property line, and the bulk and the mass will be the same as the neighbor's. He then said that the applicant should be allowed to have their own design, given the fact that there is a KU easement on the right side.

In conclusion, Mr. Murphy said that the garage will only be visible to the neighbors, and the current site design is the only way to locate it in this property.

Citizen Rebuttal – Ms. Butler stated that with respect to the changes, they were not made aware of those changes nor did they have time to review those changes. In reference to the trees, she said that they have never challenged the property lines; they are only requesting that the applicant respect the property lines.

Staff Rebuttal – Mr. Taylor clarified that the portion of the garage that is fully enclosed is under 400 square feet, and its size will be roughly an 18 X 21 structure. He said that since this will not be fully enclosed, the two outer sides are not included. Mr. Vaughn asked for further clarification using the submitted development plan. Mr. Taylor explained that the garage scales off at 18 X 21; and since the garage is not fully enclosed, it cannot be considered as buildable area.

Planning Commission Comments – Mr. Vaughn clarified that the staff had submitted the revised recommendations, as well as the Board of Adjustment conditions, which includes the 22' setback. He said that the Subdivision Committee had originally recommended postponement, due to the three items previously mentioned. He said that since that time, the applicant had addressed those items.

Mr. Cravens said that he is in agreement with Mr. Murphy's comments regarding the orientation of the garage. He said that the garage will block the view from the adjacent property, while giving a barrier at the same time.

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 8-0 to approve DP 2008-80, subject to the revised conditions listed by staff, noting that the side yard is to be 6' and the rear yard to be 2'.

- b. DP 2008-117: BERRY CREST SUBDIVISION, LOTS 8 & 9 (10/29/08)* - located at 235-249 Pasadena Drive.
(Council District 10) **(Barrett Partners)**

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscape buffer.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant location.
6. Division of Waste Management's approval of refuse collection.
7. Addressing Office's approval of street names and/or addresses.
8. Review by the Technical Committee prior to certification.
9. Resolve access to adjacent properties.
10. Resolve access to Pasadena Drive.

Staff Presentation – Mr. Martin said that the subject property is located at 235-249 Pasadena Drive, which is between Nicholasville Road and Regency Road and presented this plan to the Commission. He said that the subject property is directly across from the Pain Clinic parking lot and the large detention basin known as the "Pasadena Pond."

Mr. Martin then said that the applicant is proposing a three-story medical office building that will be 18,000 sq. ft. with associated parking. He said that they are also requesting two access points (24' in width) onto Pasadena Drive, as well as a future access point in the rear of the property.

Mr. Martin submitted an overall view of the subject property, and said that there was a considerable amount of discussion on the access points and what the impact will be on Pasadena Drive, including the future access at the rear. He said that the staff has always encouraged an alternative system through the back of the properties that will lead from Huguenard Drive to Regency Road; however, with the applicant requesting two access points off of Pasadena Drive, the concern is the impact on Pasadena Drive. On the revised plan the applicant has shown the rear access that will ultimately connect to the day care property, over the adjoining property if developed, and the staff is assuming that the applicant will want the same connection, especially if there were to be an expansion. Mr. Martin stated that during the staff review, it became apparent that a waiver to Article 6-8(q)(3)(b) of the Land Subdivision Regulations would be necessary for this request. He noted that the distance from Regency Road to the first access point is 210', which does not meet the access requirements of 440' as described in the Land Subdivision Regulations; but the second access point into the subject site is closer to Huguenard Drive and it meets the requirement. In response to the staff's concerns, the applicant has submitted a revised plan, showing the future access point and the circulation of the on-site traffic flow as being one-way. They have also agreed to denote on the plan that the "exit only" access point is temporary and will be closed at such time as the alternate access is constructed and available for use by the subject property. The applicant does not have control over the development of the adjoining properties, which is the reason for the undue hardship.

