

**Minutes
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

February 12, 2009

- 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 (arrived at 1:40 p.m.); Carolyn Richardson; Lynn Roche-Phillips; Marie Copeland; Mike Owens; Joan Whitman (arrived at 1:39 p.m.); Mike Cravens and Patrick Brewer. Ed Holmes and Frank Penn were absent.

Planning Staff Present – Chris King, Director; Bill Sallee, Barbara Rackers, Tom Martin, Cheryl Gallt, Chris Taylor, Rob Hammons, Jimmy Emmons, Traci Wade 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 Allen Case, Division of Fire & Emergency Services; and Tim Queary, Division of Streets, Roads and Forestry.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Owens, seconded by Mr. Brewer and carried 7-0 (Whitman, Day, Holmes and Penn absent) to approve the minutes of December 11, 2008; December 18, 2008, and January 15, 2009.

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

- a. **PLAN 2008-71P: HAMPTON SPRINGS (AMD.) (1/15/09)*** - 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 March 12, 2009, Planning Commission meeting.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request for postponement. There was no response from those in the audience.

Action - A motion was made by Mr. Cravens, seconded by Mr. Owens, and carried 7-0 (Whitman, Day, Holmes and Penn absent) to postpone PLAN 2008-71P to the March 12, 2009, Planning Commission meeting.

- b. **PLAN 2008-76F: BOGIE ESTATE, LOT 1 (1/15/09)*** - 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 March 12, 2009, Planning Commission meeting.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request for postponement. There was no response from those in the audience.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 7-0 (Whitman, Day, Holmes and Penn absent) to postpone PLAN 2008-76F to the March 12, 2009, Planning Commission meeting.

Note: The next two items were heard simultaneously.

- c. **PLAN 2007-239F: GESS PROPERTY, UNIT 6-A (3/22/09)*** - located on William Way (a portion of).
(Council District 7) **(EA Partners)**

- d. **PLAN 2007-241F: GESS PROPERTY, UNIT 6-C (3/22/09)*** - located on William Way (a portion of).
(Council District 7) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2007-239F and PLAN 2007-241F to the March 12, 2009, Planning Commission meeting.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request for postponement. There was no response from those in the audience.

Action - A motion was made by Ms. Copeland, seconded by Mr. Cravens, and carried 7-0 (Whitman, Day, Holmes and Penn absent) to postpone of PLAN 2007-239F and PLAN 2007-241F to the March 12, 2009, Planning Commission meeting.

Note: Ms. Whitman arrived at this time.

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

- e. DP 2008-89: TOWNHOUSES OF LEXINGTON (REGENCY POINT) (AMD) (4/24/09)* - located at 2553 Nicholasville Road.
(Council District 10) **(Foster - Roland)**

Staff Comments – Mr. Martin stated that the staff had received an email correspondence from the applicant, requesting to withdraw DP 2008-89.

Action - A motion was made by Ms. Richardson, seconded by Ms. Whitman, and carried 8-0 (Day, Holmes and Penn absent) to accept the withdrawal of DP 2008-89.

Note: Mr. Day arrived at this time.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, February 5, 2009, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Mike Cravens, 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, Denise Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Traci Wade, Barbra Rackers 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.*

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, Chairman Vaughn requested that the Consent Agenda items be reviewed. 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 2009-09F: TUSCANY, UNIT 4-F (4/16/09)* - located at 1970 Winchester Road (a portion of).
(Council District 6) **(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 and tree preservation 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. Remove "approx." from written scale information.
9. Addition of property owner and developer names and addresses.
10. Clarify vicinity map.

2. Page 3, Item e. PLAN 2009-10F: BEAUMONT FARM, UNIT 2-C, SECTION 2, LOT 3 (AMD) (4/16/09)* - located at 3294 Snaffle Road. (Council District 10) **(EA Partners)**

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

Note: The purpose of this amendment is to subdivide one lot into two lots and to remove note #5 from previous plat.

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. Addition of developer and property owner names and addresses.
 8. Remove "approx." from written scale information.
 9. Add relevant notes from previous plan to plat.
 10. Denote: Built to townhouse standards per 1997 Kentucky Building Code.
3. Page 3, Item f. PLAN 2009-11F: PROVIDENCE PLACE, LOT 2 & INTERSTATE SERVICE CENTER, UNIT 6, LOT 2-B (AMD) (4/16/09)* - located at Newtown Pike and Stanton Way.
(Council District 12) **(Midwest Engineers)**

Note: The purpose of this amendment is to subdivide one lot into two lots, dedicate right-of-way and remove two screening easements.

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. Denote: This property shall be developed in accordance with the approved final development plan.
 8. Correct zoning information along Providence Place Parkway and complete plan dimensions.
 9. Graphically remove the screening easements from the face of the plan.
 10. Clarify plan boundaries, including all of lot 2A.
 11. Remove the purpose of amendment note from the listing of general notes.
 12. Correct Planning Commission certification.
 13. Addition of Stanton Way cross-section.
 14. Clarify note #8.
 15. Relabel 5' building line as landscape buffer on Lot 2B-1 and clarify 20' utility easement boundaries.
 16. Clarify Hackney Place cross-section versus development plan cross-section.
 17. Denote BOA information for Lot 2B-2 for release of buffer.
 18. Resolve completion of improvements and modification of cul-de-sac on Stanton Way and Hackney Place prior to certification of this plan.
 19. Resolve addition of Lot 2A information or additional dedication of right-of-way.
4. Page 4, Item h. PLAN 2009-14F: LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (4/28/09)* - located at 138 Montmullin Street. (Council District 3) **(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. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
 7. Document compliance with R-1E lot size requirements.
 8. Remove "approx." from written scale information.
 9. Addition of name and address of property owner.
 10. Complete adjacent property information.
 11. Review by Technical Committee prior to certification.
5. Page 5, Item i. PLAN 2008-13F: DENTON FARM, INC., UNIT 3A, LOTS 31-34 (AMD) (4/30/09)* - located at 280-288 Somersly Place. (Council District 7) **(Strand Associates)**

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

Note: The Planning Commission originally approved this plan on February 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street addressing by e911 staff.
5. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: This property shall be developed in accordance with the approved final development plan.
7. Certification of amended final development plan prior to certification.
8. Provided utility easements are released prior to certification.
9. Correct purpose of amendment note.
10. Correct exaction information.
11. Delete all lots not affected.

Note: The applicant requests a reapproval of this item.

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

6. Page 6, Item j. PLAN 2008-14F: DENTON FARM, INC., UNIT 3B, LOTS 27-30 (AMD) (4/30/09)* - located at Somersly Court and Somersly Place. (Council District 7) **(Strand Associates)**

Note: The Planning Commission originally approved this plan on February 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street addressing by e911 staff.
5. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: This property shall be developed in accordance with the approved final development plan.
7. Correct purpose of amendment note.
8. Certification of amended final development plan prior to certification of plan.
9. Provided utility easements are released prior to certification.
10. Correct exaction information.
11. Delete all lots not affected.

Note: The applicant requests a reapproval of this item.

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

7. Page 6, Item k. PLAN 2008-15F: DENTON FARM, INC., UNIT 4A, LOTS 19-20 & 23-26 (AMD) (4/30/09)* - located at Weston Park. (Council District 7) **(Strand Associates)**

Note: The Planning Commission originally approved this plan on February 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street addressing by e911 staff.
5. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: This property shall be developed in accordance with the approved final development plan.
7. Certification of amended final development plan prior to certification.
8. Provided utility easements are released prior to certification of plan.
9. Correct exaction information.
10. Delete all lots not affected.

Note: The applicant requests a reapproval of this item.

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

8. Page 6, Item l. PLAN 2008-16F: DENTON FARM, INC., UNIT 4B, LOTS 12-18 & 21-22 (AMD) (4/30/09)* - located at Weston Park and Branham Park. (Council District 7) **(Strand Associates)**

Note: The Planning Commission originally approved this plan on February 14, 2008, subject to the following conditions:

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscape buffers and required street tree information.
4. Approval of street addressing by e911 staff.
5. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: This property shall be developed in accordance with the approved final development plan.
7. Certification of amended final development plan prior to certification.
8. Provided utility easements are released prior to certification of plan.
9. Correct exaction information.
10. Delete all lots not affected.

Note: The applicant requests a reapproval of this item.

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

9. Page 9, Item a. DP 2009-07: MANCHESTER DEVELOPMENT, LLC (AMD) (4/16/09)* - located at 855-941 Manchester Street. (Council District 2) **(Thoroughbred Engineering)**

Note: The purpose of this amendment is to change the status of this project from an Industrial Mixed Use to an Adaptive Reuse Project. Additionally, parking layout and use changes are proposed.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
 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.
 5. Greenspace Planner's approval of tree preservation plan.
 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. United States Postal Service approval of delivery locations.
 12. Correct spelling of "vicinity".
 13. Update floodplain note to include 2008 FEMA map reference.
 14. Improve plan text legibility.
 15. Remove "General Limits of Development Plan" note.
 16. Remove "Zoning Requirements" block.
 17. Provide developer's information on plan.
 18. Provide adjacent property information.
 19. Correct floodplain information on plan face.
 20. Addition of note requiring compliance with Engineering Manuals.
 21. Document LexTran's approval for bus shelter location.
 22. Document signage and notification requirements.
 23. Remove or clarify Phase 3 information.
10. Page 9, Item b. DP 2009-08: NEWTOWN SPRINGS, LOT 9 (AMD) (4/16/09)* - located at 1400 Newtown Pike. (Council District 2) **(Eagle Engineering)**

Note: The purpose of this amendment is to depict two-car garages for all units.

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. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. United States Postal Service approval of centralized mail delivery location(s).
9. Provide accurate vicinity map.
10. Addition of topographic information.
11. List adjacent property information.

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

12. Addition of note #15 from previous plan.
 13. Addition of pedestrian features from previous plan.
 14. Addition of driveways from previous plan.
 15. Delete note #9.
 16. Denote compliance with minimum open space requirements.
11. Page 10, Item c. DP 2009-09: MERRICK PLACE (MERRICK INN - OLD TOWNE PROPERTY) (AMD.) (4/16/09)* - located at 3380 Tates Creek Road. (Council District 4) **(Wheat and Ladenburger)**

Note: The purpose of this amendment is to depict an expansion to the restaurant use.

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. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. Addition of BOA case number information.
9. Correct note #9 with updated FEMA panel number.
10. Resolve required 10' landscape buffer conflict with proposed parking adjacent to New Circle Road right-of-way.

Mr. Sallee 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. He noted that the required signed affidavit for DP 2007-09 had been presented to the staff.

Commission Comments - There were none.

Audience Comments – There were none.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 9-0 (Holmes and Penn absent) to approve the 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
- Commission discusses and/or votes on the plan

1. Final Subdivision Plans

- a. PLAN 2009-13F: JAMES MOTOR COMPANY PROPERTY (AMD.) (4/24/09)* - located at 2410 Richmond Road. (Council District 5) **(EA Partners)**

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. Denote: This property shall be developed in accordance with the approved final development plan.
8. Remove "approx." from written scale information.
9. Addition of 20' building line, utility and screening easement along Lot 1 and the rest of Lot 2.
10. Addition of building line along Lake Park Drive.

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

11. Provided the Planning Commission grants a waiver of Article 4-7 of the Land Subdivision Regulations regarding the bonding for a portion of the sanitary sewer that is not constructed.

Staff Presentation – Mr. Martin directed the Commission's attention to the amended final record plat, and oriented them to the surrounding area, noting that the subject property is located at 2410 Richmond Road, which is at the interchange of Richmond Road and New Circle Road. Access to the subject property is from Lake Park Drive.

Mr. Martin said that the purpose of this amendment is to subdivide one lot into two lots. He said that the front portion of the property is over 4 acres in size, and the rear of the property is over just 2 acres. He then said that there is an area of the property that has conditional zoning restrictions attached from a previous zone change.

Mr. Martin said that the applicant's proposal was reviewed and approved by the Subdivision Committee, subject to the conditions listed on the agenda. As part of their recommendation, a waiver request to Articles 4-7(d)(1) and 4-8 of the Land Subdivision Regulations was submitted by the applicant. He said that this waiver would allow the applicant to bond a section of the required sewer line serving the proposed Lot 2, as well as to proceed with the recording of the plat. This would also allow the applicant to proceed with the financial surety in lieu of the actual sewer line construction.

Mr. Martin stated that there are two options as to how the construction of this sewer line may come about. He said that the first option is to extend a lateral line approximately 150' in length from Lot 1, and the second option would be to connect a sewer line to the existing line on Lake Park Drive, then construct a new manhole in the right-of-way of Lake Park Drive, which would then extend the sewer line on down to Lot 2. The issue that the applicant is facing is that Lot 2 does not have an approved final development plan. He said that when the development is known and the finished floor elevations are established, it will then dictate what the best option is to provide an appropriate sanitary sewer to serve Lot 2.

In conclusion, Mr. Martin said that the staff is recommending approval of the requested waiver, for the following reasons:

1. Denial of the waiver would constitute a hardship for the applicant due to the inability to determine which of the appropriate designs is the best to provide sanitary sewer service to the subject property. This has the effect of preventing the timely financing for the proposed lot.
2. Granting the waiver will not negatively impact public safety, as the completion of public improvements for lot 2 will be coordinated following the approval of a final development plan. In addition, the posting of a bond for the full amount of this construction will ensure that the sewer will be built should the Planning Commission determine it is necessary.

This recommendation is made subject to the following additional requirement:

- a. Denote: No Certificate of Occupancy for lot 2 shall be issued until the appropriate sewer line extension is constructed in compliance with the Engineering Manuals, and accepted by the Division of Engineering.

Planning Commission Questions – Mr. Vaughn asked for clarification to the additional requirement listed on the waiver report. Mr. Martin said that this is directly related to the final development plan, and there will be no issuance of a Certificate of Occupancy until after the Planning Commission approves that development plan.

Representation – Rena Wiseman, attorney, was present representing the applicant. She said that they are in agreement with the staff's recommendations; however, they would like to make the following change:

9. Addition of 20' building line, ~~utility and screening easement~~ along Lot 1 and the rest of Lot 2.

Mr. Martin concurred, and said that upon review of the record plat, the utility and screening easement does not extend as far as staff had initially thought.

Ms. Wiseman then said that they are also in agreement with the staff's recommendations concerning the waiver request to Articles 4-7(d)(1) and 4-8 of the Land Subdivision Regulations. She then said that this is being done due to financing reasons and the mortgage currently on the property. She noted that there will be a new lender for Lot 1, which is the actual dealership, and Lot 2 is vacant. She said that this is a non-building plat; therefore, no construction can take place. The urgency of this being completed is due to the closing date needing to be held on or before February 17, 2009, and no guarantee of the interest rate holding thereafter.

In conclusion, Ms. Wiseman stated that they are in agreement with the staff's recommendations, and requested approval of PLAN 2009-13F, as well as approval for the waiver request to Articles 4-7(d)(1) and 4-8 of the Land Subdivision Regulations. She noted that the applicant will be furnishing a bond for the full cost of the new manhole and an 8" sewer line extension.

Planning Commission Questions – Mr. Vaughn asked for clarification to the wording for condition number 9. Mr. Sallee replied that the staff believes that condition number 9 could read as: "Addition of 20' building line along Lot 2."

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 9-0 (Holmes and Penn absent) to approve PLAN 2009-13F, subject to the conditions as listed by staff, changing condition number 9 to read: "Addition of 20' building line along Lot 2;" and granting the waiver for the following reasons:

1. Denial of the waiver would constitute a hardship for the applicant due to the inability to determine which of the appropriate designs is the best to provide sanitary sewer service to the subject property. This has the effect of preventing the timely financing for the proposed lot.
2. Granting the waiver will not negatively impact public safety, as the completion of public improvements for lot 2 will be coordinated following the approval of a final development plan. In addition, the posting of a bond for the full amount of this construction will ensure that the sewer will be built should the Planning Commission determine it is necessary.

This recommendation is made subject to the following additional requirement:

- a. Denote: No Certificate of Occupancy for lot 2 shall be issued until the appropriate sewer line extension is constructed in compliance with Engineering Manuals, and accepted by the Division of Engineering.

Note: The next three items were heard simultaneously.

- b. PLAN 2008-138F: MEADOW OAKS, UNIT 1-A (ASHFORD OAKS) (5/3/09)* - located at 3414 Felician Lane.
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on November 13, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. 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. Denote: This property shall be developed in accordance with the approved final development plan.
8. Clarify label of cross-section for "G-G."
9. Denote private street maintenance responsibilities.
10. Verify exaction information to the approval of Division of Planning.
11. Clarify public versus private right-of-way dedication.
12. Addition of conditional zoning notes and development standards from approved development plan.
13. Resolve possible conflicts between development standards and plan notes.

Note: The applicant requests a waiver of Article 4-7(d)(9)(c) of the Land Subdivision Regulations regarding the bonding of sidewalks (along the private street) that is not constructed.

The Staff will report at the meeting.

- c. PLAN 2008-139F: MEADOW OAKS, UNIT 1-B (ASHFORD OAKS) (5/3/09)* - located at 3414 Felician Lane.
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on November 13, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. 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. Denote: This property shall be developed in accordance with the approved final development plan.
8. Verify exaction information to the approval of Division of Planning.
9. Addition of conditional zoning notes and development standards from approved development plan.
10. Denote the 25' conditional zoning setback along Greenbrier golf course (lots 17-26).

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

11. Resolve possible conflicts between development standards and plan notes.

Note: The applicant requests a waiver of Article 4-7(d)(9)(c) of the Land Subdivision Regulations regarding the bonding of sidewalks (along the private street) that is not constructed.

The Staff will report at the meeting.

- d. **PLAN 2008-140F: MEADOW OAKS, UNIT 1-C (ASHFORD OAKS) (5/3/09)* - located at 3414 Feliciana Lane. (Council District 12) (EA Partners)**

Note: The Planning Commission originally approved this plan on November 13, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection areas.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Verify exaction information to the approval of Division of Planning.
10. Addition of conditional zoning restrictions and development standards from approved development plan.
11. Denote the sanitary sewer easement across the greenway.
12. Resolve the extent and timing of the greenway dedication.

Note: The applicant requests a waiver of Article 4-7(d)(9)(c) of the Land Subdivision Regulations regarding the bonding of sidewalks (along the private street) that is not constructed.

The Staff will report at the meeting.

Staff Presentation – Mr. Martin stated that the Planning Commission originally approved these plans on November 13, 2008. He said that the applicant is now requesting a waiver to Article 4-7(d)(9)(c) of the Land Subdivision Regulations regarding the bonding of sidewalks (along the private street) that is not constructed.

Mr. Martin directed the Commission's attention to the final record plats, and oriented them to the surrounding area, noting that the subject property is located at 3414 Feliciana Lane. He said that the Meadow Oaks subdivision is located northeast of the Blackford Property development and west of the Greenbrier Subdivision.

Mr. Martin then stated that the applicant is requesting a waiver to bond the sidewalk (along the private street) that has not yet been constructed. He said that the Land Subdivision Regulations allows bonding of the final course of asphalt on a private street; but on a public street the sidewalks can normally be bonded without the need for a waiver. In this case, the applicant is requesting to bond the entire length of the sidewalk, which is approximately 5,000 ft.

In conclusion, Mr. Martin said that the staff had reviewed the applicant's proposal, and is recommending approval of the requested waiver for the following reasons:

1. The bonding of sidewalks on private streets has been agreed to by the Urban County Government Division of Engineering in the past in the defined Expansion Area, and will still allow the collection of a surety to ensure completion of all the sidewalk improvements to this subdivision.
2. Strict adherence with the Subdivision Regulations would create an undue hardship to the developer, requiring heavy construction equipment for home construction to drive over sidewalks, which could damage the sidewalks, resulting in the need to repair or replace an otherwise new sidewalk.

Approval of this waiver request is subject to the following condition being added to all three of these Final Record Plats, in addition to those originally approved by the Commission on 11/13/08:

- a. Collection of a financial surety by the Division of Engineering for the ultimate construction of sidewalks not initially constructed on private streets, to ensure their completion, subject to the approval of the Law Department.

Mr. Martin noted that the staff is recommending that the sidewalk construction be tied into the driveway apron construction, through the following additional requirement:

Approval of this waiver request is subject to the following condition also being added to two of three of these Final Record Plats (PLAN 2008-138F: MEADOW OAKS, UNIT 1-A & PLAN 2008-139F: MEADOW OAKS, UNIT 1-B), in addition to those originally approved by the Commission on 11/13/08:

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

- b. Denote: No certificate of occupancy shall be issued for any dwelling unit until the sidewalks are constructed in conjunction with the required concrete driveway apron.

Planning Commission Questions – Mr. Vaughn asked for clarification as to the location of Units 1A through 1C on the plats. Mr. Martin illustrated the location of each unit, and the greenway, as well as the location of the proposed HOA lot.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's recommendations, including the additional note previously mentioned by the staff. He requested approval of the waiver to Article 4-7(d)(9)(c) of the Land Subdivision Regulations for PLAN 2008-138F, PLAN 2008-139F and PLAN 2008-140.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Ms. Whitman, and carried 9-0 (Holmes and Penn absent) to grant the waiver for PLAN 2008-138F, PLAN 2008-139F and PLAN 2008-140, for the following reasons:

1. The bonding of sidewalks on private streets has been agreed to by the Urban County Government Division of Engineering in the past in the defined Expansion Area, and will still allow the collection of a surety to ensure completion of all the sidewalk improvements to this subdivision.
2. Strict adherence with the Subdivision Regulations would create an undue hardship to the developer, requiring heavy construction equipment for home construction to drive over sidewalks, which could damage the sidewalks, resulting in the need to repair or replace an otherwise new sidewalk.

Approval of this waiver request is subject to the following condition being added to all three of these Final Record Plats, in addition to those originally approved by the Commission on 11/13/08:

- a. Collection of a financial surety by the Division of Engineering for the ultimate construction of sidewalks not initially constructed on private streets, to ensure their completion, subject to the approval of the Law Department.

Approval of this waiver request is subject to the following condition also being added to two of three of these Final Record Plats (PLAN 2008-138F: MEADOW OAKS, UNIT 1-A & PLAN 2008-139F: MEADOW OAKS, UNIT 1-B), in addition to those originally approved by the Commission on 11/13/08:

- b. Denote: No certificate of occupancy shall be issued for any dwelling unit until the sidewalks are constructed in conjunction with the required concrete driveway apron.

- e. PLAN 2008-169F: MILLER STREET PROPERTIES (2/23/09)* - located at 220-242 Miller Street.
(Council District 1) **(2020 Land Surveying)**

Note: The Planning Commission originally approved this plan on December 12, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping 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. Clarify/denote sidewalk easement in both cross-section and on plan face.
8. Remove purpose of amendment note.
9. Addition of building lines.
10. Correct site statistics, Urban County Engineer's Certification and private access easement owner's responsibility note.
11. Clarify right-of-way location at lots 1 and 5.

Note: The applicant requests a waiver of Article 4-7 of the Land Subdivision Regulations regarding the bonding requirements for final improvements that are not constructed.

The Staff will report at the meeting

Staff Presentation – Mr. Martin directed the Commission's attention to the final record plat, and oriented them to the surrounding area, noting that the subject property is located at 220-242 Miller Street. He said that Miller Street is near the downtown area, between Second Street and Third Street, and is also near Jefferson Street. He then said that the Planning Commission had recently reviewed a development plan for this property that is proposing single family dwelling units and townhouses. Mr. Martin stated that the Planning Commission originally approved this final

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

record plat on December 12, 2008. He said that at that meeting there was a discussion concerning the width of the sidewalk and the conflict with the water meters and utility construction. He said that the applicant is now requesting a waiver to Article 4-7 of the Land Subdivision Regulations regarding the bonding requirements for final improvements that are not constructed. He said that due to the utility conflicts, the coordination of the required work and the asphalt plants closing for the winter, this has created an exceptional hardship on the applicant. With the granting of the waiver, it would allow the applicant to bond the final improvements to Miller Street. He noted that the remaining improvement is such a small portion that the applicant could provide the finances up front.

In conclusion, Mr. Martin said that the staff had reviewed the applicant's proposal, and is recommending approval of the requested waiver for the following reasons:

1. The closing of the asphalt plant for the winter season has created an exceptional hardship for the developer in coordinating and completing the remaining public improvements, resulting in a several month delay to sell the completed townhomes.
2. This waiver will not compromise the basic objectives of the Subdivision Regulations and should not impact the public welfare or safety, as only a small portion of the public improvements for on-street parking have not been completed. A letter of credit will provide the government the assurance that the public improvements will be completed in a timely manner.

Representation – David Doucoumes, applicant, was present. He said that he appreciated the Planning Commission, as well as the Planning Staff, for taking the time to help him through this long process. He said that there have been many setbacks throughout this entire process, including the issue of today's required meeting, and hopefully the process will go more quickly in the future. He again thanked the Planning Commission and the staff for their help.

In conclusion, Mr. Doucoumes said that he is in agreement with the staff's recommendations, and requested approval of the waiver Article 4-7 of the Land Subdivision Regulations regarding the bonding requirements for final improvements that are not constructed.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Questions – Ms. Roche-Phillips confirmed that the Commission will be waiving the requirement that would normally be required to be bonded. Mr. Martin said that the Commission would be allowing a bond to be posted in lieu of substantial completion of the improvements. Ms. Roche-Phillips asked if the improvements were close to completion. Mr. Martin replied affirmatively, and Mr. Emmons noted that the improvements in question will not be to the street (i.e. the through portion of the street); but rather for the off-street parking that will be added to the right-of-way of Miller Street.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 9-0 (Holmes and Penn absent) to grant the waiver to Article 4-7 of the Land Subdivision Regulations, for the following reasons:

1. The closing of the asphalt plant for the winter season has created an exceptional hardship for the developer in coordinating and completing the remaining public improvements, resulting in a several month delay to sell the completed townhomes.
2. This waiver will not compromise the basic objectives of the Subdivision Regulations and should not impact the public welfare or safety, as only a small portion of the public improvements for on-street parking have not been completed. A letter of credit will provide the government the assurance that the public improvements will be completed in a timely manner.

- f. PLAN 2004-226F: HIGBEE MILL RESERVE (5/7/09)* - located at 4180-4290 Harrodsburg Road.
(Council District 9) **(Eagle Engineering)**

Note: The Planning Commission originally approved this plan on September 9, 2004, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
5. Addition of street addresses and names.
6. Urban Forester's approval of tree preservation plan.
7. Greenspace Planner's approval of greenspace, greenways, and bike/pedestrian facilities.
8. Environmental Planner's approval of treatment of environmentally sensitive areas.
9. Addition of reciprocal parking and access note.
10. Denote: This property will be developed in accordance with the approved final development plan.
11. Review by the Technical Committee prior to plan signature.

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

Note: This plan was reapproved on October 13, 2005, and then again on September 14, 2006, subject to 11 conditions. The applicant was granted a one-year extension of that approval on September 13, 2007. The applicant now requests a reapproval of this plan.

The Staff Recommended: Reapproval, subject to the previous requirements.

Staff Presentation – Ms. Gallt directed the Commission's attention to the final record plat, and oriented them to the surrounding area, noting that the subject property is located at 4180-4290 Harrodsburg Road. She said that the property is zoned R-3, and it consists of a little over 15 acres. She then said that there are 22 lots located on the subject site, 13 of which are now recorded.

Ms. Gallt stated that this item was originally approved by the Planning Commission on September 9, 2004, and now the applicant is requesting reapproval of this item, subject to the original conditions listed on the agenda. She noted that at the end of September 2004, this item was reviewed by the Technical Committee; therefore, condition number 11 can now be deleted.

Planning Commission Questions – Mr. Vaughn confirmed that condition number 11 can be deleted. Ms. Gallt replied yes.

Representation – Jason Banks, Eagle Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2004-226F, subject to the conditions listed on the agenda, deleting condition number 11.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Richardson, seconded by Ms. Whitman, and carried 9-0 (Holmes and Penn absent) to reapprove PLAN 2004-226F, subject to the conditions listed on the agenda, deleting condition number 11.

Note: The next two items were heard simultaneously.

- g. PLAN 2007-06F: LOCHMERE ESTATES UNIT 1-A (MAPLE RIDGE) (5/7/09)* - located at 645 Chilesburg Road. (Council District 7) **(Eagle Engineering)**

Note: The Planning Commission originally approved this plan on January 11, 2007 and on June 14, 2007, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree preservation area(s).
6. Environmental Planner's approval of environmentally sensitive areas.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Addition of HOA maintenance note.
9. Correct conditional zoning notes.
10. Greenspace Planner's approval of pedestrian access.
11. Division of Fire's approval of emergency access and fire hydrant locations.
12. Division of Solid Waste's approval of refuse collection.
13. Correct vicinity map.
14. Locate tree planting easements on street cross-sections.
15. Complete exaction information.
16. Addition of public pedestrian easement.

Note: The applicant now requests a reapproval of this item, including a waiver to Article 4-7(d) of the Land Subdivision Regulations, which was approved on June 14, 2007.

The Staff Recommended: Reapproval, subject to the previous requirements, including Approval of the requested waiver, for the following reasons:

1. The bonding of sidewalks on private streets has been granted on a few occasions in the Expansion Area, and will still allow the collection of a surety to ensure the completion of all the planned pedestrian improvements to this subdivision.

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

2. Strict adherence to the Subdivision Regulations would create an undue hardship to the developer, requiring reconstruction of these private walkways once the temporary detention basin is converted to an amenity pond.
- h. PLAN 2007-07F: LOCHMERE ESTATES UNIT 1-B (MAPLE RIDGE) (5/7/09)* - located at 645 Chilesburg Road. (Council District 7) **(Eagle Engineering)**

Note: The Planning Commission originally approved this plan on January 11, 2007, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree preservation area(s).
6. Environmental Planner's approval of environmentally sensitive areas.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Addition of HOA maintenance note.
9. Correct conditional zoning notes.
10. Greenspace Planner's approval of pedestrian access.
11. Division of Fire's approval of emergency access and fire hydrant locations.
12. Division of Solid Waste's approval of refuse collection.
13. Correct vicinity map.
14. Locate tree planting easements on street cross-sections.
15. Complete exaction information.
16. Addition of public pedestrian easement.

Note: The applicant requests a reapproval of this item.

The Staff Recommended: Reapproval, subject to the previous requirements.

Staff Presentation – Mr. Taylor directed the Commission's attention to these final record plats, and oriented them to the surrounding area, noting that the subject property is located at 645 Chilesburg Road. He stated that these two items were original approved by the Planning Commission on January 11, 2007. He noted that Unit 1-A was approved with a waiver to Article 4-7(d) of the Land Subdivision Regulations for substantial completion of the sidewalks. He then noted the location of the sidewalk, the pedestrian access, and the private section of the walkway system. He said that the waiver was only for about 25 percent of the interior pedestrian easement, and that bond has been posted. He then said that 16 of the 18 lots have already been recorded, and the only lots remaining to be created on Unit 1-A are lots 19 and 42. He noted that Unit 1-B only has one lot recorded at this time.

Mr. Taylor stated that the Subdivision Committee had recommended reapproval for both of these requests, subject to the conditions listed on the agenda, as well as the reapproval of the waiver of Article 4-7(d) of the Land Subdivision Regulations, for the reasons provided on the agenda.

Representation – Bruce Simpson, attorney, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2007-06F and PLAN 2007-07F.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Brewer, seconded by Ms. Roche-Phillips, and carried 9-0 (Holmes and Penn absent) to reapprove of PLAN 2007-06F, subject to the previous conditions listed by the staff, including the granting of the requested waiver, for the following reasons: 1. The bonding of sidewalks on private streets has been granted on a few occasions in the Expansion Area, and will still allow the collection of a surety to ensure the completion of all the planned pedestrian improvements to this subdivision; 2. Strict adherence to the Subdivision Regulations would create an undue hardship to the developer, requiring reconstruction of these private walkways once the temporary detention basin is converted to an amenity pond; and to approve PLAN 2007-07F, subject to the previous conditions listed by the staff.

- i. PLAN 2008-162F: DENTON FARM, INC, UNIT 3, SECTION A (AMD) (5/1/09)* - located on Richmond Road at Ellerslie Park. (Council District 7) **(Strand Associates)**

Note: This plan was approved by the Planning Commission at its meeting on December 11, 2008, subject to the following conditions:

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

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

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. Correct plan title.
8. Denote exaction amounts to the approval of the Division of Planning.
9. Revise the Home Owners' Association notes.

Note: The applicant requests a waiver of Article 4-7(d)(1) of the Land Subdivision Regulations regarding the bonding of sidewalks that have not been constructed along a private access easement.

The staff will report at the meeting.

Staff Presentation – Mr. Martin directed the Commission's attention to the final record plat, and oriented them to the surrounding area, noting that the subject property is located on Richmond Road at Ellerslie Park. He noted the location of the Lake and the Reservoir areas, as well as the location of the townhouse area, which has been under development for some time. Mr. Martin stated that the plan was originally approved by the Planning Commission on December 11, 2008; and with that approval of the lotting pattern for the townhouses were developed. He noted that the subdivision and development plan that were approved show a continued street and a cul-de-sac that have not been platted as of yet.

Mr. Martin then stated that the applicant is now requesting a waiver to Article 4-7(d)(1) of the Land Subdivision Regulations regarding the bonding of approximately 150' of sidewalks that have not been constructed along a private access easement. He said that this waiver would allow the bonding of a private sidewalk in lieu of their construction. He then said that this will avoid the necessary rebuilding or repairing of the sidewalk from any type of damage that may occur during the home construction process.

In conclusion, Mr. Martin said that the staff is recommending approval of the applicant's request, for the following reasons:

1. The bonding of sidewalks on private streets has been granted in the past in the defined Expansion Area, and this waiver will allow the collection of a surety to ensure completion of the sidewalk improvements to this subdivision, resulting in no negative impact on public health and safety.
2. Strict adherence with the Subdivision Regulations would create an undue hardship to the developer, requiring the need to repair or replace new sidewalks damaged by construction traffic.

Approval of this waiver request is subject to the following condition:

- a. Collection of a financial surety by the Division of Engineering for the ultimate construction of the sidewalk not initially constructed on the private access easement, to ensure its completion, subject to the approval of the Law Department.

Representation – Carol Goes, Landscape Architect, was present representing the applicant. She stated that the applicant is in agreement with the staff's recommendations, and requested reapproval of PLAN 2008-162F. She noted that the staff did recommend that the surety be for both the LFUCG and the Home Owner's Association.

Audience Comment – Chairman Vaughn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Ms. Whitman, and carried 9-0 (Holmes and Penn absent) to approve PLAN 2008-162F, subject to the conditions listed by the staff, and granting the waiver to Article 4-7(d)(1) of the Land Subdivision Regulations, for the following reasons:

1. The bonding of sidewalks on private streets has been granted in the past in the defined Expansion Area, and this waiver will allow the collection of a surety to ensure completion of the sidewalk improvements to this subdivision, resulting in no negative impact on public health and safety.
2. Strict adherence with the Subdivision Regulations would create an undue hardship to the developer, requiring the need to repair or replace new sidewalks damaged by construction traffic.

Approval of this waiver request is subject to the following condition:

- a. Collection of a financial surety by the Division of Engineering for the ultimate construction of the sidewalk not initially constructed on the private access easement, to ensure its completion, subject to the approval of the Law Department.

- D. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Ms. Roche-Phillips, seconded by Mr. Day, and carried 9-0 (Holmes and Penn absent) carried to approve the release and call of bonds as detailed in the memorandum dated February 12, 2009, from Ron St. Clair, Division of Engineering.

A recess was declared by the Chair at 2:22 p.m. and the meeting re-convened at 2:34 p.m.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, January 8, 2009, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Ed Holmes, Lynn Roche-Phillips, Randall Vaughn, and Joan Whitman. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. CALLER PROPERTIES, LLC, ZONING MAP AMENDMENT & GENERAL TELEPHONE OF KENTUCKY, LOT 2, ZONING DEVELOPMENT PLAN

- a. MAR 2009-1: CALLER PROPERTIES, LLC (3/5/09)* - petition for a zone map amendment from a Light Industrial (I-1) zone to a Highway Service Business (B-3) zone, for 2.82 net (3.70 gross) acres, for property located at 3695 Nicholasville Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Retail, Trade and Personal Services future land use for the subject property. The petitioner proposes constructing two buildings on the property for a new grocery store and retail shops.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The requested Highway Service Business (B-3) zone for the subject property is in agreement with the Retail, Trade and Personal Services future land use recommendation of the 2007 Comprehensive Plan. Additionally, use restrictions are appropriate to make the proposed zoning compatible with other nearby B-3 zoning.
2. This recommendation is made subject to the approval and certification of ZDP 2009-4: General Telephone Company of Kentucky, Lot 2, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are to be prohibited at this location via conditional zoning:
 - a. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment, contractor equipment, tractor-trailer trucks, boats, travel trailers, mobile homes, or supplies for such items.
 - b. Cocktail lounges and nightclubs.
 - c. Car washing establishments.

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

- d. Motel or hotel.
- e. Kennels.
- f. Circuses and carnivals, even on a temporary basis.
- g. Taxidermy establishments.
- h. Pawnshops.
- i. Amusement park, fairgrounds, or horse racing track.
- j. Outdoor recreational facilities including go-cart tracks, archery courts, skateboard and roller skating tracks, trampoline centers, rifle and other fire-arm ranges, swimming pools, water slides and other water related facilities, and other similar uses.
- k. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
- l. Mining of non-metallic materials.
- m. "Advertising signs" as defined in Article 17-3(b)(1) of the Zoning Ordinance.

These restrictions are appropriate and necessary for the following reasons:

- 1. Existing multi-family residential and church uses are located within 500 feet of the subject property, directly across Nicholasville Road.
- 2. Most of the above uses are not recommended by the Comprehensive Plan at this location or in this area.

- b. ZDP 2009-04: GENERAL TELEPHONE COMPANY OF KENTUCKY, LOT 2 (3/5/09)* - located at 3695 Nicholasville Road and Rojay Drive. **(Barrett Partners)**

The Subdivision Committee Recommended: Referral to the full Commission. There were concerns about the access easement and access to Rojay Drive.

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

- 1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
- 4. Building Inspection's approval of landscape buffer.
- 5. Urban Forester's approval of tree inventory map.
- 6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
- 7. Depict access on adjacent property across access easement.
- 8. Add dimensions to receiving area.
- 9. Clarify parking calculations and document Ordinance compliance.
- 10. Denote all existing easements.
- 11. Resolve reciprocal parking and access.
- 12. Add access easement cross-section.
- 13. Discuss proposed access.

Zoning Presentation - Ms. Wade presented the staff report, and said that the petitioner is requesting a zone change from a Light Industrial (I-1) zone to a Highway Service Business (B-3) zone for property located at 3695 Nicholasville Road. She briefly oriented the Commission to the location of the subject property using a rendered zoning map, and said that the subject property is located at the northwest corner of the intersection of Rojay Drive and Nicholasville Road. She then said that Rojay Drive is a public street that extends west toward Mall Road, and it connects into the most recent expansion of Fayette Mall, also known as Fayette Commons. The existing use of the subject property is a Man O' War Ford car dealership that is planning to move to Jessamine County. Ms. Wade stated that the zoning in this area is mostly commercial; but the western side of Nicholasville Road has B-6P zoning to the north and west; an I-1 zone is to the immediate south, with B-3 zoning further toward Man O' War Boulevard. To the east and across Nicholasville Road there is a multi-family residential use, as well as a church.

Ms. Wade stated that the applicant is proposing to construct a 14,500 sq. ft grocery store and a 15,700 sq. ft. retail building on the redeveloped site. She provided an aerial photograph and oriented the Commission to the surrounding area and the nearby streets, as well as the existing uses near or adjacent to the subject site.

Ms. Wade then said that the 2007 Comprehensive Plan recommends Retail, Trade and Personal Services, which is the same land use proposed for a very large stretch down Nicholasville Road toward the east of this site. The Retail, Trade and Personal Service land use category does agree with the business zoning along Nicholasville Road; but when a B-3 zone is requested, the staff often recommends conditional zoning restrictions, due to the several type of uses within that zoning category that do not agree with a Retail-Trade and Personal Services land use. Some of the uses proposed for

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

exclusion at this location include hotels and motels, adult related businesses, as well as cocktail lounges, among many more.

In conclusion, Ms. Wade stated that the staff is recommending approval of the requested zone change, and also recommends that conditional zoning restrictions be attached that will reflect the same restrictions as the remainder of the general area. She said that the staff believes that conditional zoning restrictions are appropriate, especially with the residential and church being directly across from the subject site.

Since the January Zoning Committee meeting, the staff has met with the applicant's representative. She said that they have expressed a desire to remove some of the conditional zoning restrictions that are listed on the agenda. She said that the staff believes that pawnshops can be removed because they are a conditional use in the B-3 zone and require approval from the Board of Adjustment, after notification to neighboring property owners. Ms. Wade stated that the staff believes that the remaining conditional zoning restrictions are appropriate for this location and should remain if this property is rezoned to I-1.

Zoning Development Plan Presentation – Mr. Martin presented the revised preliminary development plan to the Commission, and oriented them to the surrounding street system, which includes Nicholasville Road, Rojay Drive and Mall Road. He pointed out the access easements leading from the Mall area at the rear of the subject site, noting the applicant is now proposing a 16,800 sq. ft. grocery store and a 13,400 sq. ft. retail building. He said that the amount of traffic anticipated requires 104 parking spaces, and the applicant is proposing 132 spaces.

Mr. Martin stated that the original submittal had caused a concern with the access and circulation proposed into the subject site, in particular, the rear of property and along Rojay Drive. He said that the applicant is now proposing a different layout of the parking area, as well as widening the rear entrance to allow larger trucks to enter and exit the loading dock area. He then said that there was a considerable amount of discussion at the Subdivision Committee meeting regarding the entrances along Rojay Drive, and this is what led the Committee to recommend a referral of this plan to the full Commission. With the revised plan, the applicant is now proposing a right-in only for the first access point west of Nicholasville Road, which will help relieve the stacking of vehicles coming from US 27 onto Rojay Drive.

In conclusion, Mr. Martin noted the conditions listed on the agenda; however, with the revised preliminary development plan submitted, the staff is comfortable with recommending approval of this development plan. The staff is recommending a change to condition number 13 from "Discuss proposed access" to "Resolve proposed access." He said that condition number 13 could be resolved at the final development plan stage.

Planning Commission Questions – Ms. Copeland asked for the staff to comment on the proposed access to this site from the mall area. Mr. Martin said that there was discussion about an access leading from the subject site into the mall area near Nicholasville Road. He then said that if it were possible, the applicant would be willing to provide a connection into the mall property. The applicant has it shown on the revised plan; but at this time, it would be hard to say when it would be connected into the mall service road.

Ms. Copeland confirmed that the access point into the mall area is only a possibility. Mr. Martin replied affirmatively, as it is only a possibility at this time.

Petitioner's Presentation – Tony Barrett, Barrett Partners, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations. As for the previous commentary by the staff, he clarified that they did not request pawnshops and they do not envision the need for a pawnshop in this area; but if the opportunity should arise, then that would involve a conditional use review. He then requested that cocktail lounges, hotels and motels and advertising signs be removed from the conditional zoning restrictions, as well.

As for the development plan recommendations, Mr. Barrett stated that they are in agreement with the staff's conditions for approval, as well as resolving condition number 13 at the final development plan stage. He said that the issue of the first entrance has been addressed by placing a right-in only, while leaving the existing access easement at its original location. He then noted that there would be the possibility of an access point into the mall area, when that becomes available. He said that there will be three accesses into the property, two of which will allow exiting out of the subject property, with the possibility of an additional in and out access toward the mall area in the future.

In conclusion, Mr. Barrett said that they are in agreement with the recommendations and requested approval of MAR 2009-1 and ZDP 2009-04.

Planning Commission Questions –Chairman Vaughn asked if the Commission could hear from the Traffic Engineering staff.

Jeff Neal said that he could not add anything further, but he would be glad to answer any questions from the Commission.

In reference to the first entrance, Mr. Owens asked how the entrance will be built to keep it a right-in only. Mr. Neal said that the entrance will be narrowed and angled, as has been done in other locations around town. He then said that the objective is to simplify the entrance and lessen any conflict points, while taking some of the traffic off of Rojay Drive. The design of the entrance will need to be narrowed to keep the majority of people from making a wrong turn.

Ms. Roche-Phillips asked if there is comparative data available on the traffic counts and volume, based upon what is existing versus what is being proposed. Mr. Neal said that this site did not generate enough traffic to warrant a traffic impact study; therefore, the staff did not collect any data on the counts or volume.

Rob Hammons, Transportation Planning, previously submitted a memo to the Commission, to which he referred during his presentation. Mr. Hammons stated that in this memo, he provided data for the total new trips generated between the existing land use vs. the proposed land use. He said that with this proposed use there will be less than 100 new trips inbound and outbound in the PM peak hours, which is just under the threshold. He then said that the right-in only will help decrease traffic stacking on Rojay Drive. He noted that he had given this information to the Technical Committee, as well.

Planning Commission Questions – Ms. Roche-Phillips asked for clarification of the data sheet. Mr. Hammons explained how the figures that are shown on the data were calculated using the current ITE Manual.

Ms. Copeland asked if Nicholasville Road is at capacity. Mr. Hammons said that, at times, Nicholasville Road is at capacity depending on the time of day. He then said that retail traffic usually does not impact the area until later in the day. Ms. Copeland asked if there could be added an auxiliary lane. Mr. Hammons responded that an auxiliary lane would replace the turn lane into Rojay Drive. Ms. Copeland confirmed that this proposal will only add an additional 99 incoming and outgoing pm peak hour trips. Mr. Hammons replied affirmatively. Ms. Copeland then asked if Nicholasville Road has any extra capacity. Mr. Hammons replied that it does. Ms. Copeland confirmed that there was a request that a traffic impact study be performed. Mr. Hammons said that for any proposed development that is near the threshold limits, a traffic impact study is recommended, but not required by law. He then said that when an applicant proposes a certain type of land use, and there is more square footage involved, a study is recommended to show the details of the traffic flow. Ms. Copeland then asked if there is transit available in this area that will travel toward Jessamine County. Mr. Hammons said that there is a transit line in the general vicinity; but as for the location, he is unsure. Mr. Sallee stated that in speaking with Joey David, Sr. Transit Planner, there are 3 transit routes that currently serve the general vicinity, but noted that none of the routes currently extends into Jessamine County. Mr. Hammons said that the Comprehensive Plan shows potential routes going toward Jessamine County in the future.

Mr. Owens asked, since the right-in only aligns with the existing commercial service road, which is directly across from the subject site, what will keep the traffic from driving straight across Rojay Drive. Mr. Neal said that the first entrance will be shifted down toward Nicholasville Road, which will help keep vehicles from coming straight across Rojay Drive there. Mr. Vaughn noted that this proposal is a preliminary development plan; therefore, the Commission will have another opportunity to review this plan before any construction occurs.

Public Comment - No citizens were present to speak to this request.

Petitioner Rebuttal – Mr. Barrett said that they did not believe this property would have benefited from a traffic study, and this is why one was not provided. He then said that the 2007 Comprehensive Plan recommends business use for this site, as well as for the majority of the Nicholasville Road area. He noted that their goal is to catch the traffic traveling up and down Nicholasville Road, and for this type of use they do not believe it will generate any more traffic than what is already in this area. Again, Mr. Barrett said that a traffic impact study was not warranted for this proposal. As for the entrances into the site, they were aligned to keep the traffic flowing smoothly. He said that this is only a preliminary development plan; therefore, the Planning Commission will have the opportunity to review this property again.

Staff Rebuttal – Mr. Martin clarified that condition number 13 should read: “Denote: the proposed access shall be determined at the final development plan.”

Planning Commission Comments - Mr. Vaughn said that the staff is recommending approval of MAR 2009-1, with conditional zoning restrictions, deleting the following item:

Item h. pawnshops

He said that the applicant has requested that the additional items be deleted:

Item b. Cocktail lounges and nightclubs

Item d. Motel and hotel

Item m. "Advertising signs" as defined in Article 17-3(b)(1) of the Zoning Ordinance

Mr. Vaughn then said that the zoning development plan is also being recommended for approval, with the noted changes previously mentioned by Mr. Martin.

Zoning Action - A motion was made by Mr. Cravens, seconded by Ms. Whitman, and carried 9-0 (Holmes and Penn absent) to approve MAR 2009-1, with conditional zoning, for the reasons provided by staff, deleting pawnshops (Item h) from the list of conditional zoning restrictions.

Development Plan Action - A motion was made by Mr. Cravens to approve ZDP 2009-4, subject to the conditions as listed on the agenda, changing condition #13 to read: "Denote: the proposed access shall be determined at the final development plan."

Ms. Wade clarified that a 14th condition should be added to reflect the conditional zoning restrictions being added.

Mr. Cravens amended his motion, and noted that the following condition should be added to ZDP 2009-4:

The motion was seconded by Ms. Copeland, and carried 9-0 (Holmes and Penn absent).

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. **ZOTA 2009-1: AMEND ARTICLE 9: GROUP RESIDENTIAL PROJECTS** – petition for a Zoning Ordinance text amendment to Article 9 to simplify existing regulations regarding open space and yard setbacks, and to provide for pedestrian accommodations and bicycle parking.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Copies of the latest draft for this text are available upon request)

The Zoning Committee Recommended: Postponement, to allow staff more time to evaluate alternative text

The Staff Recommends: Approval, for the following reasons:

1. The proposed text amendment to Article 9 of the Zoning Ordinance, which regulates Group Residential Projects, will allow for more appropriately scaled and designed Group Residential Projects by reducing the required Project perimeter yards, allowing indoor recreational facilities to meet open space requirements, requiring adequate pedestrian connections, limiting over-building of surface parking and requiring bicycle parking space.
2. These changes will allow for slightly more dense development of our urban land without compromising open space and recreation amenities that benefit the residents of such Projects.
3. The proposed amendments to Article 9 will simplify Group Residential Project regulations for those designing townhouse and apartment development plans, as well as for the Planning Commission and the LFUCG staff who administer the Zoning Ordinance.

Staff Comments – Ms. Wade stated that at the February 5, 2009, Zoning Committee Meeting, a recommendation was made to postpone ZOTA 2009-1 for one month to the March hearing, to allow the staff more time to evaluate the language of the text. She said that the staff is also requesting postponement of this item to the March 26, 2009, Planning Commission meeting.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 9-0 (Holmes and Penn absent) to postpone ZOTA 2009-1 to the March 26, 2009, Planning Commission meeting.

2. **ZOTA 2009-2: AMEND ARTICLE 1-11 TO ALTER DEFINITIONS OF "DWELLING UNIT" AND "EXTENDED-STAY HOTEL"** (2/13/09)* – petition for a Zoning Ordinance text amendment to Article 1-11 to alter definitions of "dwelling unit" and "extended-stay hotel" to limit short-term rental of dwelling units being used for and zoned for residential purposes.

INITIATED BY: Urban County Council

PROPOSED TEXT: (Note: Text underlined indicates an addition, and text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)

ARTICLE 1: GENERAL PROVISIONS AND DEFINITIONS

DWELLING UNIT - One room or rooms connected together, constituting a separate, independent housekeeping establishment for occupancy by a family as owner, by rental or lease on a ~~weekly~~, monthly or longer basis, or for a period of time between one week and one month no more than four times per year; physically separated from any other rooms or dwelling units which may be in the same building, and containing independent kitchen and sleeping facilities.

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

EXTENDED-STAY HOTEL - Multiple family dwelling(s) with rental or lease of units allowable for less than one month in duration without restriction week, provided such rentals or leases of less than one week shall comprise less than 50% of the total dwelling units within the structure(s).

The Zoning Committee Recommended: **Referral to the full Commission.**

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed text amendment would limit short-term rental and/or lease of dwelling units to no more than four times per year, which will allow for some reasonable level of rental and/or lease of residential units on less than a monthly basis, while providing additional protection to neighborhoods and adjacent property owners from traffic and noise nuisance problems associated with more frequent rentals.
2. The proposed definition change will properly regulate the anticipated rental of residences during the 2010 Alltech World Equestrian Games in a fashion similar to and respectful of the past practices associated with the rentals during local horse racing meets and sales, and will largely accommodate the continuation of rentals associated with those annual equine events (up to four times per year).
3. The corollary change proposed to the definition of "extended-stay hotel" is to avoid any confusion that the dwelling units available in an extended-stay hotel (containing full kitchen facilities) would be impacted by the proposed change to these new rental restrictions for single-family, two-family and other multi-family residential dwelling units.

Staff Presentation: Ms. Wade presented a packet of information to the Commission, which included the staff report, Urban County Council Resolution #719-2008, letters of opposition and support, a list of zoning classifications and the type of dwelling units permitted in each zone, as well as different definitions of "dwelling units" from other areas in Kentucky. She said that the Lexington-Fayette Urban County Council had initiated this text amendment to revise the definition of a dwelling unit and an extended-stay hotel for Article 1-11 of the Zoning Ordinance. Ms. Wade stated that since this item was initiated by the Urban County Council, the Planning Commission has 60 days to take action. She said that the staff had received notice from the Council on December 15, 2008; therefore, the Planning Commission must make a recommendation today.

Ms. Wade stated that the staff had reviewed the Council's proposal to amend Article 1-11 of the Zoning Ordinance, as well as the precipitating events that led to this proposed change. She said that the first event involved a complaint about the rental of a dwelling unit within the rural area of Fayette County. She then said that the rental of this property was on less than weekly basis; however, it had turned into a weekly basis after awhile. The issue of residential property owners renting or leasing their dwelling units on a weekly, monthly or longer term was then brought to the attention of the Council. She said that if a property is rented 52 times a year, this can become disruptive to the surrounding properties and neighborhoods. Ms. Wade stated that the second precipitating event for this proposed change is the upcoming Alltech World Equestrian Games in 2010. She said that often residential units are rented out for horse racing events or horse sales on a regular basis, and the Council understands that there must be some flexibility; however, they also understand renting a residential unit 52 times a year is more of a commercial use, not a residential use. She noted that these two events are what prompted the proposed change to the definition(s) in Article 1-11 of the Zoning Ordinance.

Ms. Wade stated that the current restrictions for weekly, monthly or longer term is directly tied to the State Building Code, which defines residential use as being on a weekly or longer basis. The State Building Code also defines transient use as being rental for less than seven days. She said that in researching this issue, the staff found a case where a bed and breakfast was approved in the 80s for Rokeby Hall on South Mill Street; and since Rokeby Hall is within a residential area, they were required to submit an affidavit to the LFUCG stating that the rentals would either be on a weekly or longer basis. She then said that the staff also found where the Zoning Ordinance was amended in the 90s; and with that amendment, there were more restrictions placed upon these types of uses. She noted that over the past years, the staff did find that the State Building Code no longer regulates transient use or the length of the stay.

Ms. Wade said that the revised definition of dwelling unit now proposed for the Zoning Ordinance will change how often rental and leasing of dwelling units can occur in the future. She then said that the Urban County Council would like to restrict rental of residential dwelling units to a minimum of a month or longer stay. With the knowledge of the upcoming World Equestrian Games and the annual horse sale and racing events, it was clear that flexibility was needed, so the Council proposed an allowance for property owners to lease their homes up to four times a year with stays ranging between one week and one month. This amendment will no longer allow residential dwellings to be rented on a weekly basis, year around, which is considered to be commercial use and not a residential use.

Ms. Wade stated that the corollary change now proposed to the definition of "extended-stay hotel" is to avoid any confusion that the dwelling units within the extended-stay hotel would be the same as a dwelling unit for single-family, two-family or multi-family residential dwelling units. She said that dwelling units and extended-stay units would not be restricted to the month or longer period of time; but the single-family, two-family and multi-family units would be restricted to the new requirements being proposed.

Ms. Wade said that the staff had researched seven different communities inside and outside of Kentucky, to see how their Zoning Ordinance defines dwelling units and how rental units were being restricted; and for the communities such as Orlando, Florida; Virginia Beach, Virginia; and Myrtle Beach, South Carolina, rental of dwelling units is restricted to 30 days or longer. She said that the proposed definition change would be consistent with other communities. She then said that Paducah, Kentucky did not have any restriction listed; and Bowling Green, Kentucky is similar to what Lexington currently has listed. Ms. Wade noted that three communities outside of Kentucky mentioned timeshares, which concerned some members of the Planning Commission. She said that timeshare is a form of transient use if the occupancy period is less than 30 days, and is considered a commercial use. She then noted that Orlando, Florida considers a timeshare as being the same as a hotel or motel, and is considered to be a commercial dwelling unit. In Virginia Beach, Virginia, if the occupancy is less than one month, it is considered to be a lodging unit, which is also considered to be a hotel. Ms. Wade stated that the staff believed the proposed change is in line with other communities; but they also recognize that the proposed change will affect the property owners who rent their dwelling units on a nightly or weekly basis. The staff has received letters of opposition from several property owners; and in some cases, these property owners are in violation of the existing Ordinance by how they rent their property. She said that allowing nightly rental in a dwelling unit within a residential area is in direct violation of the current Zoning Ordinances; and the only way to have nightly stays is for that unit to function as a hotel, motel, or a bed and breakfast. She noted that a bed and breakfast requires the property owner to live on site, as well as acquiring the Board of Adjustment's approval for that use. Ms. Wade said that the staff does agree with the Law Department in saying rental of dwelling units on a weekly basis is more of a commercial use; however, the staff also understands that the World Equestrian Games will need some reasonable flexibility.

In conclusion, Ms. Wade said that the staff is recommending approval of the proposed text amendment, for the following reasons:

1. The proposed text amendment would limit short-term rental and/or lease of dwelling units to no more than four times per year, which will allow for some reasonable level of rental and/or lease of residential units on less than a monthly basis, while providing additional protection to neighborhoods and adjacent property owners from traffic and noise nuisance problems associated with more frequent rentals.
2. The proposed definition change will properly regulate the anticipated rental of residences during the 2010 Alltech World Equestrian Games in a fashion similar to and respectful of the past practices associated with the rentals during local horse racing meets and sales, and will largely accommodate the continuation of rentals associated with those annual equine events (up to four times per year).
3. The corollary change proposed to the definition of "extended-stay hotel" is to avoid any confusion that the dwelling units available in an extended-stay hotel (containing full kitchen facilities) would be impacted by the proposed change to these new rental restrictions for single-family, two-family and other multi-family residential dwelling units.

Citizen Support – Chairman Vaughn asked if anyone in the audience wished to come forward in support of this text amendment.

Knox Van Nagell was present on behalf of the Fayette Alliance. She read portions of her letter into the record. (A copy of the complete letter is attached as an appendix to these minutes).

She stated that the Fayette Alliance is a group representing agricultural, neighborhood and development interests, whose aim is to promote urban and rural vitality here in Fayette County. She said that farmland preservation, the promotion of our signature agricultural industries, and the revitalization of our urban core are essential pillars of their organization; and, more importantly, to the county's future prosperity. She then said that Council is proposing a text amendment (ZOTA 2009-2) to Article 1-11 of the Zoning Ordinance that will change the definition of a dwelling unit and an extended stay hotel. If adopted, this text amendment would allow home rental on a monthly basis or for a period between one week and one month, up to four times a year in Fayette County. She said that such rental requirements will address some of the temporary housing needs of major local events, such as the 2010 World Equestrian Games, and the annual Keeneland and Fasig-Tipton thoroughbred sales. On the other hand, it will also prohibit home rentals for a period of time less than one week, discouraging the presence of disruptive, transient, nonresident renters within the agricultural area and the neighborhoods. She said that an emerging phenomenon is happening with real estate markets decreasing and rental properties increasing in numbers. She then said that they feel this text amendment achieves the delicate balance of advancing local tourism and individual property rights, while promoting stability and safety in our residential and rural areas. Accordingly, The Fayette Alliance joins the LFUCG Planning Staff, the Fayette County Neighborhood Council and the Fayette County Farm Bureau by supporting ZOTA 2009-2.

Tony Hancock, residing at 1783 Iron Works Pike, was present, and said that his family owns and operates 300 acres of land, known as North Fork Farm. He presented a PowerPoint presentation to the Commission, and gave a brief summation of each slide. (A copy of the presentation is attached as an appendix to these minutes). The presentation consisted of photos of an adjoining property, as well as reasons for his support of the text amendment. It was his opinion that the use of the adjoining property was in violation of current zoning regulations.

Mr. Hancock oriented the Commission by showing the layout of the surrounding area, the location of his property, relative to the area. He said that the offending property is noted by the red dot on the photo.

Mr. Hancock said that there are two structures on the neighboring property that are being operated as a hotel. He then said that the property is advertised on the internet (www.vacationhomes.com) with rates ranging from \$400 to \$1,000 per night, depending on which structure is used. The website states that this property is perfect for multi-family, large groups and events, despite the difference in how it is represented to Code Enforcement. The website also says the property will provide such amenities as linens, toiletries, a stocked refrigerator, and so forth.

Mr. Hancock stated that the property owner, Skip Jackson, does not reside on site; but, rather, his family lives in Tennessee. He made note that this is not a dispute between neighbors because he has known the Jackson family for a long time and there are no hard feelings toward them; rather, this is a business problem. He then said that he is trying to run a thoroughbred breeding operation, and the Jacksons are trying to run a hotel, and these two uses do not mix side by side. He noted that this is a dangerous situation to humans, who are not familiar with horses, as well as being dangerous to the animals, who are curious about people. He said that people don't realize that a horse will bite, kick or otherwise harm them. He then said that he has personally seen people feed his horses' walnuts, which is harmful to them. Mr. Hancock stated that he has warned both children and adults about the specific dangers of petting and feeding a thoroughbred horse. He said that he has witnessed children being in the field where the horses are located, which creates a highly dangerous situation. He then said that he has seen the neighboring dogs run on his property; and by law, within the rural area, a property owner can take action against that situation. There is also a noise problem due to the frequent parties and alcohol consumption.

Mr. Hancock said that this situation had started with him contacting Building Inspection in June, 2008. In return, he had received a letter from Jim Hume, Sr. Inspector, who stated that there is no violation occurring. He then said that he had contacted Councilman Lane, who then spoke with Ms. Boland, LFUCG attorney. Ms. Boland had subsequently issued a letter stating that this type of business use is prohibited within the A-R zone. Mr. Hancock stated that the Jacksons attorney, Richard Murphy, has stated that his clients are in compliance with today's ordinance, and weekly rentals are allowed. However, the party operation has continued and these two houses have been rented every weekend until a few weeks ago. He said that his attorney had called Mr. Jackson to inquire about renting one of the houses, and Mr. Jackson stated that an agreement would need to be signed to reflect a weekly rental, but, in reality, they would only be charged by the day.

At this time, Mr. Hancock illustrated a series of events that had occurred on the Jackson property after Mr. Jackson had retained Richard Murphy as their attorney. The first documentation is a "Wedding Reception" that was held on October 5, 2008. These pictures illustrated the reception tent, the vehicles parked on the land and signage leading to the site.

Mr. Murphy, who was present, noted their objection, and said that he was not sure the Commission wanted to get involved in specific events, because an Ordinance was being considered for all of Fayette County. Chairman Vaughn noted Mr. Murphy's objection, and said that Mr. Hancock had attended two Committee meetings. He was told at that time, he would have the opportunity to present his case to the Commission.

Mr. Hancock continued with the second documentation, and said that on October 25, 2008, another "Wedding Reception" was held on the property. These pictures illustrated the vehicles parked on the property and balloons leading to the site. The third documentation was a "Woman Party" held on November 1, 2008; and with this party there were over 10 cars and vans, with additional balloons leading toward the site. He noted that for both of these parties, guests fed and petted the horses on his land.

In conclusion, Mr. Hancock requested that the Planning Commission provide him some type of relief. He said that people are saying this type of use is in violation of the existing Ordinance; and, if so, the Ordinance needs to be enforced. If this type of use is not in violation of the current Ordinance, then the Ordinance needs to be amended to address the issue. The staff and the Council have been supportive in this request, and he requested that the Planning Commission support it as well and provide adequate enforcement that is needed. He then asked that this process be expedited due to the close calls that have occurred between the horses and people. Mr. Hancock concluded with a request that the text amendment be approved.

Chairman Vaughn asked if any additional audience members wished to come forward in support of this text amendment. There was no response.

Citizen Opposition - Chairman Vaughn asked if anyone in the audience wished to speak in opposition of this text amendment.

Richard Murphy, attorney, was present on behalf of Mr. and Mrs. Jackson. He submitted an exhibit packet to the Commission, and said that this is a result of a dispute between neighbors, and there are two sides to every story. He then said that they appreciate the Planning Commission listening to this case, and there will be a lot of details presenting explaining why it is a neighborhood dispute.

Mr. Murphy stated that his clients, Ramon "Skip" and Janie Jackson are native of Kentucky, who owns the property at 1791 and 1795 Iron Works Pike. He said that their land consists of 18 acres, and Mr. Hancock's land consists of 10 acres, not 300

acres. He then said that the land in this area does not conform to the standard 40 acres required for agricultural use within this community. Mr. Jackson owns horses, as well as being in the horse industry. He said that his clients commute between Lexington, Kentucky and Nashville, Tennessee due to employment opportunities. He then said that Mr. Jackson has a special needs son, who sees a doctor located in Lexington, which is one reason they have maintained this home. Mr. Murphy said that the home is rented out only 20 percent of the time, his clients and their families use the property about 30 percent of the time, and the remaining time the house is vacant.

As for the property located at 1795 Iron Works Pike, Mr. Murphy said that for the past few months the Jacksons have rented out this house to a family that is moving from Atlanta, GA. He said that this family is currently waiting on their house to be completed, and having a temporary rental agreement has been extremely helpful to them.

Mr. Murphy said that this property is very helpful to the tourism industry, since it is very near to the horse park and the events that will be held there. Referencing the exhibit previously handed out, he directed the Commission attention to pages 1 and 2, and said that the CEO of the U. S. Equestrian Federations (USEF) has stated that "he sees the World Games, the Horse Park's growth and its new ability to hold events year-round, and the possibility of tweaking the Breeders Incentive Fund as a perfect storm to make Kentucky the sport horse capital of the United States." He further said that a spokeswoman for the Horse Park had stated that "the park receives more business than it can handle - it is booked through 2010 and it turns away about 25 shows a year." Mr. Murphy said that the horse park is building a new indoor arena, which will allow more possibilities for Lexington; and with horse related events; some people will want to stay on the same property as their horse. He then said that his clients have a 16-acre paddock, which is ideal for those people who are in an event at the horse park. The Kentucky Horse Park hosts events, which mandates the horses be housed on site; however, there are some events that do not have that requirement, and the Jacksons are providing an off-site facility. Mr. Murphy said that if Lexington is going to be the horse capital of the world, then facilities such as the Jacksons are needed.

Mr. Murphy stated that the picture of the tent that was shown in the Herald-Leader is irrelevant to this case. He said that this was not an event that was done by a paid guest, but rather Mr. Jackson's personal friend. He then said that it is not illegal to have a party in the A-R zone; if it were, then everyone who has had a Derby party would be in violation. He noted that the Hancocks have done things in the past that do not conform to being neighborly either. He said that the way to solve this dispute is face to face, which will be done through mandatory mediation that has been scheduled in the next few days, where a written agreement will be drafted for these neighbors. This change is not needed because it will affect everyone in the Fayette County area. Mr. Murphy referenced pages 11 through 14 of the exhibit, and said that they are objecting to this text amendment, based upon the following direct violations:

- 1) Code of Enforcement Section 12-54. Landlord-tenant act, which states the Urban County Government hereby enacts the provisions of the Uniform Residential Landlord and Tenant Act as set forth in the Kentucky Revised Statutes.
- 2) The Uniform Residential Landlord and Tenant Act states that "no other ordinance shall be enacted by a city, county or urban county government which relates to the subjects embraced in KRS 383.505 to 383.705."
- 3) KRS Section 383.565, Terms and conditions of rental agreement state that "a landlord and a tenant may include in a rental agreement terms and conditions not prohibited by KRS 383.505 to 383.715 or other rule of law, including rent, terms of the agreement and other provisions governing the rights and obligations of the parties.
- 4) KRS Section 383.695 Periodic tenancy - holdover remedies states that "the landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven (7) days before the termination date specified in the notice."

Mr. Murphy said that in speaking to the Fair Housing Council, they stated that when rent is paid weekly, the terms are based upon a week-to-week agreement. He then said that another reason they are against this text amendment is that changing the Ordinance will impact every resident within this community, especially the companies providing rentals for executive levels. Another impact would be the lower income rentals, which provides housing on a week-to-week basis. He said that Mr. Morton with the Human Rights Commission is present, and he will be speaking on the effects that this change would have to lower income people.

Referencing exhibit pages 3 through 10, Mr. Murphy stated that the tourism industry will also be impacted. He said that Kentucky wants to be known as the "Horse Capital of the World;" but what is being said with this text amendment is that an appropriate facility cannot be used year around. He then said that Charleston, South Carolina was being used as an example; but what needs to be known is that Charleston is a beach town, which rents out their facilities nightly or weekly. He said that Charleston, SC is a functioning city, it is the second largest city in South Carolina, and it is the financial capital of South Carolina. In researching the vacation rentals within Charleston, there are several places that advertise renting on a weekly basis throughout the city. These places include such facilities as townhouses, apartments, houses, etc., all providing nightly rates. He further stated that Louisville, Kentucky provides short-term rental for such events as the Riders Cup, the Kentucky Derby, the Breeders Cup and so forth.

Mr. Murphy referenced exhibit pages 18 through 21, and said that there are several comments made about the article that was listed in the Lexington-Herald Leader. He said that, in reading these comments, almost everyone is against this change to the Ordinance. He quoted the following comment found on page 21: "In this economy they (Planning Commission) better think long and hard about restricting this. Not to mention how will this affect those who are renting out property during the 2010

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

games. It will be hardest on those that have already agreed to rent out housing and stalls for that." He said that there are major implications to this text amendment that are beyond this issue.

In conclusion, Mr. Murphy stated that Mr. Hancock had made a complaint to the Division of Building Inspection over the summer. He said that his clients had then contacted his firm, and they had spoken with the Division of Building Inspection about this issue. He then said that in the beginning, his clients were under the impression that as long as the majority of the rentals were over a week, they could rent out their home on a nightly basis; however, the Division of Building Inspection had stated that was incorrect. Since that time, his clients have stopped the nightly rentals and they are only providing weekly rentals. He said that their advertisement now reflects weekly rentals, not nightly rentals; and everyone who rents from the Jacksons are informed of the ongoing issues, as well as what is prohibited on site. Mr. Murphy said that there is an existing Ordinance on record concerning noise, and as for the fireworks that Mr. Hancock had referenced, the Jacksons could not prove who set off the fireworks; but from past experience it was the surrounding neighbors. Mr. Murphy said that the Jacksons have placed "No Trespassing" signs along the property line, as well as informing their guests not to pet the horses. There will be no parties, and so forth. The people who rent from the Jacksons understand what the rules are for this property. Lastly, he said that the Jacksons are a valid non-conforming use. He then said that after they have spoken with the Division of Building Inspection, his clients received a letter stating that they were in compliance with the definition of a dwelling unit; thereby, complying with the principal uses in the A-R zone. Additionally, the Division of Building Inspection had determined that no application to the LFUCG Board of Adjustment was necessary at this time (page 17 of the exhibit). He said that this letter qualifies them as a legal use, as of September 4, 2008; and it also allows the Jacksons to rent their property on a weekly basis, even if the Ordinance is changed to reflect a monthly basis. He then said that before the idea of a bed and breakfast, properties within the R-3 and R-4 zones were allowed to be rented on a weekly basis. It was ruled that under the existing definition of a dwelling unit, a property owner could rent out their unit on a weekly basis. As of now his clients, as well as a number of other people are a non-conforming use; and the impact of this text amendment will affect both lower and higher income people - people who reside downtown, not just people in the rural area. Mr. Murphy said that the Council has imposed the 60-day deadline and the Planning Commission has little time to deal with this issue. He said that they do not believe this Ordinance is needed; and this text amendment has arisen due to the issue of a dispute between neighbors, adding that there is no need to subject the entire community to this issue when these parties could just sit down together and have a discussion. Mr. Murphy said that if the Planning Commission cannot recommend disapproval, then they could send this text amendment to Council with no recommendation. He said that they believe changing the Ordinance is not the solution, and he hopes the Planning Commission will review this request because it will affect the entire Lexington area.

Skip Jackson, owner of 1791 and 1795 Iron Works Pike, was present. He said that they had purchased this property in 1992 and they have made the farm into what it is today. He noted that they are Lexingtonians, not Nashville residents; and they rent the properties out when they are not in Lexington. He said that they want their kids to spend time on the farm and grow up here. He then said that this property is their family legacy, their heritage, and no one cares more about the Bluegrass or the integrity of the Bluegrass than his family.

Mr. Jackson noted that they do have a special needs child; but he does not want to get into the details of that subject. He said that this is a neighbors' dispute that has found its way to the Planning Commission and it will go on to the Council. He wants everyone to understand that Mr. Hancock has never once spoken to him about any problems that exist with his property. He said that he has called Mr. Hancock to see if there was anything that could be done; but his phone calls have never been returned.

Mr. Jackson stated that they do rent their properties on a weekly basis, which allows his family to continue to use the property when they are in Lexington. He said that if they had rented the properties on a longer lease that would prevent his family from enjoying their home. He then said that most of the guests coming to the house are extended family, who is non-paying guests.

Mr. Jackson then stated that since the article in the Herald Leader was published, he has received phone calls from all over the world from people, who could not believe how the article had spun into saying how property owners could use their land. He said that a former tenant who has stayed on the property, and who has been in several family events, knows how well maintained the property is. Mr. Jackson stated that they do rent their property on a weekly basis; but by the time the tenant receives the keys, they have been well investigated. He said that they do not allow "party people" to rent the house, as has been stated in the previous testimony; and as of now they feel uncomfortable on their own property due to this dispute. They are hoping this issue will be solved through mediation. He noted that if Mr. Hancock had approached him with this problem, he would have corrected it. He said that he was not aware of anything inappropriate taking place on his property. Mr. Jackson then said that he has informed the Brewers (on the opposite side) that, if they see anything inappropriate, they should call him. His father lives 2 miles from their home, he could very easily check on the property.

Mr. Jackson said that this Ordinance will not only have an effect on his property, but it will affect the entire county. He said that he has received so much support from people who do the same thing or from people who are amazed with an Ordinance being passed that could limit property owners' rights. He noted that this is a neighborhood dispute, and said that he was never contacted by any government offices regarding any type of complaints about his property.

In conclusion, Mr. Jackson said that he is already receiving phone calls regarding the World Equestrian Games (WEG), from both private individuals, as well as the official WEG sponsors. He then said that by limiting the number of times a property owner can rent out his/her house is heading in the opposite direction. Most of the WEG guests will not be staying for the entire week, but only a few days at a time. He said that some property owners, who have decided to rent out their home on a nightly basis, will not be able to leave their residence for more than a couple of days at a time. He then said that the property owners who have chosen to provide nightly rentals are trying to get ahead on their mortgage or bills. Mr. Jackson said that this proposal will make the situation with the WEG worse; it will not solve any problems. He then said that if it was the Council's intention to solve a neighborhood dispute and provide a solution to the WEG, it has failed. The Council should allow nightly rentals during the period of the WEG. He said that Louisville, KY allows weekend packages for special events such as the Kentucky Derby, Breeders Cup, and so forth, which generates more revenue for the city.

Paul Bracken, residing at 150 Larue Road, was present. He said that his family owns a home on South Upper Street, and they provide weekly rental to tourists. He then said that many of their guests would not come to Lexington if they could not rent a home. They are very particular about who rents their home because they want to make sure it is well taken care of. He noted that they do have a business license, and they pay taxes. He said that once the monthly mortgage has been paid, they reinvest the remaining money back into the renovation of this historic home. He then said that if they were not able to rent their home, they would not be able to maintain its history. If this amendment is passed, they would be forced to sell this home. He said that this proposal is a remedy for a specific problem between two properties and it will affect property owners that do not have such problems. He then suggested an alternative solution. The City should regulate licenses that will restrict the density, the number of residents, and so forth. It should have clear guidelines for both tenants and property owners; and any violation of these guidelines should result in an immediate removal of the tenants, at the same time only allowing the property owner "3 strikes" before revoking the license. Mr. Bracken said that with a more targeted solution it would allow property owners to keep their homes, while increasing tourism money and tax revenue for the City.

Kate Savage, residing at 619 Columbia Avenue, was present. She said that she lives within an R-1 district and her neighborhood surrounds the University of Kentucky and its student housing. She then said that, in listening to both sides, it is apparent that this is a neighborhood squabble and it should have never come before the Planning Commission. In her neighborhood, they deal with noise, trash, and loud parties every weekend, with no assistance or help whatsoever; rather they are expected to call Lexcall with any problem. She said that Mr. Bracken's suggestion for the "3 strikes" deal is a very good suggestion. Ms. Savage said that the Planning Commission is opening a can of worms with this proposal, and it seems to penalize a lot of people. She then said that she cannot see what the intention is behind this text amendment. A party on 20 acres is not as intrusive as it is in her neighborhood, and they are expected to tolerate this type of behavior. She said that they have been involved in Committee discussions for several years, with nothing resolved; but for some reason this issue came up and was pushed through. As president of the Columbia Heights Neighborhood Association, she asked how she can have a text amendment proposed for her neighborhood that would be processed this quickly. Ms. Savage said that a text amendment for the R-1 areas needs to be placed on the docket, not restricting property owners who are abiding the law. She asked, with regards to the WEG, where everyone would stay and who would regulate the "4 times per year" rule. She asked if the burden would be placed upon the neighborhood to monitor these rentals. She said that this text amendment is absurd and discriminatory. People who pay by the week can only rent by the week. In conclusion, Ms. Savage said that too much time is being spent on the tinkering of this regulation, when the R-1 areas need help with enforcement in the campus neighborhoods, which is where the Planning Commission and the Council need to focus their time.

Ms. Janie Jackson, residing at 1795 Iron Work Pike, was present. She said that the 4-week time period is arbitrary considering what events are held at the Kentucky Horse Park. She said that there are a number of events and sales that come to Kentucky, and people who are coming to these events and sales will only need to stay for a certain amount of time.

Janet Bracken, residing at 150 Larue Road, was present. She noted that her family owns and rents out 350 South Upper Street. She said that as the staff report states there was a reasonable attempt to compromise on the number of times a dwelling unit could be rented per year. She then said that the staff had also stated that there was concern that a dwelling unit being rented 52 times per year could result in a problem. There is a big difference between 4 times a year and 52 times a year; and in her case, her family often stays at 350 South Upper Street. She said that they have no desire to rent this house 52 times per year, even though there are several requests. She then said that they will need to be able to rent the house more than 4 times a year for the house to pay for itself, but they aren't even close to renting it 52 times per year.

Ms. Jackson said that she agreed with Ms. Bracken's statement.

Citizen Comments - William Wharton, Executive Director of the Lexington-Fayette Urban County Human Rights Commission, was present. He said that he is neither in favor of nor in opposition to the proposed text amendment. He said that he is present because the definition of "dwelling" concerns his staff with respect to them enforcing the local fair housing ordinance. He then said that they annually meet with the government staff to ask questions regarding the zoning and land use issues that have happened over the past 12 months to determine what effects any changes may have on fair housing issues. He said that when certain words such as "family, dwelling, single family dwelling, group home, and manufactured home" are tinkered with, it gets their attention. He then said that when amendments are proposed, this can restrict housing use; and when housing use is restricted, choices are restricted as well, and this concerns the staff with respect to fair housing. He then said

that the responsibilities of the landlord and the tenant are defined and can be enforced through the Landlord/Tenant Act. He believes that tinkering with the current definition is just as easy as changing the language and terms of a contract. He said that a person should be able to enjoy their property without ending up in front of the Planning Commission to resolve issues. In conclusion, Mr. Wharton said that he called the Social Security Administration; and even though there are no statistics being provided, they had concluded that for most people that are low to moderate income, this type of housing (i.e. week to week rental) is better for them. He then said that he is not sure that changing the Ordinance in this way would be in the community's best interest, especially with the current economy. He noted that these types of issues need to be addressed through the current Ordinance, rather than having people come in front of the Commission, asking to change definitions, citing previous discussions regarding changing the definition of "family." He then said that changes to these definitions will have neighbors against neighbors.

Staff Rebuttal – Referencing KRS 383.500, Ms. Wade said that, in speaking with the Law Department, the staff does not believe that the Landlord and Tenant Act prohibits the local government from regulating the term of rental to a monthly rental. She then said that it does speak to the situation where, if someone was renting on a weekly basis, then it sets out the condition that 7 days' notice must be given for termination.

Ms. Wade stated that as for the advertisement for Charleston, South Carolina, the staff had researched vacation rental web sites for Lexington; and according to one website there were 7 rental homes offerings, including the Jackson property and the Martin House. She said that a small number of people advertise their homes for rental on a weekly basis. She noted that it is difficult for the staff to assess how Charleston, SC regulates its rental homes based upon the information from one website.

Referencing KRS 100.211-(2), Mr. Sallee said that this is the state law that governs the Planning Commission's role when the Urban County Council initiates a text amendment. He then said that KRS 100.211-(2) does require the Planning Commission to hold a public hearing within 60 days of that text amendment being initiated. The Planning Commission is not able to send a text amendment forward to the Council without a recommendation, as Mr. Murphy had suggested. He said that, unless the Planning Commission wants to postpone this item for one additional day, today's meeting would be the last scheduled opportunity to take action on this proposed text amendment.

Mr. Sallee directed the Commission's attention to the staff rebuttal exhibit, and said that in the staff's research, the terms "Timeshare" and "Commercial dwelling unit" were discovered that do not appear in the current Zoning Ordinance. Mr. Sallee then said that the staff has attempted to list the types of local residential and transient uses from the highest intensity to the lowest intensity, as well as categorizing the uses to the respective zones, in which they are regulated. He said that the issue for the staff is whether these two terms should be categorized the same as an as single family home.

Planning Commission Question – Mr. Vaughn asked if the Planning Commission must make a recommendation according to KRS 100.211-(2). Mr. Sallee said that the only other option is for the Planning Commission to postpone this item for one more day. He said that the Commission would need to either approve or disapprove this item. Mr. Vaughn said that he wants to make it clear that the Commission will need to take action on this item.

Citizen Rebuttal – Mr. Hancock commented that Mr. Murphy has done a very nice job in presenting his clients' case; but some of the testimony given was not correct. According to Mr. Murphy, his clients only rent their property about 20 percent of the time, and that is not true. He said that he lives next to the Jacksons, and he knows better, because it has been rented every weekend. As for the party event held on October 5, 2008, Mr. Hancock stated that he had spoken with those guests, and they did not know who Mr. Jackson was. He said that he saw Mr. Jackson in his truck, who did not attend his own friends' wedding reception. He then said that that wedding announcement had read: "come as you like to, eat, drink and dance the night away." As for the letters of opposition those letters, he said that he was quite amused with them. The wording used to describe the use was "hotel." He then said that Jonathan Buckley (his attorney) had called the Jacksons to inquire about rental of the property, and he was told that it could be rented by the day; but an agreement stating that it was a weekly rental must be signed, which is what the Ordinance requires. In conclusion, Mr. Hancock said that this is far from a neighborhood dispute, and the Jacksons may be upset with him at this point; but this is a business matter, and about being or not being able to conduct a business.

Mr. Murphy said that they stand by with what has been said: 1) it is currently rented on a weekly basis, and 2) they are in compliance with all requirements. He said that the Jacksons use the property themselves.

Referencing Mr. Hancock's previous rebuttal comments, Ms. Jackson said that the bride and groom from the wedding reception are close friends of the family, and she does not know of any reception where every single person knows each other. She then said that the reason Mr. Hancock has the announcement is due to Ms. Hancock trespassing onto their property during that wedding reception.

Jonathan Buckley, residing at 245 Victoria Way, Georgetown, KY, was present. He noted that he is an attorney, as well as a friend to Mr. Hancock. He said that his wife had called the Jacksons in January 2009, to inquire about renting their property, and she was told that the contract had to state that it was for a week rental; but she would only be charged by the day. Mr. Buckley said that the Planning Commission is going to have to decide if Kentucky will be the home of the horse or the Horse

Capital of the World. They will also have to decide if everyone within the agricultural district can run a hotel. He then said that if the current ordinance prohibits this type of use, then it needs to be enforced; and if there are no current restrictions, then this text amendment will improve the enforceability of action to prevent hotel uses. Should a property owner wish to run a hotel out of his/her home, then they should be required to have a permit.

Ms. Savage said that the disagreement between these two people is going to result in a text ordinance change. She said that the staff had stated that only 7 homes were being advertised on the internet; and this dispute is what has caused the initiation of a text amendment, which will penalize the working poor class across Lexington. She then said that she is shocked by this entire issue.

Planning Commission Questions – Mr. Brewer said that to him this looks like a neighbor dispute to him; and in the current economy, he is hesitant to act upon a situation that might affect someone's ability to earn income. He then said that he does like the alternative suggested by Mr. Bracken, rather than approving a text amendment. With regards to Mr. Wharton's concerns, they were right on target. He said that he does not like the fact that the Planning Commission is being forced by the Council to act on this issue today. He then said that there are plenty of questions that need to be explored further, and the fact that the Commission must take action today is unsettling. He felt that the current Ordinance needs to be enforced rather than the creation of new Ordinances.

Law Department Comments - Ms. Boland clarified that the Council is not compelling the Planning Commission to take action in 60 days; rather, State law mandates it. She said that if the Council perceives an issue to be a problem, they can initiate a text amendment; but it is by State law that the Commission has only 60 days to take action. The Council does not give the Commission a time limit. As far as a recommendation, the Planning Commission could advance this text amendment with a recommendation of disapproval, due to more time being needed to determine a more appropriate recommendation. She noted that the Commission has the following options:

1. Approve this text amendment as it is,
2. Disapproval due to no problem existing, or
3. Disapproval, due to more investigation being needed.

Ms. Boland said that the Commission has more than a "yes" or "no" option in stating the reasons for their recommendations.

Planning Commission Questions - Ms. Richardson said that after listening to the testimony for both sides, she believes that this is a dispute among neighbor. She then said that there needs to be a way to solve this problem through other means. She felt that there will be unintended consequences with this text amendment. She said that it seems that individual's property rights are being hacked away. She then said that there is a problem here, but she believes it could be handled differently; therefore, she cannot support this text amendment.

Mr. Owens said that he encourages tourism and he does not believe that renting houses is a problem. He said that it seems there is a personal squabble going back and forth here. He noted that he does not live close to these properties; but he does pass these properties daily. He said that on one of the properties, he always sees the gates closed during the week and open on the weekends. He then said that he has not seen any activity on the property got a weekly period; rather, folks seem to arrive on Saturday and leave by Monday morning. He said that he does not believe this to be a weekly rental, but rather a "bed and breakfast" type of use; and there are currently regulations for this type of use. Mr. Owens stated that a few weeks back, he passed by the house in question, and he saw what looked to be at least 30 people in one of the houses. He said that things such as parties and receptions could be placed within a winery use category, and this type of use is now allowed in the A-R zone. He then said that this type of activity could happen throughout Lexington, and this type of rental 52 times a year would not go over with many neighbors. He then noted that Iron Works Pike does not have the capability to handle high traffic volumes, and there have been many accidents in the area of these houses due to the crest of the hill. Mr. Owens then noted that he is torn with this case. He believes that this is a commercial use and for that reason there needs to be some type of relief.

Mr. Day concurred with Ms. Richardson regarding individual property rights. He said that he has lived in Lexington since before the city and county were merged. Because Lexington is now an urban county government, whatever decision is made will affect the entire Lexington area. He then said that if you live in town, everyone puts up with the noise on a weekly basis, especially near the UK's Commonwealth Stadium during the fall. Mr. Day said that condos downtown has been promoted with the Comprehensive Plan, and these are being rented on a daily, weekly or monthly basis. He said that for the Planning Commission to now say that type of activity is nonconforming, he cannot support that decision. He cannot see how this will work, unless neighbors turn in each other and make a complaint to Building Inspection for enforcement.

Mr. Vaughn also said that he is torn by this case. He then said that with all text amendments, the Planning Commission must look at the issue globally and what type of impact there may be in both the rural areas and the inner city. He noted that if someone lives near areas like Commonwealth Stadium, there will be noise, not to mention in areas near hospitals. As Ms. Richardson stated, there will be unintended consequences, and this is a struggle. He said that he would like to see something that would address this issue; but a text amendment of this type may not be the way.

Mr. Cravens commented that this looks like special legislation essentially for one event, and the Commission has been tolerant in hearing this case; but the comments made should have been more toward whether or not this text amendment would be good for out regime of zoning. He said that that the Division of Police handles all types of disputes; and as for neighbor disputes, his own neighbor has decided not to cut his grass. He could research the Ordinance and find a solution to this issue or have Code Enforcement investigate it further. Mr. Cravens believes that this text amendment is too narrow in scope, and the impact of it is unknown for the local housing rental market, especially for weekly rentals. He said that this would be another right that property owners have to give up. As of now, he believes that this text amendment would be a mistake, and he cannot support the proposal.

Ms. Copeland stated that a person cannot risk their livelihood with tourism or from people trespassing on their property. She said that this issue is different from that in Charleston, South Carolina. She understands what could happen when this type of activity is next door to a crop farm; their crop would not last with the right kind of party next to them. She said that this text amendment is not the way to go; but this is a real problem, especially for the agricultural community. She asked if the Jacksons' properties receive subsidized agricultural taxes; if so, then it is obvious that this is a commercial use within an A-R zone.

Ms. Whitman concurred with Ms. Copeland, and said that there are property rights on both sides of the fence. She then said that this case seems to be a commercial use within the A-R zone, and she is not sure what the solution should be in this case. She understands that Mr. Hancock has a business; but as for the text amendment, she is not sure this will be the way to go. She did say that the comments previously made regarding licensing may be the way to go for this issue. She said that property owners on both sides need to come to an understanding and respect each others' rights.

Action - A motion was made by Ms. Roche-Phillips to disapprove ZOTA 2009-2, due to more time being needed for further evaluation of the text amendment.

Ms. Roche-Phillips commented that the Zoning Ordinance may not be the appropriate place to make this type of adjustment. She did not feel that this issue is exclusively a land use issue, which is what the Zoning Ordinance is meant to regulate. She believes that the Planning Commission should further investigate these issues; therefore, her motion is for disapproval until adjustments can be made to this proposal. With respect to Mr. Hancock, there are plenty of nuisance ordinances in effect, and those ordinances should be enforced.

Clarification of Motion – Ms. Boland clarified that this text amendment will go forward to Council with the Planning Commission's recommendation for disapproval; however, as a separate issue, the Planning Commission can request that the staff continue researching this issue.

Action - The motion was seconded by Ms. Richardson, and carried 8-1 (Owens opposed; Holmes and Penn absent).

Mr. Hancock made a request to speak to the Commission. Mr. Vaughn made note of Mr. Hancock's request, and said that he could speak to the Commission during the upcoming Audience Items.

VI. COMMISSION ITEMS - The Chairman will announce that any item a Commission member would like to present will be heard at this time. There were none.

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

A. UPCOMING WORK SESSION – Mr. King reminded the Commission members of the upcoming work session on February 19, 2009. He said that, prior to the work session; there will be a joint session between the Urban County Council Planning Committee and the Planning Commission. He then said that the joint session will begin at 11:30 a.m., in the basement of the Library and will continue until the scheduled 1:30 p.m. work session in the Council Chambers. He noted that refreshments will be provided to everyone attending.

Mr. Vaughn encouraged the Commissioner members to attend the joint meeting. He said that the Planning Committee has requested to meet with the Commission, and he believes that this work session will be productive.

VIII. AUDIENCE ITEMS – Mr. Hancock said that if the reason for disapproving the text amendment is due to it affecting the inner city limits, then he requests that this text amendment be narrowed to the scope only reflecting agricultural areas. He said that this will prevent hotels being next to farms. He suggested that this issue be placed back on the Commission's docket for further investigation.

Mr. Vaughn noted that the Planning Commission's recommendation will be forwarded to the Council; and, at that time, Mr. Hancock will be able to further speak to them on this issue. Ms. Boland said that the Council will make the next decision regarding this particular text amendment. Mr. King said that the Council has many options, since it is their legislation that was initiated. He said that the Council can deal with the issue or refer it back to another Committee for further discussion. He advised that anyone who is interested in this subject to monitor the progress of this legislation as it goes on to the Council.

Ms. Jackson commented that her family does operate a farm and this is only a neighborhood dispute, adding that Mr. Hancock has run his cattle across onto their property in the past.

IX. NEXT MEETING DATES -

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	February 19, 2009
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	February 25, 2009
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	February 26, 2009
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	March 5, 2009
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	March 5, 2009
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 12, 2009

X. ADJOURNMENT - There being no further business, a motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 9-0 (Holmes and Penn absent) to adjourn the meeting at 5:04 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary