

Gorton
Blues
Gray
Ellinger
James
Lawless
Beard
Feigel
Stinnett
McChord

A G E N D A

PLANNING COMMITTEE

March 17, 2009
1:00 P.M

1. **Electrical Inspector's Fee Schedule Update – McChord**
2. **Time Limits on Building Permits – Henson** (1-2)
3. **Increased Fines on Zoning/Building Permit Violations – Henson** (1-2)
4. **Heritage Tree Program – James** (3-5)
5. **Courthouse Area Design Review Recommendations – Lawless** (6-14)
6. **Items Referred to Committee** (15-16)

“Planning Committee, to which should be referred matters relating to parks, planning and zoning, housing, transportation, grants, legislation and social services.”

Council Rules & Procedures, Section 2.102(1)



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

TO: Linda Gorton, At-Large Councilmember
Chair Planning Committee

FROM: Department of Law

DATE: February 25, 2009

RE: Regulation Questions
Log No. 09-CC0208

This memorandum is in response to the following questions raised by the Council Planning Committee at its January 20, 2009 meeting¹:

1. Can the Lexington-Fayette Urban County Government ("LFUCG") place a time limit on the completion of a permitted project?
2. Can LFUCG adopt increased fines or penalties for zoning or building permit violations?

Because there is a substantial likelihood that the above changes would not survive an argument that they would be preempted under the state law, the Department of Law recommends that neither of the above, nor any amendment similar to them, be attempted.

KRS Chapter 198B is a comprehensive scheme of legislation pertaining to housing, building and construction in Kentucky. Under its provisions, each local government is to use the same uniform codes for construction projects. KRS 198B.110. There are 2 such codes in Kentucky – the Kentucky Building Code and the Kentucky Residential Code.

Each of these codes indicates that it is a "mini/maxi" code, and prohibit local government from adopting or enforcing any other code. Each of these codes includes

¹ A third question pertaining to whether LFUCG can impose restrictions on issuing building permits in instances where the applicant has outstanding zoning and/or building inspection violations on other property(s) will be answered under separate cover.

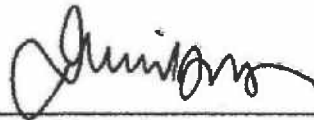
HORSE CAPITAL OF THE WORLD

Planning Chair Linda Gorton
February 25 2009
Page 2

a permitting section which includes a 180 day period within which to commence work, or within which some activity towards completing the permitted work must take place. Each of these codes also indicates that the penalties provided in KRS 198B.990 shall apply to violations.

Therefore, we believe that LFUCG is preempted from imposing a time limit on the completion of permitted projects, or from adopting increased penalties for building code violations. See KRS 67A.070. LFUCG, can however, suggest these changes to the Commonwealth of Kentucky's Office of Housing, Buildings, and Construction, which is tasked with amending the applicable building codes.

Similarly, planning and zoning in Kentucky are governed by KRS Chapter 100, which is another comprehensive scheme of legislation that includes the penalties that are to be imposed for violations. KRS 100.991. Therefore, that statute would need to be amended in order to increase the fines or penalties for violations of the zoning ordinance that are based on it.



David J. Barberie
Attorney Senior

cc: (via e-mail only)
Rebecca Langston, Council Administrator
Dewey Crowe, Director of Building Inspection
Chris King, Director of Planning
Mike Webb, Commissioner of Public Works
Rochelle Boland, Senior Attorney

DJB/X:\Cases\CO\09CC0208\MEMO\DJB0212

ORDINANCE NO. _____-2007

AN ORDINANCE CREATING SECTION 17B-9.1 OF THE CODE OF ORDINANCES TO CREATE CIVIL PENALTIES FOR ANY VIOLATION OF CHAPTER 17B REGULATING STREET TREES, TO ALLOW APPEAL OF CITATIONS TO THE INFRASTRUCTURE HEARING BOARD, AND TO ALLOW ABATEMENT OF VIOLATIONS; AMENDING SECTION 14-10(6) TO REFLECT A CHANGE IN THE DIVISION FOR THE URBAN FORESTER; AND AMENDING SECTION 16-76 TO GRANT JURISDICTION TO THE INFRASTRUCTURE HEARING BOARD OVER ENFORCEMENT OF ORDINANCES BY THE DIVISION OF STREETS, ROADS, AND FORESTRY.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 17B-9.1 of the Code of Ordinances, Lexington-Fayette Urban County Government, related to Heritage Trees be and hereby is created to read as follows:

- (a) A heritage tree is any tree that because of its age, size, unique type, or historical association is of special importance to the urban county government. The urban county government acknowledges that preserving such trees may be beneficial, and has set forth the procedure in this section to preserve and protect heritage trees.
- (b) For a tree to be designated as a heritage tree a written application must be submitted to the division of streets, roads, and forestry. The request shall be on a form provided by the division and shall include a signed declaration by the owner of the property on which the tree is located approving of the application, a site map showing the lot, any structures on site, the current use of the site, the species and size of the tree, and a narrative explaining why the applicant wishes to designate that tree as a heritage tree.
- (c) No tree standing on private property shall be designated a heritage tree without the consent of the property owner. No tree on urban county government property shall be designated a heritage tree without the consent of the mayor. No tree on other public property shall be designated a heritage tree with consent from the appropriate government official.
- (d) Upon receipt of a complete and valid application for heritage tree status, the urban forester shall evaluate the condition of the tree and report regarding an evaluation of the tree's health, aerial space, open ground system for the root system, longevity of the species, and expectation of long-term longevity.
- (e) The urban forester shall present his report to the tree board along with the application, and any additional information as may be pertinent to the request. The tree board shall hold a public hearing consider the application and shall vote whether or not to adopt the tree as a heritage tree following the public hearing.
- (f) When a tree is designated as a heritage tree, a plaque so signifying may be placed near the tree. The urban county government shall cause a notice to be placed in the land records in the Fayette County Clerk's Office for all properties

upon which a heritage tree is located stating that the heritage tree is protected by the provisions of this section. The restrictions placed on a heritage tree shall be binding on all successors, heirs, and assigns of the owner of the property where the tree is located.

- (g) Except as provided in subsection (j) of this section, it shall be unlawful to remove or damage in any way a heritage tree, its plaque, or any protective measures for that tree. It shall be unlawful to prune, trim, remove any limb, disturb the ground within the critical root zone, or undertake any other active which could cause harm to the tree with obtaining prior approval from the urban forester.
- (h) It shall be the duty of every owner of property upon which a heritage tree is located to maintain that tree. Upon request, the urban forester may give advice and assistance to property owners regarding proper maintenance. The urban county government shall maintain all heritage trees located on its property or on public rights of way within Fayette County.
- (i) If, in the judgment of the urban forester, a heritage tree, whether located on private or public property, has become a hazard, he shall report to the tree board on his evaluation of the condition of the tree and recommend a suitable course of action. After review, the tree board may approve the recommendation, deny it, or modify it as appropriate based on the condition of the tree. Following the determination of the tree board the owner of the property where the tree is located shall proceed with the recommendation.
- (j) A designation as a heritage tree may be removed only after evaluation of the following criteria:
 - (1) if the tree is in poor health, diseased or no longer alive;
 - (2) if the tree meets the criteria of section 17B(1);
 - (3) if the tree no longer meets the criteria for designation as provided in section 17B(a);
 - (4) the proposed location of any proposed improvements or structures;
 - (5) if protecting the tree would deprive a private property owner of the reasonable economic enjoyment of his property;
 - (6) if good agricultural practices are better served by removal of the designation;
 - (7) any erosion or other problems which are caused by the topography of the property where the tree is located;
- (k) The tree board may remove the designation of a heritage tree if it finds after review that the designation is no longer justified based on one or more of the criteria stated in subsection (j). After a designation as a heritage tree is removed, all applicable provisions of this chapter shall apply to the tree.
- (l) In any case where a heritage tree is damaged by a natural disaster or other acts of nature, the provisions of this section may be waived to the extent necessary to alleviate immediate hazards.
- (m) As an alternative penalty or in addition to civil fines as provided in section 17B-13(c), any person who violates the provisions of this section may be ordered to undertake reasonable actions to mitigate the damage caused by the violation, including, but not limited to, planting a replacement tree or trees.

Section 2 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

00198179.DOC

REF

Paul Schoningher

From: Billy Van Pelt
Sent: Tuesday, March 10, 2009 10:56 AM
To: Paul Schoningher
Cc: 'Diane Lawless'; Rochelle Boland; Michael Webb; 'Mike Meuser'
Subject: RE: CADRB items for the Planning Committee

Paul,

The CADRB voted to forward two changes to the Ordinance at their last public hearing:

1. No demolition allowed until all administrative appeals are complete.
2. Require roof inspections by the Division of Code Enforcement and the Division of Fire.

Thank you

Billy F. Van Pelt, RLA, ASLA
Program Manager
Purchase of Development Rights Program
Design Review Officer
Courthouse Area Design Review Board
Commissioner's Office for Public Works and Development
Lexington-Fayette Urban County Government Center
200 East Main Street, 9th Floor
Lexington, Kentucky 40507
Phone: 859-425-2227
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ARTICLE 27

COURTHOUSE AREA DESIGN OVERLAY ZONE

27-1 INTENT - The intent of the Courthouse Area Design Zone is to encourage growth and redevelopment in the downtown area, while preserving and protecting the unique features and characteristics of the area in conformity with the Comprehensive Plan and the design guidelines for the Court House area adopted by the Lexington-Fayette Urban County Council.

27-2 APPLICATION OF REGULATIONS - The classifications and regulations hereunder shall be established in addition to the zone classifications and regulations as shown on the zoning map atlas for the subject areas. Except as provided herein below, the use, dimensions and other requirements for said zones, as provided in the Zoning Ordinance, shall apply. Where there are conflicts between the procedures and regulations within the Zoning Ordinance, the more restrictive shall apply.

27-3 DEFINITIONS - As used in this Article, the following terms shall mean:

AUTHORIZATION PERMIT - A document which certifies the findings of the Board or the Design Review Officer that the work proposed by the applicant is appropriate. The Authorization shall also delineate any conditions imposed by the Board or Officer in approving the request. In order to grant an Authorization, the Board or Officer shall consider all circumstances related to the proposal, and may grant the Authorization if it finds that the proposed changes are consistent with the adopted Courthouse Area Design Guidelines.

BOARD - The Courthouse Area Design Review Board of the Lexington-Fayette Urban County Government.

DEMOLITION - Any act that destroys, in whole or in part, a building or structure; or which results in the moving of any building or structure.

DESIGN REVIEW OFFICER - The employee of the Lexington-Fayette Urban County Government assigned by the Chief Administrative Officer to carry out the duties and functions of the officer as defined herein. This individual shall demonstrate expertise and/or have a professional degree in architecture, design, or a similar field so as to be qualified to carry out such duties. The term "officer" when used in this

Article refers to the Design Review Officer.

EXTERIOR CHANGE - Rehabilitation or replacement which is not ordinary maintenance and repair. New construction of any building element, addition, building or structure is an exterior change. Demolition of any building element, addition, building or structure is an exterior change.

(1) **EXTERIOR CHANGE** includes, but is not limited to:

(a) **MAJOR REHABILITATION, REPLACEMENT AND INSTALLATION OF BUILDING ELEMENTS.**

- (1) Rehabilitating large amounts of existing building elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Rehabilitating/replacing existing building elements when changes are made in materials, style or configuration;
- (3) Installing new building elements;
- (4) Replacing missing building elements and/or materials;
- (5) Painting a structure or material not previously painted;
- (6) Removing paint from a material previously painted.

(b) **MAJOR REHABILITATION, REPLACEMENT AND INSTALLATION OF SITE ELEMENTS**

- (1) Rehabilitating large amounts of existing site elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Rehabilitating or replacing existing site elements when changes are made in

materials, style or configuration;

- (3) Installing new site elements;
- (4) Replacing missing site elements or materials;
- (5) Painting a site element not previously painted;
- (6) Removing paint from a site element which has been painted;
- (7) Removing trees with trunks more than 10" in diameter;
- (8) Major landscaping projects, including installation, relocation or redesign of new or existing site elements;
- (9) Disturbing fields, archaeological and other land features by demolition or new construction on sites;
- (10) Rehabilitating or replacing existing signs when changes are made in materials, style and configuration;
- (11) Installing new signs.

ORDINARY MAINTENANCE AND REPAIR - The correction of minor deterioration to site and building elements and structures when changes are made with the same materials with the same size, shape, configuration, style, texture and material color.

- (1) **ORDINARY MAINTENANCE AND REPAIR** includes the following activities:

(a) **ROUTINE MAINTENANCE AND REPAIR OF BUILDING ELEMENTS**

- (1) Repairing small amounts of existing building materials and elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Painting a structure or material that is already painted;
- (3) Caulking and weather stripping windows and doors.

(b) **ROUTINE MAINTENANCE, REPAIR AND INSTALLATION OF SITE ELEMENTS**

- (1) Repairing site elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Pruning trees and shrubbery and removal of trees less than 10" in diameter;
- (3) Planting vegetable and flower gardens, except as part of a major landscaping plan;
- (4) Planting shrubs and trees, except as part of a major landscaping plan;
- (5) Installing temporary signs (real estate, political, etc.);
- (6) Installing building numbers and mail-boxes.

27-4 COURT HOUSE AREA DESIGN REVIEW BOARD

27-4(a) ESTABLISHMENT - The Court House Area Design Review Commission is established to review and decide applications in compliance with the provisions of this Article.

27-4(b) MEMBERSHIP - The Court House Area Design Review Board shall consist of five (5) voting members, including the chairman. All members must be residents of Fayette County. At least two (2) of the five (5) members shall be design or preservation-related professionals. These include the professions of architecture, history, archaeology, architectural history, historic preservation, urban design or related disciplines such as urban planning or landscape architecture. One (1) member shall be an employee of the Lexington-Fayette Urban County Government who is not the Design Review Officer; one (1) member shall be a representative of the banking or financial community; and one (1) member shall be a property or business owner within the Court House Area Overlay Zoning District. When the Court House Area Design Review Board reviews an issue, and that field is not represented on the Court House Area Design Review Board, the Court House Area Design Review Board shall seek expert advice before rendering its decision.

27-4(c) ETHICS - The Court House Area Design Review Board shall prepare and keep on file, available for public inspection, the members' qualifications. Article 16, the Code of Ethics of the Lexington-Fayette Urban County Government Charter, shall apply to members of the Court House Area Design Review Board.

27-4(d) OFFICERS - The Court House Area Design Review Board shall annually elect one (1) of its members to be Chairman and one (1) of its members to be Vice-Chairman. The Secretary of the Court House Area Design Review Board shall be the Design Review Officer, who shall also serve as a non-voting member of the Court House Area Design Review Board.

27-4(e) LENGTH OF TERM - The terms of Court House Area Design Review Board members shall be as follows:

- (1) Members shall serve a term of four (4) years, except that the membership of those representing particular organizations or offices shall be deemed to have terminated upon their leaving their respective memberships or positions.
- (2) Terms shall be staggered in such manner to allow the appointment or re-appointment of at least one half of the membership every two (2) years.
- (3) Term of membership shall extend from July 1 of one (1) year through and until June 30 of the designated year.
- (4) Vacancies, when they occur during a term of office, shall be filled for the unexpired term in the manner prescribed for original appointment.
- (5) Members may serve consecutive terms but must go through the reappointment process to do so. The maximum length of membership shall be two terms or eight years, whichever is longer.
- (6) Any member may be removed from office by a majority of the Council of the Lexington-Fayette Urban County Government.

27-4(f) COMPENSATION - The members shall serve without compensation but shall be reimbursed

for expenses necessarily incurred in the performance of their duties, subject to sufficient funds being appropriated by the Lexington-Fayette Urban County Council for this purpose.

27-4(g) BYLAWS - The Court House Area Design Review Board shall adopt bylaws for the transaction of its business and the transactions of the business of all of its sub-committees. Regular meetings shall be held and special meetings may be held as specified in the bylaws. Minutes of all meetings and records of all proceedings, including the number of votes for and against each question and the record of the vote of each member, shall be kept and made available for public inspection. The Court House Area Design Review Board shall prepare a written annual report, which shall be kept and made available for public inspection. A simple majority of the total membership of the Court House Area Design Review Board shall constitute a quorum for the transaction of business. The Chairman votes only in the case of a tie. Each member shall be required to attend meetings regularly as defined in the bylaws. Failure to do so may result in removal from the Court House Area Design Review Board. The Court House Area Design Review Board shall have the power to establish sub-committees as it deems necessary, from both within and without its membership, and to receive assistance in its work from outside individuals, groups and organizations. The Court House Area Design Review Board may give special recognition to outside individuals, groups and organizations.

27-4(h) JURISDICTION - The jurisdiction of the Court House Area Design Review Board shall include all necessary and implied powers as shall be described herein with respect to the regulation of the Court House Area Overlay Zone.

27-4(i) POWERS AND DUTIES - In addition to such other powers, duties and authorities as are set forth in this Article, the Court House Area Design Review Board shall in order to accomplish the purpose of this Article perform duties that include, but are not limited to, the following:

- (1) Present to the Lexington-Fayette Urban County Council and the Planning Commission annually a report containing (i) a statement of goals and objectives for the county for the next ensuing five-year period; (ii) any financial records pertaining to the Court House Area Design Review Board's operation.
- (2) Cooperate with and advise the Lexington-

Fayette Urban County Council and other government agencies, departments, commissions and offices with regard to such matters as may be appropriate with respect to the Court House Area.

- (3) Form sub-committees as necessary.
- (4) Establish criteria for which applications may be acted upon by the Design Review Officer, and which cases require both a preliminary and final review by the Board.
- (5) Review and decide applications for Authorization Permits as provided herein below.
- (6) Periodically review the adopted design guidelines and make recommendations to the Urban County Council for changes to design guidelines.

27-5 DESIGNATION OF THE COURT HOUSE AREA DESIGN ZONE (CA) - To further the goals and purposes of this Article and the preservation, protection, perpetuation and use of the Court House Area, the Urban County Council shall have the authority to designate properties protected by a zoning overlay district to be known as the CA zone. The procedures to establish such zoning shall comply with all applicable state statutes and requirements contained in this Zoning Ordinance for the creation of a zoning district as a zoning map amendment.

27-6 AUTHORIZATION PERMITS - An Authorization Permit shall be required before a person may undertake any exterior changes on a property or structure within a zone protected by a CA overlay. Ordinary maintenance and repair as defined under Article 27-3(f) may be undertaken without an Authorization Permit, provided that the work involves repairs to existing features of a building or the replacement of elements of a building with identical pieces, and provided that the work does not change the exterior appearance of the building.

27-6(a) WHERE REQUIRED - An Authorization Permit shall be required prior to the initiation of any new construction on; any exterior change to; or the demolition of all, or any part of, any building, structure or sign on any premises in a zone protected by a CA overlay.

In no case shall an Authorization Permit be required to change the paint color of a previously painted surface.

27-6(b) PROCEDURES FOR ISSUANCE OF AN

AUTHORIZATION PERMIT FOR EXTERIOR CHANGES AND NEW CONSTRUCTION - Authorization Permits specified herein below.

27-6(b)(1) AUTHORIZATION PERMITS ISSUED BY THE BOARD - All applications for Authorization Permits shall be reviewed by the Board at a public hearing, except those applications for work which have been specifically delegated to the Design Review Officer under 27-6(b)(2).

In addition, the Board shall review all applications for Authorizations referred by the Design Review Officer or those requested for public hearing by the applicant.

27-6(b)(1)(a) PRE-FILING CONFERENCE - Prior to formal filing, the applicant shall meet with the Design Review Officer to discuss preliminary design concepts, applicable procedures and similar matters. The Officer shall determine whether the matter can be approved by the Officer as specified under 27-6(b)(2). If the Officer determines that full Board approval is necessary, the Officer shall further determine if preliminary Board review is required, or if the applicant may proceed directly to final action by the Board.

27-6(b)(1)(b) PRELIMINARY BOARD REVIEW - Where determined to be necessary by the Officer, the Board shall first consider the application at a preliminary review meeting. This meeting shall not be considered a hearing, and notice shall not be required. The extent of the review shall be concept plans on building mass and scale. The Board will provide comments to the applicant for the applicant to consider for final Board review.

27-6(b)(1)(c) FINAL BOARD REVIEW - Final Board review shall be considered a public hearing as specified under Article 27-6(b)(1)(f) and will be subject to the notice requirements of Article 27-6(b)(1)(e). Authorization permits may only be issued by the Board after action at a hearing.

27-6(b)(1)(d) FILING MATERIALS - The Board, where it deems necessary in order to review a particular application, may require the submission of any or all of the following items: architectural plans, plot plans, landscaping plans, plans for off-street parking, plans for proposed signs, elevations of all portions of proposed additions to structures, photographs, elevations, or perspective drawings showing the proposed structure and exist-

ing structures that are within one hundred (100) feet or are substantially related to it visually or by reason of function, traffic generation or other characteristics.

Should the Board find that the material submitted is not adequate for the proper review of the proposal, the Board shall promptly notify the applicant and state the specific information that will be required. In such cases, the applicant shall not be deemed to have made a bona fide application to the Board until the specific information is submitted.

27-6(b)(1)(e) NOTICE - Notice of the time, place and reason for holding a public hearing shall be given by first class letter at least fourteen (14) days in advance of the public hearing to owners of all properties located within two hundred (200) feet of the subject property. It shall be the obligation of the Design Review Officer to prepare, certify and mail all notice as required herein.

Further, the Board shall give notice of the time, place and reason for holding a public hearing by publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing.

27-6(b)(1)(f) BOARD PUBLIC HEARING - After notice, the Board shall consider the request for an Authorization Permit at a public hearing. At the hearing, the Board shall receive the report of the Officer, orally and/or in writing, and shall allow the applicant, protestors and other interested citizens to testify and rebut evidence presented by others, provided the Chairman shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence.

In its review of material submitted, the Board shall examine the architectural design and the exterior surface treatment of the proposed construction on the site in question and its relationship to other structures within the area, the relationship of the proposed construction to the design of the building, and other pertinent factors affecting the appearance and efficient functioning of the structure.

The Board shall not consider any interior arrangement. The Board shall make no requirements

except for the purpose of preventing development incongruous in scale, design or materials to the district.

In reviewing proposals, the Board shall utilize the design guidelines and criteria adopted by the Court House Area Design Review Board. These guidelines shall form the basis of any action by the Board.

The Board shall vote to approve all or part of the application or disapprove all or part of the application within sixty (60) days after the completed application is filed. The Board shall be required to make findings to support any action of approval/disapproval, indicating the specific provisions of the adopted guidelines that support the action.

27-6(b)(1)(g) AUTHORIZATION PERMIT ISSUANCE - The Design Review Officer shall promptly issue the Authorization Permit in accordance with the action of the Board. Copies of the Authorization and the application materials shall be forwarded to the Division of Building Inspection and/or the Division of Housing Maintenance, as appropriate.

27-6(b)(2) AUTHORIZATIONS ISSUED BY THE DESIGN REVIEW OFFICER - An Authorization issued by the Design Review Officer is intended to expedite approval of routine applications for exterior changes without full hearing and action by the Board.

The Board may review and delegate items to the responsibility of the Design Review Officer for review and issuance of Authorization Permits. The delegation of these items shall be reviewed by the Board at a public hearing and recorded in the minutes of the Board.

27-6(b)(2)(a) PROCEDURES FOR ISSUANCE OF AN AUTHORIZATION BY THE DESIGN REVIEW OFFICER

1. FILING - The applicant shall file sufficient information as to accurately depict the location, design and scope of the work to be done. The Officer shall review the information and promptly notify the applicant if the material is not adequate for review and advise the applicant what specific information will be required.

2. REVIEW - The Officer shall review the application for compliance with the adopted guidelines and consult with other Divisions, as appropriate, to ensure proper review. Upon determination that all requirements of the guidelines have been met and that the application complies with the requirements of the Board, the Design Review Officer shall approve the application and issue the Authorization Permit. If any question arises as to compliance, or if the Design Review Officer or applicant feels that the application raises issues deserving review by the full Board, the request shall be referred to the Board for action.

3. AUTHORIZATION PERMIT ISSUANCE

- Upon approval by the Design Review Officer, the Officer shall issue the Authorization Permit and notify the applicant. In addition, the Officer shall forward a copy of the Authorization and application materials to the Division of Building Inspection.

27-6(c) AUTHORIZATION PERMITS FOR DEMOLITION - The Division of Building Inspection shall issue no permit which would result in the demolition of all or any part of a structure within a zone protected by a CA overlay unless and until an Authorization Permit has been approved by the Board.

27-6(c)(1) PROCEDURES - The procedure for review of an Authorization Permit for demolition shall be as set forth in Article 27-6(b)(1) above. The Board shall hear evidence concerning the application at its public hearing and may approve an Authorization only if one of the following conditions is determined to exist:

- (a) The application is for demolition of an addition, for a portion of a building or for an accessory structure which is not significant to the principal structure, site, or district; and the approval of the application would not adversely affect those parts of a building or district which are significant.
- (b) The application is for the demolition or moving of a building, or portion of a building, which does not contribute to the character of, and will not adversely affect the character of the property in a zone

protected by a CA overlay.

- (c) No reasonable economic return can be realized from the property, and the denial of the application would result in the taking of the property without just compensation.

If the owner wishes to make a claim that the denial of the permit would amount to a taking of the property without just compensation, the owner shall submit to the Board, not less than twenty (20) days prior to the public hearing, the following information:

1. For all property:

- (a) The amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;
- (b) The assessed value of the land and improvements thereon, according to the two (2) most recent assessments recorded in the office of the Property Valuation Administrator;
- (c) The two most recent real estate tax bills;
- (d) Annual debt service for the previous two (2) years recorded by the lending agency;
- (e) All appraisals obtained within the previous two (2) years by the owner in connection with his purchases, financing or ownership of the property;
- (f) Listings of the property for sale or rent, price asked and offers received, if any;
- (g) Any consideration by the owner as to profitable adaptive uses for the property.

2. For income-producing property:

- (a) Annual gross income from the property for the previous two (2) years;
 - (b) Itemized operating and maintenance expenses for the previous two (2) years;
 - (c) Annual cash flow for the previous two (2) years.
3. The Board may require that the property owner furnish such additional information as the Board believes is relevant to its determination of taking without just compensation and may provide, in appropriate instances, that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information that cannot be obtained, and shall describe the reasons why such information cannot be obtained.

Should the Board find that the material submitted is not adequate for the proper review of the proposal, the Board shall promptly notify the applicant and state specifically the information that the Board requires.

27-6(c)(2) ACTION - Notwithstanding any other provision of this Article, the Board, after hearing evidence at its public hearing, may vote to postpone action to approve or deny an appeal for a reasonable period of time not to exceed one (1) year from the filing date of application in order to conduct studies, surveys and/or gather information concerning the following:

- (a) Alternatives which may be or may become available, including restoration, rehabilitation, adaptive reuse, or other alternatives to demolition; and
- (b) Study the question of economic hardship for the applicant, including whether the structure can be put to reasonable beneficial use without the approval of the

demolition; and whether the applicant can obtain a reasonable return from his/her existing building. If economic hardship or the lack of a reasonable return is not proved, the Board shall deny the demolition application, giving the facts and reasons for its decision.

27-6(d) EFFECT OF AUTHORIZATION PERMIT

- Upon receipt of the Authorization Permit from the Design Review Officer, the Division of Building Inspection shall issue a building or wrecking permit, as appropriate in accord with the Authorization Permit, provided the application meets all other requirements of law.

The Division of Building Inspection shall enforce all provisions of the Authorization, including any conditions thereof, and shall inspect the property at regular intervals to insure strict compliance. The Building Inspector who inspects the site shall be governed by the design guidelines adopted by the Court House Area Design Review Board and shall receive technical assistance from the Officer in this inspection.

The property owner shall obtain permits, when required, and commence work on all work authorized by the Authorization Permit within one (1) year from the issuance of the Authorization.

27-6(e) FAILURE OF BOARD TO ACT - Upon failure of the Board to take final action upon any application within sixty (60) days after the completed application has been filed, and unless a mutual written agreement between the Board and the applicant has been made for an extension of time, the application shall be deemed to be approved and an Authorization Permit shall be issued to the applicant, and a copy of said Authorization transmitted to the Division of Building Inspection.

27-7 APPEALS - Any person or entity claiming to be injured or aggrieved by any decision of the Board to approve or deny any request for an Authorization Permit may appeal such decision to the Planning Commission within thirty (30) days of the Board's action. Such appeal shall be in writing and shall fully state the grounds upon which the appeal is sought. Upon receipt of the appeal, the Secretary to the Planning Commission shall notify the Design Review Officer, who shall promptly transmit the entire record of the Board, including tapes and transcripts, if any. In addition, within five (5) days of the filing of the appeal, the Secretary to the Planning Commission shall, by certified mail, notify the applicant of the appeal, if the

applicant is not the appellant. The Commission shall then hold a de novo hearing on the appeal and render a decision within ninety (90) days of the date of filing the appeal.

27-7(a) PROCEDURE FOR THE DE NOVO PUBLIC HEARING

27-7(a)(1) NOTICE - All parties to the appeal, including the Board, shall be notified of the time, place and reason for the public hearing by first class letter at least fourteen (14) days in advance. In addition, notice of the appeal shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days nor later than seven (7) days before the public hearing.

27-7(a)(2) ACTION BY THE PLANNING COMMISSION - After notice, as required above, the Commission shall conduct a public hearing and vote to approve or deny the appeal. At the hearing, the Planning Commission shall allow its staff, Design Review Officer, the Board members, the appellant, protestors, and other interested citizens to testify and rebut the evidence presented, provided that the Chairman shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence. In its deliberations, the Planning Commission shall give due consideration to the decision of the Board and the finding and conclusions reflected in the Board's record and shall apply the adopted design guidelines.

27-7(b) APPEAL TO THE FAYETTE CIRCUIT COURT - Any person or entity claiming to be injured or aggrieved by any order of the Planning Commission to affirm, modify or set aside the Authorization Permit and/or final decision of the Board may appeal from the Planning Commission's action to the Fayette Circuit Court within thirty (30) days of that order in the manner as established in KRS 100.347.

All orders of the Planning Commission which have not been appealed within thirty (30) days shall become final; however, there shall be no stay of any action on the subject property until such time as an appeal has been filed with the Fayette Circuit Court.

27-7(c) CONSIDERATION BY THE BOARD OF PREVIOUSLY DENIED APPEALS - In the event the appeal of an applicant is denied by the Planning Commission, the building, or any portion thereof, which was the subject of the applicant's application,

shall not be included in a subsequent application to the Board for an Authorization Permit and/or final decision until the expiration of one (1) year from the date of the order of the Planning Commission.

However, before the expiration of one (1) year, the Board may allow the filing of an application for an Authorization Permit and/or final decision if the Board finds that there are new facts or conditions not considered previously, or that there has been a change in the adopted guidelines which has substantially altered the character of the request. In such cases, after the evidence is presented by the applicant, the Board shall vote to approve or deny such a request for a new hearing. The Board's reconsideration of the application shall take into consideration the new evidence presented. The Board's decision need not be restricted to the new evidence. If the new evidence is withdrawn at any time during the reconsideration by the applicant, the Board shall have no authority to reconsider the application.

27-8 COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS - In order to prevent purposeful neglect of structures within zones protected by CA overlays, all properties shall comply with the BOCA, adopted Basic Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Design Review Officer shall quarterly consult with appropriate enforcement officials and compile and forward to the Board and the Court House Area Design Review Board a list of those properties in zones with CA overlays which have been found to be in violation of the BOCA Basic Property Maintenance Code.

Planning Committee- Issues Outstanding

02/18/09

Issue	Member Referred	Date Referred	Status
• Liberty Road Project Status	Stinnett	Jan 06	Bi Monthly Written Report
• Newtown Pike Status	Blues	Feb 06	Bi Monthly Report
• Loudon Avenue Phase 1 Status	James	Oct 06	Bi Monthly Written Report
• Buffering ED Zone	Gorton	Jan 07	Fayette Alliance Reviewing
• Development Plan Adherence	Myers	Jan 07	Winter-Spring 09
• Land Bank	James	June 07	Jan 09
• Student Housing Issues	Lawless	Sept 07	Winter-Spring 09
• Fence Regulations	Blues	Dec 07	Unknown
• Mobile Home Trailer Park Quality of Life	James	Dec 07	On Hold
• Infill Redevelopment Committee Recommendations	Gray	Feb 08	Unknown
• Tree Protection Ordinance	James	Mar 08	Unknown
• Streetscape Plan	Gorton	Mar 08	Task Force to be Formed
• Downtown Master Plan	Lawless	Apr 08	Committee Work Complete?
• Electrical Inspector's Fee Schedule	McChord	May 08	Feb 09
• Management Audit Recommendations	Crosbie	May 08	Subcommittee Formed
• Family Care Center Audit	??Stevens	May 08	Final Audit Delivered Mid March
• Review Civil Penalties/Impose Fines on Property Owners Who Operate a Home Office/Occupation in Violation of the Zoning Ordinance	Henson	July 08	Seeking Legal Opinion
• Impose Restrictions on Issuing Permits to Individuals/Property Owners When There are Pending Written Complaints Regarding Violations of Zoning Ordinances	Henson	July 08	Seeking Legal Opinion
• Place Reasonable Time Limits for Completion of construction projects approved for existing 1/2 Family Residential Building Permits and Fence/Retaining Wall Permits	Henson	July 08	Seeking Legal Opinion
• Special Districts	Myers	Sept 08	Seeking Legal Opinion
• Zoning Violation Fines	Myers	Sept 08	General Assembly Action Required
• Newtown Pike Design Ordinance	Gorton	Oct 08	Spring 09
• Courthouse Area Design Review Recommendations	Lawless	Dec 08	Spring 09
• Destination 2040 Recommendations	Ellinger	Jan 09	Spring 09

Planning Committee- Issues Outstanding (continued)

• Private Retention/Detention Basin Maintenance	Myers	Jan 09	Feb 09
• Parks Master Plan	Stinnett	Feb 09	
• Hisle Property Master Plan	Stinnett	Feb 09	
• Big Blue Horse Branding Issue	Lawless	Feb 09	
• Heritage Tree Program	James	Feb 09	

02.24.2009