In conclusion, Mr. Martin stated that the staff had reviewed the revised submission, and was recommending approval, subject to the 10 conditions listed on the agenda, and adding an 11th condition to read: "Provided the

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Planning Commission grants a waiver to Article 6-8(q)(3)(b) of the Land Subdivision Regulations." He noted that the Subdivision Committee had recommended approval of the applicant's request, as well.

Planning Commission Questions – Mr. Penn asked if the access points will be a right-in and a right-out. Mr. Martin said that they will not be; it will only be a one-way in and a one-way out. He said that without a median, the right-in and right-out traffic movement would be hard to control.

Mr. Holmes asked which is more important, the access points or the required distance of 440 sq. ft. Mr. Martin said that, in speaking with Traffic Engineering, it was determined that Pasadena Drive/Regency Road is the primary intersection; therefore, the staff had measured the distance from that intersection to each of the access points, and came to the conclusion that one access point barely meets the requirements, while the other access point does not, resulting in the waiver request. He further added that the off-set driveways directly across Pasadena Drive create conflicts with the access points.

Mr. Vaughn asked what means will be used to control the traffic from Pasadena Drive. Mr. Martin said that that has not been discussed, but it could be done through signage and striping the pavement.

Petitioner's Presentation – Tony Barrett, Barrett Partners, was present representing the applicant. He clarified that one of the entrances will be closed off, which will create a primary access point for the other access point. He said that the primary access point will become a two-way path, while the rear access point acts as a relief entrance and exit onto Huguenard Drive. He then said that they will use signage along with striping for the entrances. In conclusion, Mr. Barrett stated that they are in agreement with the staff's recommendations, and requested approval of this item.

Planning Commission Questions – Mr. Penn said that in reviewing the plan, the access easement is shown on the right toward the rear, and asked what is noted for the left side of the plan. Mr. Barrett said that on the left side there will a landscape area, due to the considerable amount of grade difference on the property.

Mr. Holmes asked if there is anything that will help minimize the access conflict. Mr. Barrett said that the access points are so close together that it could impact the traffic. Mr. Holmes then asked if the access points along Pasadena Drive are too close together to line them up. Mr. Barrett said that the two access points are only 36' apart. Mr. Holmes asked how the conflict could be minimized with the access point and the parking lot on the opposite side. Mr. Barrett said that they are restricted as to how the layout of the development could be, and if the design is made to accommodate the opposite entrance, then they would lose internal efficiencies.

Staff Rebuttal – Mr. Martin said that if the Planning Commission should approve the waiver request, then condition number 10 could be deleted from the recommendation, and suggested that condition number 9 remain listed on the recommendations. Mr. Vaughn clarified that condition number 10 could be changed to read "Provided the Planning Commission grants a waiver to Article 6-8(q)(3)(b) of the Land Subdivision Regulations." Mr. Martin agreed, and said that granting the waiver will resolve the access to Pasadena Drive (condition number 10).

Planning Commission Comments – Mr. Vaughn stated that the Subdivision Committee and staff had recommended approval, subject to the 10 conditions listed on the agenda, changing condition number 9 to read: "Denote that the exit only access point is temporary, and it will be closed at such time the alternate access is constructed and available for use by the subject property" and condition number 10 to read: "Provided the Planning Commission grants a waiver to Article 6-8(q)(3)(b) of the Land Subdivision Regulations."

Mr. Day said that the Subdivision Committee had reviewed the applicant's request, and there was concern with the two access points onto Pasadena Drive; however, if the rear entrance can be used, then it will delete one of the access points on Pasadena Drive.

Action - A motion was made by Mr. Day, seconded by Ms. Richardson, and carried 8-0 to approve DP 2008-117, subject to the subject to the 10 conditions listed on the agenda, changing condition number 9 to read: "Denote that the exit only access point is temporary, and it will be closed at such time the alternate access is constructed and available for use by the subject property," and condition number 10 to read: "Provided the Planning Commission grants a waiver to Article 6-8(q)(3)(b) of the Land Subdivision Regulations" and granting the waiver as noted in condition number 10.

