

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

October 9, 2008

- I. CALL TO ORDER** - The meeting was called to order at 1:35 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

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

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

- II. APPROVAL OF MINUTES** – None were considered at this time.

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

- a. PLAN 2008-71P: HAMPTON SPRINGS (AMD.) (10/9/08)* - 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 November 13, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Holmes and Whitman absent) to postpone PLAN 2008-71P to the November 13, 2008, Planning Commission meeting.

- b. PLAN 2008-76F: BOGIE ESTATE, LOT 1 (10/9/08)* - 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 November 13, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 9-0 (Holmes and Whitman absent) to postpone PLAN 2008-76F to the November 13, 2008, Planning Commission meeting.

- c. PLAN 2008-123F: PROVIDENCE PLACE, TRACT 3 (AMD.) (12/20/08)* - located at 2200 Newtown Pike.
(Council District 12) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2008-123F to the November 13, 2008, Planning Commission meeting.

Planning Commission Questions – Mr. Owens asked if DP 2008-124 would be included in this recommendation of postponement. Mr. Kahly said that it would be postponed separately.

Action - A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 9-0 (Holmes and Whitman absent) to postpone PLAN 2008-123F to the November 13, 2008, Planning Commission meeting.

- d. DP 2008-124: PROVIDENCE PLACE, TRACT 3 (AMD.) (12/20/08)* - located at 2200 Newtown Pike.
(Council District 12) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2008-124 to the November 13, 2008, Planning Commission meeting.

Action - A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 9-0 (Holmes and Whitman absent) to postpone DP 2008-124 to the November 13, 2008, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, October 2, 2008, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Mike Cravens, Marie Copeland, Mike Owens 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: Chris King, Director; Bill Sallee, Denice Bullock, Chris Taylor, Cheryl Galt, Tom Martin, Kenzie Gleason, Frank Boateng, Barb Rackers, and Jimmy Emmons; as well as Rochelle Boland, Department of

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Law; Captain Charles Bowen, Division of Fire & Emergency Services; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

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

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

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

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

- Requests can be made to remove items from the Consent Agenda:**
- (1) due to prior postponements and withdrawals,
 - (2) from the Planning Commission,
 - (3) from the audience, and
 - (4) from Petitioners and their representatives.

At this time, Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the Planning Commission Meeting Agenda. 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 3, Item d. PLAN 2008-129F: KOKERNOT & RIGGS (12/8/08)* - located at 319 North Broadway.
(Council District 1) **(Tom Noftsgger)**
2. Page 3, Item e. PLAN 2008-130F: PATCHEN WILKES, UNIT 1-D (12/8/08)* - located at 1811 Winchester Road (a portion of). (Council District 6) **(EA Partners)**
3. Page 3, Item f. PLAN 2008-80F: MAHAN, UNIT 1-C (12/24/08)* - located at 2940 Man O' War Boulevard.
(Council District 4) **(EA Partners)**
4. Page 4, Item g. PLAN 2004-226F: HIGBEE MILL RESERVE (12/24/08)* - located at 4180-4290 Harrodsburg Road.
(Council District 9) **(Eagle Engineering)**
5. Page 5, Item d. DP 2008-130: SOUTHLAND VILLAGE SUB., UNIT 1-C, BLK. B, SEC. 1, LOT 4 (K-S INVESTMENT, INC.) (AMD.) (12/8/08)* - located at 2020 Regency Road. (Council District 10) **(Sherman/Carter/Barnhart)**
6. Page 6, Item e. DP 2008-131: ELLERSLIE PLACE, LOT 2 (BELL PLACE) (AMD.) (12/8/08)* - located at 225 Walton Avenue. (Council District 3) **(Barrett Partners)**

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.

There were no requests made to remove an item from the Consent Agenda.

Action - A motion was made by Mr. Day, seconded by Mr. Cravens, and carried unanimously (Holmes and Whitman absent) to approve the 6 items listed on the consent agenda.

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

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- Commission discusses and/or votes on the plan

1. Final Subdivision Plans

- a. PLAN 2008-128F: COMMUNITY MONTESSORI SCHOOL & COMMUNITY MONTESSORI MIDDLE SCHOOL
(12/8/08)* - located at 727 Stone Road. (Council District 10) **(Ross-Tarrant Architects)**

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
7. Revise cross-section and building line information.
8. Addition of graphic scale.
9. Dash all utility lines.
10. Clarify vicinity map.
11. Denote Board of Adjustment's prior approval of a conditional use permit.
12. Identify steep slope areas.
13. Resolve the possible need for a Preliminary Subdivision Plan (cul-de-sac and/or improvements).
14. Provided the Planning Commission grants a waiver to Article 6-8(f) of the Land Subdivision Regulations.
15. Discuss improvements to Stone Road.

Staff Presentation – Mr. Martin directed the Commission's attention to the rendered final record plat proposed for property located at 727 Stone Road. He said that the subject site consists of 12 acres, and the applicant is requesting to subdivide the property into two parcels. He oriented the Commission to the subject area, and said that the applicant is requesting to subdivide a portion of the property to create a smaller lot consisting of 0.8 acres at the corner of the southwest corner of the property on Stone Road near Chase Place. He noted that there is an existing house at this corner of the property, and the applicant wants to utilize this structure. As for the remainder of the property, there are two structures at the opposite corner of the site that will be torn down. He then directed the Commission's attention to the FEMA floodplain area, which is in the center of the property, and then indicated the location of the top of the watershed for the Stonewall Tributary.

Mr. Martin then directed the Commission's attention to the surrounding areas outside of the subject site and noted that there is an industrial/warehouse area toward the east, off of Big Run Road; a neighborhood area to the west, (Chase Place subdivision), which is where the cul-de-sac is located; and directly north of the subject site is the Open Gate subdivision, which is where the stub street of Ark Royal Way enters the subject site.

Mr. Martin stated that the Subdivision Committee had reviewed the applicant's request, and they recommended approval of this subdivision plat, subject to the conditions listed on the agenda. He said that the conditions are fairly standard, with the exception of numbers 13, 14 and 15. He then said that condition number 14 references the waiver requested to Article 6-8(f) of the Land Subdivision Regulations. He noted that the staff report was previously submitted to the Commission; and said that in conjunction to the waiver request and its attachments, the staff has also distributed the minutes from the August 27, 2004 Board of Adjustment (BOA) meeting, as well as the site development plan that was used in association with case number C-2004-37 (Community Montessori School, Inc.).

Note: Mr. Holmes arrived at this time.

Mr. Martin said that the last three conditions are related to the outcome of that case (C-2004-37), as well as to the waiver request. He then said that the applicant was requesting relief from constructing the cul-de-sac or providing the connection to Ark Royal Way, even though the Land Subdivision Regulations require proper street termination or street connectivity. He noted that there are three lots that front onto this stub street.

Mr. Martin said the staff had consulted with the Division(s) of Fire, Traffic and Waste Management regarding the provisions to provide services to this neighborhood; and based up the information obtained from the 2004 BOA meeting, this waiver would have a negligible impact on the property or the area.

Mr. Martin stated that at the 2004 meeting, the BOA did approve a conditional use permit for the construction and occupancy of a school within a single family residential zone, as well as approving the parking lot area at the rear of the property to be used for "special events." He said that the BOA also required the additional right-of-way improvements along Stone Road across from Big Run Road, as well as the widening and standard improvements

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to the right-of-way nearer to Chase Place. He said that the applicant was also required to dedicate the right-of-way along Stone Road. This is a part of this waiver request.

In conclusion, Mr. Martin highlighted that the Subdivision Committee recommended approval, subject to the 14 conditions listed in the minutes; and as for the waiver request, the staff is recommending approval of it, for the following reasons:

1. Strict compliance with these regulations would create an undue hardship on the applicant, due to the extensive road frontage of this lot along Stone Road. That street and Severn Way essentially provide a loop street system, minimizing the need for a stub of Ark Royal into the subject property.
2. Granting the waiver will meet the Innovative Design requirements of Article 1-5(b) for the following reasons:
 - a. Provision of an alternative pedestrian system will provide connectivity and a greater level of public safety for pedestrians than currently exists on Stone Road.
 - b. Partial improvements to Stone Road (required by the Board of Adjustment) will provide a level of "traffic calming" needed near a new school facility.

This recommendation is subject to the following additional requirement:

- a. An internal pedestrian system shall be constructed to provide connectivity to the school and the neighborhood to the approval of the Pedestrian Planner and the Division of Traffic Engineering, in accord with the conditions associated with the Board of Adjustment's approval.

Planning Commission Questions and Comments – Mr. Penn asked if the 12 acres will be used by one person. Mr. Martin said that the site development plan submitted to the Board of Adjustment had shown a building area of 55,000 square feet, and the rear portion of the property (north of the creek) will be open for recreation and outdoor use. Mr. Penn then asked if there will be a proposal for outlots. Mr. Martin said that there is no request at this time; but if one should come in, it would need the Board of Adjustment's approval.

Mr. Vaughn said that the requested waiver references the required improvements along Stone Road, and asked if there are any improvements for the other sections of Stone Road or if it is for the entire length of the road. Mr. Martin said that, per the Board of Adjustment's approval, the sidewalks near the Chase Park cul-de-sac are required, as are the improvements made for a turning lane into the property. He said that if the Commission should grant the waiver, there will be no improvements made to the area where dedication will be made and there will be an alternative system to serve as the otherwise required pedestrian access.

Mr. Cravens clarified that there will be a sidewalk along the driveway entrance in front of the proposed building. Mr. Martin verified that was so, and said that there will be an internal sidewalk only along the driveway. Mr. Cravens then said that a pedestrian could walk down Stone Road and access the subject site via a sidewalk. Mr. Martin said that that is possible, and the staff hopes it will create a connection to the neighborhoods. He then repeated that the Subdivision Committee did recommend approval of the applicant's request and the staff is recommending approval of the waiver request.

Petitioner's Presentation – Richard Murphy, attorney, was present, along with Janet Ashby, School Administrator; Lay Roth, Ross-Tarrant Architects; and Katie Talf, Development Officer. He noted that in 2004, the applicant had received approval from the Board of Adjustment for the same plan that is being shown today. He said that at that time there was a negotiation period between the applicant and the surrounding neighborhoods, which ended in an agreement just prior to the hearing. He then said that the same issues that are being raised today were discussed at that meeting, as well. The Board of Adjustment members were concerned with the safety of the school(s), as well as the concerns of the neighborhoods; therefore, they had imposed 14 conditions all of which the school is complying with. He said that Board of Adjustment approval included a Community Montessori Elementary School and a Montessori Middle School, to be constructed on this land. He noted that these schools are currently located at another site, and the school board is prepared to construct the middle school; then once funding is obtained the elementary school will follow.

Referencing the previously approved BOA site plan, Mr. Murphy noted that there is an occupied house in the lower left corner that was originally shown as potential parking lot; and in the lower right corner there are two structures that will be torn down to make way for additional parking. He said that since the middle school will only be built at this time, they do not need the extra parking space; therefore, the existing house will remain and will be occupied by Janet Ashby. He then said that the land is currently being used to provide outdoor activities and ecological studies. The proposed layout will have the schools on the south side of the creek; and toward the northern section of the land there will be a play area, a study area, and two pedestrian bridges provided. At the time this plan was submitted to Building Inspection, the staff had noticed a parking lot area in the same vicinity as the existing house; and was told that for them to obtain the building permit; they would need to tear down that house. The problem with that is that the applicant wants to keep that house, and this is what led the applicant to file this request. He said that all of the issues that were previously discussed today had also been addressed by the Board of Adjustment. He then said that they had agreed to make the improvements, but they were not

required to construct the cul-de-sac or make the connection to Ark Royal Way. Mr. Murphy directed the Commission's attention to the letter that was submitted at the BOA hearing and said that the Open Gate Neighborhood Association had recently stated that they are still in support of this request and they want the same conditions applied that were originally approved by the Board in 2004. He noted that the BOA findings were based upon those conditions, as well. He then said that at the 2004 BOA meeting, a letter written by John Driscoll, a resident on Ark Royal Way, was submitted to the Board; and attached to that letter were a number of signatures from surrounding residents, requesting that the following conditions be made part of the conditional use permit:

1. The gate at Ark Royal Way will be closed and locked during normal school hours, except for property maintenance (mowing, mulching, tree trimming, access to utilities and special events) and not used for deliveries.
2. The gate at Ark Royal Way will be a full height gate connected to a fence (rather than a barrier that only blocks cars), to eliminate walk-through when the gate is closed.

Mr. Murphy stated that they had agreed with those conditions suggested by the neighborhood, as well as the 14 conditions imposed by the BOA. He submitted a copy of the August 2004 minutes to the staff, and noted just a few of the BOA conditions that they had agreed to.

