

Minutes
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS

December 11, 2008

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

Planning Commission Members Present – Randall Vaughn Chair; Neill Day (arrived at 1:39 p.m.); Carolyn Richardson; Lynn Roche-Phillips (arrived at 1:34 p.m.); Mike Cravens; Marie Copeland; Frank Penn; Mike Owens; Joan Whitman (arrived at 1:34 p.m.); Ed Holmes and Patrick Brewer (arrived at 1:35 p.m.).

Planning Staff Present – Chris King, Director; Bill Sallee, Barbara Rackers, Tom Martin, Jimmy Emmons, Cheryl Gallt, Chris Taylor, and Denice Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Bob Carpenter, Division of Building Inspection; Rochelle Boland, Department of Law; Captain Charles Bowen, Division of Fire & Emergency Services; Billy Van Pelt, Purchase of Development Rights; Philip Stiefel, Robert Poage and Paul Hockensmith, Addressing Office 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.)** (12/11/08)* - 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 January 15, 2009, Planning Commission meeting.

Action - A motion was made by Mr. Cravens, seconded by Mr. Owens, and carried 7-0 (Roche-Phillips, Whitman, Day and Brewer absent) to postpone PLAN 2008-71P to the January 15, 2009, Planning Commission meeting.

Note: Ms. Roche-Phillip, Ms. Whitman, and Mr. Brewer arrived at this time.

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

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2008-76F to the January 15, 2009, Planning Commission meeting.

Action - A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 10-0 (Day absent) to postpone PLAN 2008-76F to the January 15, 2009, Planning Commission meeting.

- c. **DP 2008-137: MOHAMMAD SERAJI PROPERTY (AMD.)** (1/8/09)* - located at 432 South Broadway.
(Council District 2) **(Mohammad Seraji)**

Staff Comments – Mr. Martin stated that the staff had received written communication from the applicant, requesting postponement of DP 2008-137 to the January 15, 2009, Planning Commission meeting.

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 10-0 (Day absent) to postpone DP 2008-137 to the January 15, 2009, Planning Commission meeting.

Note: Mr. Day arrived at this time.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, December 4, 2008, at 8:30 a.m. The meeting was attended by Commission members: 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: Bill Sallee, Denice Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Traci Wade, Jimmy Emmons and Rob Johnson, as well as Rochelle Boland, Department of Law; Capt. Charles Bowen and Capt. Allen Case, 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.*

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

- 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 2, Item 1b. PLAN 2008-155P: HIGHLAND LAKES, UNIT 1, PHASE 1 (AMD) (2/12/09)* - located on Southpoint Drive (right-of-way). (Council District 12) **(EA Partners)**
2. Page 2, Item 2b. PLAN 2008-156F: MILLER BIRD COMMERCIAL PARK SUBDIVISION, BLOCK A, UNIT 1, LOT 1 (AMD) (2/12/09)* - located at 2555 Nicholasville Road. (Council District 10) **(The Roberts Group)**
3. Page 3, Item c. PLAN 2008-157F: GESS PROPERTY, UNIT 11-A (2/12/09)* - located at 4618 Willman Way. (Council District 7) **(EA Partners)**
4. Page 3, Item d. PLAN 2008-158F: BLUEGRASS BUSINESS PARK (PEMBERTON FARM), LOTS 3-A & 3-B (AMD) (2/12/09)* - located at 2570 Spurr Road and 2201 Jaggie Fox Way. (Council District 2) **(EA Partners)**
5. Page 3, Item e. PLAN 2008-159F: CASTLEGATE, UNIT 1, LOT 15 (AMD) (2/12/09)* - located at 3540 Castlegate Wynd. (Council District 5) **(Foster - Roland)**
6. Page 3, Item f. PLAN 2008-160F: MELBOURNE INDUSTRIAL PARK, UNIT 1-G, BLOCK C, LOT 12 (AMD) (2/12/09)* - located at 884 Nandino Boulevard. (Council District 2) **(Midwest Engineers)**
7. Page 4, Item g. PLAN 2008-161F: JOHNSON PLAZA, UNIT 1, LOT 1 (AMD) (2/12/09)* - located at 1306 South Broadway. (Council District 11) **(Midwest Engineers)**
8. Page 4, Item h. PLAN 2008-162F: DENTON FARM, INC., UNIT 3, SECTION A (AMD) (2/12/09)* - located on Richmond Road at Ellerslie Park. (Council District 7) **(Strand Associates)**
9. Page 5, Item j. PLAN 2008-168F: BEAUMONT FARM, UNIT 1, SECTION 5, LOT 3 (AMD) (2/26/09)* - located at 3194 Beaumont Centre Circle (a portion of). (Council District 10) **(EA Partners)**
10. Page 5, Item k. PLAN 2008-169F: MILLER STREET PROPERTIES (2/23/09)* - located at 220-242 Miller Street. (Council District 1) **(2020 Land Surveying)**
11. Page 6, Item b. DP 2008-138: COVEY RIDGE DEVELOPMENT COMPANY, LOT 1 (AMD.) (2/12/09)* - located at 5527 Athens-Boonesboro Road. (Council District 12) **(Allen Engineering)**
12. Page 6, Item d. DP 2008-140: MAGNA ENTERTAINMENT CORPORATION (2/12/09)* - located at 2040 Sandersville Road. (Council District 2) **(Sherman/Carter/Barnhart)**
13. Page 7, Item e. DP 2008-141: SHARKEY PROPERTY, UNIT 2D (AMD) (TOWNE CENTER) (2/12/09)* - located at 149 Old Towne Walk. (Council District 2) **(Barrett Partners)**
14. Page 7, Item f. DP 2008-142: OVERBROOK LAND COMPANY (AMD) (2/12/09)* - located at East New Circle Road and Liberty Road. (Council District 5) **(Vision Engineering)**
15. Page 7, Item g. DP 2008-143: BEAUMONT FARM, UNIT 1, SECTION 4, LOT 2 (2/12/09)* - located at 937 Midnight Pass. (Council District 10) **(HDR/Quest Engineers)**

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16. Page 7, Item h. DP 2008-144: JOHNSON PLAZA, UNIT 1, LOTS 1 & 1-A (2/12/09)* - located at 1306 South Broadway. (Council District 11) **(Midwest Engineers)**
17. Page 8, Item i. DP 2008-145: BRADLEY SUBDIVISION (FAITH COMMUNITY HOUSING) (2/12/09)* - located at 372 & 372½ Glen Arvin Avenue. (Council District 2) **(Foster – Roland)**
18. Page 8, Item j. DP 2008-146: BEAUMONT FARM (A PORTION OF UNIT 1 & UNIT 3) (2/12/09)* - located at Wall Street and Beaumont Centre Circle. (Council District 10) **(Lightowler Johnson)**
19. Page 8, Item k. DP 2008-151: BEAUMONT FARM, UNIT 1, SECTION 5, LOTS 3 & 4 (2/26/09)* - located at 3194 Beaumont Centre Circle (a portion of). (Council District 10) **(EA Partners)**
20. Page 9, Item l. DP 2008-152: MILLER STREET TOWNHOMES (THE ROPE WALK) (AMD) (2/23/09)* - located at 220-242 Miller Street. (Council District 1) **(2020 Land Surveying)**

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

Citizen Comments – Bob Cornett requested that PLAN 2008-156F be removed from the Consent Agenda and left on the discussion portion of the meeting.

Chris Westover requested that DP 2008-142 be removed from the Consent Agenda to further discuss a proposed note on the development plan.

John Tucker requested that PLAN 2008-157F be removed from the Consent Agenda to further discuss this proposal.