- D. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Day, seconded by Ms. Whitman, and carried 8-0 to approve the release and call of bonds as detailed in the memorandum dated August 14, 2008, from Ron St. Clair, Division of Engineering.

A recess was declared at 3:20 p.m. and the meeting re-convened at 3:30 p.m.

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

- A. **RESOLUTIONS FOR FORMER PLANNING COMMISSION MEMBERS** – At the beginning of the meeting, Mr. Day stated that the Commission and the staff would like to take an opportunity to honor Linda Godfrey and Lyle Aten for their dedication and service to the Planning Commission and the Lexington-Fayette County community. Ms. Godfrey and Mr. Aten joined Mr. Day and the other Commission members at the podium, and Mr. Day read Ms. Godfrey's and Mr. Aten's resolutions into the record. (A copy of each resolution is attached as an appendix to these minutes). Ms. Godfrey and Mr. Aten both expressed their appreciation for the work of the Commission and the staff.
- B. **POSSIBLE AMENDMENT OF THE 2008 MEETING & FILING SCHEDULE FOR COURTHOUSE AREA APPEAL** – The Chair will announce that a date, time and specific guidelines are needed for a future meeting to hear the Courthouse Area Overlay Zone appeal for Centre Pointe. This will be determined by the Planning Commission at this time.

Director's Comments – Mr. King stated that at the June work session, there was a discussion regarding a possible amendment of the 2008 meeting and filing schedule, in particular adding a special date for the Courthouse Area Appeal. He said that since the June work session, and prior to the deadline for appeals of the Courthouse Area Review Board, a second appellant (The Blue Grass Trust for Historic Preservation) had filed a separate appeal on this project. At this point, there are now two appeals pending, and they are both subject to the same guidelines. He said that with there being two appellants, this may change the procedure. (for example, the time limits for the speaker). Mr. King informed the Commission that the Court did rule on the injunction request regarding the demolition. He said that the Court ruled in favor of the developer proceeding with the demolition of the buildings, even though the two pending appeals are primarily with regards to the demolition. The demolition of the block has started and it is proceeding at a rapid pace. He said that at this rate, the issue of demolition will be moot by the time these two appeals are before the Commission. He then said that the staff has been in contact with both appellants, and they've stated that they will be going forward. Mr. King noted that the focus will not be on the demolition, but rather on the nature of the new construction. With that in mind, Mr. King suggested that the Courthouse Area Appeal meeting should be scheduled for September 18, 2008. He noted that September 18th is a regularly scheduled work session; therefore, the Commission could change the work session to the meeting for the Courthouse Area Appeal. It's being anticipated that there could be a lot of public input; therefore, the staff is suggesting starting the meeting at 1:30 p.m.

Planning Commission Questions – Mr. Cravens noted that on September 18th, he would be leaving the meeting early to attend another engagement; therefore, he would prefer to start the meeting at 1:30 p.m.

Mr. Penn noted that he is open on September 18th and asked if the staff is expecting public input. Mr. King said that the staff is unsure at this time how much public input there will be. Mr. Penn then asked if the process of the appeals will be discussed at this meeting; and, if so, how open the discussion will be. Mr. King said that the staff has talked about that concern, with regard to how the process is set out, the law today does not address this type situation, referring to a stay demolition until the appeal process has been completed. He then said that there will be a number of different groups present, who will contribute suggestions as to how the process could be improved. However, the staff believes this to be irrelevant to the hearing, because of the way the law is written today. He said that the staff will develop a recommendation for the appeals and discuss any ideas that may come forth, but the consensus is that something needs to be done through the Zoning Ordinance, such as a text amendment. At this time, those issues should not be dwelt upon; but once the hearing is over, there will be a community discussion as to what should be done next time. Mr. Penn asked if comments will be limited until a later date. Mr. King said that that would be his recommendation to the Commission, at this time.

Mr. Day asked if it would be possible for the person(s) who are making the appeal to state what their appeal is about. He said that the Commission cannot do anything on the issue of the buildings being torn down, and it should not be rehashed; but he would like the person(s) to define the nature of their appeal. Mr. King said that the staff has had ongoing discussions regarding what should or should not be allowed in relation to preservation of those structures; and given the ruling of the Courts, testimony may be limited. He noted that by the time the appeals are presented to the Commission, the buildings will be gone.

Mr. Penn said that if the Commission does not do anything, then a situation would be created that would be difficult to rectify. He said that the Commission cannot put the buildings back together or turn the judge's decision around, and asked if the hearing would be productive if the discussions are limited. Mr. King said that it would be productive, because there are two facets to the action of the Court. He said that the first dealt with the demolition of the buildings, and the second dealt with what will be approved for that site. He then said that second portion of that ruling will be what the Commission will be dealing with during the appeal. The Commission will hear testimony on what is being proposed for that site, if it conforms to the law, and if it is appropriate or not.

Ms. Richardson asked if new testimony and evidence will be allowed. Mr. King replied yes, and said that the law states the appeal hearing is a "denovo" hearing, and new testimony, witnesses and information will be allowed. He suggested that the Commission go ahead and announce those guidelines, today. Ms. Richardson then asked if new evidence is added, that will that change the parameters for which the appeal was originally made. Mr. King replied that it can. Ms. Richardson said that she is having a hard time understanding what the Commission can do or what they can decide upon. Mr. King said that the law

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states that the Commission must give consideration to the ruling of the Board, but the Commission does have the right to make an independent decision on the appeal, as well as input as to what is constructed on the property.

Ms. Roche-Phillips said that a text amendment needs to be done that will provide a "stay" if there is an appeal to the Commission's decision. She then said that she does not believe a denovo hearing would be an appropriate venue, because the Commission should be reviewing the Design Review Board's process. There has been a discussion regarding what is being proposed and whether or not that design fits the Overlay zone, specifically with regard to height and setback. Ms. Rackers replied that she had received some information from the Historic Preservation Office, and it contained the basic building heights and setbacks in the immediate vicinity. Ms. Roche-Phillips then suggested having digital photographs presented to the Commission, showing the front façade of the buildings. Mr. King said that the staff is currently looking into other visual displays to help place the issues into context. Ms. Roche-Phillips commented that there are Commission members who have a background in architecture, and they will be providing their expertise on that subject; but as for the rest of the Commissioners, they will be providing a more subjective view. She then asked if the Council will be appointing the new Commission members before the hearing comes about. Mr. King said that the Council did hold their confirmation hearing to appoint the new Commission members, and later that might the Council would take action to approve the new members. He said that once the new members are sworn in they will be able to take part in this case.

Mr. Vaughn commented that there will be more people who are more than qualified present for the case, and sometimes common sense prevails over expertise. He said that an appeal consists of reviewing the information on record, as well as new information that is introduced. He asked if the bulk of the information initially submitted is a result of the first appeal, and is it related to the demolition or to the new construction. Mr. King said that the staff has made arrangements for that information to be copied; but they wanted to make sure the appeals were going forward before copying and distributing the information, due to the cost; but it dealt primarily with the demolition. Mr. Vaughn said that the Courthouse Area Review Board had submitted information to help in their decision, and asked if the Commission will be able to review that same information. Mr. King said that the staff had reviewed that information, and there was a question as to whether or not they had all the information. He responded that the Commission would have access to all of the available information. He then said that he and Ms. Rackers had a conference call with Mr. Turner late the previous day, and Ms. Rackers will meet with him to go over the submitted information to make sure what is being reflected is currently on the table and that the information is complete.