- Make the improvements to Stone Road (C-2004-37, condition number 3).
- Dedicate additional right-of-way on Stone Road (C-2004-37, condition number 4).
- Provide a storm water management plan (C-2004-37, condition number 9)
- Provide a 25' floodplain buffer (C-2004-37, condition number 10).

Mr. Murphy said that the BOA had modified condition number 11 to read: "Access to the special events parking area at the end of Ark Royal Way shall be gated, with a full height gate, with the gate to be open only during special school-related events and for property maintenance. The gate shall remain closed during routine, daily school activities, and after the completion of any special events. The school shall take whatever steps are necessary to ensure that the end of Ark Royal Way is not used as a drop-off or pick-up area for students." He noted that everyone was in agreement with this condition.

Mr. Murphy said that the neighborhood was very concerned with the possibility of children being dropped off at the stub street for Ark Royal Way; however, the Montessori School's policy is to have a one-way system for picking up and dropping off the students, which allows the children to be escorted into the building by a school representative. He then said that the neighborhood did not want a cul-de-sac because it would create a undesirable activity after dark; and they wanted the stub street to be gated off, preventing public access.

Mr. Murphy said that from the schools' standpoint, one of the issues is having strangers walk the grounds during the day without anyone knowing. He said that Ms. Ashby monitors the property at all times; and if a stranger is seen on the property, it poses a big problem with the school. He then said that the schools today are not the same as they were in the past. Public schools have methods of locking down the school in the event of a threat, and the Montessori School is no different. He said that they need tight security on the property to provide a safe environment for school activities. He then said that at one point they were being required to have a full height fence along the rear of the property to prevent any access from Ark Royal Way. He said that in speaking with Ms. Ashby, they do not object with the adjacent neighborhood using the land after hours, but there is a problem with allowing the public to use the land during school hours. Mr. Murphy said that they understand the goal of providing public activities, but in this area there is not a lot to offer. He said that even though the goals of providing public activities are important, the goals of providing a secure environment for the school is needed, as well; and this is where the agreement came into play 4 years ago. Mr. Murphy stated that they would not be in this position if they had not agreed to bulldoze the existing house, and they would had just followed the Board of Adjustment ruling at the original approval in 2004; however, the house will be occupied by Ms. Ashby, who will be monitoring the property.

In conclusion, Mr. Murphy said that for the most part, they agree with the recommendations provided by the staff; however, the additional requirement that is listed on the waiver report does pose a problem. He said that the BOA had stated that there would be no connection to Ark Royal Way; but the staff is requiring that pedestrian connection, which is in direct violation of the BOA ruling. He said that they do not want to go back on what they had originally agreed to with the neighborhoods, and they do not want to be in a situation of going around the BOA conditions of approval. He noted that the BOA was concerned with this connection; and, in return, the applicant had agreed to provide a number of public improvements. They want to provide a secure environment for the students who will be attending the schools.

Planning Commission Questions and Comments – Mr. Penn asked if the provision recommended by the staff was being interpreted as if the Board of Adjustment is not requiring the pedestrian access. Mr. Murphy said that they want to make sure the applicant and staff are on the same page as to how this provision is being interpreted. He then said that they have an existing plan showing the sidewalk; and at the 2004 BOA meeting, they had agreed the sidewalk could be used by the public rather than providing a sidewalk along Stone Road, which is safer for

pedestrian movements. They will have mulch trails on both sides of the creek for the students to use, as well as a pedestrian bridge going across the creek. He said that if provision "a" is being interpreted as to what is currently shown on their plan, then there is no problem; but if it is being interpreted that a sidewalk or a trail to connect to Ark Royal Way is required, then there is a problem. He feels that the staff is interpreting this provision as to mandate a connection to Ark Royal Way; and they believe they do not have to make the connection, based upon the prior BOA ruling.

Mr. Cravens asked if the sidewalk and driveway will be within an easement. Mr. Murphy responded that it will not, as it is part of the private property. He said that they do not want those in an easement in case it needs to shift. Mr. Cravens then asked how the public will have access. Mr. Murphy said, during the BOA meeting, that they had stated the public could have access. Mr. Cravens commented that if someone were to walk down Stone Road and cross the property, then they would not be able to cross over if there are gates. Ms. Ashby said that they had moved into this area to be part of the neighborhood/community and they are trying to design a walking trail for people to use after school hours, as well as in the summer months. She said that, as for the gates, they have not discussed that issue and they have not included gates on the plans. Mr. Roth noted that the sidewalks are located at the front of the school where it can be monitored. He said that the Montessori School wants to control and secure the entire property, and they consider the entire property to be the classroom or an educational area for the students. The educational area is the area between the front of the school to the rear property line. He then noted that the front of the school has open access for anyone to drive into; but as for the rear, the school wants to monitor that area since this will be where the children are every day. Mr. Cravens commented that he was involved in the same type of situation; and even though he was not required to widen the road, he had to place the sidewalk within an easement for public access. Mr. Murphy said that he lives across from a public school, and the sidewalk in front of that school is open to the public; the Montessori School will provide the same type of access.

Ms. Roche-Phillips asked if there will be sidewalks provided along the northern portion of Stone Road. Mr. Murphy responded that the BOA did not require a sidewalk along Stone Road since a connection could not be made farther to the north of this site. Ms. Roche-Phillips said that there is a sidewalk at Chase Place, as well as in front of the existing house, and asked if there is a sidewalk leading toward Clays Mill Road. Mr. Murphy replied that there is, and said that they believe the sidewalk only extends in front of Chase Place. Ms. Roche-Phillips then asked if Ark Royal Way has sidewalks. Mr. Murphy replied that it does, and submitted an aerial photograph of the property showing these sidewalks. Ms. Roche-Phillips asked if the perimeter of the property will be fenced. Mr. Roth said that there is an existing fence along the northern property line; and once Phase 2 is constructed, there will be a fence added to secure the area around the play area.

Ms. Copeland asked if the front driveway proposed is only to allow the children to be dropped off or picked up by a vehicle, and if there will be walkers. Mr. Murphy responded that, according to Ms. Ashby that was not the case. Ms. Copeland then asked if the Mary Queen of Holy Rosary or Lexington Catholic School properties are fenced in from Southland Park. Mr. Murphy responded that they did not know. Ms. Copeland noted that she had visited the site and said that the property seems to be open. She asked about the proposed activities are proposed for the rear portion of the school site. Ms. Ashby said that on the other side of the creek, a portion of the land will be used for the elementary school play area; and at least 2 acres will be used, in conjunction with the University of Kentucky, for educational purposes to study the environment, which is the reason to have their middle school constructed first. She noted that since the students are using the property as a classroom, they do not want an unauthorized person to be on the grounds during school hours. She said that when a child enters the property, there are several people who greet them; and not knowing that someone is on the property is a concern of theirs. She then said that a question was raised as to whether or not the school was only allowing drop-off or pick-up only. A parent could walk their child to the school, but they would be encouraged to hand deliver that child to the teachers. Ms. Copeland asked if the children would be allowed to bicycle to school. Ms. Ashby said that if a child wants to bicycle to school, then they will have to use the front entrance where the bike rack is located. Ms. Copeland then asked if there will be a fence blocking off the sides and the rear of the property. Mr. Roth said that once both schools are completed, there is a proposal to seal off the two sides, as well as the rear, for security measures. He then said that since the Montessori School utilizes the outdoors for educational purposes, security is important. Ms. Copeland asked what type of fence would be used. Mr. Roth said that for the front a 5-foot fence would be used and the rear would match the existing fence. Ms. Copeland clarified that there could be access to Ark Royal Way with a sidewalk while still securing the property with a fence. Mr. Roth said that with the grade change in this area, a sidewalk could not be used since it is not ADA compliant. He then said that if stairs were to be used, then that would eliminate bikers. As for securing the gates, they would have to lock and unlock the gates to provide connectivity through the campus. Ms. Copeland commented that that could be possible. Mr. Roth said that anything is possible. Mr. Murphy said that no matter how the Commission rules on this case, students are not allowed to enter the property from Ark Royal Way, according to BOA conditions of approval. He said that this is a direct violation of the BOA ruling and it would result in his clients going to court. Ms. Copeland said that the BOA ruling was in 2004; and according to the 2007 Comprehensive Plan Goal 15, Objective K, it states "Promote human-scale, bicycle, and pedestrian-friendly neighborhoods." She asked if this request is grandfathered in or should the 2007 Comprehensive Plan be used.

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Mr. Vaughn asked for guidance from the Law Department, as to how much latitude the Commission has concerning the prior BOA ruling. Ms. Boland said that the Planning Commission does not have the authority to change the conditions required of the Board of Adjustment; and if the Commission were to approve this request with conflicting conditions, then the applicant would need to back before the BOA and request an amendment to those conditions. She then said that if the BOA is not willing to amend those conditions, then that would place the applicant in an impossible situation.

Mr. Penn asked for clarification to the following provision recommended by the staff:

"a. Provision of an alternative pedestrian system will provide connectivity and a greater level of public safety for pedestrians than currently exists on Stone Road."

Mr. Martin said that the staff is concerned with the overall connectivity to both neighborhoods, which is the basis of this recommended condition. Mr. Brewer said that the neighborhood has stated that they do not want connectivity and asked if that was the case. Mr. Martin replied that that is the staff's understanding.

Petitioner's Rebuttal – Mr. Murphy said that they understood the staff's concern; but in reviewing the BOA minutes from the 2004 meeting, the staff had recommended the following (noted in bold):

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Needed improvements to Stone Road will be completed prior to occupancy of the school, including the provision of left and right turn lanes at the school entrance and road widening between the exit drive and the western property line. **Adequate off-street parking will be provided, with the special events parking lot at the end of Ark Royal Way to be gated so that access can be controlled and limited appropriately.** Building construction will comply with the required 25' floodplain buffer, and storm water management will be provided in accordance with the requirements of the adopted Engineering Manuals.

Mr. Murphy noted that there were several staff members included in this review, as well as input from the Open Gate Neighborhood Association. He said that the only reason they were in front of the Commission today was for the existing house to remain standing.

Mr. Brewer clarified that this request is contingent upon it being in accord with the conditions associated with the Board of Adjustment's approval, and condition "a" clearly stated that the access to Ark Royal Way would be gated. He said that he understood the reason for the grey area, and it should be clarified for this project to move forward.

Motion - A motion was made by Mr. Brewer, seconded by Ms. Roche-Phillips, to approve PLAN 2008-128F, subject to the conditions listed by the staff, noting that this approval is contingent upon it being in accord with the conditions associated with the Board of Adjustment's approval, as well as adopting the following findings for the requested waiver of the Land Subdivision Regulations:

1. Strict compliance with these regulations would create an undue hardship on the applicant, due to the extensive road frontage of this lot along Stone Road. That street and Severn Way essentially provide a loop street system, minimizing the need for a stub of Ark Royal into the subject property.
2. Granting the waiver will meet the Innovative Design requirements of Article 1-5(b) for the following reasons:
 - a. Provision of an alternative pedestrian system will provide connectivity and a greater level of public safety for pedestrians than currently exists on Stone Road.
 - b. Partial improvements to Stone Road (required by the Board of Adjustment) will provide a level of "traffic calming" needed near a new school facility.

This recommendation is subject to the following additional requirement:

- a. An internal pedestrian system shall be constructed to provide connectivity to the school and the neighborhood, to the approval of the Pedestrian Planner and the Division of Traffic Engineering, in accord with the conditions associated with the Board of Adjustment's approval.

The motion failed 4-6 (Richardson, Penn, Owens, Roche-Phillips, Cravens and Copeland opposed; Whitman absent).

2nd Motion - A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, to approve PLAN 2008-128F, subject to the conditions listed by the staff, and denying the requested waiver.

Discussion of Motion – Mr. Brewer asked for clarification to the motion on the floor. Mr. Vaughn explained that this waiver request is related to the street improvements, and asked for clarification to which street improvements. Mr. Martin said that the waiver is a request not to construct a cul-de-sac; therefore, if the waiver is not granted then the applicant would need to build the cul-de-sac, as well as provide full improvements to Stone Road that are not already required by the Board of Adjustment. Mr. Brewer clarified that the applicant does not want a cul-de-sac, nor does the neighborhood. Mr. Martin replied that was correct.

Amended 2nd Motion - A motion was made by Ms. Roche-Phillips, to amend her original motion, seconded by Mr. Cravens, to approve PLAN 2008-128F, subject to the conditions listed by the staff, and granting only the portion of the waiver request not allowing the cul-de-sac; thus requiring the improvement and sidewalk along Stone Road, as well as other ordinary improvements to be required.

Petitioner's Response – In light of the motion, Mr. Murphy said that the applicant is requesting to withdraw their request. He said that they are not able to provide the improvements to Stone Road and construct the school at the same time.

The 2nd motion was approved 9-1 (Brewer opposed; Whitman absent).