Planning Commission Comments – Mr. Vaughn noted that PLAN 2008-156F, PLAN 2008-157F and DP 2008-142. would be removed from the Consent Agenda in order for the Commission to review the applicants' requests.

Action - A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried unanimously to approve the items listed on the consent agenda, removing PLAN 2008-156F, PLAN 2008-157F and DP 2008-142.

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

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

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

1. Final Subdivision Plans

- a. PLAN 2008-156F: MILLER BIRD COMMERCIAL PARK SUBDIVISION, BLOCK A, UNIT 1, LOT 1 (AMD) (2/12/09)* - located at 2555 Nicholasville Road. (Council District 4) **(The Roberts Group)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

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. Urban Forester's approval of tree protection areas.
6. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
7. Delete sidewalk and apron information from public right-of-way (not from cross-sections).

Staff Presentation – Ms. Gallt presented the proposed final record plat to the Commission, and stated that the subject property is located at the corner of Moore Drive and Nicholasville Road. She said that the Commission had previously approved the construction of two buildings on this property, and now the applicant was requesting to subdivide that property into two parcels, which would separate the two buildings. Ms. Gallt stated that the site is being subdivided to where the access points are serving each lot as located on the development plan. In conclusion, she said that

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the Subdivision Committee had recommended approval of the applicant's plat, subject to the 7 conditions listed on the agenda.

Petitioner's Presentation – Bob Cornett, The Roberts Group, was present representing the applicant. He said that this item is listed as having a 2555 Nicholasville Road address, and it has always been recognized with a Nicholasville Road address. He then said that one of the conditions for approval is the approval from the Addressing Office; and when the applicant had submitted this plan to the staff, the staff had indicated that this property would be approved with a Moore Drive address. Mr. Cornett stated that he had discussed this issue with his client and they were adamant that this remain as a Nicholasville Road address. He said that his clients had purchased this property, listed by PVA (Property Valuation Administrator) as a Nicholasville Road address, not a Moore Drive address. He then said that both of the lots front on Nicholasville Road, and they do not understand why a Moore Drive address would be used in place of the Nicholasville Road address. Mr. Cornett said that if a person is not familiar with this area, they may not know where Moore Drive is located. He noted that the property across from their lot is a Wendy's restaurant. That site had been completely redeveloped, and was able to keep its Nicholasville Road address; they do not see any reason why their property has to be listed as Moore Drive.

Planning Commission Questions – Mr. Vaughn asked who has the authority over addressing. Ms. Boland noted that the Planning Commission could authorize that condition to be removed. She said that they had requested that the Addressing Office staff be present in order to explain their reasoning behind this recommendation.

Addressing Office Presentation - Philip Stiefel, along with Robert Poage and Paul Hockensmith, Addressing Office, were present. Mr. Stiefel said that addresses are assigned based upon the location of the access into a property. He then said that this property is located on a corner lot, and most of the time corner lots have issues that are considered to be in the grey area. A Committee, consisting of employees from the USPS and the different governmental agencies, reviews and evaluates each plan that is submitted.

Mr. Stiefel stated that when the development plan was reviewed, there was a proposed parking area within a grassy area, with the access being off of Nicholasville Road, which was impractical. He said that based upon the orientation of the buildings and using their addressing standards, the Moore Drive addresses were more applicable. The applicant has now submitted a plat showing the subdivision of the lot, and the staff recommends that this request agree with the actual parcels, which would then eliminate multiple addresses. He said that the Addressing Office, per their Addressing Committee, believes that it is most logical to have a service access off of Moore Drive. Mr. Stiefel said that he understood that a new development plan has been submitted, showing that the parking is no longer there; however, the Addressing staff has yet to see the new submittal. He said that if the revised plan shows access off of Nicholasville Road, then these issues can be revisited again.

Mr. Hockensmith said that the existing restaurant clearly has its front door facing Nicholasville Road. He said that the proposed retail shop and restaurant will only be visible from the Moore Drive side. He then said that from the Addressing Office's perspective, the question is how Emergency Services will gain access to these buildings. They do not want to explain to an emergency service that they must travel down Nicholasville Road and turn onto Moore Drive to see the front door. He said that giving a Moore Drive address is more descriptive for these parcels.

Planning Commission Questions – Mr. Holmes asked if this plan can be approved with the Addressing Office's approval listed in the recommendations. Mr. Stiefel said that generally they assign addresses to the development plan and resolve any issues prior to the Planning Commission meeting. He then said that the development plan and the plat are coming together at the same time; and if there is a revised plan, then they want to see it before any address is assigned to the parcels. He noted that addresses are assigned to parcels based upon on how the building is to be accessed and serviced. Mr. Holmes then asked how building permits are assigned. Mr. Stiefel said that the Addressing Office is one of the sign-offs that the applicant needs in order to obtain a building permit; therefore, the staff needs to distinguish which building is applying for that permit.

Mr. Owens asked if both parcels will have a Moore Drive address. Mr. Stiefel said that, based upon the development plan, both parcels will have a Moore Drive address. He said that the property address and parcel address must agree with the numbers assigned to the buildings. He noted that the building addresses are based upon the most logical way to access those buildings.

Mr. Vaughn clarified that the applicant wants to keep the Nicholasville Road address; but according to the Addressing Office staff, he asked if Moore Drive addresses are being recommended. Mr. Stiefel said that was correct. Mr. Vaughn then asked if the Commission takes action on this request with the recommended conditions, then that would give this proposal a Moore Drive address. Mr. Stiefel said that the Addressing Ordinance states that the Addressing Office is the only entity that can assign or change addresses in Fayette County. He said that it is not known if the Planning Commission can take action on this decision.

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Mr. Brewer asked if the current address is listed as Nicholasville Road. Mr. Hockensmith said that as far as the Addressing Office is concerned, the staff applies and uses the current standards to new developments. He said that the address needs to be based upon the access of those buildings. The applicant had originally shown the parking adjacent to the service road, which is problematic for the e911 staff. He said that the e911 staff could not properly direct the emergency service, which is why the Moore Drive address was to be assigned.

Ms. Copeland said that she is concerned with having the corner building that faces the apartments being listed as Moore Drive, when the front door is visible from the service road along Nicholasville Road, and added that it seems a person would need to be on the service road to see the front door or the number on the building. Referencing the corollary development plan, Mr. Hockensmith explained where the staff would suggest having the address located along Moore Drive.

Mr. Day said that when this was originally proposed, the Commission had reviewed and discussed the ingress and egress along Moore Drive. He then said that a comparison of the two needs to be reviewed before putting this issue off. Mr. Vaughn asked if the development plan is available for the Commission to review. Mr. King said that the staff does not have the development plan on hand, but it may be available online for the Commission to view; if not, then the staff will obtain it from the office.

Mr. Owens said that during the Subdivision Committee meeting this issue was not mentioned. He asked if this is a new development from staff's perspective, or perhaps the applicant was not made aware of the issue until now. If that is the case, then perhaps a postponement recommendation is in order to reach some type of resolution. Mr. Vaughn said that the Commission could take that into consideration. He then asked for a response from the Subdivision Committee Chair. In response, Mr. Cravens said that he is in favor of having the Nicholasville Road address. He then said that he has had some experience with having lots not visible from Nicholasville Road, but those lots had Nicholasville Road addresses. In real estate, the address is very important when it comes to property values, as well as the mailing address. He then commented that the Addressing Office has stated that the Commission has no authority in changing any address.

Mr. Brewer said that the current address is a Nicholasville Road address; therefore, the Commission could remove condition number 4 from the list of recommendations.