Mr. Vaughn stated that the Commission, as a body, will look at the conformance of the design, just as they would a Big Box review. He said that there are guidelines for a Big Box review, and the Commission's decisions are based upon those guidelines. He asked if there will be a similar review process to determine what is appropriate for the new construction. Mr. King said that there are adopted guidelines, and the law states that those guidelines adopted by the Courthouse Design Review Board provide the legal yardstick by which the appropriateness of the new construction would be evaluated. He said that there is a wide area for interpretation of the guidelines, but the staff will clarify what the guidelines are and will give the Commission guidance on the issues that need to be addressed.

Mr. Holmes said that with the introduction of new evidence, it makes it more difficult to make a decision on the appeal versus having a hearing on the existing evidence only. He asked how the Commission can take action on new evidence when the Courthouse Area Review Board has not reviewed it. Mr. King said that those issues will be reviewed, and in speaking with some Commissioners concern was expressed about the Planning Commission making a determination on those appeals. He noted that nothing will change while this appeal is moving forward, but they will work under the rules of the current Ordinance.

Mr. Vaughn asked if the Commission agreed that the special meeting should be held on September 18, 2008 at 1:30 p.m. Mr. King noted that the 18th is the latest that the meeting can be held and still meet the requirements of the Ordinance.

Mr. Vaughn then asked what will be the time limit for the speakers. Mr. King said that when there was only one appellant, the Commission suggested an hour and 15 minutes, which included the rebuttal time; but with the second appellant coming forward, the question remains that if each appellant receives 1 hour 15 minutes, if that would allow the applicant (i.e. the attorney for Centre Pointe) to have twice the amount of time to present their case.

Mr. Penn asked, if one of those appeals refers only to the demolition of the buildings, why they would be allowed an hour and 15 minutes to represent their case. Mr. King said that they have not been able to discuss that issue with the attorneys for the case.

Mr. Vaughn noted that at some point the first appellant will need the opportunity to make their appeal. Mr. Penn said that he understands they will need time to make an appeal, but questioned the hour, 15 minutes. Mr. Vaughn asked if a time limit could be set. Ms. Roche-Phillips asked if the appellants could be limited to 40 minutes each. Ms. Boland said that under ordinary circumstances a 40-minute presentation would be appropriate; but the concern is that if each appellant is allowed 40 minutes, then this will result in an 80-minute presentation on their behalf. She said that only giving the applicant 40 minutes to respond and present their case may not be an adequate amount of time for them to respond. Ms. Boland suggested that since there are two appellants, perhaps additional time for the applicant could be allotted for rebuttal. She said that if these proceedings are announced, then other parties involved would have the time to petition the Commission for additional time, if needed; and if they do not petition the Commission, that will be construed to mean that they have accepted the appeal date and guidelines.

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

Mr. Vaughn said that there are two appeals coming forward on this case. The first appeal came earlier than the second, and he asked if the 90-day deadlines are different. Mr. King said that the 90-day deadline is from the Courthouse Area Review Board decision, not from the filing of the appeal. Ms. Rackers noted that the deadline is 90 days from the filing of the appeal. Ms. Boland said that if the meeting were to be extended beyond the 18th, then there would have to be two hearings. Mr. Vaughn asked if these two appeals should be heard separately or should be a combined hearing. Ms. Boland said that the concern is that the motion was to approve both the demolition and the construction; and since this was done with one action, then any appeal filed must appeal the entire motion in full. She then said that even though the demolition portion is a moot issue, case law needs to be researched to see if the Commission needs to take that portion of the appeal into consideration. Mr. Vaughn stated that he is not suggesting for the Commission not to consider those issues, but perhaps to simplify the procedure.

Ms. Roche-Phillips then said that both appellants know the demolition portion is a done deal, and to appeal that decision they would need to go forward to the Appellate Court. Mr. King said that that was correct. Ms. Roche-Phillips said that the Planning Commission should not be dealing with the demolition issue; and if time limits are imposed on each appellant, whether or not there are two separate hearings, they should speak only to the relevant issues at hand. She asked if the appellants had submitted a brief to the Planning Commission. Mr. King responded that a letter was submitted, which would be provided by staff.

Mr. Day asked if two appeals by two different appellants could be heard the same day. Mr. King replied yes that they could. Ms. Rackers said that one appeal was based upon the appeal by Preserve Lexington. Mr. King then said that if the two appeals were to be separated, then each party would have the right to come to the hearing and appear in front of the Commission on behalf of the other.

Mr. Penn said that if these appeals were to be separated, then the Commission would have two hearings, hearing the same information twice. Mr. Holmes suggested having the single hearing, and allocating the time for each appellant, even if the time is an hour each.

Mr. Vaughn asked for clarification of the additional rebuttal time. Ms. Boland said that the applicant's original presentation would not be an hour and 15 minutes, but their rebuttal time will be included in that time frame. Mr. King suggested that each appellant and the applicant have 45 minutes to present their case to the Commission. He said that each appellant will then have 15 minutes for rebuttal (30 minutes), and the applicant will have 30 minutes for rebuttal. As for citizen comments, each citizen will have 3 to 4 minutes to voice their concerns and comments to the Commission. Mr. Penn asked if that could be left up to the Chair, depending on the number of citizens present. Mr. King said that it could be noted that the Chair intends to restrict general testimony from the public to 3 minutes; however, at the discretion of the Commission, additional time may be allowed. Mr. Vaughn agreed.

Mr. King stated that the submittal of new information was an issue at the Courthouse Area Design Review Board, in particular, one side had presented a large packet of information less than 24 hours before the hearing. He said that it was suggested that all information submitted must be at least 21 days prior to the hearing, which would then give all parties 10 days for review and rebuttal. He then said that this time frame would help the staff, as well, to make the appropriate recommendations.

Lastly, Mr. King said that the staff will provide a definitive recommendation, whether it is for approval or disapproval. He said that since this issue will be dealing with guidelines, the guidelines can be interpreted in different ways by everyone. The staff will try to illuminate what criteria the Commission should be using. Mr. Penn said that when the staff does receive new information, then that information should be evaluated based upon the appeal. He noted that there is a concern that if 95% of the testimony is on the demolition issue, and at some point during the meeting new information is discussed, then that information could be missed by the Commission members. Mr. Penn stated that the Planning Commission should also receive any new information prior to the hearing, and Mr. Vaughn concurred.

Ms. Roche-Phillips asked for a recap of the time limit. Mr. King said that 45 minutes will be allotted for the initial presentation (staff, first appellant, second appellant and applicant), 15 minutes will be allotted for the rebuttal time (staff, first appellant, second appellant, applicant), and due to there being two appellants, if additional time is needed on behalf of the applicant, that could be arranged.

Mr. King said that Ms. Roche-Phillips had inquired about the other structures in the district; and in speaking with the Historic Preservation staff there could be some photographs and documents that might help the Commission see the context of the proposal. Ms. Roche-Phillips asked since it is a denovo hearing, if it is possible that the applicant could present a new design. Mr. King said that different actions by the Commission could have different implications. If the Commission upholds the appeal, then the application approved by the Design Review Board is denied. That does not mean that the project is dead, but rather the applicant would need to start over, by submitting a new design to the Courthouse Area Design Review Board. Ms. Boland said that at a denovo hearing, new evidence can be presented; but it is still a hearing of that appeal that was originally heard by the Courthouse Area Design Review Board. She said that major changes to the design could not be presented, but minor changes could be made. Any major changes would require further review and action by the Design Review Board.

Ms. Richardson asked what procedure would be since this process is new to the Commission. Ms. Boland said that this will be heard in an open session, and the same standards apply as in Board of Architectural Review appeals; however, there will be a different set of guidelines for the Commission to review. Mr. Holmes said that the Commission members should be careful with what they say in public about this case. Mr. Vaughn said that everyone recognizes that the Commission members cannot say anything without jeopardizing the case. Mr. Penn said that it is not only a question of what you say, but also what you hear; and it would be best not to discuss this issue at all.

Mr. Cravens asked if there is a chance that the two appeals could be rescinded by the appellants. Ms. Rackers said that both attorneys for the appellants realize that the demolition is a moot point; but as far as the construction is concerned, they want to move forward. Mr. Cravens then asked if the Commission rejects the appeals. Mr. King said that the Commission must hear the appeals; and since it is understood that the demolition is moot, the Commission could state that the demolition testimony is not relevant, given where they are today.

Citizen Comments – Mr. Darby Turner, attorney for Centre Pointe, was present, and asked what would be the order of presentations. Mr. King stated that the procedure for consideration of the Courthouse Area Appeal is as follows:

- Staff Presentation(s).....45 minutes
- Appellant's Presentation(s)45 minutes
- Applicant's Presentation(s)45 minutes
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request.....4 minutes
- Rebuttal – (a) Appellant's comments, (b) Applicant's comments, and (c) Staff comments.....15 minutes, unless otherwise noted
- Commission discusses and/or votes on the plan

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 8-0 to adopt the recommendation made for the Special Meeting concerning the Courthouse Area Appeal, which will be held on September 18, 2008 at 1:30, 2nd Floor Council Chambers, as well as to adopt the additional restriction and the order of the proceedings.

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

A. MINOR SUBDIVISION PLAN – The staff may refer the following item to the Planning Commission for consideration at this time.

1. DP 2008-75: EAST HILLS SHOPPING CENTER, LOT 3A (AMD.) - located at 540 and 544 Eureka Springs Drive.
(Council District 7) **(Endris Engineering)**

Note: The purpose of this amendment is to add buildable area, revise the parking circulation and depict the as-built entrances.

This plan was approved by the Planning Commission on June 12, 2008, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Waste Management's approval of refuse collection.
7. Approval of street names and addresses per e911 staff.
8. Delete note number 9.
9. Revise note number 10.
10. Clarify number of children proposed for day-care operation.
11. Addition of dimensions for access points and drive aisles.
12. Secure manhole within play area to the approval of Streets, Roads and Forestry.

This plan is nearing certification, but the final condition associated with the Commission's approval cannot be satisfied. Field investigations and a review of the engineering "as-built" construction drawings reveal that there is no manhole within the fenced play area for this day care center. One was *planned* in this area, but was never constructed to serve an adjacent car wash that was never constructed. As such, the staff has referred this plan to the Commission for their consideration of deleting condition #12.

The Staff Recommended: Approval, subject to the previous requirements, deleting condition #12.

Staff Presentation – Mr. Taylor said that the subject property is located at 540 and 544 Eureka Springs Drive, near Mr. Tabor Road and the purpose of this amendment is to add buildable area, revise the parking circulation and depict the as-built entrances. He said that this item was originally approved at the June 2008, Commission meeting, and one of the conditions

listed was to secure the manhole within the play area (condition number 12). He then said that through the course of certifying this plan, the applicant had indicated that the manholes were actually located outside the play area. Upon further review it was found that the manholes being shown on the plan needed to be relocated. As a result of this new information, he said that the staff is recommending approval of this item, subject to the conditions listed on the agenda, deleting condition number 12.

Representation – Kevin Phillips, Endris Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested approval of DP 2008-75.

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 8-0 to approve DP 2008-75, subject to the conditions listed on the agenda, deleting condition number 12.

Mr. Phillips wished to thank Hillard Newman and Bill Sallee for taking on the task of locating the manholes. Mr. Sallee also thanked Mr. Newman with his help.

- VII. **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.

VIII. **NEXT MEETING DATES** -

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 21, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building).....	August 27, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 28, 2008
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building).....	September 4, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	September 4, 2008
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	September 11, 2008

- X. **ADJOURNMENT** - There being no further business, the meeting was adjourned at 4:40 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary

CT/CG/TM/JE/BR/WLS/DB