3rd Motion - A motion was made by Mr. Penn, seconded by Mr. Holmes, to accept the applicant's request to withdraw PLAN 2008-128F, as well as the associated waiver request.

The motion was approved 10-0 (Whitman absent).

2. Development Plans

- a. DP 2008-106: SIKURA-JUSTICE PROPERTY, UNIT 6 (POLO CLUB CENTER) (AMD.) (10/9/08)* - located at 2945 Polo Club Boulevard and 6401 & 6409 Polo Club Lane.
(Council District 12)

(EA Partners)

Note: The Planning Commission postponed this plan at its September 11, 2008, meeting. This plan requires the posting of a sign and an affidavit of such. The purpose of this amendment is to revise the proposed development to depict a 3,224 square-foot bank, a 14,000 square-foot retail area and associated parking.

The Subdivision Committee Recommended: Referral to the full Commission. There were questions as to whether or not the amended final development plan is in compliance with several aspects of the Community Design Element of the EAMP [Article 23B-5(c)], and with Article 23B-4(b) of the Zoning Ordinance.

The Technical Committee and Staff Recommended: Disapproval, for the following reasons:

1. The proposed amendment to the final development plan does not comply with Article 23B-5(c) of the Zoning Ordinance regarding compliance with the Expansion Area Master Plan.
2. The currently approved final development plan was found to be minimally compliant with the EAMP. The proposed amendments are even less in compliance with those recommendations.
3. The proposed amendments to the final development plan alter essential elements of the character of the development as originally approved, which thereby constitutes grounds for disapproval of the plan by the Planning Commission under Article 21-7(e) of the Zoning Ordinance.
4. There is a substantial conflict between the proposed building layout and a Kentucky Utilities Easement. K.U. has a planned Three-Phase Line that is required to provide public utility service for the area.
5. The 25' vegetative buffer area adjacent to the floodplain, required by Article 19-7(g)(4)(c) of the Zoning Ordinance, is not being provided by this development plan amendment.

Staff Presentation – Ms. Gallt directed the Commission's attention to the amended final development plan, and oriented them to the surrounding area. She noted that the subject site is located at 2945 Polo Club Boulevard and 6401 & 6409 Polo Club Lane. She said that the purpose of this amendment is to revise the proposed development to depict a 3,224 square-foot bank, a 14,000 square-foot retail area and to revise the associated parking. She then said that the Technical Committee and Staff recommended disapproval of the applicant's request for the reasons provided on the agenda.

Ms. Gallt stated that, in reviewing these reasons, the staff is now recommending that condition number 5 be deleted. She noted that when this request was presented to the Subdivision Committee, the applicant had requested for this issue to be discussed by the entire Commission.

EAMP Compliance Report Presentation – Mr. Martin directed the Commission's attention to the EAMP Compliance Report that was previously distributed. He said that the staff had reviewed the applicant's plan to ensure its compliance with the EAMP, and their proposal does comply relative to having collector streets and major highways being built. It also complies with the sanitary sewer system being in place, as well as the drainage facility that will be part of the Regional Plan. He noted that the applicant's request appears to be consistent with the aspect of the infrastructure component of the EAMP.

As far as the future land use, Mr. Martin said that the EAMP requires this area to be a mixed-use development with at least 40 percent of floor area being residential use. He then said that the applicant is proposing 43 percent of this development to be residential, which is above the minimum requirements for the EAMP. However, there is

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

a concern with the Community Center (CC) design portion of the proposal, in light of the EAMP. He said that when the EAMP was developed for the CC section, it was done so with the idea of providing a small-town pedestrian-friendly atmosphere. He then said that when this plan was originally approved by the Commission, it only demonstrated only minimal compliance relative to the required community space. He said that the provision of public and private space was an important component of the CC section; and when the staff had reviewed the original plan in comparison to the amended plan, a concern arose with the lack of vehicular connections proposed for the overall area, which is one of the goals for the EAMP. In return, he noted that the applicant is offering additional patio areas looking out onto the greenspace area, which is also one of the goals in the EAMP.

Mr. Martin stated that the staff is also concerned with the proposed drive-through facility to be situated centrally in the CC area. He said that there is a force main sewer easement, as well as a KU easement that comes into this development from the adjacent land, and this is causing a conflict with that proposed drive-through facility. He noted that there are solutions to address this concern, but the applicant has failed to do so at this time.

In conclusion, Mr. Martin said that the applicant's plan does meet the future land use and infrastructure elements of the EAMP; however, it does not comply with the CC element of the EAMP; therefore, the staff recommends disapproval of this plan for the following reasons:

1. The loss of the vehicular connection prevents the integration of the two CC properties that the staff believes is vital to integrate the character of the development.
2. The location of a drive-through facility in the interior of the proposed development imposes a more suburban character on the development, counter to the goals of the EAMP Community Design Element; it would also conflict with utility plans and facilities.

Planning Commission Comments and Questions – Mr. Holmes asked for clarification with regard to the location of the drive-through facility. Mr. Martin pointed out its proposed location and said that what is currently approved in this area is the Rite Aid Store, the gas station, the townhouse development and a single building. He then said that the currently approved plan shows a large retail building proposed along Man O' War Boulevard in the back corner and another building in the middle of the development. The applicant has altered those buildings to allow the bank to be constructed in the center of the property, and this has created a conflict in the flow of traffic. Mr. Holmes asked if the element of the drive-through and the aspect of the bank is creating the conflict. Mr. Martin said that a bank facility is an approved use in this area, but the drive-through itself is creating a conflict.

Mr. Cravens asked if the reasons for disapproval are due to the lack of vehicular connection to the adjacent land. Mr. Martin said that that is the staff's main concern. He said that the previous approval was based on the fact that there was a potential to combine these two areas and provide a better functioning CC area.

Mr. Day requested to see the original plan that was approved by the Commission. Mr. Martin illustrated the original plan, and explained the location of the buildings and the open space features. Mr. Day asked if there was a connection to the adjacent property. Mr. Martin replied that there was a vehicular connection being provided. Mr. Day then asked if that connection that only showed the Rite Aid Store was on the plan. Mr. Martin indicated that was correct.

Mr. Owens noted that there is an area of the proposed plan not rendered near the bank facility and the drive-through, and asked about its significance. Mr. Martin indicated that that area is a proposed greenspace.

Mr. Holmes asked if there is a vehicular connection on the proposed plan. Mr. Martin replied that there is not, and said that in an effort to increase the orientation of the greenway and provide the necessary public space, the plaza area was enlarged and the vehicular connection was omitted.

Petitioner Presentation – Al Gross, EA Partners, along with Steve Ruschell, attorney; Les Kimbrough, Bank of America; and Rob Mould, Gleneagles Homeowners Association were present. Mr. Gross submitted an exhibit showing the proposed layout of the area, and said that the original plan was approved in 2007, which included the Rite Aid Store and the retail area that was toward the rear of the Rite Aid Store. He noted that the original plan also included the office space and the townhouse development. He then said that they are now proposing to change everything from the rear of the Rite Aid Store back to the property line.

Mr. Gross submitted the overall view of the land, explained the location of the Rite Aid Store, and pointed out the location of the Blackford CC development that was ultimately withdrawn. He said that in looking at each of these developments, their plan is considerably smaller than the Blackford CC development; and since the Blackford development was a much larger development, it allowed the design to be spread out. It also required several accesses out of the development, which included a connection to the adjacent land, a connection to Man O' War Boulevard, and a connection through the TPA area. He noted that there was also a connection from the Blackford CC development leading to their property via the greenway area. He said that, previously, when the amended plan was submitted to the Subdivision Committee, they had stated that there was no issue with adding

the greenway connection back to the plan, if that was the Commission's and the staff's desire. He directed the Commission's attention to a proposed plan showing that connection, and pointed out the proposed vehicular connection toward the Blackford CC development. He said that they realized after the Committee meeting that their proposal was more vehicular friendly and not pedestrian friendly, so they had met with the staff to discuss any improvements that could be made. He said that one of the issues being discussed was to make this development an enclave, meaning that the pass-through traffic from Polo Club Boulevard into the Blackford CC development would be disjointed, which would create a small community center that would serve the needs of the surrounding neighborhoods. As a by-product of creating a more pedestrian friendly area, the access across the greenway was eliminated and the pedestrian common area was increased. He said that when reviewing the overall picture, the vehicular connection into the Blackford CC development did not seem to be important at that time, but pedestrian access was. At the Committee meeting, the Fire Department had voiced concerns with the lack of connectivity between the two areas in the event there was ever a need for emergency services. Mr. Gross noted that the staff had listed on the EAMP Report that "the loss of the vehicular connection prevents the integration of the two CC properties that the staff believes is vital to integrate the character of the development;" and they agree to provide that space for vehicular connection.

In conclusion, Mr. Gross said that the driving force behind this amendment is to integrate the bank into this area, as it will bring stability to this area. They have integrated an independent community center space for the public to use and provide a benefit to this area. He said that the community center will provide a conference room and a kitchen area that can be accessible to the public 24 hours/7 days a week. He noted that this plan is remarkably similar to the original plan that was approved in 2007, and if the vehicular connection is added, then it will be virtually the same, with the exception of the drive-through bank. He said that the staff had cited the following two reasons for disapproval in the EAMP Report:

1. The loss of the vehicular connection prevents the integration of the two CC properties that the staff believes is vital to integrate the character of the development.
2. The location of a drive-through facility in the interior of the proposed development imposes a more suburban character on the development, counter to the goals of the EAMP Community Design Element; it would also conflict with utility plans and facilities.

Mr. Gross said that the suburban character is more imposed by the connection than the drive-through bank; however, they believe both can exist with the goals and objectives of the EAMP Community Design Element. He then said that they have attempted to heavily landscape the area between the proposed bank and Man O' War Boulevard in the hope that vehicles will not be seen from the road, which is one of the goals for areas along major arterials.

Planning Commission Comments and Questions – Mr. Cravens asked how the Kentucky Utilities Easement issue will be resolved. Mr. Gross illustrated the location of the easement, and said that the KU easement and the sanitary sewer force main would most likely be relocated, regardless of the plan design due to change in the elevation. He said that it's incorrect to say that this request will cause the relocation of the easements and is misleading. He then said that he had spoken with Joe Oakley, KU representative, and they had agreed upon a concept showing how the relocation of these easements would work in relation to the bank. At this time, Mr. Gross submitted 3 different proposals: the first plan shows the 30-foot easement; the second plan shows the existing facility; and the last plan shows the potential relocation of the easements, which stems from a discussion between Mr. Gross and Mr. Oakley. He said that a note has been placed on the amended plan in reference to the easement issue and reads as follows: "Building A in the UE encroachment shall be resolved prior to the building permit being issued." He said that when there is a utility conflict they work with those providers to remove that conflict. This connection is important to KU because it will serve the Hamburg area, as well as the proposed medical facility that is being planned. He said that he had proposed an idea to Mr. Oakley about relocating the easements down the greenway area, which extends into the Hamburg area. He then said that the pump station comes down from I-75 via the greenway; and it could then proceed up through the greenway toward the Hamburg area, as well as toward the location for the proposed medical facility. However, KU believes that the corridor needs to remain open for service, so they are planning to concede to their request.

Mr. Holmes clarified that, prior to construction; the issues with KU will need to be resolved. Mr. Gross replied that absolutely that would be the case.

Ms. Copeland asked where the trash location would be. Mr. Gross pointed out the dumpster locations, and said that they are hoping to negotiate an agreement with the Rite Aid Store for the consolidation of the dumpsters to reduce the number down to 5.

Mr. Holmes asked how much of the open space would be lost with the vehicular connections. Mr. Gross said that the area south of the 6,000 square-foot building would lose half of the open space. He said that they have spoken with the nearby property owner (Chevron) about incorporating some of their area for the open space and

community service area. Mr. Holmes said that the vehicular connection is important and he would like to see it happen. Mr. Gross replied that was fine.

Petitioner's Presentation (cont.) - Mr. Gross submitted the required signed affidavit and photograph to staff.

Steve Ruschell, attorney, was present representing the applicant. He said that at the beginning of this process they had started to work with the neighborhood. He then said that since this is a small neighborhood community center, they wanted to know what concerns the neighborhood may have had; and Rob Mould, acting president of the Gleneagles Homeowners Association, was there with them. He said that Mr. Mould was present at the Subdivision Committee meeting, and presented compelling reasons as to why the neighborhood supports this proposal.

Mr. Ruschell stated that the applicant would construct the connection, but they believed it would be a better plan to have more open space and an enclave of a small development, since the land is an odd shape. He said that they will concur with what the Planning Commission requests.

