

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 31, 2008

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on October 31, 2008. Members present were Jim Griggs, Peter Brown, Carolyn Edwards, Kathryn Moore and Jan Meyer. Absent were members Louis Stout and Barry Stumbo. Others present were Jim Hume, Division of Building Inspection; Barry Brock, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Jim Marx, Barbara Rackers and Wanda Howard.

Prior to the start of the meeting, Mr. Griggs announced that the Mayor had appointed Mr. Peter Brown as a returning member of the Board to fill the unexpired term of Mr. Mike Owens, Chair, who had recently been appointed to the Planning Commission. After welcoming Mr. Brown, he announced that it would be necessary for the Board to elect a Chair to replace Mr. Owens. A motion was made by Ms. Edwards, seconded by Ms. Meyer and carried 5-0 (Stout and Stumbo absent; Brown abstained) to elect Mr. Brown as Chair.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the meetings held on September 28, 2007; August 22, 2008 and February 29, 2008 would be considered at this time.

Action - A motion was made by Ms. Edwards, seconded by Mr. Griggs, and carried unanimously (Stout and Stumbo absent) to approve the September 28, 2007; February 29, 2008 and August 22, 2008 meeting minutes.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** - appeals for a conditional use permit to modify and expand an existing church, involving demolition of one building, in a Single Family Residential (R-1D) zone, on property located at 920 Bates Creek Road; and a variance to increase the allowable distance between the church and required parking from 300 feet to 475 feet, provided at 1125 Bates Creek Road (Cassidy Elementary School) (Council District 3).

The Staff Recommended: Approval of the requested conditional use, for the following reasons:

- a. Granting the requested conditional use permit will not adversely affect the surrounding neighborhood. The church as expanded will be comparable to the size and scale of the Faith Lutheran Church situated on the opposite corner of Melrose Avenue and Bates Creek Road. Since many of the residential structures between the church property and the intersection of Sunset Avenue and Bates Creek road are two stories in height already, the relatively large increase proposed for this church will still not be out of character with these long-established residential uses to the north of this site.
- b. Except for a loop drive aisle now proposed off of Melrose Avenue, the church expansion has been designed appropriately from an architectural standpoint, and from a site design perspective, includes provision for a significant landscape buffer between the church and nearby residential properties to the north and west.
- c. Existing storm and sanitary sewers are available to the church property, and other public facilities are available and adequate to serve this congregation.

The Staff Recommended: Approval of the requested variance, for the following reasons:

- a. Although a dimensional variance is not needed to continue use of the school parking lot some 475' away from the church building, and is "grandfathered" to the extent that it supports the activities at the existing church constructed over fifty years ago, it is necessary to allow the increase in sanctuary seating now proposed.

- b. Strict application of the Zoning Ordinance would dictate a more modest expansion of this church, thereby allowing some off-street parking on site, but would not be feasible in a way that will not affect their worship, creating an unnecessary hardship to this congregation.
- c. The variance will not adversely affect the public health, safety or welfare, nor alter the character of this vicinity since a complete and adequate sidewalk system exists from the parking area at Cassidy Elementary School to the front door of the church, served by a signalized intersection at Hart Road and Bates Creek Road (with a crosswalk) to allow safe pedestrian movement along this 475' distance.
- d. This variance will not result in an unreasonable circumvention of the Zoning Ordinance, and is the result of special circumstances not generally found with other properties in this area, since the church was originally permitted at this location without off-street parking some 50 years ago, and since the on-street and off-street parking conditions will result in a continuation of the status-quo.
- e. The variance is not a direct result of actions by the church since its original construction years ago.

These recommendations of approval are made subject to the following conditions:

- 1. The expansion shall take place in accordance with the submitted application and site plan (dated April 25, 2008) except that the 13' wide circular drive proposed off of Melrose Avenue is to be removed from the plan prior to the issuance of any building permits for this property. Revised site plans shall be submitted to the Divisions of Planning and Building Inspection indicating compliance with this requirement.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction.
- 3. The proposed driveway to remain from Melrose Avenue shall be approved by the Division of Traffic Engineering.
- 4. A minimum of 28 off-street parking spaces shall be leased off site for the use by the church during their activities.
- 5. The subject property shall be fenced, landscaped and screened from adjoining residential properties to the north and west as indicated on the submitted site plan (dated April 25, 2008).
- 6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- 7. No new outdoor lighting associated with the proposed additions shall be directed at any neighboring property to the north, east or west of this site.

Representation - Mr. Scott Pennington, attorney, was present representing the church. He asked for a postponement until the December 12, 2008 hearing, in order to allow additional time to address Traffic Engineering issues related to their design.

Mr. Griggs expressed concern that this case had been postponed for several months, noting that the two new Board members had not had the benefit of the previous presentation. He thought it appropriate for the church to withdraw its request and come back at a later time, noting he would be in favor of disapproval at this time. In response, Mr. Pennington said that things had changed so much since the original request that, in essence, it would be a new presentation anyway.

Action - A motion was made by Ms. Moore, seconded by Ms. Edwards, and carried 4-1 (Stout and Stumbo absent; Griggs opposed) to postpone **CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** (an appeal for a conditional use permit to modify and expand an existing church, involving demolition of one building, in a Single Family Residential [R-1D] zone, on property located at 920 Bates Creek Road; and a variance to increase the allowable distance between the church and required parking from 300 feet to 475 feet, provided at 1125 Bates Creek Road [Cassidy Elementary School]) until the December 12, 2008 public hearing.

- b. **V-2008-67: CARMAX AUTO SUPERSTORES, INC.** - appeals for a variance to reduce the required amount of interior landscaping in an automobile display lot from 4,905 square feet to 1,860 square feet; and to relocate that landscaping to a visitor and employee parking lot, in a Highway Service Business (B-3) zone, on property located at 3200 Richmond Road (Council District 7).

The Staff Recommended: Disapproval, for the following reasons:

- a. The subject property is situated at a highly visible location at the corner of Richmond Road and

Man o' War Boulevard. The proposed reduction of required interior landscaping at this location, within a paved area in excess of two acres in size, will negatively impact the overall appearance of the property.

- b. Special circumstances unique to this particular property have not been identified to justify a substantial reduction in the required interior landscaping. The desire to maximize available space for vehicle display, and minimize the frequency that cars have to be washed, are not unique aspects of this development. Any justification related to vehicle cleanliness and space needs would have broad applicability to other locations, and could potentially result in a widespread circumvention of the Zoning Ordinance requirements.
- c. Strict application of the Zoning Ordinance will not unreasonably restrict use of the property or create an unnecessary hardship to the applicant. Cleaning vehicle inventories is a normal part of any automobile dealership. If insufficient space is available within the proposed vehicle display lot, it would be feasible to amend the Final Development Plan for the subject property (since it is undeveloped) to expand the area proposed for vehicle display, or reconfigure that area in conjunction with the visitor/employee parking lot.

Representation: Mr. Nick Nicholson, attorney, was present on behalf of the applicant. He requested an indefinite postponement of the case, because they were unsure how the applicant planned to resolve the landscaping issue. He noted that it had been postponed several times, adding that there was no sense in continuing to postpone it month after month. In response to a question from Mr. Brown, Mr. Nicholson said that they would re-notice surrounding property owners when the case was ready to be brought back before the Board.

Action: A motion was made by Ms. Moore, seconded by Ms. Meyer and carried 5-0 (Stout and Stumbo absent) to indefinitely postpone **V-2008-67: CARMAX AUTO SUPERSTORES, INC.** (an appeal for a variance to reduce the required amount of interior landscaping in an automobile display lot from 4,905 square feet to 1,860 square feet; and to relocate that landscaping to a visitor and employee parking lot, in a Highway Service Business [B-3] zone, on property located at 3200 Richmond Road).

2. No Discussion Items - The Chair asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2008-99: CALVIN D. GULLEY** - appeals for a variance to reduce the required front yard from 40 feet to 30 feet to allow an elevated covered porch to remain as built, in a Single Family Residential (R-1B) zone, on property located at 720 Downs Avenue (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The porch is very small (65 square feet), and is tucked into a corner created by an offset of the front building wall of the dwelling. It does not appear out of place in this neighborhood, a small residential area on Downs Avenue that is bordered on two sides by industrial property.
- b. The topography of the lot, sloping downward from the rear to the front, is a special circumstance that resulted in the front porch being elevated more than 3 feet above the established grade at the front corner of the constructed dwelling.
- c. Strict application of the Zoning Ordinance would force the appellant to lower the elevation of the porch, or shift the entire dwelling and porch farther to the rear of the lot. Lowering the elevation of the porch might appear odd given the design of the home, and would render the porch less useable. Moving the entire dwelling and porch would be a fairly severe economic hardship on the appellant, and is not warranted in this particular case.
- d. This variance request did not arise from intentional actions taken by the appellant, but resulted from insufficient elevation detail being considered during the permitting process.

This recommendation of approval is made subject to the following conditions:

1. The elevated porch may be retained in accordance with the submitted application and site plan.
2. Functional railings shall be maintained at all times in accordance with permitting requirements of the Division of Building Inspection.

There were no objectors present to the subject appeal; therefore, slides of the subject property were not presented.

Representation - Mr. Calvin Gulley, applicant, was present. He said that he had read the staff report and agreed to abide by the two conditions for approval.

Action - A motion was made by Ms. Edwards, seconded by Ms. Moore and carried 5-0 (Stout and Stumbo absent) to approve **V-2008-99: CALVIN D. GULLEY** (a variance to reduce the required front yard from 40 feet to 30 feet to allow an elevated covered porch to remain as built, in a Single Family Residential [R-1B] zone, on property located at 720 Downs Avenue) for the reasons provided by the staff, subject to the two recommended conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

- b. **C-2005-138: HARDWOOD HOLDINGS** - appeals for a one-year review from the date of issuance of a Certificate of Occupancy for a conditional use permit to operate a recreational facility, to include a sports bar/café, in a Light Industrial (I-1) zone, on property located at 401 Sporting Court (Council District 9).

At its December 2005 public hearing, the Board approved a conditional use permit to allow a sports bar/café to operate as part of an expanded recreational facility, subject to several conditions. One of those conditions was a 1-year review from the issuance date of a Certificate of Occupancy for the expanded use to determine if there had been any adverse impacts resulting from the sale of alcohol on the premises. The conditions to be reviewed, as they relate to the expansion of the use (including the sports bar/café), are as follows:

8. Release of the existing sanitary sewer easement (where this new building is proposed) must be completed prior to the issuance of a building permit for the facility, and the record plat must be recorded before the issuance of the occupancy permit.
9. The sports bar/café shall not serve any alcoholic beverages other than beer and wine.
10. The sports bar/café shall not have a direct entrance from the outside of the recreational building.
11. The sports bar/café shall not be open outside the normal operating hours for the entertainment center.
12. A one-year review by the Board of Adjustment, following the issuance of a Certificate of Occupancy, to include a report from Building Inspection.
13. The conditional use for beer and wine shall immediately cease upon the changing of ownership, or the primary operator, of the facility.

Representation: Mr. Joe Champa, owner of the facility, was present with his son, Nick.

Mr. Brown asked for a report from Building Inspection as to compliance with the approved conditions. Mr. Hume responded that there had been no complaints since issuance of the Certificate of Occupancy, which had been approximately one year ago. The inspection result was that the food handler and beer licenses were intact and in good standing, with no violations. Mr. Griggs noted that he had visited the facility, and it appeared to be well kept. In response to a question from Mr. Brown, Ms. Rackers said that action should be taken with regard to approval of the review, based on Building Inspection's report, adding that some conditions could be deleted, depending on their level of completion. She said that, with regard to the original conditions imposed, numbers 1, 2 and 4 could be deleted; numbers 5 and 6 could possibly be deleted as well, based on input from the Divisions of Engineering and Traffic Engineering. Mr. Champa asked if #8 could also be deleted, as it had been completed and the plat recorded. After a brief discussion, it was determined that condition numbers 1, 2, 4, 5, 6, 8 and 12 could be deleted, and that no further Board-scheduled reviews were needed. Mr. Hume assured the Board that his yearly inspection would be done as required, which should be sufficient, based on the applicant's level of compliance. If there was a need to bring it back to the Board, he would make note of that in his inspection

report, and it would be done. In response to a question from Mr. Griggs, Ms. Boland said that the Board could find that, based on the 1-year review (and the conditions that have been satisfied), there would be no further scheduled reviews needed. She added that, in the motion, when it is stated that the previously mentioned conditions could be deleted, the Board could adopt a finding that those conditions have been completed and satisfied, with the finding that: "based on this review, this use has shown itself to be appropriate in this location; therefore, no scheduled reviews are necessary."

Action: A motion was made by Mr. Griggs, seconded by Ms Edwards and carried 5-0 (Stout and Stumbo absent) to accept the wording provided by Ms. Boland, deleting conditions #1, 2, 4, 5, 6, 8 and 12, and leaving conditions #3, 7, 9, 10, 11 and 13 intact.

- c. **C-2008-91: BOL LAND ACQUISITION CO., LLC** - appeals for a conditional use permit for a bank drive-through facility, in a Community Center (CC) zone, on properties located at 6409/6413 Polo Club Lane (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, which are either used for commercial purposes or are dedicated to passive public recreation and preservation of open space. Meanwhile, nearby residents have previously voiced their support of this design. The final design of the facility will be subject to review and approval by the Division of Traffic Engineering.
- b. All necessary public facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The drive-through facility shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the drive-through facility shall be subject to review and approval by the Division of Traffic Engineering.
4. Storm water management is to be provided in compliance with the Division of Engineering Storm Water Manual.
5. Encroachment permits or utility relocations shall be accomplished prior to the construction of this facility.

There were no objectors present to the subject appeal; therefore, slides of the property were not presented.

Representation - Mr. Steve Ruschell, attorney, was present on behalf of the applicant. He said that they had read and agreed to comply with all of the recommended conditions.

Action - A motion was made by Ms. Moore, jointly seconded by Ms. Edwards and Ms. Meyer and carried 5-0 (Stout and Stumbo absent) to approve **C-2008-91: BOL LAND ACQUISITION CO., LLC** (a conditional use permit for a bank drive-through facility, in a Community Center [CC] zone, on properties located at 6409/6413 Polo Club Lane) for the reasons provided by the staff, subject to the five recommended conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

- d. **C-2008-92: HURRICANE HALL FARMS, LLC** - appeals for a conditional use permit to operate a horse training facility, in the Agricultural Rural (A-R) zone, on properties located at 3899 Georgetown Road and 3688 Hurricane Hall Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. A horse training operation at this location should not adversely affect the subject or surrounding properties. All needed facilities are already in place. Adequate buffers will be provided by existing trees and other landscaping, as well as surrounding roads and the golf course that borders the south side of the farm.
- b. All necessary public services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Horse training activities shall take place in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.

There were no objectors present to the subject appeal; therefore, slides of the property were not presented.

Representation - Mr. Sam Carneal, attorney, was present representing the applicant. He said that they had read and agreed to the recommended conditions and asked for approval.

Action - A motion was made by Ms. Edwards, seconded by Ms. Meyer and carried 5-0 (Stout and Stumbo absent) to approve **C-2008-92: HURRICANE HALL FARMS, LLC** (a conditional use permit to operate a horse training facility, in the Agricultural Rural [A-R] zone, on properties located at 3899 Georgetown Road and 3688 Hurricane Hall Road), for the reasons provided by the staff, subject to the two recommended conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

- e. **C-2008-93: HOPE SPRINGS COMMUNITY CHURCH** - appeals for a conditional use permit to expand a church use into an additional (existing) building, in a Wholesale and Warehouse Business (B-4) zone, on property located at 1109 Versailles Road (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adjoining or nearby land uses, largely of a commercial nature, are not likely to be disturbed by church activities. The nearest residential area is several hundred feet away, and adequately buffered from the proposed church site. Sufficient off-street parking will be provided, with steps taken to ensure that the church will have exclusive access to the minimum required spaces (60) during times that church services are taking place.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church shall be expanded in accordance with the submitted application and site plan, with the worship center to provide sanctuary seating for no more than 300 persons.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to occupying the building.
3. The church shall enter into an agreement with the owner of the property, ensuring that they have exclusive access to a minimum of 60 off-street parking spaces during times that regular church services are being held. This agreement shall be subject to approval by the Division of Building Inspection and/or the LFUCG Law Department.

There were no objectors present to the subject appeal; therefore, slides of the property were not presented.

Representation - Mr. David Calhoun, pastor, was present on behalf of the church. He said that he had reviewed and agreed to the conditions recommended by the staff.

Action - A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried 5-0 (Stout and Stumbo absent) to approve **C-2008-93: HOPE SPRINGS COMMUNITY CHURCH** (a conditional use permit to expand a church use into an additional [existing] building, in a Wholesale and Warehouse Business [B-4] zone, on property located at 1109 Versailles Road, for the reasons provided by the staff, subject to the three recommended conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

- f. **C-2008-94: IMMANUEL BAPTIST CHURCH** - appeals for a conditional use permit to establish a child care facility for up to 40 children, in a Single Family Residential (R-1B) zone, on property located at 3100 Tates Creek Road (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. A relatively small child care center at this location should not adversely affect the subject or surrounding properties. All necessary interior space is already available, and an abundance of off-street parking is conveniently located near the entrance to the proposed facility. Sufficient open space for an outdoor play area is available near the building to be occupied. Increased traffic is expected to be minimal, and can be accommodated by the existing public roads that serve the church property.
- b. All necessary public facilities and services, such as police and fire protection, are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- 1. The child care center shall be established in accordance with the submitted application and a revised site plan showing the location of the proposed outdoor play area of at least 1,000 square feet in size.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the center, which shall include any permits for fencing and screening of the outdoor play area.
- 3. The child care center shall have a maximum enrollment of 40 children, with hours limited to Monday through Friday, from 7:00 a.m. until 6:00 p.m.
- 4. Operation of the child care center shall at all times comply with regulations of the Kentucky Cabinet for Health and Family Services.

There was no one present in opposition to the subject appeal; therefore, slides of the property were not presented.

Representation: Ms. Kelly Hale, Director of the Early Childhood Education program for the church, was present. She said that she had read the conditions recommended by the staff and agreed to abide by them.

In response to a question from Mr. Brown, Ms. Hale said that there was not a day care facility at the church at that time. What they did have was a pre-school facility, serving children from three to five years of age.

Action: A motion was made by Ms. Moore, seconded by Ms. Edwards and carried 5-0 (Stout and Stumbo absent) to approve **C-2008-94: IMMANUEL BAPTIST CHURCH** (a conditional use permit to establish a child care facility for up to 40 children, in a Single Family Residential [R-1B] zone, on property located at 3100 Bates Creek Road), for the reasons provided by the staff, subject to the four conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

- g. **C-2008-95: VULCAN LANDS, INC.** - appeals for a conditional use permit to conduct a mining/quarrying operation, in the Agricultural Rural (A-R) zone, on property located at 2850 Georgetown Road (Council District 12).

Representation: Mr. Richard Hopgood, attorney, was present on behalf of the applicant. He said that individuals wishing to speak in favor of the proposal were not yet present, and offered to defer to the remainder of the cases on the agenda. This case was moved to the discussion portion of the agenda, and was heard immediately following **V-2008-98: DANIEL R. VIOLETTE**.

- h. **C-2008-96: BEAUMONT PARK TOWNHOMES, LLC** - appeals for a conditional use permit to establish a temporary real estate sales office, in a Planned Neighborhood Residential (R-3) zone, on property located at 3234 Beacon Street (Council District 10).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, since this is a temporary use in a newly developing subdivision. Required off-street parking will be provided, and the sales office will be removed no later than at the end of two years.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The sales office shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the sales office.
3. Use of the office shall be strictly limited to real estate sales, with no use as general office space for contractors, subcontractors, architects or other similar entities involved in the building industry.
4. The sales office shall be removed within two years after approval by the Board.

There was no one present in opposition to the subject appeal; therefore, slides of the property were not presented.

Representation: Mr. Andy Holmes, Midwest Engineering, was present on behalf of the applicant. He said that they had reviewed the conditions, agreed to abide by them, and requested approval.

Action: A motion was made by Ms. Edwards, seconded by Ms. Moore and carried 5-0 (Stout and Stumbo absent) to approve **C-2008-96: BEAUMONT PARK TOWNHOMES, LLC** (a conditional use permit to establish a temporary real estate sales office, in a Planned Neighborhood Residential [R-3] zone, on property located at 3234 Beacon Street), for the reasons provided by the staff, subject to the four conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

- i. **C-2008-97: FASIG-TIPTON COMPANY, INC.** - appeals for a conditional use permit to construct an office building for an existing horse sales facility, in the Agricultural Rural (A-R) zone, on property located at 2400 Newtown Pike (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A horse sales establishment has been at this location for many years. The new office building will be immediately adjacent to the existing sales pavilion, well outside of the required 25' floodplain setback. Adequate off-street parking is conveniently available, and any increase in traffic is expected to be minimal.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The new office building shall be built in accordance with the submitted application and site plan, set back at least 25' from the 100-year floodplain of Cane Run Creek.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A storm water management plan, if required, shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. Best Management Practices are to be used so as not to affect the water quality in the Royal Spring Aquifer Protection Area.
5. That the proposed construction and layout of the property be presented to, and reviewed by, the Royal Spring Aquifer Wellhead Protection Committee prior to issuance of any permits from the Division of Building Inspection.

There was no one present in opposition to the subject appeal; therefore, slides of the property were not presented.

Representation: Mr. John Miller, site planner for the applicant, was present. He said that he had reviewed the conditions and was agreeable to them; however, there was a small revision to the application that he would like to present, noting that when Fasig-Tipton first applied to the Board, the site plan showed the square footage of the office building to be about 20,000 square feet. It was still to have the same square footage, but there was an area under roof (which he referred to as a mezzanine) that was to be used for mechanical equipment during the first phase of construction. He said that the Fasig-Tipton personnel would like to expand the mezzanine floor at a later date, which would bring the total square footage to about 25,000.

Mr. Griggs asked if the footprint was to remain unchanged. Mr. Miller replied that that was the

case. Mr. Brown noted that there would be about a 25% increase in square footage, which Mr. Miller also affirmed. In response to a question from Mr. Brown, Mr. Marx responded that the staff was aware of the change and was okay with it, adding that the increase in square footage would not cause an issue with regard to surrounding property owner notice, as there had been no specific mention in the notification letters as to the size of the office building.

Action: A motion was made by Mr. Griggs, seconded by Ms. Meyer and carried 5-0 (Stout and Stumbo absent) to approve **C-2008-97: FASIG-TIPTON COMPANY, INC.** (a conditional use permit to construct an office building for an existing horse sales facility, in the Agricultural Rural [A-R] zone, on property located at 2400 Newtown Pike), for the reasons provided by the staff, subject to the five recommended conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

- B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

Note: At this point, Mr. Brown asked anyone who would be speaking in reference to the following case to stand and be sworn.

- 1. **V-2008-98: DANIEL R. VIOLETTE** - appeals for a variance to reduce the required front yard from 30 feet to 6 feet, 6 inches in order to complete construction of a storage shed, in a Single Family Residential (R-1D) zone, on property located at 1937 Alexandria Drive (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare or significantly alter the character of the general vicinity. Landscaping will be provided to make the shed less visible from Alexandria Drive. The wide street right-of-way at this location will help to minimize any possible impact on the Alexandria Drive streetscape.
- b. The odd configuration of the subject property, combined with utility easements that extend along most of the sides and rear of the property, has resulted in an unusual mix of circumstances that make the front yard location of an accessory building more desirable in this particular instance.
- c. Strict application of the Zoning Ordinance would require that the shed be relocated to the side or rear of the dwelling, where available space is more limited by utility easements. Relocation does not appear to be warranted in this case, given the impact it might have on useable open space surrounding the residence and commitments made by the appellant to buffer the shed (where currently located) with additional landscaping.

This recommendation of approval is made subject to the following conditions:

- 1. The storage shed may be completed where currently located in accordance with the submitted application and site plan.
- 2. Proposed landscaping in the vicinity of the shed shall be installed either prior to or concurrent with completion of the shed.

3. The shed shall be properly maintained at all times.
4. The variance is granted only for the purpose of allowing the 8' by 12' shed to remain where currently sited.

Representation: Mr. Daniel Violette, applicant, 1937 Alexandria Drive, was present.

Mr. Brown asked to see photos of the property, which Mr. Violette provided. The photos of the property showed the property itself; a copy of the plat, noting that his was one of the oddest lots in the neighborhood; a broader view of the neighborhood (plat); an aerial photograph, which showed the property location and the vegetation that had been present prior to his purchase; the hedge that he has since planted after removal of the excess vegetation, in addition to other improvements; a copy of the plat of the rear of the property, which showed the existing utility easements; the concrete pad and storage shed framing materials; the stop work order from the Division of Building Inspection; the letter of notification to surrounding property owners, as well as the signatures of all property owners within the notification area, expressing support of the placement of the shed; and views of the shed, noting the difference in its appearance once additional landscaping is planted.

Mr. Violette said that he was proud to have purchased the property and intended to make additional improvements. He compared the layout of his property to those in the remainder of the neighborhood, and said that there was no other property like his along Alexandria Drive. His property is triangular in shape, with the side yard fronting Alexandria Drive. He said that when he purchased the property, the vegetation along Alexandria Drive was greatly overgrown, as the previous owners had not taken the time or effort to maintain it. He removed that vegetation and planted a hedge to discourage vagrants from trespassing into his property, which happened regularly when the property was overgrown.

He said that when he decided to construct the shed in August of 2008, because of the odd shape of the lot, he called Building Inspection about a building permit. He spoke to one of the inspectors who told him that, due to the small size of the shed, a permit was not needed. He said that he asked about setbacks and was told that the shed had to be a minimum of three feet from the property line, whether it was the front, side or rear of the property. Mr. Violette proceeded to pour the concrete pad and construct the framing, which was bolted to the concrete, as well as to the rest of the framing, which would ensure that it was a sturdy structure. He also added more landscaping. He said that, because of the easements along the rear of the property, based on his conversation with Building Inspection, he chose to build the shed closer to Alexandria Drive. During an inspection, Mr. Violette was told by the inspector that, although he understood why the shed had been located near Alexandria Drive, it violated the setback requirement along the street (due to the size of the right-of-way) and issued a "stop work order" to allow Mr. Violette to apply for a variance.

He said that his neighbor (who was present in opposition to this case) saw his landscaping plan and said that he would like something more permanent (i.e., evergreen) than what he had originally planned. Mr. Violette agreed to plant arborvitae, which should attain a mature height and width of 14 feet and 4 feet, respectively. He added that he would not have gone to the time and trouble to deal with this neighbor's issue, but he was concerned about the neighbors' opinions and about property values in the neighborhood. He reiterated that additional landscaping would be planted so that the shed would not be visible from either the street or surrounding properties.

Mr. Brown asked Mr. Hume (Building Inspector) if he would like to add any further information. Mr. Hume responded that Mr. Violette had been very cooperative and complied with everything Building Inspection had required. He said that, because Mr. Violette had called prior to construction of the shed, because he was at a disadvantage with the shape of the lot (including existing easements), and because he had gone above and beyond the norm in trying to satisfy his neighbors, he had no problem with granting the variance to allow the shed to remain. Mr. Hume clarified that, should the Board approve this request, a permit would still not be required for the shed due to its small size; and if it did not encroach into the required setback from Alexandria Drive, this would not even be before the Board.

Opposition: Mr. Mark Hanks, 1933 Alexandria Drive, was present in opposition. He said that he owns and lives next to Mr. Violette. His concern was that the shed, as located, was in violation of the setback requirements. Even though Mr. Violette had done a good job in cleaning up the property, constructing the shed and making other improvements, this was still in violation and, he felt, was too close to the street. He said that he has never seen an accessory building in any other front yard in Lexington, and it

was his fear that this would set a precedent and would negatively affect surrounding property values. Mr. Hanks said he liked Mr. Violette's landscape plan, but he would prefer that he consider land values and the negative precedent (for all of Lexington) that would be set by leaving the shed where currently located.

Mr. Griggs asked if Mr. Marx could explain to Mr. Hanks about precedent as it related to this case in order to put aside his concerns. Mr. Marx explained that every case gets evaluated on its own merits. In this case, the situation was so unusual that it would likely not come up often, if at all. The burden is on the Board to look at and evaluate the particulars of each case. Mr. Hume added that, given the fact that Mr. Violette called ahead and tried to do the right thing, it was because of a misunderstanding that the Board was even hearing this case.

As a final comment, Mr. Brown said that he dislikes seeing construction commence in error, which results in an applicant coming and asking for forgiveness; however, Mr. Violette did try to do the right thing by calling ahead to determine if any permits were needed and if the proposed location of the shed was acceptable.

Action: A motion was made by Ms. Meyer, seconded by Ms. Edwards and carried 5-0 (Stout and Stumbo absent) to approve **V-2008-98: DANIEL R. VIOLETTE** (a variance to reduce the required front yard from 30 feet to 6 feet, 6 inches in order to complete construction of a storage shed, in a Single Family Residential [R-1D] zone, on property located at 1937 Alexandria Drive) for the reasons provided by the staff, subject to the four conditions, and based on the Certificate of Land Use Restriction, attached as an appendix to these minutes.

D. Conditional Use Appeals

1. **C-2008-95: VULCAN LANDS, INC.** - appeals for a conditional use permit to conduct a mining/quarrying operation, in the Agricultural Rural (A-R) zone, on property located at 2850 Georgetown Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. An underground mining operation at this location should not adversely affect the subject or surrounding properties. The area to be mined is immediately adjacent to an existing surface mining (quarry) operation (owned by the appellant) that has been in place for many years, and the adjoining agricultural property to the north is also owned by the appellant. Agricultural uses on property to the east should not be impacted by the proposed mining, which will be entirely underground. The activity will be buffered by Interstate 64/75 to the south.
- b. Excessive noise or dust is not anticipated, as the mining activity will be entirely underground, and reclamation of the site and drainage control will be easily accomplished since only very minor alterations will be made on the surface of the subject property. Extensive studies and review by mining experts have been undertaken, which support that blasting in underground areas below 265' will not cause disturbances or property damage due to vibration or noise.
- c. Underground mining will take place at a depth of between 265' and 400', which is well below the lower extent of the Royal Spring Aquifer. Based on an evaluation of the site and the proposed mining operations, mining engineers and blasting experts have concluded that the activity should not impact that important water resource. Monitoring will be required during the critical construction phase to ensure that any unanticipated problems are dealt with in a timely manner.
- d. The appellant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local mining laws, regulations or conditions.
- e. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Construction and operation of the mine shall be done in accordance with the submitted application and site plan, with the understanding that the location of any needed air ventilators will be addressed during the permitting process.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The facility shall at all times comply with the provisions of the Mining/Quarrying Ordinance (Code of Ordinances #252-91), as well as all Federal and State regulations pertaining to mining activities and groundwater protection.
4. Prior to initiating construction of the entrance portals, the appellant shall provide final plans for the

design and construction of the portals to the Chairman of the Royal Spring Aquifer Wellhead Protection Committee. Within 20 days after provision of those plans, the appellant shall meet with that Committee to review/discuss the plans. The appellant agrees to not commence construction for at least 30 days following that Committee meeting, so that the Committee can provide comments to the Division of Building Inspection and any other LFUCG entity that will be exercising oversight over the appellant's mining operation.

5. During construction of the entrance portals, the appellant shall provide monthly reports to the Royal Spring Aquifer Wellhead Protection Committee, and to the Georgetown Municipal Water and Sewer Service. At a minimum, these reports shall provide an update on construction progress, and describe any problems that have been encountered and what steps have been taken to address these problems, with a focus on any issues relating to the quantity, quality and distribution of water in the Royal Spring Aquifer.

Representation: Mr. Richard Hopgood, attorney, was present on behalf of the applicant, and noted that there were several other people present on behalf of the proposal as well. Mr. Hopgood said that his client was in agreement with the recommended conditions, including a minor change recommended by the staff (noted above in italics and underlined as part of condition #3). He asked Mr. Brown how he preferred to proceed, since there was no one present in opposition to the case. In response, Mr. Brown asked if the Board had any questions and who was present to testify for Vulcan. Mr. Hopgood listed those present: Mr. Jim DeCinque, General Manager of Vulcan Materials in Kentucky (a geologist by education and training); Dr. Kot Unrug, Ph.D., mining professor at the University of Kentucky; Dr. Braden Lusk, Ph.D., also a mining professor at UK who specializes in blasting; Mr. Steve Gardner, mining engineer and consultant with Engineering Consulting Services, an engineering firm in Lexington, who had evaluated the site and prepared extensive reports relative to the proposed mining operation; and Mr. Craig Morgan, also an engineer by training, who had performed work in the noise analysis area for Vulcan. Mr. Hopgood said that all of the reports that had been prepared were submitted as part of Vulcan's application and were contained in the booklet of information that he had distributed to the Board.

When asked by Mr. Brown to explain revisions to any of the conditions, Mr. Marx said that there was only one minor change (in response to a request from the Royal Spring Aquifer Wellhead Protection Committee), adding the words "and groundwater protection" to the end of condition #3 (noted above). Mr. Hume questioned the wording of condition #5, and asked if the Royal Spring Aquifer Wellhead Protection Committee was a Fayette County organization, to which Mr. Brown responded that it was strictly contained within Scott County, although it was noted that members of the LFUCG Division of Planning and Department of Environmental Quality are also part of that committee. Mr. Hume requested that Fayette County (Building Inspection) also receive reports (similar to those to be submitted to the Wellhead Protection Committee); otherwise, there would be no way for him to enforce the conditions. Mr. Hopgood said that they had no opposition to that request.

Mr. Brown then opened the discussion to questions from the Board, noting that, if necessary, a full presentation could be made by Mr. Hopgood.

Mr. Griggs questioned the notification area and the fact that there was no opposition present. He was concerned, because there was no opposition, about the quarrying under the Royal Spring Aquifer and thought that a different point of view, other than that of the supporters, would be helpful to understand the full import of the case. He felt that, without a differing point of view, the Board was at a disadvantage by not having as much information as they might otherwise have. He said that he would like to hear what the supporters had to say; but with no dissent to provide another side of the issue, the outcome of the case could be predicted, which concerned him. Ms. Meyer said that she would like to hear from the Wellhead Protection representative(s), as well as the Georgetown Municipal Water Supply representative(s). She said that the Board had been told that the project had their support, but she would like their input as well.

At this point, Mr. Brown asked that anyone present who wished to speak stand and be sworn as a group, as that would be the most efficient way to proceed.

Mr. Hopgood used an aerial photo of the area to explain the location and layout of the property. He said that there are 194 acres that have been owned by Vulcan since the 1960s (which they have a vested right to mine), and property adjoining that land to the east is the University of Kentucky's veterinary science (equine) research facility. There is an additional 57 acres, also to the east of Vulcan's property, owned by UK. He said that it is Vulcan's long-range plan to take their mining operation underground, as opposed to

the surface mining operation they are now conducting, and indicated the location of that proposal. He said that Vulcan had discussed this with the University, who had indicated a need for more land for their equine research operation. This led to the initial discussion between the parties about a possible swap of surface rights on one tract for mineral rights on UK's 57-acre tract. At the same time as this discussion, Vulcan was approached by representatives of the Legacy Trail, with a proposal to have the trail, which is to extend from downtown Lexington to the Horse Park, to come through the property in the area where Vulcan was planning to go underground. Mr. Hopgood said that a letter of intent between UK and Vulcan was drafted (approved by both UK's Board and Vulcan's Board) to allow the trail to come through the property as proposed, and to allow Vulcan to go underground with their quarrying operation. He added that all of Vulcan's surface operation(s) will remain where currently located; and since the tract in question is not part of the original ownership from the 1960s, they were required to obtain a conditional use permit to commence underground mining, with no surface operations, on the 57-acre tract.

Mr. Hopgood indicated the location of Cane Run Creek, which is part of the Royal Spring Aquifer. He said that Vulcan has had several conversations with the Wellhead Protection Committee, one of which was a technical review meeting, with all members present, as well as an independent engineer hired by the Committee. All of the professionals that were at today's hearing on behalf of Vulcan were also at that technical meeting and had presented written reports with analyses to the Committee. Mr. Hopgood explained the makeup of the Committee, noting that the Chair, also present at this hearing, is the manager of the Georgetown Municipal Water and Sewer Company. Other Georgetown/Scott County and Fayette County planners are also members, as well as a representative from Scott County's Emergency Services Division. All heard the presentations and had access to every report that was submitted. The Wellhead Committee agreed that Vulcan's plan of operation was acceptable, provided that the final engineering plans for the mining operation would be taken back to that Committee prior to actual commencement of mining, which is reflected in conditions 4 and 5 above. Vulcan will make a final engineering presentation and will get input from the Wellhead Committee, giving them time and the opportunity to raise any further questions and/or concerns about the operation.

He explained that, as they proceed with the creation of the underground portals, ground conditions will continually be monitored (e.g., with regard to seepage or any other potential problem) and will provide detailed reports to the Water Company and the Wellhead Committee so that they will be aware of what is happening. He said that Mr. Jim Currans (Kentucky Geological Society) was also present at the Wellhead Committee meetings and heard the presentations and was aware of the proposed operation. The engineering plan is essentially to create portals (open entries) to the underground, starting in the surface pit, which is about 80 feet deep and continuing downward. Mr. Hopgood used the aerial photo to describe the process and the proposed direction of the mining. He said that the portals are drilled, as opposed to blasted, to the 265-foot depth, meaning that there will be 265 feet of limestone above the mining operation itself. The Royal Spring Aquifer is no more than 50 feet deep, and the depth of the surface pit (80 feet) is already below the level of the Aquifer.

The mining process is a "room and pillar" process, which is where stone is severed at the end of the day by limited-control blasting to provide sufficient material daily for underground crushing and conveying to the surface. Once at the surface, it is crushed again, separated according to size, and is either stored or trucked out to job sites. The "room and pillar" method leaves 50 square-foot pillars of limestone (floor to ceiling) to provide structural integrity for the mine. Those pillars are never removed; and often, when mining is complete, because it is a dry, temperature-controlled environment, the space is leased out for underground storage or other uses.

Mr. Hopgood explained that between the surface and the location of the mining operation, there are three layers of bentonite, which is a heavy clay material and a natural sealant that is present throughout Fayette County. Each layer is approximately one foot deep, and is located at different levels. Its presence keeps groundwater from seeping into the mine. The locations (elevations) of the seams have been identified, and the mining will be located well under the lowest seam. He cited Mr. Gardner's report, noting that core drillings had been done and samples taken in order to tell if water was moving from one level to another where the portals are proposed. They found that there was no movement of water between levels.

In order to alleviate concerns, Mr. Hopgood told the Board that Vulcan's facility on the western side of the city (Central Rock) is currently mining under McConnell Springs, and there is no groundwater in the mine under the springs and stream, nor will there be any in the new facility. The mining will take place well below the ground water level. Any water that is in the mine is intentionally allowed to run in to provide

water for dust suppression, which is a requirement of the Kentucky Division of Air Quality, who continually monitors the interior of the mine. The water flows into ponds, and the particulate matter settles to the bottom of the pond(s). This allows it to be re-used in the spraying system (i.e., recycled to control dust) above ground.

Mr. Hopgood said that Dr. Braden Lusk, Mining Engineering professor at UK, was currently operating at an underground quarrying operation in Scott County, under Elkhorn Creek. He said that Dr. Lusk had reviewed the blasting procedures used at Central Rock and the seismograph records of the blasts that occur on a daily basis. His conclusion was that Central Rock was way under state standards and characterized the above-ground blasting effects as negligible. The same technique will be used at the Georgetown Road facility, and the initial blasting will take place 265 feet below the surface. The blast, which occurs once per day, is a small, very controlled blast; therefore, it will have no effect on surrounding properties or on the Royal Spring Aquifer.

Mr. Hopgood also referred to Dr. Kot Unrug, who has been a Mining Engineering professor at UK for approximately 35 years and is internationally known in the mining engineering field. Mr. Hopgood said that Dr. Unrug had come to the same conclusion(s) as had Mr. Gardner, which supports the process of drilling ahead (small holes) along the decline into the mine in order to be sure they were aware of what was ahead of them. If, by chance, there were to be any seepage of groundwater, it would be known well ahead of time and they will know how to deal with it. He said that this is part of the reporting process to the Wellhead Protection Committee.

Mr. Hopgood said that the notification area for the conditional use permit was large – at least 60 property owners were notified. It consisted of part of the Coventry and Kearney Ridge subdivisions. He said that they had spoken with the residents of Spindletop Hall, as well as the developers of both Coventry and Kearney Ridge. A great deal of time had been spent with the Wellhead Protection Committee as well. The reason there was no opposition present was because the people that have looked at the proposal had no problem with it. He said that they knew from the beginning that the Royal Spring Aquifer would be an important issue, for both the Wellhead Protection Committee and the Board of Adjustment. The process was slowed from the normal amount of time it generally takes to get an application to the Board, because they wanted to be sure that everyone understood what was proposed so that there would be no reason to oppose it.

In what he termed the “spirit of fair disclosure,” Mr. Brown said that he wanted Mr. Hopgood and the applicant to know that he had grown up in an area where there is a great deal of coal mining – both surface and underground. He added that he lives on the western side of Lexington and is familiar with the blasting that occurs at 5:00 p.m. daily. At that point, he asked to hear from the Royal Spring Wellhead Protection Committee.

Mr. Jimmy Emmons, Senior Planner with LFUCG Division of Planning and member of the Royal Spring Wellhead Protection Committee, was present; as was Mr. Bill Jenkins, Chair of the Wellhead Protection Committee and General Manager of the Georgetown Water Supply Company. Mr. Emmons explained the membership of the Wellhead Protection Committee, noting that it is a 7-member committee, five of the members being from Georgetown/Scott County, and two from Lexington-Fayette County. The Committee, which is an oversight committee, was created by ordinances in both counties. He said that when Vulcan originally made known their plans, he was very concerned, as it was in the Wellhead Protection Area. He was given the opportunity to tour the underground quarry (Central Rock) off of Manchester Street, which is very similar to the underground operation proposed for Georgetown Road, including mining under a protected water source (McConnell Springs). He said that he stood directly under the spring/stream (200 feet below ground); and the area was perfectly dry, adding that the professionalism of the mining company employees, as well as their level of detail and planning, were enough to convince him of the safety of the operation with regard to the Royal Spring Aquifer.

Mr. Emmons said that the Wellhead Protection Committee had had two meetings with the Vulcan representatives and technical experts (i.e., Drs. Lusk and Unrug, Mr. Steve Gardner, et al.). The second meeting lasted two hours, and the Committee members asked very difficult and detailed questions with regard to protection of the Aquifer. It was at that meeting that conditions #4 and 5 were requested to be part of the Planning staff's recommendation to the Board; and it was determined at that time that, with those conditions as part of the recommendation, they could be in favor of this proposal going forward.

Mr. Bill Jenkins, Chair of the Wellhead Protection Committee, told the Board that when Vulcan came forward with their proposal, they were very concerned about the Royal Spring Aquifer. They are always concerned about its protection and would prefer that there be no development in the Aquifer Recharge Area; however, that is not realistic. He said the best thing to do, in considering such situations, is to require the use of Best Management Practices. When Vulcan initially came to the Wellhead Protection Committee, it was a matter of courtesy on their part to let the Committee know about their plans. Mr. Jenkins said that that, in and of itself, is unusual, as most of the time they get no preliminary notification of a proposal in the Aquifer Protection Area. At the second meeting, Vulcan presented a preliminary plan, and the Committee was satisfied that it would be an acceptable use, provided the two conditions referenced by Mr. Emmons were imposed. He said that this will give the Committee an opportunity to review the actual engineering plan and will be able to comment on changes that may be needed. If that process fails, there will be the opportunity to bring it back to the Board and explain where the issues are. He reiterated the Committee's support of the project, provided the staff's recommended conditions were in place. In response, Mr. Brown said that the Board was there to assist the Wellhead Protection Committee in any way necessary, should any problems arise.

Mr. Griggs asked Mr. Jenkins, when analyzing various scenarios, where they drew the line as to there being too great a risk to Georgetown's water supply. In response, Mr. Jenkins said that they look at each case individually, much as the Board does. The Committee reviews requests for parking lots as well as projects that would have a large impact (e.g., the stockyard request from a few years previous that was located directly over the Aquifer). He said that it is generally worked out that either Best Management Practices are used, the plan is changed to cause less impact, or conditions that must be met are placed on the proposal. He explained that the Royal Spring Aquifer Recharge Area is a large water supply area (80% in Fayette County and 20% in Scott County). He said that it is difficult to find the actual water conduit, citing an example of a number of wells being drilled several years ago, with only one being an actual "hit" that could provide water for a farm. They have a good idea as to where the main supply comes from, but the Recharge Area itself is hard to identify. Mr. Jenkins said that where Vulcan is proposing to start the decline to the underground operation is at the tip of the Recharge Area, and only about a 500-foot distance might be of concern. He said that, according to the experts (as presented at the Wellhead Protection meeting), once they reach a certain depth, it will be safe, as the Recharge Area is only about 70 to 80 feet deep at most.

Mr. Steve Austin, director of the Legacy Center at the Blue Grass Community Foundation, was present to speak in support of the proposal. He explained its significance relative to the Legacy Trail that is proposed to extend from Downtown Lexington to the Horse Park. He said that the Legacy Trail will be a 9-mile walking/biking trail that will begin in the East End area of Lexington, near the Isaac Murphy Memorial Art Park, and will terminate at the Horse Park. Part of the trail will extend through Maine Chance Farm, which is the University of Kentucky's equine research facility adjoining Vulcan's property. Mr. Austin said that without the conditional use permit requested by Vulcan, the ability to take the trail in the alignment preferred by UK will no longer exist. He noted that the trail is planned to be completed in time for the opening of the 2010 World Equestrian Games. One of the goals of the Legacy Trail is to connect the East End area of Lexington to the larger trail project, both physically and symbolically, which will be done via its connection to the Isaac Murphy Park. Mr. Austin explained that Isaac Murphy, who lived and worked in the East End area, was a professional African-American athlete at the end of the 19th century and was the first African-American jockey to be inducted into the Thoroughbred Hall of Fame. So when speaking about the Legacy Trail, it is more than just a walking/biking trail – it is the coordination and integration of stories and culture between the East End and the Horse Park. The Legacy Foundation wants to see the project completed, and having the Board's approval to this conditional use is vital to that. In response to a question from Mr. Brown, Mr. Austin said that the Legacy Foundation wholeheartedly supported Vulcan's proposal.

Mr. Bill Peterson was present representing UK's College of Agriculture. He said that they were in full support of this proposal, as it would provide about 80 additional acres of surface land that can be used for their equine research facility. This would not be possible if Vulcan was not able to go underground with their mining operation.

Ms. Meyer asked how often (as in how many places) drilling takes place under a city's water source. Mr. DeCinque responded that he was only able to speak knowledgeably about Vulcan locations, citing both the Manchester Street location (active mining under McConnell Springs) and the Old Richmond Road facility (which is not over, but adjoins a water source); however, there are several quarries in Kentucky that do

mine under water sources, one of which is under the Ohio River, and one in Georgetown (under the Town Branch Creek, which feeds into the north Georgetown area water system). He said that it is not unusual to mine or quarry underground where there is water in an aquifer above the mine. In response to a second question from Ms. Meyer, he said that he was not aware of any problems experienced by any of the mines, but Vulcan has had no problems with regard to water infiltration. There are layers of bentonite in the limestone that act as sealants and prevent groundwater seepage. Mr. DeCinque said that he was not aware of any mining companies that have had groundwater problems in their mines.

Mr. Brown said that he was more familiar with coal mining, noting that coal is found in seams. He said that it seemed to be a similar case with limestone and asked about the thickness of the layer of limestone that will be quarried at the facility.

Mr. Steve Gardner, consulting engineer with ECSI (Engineering Consulting Services, Inc.), said that he would go through some exhibits with the Board in order to answer Mr. Brown's question. He said that their firm was retained to do a hydro-geological evaluation of the quarry and to provide an independent, objective review of Vulcan's plan. As a licensed, professional engineer, he said that his first obligation is to protect public health, safety and welfare when doing an independent review; no opinion is ever given without that as his first consideration. He said that he has worked with a number of quarries and coal mines across the state, and his firm has done many inspections. ECSI was one of the first firms hired by the City to do inspections to determine compliance with the Mining and Quarrying Ordinance back in the early 90s. He said that they have evaluated other quarries in the area, one of which is the Lexington Quarry in Nicholasville, which operates under the Connemara Golf Course. The golf course was recently purchased by Alltech, and they were concerned about potential impacts from the mining operation. ECSI did an evaluation of the mining operation and was able to assure the new owners that there would be no adverse impacts to the golf course.

Mr. Gardner presented an aerial photo of the property, showing the quarry pit as it currently exists. He also showed the undisturbed surface area that belongs to Vulcan, which is the area proposed for trade (surface rights for mineral rights) with the University of Kentucky. Other exhibits included a topographical view of the property and a geological cross-section, which was based on drilling conducted over the years. He said that five new holes had been drilled recently, the deepest of which was between 500 and 600 feet. He described the cross-section, noting that there are four layers of limestone that might compare to seams of coal. The purpose of drilling was to identify the location of bentonite in the rock strata. There are three layers, ranging in thickness from 3 inches to 10 inches, that occur in the limestone in that area. The Royal Spring Aquifer is confined to the strata above the bentonite layers, and the actual quarrying will be conducted below the bentonite. He said that from a review of all available information, it was his belief that there would be no impact on the Royal Spring Aquifer from the additional quarrying that was proposed. To answer Mr. Brown's question, Mr. Gardner said that quarrying operations are generally done in a manner of cuts – the first cut being at about a 27-foot depth. The depth of the second cut would possibly be at an additional 27-foot depth, which would result in an underground mining area of about 60 feet in height.

Mr. Brown said that it appeared that the slope is the most likely place for something unexpected and undesirable to happen, if anything were to happen. He asked if there would be any way to stop the flow of water in the event that there is a disturbance to the Aquifer and water began seeping from the portals as they were being constructed. Mr. Gardner responded that the water flow could be stopped and presented a 3-D graphic of what the general operation would look like. He said that tunneling and slopes are done all over the country, and water problems are sometimes encountered. However, the technology for ceiling tunnels is very advanced; and if any water problems were encountered, it would not be difficult to seal off the area(s). Mr. Brown then asked if there was a possibility that the discharge in the Aquifer might be permanently impacted if the discharge area for the spring were to be disturbed. It was Mr. Gardner's opinion that it would not because of the bentonite layers. If there was any contact with the spring/aquifer, because the bentonite is present and expands on contact with water, a natural sealant would be created. Mr. Gardner added that the existing surface operation is within the Royal Spring Aquifer; because the mining will be taken underground and below the water level itself (as opposed to an expansion of the surface operation), they would be able to ensure that there is no impact to the Aquifer.

Mr. Griggs said that when he visited the site, he noticed that the open quarry areas were filled with water. He asked if that was likely surface water runoff or water from the Royal Spring Aquifer leaking into the pits. Mr. Gardner replied that it was probably a little of both.

In response to a question from Mr. Hume, Mr. Gardner said that the mine is currently proposed for a single level; after many decades of operation, it could well expand to additional levels.

Ms. Meyer questioned possible effects of blasting and asked, even though it was controlled blasting, if there was a possibility that the layers of rock and bentonite could shift. Dr. Lusk, who is an expert in the field of blasting, responded that it was not likely a possibility, based on rock's reaction to the blasting process. He explained how the mass of rock responds to the type of vibration that occurs with blasting and said that any level of displacement would be minimal. It was his professional opinion that there would be no shifting of the layers of bentonite that might cause water seepage into the lower level(s).

Mr. Griggs asked, in the event of an earthquake that would cause major structural problems, if it would be likely that the limestone would collapse and damage the Aquifer. Dr. Lusk responded that if there was an earthquake of that magnitude, the bentonite layers would probably crack, which would disrupt the Aquifer, no matter what; however, since he was not an expert in that field, he deferred to Dr. Unrug.

Dr. Kot Unrug spoke and said that there is a fairly large body of data from earthquakes. He cited the San Francisco earthquake, noting that bridges and buildings collapsed. He said that surface waves in an earthquake are the most damaging. Underground, there is confinement of the surrounding ground area. Again citing the San Francisco earthquake, he said that there was no damage to tunnels or the subway system, which covers a substantial area underground, as subways are one of San Francisco's main forms of transportation. He said that rock is strong in compression and weak in tension, and explained how they take advantage of that in mining excavation. He also cited the New Madrid Fault area, noting that there were several incidents between 1802 and 1807. The unconsolidated material (close to the surface) completely liquefied, but no damage was experienced in the rock formations. He said the same thing is true of mining.

Mr. Brown asked Mr. DeCinque when they would commence with portal construction, assuming that the conditional use permit was granted. Mr. DeCinque responded that the actual declines would take anywhere from 2 to 3 years to construct before they started the mining process, and they were looking at 5 years before construction would even start on the portals. He said that that was one of the reasons the Wellhead Protection Committee had asked Vulcan to come back and work with them during the construction itself – i.e., so that their input would be more immediate to the operation. Mr. Brown clarified, based on Mr. DeCinque's response, that it would be at least 7 years before the "first shovelful of gravel" was removed. Mr. DeCinque confirmed that that was correct.

Ms. Meyer asked about the inspection process (i.e., who does the inspections). In response, Mr. Hume said that the Code of Ordinances requires that mines be inspected once per year. Building Inspection gets maps and a geological report from an independent engineer and verifies compliance with the items mentioned in the Zoning Ordinance. Ms. Meyer asked about the inspection process during the construction phase and as they get ready to begin drilling. Mr. Hume said that that phase of the construction process is monitored by state and federal agencies. Mr. DeCinque added that Vulcan has multiple inspections by state and federal agencies, as well as by the City. MSHA (Mining Safety and Health Administration) conducts at least four inspections per year, each of which lasts about 2 to 3 days. They walk the entire length of the mine and check all operations and equipment, etc. The State Air Quality Permitting people also inspect the mines at least twice per year (unannounced). He said that they are more likely to show up 7 or 8 times per year, versus the two times that they are required to conduct an inspection. Mr. DeCinque said that they also have inspections by the Groundwater Division and the Surface Mining Division (which is responsible for monitoring blasting and noise), also occurring up to 8 times per year.

At this time, Ms. Moore noted that she would abstain from voting, as she is employed by the University of Kentucky.

Mr. Griggs said that it was bothersome that there was no one in opposition that might present the "other side"; however, it could be that there was no legitimate cause for opposition. He said that he wanted to add to the record minutes from a case from 1989 (C-89-35: Vulcan Materials Company) that had been submitted to this Board for approval approximately a year ago, having been in draft form for at least ten years. It was the same applicant and a very similar case – i.e., Vulcan was asking to expand its operation near a very delicate water feature, and there was heavy opposition at the time. Mr. Griggs read into the record excerpts from those minutes, consisting of expert testimony from a hydro-geologist, who concluded

that there would be no impact on Elk Lick Creek as a result of the tunnel construction; and testimony from the opposition's attorney regarding the importance and the uniqueness of the Elk Lick Falls, as well as the Wharton Sanctuary, which adjoined the subject property, and the adverse impact that might occur to the creek from the quarrying operation. He said that Vulcan ended up withdrawing that application.

In response, Mr. Hopgood said that comparing the Old Richmond Road facility and the proposed facility was like "comparing apples to oranges" – and that the issues that were experienced with the Old Richmond Road facility were unique to that property. The quarry was owned and operated by a different entity than Vulcan (opened in 1958) and was acquired at a later time by Vulcan, who cleaned up and remedied the situation that the former owner had caused (i.e., gravel washing into the creek and stopping its flow). Compliance was not an issue at that time, nor was there any oversight by regulating agencies. He said that much legislation (e.g., the Clean Air and Clean Water Acts) has been adopted since. Vulcan is a compliance-oriented company, and the health and safety of its employees is of paramount importance.

Compliance with mining regulations is one of the crucial aspects of the company's operation. He said that Jim Rebmann, who is an environmental planner with the Urban County Government and a member of the Wellhead Protection Committee, supports the project; and the expert witnesses speaking in favor of the project have much more extensive backgrounds in their fields than those who spoke in 1989 in opposition to Vulcan's request. Mr. Hopgood concluded by noting that the history of the quarry on Old Richmond Road has no relation to the proposed operation.

In response to a question from Mr. Brown, Mr. DeCinque said that any members of the Wellhead Protection Committee could visit the facility while the construction of the portals was taking place. They do take safety precautions, in that there is a sign-in process and training, and visitors are required to wear hardhats when on the property. He said that part of the condition recommended by the staff is to keep the Wellhead Committee updated as to what's going on during the construction process and to provide them information on a regular basis. Mr. Brown said that he was aware that reports would be provided on a regular basis (included in the wording of the conditions); it was his intent to ensure that if anyone wanted to inspect the mine themselves, that it would be acceptable.

Action: A motion was made by Ms. Edwards to approve C-2008-95 for the reasons provided by the staff, subject to the five recommended conditions, amending conditions #3 and 5 as previously noted. The motion died for lack of a second.

Note: At this time, Mr. Brown declared a 10-minute recess, with the meeting to be re-convened at 3:25.

Once the meeting re-convened, Mr. Brown noted that a representative from the State Division of Water was present and asked him to come forward.

Mr. Ernie Ellison, program hydrologist for the Kentucky Wellhead Protection Program, was present. He said that he works for the Kentucky Division of Water, Watershed Management Branch, and is charged with assisting public water systems in Kentucky that get water either from springs or water withdrawal wells. It is his job to help manage the water supply and address any issues with regard to water quantity and quality and to identify any potential (point or non-point) sources of contamination that can affect the water supply. He said that any public water system is required to have a Wellhead Protection Plan in place for that purpose.

In response to a question from Ms. Meyer, Mr. Ellison said that he was not able to offer a personal opinion on Vulcan's request; but as far as the Division of Water is concerned, the main issue is that Vulcan meet state and federal regulations (which is covered by condition #3). He said that it was he that requested the amendment to condition #3 with regard to groundwater protection. He said that the state's regulations protecting groundwater are related to the Safe Drinking Water Act, noting that many of the regulations are reactive (i.e., remedial) in nature. It is required that all activities in the state, similar to what Vulcan is requesting, have a groundwater protection plan in place. He believes that Vulcan has met that requirement. He said that, with the Safe Drinking Water Act, if Vulcan does anything to affect the Aquifer, they (Vulcan) are legally responsible for supplying water to the system that's affected, whether it's a public water system or a citizen's private supply.

Mr. Ellison said that the geology in the area is karst geology with limestone. Most of the flow of the Royal Spring Aquifer is conduit flow, as opposed to diffuse, and flows similarly to water in a straw, in a tube-like fashion. If the tube is broken, the water flow is impeded. He said that if they intersect the conduit in

constructing the decline, he was not sure how they would address it. He added that the flow of the Royal Spring has declined over the years, likely due to development and the loss of green space, but the reason has not yet been determined. Mr. Ellison said that, in addition to conduit flow, water also flows through the soil and collects in streams. Some streams in Fayette County are what are known as "losing streams," meaning that when water percolates down, it collects in the conduits and flows into the streams; and as surface area is lost, flow is lost as well. The City of Georgetown does not have the resources to address where the water loss is originating, and neither does the State. All they are able to do is provide assistance to communities, as described earlier in his presentation.

In response to a question from Mr. Brown, Mr. Ellison said that the Division of Water itself doesn't have a legal say with regard to either support or opposition to the project. They have carefully looked at the application; and, in light of the program's objectives, they strongly urge Vulcan to use caution, because if the water supply is compromised, Georgetown will lose their primary water supply.

Mr. Hopgood asked Mr. Ellison's background, to which he responded that he has a B.A. in Geology from the University of Kentucky. In response to a second question from Mr. Hopgood, he said that he has been to all the Wellhead Protection Committee meetings, and they put Vulcan "through the ringer" with concerns about their proposal. He said that with regard to the chance of affecting the Royal Spring Aquifer, Vulcan can't guarantee that they will not; and the Division of Water and the Wellhead Protection Committee can't say with 100% certainty that they will -- it is not an exact science. Mr. Brown asked if Vulcan has been cooperative in doing everything they have been asked to do, and Mr. Ellison confirmed that they have.

Mr. Hopgood said that that question had come up at the Wellhead Protection Committee meeting, and it was Mr. Rebmann who had indicated the likelihood of the decline of the flow in the Royal Spring Aquifer. He added that 80% of the watershed is in Fayette County, and has been developed. With the paved, impervious surfaces from the development(s), water is going into the storm sewer system rather than the creek. If Vulcan causes a problem with Georgetown's water supply, they can still get water from Kentucky American (KAWC) -- they'll just have to pay for it; however, it will be Vulcan's responsibility to remedy the situation in whatever way is needed. Mr. Hopgood said that that is the reason they have gone to the lengths they have to work with the Wellhead Protection Committee. They have taken, and will take, every step possible to avoid potential issues. He said that Mr. Ellison had been to the meetings, and today was the first time they had heard any of what had just been presented to the Board.

Ms. Meyer was concerned that there was a great deal of information given to the Board that they had not had a chance to review. She said that she was not comfortable voting on something of this importance without having an opportunity to digest the information. She said that she would be open to a continuance to the following (November) meeting and made a motion to that effect. Mr. Marx clarified that the date of the November hearing would be November 21, and the one following would be December 12. Mr. Hopgood noted that there were two Board members not in attendance and asked if they could bring them up to speed at the next hearing, assuming that they were present, and have them participate as well. In response, Ms. Boland said that since Vulcan was the applicant, it would be their decision; but in order to vote, since they weren't present for the first part of the hearing, they would have to be willing to review the record/watch the video in order to know what evidence had been presented. It would be up to the Chair as to how to proceed in the meeting, provided the two absent members had the same background regarding the case as the other Board members.

Mr. Hopgood said that he would not want anyone voting on the case without all of the information presented, and it did not matter how they got the information. Mr. Brown noted his preference that the other Board members watch the video. He asked for a second to Ms. Meyer's motion for a continuance. There was no response; the motion therefore died for lack of a second.

Action: A motion was made by Mr. Griggs and seconded by Ms. Meyer to deny **C-2008-95: VULCAN LANDS, INC.** (an appeal for a conditional use permit to conduct a mining/quarrying operation, in the Agricultural Rural [A-R] zone, on property located at 2850 Georgetown Road), for the reason that the applicant has failed to support the burden of proving that the proposed mining operation will not become detrimental to the Royal Spring Aquifer, as the property lies within the Recharge Area. Due to its proximity to the Aquifer, the burden is very high to prove that a major water source will not be adversely impacted.

The vote was tied; therefore, the motion did not carry. Votes were as follows:

Ayes: Griggs and Meyer

Nayes: Brown and Edwards
Moore abstained

Mr. Brown asked Ms. Boland what happens in the case of a tie vote, to which she responded that if no action has been taken to grant the conditional use permit, then it is not granted; however, since there has not been a denial as such, there is no prohibition (or time limit) on Vulcan applying again for the same request. In response to Mr. Griggs' request for clarification, Ms. Boland said that the motion to approve was not supported, nor was the motion to disapprove. Therefore, no action was taken on this application. There has been no denial of the conditional use permit; and, according to the Board's bylaws, Vulcan could therefore re-apply if and when they so chose.

E. **Administrative Review**

None

- IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time. There was no response.
- A. Mr. Brown asked for either Staff or Board items, to which there was no response. He asked about the "Draft Meeting and Filing Schedule", and if the Board should adopt it at that time. Ms. Rackers responded that it was distributed for informational purposes, for the Board's consideration for adoption the following month.
- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time. There was no response.
- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be November 21, 2008.
- VII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 3:46 p.m.

Peter Brown, Chairman

James Griggs, Secretary