Mr. Vaughn asked for the Law Department to weigh in on this issue, as the original development plan was displayed for review by the Commission. Mr. Vaughn then asked if the development plan being shown to the Commission is the same development plan submitted at the Subdivision Committee meeting, which the Committee members verified. Mr. Taylor said that the development plan being shown is not the same as the certified development plan in the office. He said that they were not able to access the plan via the internet, and the applicant had a copy on hand for the Commission to review. He noted that if the Commission wants to view the certified plan, he would be more than willing to retrieve the plan for the Commission's review.

Mr. Penn asked if the Planning Commission has the ability to assign the address on the final development plan or if that is the responsibility of the Addressing Office. Ms. Boland said that she is not familiar with the Addressing Ordinance, but she does believe the Addressing Office does have the final say since it concerns public safety issues. She then said that the address is to provide accurate information for emergency services, and the Planning Commission could remove that note; but it does not supersede the Addressing Office's authority, especially if it is stated in the Ordinance. She said that the Planning Commission is there to provide organized planning and development of a property, not something as mundane as what number is placed on that property.

Mr. Hockensmith noted that Article 17 of the Code of the Ordinances is where that statement is located. Ms. Boland said that she did not have the Ordinance with her; and if she was able to review it, then she would be able to make an opinion. She said that if it is stated in the Code of Ordinances, then it will take precedence over the Planning Commission.

Mr. Penn said that he is in favor of approving the development plan with the note (condition number 4) remaining in the recommendations. He then said that this would allow the staff and the applicant to resolve what superseded what. He then said that he does not believe the Planning Commission has the ability to make that decision; therefore, he sees no reason to review the development plan again when the issue is really moot. Mr. Penn suggested leaving the condition as it appears on the recommendations, and approving the development plan "as is," thus allowing the appropriate people to assign the address. Mr. Holmes agreed with Mr. Penn's comments, and said that he is uncomfortable with making a decision like this when it comes to public safety. He then said that there is a Committee that assigns those addresses and it should be left up to them.

Action - A motion was made by Mr. Penn, seconded by Mr. Holmes, and carried 11-0 to approve PLAN 2008-156F, subject to the conditions listed by the staff.

- b. PLAN 2008-157F: GESS PROPERTY, UNIT 11-A (2/12/09)* - located at 4618 Willman Way.
(Council District 7) (EA Partners)

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of 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. Urban Forester's approval of tree protection areas.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
8. Clarify "future development" in greenway.
9. Addition of "north arrow" and all required scale information.
10. Delete note #6.
11. Addition of storm sewer easement on lots 140-143.
12. Addition of 10' tree protection area (TPA) on lots 141 and 178-187.
13. Clarify sidewalk information per preliminary subdivision plan.
14. Complete adjacent property information.
15. Applicant shall document either evidence of a Section 404 Water Quality Permit and relief from the Corps of Engineers' "Cease and Desist" Order for this Unit or sufficient evidence that this Unit does not require a Section 404 Water Quality Permit prior to certifications.

Staff Presentation – Mr. Martin directed the Commission's attention to the rendered final record plat, and noted that there are 62 lots proposed on the subject site, 61 of which would be buildable. He then oriented Commission to the overall layout of the Gess Property, and pointed out the area where Red Wing Ecological Service had conducted their environmental study for the developer, as well as the surrounding street systems.

Referring to the approved development plan, which was rendered and on display, Mr. Martin illustrated the areas where the impacted wetlands are located. He said that the applicant has made a slight reconfiguration to the layout of these proposed lots in order to obtain more buildable area for Unit 11-A. He then said that, with this change, the buildable area has moved closer to the impacted wetland areas; however, based upon the information received from the applicant, the staff is comfortable in saying that the buildable area is still out of the impacted wetland area.

Mr. Martin stated that the Subdivision Committee did review the applicant's plan, and has recommended approval of it, subject to the 15 conditions listed on the agenda. He said that the conditions listed are fairly standard, with the exception of condition number 15. He then said that condition number 15 has been applied to several of the Gess plats in order to confirm that there will not be an impact to the identified wetland areas. He concluded his presentation, noting the staff recommendation of a 16th condition to be added that reads: "Addition of the graphic scale."

Planning Commission Questions – Mr. Penn asked if condition number 15, means the Commission is certifying either/or has been approved. Mr. Martin replied that condition number 15 requires the applicant's to document and verify that they have either met the required 404 Water Quality Permit or it is not applicable to this area. Mr. Penn then asked if Unit 11-A requires a 404 Water Quality Permit. Mr. Martin said that Unit 11-A is outside the impacted wetland area; therefore, it should not be applicable.

Mr. Owens said that, in reviewing the over all plan, it looked as if there is extra room between lot 149 and the wetland area. Mr. Martin verified that there is some space remaining between lot 149 and the impacted wetland area.

Ms. Roche-Phillips asked if the construction of the roadway will impact the wetland areas. Mr. Martin replied that the construction of the roadway has not been approved by the Planning Commission, and the applicant will need to obtain the proper permits prior to construction of the roadway.

Staff Comment – Mr. Sallee noted that a 16th condition is not needed, due to condition number 9 reflecting the concern previously mentioned by Mr. Martin. Mr. Vaughn confirmed that there are only 15 conditions appearing on the agenda, to which, Mr. Sallee agreed.

Petitioner's Presentation – Ms. Rena Wiseman, attorney, was present representing the applicant. She said that the applicant was in agreement with the staff's recommendation, and requested approval of PLAN 2008-157F. She said that it's their understanding that Mr. Tucker will be speaking on this plan; therefore, they would like to reserve time to respond to his concerns. She noted that the issue of staying out of the impact zone had been addressed prior to the issuance of the grading permits. She said that there was a requirement on the

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development plan stating that prior to a grading permit being issued, the impact zone had to be certified, verifying that the area would not be affected. She then said that they had submitted the construction plans for this unit to the Division of Engineering and these drawing demonstrated the boundaries, the wetland areas and the setback requirement for this area, which is identical to the proposed plat. In conclusion, Ms. Wiseman said that a representative from the Red Wing Ecological Service was present, should the Commission have any questions.

Citizen Opposition – Mr. Tucker, who owns property on Chilesburg Road, was present. He said that his property is having storm water problems; and prior to this meeting, he had spoken with the Army Corps of Engineers about this problem, but they could not answer his questions. He then said that hopefully the applicant can clarify some of the questions and issues that he has.

Mr. Tucker agreed that the applicant is remaining out of the wetland area; but if the retention pond has been built illegally, then that is allowing the water to run directly into the wetland areas. He then asked where the water quality controls come into effect.

Mr. Tucker said that, in speaking with Grace Jared, Army Corps. of Engineers, he was advised to find out who is in charge of storm water management, since there is a water quality and storm water issue present. He then said that more impervious surface is being added to the area, resulting in more water being added to the wetland area, which is ending up on his property.

Mr. Tucker stated that in 2004, there was an agreement between the LFUCG and the EPA to have a check-off list to make sure the permits are in order prior to development. He said that he would like to know who signed off on this check list, and he would also like to know who is responsible for the water quality for this area, as well. He said that he has the right to know who is responsible and he is requesting to review these permits. According to the Storm Water Manual, there should not be any release of the storm water into the reservoir area; but, rather, it should be diverted to the retention pond. He said that if the retention pond is not working, then this is a problem. In conclusion, Mr. Tucker asked who is responsible, and at what point do you say enough is enough.

Petitioner's Rebuttal - Ms. Wiseman said that the retention pond was not built illegally, and they have not received any citations from any entity, whether it be the LFUCG or the Army Corps. of Engineers. She said that the retention pond was constructed properly and it is functioning properly. She noted that Mr. Tucker has a habit of coming in front of the Planning Commission and making statements that are not true. She said that at a previous Commission meeting, Mr. Tucker had told the Commission that the 404 Water Quality permit had expired, which is not true, and they wanted to correct that statement for the record. As for the conversation Mr. Tucker had with Ms. Jared, they do not know what transpired between them; but they believed the LFUCG and the Army Corps. of Engineers is in charge of the required storm water permits.

Ms. Wiseman then stated that Mr. Thomas had spoken with Ms. Jared on December 10, 2008, and there was no mention of there being an issue with the detention pond or the water quality. She said that her clients had submitted the application for the 404 Water Quality Permit to the Army Corps. of Engineers back in 2005, and they are still waiting on their response. She then said that due to the Commission's directive, the applicant has stayed out of the impacted wetland areas, and no mitigation can begin until the permit is obtained.

In conclusion, Ms. Wiseman said that the previous statement made by Mr. Tucker regarding the detention ponds is not true. She said that they have followed all of the rules, as well as the referred to in condition number 15, and requested approval for this item.

Objector's Rebuttal - Mr. Tucker said that the Pipeline Tributary is a blue line stream, and it is required to have a 404 acceptable permit. Therefore, he does not believe the permit for the retention pond has been issued.

Planning Commission Question – Mr. Brewer asked if condition number 15 covers the issue of the retention pond. Mr. Vaughn responded that it does not.

Mr. Vaughn asked, on the Commission's behalf, that Marwan Rayan come forward to speak to this issue. Mr. Rayan and Mr. Hillard Newman, Division of Engineering, came forward to answer questions from the Planning Commission.

Ms. Roche-Phillips asked if the Division of Engineering was comfortable in saying that the proper permits are in place, and the detention pond is "good to go." Mr. Rayan said that the retention pond was included and addressed in the application for the 404 permit. He then said that the detention pond is in a different area and it does not impact what the Commission is considering today.

Mr. Penn asked if the additional runoff created by this development would not impact the retention pond, or create more water. Mr. Rayan said that the detention pond size will take care of any runoff that is generated from this

area. Mr. Penn then asked when that grading permit was issued; if the staff had full confidence in the detention pond handling the additional runoff from this development. Mr. Rayan replied affirmatively.

Ms. Roche-Phillips said that there is no storm water infrastructure on the Unit 11-A site, and asked if the storm water runoff would be collected downstream. Mr. Rayan replied that it would. Ms. Roche-Phillips then asked if this is the same storm water detention pond referenced by Mr. Tucker. Mr. Newman said that the stormwater basin for quantity is located further down stream, noting the location of the basin on the map. He said that the runoff from the development will need to make its way to this basin through the stream system, noting that there is on-site sediment control just before the wetland area.

Mr. Brewer clarified that the only thing that is being changed is the slight shift of the lot line for the end unit, and included nothing substantial to this area. Mr. Martin said that that was correct. He then said that the Commission had originally approved the overall plan for this area, and this request is to plat lots for Unit 11-A. The plat and the overall plan do match each other, with the exception of the slight adjustment to the end lot. Mr. Brewer said that despite the issues of the stormwater, if the only adjustment to this area is the slight adjustment to the lot line, it seems that that would not make a huge difference in the runoff.

Mr. Penn said that he wants everyone to be on the same page, and this issue has been discussed a number of times. In reference to the grading permit being issued, he asked if the retention pond will control the water coming off of Unit 11-A, while staying in compliance. He then said that he will continue to ask this question because there is a storm water problem in this area and in the community. There is a new set of rules that everyone must play by; and for the Commission to comfortably respond, everyone must evaluate these issues using those rules. Mr. Penn said that he wants this to be on the record in order to protect everyone.

Closing Comments – Ms. Wiseman said that the basin that is being discussed is located off site; and under the EAMP concept, there would be a regional detention basin for this area. She said that the regional basin would control the runoff from this lot, as well as from the 300+ acres in this area. She noted that for this area the applicant had paid exaction fees, which help pay for the master plan facility to be designed and constructed. In conclusion, Ms. Wiseman said that the only testimony given concerning flooding is from Mr. Tucker, whose property is within an identified floodplain area. She said that there may be storm water problems throughout the community; but there is no evidence of flooding within this development, due to the detention pond.

Howard Cruse was present on behalf of Ball Homes. He said that the detention pond was designed by CTI, who prepared the Storm Water Master Plan for the Expansion Area. He said that the detention pond in question was designed by this consultant for the Government, and CTI had proposed the pond to be built at this location, and in this configuration. He then said that they had followed the proposed plan, as well as utilizing the storm water design standards. The pond was built, inspected, and approved by the Exaction Appeals Committee. He said that nothing has changed; the pond was designed to handle the impacts from development of the Gess Property and any other properties within this watershed. He then said that Mr. Tucker has stated that the pond is not working; but at the same time, he has not provided any evidence to show that fact. Mr. Cruse said that they have followed all of the approved design standards, and the pond has been tested and accepted. He does not understand why this issue is still being discussed.

Objector's Closing Comments - Mr. Tucker said that Ms. Wiseman stated that the 404 Permit was approved for the retention basin. Ms. Wiseman responded that she did not say that. Mr. Tucker asked how the basin could be built if it is not built illegally. He then said that this stream, the Pipeline Tributary, is a blue line stream and it falls under the required 404 permit. Mr. Tucker said that when he is accused of giving false information, he wants to know "which side he is standing on."

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 11-0 to approve PLAN 2008-157F, subject to the conditions listed by the staff.

- b. PLAN 2006-5F: JOHN AND DINA R. MELVIN PROPERTY (2/15/09)* - located at 112 Loneta Avenue.
(Foster - Roland)

Note: The Planning Commission originally approved this plan on February 9, 2006, subject to the following 11 conditions, which included granting of a waiver to Article 6-8(a) and Exhibits 6-1 and 6-3 of the Land Subdivision Regulations:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addresses by e911 staff.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Division of Fire's approval of emergency access and fire hydrant locations, as necessary.

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

7. Division of Solid Waste's approval of turnaround easements, as necessary.
8. Addition of Loneta Avenue street cross-section.
9. Addition of building lines.
10. Correct all certifications for a Final Subdivision Plan.
11. Provided the Planning Commission grants a waiver of Article 6-8(a) and Exhibits 6-1 and 6-3 of the Land Subdivision Regulations.

The applicant is now requesting reapproval of this item, subject to the conditions listed on the agenda, including granting a waiver of Article 6-8(a) and Exhibits 6-1 and 6-3 of the Land Subdivision Regulations.

The Subdivision Committee Recommended: Reapproval, subject to the previous 11 conditions, including granting the waiver of Article 6-8(a) and Exhibits 6-1 and 6-3 of the Land Subdivision Regulations.

Staff Presentation – Mr. Martin directed the Commission's attention to the proposed final record plat, and oriented them to the surrounding street system using a rendering of that plat. He said that the applicant's are requesting reapproval of this item, subject to the conditions listed on the agenda, which includes a waiver to Article 6-8(a) of the Land Subdivision Regulations. He noted that this plat requests to subdivide one lot into three lots for property located at 112 Loneta Avenue. He distributed a copy to the Commission members of the prior staff review on this waiver request.

Mr. Martin stated that prior to the original request being presented to the Commission, the staff and the applicant's had worked together to resolve several issues, one of which involved the street improvements along Loneta Avenue. He said that, at that time, the applicants had requested a waiver to Article 6-8(a), which the Planning Commission had approved.