Mr. Ruschell then stated that the applicant has not requested additional retail space; they are only requesting to take the one building and split it into two smaller buildings. He said that one building will be oriented toward Man O' War Boulevard and the second building will be oriented toward the greenspace area, as well as the bank facility. He said that with these revisions, the gathering area will need to be moved, noting that the neighborhood association is in agreement with this change.

Rob Mould, acting president of the Gleneagles Homeowners Association, was present. He noted that there are several neighborhoods surrounding this proposal, as well as an apartment complex that offers the federal housing program. He then said that last month there was a fatal incident at the apartment complex; and when looking at this area the crime rate is high for both the apartment complex and the KU substation area. He said that the neighborhood is concerned with the issue because it will cause the property values to drop immensely. He noted that there are also parking issues along Market Garden Lane. He said that there are several other issues with this plan that the neighborhood does not want. He said that a gathering area next to the dumpsters is undesirable and is not wanted. He then said that the area does not need more crime or loitering in the area, noting that several businesses have been robbed at least once since the apartments were built.

Mr. Mould said that the applicant is proposing a community center with a bank and asked what bank does not offer a drive-through facility. He said that they are offering a patio area and can integrate the retail space and, if needed, a restaurant. He then said that the walkway to the road is not an issue with the neighborhoods. In reviewing the area, the city has approved two "pork chops" along Polo Club Boulevard, noting that one does not allow the traffic from Man O' War Boulevard to turn into the proposed site. He said that a person would have to travel to Market Garden Lane and access the center through Polo Club Lane. He said that each "pork chop" only allows the vehicles to travel a certain way out of the center or the neighborhood.

Mr. Mould stated that he receives emails from concerned residents regarding these issues. He said that they had stumbled across the issue of the KU property, and the concern is that the substation will be in their back yard. He pointed out the location of his house and then said that KU is not planning to build the substation until 2012; but the neighborhood is committed to fighting that construction, as well as the ongoing battle with the apartment complex. He said that the neighborhood does not want to deal with the crime or loitering in the area.

Mr. Mould then stated that the Comprehensive Plan's Goal 15, Objective I states: "Implement neighborhood protection overlay zoning provisions as a tool for establishing stability and protection in existing and, especially, older neighborhoods;" and they need their neighborhood protected from these issues. He then said that their neighborhood has a lot of going on that is creating negative effects. The entrance into Gleneagles Neighborhood has Section 8 housing on one side, commercial on the other side and a substation in the area, which is not a great thing to look at when coming home. He said that a community center would truly help the area, especially the bank. He then said that at this time, there is no place for the neighborhoods to gather for meetings, and the bank is offering that opportunity by providing a conference room, restrooms and a break area for neighborhood use. Mr. Mould said that they currently use the Chevron station for such things as Christmas events, and it would be nice to be able to use the bank facility for special occasions.

In conclusion, Mr. Mould said that the neighborhoods had voted unanimously in support of the applicant's request. He said that the applicant's proposal is a nice plan, even though it may not meet the criteria set by staff. He then said that the Commission has already approved a building in this location, and asked why not a bank, since it will help the community, and a community center gives something back to the neighborhoods.

Planning Commission Questions – Mr. Vaughn asked how the neighborhood association feels about the vehicular access. Mr. Mould said that they are not in opposition to the walkway or the drive-through. He said that the neighborhood association had approved the walkway, as well as the drive-through.

Petitioner's Presentation (cont.) – Mr. Ruschell thanked Mr. Mould for being present, and said that they appreciate his support. He said that the applicant is not requesting additional square footage; they are only requesting to separate the larger building into two smaller buildings. He then said that they are also requesting to move the gathering space, with the neighborhood in agreement with that concept for the reason provided earlier. The surrounding neighborhoods will be able to enjoy the greenspace areas, as well as enjoy an atmosphere such as the Regatta Seafood Restaurant. He said that they are neutral as to whether or not the road is closed or open; it's at the Commission's discretion. He then said that they are requesting the Commission to approve this plan, not only for the developer, but for the neighborhoods' needs.

Citizen Comment – Larry Ridenour, who resides at 3064 Roundway Lane, was present. He said that the residents of Gleneagles are in support of this application, and they support the idea of eliminating the gathering space for the same reasons previously mentioned by Mr. Mould. He then said that he was involved in the original plan that was approved by the Commission. The conditions have changed in the neighborhood, and this is why the gathering area needs to be removed. He said that he doesn't understand why this request is being considered to be turned down since there has already been an approval of two other suburban developments. The Rite Aid and the Chevron Station are two suburban developments that have created a precedent in the area; and how this request can be disapproved because of the proposed bank, is not understandable.

Staff Rebuttal – Mr. Martin noted that the 5th condition can be deleted from the staff recommendation of disapproval.

Planning Commission Comments and Questions - Mr. Holmes asked if there is a way to resolve the conflict between the existing KU easement and the proposed building layout, or if it is worked out between the applicant and the provider. Mr. Martin said that if the Commission were to approve this plan, that issue could be listed as a "resolve" condition.

Mr. Penn said that in reviewing the plan, it shows the bank being built over the force main easement, and asked for clarification. Mr. Gross said that the bank will not be built over the force main easement; rather it will be relocated along with the overhead utilities. He then said that the original plan that was approved by the Commission will require the same type of relocation. Mr. Vaughn said that when the Commission reviews the submitted documentation, what they see is what is on the plat; and in all fairness, the Commission would appreciate receiving accurate information. Mr. Gross apologized for this, and said that he assumed that two-dimensional plans would be understood. He noted that the utilities will be relocated and the apparent conflict resolved.

Action - A motion was made by Mr. Holmes to approve DP 2008-106, for the reasons provided by the staff, deleting condition number 5 that reads: "The 25' vegetative buffer area adjacent to the floodplain, required by Article 19-7(g)(4)(c) of the Zoning Ordinance, is not being provided by this development plan amendment" and incorporating the vehicular connection.

Mr. Vaughn noted that if a motion for approval is placed on the floor, then findings for approval will be needed. Mr. Holmes asked for further clarification. Mr. Sallee said that the staff has drafted the following conditions of approval, if needed by the Commission.

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. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Greenspace Planner's approval of the treatment of greenways/bike trails.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Approval of street names and addresses per the street addressing office.
10. Resolve the KU easement conflict with the proposed bank prior to certification.
11. Denote the location of the sanitary sewer easement and resolve any conflicts with proposed buildings prior to certification.
12. Denote the timing for the construction of the required entrance improvements per the approved development plan.
13. Resolve pedestrian connections to the adjoining property.
14. Denote: This property will comply with the Man O' War Landscape Ordinance.

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

Mr. Sallee noted that the first 9 conditions are standard; and as for condition number 10, it will resolve the conflict with the KU easement, Condition number 11 will resolve the conflict with the sanitary sewer easement. Mr. Martin noted that condition number 12 references the "pork chop" issue, and the staff is asking to know the timing of that construction. Mr. Sallee said that condition number 13 references the discussion at the Subdivision Committee meeting regarding pedestrian connectivity, and condition number 14 was a request from Building Inspection due to the Man O' War Landscape Ordinance being expanded.

Mr. Holmes asked if condition number 12 will address the connectivity. Mr. Sallee said that condition number 13 would address the pedestrian connection, which could be expanded to include the vehicular connection, as well.

Mr. Cravens asked if the motion included the street connection or the pedestrian connections. Mr. Holmes said that he would add vehicular connections to condition number 13, which will then read: "Resolve pedestrian and vehicular connections to the adjoining property."

Mr. Cravens noted that he would like to amend the motion, but he was unsure if the original motion was seconded. Mr. Vaughn replied that there was no second to the original motion, and requested that the original motion be re-read for the Commission.

Amend motion - A motion was made by Mr. Holmes to approve DP 2008-106, subject to the 14 conditions provided today by the staff, changing condition number 13 to read: "Resolve pedestrian and vehicular connections to the adjoining property."

The amended motion was seconded by Mr. Day.

Discussion of Motion - Ms. Boland asked if the motion included findings stating that this request is in compliance with the Community Aspect of the EAMP. Mr. Holmes indicated yes. Ms. Boland then asked if the reasons include the addition of the vehicle access and the belief that it satisfies those requirements. Mr. Holmes replied yes.

Mr. Vaughn clarified that the compliance with the EAMP is based upon the addition of the vehicular access, which Ms. Boland verified. Mr. Vaughn repeated the motion on the floor, to approve DP 2008-106, subject to the 14 conditions provided by the staff, changing condition number 13 to read: "Resolve pedestrian and vehicular connections to the adjoining property;" and accepting the finding of the EAMP Compliance Report, with the addition of the vehicular access, as noted on condition number 12.

2nd amended motion - Mr. Cravens asked to further amend the motion, with which Mr. Holmes was in agreement. Mr. Cravens said that this request is similar to the Hamburg Development near the Lowe's Home Improvement Store, and there is a pedestrian greenway leading over to the Wal-Mart Super Store. He said that the Commission there made a finding to only allow a pedestrian access and not a vehicular access. He then said that this request reminds him of that case, and he believes this area would be better and safer if there is not a northerly vehicular connection. That is his motion.

Ms. Boland clarified that, as part of the amended motion, the findings would also need to be amended with regard to satisfying the EAMP requirements to the Community Design Element, by finding that the existing proposed pedestrian access is sufficient to connect the two CC areas together. Mr. Cravens agreed.

Mr. Vaughn then asked if there was a second to the motion; Ms. Roche-Phillips seconded the motion. Mr. Vaughn asked if Mr. Holmes accepted the amended motion, which he did.

Discussion of Amended Motion - Mr. Penn believed that without the road connection, the CC requirements are not being fulfilled. He said that the difference with the Hamburg Development is that the site is not located in the CC area. He then said that if there is a CC area, and the neighborhood requirements are included, there is a difference between the Lowe's Home Improvement Store and the Wal-Mart Super Store, and this site, due to the zoning. The applicant is requesting that the development plan be changed; however, the subject site is still located in a CC area, and the rest of the neighborhood must be incorporated in order to fulfill those requirements for the CC area. With that being said, Mr. Penn said that he was inclined to vote against the amended motion.

Mr. Cravens said that issue was discussed at the Subdivision Committee meeting; and it was pointed out that if someone wanted to access the Blackford Property, then they could travel along Man O' War Boulevard. He then said that Mr. Mould has also stated that there are other alternatives to enter the Blackford Property, as well.

Mr. Day stated that in that same discussion, there was a question as to why someone who lives in the back of the neighborhood would have to travel along Man O' War Boulevard in order to reach the Rite Aid Store. He said that he believes the connection should be made and it needs to be there.

Mr. Cravens said that he lives off of Polo Club Boulevard, about 3 miles from the subject site, and traffic is very chaotic and confusing in the area where the "pork chop" stub is located. He then said that he does not believe they should encourage more ingress and egress in this area.

The amended motion tied 5-5 (Holmes, Penn, Owens, Brewer, Vaughn opposed; Whitman absent).

Ms. Boland said that even though the amended motion failed, the original motion remained on the floor.

Discussion of Motion - Ms. Copeland stated she had visited the site before the connectivity issue had come about, and once you move down the grade, it seemed to have a whirlpool of traffic. She said that once the bank is completed and in business, it will be difficult for pedestrians crossing (e.g. a mother with a baby carriage). She then said that this area is confusing due to what happened to the site prior to this request. She indicated a strong preference for not abdicating the Commission's responsibility, and believes they are acting more responsibly by requiring the pedestrian walkway.

Mr. Vaughn stated that the original motion on the floor was subject to the 14 conditions previously submitted today by the staff, noting that #13 has been changed, and that by providing the vehicular connection, it will bring this request into compliance with the EAMP.

The motion carried 10-0 (Whitman absent).

A recess was declared at 3:46 p.m. and the meeting re-convened at 3:56 p.m.

- c. DP 2008-129: GREENDALE HILLS (CHESAPEAKE EQUINE) (CENTRE POINT CHRISTIAN CHURCH) (AMD.) (12/8/08)* - located at 865 Greendale Road. (Council District 2) **(Qore)**

Note: The purpose of this amendment is to revise the building location, size and off-street parking layout.

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 buffers.
4. Urban Forester's approval of tree preservation plan, to also include significant trees.
5. Greenspace Planner's approval of the treatment of greenways/bike trails.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Approval of street names and addresses per the street addressing office.
10. Denote Board of Adjustment's approval of conditional use.
11. Correct plan title.
12. Kentucky Transportation Cabinet's approval of the access to Greendale Road.
13. Delete note number 9 from plan and add note number 9 from the previous plan.
14. Addition of interior vehicular use area (VUA) landscaping requirements.
15. Denote required zone-to-zone landscape buffers, and denote tree preservation (TPA) areas.
16. Correct tree canopy note.
17. Clarify location and denote sanitary sewer easement.
18. Confirm and denote Citation Boulevard right-of-way location per Kentucky Transportation Cabinet plans.
19. Denote construction access location.
20. Resolve perimeter tree preservation.
21. Discuss addition of sidewalks to Greendale Road.

Staff Presentation – Mr. Taylor directed the Commission's attention to the proposed development plan, and said that the subject site is located on Greendale Road, which is between the Meyers property and the Hillenmeyer Property subdivision. He said that the purpose of this amendment is to build a church, a detention basin and provide off-street parking on Greendale Road. He noted that at the time the original plan was approved by the Commission, it only included the approval for access to the cell tower station on the property.

Mr. Taylor said that the Subdivision Committee had recommended approval, subject to the conditions listed on the agenda; and with those recommendations, the Committee had left condition number 21 as a discussion item due to the issues concerning the sidewalks on Greendale Road. He said that, in reviewing the adjacent properties, there are sidewalks being shown along Greendale Road. The staff believes the sidewalks should be added to the applicant's proposal in order to complete the connection. He then said that the staff suggests changing condition number 21 to read: "Addition of sidewalks to Greendale Road."

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

Petitioner Presentation – Bill Leake, Qore, was present representing the applicant. He said that the applicant is in agreement with the staff's recommendations and requested approval of this item. With regard to the sidewalk issue, he noted that they will mirror what the adjoining properties have done in order to provide the connection.

Action - A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 10-0 (Whitman absent) to approve DP 2008-129, subject to the reasons provided by the staff, changing condition number 21 to read: "Addition of sidewalks to Greendale Road."

- D. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, to approve the release and call of bonds as detailed in the memorandum dated October 9, 2008, from Ron St. Clair, Division of Engineering.

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

A. T.I.F. APPLICATIONS

Prior to the presentation of the TIF applications, Ms. Rackers noted that there is an error on the agenda, and said that item number 2 should read "LFUCG" and not "Centre Pointe, LLC" as the applicant. She explained that a Tax Increment Financing (TIF) District is permitted by state statute, and the first presentation the Commission would hear would be for properties located on Manchester Street. The second presentation would be for properties located in the downtown area. She said that there are different types of TIF Districts and each district has different criteria that determine what type of district it will be. She noted that Item 1, which is known as the Lexington Distillery District, is located on both sides of Manchester Street, within the Distillery District, and is considered to be a "Blighted Urban Mixed Use Redevelopment Area" TIF District. She then said that Item 2 is known as the Phoenix Park/Courthouse Development Area, and this district is known as a "Signature" TIF District. The process of creating a TIF District provides a mechanism to allow improvements for a specific area. She said that the financing for an area is made up front and the revenues that are generated by the improvements will help pay for the project. As part of this process, the Urban County Council must conduct a public hearing, and these two requests are scheduled to be placed on the October 21, 2008, docket. Once the hearing has taken place, the development plan and the recommendations are forward onto the State, at which time the State will review and either approve or disapprove it. If the request is approved, then a formal agreement is executed between the Urban County Government and the State, at which time the TIF District is created. As part of that process, it is the responsibility of the Planning Commission to review each TIF District Development Plan and certify that it is in compliance with the 2007 Comprehensive Plan.

1. **PEPPER DISTILLERY, LLC** – review of a Tax Increment Financing application for property on both sides of Manchester Street (Council District 2).

Staff Presentation – Ms. Rackers directed the Commission's attention to the first application and the map of the proposed District, noting that this application consists of properties on both sides of Manchester Street. She said that there is a small area inside the boundary that is not part of this application. She oriented the Commission to the area and surrounding street system, and said that the property is approximately 25 acres in size, and will extend from the future extension of Newtown Pike, west toward South Forbes Road.

Ms. Rackers stated that there will be both public and private improvements made to this area, and the Development Plan that explains those improvements will be made part of the packet that will be forwarded on to the Urban County Council and the State. She directed the Commission's attention to the staff report, and said that on pages 1 and 2 the proposed projects (both public and private) to be eligible for funding through the TIF District were listed.

Ms. Rackers then stated that there are several elements of the 2007 Comprehensive Plan that speak to the types of projects that are proposed the Manchester Street area. The Mission Statement and the Vision of Lexington-Fayette County statement supply the basis for land use decisions and development, including urban design. She then said that the Mission of Lexington's planning efforts is "to provide a vision for physical development that will allow Lexington to grow and prosper, promoting economic development and viable job development while preserving its quality of life, historic character and amenities, and other elements that make it a desirable place to live and work." This language speaks to and supports the TIF District.

Ms. Rackers said that there are several themes included as part of the Mission Statement that are applicable to the TIF District, and those include the following:

- Promoting the myriad components that strengthen the viability of downtown, including professional and commercial uses, cultural and recreational activities, and new and existing housing.
- Implementing infill and redevelopment strategies that expand residential and commercial opportunities; are appropriate in character and design; and complement and reinforce the fabric of the neighborhood.

- Enabling the creation, growth and retention of jobs that promote a strong, progressive and diversified urban and rural economy.
- Developing a green infrastructure system with open space, facilities and amenities that serves all citizens and helps create a sense of community.
- Providing infrastructure improvements to fully serve existing developments, to accommodate current growth, to plan for long-term future urban needs, and to enhance the high quality of life in Lexington.

Ms. Rackers then said that there are 21 Goals in the Comprehensive Plan, all of which have Objectives to help facilitate the implementation of those Goals; 10 of those Goals and their associated Objectives directly support these improvements. She noted that the Goals and Objectives are listed on pages 3 through 6 of the staff report. She then said that the Land Use Element has text supporting this proposal, parts of which are the principles of the Downtown Master Plan. She said that this proposal is not specifically in the heart of downtown, but parts of the District are included in the boundaries of the Downtown Master Plan. Based on the development that has begun and that hopefully will continue, it will likely become an extension of the downtown area, noting that there is the possibility of it being added to the downtown area in the next Comprehensive Plan Update.

Ms. Rackers stated that the staff has found no statement in the 2007 Comprehensive Plan in opposition to the project, but rather the 2007 Comprehensive Plan and the TIF District support each other. She said that as part of the Planning Commission certification, the Commission has the ability to make recommendations for any zone change, text amendments or other changes needed to accommodate the proposed TIF Development Plan. She then said that as far as this proposal, the staff has not found any changes that need to be made, because all but one property is zoned for B-4, I-1 or I-2 along Manchester Street. She noted that a text amendment (the Adaptive Reuse text amendment) to implement the TIF District has received the first reading by the Council, and the second reading is scheduled for the October 16, 2008 meeting.

In conclusion, Ms. Rackers directed the Commission's attention to the FEMA floodplain map, and said that there is one issue to be considered, which is that most of the proposed district is encumbered by a FEMA special flood hazard area, which is related to the Town Branch Creek. She said that the applicant is aware of this issue and has proposed flood mitigation and control as part of this TIF application, which is one of the public improvements being requested. She said that with regards to the Comprehensive Plan, Goal 3 ("Promote land uses that are sensitive to the natural and built environment") and its Objectives provide the basis for the environmental stewardship required by the Plan as it relates to development within Fayette County. To ensure that those are met with regard to the floodplain improvements, the staff believes that the natural environment as it relates to the Town Branch Creek and its associated floodplain needs to be enhanced rather than degraded with this development. Ms. Rackers stated that the most relevant language that supports this projects is contained in the Downtown section of the Land Use Element, and reads as:

"The need for a vibrant, dynamic, and growing downtown area continues to be one of the most important elements of the overall growth management strategy of the 2007 Comprehensive Plan. Since the adoption of the 2001 Plan Update, extensive efforts have been undertaken to enhance recent trends and development activity that bode well for a major renaissance of Lexington's downtown area." "Recent trends in development activity have shown that downtown is an attractive place to live. This residential component of downtown is viewed as key to downtown's future, as downtown and the immediate vicinity are inherently attractive to both younger and older residents due to diversity, walkability, entertainment, proximity to major universities and many other factors. A number of recent projects are underway, which will add additional living space to downtown, often in a mixed-use development."

Ms. Rackers noted that the applicant had included residential components as part of the proposal, and said that the staff finds this proposal to be in compliance with the 2007 Comprehensive Plan, and requested the Commission to approve and certify this application. (A copy of the Certificate of Compliance is attached as an appendix to these minutes). She then noted that the applicant was present, as were his attorneys, should the Commission have any questions.

Planning Commission Questions – Mr. Holmes asked if the Downtown Master Plan has been incorporated and adopted as part of the 2007 Comprehensive Plan. Ms. Rackers said that the principles of the Downtown Master Plan are included as part of the 2007 Comprehensive Plan. Mr. Holmes asked whether the application was in compliance with the adopted plans. Ms. Rackers replied that it is.

Mr. Penn asked for clarification as to which properties will be excluded from this request. Ms. Rackers noted that there are properties within the area that will be excluded due to various reasons. Mr. Penn asked if those properties were excluded at the property owners request. Ms. Rackers replied that they were.

Mr. Vaughn said that since this a new procedure for the Planning Commission, he asked for guidance from the Law Department regarding the type of action that should be taken. Ms. Boland said that the Planning Commission should make a motion to certify that the proposal is in compliance with the 2007 Comprehensive Plan; and by taking that motion, the Commission is authorizing the Chairperson to sign the Certificate of Compliance.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 10-0 (Whitman absent) to certify that the proposal is in compliance with the Goals and Objectives of the 2007 Comprehensive Plan, thereby authorizing the Chair to sign the Certificate of Compliance on behalf of the Planning Commission.

2. **CENTRE POINTE, LLC** – review of a Tax Increment Financing application for property bounded generally by W. Main, N. Upper, W. Vine and N. Limestone Streets (both sides), and extending westward to N. Mill Street and northward to Church/Barr Streets (Council Districts 1 & 3).

Staff Presentation – Ms. Rackers noted that this item is actually “LFUCG” and not “Centre Pointe, LLC.” She directed the Commission’s attention to the application for the Phoenix Park/Courthouse Development Area. She said that this is a “Signature” TIF District, and the boundary of this district encompasses approximately 3 blocks and contains 14.25 acres. She oriented the Commission to the surrounding street system, and said that some of the improvements will be made to Phoenix Park, to the new Courthouse building area, as well as to the older Courthouse building and Cheapside Park.

Ms. Rackers said that the improvements will consist of both public and private improvements. She directed the Commission’s attention to the staff report and said that the list of eligible public improvements is noted on page 1 and continues to page 2. She then noted that the private improvements will be mainly Centre Pointe.

Ms. Rackers then said that this application will also be reviewed by the Urban County Council, and it will have the same process as stated in the previous presentation. She said that there are 3 themes that are included in the Vision Statement of the 2007 Comprehensive Plan that directly relate to this proposal, and those include the following:

- Promoting the myriad components that strengthen the viability of downtown, including professional and commercial uses, cultural and recreational activities, and new and existing housing.
- Enabling the creation, growth and retention of jobs that promote a strong, progressive and diversified urban and rural economy.
- Providing infrastructure improvements to duly serve existing development, to accommodate current growth, to plan for long-term future urban needs, and to enhance the high quality of life in Lexington.

Ms. Rackers then said that there are several Goals in the Comprehensive Plan that apply to this Development Plan, and those include the following:

- Goal 12: “Ensure the desirability, diversity and vitality of downtown,” which has 7 relevant Objectives.
- Goal 18: “Provide and maintain essential public services and facilities,” which have 3 relevant Objectives.
- Goal 19: “Provide and maintain a comprehensive transportation system,” which has 2 relevant Objectives.
- Goal 20: “Provide and maintain a range of community facilities and services,” which has 5 relevant Objectives.

Ms. Rackers noted that, in addition to the Goals and Objectives, there is a portion of the Comprehensive Plan Land Use Element that supports this proposal. She said that the following principles of the Downtown Master Plan, which are included in the Comprehensive Plan, also apply:

- Invest in a pedestrian network.
- Develop Vine Street (a linear pedestrian park within the Vine Street right-of-way will also be included, although this will not be located in the TIF Development Area boundary).
- Make Farmers’ Market a permanent amenity.

In conclusion, Ms. Rackers noted that a portion of text from the Land Use Element regarding transportation also supports this proposed project, which can be found on page 4 of the staff report; but the most relevant language that supports this project comes from the Downtown Section of the Land Use Element. It states the following:

“The need for a vibrant, dynamic, and growing downtown area continues to be one of the most important elements of the overall growth management strategy of the 2007 Comprehensive Plan. The downtown area is the heart of the community and its center for government and most commerce. Since the adoption of the 2001 Plan Update, extensive efforts have been undertaken to enhance recent trends and development activity that bode well for a major renaissance of Lexington’s downtown area.”

Ms. Rackers said that the staff finds this proposal to be in compliance with the 2007 Comprehensive Plan, and requested that the Commission approve and certify this application. (A copy of the Certificate of Compliance is attached as an appendix to these minutes). She noted that Mr. Tate (Downtown Development Authority) was present, should the Commission have any questions.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 10-0 (Whitman absent) to certify that the proposal is in compliance with the Goals and Objectives of the 2007 Comprehensive Plan, and to authorize the Chair to sign the Certificate of Compliance on behalf of the Commission.

B. PUBLIC FACILITY REVIEW

1. PFR 2008-2: LFUCG PUBLIC SAFETY OPERATIONS CENTER

The Staff Recommended: **Approval**, as requested, with the following recommendations:

1. Because the property is within the Wellhead Protection Area, it is recommended that the proposal be presented to the Royal Spring Water Supply Protection Committee, which is an advisory committee for Scott and Fayette Counties, the purpose of which is to review any development proposed within the Wellhead Aquifer Protection Area. The Committee is charged with protection of the water supply within the two counties and the ground water system that feeds it, in accordance with the requirements of the Kentucky Water Supply Planning Regulations (401 KAR 4:220).
2. Because an existing tree line borders the property, it is recommended that it be maintained, inasmuch as possible, to screen the proposed use from the adjoining subdivisions.

Staff Presentation – Mr. Sallee directed the Commission's attention to the previously distributed staff report, and said that the Commission has received a request for a Public Facility Review for the proposed LFUCG Public Safety Operations Center that is to be located at 920 Citation Boulevard.

Mr. Sallee then directed the Commission's attention to the zoning map, and briefly oriented them to the surrounding area, noting that this property had been zoned to an R-3, as part of the University of Kentucky Coldstream Research Campus re-zoning several years ago. He said that the subject site is on the south side of Citation Boulevard, east of Georgetown Road and west of Newtown Pike, noting that the property cater-corner to the Research Campus, which is directly across Citation Boulevard to the north and east. He said that this was the only area that was not zoned to P-2 for Office Industry and Research Park use in 1991. He noted that the subject site is 16.17 acres, and it was created with the construction of Citation Boulevard.

Mr. Sallee stated that this proposal has come before the Planning Commission because of KRS 100.324(4), which requires the Planning Commission to have a 60-day review time and comment period for all major public projects. Referring to the site plan, he said that the subject site will have direct access off of Citation Boulevard, and that access will lead into the property to a loop drive area, which will also have a connection on over to Highlands Park. He then stated that there are two buildings being proposed for this site, the first being a large two-story structure and the second being a smaller storage facility. In addition to the two structures, there will be a number of off-street parking spaces proposed along the drive aisles, as well as additional areas for over flow parking using grass-pavers for high peak operating times in the event of an emergency being declared.

Mr. Sallee noted that most of the eastern side of the property is not being proposed for development at this time. He said that the facility is to be located adjacent to the Highland Park subdivision to the south and a newly created single family subdivision (Givens Property) to the west. Directing the Commission's attention to the overall site plan rendering, he stated that there is an extensive tree line along the property lines as it abuts the residential areas, with the exception of the two properties in the Highland Park subdivision along the southern property line. One of the issues noted in the staff report was the preservation of these trees lines. There is also a small tree line located centrally on the site. He said that since this facility is in close proximity to the residential areas, the staff felt that these tree lines would make a nice visual and landscaping buffer between the two neighborhoods.

Mr. Sallee stated that the subject site is located within the Royal Spring Aquifer area, and this water source is what supplies Georgetown, Kentucky with their drinking water; therefore, when there is a development that is in close proximity to the Cane Run area, there is a typical concern with water quality and stormwater issues. As part of the staff's review it is recommended that this project should be reviewed by the Royal Spring Wellhead Protection Area Committee, which is made up of citizens from both Fayette County and Scott County. This Committee routinely reviews such development issues, as well as major water quality issues within the 80-square-mile area of the Royal Spring Aquifer. He then pointed out that the property is also in close proximity to the nearby Cane Run Creek, with a portion of the property within the designated 100-year floodplain area. He noted that according to the site plan, there is no development being proposed within the floodplain area.

In conclusion, Mr. Sallee said that there are no Goals or Objectives of the 2007 Comprehensive Plan that are in opposition to the use of the property as a Public Safety Operations Center; and, although it is not in compliance with the 2007 Comprehensive Plan, which does recognize the R-3 zoning of the property. Several Goals and Objectives, as well as text of the Plan, support the proposed project. He said that the staff is recommending approval of this request, subject to the following two recommendations:

1. Because the property is within the Wellhead Protection Area, it is recommended that the proposal be presented to the Royal Spring Water Supply Protection Committee, which is an advisory committee for Scott and Fayette Counties, the purpose of which is to review any development proposed within the Wellhead Aquifer Protection Area. The Committee is charged with protection of the water supply within the two counties and the ground water system that feeds it, in accordance with the requirements of the Kentucky Water Supply Planning Regulations (401 KAR 4:220).

2. Because an existing tree line borders the property, it is recommended that it be maintained, inasmuch as possible, to screen the proposed use from the adjoining subdivisions.

Planning Commission Comments and Questions – Mr. Penn asked if a retention basin will be provided on site. Mr. Sallee said that the staff presumes there will be a need for such a facility; however, it has not been identified on the site plan as of yet. He said that John Carman, Carman and Associates, as well as Charles Milward, LFUCG, was present, and they might be able to address that issue. Mr. Penn said that it is assumed that the flooding will flow toward the creek. Mr. Sallee agreed, and said that the water drains from west to east across the site.

Petitioner's Presentation – Charles Milward, Lexington-Fayette Urban County Government Project Manager for the Safety Operations Center, was present. He said that since this property is adjacent to the creek, there are no requirements for a retention or detention basin to be provided on site; however, there will be a water quality system to treat the stormwater runoff as it flows from the parking area to the creek. He then said that there is also a site plan for the grading process, and it includes extensive erosion control measures to help prevent the silt runoff from the construction phase.

Action - A motion was made by Ms. Richardson, seconded by Mr. Day, and carried 10-0 (Whitman absent) to approve the report for PFR 2008-2, for the reasons provided by the staff, with the associated recommendations.

C. BOARD OF ARCHITECTURAL REVIEW APPEAL

1. **BOAR 2008-1: MARION C. LAUGHLIN, II** – appeals the Board of Architectural Review's denial of a Certificate of Appropriateness to demolish the primary (residential) structure, on property located at 115 Jefferson Street.

The Staff Recommended: Disapproval, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review appears to be consistent with their charge in determining appropriateness of requested alterations to the property, based on the design guidelines established by the local Historic Preservation Commission, specifically guidelines 18-1, 43-1, 43-2 and 43-3, as they apply to the appropriateness of demolition of the structure at 115 Jefferson Street; and Article 13 as it applies to conditions that must be met in order for demolition to be approvable by the BOAR.
2. Proper maintenance and care of the property after the fire in 2006 would likely have reduced the amount of repairs and their associated cost; however, no repairs were made to the building after the fire to protect its interior from the elements and to minimize the likelihood of vandalism, both of which are major contributors to the high cost of renovation.
3. Based on the report from the structural engineer, the building is structurally sound and can be renovated. There is nothing in the report that states (or infers) that it should be demolished.
4. Although the estimate for renovation of the structure was high (nearly \$200,000), there are Historic Preservation tax credits that can be obtained for renovation/rehabilitation of an historic structure. The estimate provided by the appellant did not take those tax credits into consideration, which would likely result in a significant reduction in the cost.

Staff Presentation – Ms. Rackers stated that this appeal is being made by Marion C. Laughlin, II for property located at 115 Jefferson Street, which is within the Western Suburb Historic District. She directed the Commission's attention to the area map, and briefly oriented them to the surrounding street systems, which included West Short Street and Jefferson Street. She noted that there are only three properties within this block facing Jefferson Street.

Ms. Rackers then stated that the subject property is zoned Neighborhood Business (B-1), and it is within the area recommended by the 2007 Comprehensive Plan as part of the Downtown Master Plan, noting that the underlying 2001 Comprehensive Plan recommendation is for Medium Density Residential land use.

Ms. Rackers said that Mr. Laughlin had taken possession of both 115 Jefferson Street and 113 Jefferson Street in January of 1985, for the purpose of rental property. She then said that in April of 2006, 115 Jefferson Street had sustained damage to the rear portion of the structure due to a fire. Later that year the appellant had requested a Certificate of Appropriateness (COA) for the demolition of 115 Jefferson Street, which included the rear storage shed. She said that the staff had recommended approval of a COA, but the approval was only for the shed, not the structure.

Ms. Rackers stated that there are certain requirements of Article 13 that must be provided prior to any demolition of a structure, and the appellant had not done this for this structure. She said that the appellant never acted upon the COA for the shed; and since no more information was provided, this case was never heard by the Board of Architectural Review. She noted that the house has remained unoccupied since that time and the appellant has made no repairs to the area that sustained the fire damage. As a result of the repairs not being made, the property had sustained additional damage from the elements, and the interior portion was vandalized as well.

Ms. Rackers then stated that in October of 2007, the property had been cited by the Division of Code Enforcement for several violations. She said that in November of 2007, the appellant had applied for a second COA to demolish the structure, and again the information was found to be incomplete. She said that the Historic Preservation staff had worked

with Mr. Laughlin to gather the necessary information, but they lost contact with him shortly after. In late May of the same year a third application was submitted requesting that the structure and the shed be demolished; however, that information was incomplete as well. The staff then provided the appellant with detailed information of what was required by Article 13, and by the end of June he had submitted enough information that allowed the case to be heard by the Board of Architectural Review on July 23, 2008. Ms. Rackers said that at the July meeting, the Historic Preservation staff recommended that the demolition of the storage shed was within the Design Guidelines and therefore appropriate; however, as for the demolition of the residence, the staff did not find it to meet the requirements of Article 13 for demolition. Therefore, it was not appropriate nor within the Design Guidelines.

Ms. Rackers then referenced the following four guidelines that were cited by the Historic Preservation staff, noting that all are applicable in this case.

- 18-1 Existing principal structures should be retained/maintained whenever possible.
- 43-1 Demolition within historic districts or demolition of historic landmarks is not recommended.
- 43-2 Demolition of a structure or building should not be detrimental to the character, scale, rhythm, design and importance of a group of buildings, streetscape or district.
- 43-3 If demolition of a structure is tied to future development of the property, future development should be compatible in scale, size and use with existing zoning and existing characteristics of historic properties where development is located.

Ms. Rackers said that the appellant wanted to demolish the structure to construct a parking lot and install landscaping. She then said that the Historic Preservation staff had cited the following conditions from Article 13-7 that are required for demolition of a building:

- 13-7(c)(1)(a) - The application is for demolition of an addition, for a portion of a building or for an accessory structure which is not significant to the principal structure, site, landmark or district; and the approval of the application would not adversely affect those parts of a building site, landmark or the historic district which are significant.
- 13-7(c)(1)(b) - The application is for the demolition or moving of a building, or portion of a building, which does not contribute to the character of, and will not adversely affect the character of, the property in a zone protected by an H-1 overlay.
- 13-7(c)(1)(c) - No reasonable economic return can be realized from the property, and the denial of the application would result in the taking of the property without just compensation.

Ms. Rackers noted that only one of the above conditions must be applicable to justify the demolition of a structure; and the packet submitted by the appellant included a structural engineering report that stated the structure could be renovated, and they listed ways how this may be accomplished. She said that the report also stated that the fire had not affected the structural integrity of the building; therefore, the demolition of the house was not needed. She then said that the report did state that it structurally deficient due to the type of construction (post and beam foundation), but there nothing structurally wrong with the house. The report estimated the renovation to be almost \$200,000; however, that did not include the Historic Preservation tax credits that are available for this property. Ms. Rackers stated that the Historic Preservation staff report stated that the cost of renovation was not due to any structural instability, but rather it was related to the rebuilding and replacing of the plumbing and electrical repairs that resulted from the vandalism after the fire. She said that even though the required information had been provided, the Historic Preservation staff did not find any of the three cases described in Article 13-7 applicable that would justify the demolition of the house. The staff also stated that the information that was provided had referenced the condition of the house two years after the fire; and at that time there had been no effort made by the appellant to protect the house from the elements, to make repairs, or to attempt to rent or sell the property.

Ms. Rackers stated that the findings contained in Historic Preservation's staff report were presented to the Board of Architectural Review, and it was noted that the structure located at 115 Jefferson Street is a "twin" to the structure located at 113 Jefferson Street. She then said that these two structures were built at the same time, and they were designed and made of the same material, basically being a mirror to each other. Although the structural engineer had determined the house to be structurally deficient, it could be reinforced using concrete block or poured concrete, which had been done in many similar situations. She noted that the stairs and upper story of the house were found to be structurally sound. She said that after the staff had examined the house and studied the findings issued by the structural engineer, they had determined the demolition of the house was not appropriate, nor would it be within the guidelines.

Ms. Rackers then stated that the house at 115 Jefferson Street was closer to its original design than its twin, due to the front porch still being intact, which made it more architecturally significant. She said that if this house were to be taken out of the block, it would create a "missing tooth" along this portion of the street. She then said that it would create a significant negative impact to the block, as well as to the historic district, and the Board of Architectural Review had voted unanimously to disapprove the appellant's request.

In conclusion, Ms. Rackers stated that the Planning staff could find no flaws in the review of the appellant's request by either the Historic Preservation staff or the Board of Architectural Review, which was consistent with their charge in interpreting and applying the Design Guidelines. She then said that the Planning staff is recommending disapproval of the appeal, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review appears to be consistent with their charge in determining appropriateness of requested alterations to the property, based on the design guidelines established by the local Historic Preservation Commission, specifically guidelines 18-1, 43-1, 43-2 and 43-3, as they apply to the appropriateness of demolition of the structure at 115 Jefferson Street; and Article 13 as it applies to conditions that must be met in order for demolition to be approvable by the BOAR.
2. Proper maintenance and care of the property after the fire in 2006 would likely have reduced the amount of repairs and their associated cost; however, no repairs were made to the building after the fire to protect its interior from the elements and to minimize the likelihood of vandalism, both of which are major contributors to the high cost of renovation.
3. Based on the report from the structural engineer, the building is structurally sound and can be renovated. There is nothing in the report that states (or infers) that it should be demolished.
4. Although the estimate for renovation of the structure was high (nearly \$200,000), there are Historic Preservation tax credits that can be obtained for renovation/rehabilitation of an historic structure. The estimate provided by the appellant did not take those tax credits into consideration, which would likely result in a significant reduction in the cost.

Historic Preservation Staff Presentation – Bettie Kerr, Director of Historic Preservation, was present. She presented several photographs to the Commission and gave a brief description of each, noting that these properties are listed on the National Registry of Historic Places, as well as being within the local historic district. (A copy of the photographs is attached as an appendix to these minutes). She said that the buildings reflect the different architectural styles ranging from the 1830s to the 1920s. She noted that there has been a considerable amount of Infill and Redevelopment in the Western Suburb neighborhood.

At this time, Ms. Kerr provided a series of photographs of the subject property, and gave a brief description of each. She said that 115 Jefferson Street is the twin of 113 Jefferson Street, and both of these houses were built at the turn of century (1900-1901). She then said that these houses are a T-plan Cottage style, which is very representative of that era. The property located at 115 Jefferson Street still has its front porch intact, and the only damage to this structure is located in the rear. She noted that the houses sit right on Jefferson Street and they are in close proximity to each other. Ms. Kerr then said that after the fire damage had occurred to 115 Jefferson Street, the house was left open for some period of time, which did not help the structure; and even though the interior portion of the structure was damaged from the smoke, it is physically intact.

Ms. Kerr stated that any time there is a request for demolition, the integrity, the character and the importance of the building is reviewed. She said that the properties on Jefferson Street are visible, and if this structure were lost, it would have a negative impact on the historic district, and would contradict the Design Guidelines.

In conclusion, Ms. Kerr submitted into the record the Certificate of Appropriateness application, the Board of Architectural Review minutes, Article 13 of the Zoning Ordinance (Historic Preservation section), as well as the Design Guidelines. She said that in consideration of this application, the Board of Architectural Review did act unanimously in denying the applicant's request, and requested that the Planning Commission uphold the Board's decision by denying this appeal.

Planning Commission Questions – Mr. Owens asked when the pictures of the property were taken. Ms. Armstrong replied that they were taken in July of this year (2008).

Ms. Copeland asked when this area had become a historic district. Ms. Kerr answered that this area was listed on the National Registry of Historic Places, as well as being designated as a local historic district, in the late 1970s or early 1980s.

Mr. Vaughn asked if 113 Jefferson Street is occupied. Ms. Kerr responded that, to the staff's knowledge, it was not; but the appellant's attorney could clarify that answer. She noted that 115 Jefferson Street had not been occupied since 2006.

Cross Examination – Leslie Rosenbaum, attorney, was present representing the appellant. He requested permission to cross examine Ms. Kerr with a few questions prior to his presentation. Mr. Vaughn granted his request.

Q. Mr. Rosenbaum asked if Ms. Kerr knew the 2007 PVA assessment of this property.
A. Ms. Kerr stated that she did not know.

Q. Mr. Rosenbaum then asked what if the value was set at \$20,000.
A. Ms. Kerr said that she was informed that the PVA sets the property values.

- Q. Mr. Rosenbaum asked if (Ms. Kerr) had undertaken to obtain any kind of contract or estimates as to the cost to bring the building up to code.
- A. Ms. Kerr replied no, and said that that is not the role of the government; it is the responsibility of the property owner to put forth any information pertaining to this.
- Q. Mr. Rosenbaum clarified that Ms. Kerr does not know what the cost would be to bring this building up to code.
- A. Ms. Kerr responded that they only have the information that the property owner has submitted as part of their application.
- Q. Mr. Rosenbaum asked if she know the cost.
- A. Ms. Kerr said that \$190,000 was one contractor's estimate; however, the tax credits that are available were not included in the application, which would have made a substantial difference. She noted that the applicant only provided the one estimate, and with any proposal there should be a range of estimates.
- Q. Mr. Rosenbaum asked if Ms. Kerr considered herself an expert on the Rehabilitation Tax Credit for historic structures.
- A. Ms. Kerr replied within reason. She said that, professionally, she understands the process and is able to advise people.
- Q. Mr. Rosenbaum asked if there is a 20 percent tax credit for the rehabilitation of historic structures that are listed on the National Register. .
- A. Ms. Kerr said that was correct.
- Q. Mr. Rosenbaum said that in order to take the tax credit there must be taxable income.
- A. Ms. Kerr said that the Division of Historic Preservation does not get involved with how a property affects an individual's taxes, but rather advises them of what programs are out there. She said that if a property owner were to receive a \$50,000 tax credit for a renovation project to their property, how they apply that to their finances is their business.
- Q. For this situation, Mr. Rosenbaum asked if Ms. Kerr knew that information.
- A. Ms. Kerr replied that she did not.
- Q. In terms of the tax credit, Mr. Rosenbaum asked if the cost of rehabilitation had been determined.
- A. Ms. Kerr replied that it would be 20 percent of the allowable expenses for the renovation, resulting in the certification of approval. She said that once the dollar amount was known and it had been agreed upon and approved at the State and Federal level, then it would be 20 percent of that amount.
- Q. Mr. Rosenbaum asked if the staff had gone through this exercise to calculate the dollar savings.
- A. Ms. Kerr replied no, but was prepared to give an example.

At this time, Mr. Vaughn interrupted the cross examination, informing Mr. Rosenbaum that this is an appeal before the Commission; and if there is evidence to be present to the Commission, it should be done so at this time. He noted that a request was made and granted that allowed Mr. Rosenbaum to ask a couple of questions and, by his count, more than 7 seven had been asked. Mr. Rosenbaum stated that, for the record, he objected to being limited in his cross examination of Ms. Kerr.

Petitioners Representation - Mr. Rosenbaum noted that his client was out of town due to health issues and was unable to be present at this hearing. He said that this appeal procedure was not to determine that what the Board of Architectural Review had done was right or wrong. He then said that the staff (Ms. Rackers and Ms. Kerr) believe it is the Commission's duty to determine whether or not the Board of Architectural Review made the right decision, and in this case that is not so. This is an appeal to the Planning Commission; and according to Article 13-8 of the Zoning Ordinance, it states that this will be a "de novo" hearing (or a new hearing), which means that there will be no preference given, and the hearing should take place as if nothing were presented prior to this hearing.

Mr. Rosenbaum then stated that there are Design Guidelines that discourage demolition of buildings within historic areas, and his client agrees with those statements; however, his client has done more to rehabilitate and renovate sections of Main Street and Jefferson Street than anyone in the Western Suburb District. He then said that this is not an argument for or against historic preservation, but rather this is a proceeding to determine whether or not Article 13-7(c)(1) of the Zoning Ordinance has been met. Article 13-7 states that a certificate of appropriateness for demolition should be issued if there is no reasonable economic return that can be realized from the property, and the Ordinance and the Codes do not intend that a citizen has to be weighed down by a project that is not financially sound.

Mr. Rosenbaum presented several photographs that were taken by Code Enforcement in June 2008, and gave a brief description of each. He said that the first set of photographs are views of the subject property (115 Jefferson Street) and its twin property (113 Jefferson Street). He noted that these structures are accessory buildings from a larger structure that had been torn down. He said that his client had purchased these buildings in 1988 for \$35,000; and in April of 2006, a fire had occurred causing damage to the rear portion of 115 Jefferson Street, as well as smoke damage to the interior portion. The

second set of photographs is a closer view of the front porch and the side view for 115 Jefferson Street. The third set of photographs is the rear view of 115 Jefferson Street that showed the fire damage in the rear of the structure and to the window. The fourth photograph is another view of the fire damage, and he said that plywood is being used to help prevent anyone from going into the structure. He then said that the interior portion of the structure had been damaged due to it being vandalized, which had dilapidated the structure even further.

Mr. Rosenbaum directed the Commission's attention to Exhibit 1, which is a letter dated 09/26/07 from LFUCG, Division of Code Enforcement - case number 10100115DEMO. He said that this letter states that violations were present and the structure was found to be so old, dilapidated or so out of repair that it is dangerous, unsafe, unsanitary or unfit for human occupancy or use. He then said that when property owners are given this notice, they must fix or demolish that structure. Code Enforcement has told his client he must fix or tear down the structure or they will tear it down for him; and yet when his client tries to obtain a COA from the BOAR, it is denied because the building is historic.

Mr. Rosenbaum submitted Exhibit 3, a copy of the PVA record, and noted that the assessed value for this property is \$20,000. He said that all real estate in Fayette County, KY must be assessed at fair market value for tax purposes; however, when reviewing the PVA information in 2006, this property was valued at \$65,000. After the fire had occurred, the property was valued at \$20,000 in 2007 and 2008, which is a 66 percent decrease in its value.

Mr. Rosenbaum then submitted Exhibit 7, a copy of the letter from Pyramid Consulting Structural/Civil Engineers, Inc., and said that his client is not familiar with how to fill out forms, and what had occurred between the Board of Architectural Review and Mr. Laughlin was a misunderstanding. He said that his client could not get the application correct and that irritated the Board; so in an attempt to correct that mistake, he presented a letter from Pyramid Consulting Structural/Civil Engineers, Inc. This letter stated that this property could be completely renovated and rehabilitated; however, the letter also stated that based on the above visual assessment, there are major foundation and framing deficiencies, for which total reconstruction was recommended. Mr. Rosenbaum stated that in order to find out what they were dealing with, they had obtained a preliminary proposal and specifications for the renovation of 115 Jefferson Street (Exhibit 8, Sheeran Construction estimate). He said that the document stated that the following preliminary proposal was based upon the site inspection on June 17, 2008, as well as the conversations with the owner. It was understood that whenever there is work done, it must: 1) be inspected by the building inspector, and 2) the structure needs to be brought to 2007 Kentucky Building Code standards. He said that in reviewing the estimate submitted by Sheeran Construction, it was estimated it would cost \$193,899.20 to bring this property up to code; however, the PVA only values this property at \$20,000.

In conclusion, Mr. Rosenbaum stated that his client had not submitted the proper documents to the Board of Architectural Review; and in reviewing the minutes, at least 50 percent of the Board's conversations were about the proper documentation not being submitted. He said that he agrees, but that is not why they are here today. He then said that they are here to decide whether or not this building has a reasonable economic return that can be realized and to deny the result of a taking without just compensation. He urged the Commission to find it is not a reasonable economic return to spend \$193,000 to repair a \$20,000 structure when it cannot be rented at those figures anyway. He said that as far as the Board of Architectural Review's comments, they are not relevant since this is a "de novo" hearing. He then said that it was stated that this property could be renovated and that tax credits could be used, but there must be taxable income in order to use the tax credits. Even with the discount being applied, it does not make sense to spend \$160,000 on renovations for a \$20,000 piece of property that cannot be preserved. He said that Code Enforcement had placed this building under a condemnation order, but they cannot receive a COA for its demolition. He then said that it is now up to the Commission, and requested that the Commission order the COA for the demolition of 115 Jefferson Street.

Planning Commission Questions and Comments – Ms. Copeland asked if Mr. Laughlin had owned Boone Antiques. Mr. Rosenbaum replied yes. Ms. Copeland then asked if Mr. Laughlin had restored the house that was diagonal from the church, as well as the next few houses along Jefferson Street. Mr. Rosenbaum replied that was correct, and said that Mr. Laughlin has rehabilitated structures for several years. Ms. Copeland then said that this area was designated as historic in 1970, and Mr. Laughlin purchased the property in 1988; therefore, he was well aware of its historic zoning. Mr. Rosenbaum agreed. Ms. Copeland then said that Mr. Laughlin knew the risk and he probably had insurance on the property. Mr. Rosenbaum said that there was insurance on the structure, but not on the contents. Ms. Copeland commented that insurance does factor into the issue. Mr. Rosenbaum agreed. Ms. Copeland said that the Commission must consider the neighborhood as a whole. She said that the area residents have made a tremendous effort in restoring and upgrading the developments. She then said that for the Commission to pluck this house out of the streetscape would be a mistake. She commented that Mr. Laughlin was aware of the risks and damages that are part of owning property. Mr. Rosenbaum said that the property had already been plucked from the streetscape due to the fire damage. Ms. Copeland said that the Commission should support the historic zone. Mr. Rosenbaum agreed, and said that his client has taken several pieces of property and restored them, but the issue is not whether or not you are in favor of historical properties; rather the issue is whether or not this can be done with a reasonable economic return after the fire damage, and the answer is that it can't. He then said that the Commission must decide this case with the evidence that has been put before them. The property is only worth \$20,000 and it would take \$193,000 to restore it, which is not reasonable.

Staff Rebuttal – Ms. Rackers said that she had no further comments. Ms. Kerr said that the building can be preserved. The Ordinance states that if the current property owner elects not to preserve a building, then they need to show that they have made every attempt to sell it to someone who is interested in preservation, which is not the case with this request. She then said that this type of building does need a foundation and it is not uncommon to have post and beam construction. Neither 113 Jefferson Street, which is not associated with this request, nor 115 Jefferson Street has a foundation under the structure. A lot of what is stated in the structural engineer's report deals with resolving issues such as that, and it is very commonly done for buildings of this nature. She said that these types of cottages are often most at risk in these neighborhoods. She then said that these houses are not of high design or construction, but they are very important for the make-up of the neighborhood and the community. These houses show the different architectural styles and social economic standing by retaining that mixture in the community's heritage. Ms. Kerr stated that this building is significant in terms of its history and the architecture for this area, and retaining it is in accordance with Article 13 of the Zoning Ordinance. She said that the condemnation order was in relation to the building being occupied, not for the demolition. She then said that it is the property owner's choice to seek demolition of a building, noting that the building was not ordered to be demolished.

Planning Commission Questions and Comments – Mr. Holmes asked if there are funds that would help a property owner by acquiring a structure such as this one. Ms. Kerr replied no, but Community Development could provide some funding with neighborhood monies to a property owner who needs assistance. She said that there is an owner occupied state tax credit available, as well as an income producing property that is a federal tax credit, but nothing that will match the funds.

Mr. Owens said that in reviewing the recommendation for disapproval, under reason number 4, it mentioned the Historic Preservation tax credit, and asked if there is a tax credit available for reconstruction. Ms. Kerr replied that there is.

Petitioner's Rebuttal – Mr. Rosenbaum stated that the staff had commented that his client never placed this property up for sale, and noted that a copy of the listing is attached to this appeal. He then said that the demolition letter states that either the property owner fix the structure or it will be torn down at the expense of the property owner.

Planning Commission Questions and Comments – Mr. Day asked if there are requirements in updating these types of structures. Ms. Kerr said that they are done on a case-by-case basis. She said that this house needs more structural support than what is currently under the house. She then said that if it were thoroughly functioning, it could continue on for many years. Mr. Day asked if the house could be renovated without having a new foundation installed. Ms. Kerr said that the details for this particular situation are unknown. Mr. Day said that he wanted to know the cost for the total replacement. Ms. Kerr said that that would depend on the scope of work, noting that there are different opinions and different estimates.

Mr. Penn asked if Code Enforcement would have known this structure was historic in nature and if the staff would be notified of the demolition permit being issued. Ms. Kerr said that Code Enforcement is aware of the location of the historic districts; and Ms. Armstrong, Preservation Inspector, had been working with Code Enforcement, as well as the appellant, throughout this process. She then said that if Code Enforcement finds a structure to be unsound to the point of it collapsing, historic or not, it would be torn down; but that is not the case in this situation.

Mr. Holmes said that if the structure is not fixed soon, then it will be to the point of collapsing. Ms. Kerr said that that is one of the things Code Enforcement has cited; they had noted that the property needs to have the repairs made before it does get worse.

Closing Comments - Ms. Kerr commented, with regard to the appellant selling the property that Mr. Laughlin had listed the property back in 2005; but currently there is no documentation of it being placed up for sale, which is one of the items the staff had requested.

Mr. Rosenbaum said that the demolition letter speaks to itself. He said that it states that the house is unfit for human occupancy, and it would require concrete blocks around the foundations since it is unstable. He then said that the issue today is whether or not this structure can have an economical return.

Planning Commission Questions and Comments – Mr. Brewer asked if this hearing is an appeal or a "de novo" hearing. Ms. Boland said that this is a "de novo" hearing, which means the Commission will make a new decision based upon the evidence presented. The Commission is not restricted to the record, however in Article 13-8(a)(2) of the Zoning Ordinance, it states "In its deliberations, the Planning Commission shall give due consideration to the decision of the Board and the findings and conclusions reflected in the Board's record and shall apply the design guidelines adopted by the Historic Preservation Commission." She stated that the Commission is applying the Design Guidelines to the evidence presented before them today, as well as considering the decision made at the Board of Architectural Review hearing.

In reference to a question from Mr. Brewer, Ms. Boland said that if the Commission overturns the decision of the Board of Architectural Review, then the COA will be issued.

Mr. Cravens asked if the insurance payment was known. Mr. Rosenbaum replied that it was \$40,000. Mr. Cravens then asked what the percentage from the tax credit is. Ms. Kerr replied it is 20 percent. She said that if \$100,000 was put into a structure and it met the criteria, then that property owner would receive a \$20,000 tax credit. Mr. Cravens clarified that the percent is from what was spent. Ms. Kerr said that it would be 20 percent of everything, as long as it is attached to the house, noting that new construction is not included. Mr. Cravens asked if there is a state tax credit. Ms. Kerr said that there is a state tax credit that allows 30 percent. Mr. Cravens confirmed that the 30 percent tax credit is in addition to the 20 percent tax credit. Ms. Kerr replied that each tax credit can be used for the same project. Mr. Cravens then asked if the tax credit is based upon a person's income. Ms. Kerr said that the tax credit can be sold; therefore, the property owner could utilize that credit. Mr. Cravens commented that it seems there would be \$100,000 in tax credit and \$40,000 in insurance money, which would considerably reduce the renovation cost.

Mr. Penn said that it would have been helpful if the Commission had more than one estimate to review because the current estimate seems too high for this house. He then said that he is having a hard time with the financial part of this request because of the extremely high estimate.

Mr. Vaughn said that the contextual aspect of the neighborhood and the streetscape were mentioned earlier; and when there is a twin to a house it adds to that streetscape, as well as to the character of the area. He then said that he would hate to see that disappear from this area; therefore, he agreed with the comments made by Mr. Penn, and said that there should have been three estimates showing the high and low end.

Action - A motion was made by Ms. Copeland to disapprove BOAR 2008-1.

Discussion of Motion – Mr. Cravens asked for clarification to the motion on the floor. Ms. Copeland said that the motion is to uphold the Board of Architectural Review's decision, for the reasons provided by the staff.

The motion was seconded by Mr. Cravens, and carried 9-0 (Roche-Phillips and Whitman absent).

- D. ZONING ORDINANCE TEXT AMENDMENT INITIATION** – The staff will request Commission initiation of a text amendment to Article 6-7(c) of the Zoning Ordinance, as has been discussed at various meetings over the past few weeks. The purpose of this text amendment would be to create alternative findings for changes proposed to existing Neighborhood Design Character Overlay (ND-1) zone restrictions, and to amend the procedure by which such applications will be reviewed in the future by the Commission. If initiated, the required public hearing could be held as early as next month.

Staff Presentation – Mr. Sallee stated that the staff is requesting the Planning Commission consider the initiation of a text amendment to Article 6-7(c) of the Zoning Ordinance. He said that this is in accord with the previous discussions from the Commission's last two meetings regarding the modification of the process to which conditional zoning restrictions for the Neighborhood Design Character Overlay (ND-1) zone can be modified. He noted that the staff had previously distributed this information to the Commission members during the Zoning Committee meeting last week, and the text is in the same format as it was originally presented. The staff appreciated the feedback from the Commission members, and the Zoning Committee; and if this text amendment is initiated today, the required public hearing could be held as early as next month. He noted that the staff will provide the required notification prior to that hearing.

Planning Commission Comments and Questions – Mr. Penn asked if the guidelines and the appeal process are the same as they were discussed in the Zoning Committee meeting. He said that in the ND-1 zone, a variance request by the Board of Adjustment was not possible. He asked if this is alter what was heard at their previous hearing. Mr. Sallee responded that it is, and said that with this text amendment, the idea would be to have a different application, and different findings that would be necessary to modify the Neighborhood Design Character Overlay (ND-1) zone restrictions, versus other conditional zoning restrictions. He then said that the staff could report to the Commission at their upcoming Work Session as to how the current review period could be shortened. He noted that an application must be submitted, the required notification must be sent out and the Zoning Committee members will be able to review each request. He then noted that these applications are still required to have public hearings.

Mr. Vaughn asked about the timing of the text amendment if initiated, as requested. Mr. Sallee responded that if this text amendment is initiated at today's meeting, it could be placed on next month's (November's) meeting agenda.

Mr. Cravens asked if there is currently a provision for an appeal. Mr. Sallee said that after the outcome from the August and September meetings, the staff considered different processes for amending ND-1 zoning restrictions. He said that this text amendment would not allow those cases to be heard by the Board of Adjustment (BOA), but rather, those cases would be retained for the Planning Commission to review. The text amendment would make the appeal time shorter than for a typical zone change; and if the fee schedule were to be amended, the cost would be similar to that for a variance request from the BOA. He said that instead of the case going before the BOA, though, the application would be heard by the Zoning Committee and then by the full Planning Commission. Mr. Cravens clarified that this amendment would shorten the review time of an ND-1 appeal only. Mr. Sallee replied yes, and said that the staff could present that information to the Commission at their upcoming Work Session. Mr. Cravens asked if these cases would be heard prior to a zone change

case. Mr. Sallee replied that those cases would not be heard at the Zoning public hearing, but rather they will be presented at the Subdivision meetings. Mr. Cravens said that he is not in favor of shortening the application time, and that these cases should be presented just as a typical zone change is presented. Mr. Sallee said that this text amendment does not address the time that those ND-1 cases will be scheduled. He said that the time and day of the meeting will be listed on the 2009 Meeting and Filing Schedules, which will be distributed to the Commission at next week's Work Session. Mr. Cravens commented that they have received several handouts associated with today's meeting, and he believes this information should have been distributed prior to today's meeting. He said that he had not been able to review this material, and now the Commission is asked to act upon this decision. Mr. Sallee said that if the text amendment is initiated today, then this text amendment will be presented to both the Subdivision and the Zoning Committee, and there will be a public hearing scheduled in the future. He said that the staff can certainly forward any comments from the Committees and make any possible changes that the Committees desire. He noted that there will be a full review opportunity, as is done with all text amendments.

Mr. Vaughn said that at the Zoning Committee meeting last week, the staff had distributed these documents and presented flow charts that address Mr. Cravens' concerns. He said that that information could be given to Mr. Cravens; but today's request is only for an initiation of the text amendment. Mr. Sallee commented that the Commission could postpone this initiation, as well. Mr. Vaughn concurred.

Mr. Cravens said that he cannot act on information that he has not previously reviewed, and the time to "stop" a text amendment would be now. Mr. Sallee apologized to Mr. Cravens, and said that the staff did not realize that he was not present at the past two meetings. Mr. Cravens said that even if the information was handed out at the beginning of this meeting, it would have been sufficient. He said that he is suspicious of information being handed out prior to the issue being acted upon. Mr. Sallee understood, and said that the information should have been distributed during the previous break.

Mr. Brewer commented that he is familiar with this proposal, and said that he believes that the staff has done an excellent job.

Action - A motion was made by Mr. Brewer, seconded by Mr. Owens, and carried 9-1 (Cravens opposed; Whitman absent) to initiate the requested text amendment to Article 6-7(c) of the Zoning Ordinance.

VI. **STAFF ITEMS** – None was considered at this time.

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	October 16, 2008
Zoning Items Public Hearing, 2nd Floor Council Chambers.....	October 23, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	October 29, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	October 30, 2008
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	November 6, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	November 6, 2008
Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2nd Floor Council Chambers	November 13, 2008

X. **ADJOURNMENT** - There being no further business, the meeting was adjourned at 5:32 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary

CT/CG/TM/JE/BR/BS/DB