Mr. Martin explained that Loneta Avenue is between Rosemary Avenue and North Limestone. He said that Loneta Avenue is approximately 20 feet wide after a hard 90 degree sharp turn; then the street narrows to 12 feet wide, ending just past the applicants' property. On the opposite side of the subject site, the street is bordered by a wire mesh fence and there is a steep slope down to the commercial area facing New Circle Road. The applicant's are proposing an access easement, as well as a turnaround at the end of Loneta Avenue.

Mr. Martin said that the Subdivision Committee had recommended reapproval of this request, subject to the conditions listed on the agenda. He noted that this approval includes the approval of the waiver, as well. Mr. Martin then noted that there is no representation present at the meeting.

Planning Commission Discussion – Mr. Vaughn confirmed that the applicants were not present at the meeting. He then asked if this request is for a reapproval. Mr. Martin replied that that was correct, and added that the Melvins are no longer developing this property; rather, it will be a Habitat for Humanity development.

Action - A motion was made by Mr. Holmes, seconded by Ms. Whitman, and carried 11-0 to reapprove PLAN 2006-5F, subject to the conditions listed by the staff, and granting the waiver to Articles 6-8(a) of the Land Subdivision Regulations, for the reasons provided by the staff.

3. Development Plans

- a. DP 2008-139: DISTILLERY DISTRICT WEST, UNIT 1 (2/12/09)* - located at 1151, 1158 and 1200 Manchester Street. (Council District 2) **(Thoroughbred Engineering)**

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers, including special permit uses.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan, including revision of the tree inventory note.
5. Greenspace Planner's approval of the treatment of greenways.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Solid Waste's approval of refuse collection.
10. Addressing Office's approval of street names and addresses.
11. KY Department of Transportation's approval of any improvements to Manchester Street.
12. Remove unnecessary information.
13. Addition of building dimensions.
14. Denote detention area.
15. Remove note on yard requirements per Ordinance # 227-2008.
16. Revise title to reflect "Adaptive Reuse Project" status (designations).

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

17. Revise plan status to denote as Final Development Plan.
18. Discuss improvements to Manchester Street.
19. Discuss the existing floodplain and proposed uses.
20. Discuss the relationship of TIF improvements with plan features.

Staff Presentation – Mr. Emmons directed the Commission's attention to the development plan for the Distillery District West, Unit 1. He said that this is the first Adaptive Reuse Project since the adoption of the new regulations, and noted that the staff had submitted several exhibits that consisted of the revised conditions, the TIF discussion items and a memorandum regarding the Adaptive Reuse Project Distillery District West, Unit 1. He then said that the Subdivision Committee recommended approval of the applicant's request, subject to the 20 conditions listed on the agenda, three of which were discussion items.

Mr. Emmons referred to the PowerPoint presentation, and said that the subject site is located on Manchester Street. He noted that the largest structure on Manchester Street is a five-story warehouse building, adding that there are other existing buildings on the subject property that are currently being used for office space. Also on the property, facing Manchester Street are newer buildings that most recently used as self-storage units. Mr. Emmons then indicated the location of the surrounding streets to the Commission, which consist of Thompson Road, Forbes Road and the proposed location of the Newtown Pike Extension. He said that at the edge of the development there is a railroad overpass, and Towne Branch is behind the subject property. He then said that the entire property is located within a floodplain, and this issue was one of the major discussions items during the Subdivision Committee meeting. Referring to the development plan, Mr. Emmons gave a brief explanation of the color coding system he had used, and pointed out which buildings are more historical and which buildings are newer construction. Mr. Emmons then stated that much of this area has been developed. The applicant is proposing not to add any new construction with the current development plan, but rather to redevelop the site between the 5-story building and the distillery building, as well as the parking lot area off of Manchester Street that is adjacent to the vehicle storage yard. He said that the staff is anticipating that this development plan is the first in a series of Adaptive Reuse Projects that will come before the Planning Commission.

Referring to the revised staff recommendations, Mr. Emmons noted that condition numbers 1 through 10 are standard approvals from each of the LFUCG divisions. He said that as for condition number 11, the staff is requesting that if any improvements are to be made to Manchester Street, the applicant would need the approval of the Kentucky Department of Transportation due to Manchester Street being a State road. He then said that condition numbers 12 through 17 were included in the recommendations in order to "clean up" the development plan; however, with the applicant's revised submission, these concerns have been addressed. Therefore, condition numbers 12 through 17 can be deleted. Mr. Emmons stated that at the Subdivision Committee meeting there were three discussion items that came about, and these are noted in condition numbers 18 through 20. He said that the applicant had not shown a sidewalk on the original submission; however, with the revised development plan the applicant has added a sidewalk along Manchester Street. He said that if the applicant does provide this improvement along Manchester Street, then approval from the Kentucky Department of Transportation will be needed. He then said that with KDOT and the Bike and Pedestrian Planner as part of the requirements, the staff believes that condition number 18 (Discuss improvements to Manchester Street) has been addressed and can be deleted.

Referring to condition number 19, Mr. Emmons stated that this relates to the existing floodplain and the proposed uses. He said that Town Branch Creek is one of the major waterways in this area; and according to the 2008 Flood Insurance Maps, the subject property is inside the floodplain area. He said that where the rules become stricter is the area within the floodway portion. The applicant's proposal shows the property and buildings either within or adjacent to the floodway area. He said that the applicant's has modified the development plan and placed the parking lot closer to the buildings and outside of the regulatory floodway area. He then said that with regards to the floodplain uses and what is actually in this area, a meeting was convened that included the Commissioner of Public Works and Development, several staff members from the Division of Engineering, the Division of Planning, Historic Preservation and Building Inspection to address the concerns as they relate to this property. Everyone was in favor of the Adaptive Reuse Project; however, they did not want to jeopardize their standing with the National Flood Insurance Program. He said that as they broke down each piece of the project, the proposed modification for the parking lot is within the requirements of the Engineering Manual; therefore, an approval for a special use permit could be given to the applicant. He then said that this would mean that Engineering could review this request and make the necessary changes for the applicant to acquire the proper permits. As for the historic nature of the buildings, both FEMA and the local floodplain ordinance offer exemptions to the very strict regulations to allow historic buildings that are within the floodplain area to be rehabilitated. This would give the applicant less restrictive standards to go by. He said that an important caveat to this exemption is that you cannot be exempted out of the floodplain regulations and down the road alter the building in a way that would change the historic nature of that building. He then said that, as the process goes forward, the applicant will need to acquire a floodplain variance through the Floodplain Appeals Committee. He said that this regulatory procedure was only used in rare circumstances and was unclear at the time of the Subdivision Committee meeting.

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At this time Mr. Emmons referred to the staff revised recommendations. He noted that after the staff meeting, the following conditions were added that relate to what needs to happen for this request to be approved by the Planning Commission, while at the same time making sure the conditions relating to the floodplain regulations are in compliance with the local, state and federal regulations. He read the following conditions to the Commission:

12. There shall be no occupancy permits issued for renovation of the existing historic structures unless a floodplain variance is obtained through the Floodplain Appeals Committee.
13. All non-historic structures shall comply with Article 19 of the Zoning Ordinance.
14. A Letter of Map Revision shall be submitted to FEMA prior to any occupancy permits.
15. Provided the Urban County Engineer grants a special permit use for the proposed parking areas; and any parking lot re-design shall be reviewed by the Division of Traffic Engineering and Planning.
16. The applicant shall obtain any State and Federal permits or waivers required, prior to commencing any site work.

Referring to condition number 14, Mr. Emmons noted that according to the current FEMA maps and flood studies, portions of the property would essentially be under water in the range of two to seven feet. He said that the FEMA maps and the flood studies are more than likely outdated, but the staff is bound to the current information until the new flood studies are accepted by FEMA. This is why condition number 14 is important, and the staff wants to make sure the applicant starts the procedure to obtain the Letter of Map Revision (LOMR). He then said the applicant must obtain the special permit from Engineering for the proposed parking area, as well as obtain approval from both Traffic Engineering and the Division of Planning if the parking lot is redesigned (condition number 15). He noted that this particular property is a 12-acre parcel, with the proposed Adaptive Reuse Project consisting approximately of 110,000 sq. ft. of area. He said that the required parking for this project is 274 spaces and the applicant is providing 345 spaces, which is well over the minimum requirement; therefore, if there is a need to redesign the parking area there is enough of an overage to play with. He said that if the parking area does need to be modified for whatever reason, then condition number 15 would allow that to be done without this request ever coming back to the Planning Commission for further discussion. Mr. Emmons said that condition numbers 12 through 16 were the result of everyone's hard work in trying to resolve these issues. He pointed out that the Division of Engineering had emailed FEMA regarding their thoughts on this project; but they have yet to respond back. He said that even though the staff is in favor of this project, LFUCG's standing with FEMA's National Flood Insurance Program cannot be jeopardized.

Mr. Emmons stated that in the original conditions listed on the agenda, one of the discussion items from the Committee related to the relationship of the TIF improvements with the plan features (original condition number 20). He said that not only is this the first Adaptive Reuse Project in Lexington; but it is also the first development plan that will require the additional improvements. Referring to the TIF handout, he said that the items noted in orange will be required by the applicant before proceeding, and the items noted in green are the items that could be done by the applicant on his own. He said that even though the TIF projects are beneficial, the staff is afraid that one of the necessary required improvements would fall through the cracks. He then said that the staff wants to make sure items such as the sanitary sewers, bus shelter and so forth are completed. With that being said, the staff suggests the following condition to be added:

17. Resolve the timing of any required improvements that are also included in the TIF improvements, such that the project improvements shall be coordinated in a timely manner.

In conclusion, Mr. Emmons stated that the staff will continue to work with the applicant to make sure the required items are completed in a timely manner prior to the structure being occupied. He said that the applicant has met the minimum criteria for an Adaptive Reuse Project, and has provided all the necessary documentation to the staff and this project is in compliance with the 2007 Comprehensive Plan; therefore, the staff recommends approval, subject to the revised conditions.

Planning Commission Questions – Mr. Vaughn commented that he was hoping that the public art would have been included. Mr. Emmons said that the public art will be proposed at a later date. Mr. Vaughn asked what kind of timeline there is for FEMA has to respond to this proposal. Mr. Emmons said that it could take from 10 to 18 months for them to complete a Letter of Map Revision (LOMR). He said that this is the reason the staff wants some type of assurance that the LOMR will be submitted prior to occupancy; however, it is not necessary for the LOMR to be accepted by FEMA prior to utilizing portions of these existing buildings. He noted that the applicant is taking a risk, because if FEMA should deny them the LOMR, the applicant would need to come back to the Commission.

Division of Engineering – Marwan Rayan, Urban County Engineer, said that the reason the staff is requiring a LOMR is due to the current information identified on the FEMA Flood Maps. He said that current information shows that the 100-year floodplain is about 7 feet above the existing ground level, and the staff believes this information is incorrect. With a Letter of Map Revision, a study could be completed with the results showing a different outcome. He said that the staff has no problem with issuing a special use permit for the parking area,

but they are concerned with the historic nature of the building. He noted that the requirements of Article 19 and the requirements of FEMA are different from each other; and if the building was not historic, then the applicant would need to flood-proof the lower portion of the building as high as 9 feet up.

Mr. Rayan stated that the staff does recommend that the applicant apply for a floodplain variance from the Floodplain Appeals Committee prior to obtaining a building permit or a grading permit. He asked if condition number 12 could be changed to reflect that suggestion. Mr. Emmons stated that the staff has no objections to that request. Mr. Rayan said that they would prefer that the floodplain variance be obtained before the actual construction begins.

Planning Commission Questions – Mr. Vaughn confirmed that the following changes are being recommended for condition number 12 “There shall be no ~~building occupancy~~ permits issued for renovation of the existing historic structures unless a floodplain variance is obtained thorough the Floodplain Appeals Committee.” Mr. Rayan responded that that was correct, and noted that the grading permit should be included as well. Mr. Vaughn clarified that Mr. Rayan requested a condition number 12 to read: “There shall be no **building or grading** permits issued for renovation of the existing historic structures unless a floodplain variance is obtained thorough the Floodplain Appeals Committee.” Mr. Rayan said that both are required and the applicant could apply for each one at the same time. Mr. Newman said that the parking lots will require the special permit use, which is covered under condition number 15; therefore, condition number 12 could only reflect the building permits. Mr. Vaughn confirmed that condition number 12 should only reflect building permits, to which Mr. Rayan responded that that was correct. He noted that the variance only applies to the structure, whereas the special use permit applies to the parking lot area.

Petitioner Presentation – Barry McNees, owner and developer of Pepper Distillery District, LLC, was present. He said that the floodplain is an obvious concern, but the current data for this area has not been updated since the 1970s. Referring to where the creek goes under the road, there was a bridge that was upgraded and/or replaced in either the late 1990s or 2000, which helps the water flow more easily through this area. He then noted that on September 21, 2006, a 100-year flood had occurred in this area; but no flooding of the property resulted. Mr. McNees thanked the staff who had attended the initial meeting, noting his appreciation for their efforts in helping to resolve these issues. He said that he is happy to report that this project has received the approval from the State Review Board to be placed on the nomination listed for the National Register for Historic Places. He said that this will be the first distillery in Lexington that is placed on that registry. In conclusion, he stated that they are in agreement with the staff’s revised recommendations, to include the change to condition number 12, and requested approval of DP 2008-139.

Planning Commission Comments – Mr. Vaughn noted that staff had recommended that condition number 12 be changed to read: “There shall be no ~~building occupancy~~ permits issued for renovation of the existing historic structures unless a floodplain variance is obtained thorough the Floodplain Appeals Committee.” He then noted that the Subdivision Committee recommended approval of this plan. He said that the staff recommends approval, subject to the revised 16 conditions.

Action - A motion was made by Mr. Day, seconded by Mr. Penn, and carried 11-0 to approve DP 2008-139, subject to the revised conditions listed by the staff, changing condition number 12 to read: “There shall be no building permits issued for renovation of the existing historic structures unless a floodplain variance is obtained thorough the Floodplain Appeals Committee.”

Staff Comments - Mr. Emmons noted that the required signed affidavit was presented to the staff prior to this meeting.

A recess was declared at 2:14 p.m. and the meeting re-convened at 2:24 p.m.

- c. DP 2008-142: OVERBROOK LAND COMPANY (AMD) (12/12/09)* - located at East New Circle Road and Liberty Road. (Council District 5) **(Vision Engineering)**

Note: The purpose of this amendment is to revise the proposed parking and access.

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 landscaping and landscape buffers.
4. Addressing Office’s approval of street names and addresses.
5. Correct Planning Commission certification.
6. Correct site statistics.
7. Document compliance with minimum parking requirement.
8. Remove proposed access points on corner lot.

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

Staff Presentation – Mr. Taylor directed the Commission's attention to the amended final development plan, and oriented them to the surrounding street system, noting that the subject site is at the corner of East New Circle Road and Liberty Road. He said that the applicant was requesting to add 20 additional parking spaces, while keeping the on-site structures in their current state. He then said that the applicant also wanted to add 3 access points into the subject site that were originally closed off as shown on the previous plan.

In conclusion, Mr. Taylor stated that the Subdivision Committee recommended approval of the applicant's request, subject to the conditions listed on the agenda. He noted that the staff is recommending the removal of the proposed access points on corner lot, which is noted in recommended condition number 8.

Petitioner's Presentation – Ms. Chris Westover, attorney, was present representing the applicant. She stated that the applicant was in agreement with the staff's recommendations, and requested approval of DP 2008-142. She then said that the property owner for the corner lot is requesting that an additional note be added to the plan that would prevent this lot being landlocked. She suggested that the note read: "Should the corner lot develop as a stand-alone lot, the applicant would need to amend the approved plan, and access would be determined at that time."

Planning Commission Questions – Mr. Day asked what would bring this item back in front of the Planning Commission. Mr. Taylor said that if the corner lot were to come back to the Planning Commission with a request for a stand-alone redevelopment, then the access point would be determined at that time. He said that the staff believes the note is not necessary; however, if the Planning Commission decides to add the note, condition number 8 would still require the removal of the access points from the corner lot. Mr. Taylor iterated that the staff does not believe the note is necessary with this proposal.

Ms. Westover stated that they are requesting that the note reflect the summary of the existing law. She said that this is a precautionary measure on behalf of the property owner; and if an issue should arise 10 years from now, this would give some type of assurance to the existing or new property owner that there would be no prohibition on the access to the corner lot or to any other properties around it. She noted that they understand the issue with the removal of the apron; but they want some type of "memorialization" for public access to be required in the future should that lot develop on its own.

Mr. Penn asked if the applicant wants this statement to be a note on the development plan or listed as a condition. Ms. Westover said that they prefer it to be a note on the development plan.

Mr. Vaughn clarified that the staff believes the note to be unnecessary. Mr. Taylor said that what Ms. Westover is asking for is something that will be automatically reviewed if this lot comes in for redevelopment. He then said that under the Land Subdivision Regulations they have to have access to the lot if it is not served internally. There is no access easement shown or proposed that would limit the corner lot to internal circulation only. He said that the property is entitled to access and it will be determined through the Planning Commission's action at that future time.

Mr. Day asked what the difference is (regarding the note) when the Planning Commission reviews this as one big development and it is approved as that. Ms. Westover said that if this development plan is approved and certified as is, and this business should cease to operate, then it would need to come before the Planning Commission due to a standing development plan being in place. She said that, should there be a different development of the property, or should it be developed as a separate parcel this plan would need to be amended. She then said that this would only be an issue if the current business ceases to operate.

Mr. Penn asked why this development plan is different from any other development plan that has come before the Planning Commission. Ms. Westover said that nothing is different; but quite often there are memorialization placed on development plans that are not needed. She said that the purpose of this note being added would allow this owner or the next owner some assurance in the future.

Mr. Holmes said that access is required regardless of who develops that lot. Ms. Westover replied that was the correct statement of the law. She said that they are requesting a memorialization of that statement, similar to many other development plan notes that are not required, but that are noted on the plan.

Staff Rebuttal - Mr. Taylor said that development plan notes relate to a specific plan, and this type of note is speaking to a plan that has not been filed yet. He said that the staff believes that the note is not necessary, and the difference between the memorialization of these note is: 1) it relates to the plan being filed, signed and certified; and 2) it relates to something in the future.

Discussion - Mr. Owens said that he understood there was a concern; but there are steps in place to take care of any possible problems with access in the future.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 11-0 to approve DP 2008-142, subject to the conditions listed by the staff.

- D. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Penn, seconded by Mr. Cravens, to approve the release and call of bonds as detailed in the memorandum dated December 11, 2008, from Ron St. Clair, Division of Engineering.

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

- A. **ANNUAL REPORT FROM PURCHASE OF DEVELOPMENT RIGHTS PROGRAM** – The Commission will hear from Mr. Billy Van Pelt, who will present the required Annual Report from the Rural Land Management Board.

Staff Presentation – Mr. Van Pelt, Program Manager, was present. He directed the Commission's attention to the previously distributed handouts, noting that the map shows the locations of the protected farms that were accepted, donated or currently under contract to close. The second handout is a list of conservation easements that have been acquired through donations or purchased by the PDR Program. (A copy of these items is attached as an appendix to these minutes). He noted that Round 7 is currently ongoing, and there are acquisitions that will continue to move forward until the end of the year into Round 8.

Mr. Van Pelt directed the Commission's attention to the PowerPoint presentation and said that, as of today, the PDR Program had obtained 22,589 acres. He said that approximately 45 percent of the 55,000-acre goal has been achieved for the year 2020. He then said that the farm land surrounding Lexington is unique and historical, and its world-renowned rural landscape defines our sense of place.

Mr. Van Pelt stated that the PDR Program protects the factory floor of agricultural land, as well as a number of other industries in Lexington. In 2005, Fayette County was ranked number 2 for KY farm products and it generated \$354,000 in cash farm receipts. He said that in 2006, the Bluegrass Stockyard had over \$144 million in cattle sales, with over 245,000 cattle being sold. He noted that this is the largest stockyard east of the Mississippi River. He then said that there are a significant number of jobs with a tax base related to agriculture, as well as a significant amount of infrastructure and services.

Mr. Van Pelt then stated that the PDR Program also protects the factory floor of the horse industry. He noted that in 2007, \$1.1 billion in horses were sold at Keeneland and Fasig-Tipton. He said that in researching this data, he found a study by Dr. Timothy Woods of the University of Kentucky Agriculture Department documenting that \$437 million was generated in horse revenue, as well as the fact that 6,300 employees were being supported by the horse industry.

Mr. Van Pelt said that, in addition to the previously mentioned items, the PDR Program protects the factory floor of the tourism industry. He then said that in 2007, there was a \$1.6 billion economic impact for Fayette County, and it supported 23,000 jobs with a payroll of \$529,980,347. The tax receipts from tourism were estimated to be \$14,800,000. This figure was based on the fact that Fayette County is adjacent to two interstates, as well as being within a days driving distance of 75 percent of the US population. He said that Fayette County draws visitors to the State and to the Bluegrass Region as a whole, while the PDR Program, as well as the farm land, perpetuate the unique international recognition as the Bluegrass State.

Mr. Van Pelt said that the PDR Program strives for the following goals:

- Use conservation easements to preserve 50,000 acres of rural Fayette County over the next 20 years.
- Protect the agriculture and horse economies of Fayette County by conserving large areas of farm land.
- Conserve and protect the natural, scenic, open space and agricultural resources of rural Fayette County.
- Protect the tourism economy of Fayette County by preserving the unique character and sense of place that attracts visitors from all over the world.

He said that the major principles of the program are: 1) farmers apply on a voluntary basis, 2) most rural landowners with a minimum of 20 acres are eligible to participate, 3) priority order of acquisition is to be based upon a fair and objective points ranking system, which is listed in the PDR Ordinance. He then said that the major components of the PDR Program were through the Ordinance, which was adopted in January of 2000. At that time the Fayette County Rural Land Management Board set up the Land Evaluation and Site Assessment system and the funding. He said that the Fayette County Rural Land Management Board consists of members from across the Community that represents each others interests:

- Farm Bureau
- Kentucky Thoroughbred Association
- Land Conservation Groups
- Realtors Association
- Homebuilders Association

- Neighborhood Council
- Historic Preservation
- Convention and Visitors Bureau
- Chamber of Commerce
- USDA/NRCS (non-voting)
- County Ag Extension (non-voting)

Mr. Van Pelt stated that the duties of the Board are to solicit, acquire and hold conservation easements; prioritize acquisitions; expend funds for acquisitions; hold public information forums; solicit contributions and establish administrative procedures.

Mr. Van Pelt then stated that the Land Evaluation and Site Assessment ranks the land according to such qualities as the farm size, the road frontage, the soil quality, the farm activities and the agricultural improvements. He said that the Land Evaluation and Site Assessment (LESA) establishes a ranked priority for environmentally sensitive areas, the greenway potential, natural protection areas, linkages to parks, the historic or cultural resources, scenic resources and reconsolidation of divided farms. At the same time, there is also a negative ranking system that reflects items such as the farm's proximity to the Urban Service Area, its probability of sewerability, the proximity to the federal highway and interstate interchanges, and the exceptions for Community Icons and other major protection priorities.

Mr. Van Pelt said that the value of an easement is determined by the following:

- Appraisal of conservation easement
- Before and after comparison
- Independent review of appraisal
- Recommendation by the PDR staff
- Offer by Fayette County Rural Land Management Board.

Mr. Van Pelt then said that the PDR funding comes from two different sources: 1) Matching grant monies from the tobacco settlements funds, the local AG Development Board and federal grants; and 2) LFUCG Investment, which comes from a 20-year municipal bond and through the General Fund.

At this time, Mr. Van Pelt read the following excerpt from the Federal Farm and Ranch Land Protection Program: "As a result of these land use changes, there is growing national interest in the protection of farm and ranch land. Once developed, productive farmland's rich topsoil is effectively lost forever, placing future food security for the nation at risk. Furthermore, land use devoted to agriculture provides an important contribution to environmental quality, history and scenic beauty." He said that as part of the PDR Program, a survey is sent to the property owners who have completed this process, and they were asked how the funding was used on their land. The results were as follows:

- 60% - pay down debt
- 68% - construct or improve farm buildings
- 68% - farm improvements (roads, fences, waterlines, etc.)
- 46% - pasture improvements, trees, etc.
- 41% - purchase farm equipment

Mr. Van Pelt stated that, as of today, there are 196 farms participating in the conservation easements; these include 33 donated conservation easements of 1,610 acres, with a total of over 22,589 acres. He said that there are 101 farms for equine, 82 farms for general agriculture and 13 farms that are used for other uses. He then stated that Round 7 has 64 applications submitted, which is for approximately 4,849 acres; and as for Round 8, the property owners can submit their application up until January 30, 2009.

In conclusion, Mr. Van Pelt said that the PDR Program has attained 45% of the 50,000 acres, and there are over 22,589 acres of rural farm land preserved for future generations. He then said that there are 10 benefits that the PDR Program provides, which include the following:

1. Protect Lexington's world renowned Brand Identity.
2. Protect the equine industry.
3. Protect the tourism industry.
4. Protect the general agriculture industry.
5. Encourage infill and redevelopment of the Urban Service Area, which lowers cost of services to the LFUCG.
6. Support the reduction of carbon footprint.
7. Support the EPA Consent Decree by protecting the watersheds.
8. Retain food bond credit ratings.
9. Attract jobs and business, which is a quality of life issue.
10. Protect the base of agricultural food, feed and fuel for future generations.

Planning Commission Questions – Mr. Vaughn asked if this information is available on the PDR web site. Mr. Van Pelt answered that this information is not available on the web site.

Ms. Copeland asked if the acquisition program is growing exponentially. Mr. Van Pelt said that this year the PDR Program has received \$2.5 million from the administration, and those funds are matched by the Federal Farm and Ranch Land Protection Program. He then said that the staff will evaluate the applications that are on the list and acquire those properties until the funds are exhausted. He then said that there are currently 64 applications, and the ones that do not get picked for this round will be listed on the next round. Ms. Copeland then asked if the amount of acreage increases each year. Mr. Van Pelt replied that it does, and noted that, on average, there is an increase of 2,400 acres per year, which does not include donated acreage. Mr. King said that the PDR Program is acquiring better quality land than in the beginning. He said that when this program was started, anyone who agreed to the final offer was accepted into the program. Now there are more properties that want to join this program than there are funds to acquire those properties. Mr. Van Pelt said that things really took off in the number of applications in Round 2. He said that the way the Ordinance is written, you want the most acreage under easement.

- B. ANNUAL REPORT FOR THE COURTHOUSE AREA** – The Commission will hear from Mr. Billy Van Pelt, who will present the required Annual Report from the Courthouse Area Design Review Board.

Staff Presentation – Mr. Van Pelt submitted a packet that contained information on the Courthouse Area Annual Report. This packet included a list of the Board and staff members; a map showing the Courthouse Area Design Overlay zone boundaries; a list of the potential changes to the Ordinance; pictures of approved projects that are within the Overlay zone; and the proposed design for the Centrepointe project. He noted that since the adoption of the Ordinance, there have been 24 Board approvals and 10 staff approvals. He then noted that the Board reviews the overall concept for the downtown area to make sure the suggestions given are appropriate.

Planning Commission Questions – Mr. Penn asked if the rendering of the CentrePointe project is the final version. Mr. Van Pelt said that that rendering is what the Board had approved at the last public hearing, noting that there were three changes to the design.

Mr. Vaughn asked if the Board will be involved in the Courthouse TIF; and, if so, to what extent. Mr. Van Pelt responded yes; but as far as the TIF is concerned, he cannot speak to the Board's role. He then said that if there is any project within the Courthouse Area Overlay Zone, the applicant would need to come before the Board for their approval. Mr. Vaughn asked if that would include public art. Mr. Van Pelt said that permanent public art would need the approval from the LFUCG Public Arts Review Board.

- C. APPOINTMENT OF FLOODPLAIN APPEALS COMMITTEE MEMBERSHIP** - The staff will request the Commission take action to formally appoint a member to the Floodplain Appeals Committee. The staff will distribute a memo with the proposed nominees for the committee and their respective terms.

- D. APPOINTMENT OF EXACTIONS APPEALS COMMITTEE** – The staff will request the Commission take action to formally appoint a member to the Exactions Appeals Committee. The staff will report at the meeting.

Staff Presentation – Mr. King stated that, along with serving on the Planning Commission, the members have an opportunity to serve on the Floodplain Appeals Committee, which will consist of variance requests from the Floodplain Ordinance; and the Exactions Appeals Committee, which consists of determining the cost of the improvements in the Expansion Area. He then said that these two Committees are very "light duty," in terms of time, noting that they do not meet on a regular basis.

Planning Commission Comments – Mr. Vaughn said that the Planning Commission has an obligation to fill these seats, and asked if there is a member who wishes to volunteer for this task. Mr. Cravens noted that he would like to volunteer for the Exaction Appeals Committee. Mr. Owens noted that he would like to volunteer for the Floodplain Appeals Committee.

Mr. Vaughn stated that he would like to appoint Mike Owens to the Floodplain Appeals Committee, and Mike Cravens to the Exaction Appeals Committee.

- VI. STAFF ITEMS** – Mr. King announced that immediately after the meeting there will be a training opportunity for the Commission to take part in. He said that Mr. Emmons will be presenting a brief presentation on Rain Gardens, which can be used to fulfill the state required training hours.

Mr. Vaughn confirmed that as part of the Planning Commission's duties, the members must acquire a certain amount of training hours for their continuing education credit.

- 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

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

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, immediately following this meeting, 2 nd Floor Council Chambers	December 11, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building).....	December 17, 2008
Zoning Items Public Hearing, 2nd Floor Council Chambers	December 18, 2008
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building).....	January 8, 2009
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	January 8, 2009
Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2nd Floor Council Chambers	January 15, 2009
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	January 22, 2009
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building).....	January 28, 2009
Zoning Items Public Hearing, 2nd Floor Council Chambers	January 29, 2009

- X. **ADJOURNMENT** - There being no further business, a motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 11-0 to adjourn the meeting at 4:06 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary