MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION & ZONING ITEMS PUBLIC HEARING

December 13, 2012

I. CALL TO ORDER - The meeting was called to order at 1:31 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Owens, Chair; Eunice Beatty, Will Berkley, Carla Blanton, Patrick Brewer, Mike Cravens, Karen Mundy, Frank Penn, Carolyn Plumlee, Lynn Roche-Phillips and William Wilson (arrived at 1:37 PM).

Planning Staff Present – Chris King, Director; Bill Sallee; Tom Martin; Traci Wade; Jimmy Emmons; Barbara Rackers; Chris Taylor; Cheryl Gallt; Dave Jarman; Denice Bullock and Stephanie Cunningham. Other staff members in attendance were: Steve Parker, Division of Engineering; Captain Charles Bowen, Division of Fire and Emergency Services; Jeff Neal, Division of Traffic Engineering; Tim Queary, Department of Environmental Quality and Tracy Jones, Department of Law.

II. APPROVAL OF MINUTES – A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 10-0 (Wilson absent) to approve the minutes of the October 25, 2012, Planning Commission meeting.

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

a. MAR 2012-12: GREER LAND CO. – SMYRNA #2, LLC (12/13/12)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 2.79 net (5.05 gross) acres, for property located at 3939 Tates Creek Road.

LAND USE PLAN AND PROPOSED USE
The 2007 Comprehensive Plan (Sector 10) recommends Medium Density Residential future land use for the subject property, defined as 5–10 dwelling units per net acre. The petitioner proposes a Neighborhood Business (B-1) zone to develop a branch bank and a coffee shop, both with a drive-through and associated off-street parking.

The Zoning Committee took no action on this request.

The Staff Recommends: **Disapproval**, for the following reasons:
1. The existing Agricultural-Urban (A-U) zoning for the subject property is appropriate for the subject property, given that greater than 90% of the property is located within a Special Flood Hazard Area (either floodway or floodplain), and it is compatible with the existing residential zoning of the surrounding neighborhood, as well as the agricultural zoning of the utility sub-station to the west of the subject property. The proposed B-1 zone is inappropriate at this location because it will require significant physical alteration of the property through construction of a retaining wall, as well as re-grading the property by adding eight feet of fill in order to make it developable for commercial use that includes drive-through facilities.
2. There have been no unanticipated changes in the immediate area of an economic, social or physical nature since the Comprehensive Plan was adopted in 2007.
3. There is no compelling need for the commercial development proposed in this area, given that extensive development in environmentally sensitive areas is being proposed without approval by state and/or federal agencies, and that the Tates Creek Shopping Center exists immediately to the south and has numerous vacancies.

b. ZDP 2012-63: JAMES W. ATKINS, JR. PROPERTY (12/13/12)* - located at 3939 Tates Creek Road.
(Vision Engineering)

The Subdivision Committee Recommended: **Disapproval,** for the following reasons:
1. The development proposes to excavate and fill in the floodplain, both of which are prohibited by Article 19-7 of the Zoning Ordinance.
2. The subject property could possibly be developed utilizing buildings that would be above the regulatory floodplain, and with parking and access that does not alter the floodplain areas, but that is not currently proposed.

Representation – Nick Nicholson, attorney, was present representing the petitioner. He requested an indefinite postponement of MAR 2012-12 and its associated development plan.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Penn, seconded by Ms. Beatty, and carried 10-0 (Wilson absent) to indefinitely postpone MAR 2012-12 and ZDP 2012-63.

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

c. DP 2012-89: NEWMARKET PROPERTY, PH 1, UNIT 10 (1/29/13)* - located at 1501 Deer Haven Lane (a portion of). (Council District 12) **(EA Partners)**

Note: The Planning Commission postponed this plan at their November 8, 2012 meeting. This property requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Dash all adjacent property lines.
9. Provided the Planning Commission makes a finding that the plan complies with the provisions of the EAMP.
10. Denote that exaction fee amounts shall be determined at the time of Final Record Plat, to the approval of the Division of Planning.
11. Discuss the continuation of storm water management improvements proposed for the adjacent property.
12. Discuss status of constructed wetlands per the EAMP.
13. Discuss possible need for tree protection areas on lots 20-25 & 30-34, and possible easement conflicts.
14. Discuss proposed KU/sewer line easement conflict with proposed lotting.

Representation – Richard Murphy, attorney, was present representing the applicant, and requested postponement of DP 2012-89: NEWMARKET PROPERTY, PH 1, UNIT 10 to the January 17, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Beatty, seconded by Mr. Penn and carried 10-0 (Wilson absent) to postpone DP 2012-89: NEWMARKET PROPERTY, PH 1, UNIT 10 to the January 17, 2013, Planning Commission meeting.

d. PLAN 2012-129F: LAKEVIEW ESTATES, UNIT 2-E, BLK K, LOT 2 (AMD) (2/13/13)* - located at 519 Laketower Drive. (Council District 5) **(Vision Engineering)**

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

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
7. Correct numbering on curve/radius chart.
8. Addition of date on floodplain information.
9. Resolve proposed lotting conflict with final development plan.
10. Resolve possible need for access easements on Lots 2A & 2E (across new property line).

Representation – Richard Murphy, attorney, was present representing the applicant, and requested postponement of PLAN 2012-129F: LAKEVIEW ESTATES, UNIT 2-E, BLK K, LOT 2 (AMD) to the January 17, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Penn, seconded by Ms. Mundy and carried 10-0 (Wilson absent) to postpone PLAN 2012-129F: LAKEVIEW ESTATES, UNIT 2-E, BLK K, LOT 2 (AMD) to the January 17, 2013, Planning Commission meeting.

Note: Mr. Wilson arrived at this time.

e. DP 2012-104: LAKEVIEW ESTATES, UNIT 2B, BLK J & K, UNIT 2E (AMD) (2/13/13)* - located at 475, 503, 517 & 519 Laketower Circle. (Council District 5) **(Barrett Partners)**

Note: The purpose of this amendment is to add a six-story apartment building.

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

The Subdivision Committee Recommended: **Postponement**. There were questions regarding compliance with the height-to-yard ratio and conflict with proposed lotting.

Should this plan be approved, the following requirements should be considered:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection locations.
10. Addition of zoning information for duck pond area.
11. Clarify square footage used in floor area calculation.
12. Discuss proposed lotting conflict with building location.
13. Discuss compliance with required building height-to-yard ratio.

Representation – Richard Murphy, attorney, was present representing the applicant, and requested postponement of DP 2012-104: LAKEVIEW ESTATES, UNIT 2B, BLK J & K, UNIT 2E (AMD) to the January 17, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Penn, seconded by Ms. Mundy and carried 11-0 to postpone DP 2012-104: LAKEVIEW ESTATES, UNIT 2B, BLK J & K, UNIT 2E (AMD) to the January 17, 2013, Planning Commission meeting.

f. **ZOTA 2012-9: AMENDMENTS TO ARTICLES 1, 8 & 12 FOR MODIFICATIONS TO THE B-1 ZONE** – petition for a Zoning Ordinance text amendment to Articles 1, 8, and 12 to make various modifications to the B-1 zone, including the addition of several new definitions.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(Copies of the full proposed text are available upon request)*

Revised Staff Alternative Text:
8-16(c) Accessory Uses
1. Parking areas or structures.
2. One (1) dwelling unit for owners, operators, or employees of a permitted use, provided that such dwelling unit shall be a part of the building and located above or to the rear of such permitted uses.
3. Warehousing, wholesaling, and storage, excluding outdoor storage; and provided that no building for such accessory use shall have openings other than stationary windows or solid pedestrian doors within one hundred (100) feet of any residential zone.
4. ~~The rental of trucks (single rear axle - 28' maximum overall length); trailers, and related items in conjunction with the operation of an automobile service station, provided the service station abuts a state or federal highway and does not abut a residential zone. No more than five (5) trucks shall be stored for longer than forty-eight (48) hours on any service station. A site plan shall be submitted for the approval of the Division of Building Inspection for the control of such activities and shall show the entire property, signs, parking and location of the proposed storage area.~~

4.~~5.~~ The sale of malt beverages, wine, or alcoholic beverages, when accessory to a restaurant permitted under Section 8-16(b)(3). Such accessory use shall not devote more than twenty-five percent (25~~0~~%) of its public floor area ~~exclusively~~ primarily to the preparation and service of such beverages, nor provide any separate outside entrances or separate identification signs for those areas.

~~6. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein.~~

5.~~7.~~ Satellite dish antennas, as further regulated by Article 15-8.

6.~~8.~~ One (1) or two (2) pool or billiard tables within an establishment.

7. Sidewalk cafés, when accessory to any permitted restaurant.
8. Retail sale of liquid propane (limited to 20 lb. containers), when accessory to the retail sale of merchandise or an automobile service station permitted under Article 8-16(b).
9. Indoor live entertainment and/or dancing, when accessory to a restaurant**, brew-pub** or banquet facility**;**~~,~~ but only when located more than one hundred (100) feet from a residential zone.
10. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein, when approved by the Planning Commission on a development plan.

8-16(d)Conditional Uses
1. Self-service car washes, provided that surface water from such establishments shall not drain onto adjacent property, and

that adequate on-site storage lanes and parking facilities shall be provided so that no public way shall be used for such purposes.

2. Animal hospital or clinic, provided that all exterior walls are completely soundproofed, and further provided that animal pens shall be completely within the principal building and used for the medical treatment of small animals.
3. The rental of trucks (single rear axle - 28' maximum overall length); trailers and related items in conjunction with the operation of an automobile service station, provided that the service station abuts a state or federal highway~~ when abutting a residential zone~~. No more than five (5) trucks shall be stored for longer than forty-eight (48) hours on any service station. A site plan shall be submitted for the approval of the Board of Adjustment for the continued control of such activity and shall show the entire property, buildings, signs, parking and location of the proposed storage area.
4. A restaurant **or brew-pub,** without live entertainment or dancing, which devotes more than twenty-five percent (25~~0~~%) of the establishment's public floor area ~~exclusively~~ primarily to the preparation and service of malt beverages, wine or alcoholic beverages.
5. Outdoor live entertainment **and/or dancing,** cocktail lounges, ~~brew-pubs~~ or night clubs [unless prohibited under Sections 8-16(e)(14) and (15)]. Such uses shall be located at least one hundred (100) feet from any residential zone and shall be sound-proofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.

~~6. A combination business, office and residential project, provided the following conditions and requirements are met:~~
[including sub-sections a. – s. that follow]

6.~~7.~~ Upholstery shop.

7.~~8.~~ Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
   a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
   b. That a reasonable degree of reclamation and proper drainage control is feasible; and
   c. That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.

8.~~9.~~ Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
   a. To check all operating equipment;
   b. To check fire suppression system(s);
   c. To check the condition of the fire alarm(s);
   d. To check for indications of fuel leaks and spillage;
   e. To remove trash from the site;
   f. To monitor the general condition of the site.

9.~~10. Assisted living facilities and r~~Rehabilitation homes, but only when located closer ~~more~~ than five hundred (500) feet from a residential zone.

10. Extended-stay hotels.
11. Parking lots, provided such uses conform to the conditions of Article 16.
12. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein, except as accessory uses herein.

The Zoning Committee Recommended: **Approval, including the Staff Alternative Text**, for the reasons provided by staff.

The Staff Recommends: **Approval, including the Staff Alternative Text**, for the following reasons:
1. The text amendment will be in agreement with the Implementation Element and Table of the 2007 Comprehensive Plan, which identified the "neighborhood business zone rewrite" as a necessary task following the completion of the *Non-Residential Infill Study*. The Study suggested adjusting land uses permitted within the Neighborhood Business (B-1) zone and relaxing setbacks and height limitations.
2. The proposed amendment meets many of the recommendations of the *Non-Residential Infill Study*, and accomplishes other minor improvements to the B-1 zone to make it more compatible with residential neighborhoods.
3. The creation of a "form-based neighborhood business project" will provide added flexibility for redevelopment in the Infill and Redevelopment Area, and will provide for more compatible development with the existing character of an area.

Staff Comment: Mr. Sallee stated that this proposed text amendment was initiated by the Planning Commission. The staff asked that the Commission postpone this item to one of their meetings in January, either the 17th or the 31st.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Mundy, and carried 11-0 to postpone ZOTA 2012-9 to the January 31, 2013, meeting.

g. **ZOTA 2012-15: PARKING, PRIVATE WALKWAYS AND PAVED AREAS IN RESIDENTIAL ZONES** – petition for a Zoning Ordinance text amendment to modify the definition of "driveway, for single-family and two-family dwellings;" to create new

definitions for "paved area" and "private walkway;" and to limit the size, material, and configuration of private walkways and driveways, in the front yard of single-family and two-family dwellings.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(Copies of the proposed text are available upon request)*

Staff Alternative Text:
DRIVEWAY, FOR SINGLE FAMILY AND TWO-FAMILY DWELLINGS - A private paved vehicular access, a maximum of twenty-four (24~~20~~) feet in width, or ten (10) feet in width when inside the Infill and Redevelopment Area, extending on the shortest reasonable path through the front yard or side street side yard to the required off-street parking area. All other areas paved for vehicular use within any front or side street side yard shall be considered additional parking and shall be subject to the area limitations and landscaping requirements of this Zoning Ordinance.

Note: The Staff Alternative Text also removes the proposed change from 10' to 12' in Sections 16-4(a) and 16-4(b)3(b).

The Zoning Committee Recommended: **Approval of the revised staff alternative text**, for the reasons provided by staff.

The Staff Recommends: **Approval, of the Staff Alternative Text** for the following reason:
1. The proposed text amendment will enhance zoning compliance and enforcement by clarifying parking regulations and closing certain loop holes that were being used to circumvent the Zoning Ordinance requirements for maximum parking, landscaping and stormwater controls.
2. Adoption of the staff alternative text will further the intent of the Zoning Ordinance by clarifying certain design standards related to parking for single- and two-family homes, thereby reducing the potential for zoning violations.

Staff Comment: Mr. Sallee stated that this proposed text amendment was also initiated by the Planning Commission. The staff would ask, due to the length of today's agenda, that the Commission postpone this item to their January 31st meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action: A motion was made by Mr. Brewer, seconded by Mr. Berkley, and carried 11-0 to postpone ZOTA 2012-15 to the January 31, 2013, Planning Commission meeting.

IV. COMMISSION ITEMS – The Chair announced that two Commission items would be heard at this time.

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

Mr. Van Pelt distributed the necessary information for the annual PDR report to the Commission members, as required by the Zoning Ordinance. He said that the PDR program currently has 26,725.7237 acres participating in this program, which is 53.50% of the goal of 50,000 acres by 2020. He then said that that, in reviewing the annual report, there are 236 total farms participating in the PDR Program. Out of the 236 farms, there are 129 equine farms, 94 general agriculture farms, 13 other types of farms and 39 donated conservation easements.

B. ANNUAL REPORT FOR THE COURTHOUSE AREA – The Commission heard from Mr. Billy Van Pelt, who presented the required Annual Report from the Courthouse Area Design Review Board.

Mr. Van Pelt directed the Commission's attention to the PowerPoint presentation for the Annual Report for the Courthouse Area, and explained the location and boundary of the Courthouse Business District, noting that the design overlay district currently has 90 parcels on 23.53 gross acres.

Mr. Van Pelt stated that the Courthouse Area Design Review Board was established by Ordinance in August, 2001, and the Board meets quarterly or as needed through the year. He brief noted that the Board members consist of Michael Meuser, Chair; Harry Richart, Vice Chair; Michael Speaks; Darren Teodoro and Kevin Atkins.

Mr. Van Pelt stated that the Courthouse Area Design Review Board granted 10 approvals in 2012, and there were 2 approvals made by the Design Review Officer, as well as 1 Preliminary Board Review. He noted that over the last 11 years, the Board has granted 55 approvals, and there have been 30 approvals made by the Design Review Officer. He displayed several photographs of recent changes to structures in the Courthouse Area, and gave a brief description of each.

V. RECONSIDERATION OF ZONING ITEM

1. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

Note: The Planning Commission considered this request at its public hearing on November 15, 2012, and a motion for approval received a tie vote of 4-4. Under the requirements of KRS 100.211(1), the Planning Commission's tie vote "shall be subject to further consideration" within 30 days.

a. MAR 2012-17: URBAN COUNTY PLANNING COMMISSION - petition for a zone map amendment to a Neighborhood Design Character Overlay (ND-1) zone for 52.68± net (59.72± gross) acres, for properties located at 1200-1280 Colonial Drive; 4009-4021 John Alden Lane; 4004-4025 Mayflower Lane; 1228-1273 and 1290 Standish Way; and 2492-2516 Versailles Road (even addresses only).

Proposed Design Standards:

1. One new accessory structure, not exceeding a maximum of 180 sq. ft. with a 12 ft. maximum roof height limitation, shall be permitted to be located and constructed in the rear yard area of each home.

   (Note: All existing accessory structures shall be deemed approved and permitted to remain. Said existing structures may be improved and/or replaced by new structures so long as the improvements do not exceed the existing footprint or alter the general character of the existing structures.)

2. No new front yard fencing shall be permitted with the exception of those homes fronting on Versailles Road.

   (Note: "Front Yard" shall be deemed to mean all that yard area located between the nearest points of the front of the house to its frontage roadway's right-of-way line. New and existing side and rear fencing shall continue to be approved in accordance with existing zoning restrictions.)

3. Floor area to lot size ratio shall be limited to 25% maximum.

LAND USE PLAN AND PROPOSED USE
The 2007 Comprehensive Plan (Sector 4) recommends Low Density Residential (LD) land use for the neighborhood. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate accessory structures, fencing and floor area ratio (FAR) regardless of the underlying zoning.

The Zoning Committee made **no recommendation** on this item.

The Staff Recommends: **Approval of the ND-1 overlay zone with the Staff Alternative Design Standards**, for the following reason:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan and the Goals and Objectives of the 2012 Comprehensive Plan for the following reasons:
   a. The Goals and Objectives of the 2007 Plan identify eight overriding themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." This will be enhanced with this zoning overlay for The Old Colony neighborhood. Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
   b. The Goals and Objectives of the 2012 Comprehensive Plan support the development of ND-1 Overlay zones to enable neighborhoods to flourish (Theme A.3.a).
   c. The implementation of a Neighborhood Design Character (ND-1) Overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, independent of the underlying zoning.
   d. The Old Colony neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Alternative Design Standards (Additions are identified by an underline, and deletions to the original proposal are identified by a ~~strikethrough~~.)

1. One new accessory structure, not exceeding a maximum of 180 sq. ft. with a 12 ft. maximum roof height limitation, shall be permitted to be located and constructed in the rear yard area of each home.

   ~~*(Note: All existing accessory structures shall be deemed approved and permitted to remain. Said existing structures may be improved and/or replaced by new structures so long as the improvements do not exceed the existing footprint or alter the general character of the existing structures.)*~~

2. No new front yard fenc**es**~~ing~~ **or freestanding walls** shall be permitted, with the exception of those homes fronting on Versailles Road.

   i. Retaining walls shall be permitted on all properties, subject to a maximum height of 18 inches above the unbalanced fill in the front yard.

   ~~*(Note:"Front Yard" shall be deemed to mean all that yard area located between the nearest points of the front of the house to its frontage roadway's right-of-way line. New and existing side and rear fencing shall continue to be approved in accordance with existing zoning restrictions.)*~~

3. ~~Floor area to lot size ratio~~ Lot coverage shall be limited to a maximum of 25% ~~maximum~~.

These restrictions are appropriate, given the study undertaken to identify the existing neighborhood character by The Colony Neighborhood Association (Residents, Inc.), and are necessary to maintain that existing character of the neighborhood in the future.

Chairman Comments: Mr. Owens stated that, at their November 15th meeting and after a lengthy hearing, a motion was made on this request which resulted in a tie vote of 4-4. He said that KRS 100.211 states, "A tie vote shall be subject to further consideration by the Planning Commission for a period not to exceed 30 days, at the end of which, if the tie vote has not been broken, the application shall be forwarded to the fiscal court or legislative body without a recommendation of approval or disapproval." Mr. Owens stated that, at this time, the Commission would conduct the reconsideration, and that no new testimony would be heard. He noted that only the Commission members present at the November 15th hearing will be eligible to vote on the reconsideration, unless any of the three members who were absent have watched the entire hearing and reviewed all of the documents presented. If any of those members have done so and wish to vote, a statement will be needed from those members that they have done so; otherwise, they will be asked to abstain from the vote.

Mr. Owens stated that any of the following motions can be entertained for the reconsideration: approval, which was the original motion, with findings of fact as presented at the November 15th hearing; disapproval, with findings of fact to support the motion; approval, with alternative findings of fact to support the motion; or withdrawal. If there is no motion for reconsideration, the tie vote will be forwarded to the Council.

Mr. Owens stated that none of the three members who were absent on November 15th had reviewed the video of that meeting, so they would not be able to vote. He said that the staff's recommendation at that hearing was for approval, with the three Alternative Design Standards as listed on the agenda. The Zoning Committee made no recommendation on this request. He opened the floor for a motion of reconsideration.

Motion: A motion was made by Mr. Penn and seconded by Ms. Plumlee for a reconsideration of the original motion for approval of MAR 2012-17, for the reasons provided by staff.

Action: Mr. Penn's motion carried, 9-2 (Brewer and Cravens opposed; Berkley, Blanton, and Mundy abstained).

VI. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, December 6, 2012, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Frank Penn, Mike Owens, Carolyn Plumlee and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Chris King, Tom Martin, Traci Wade, Chris Taylor, Dave Jarman, Denice Bullock, Jimmy Emmons and Cheryl Gallt, as well as Captain Charles Bowen, Division of Fire & Emergency Services; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.
1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

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

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

Requests can be made to remove items from the Consent Agenda:
(1) due to prior postponements and withdrawals,
(2) from the Planning Commission,

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

(3) from the audience, and
(4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items and the staff had recommended reapproval for the remaining item. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2012-132F: PARK HILLS, UNIT 1C, LOT 1 (AMD) (2/13/13)* - located at 3100 Pimlico Parkway. (Council District 8) **(Endris Engineering)**

   Note: The purpose of this amendment is to reduce the building line along Pimlico Parkway, to create utility easements and to update property line distances and bearings.

   The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
   1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
   2. Urban County Traffic Engineer's approval of street cross-sections and access.
   3. Building Inspection's approval of landscaping.
   4. Addressing Office's approval of street names and addresses.
   5. Urban Forester's approval of tree protection area(s) and required street tree information.
   6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.

2. PLAN 2011-71F: MARK ACRE PROPERTY (SOUTH BROADWAY LAND, LLC) LOTS 1 & 2 (2/27/13)* - located at 502 South Broadway and 319 Cedar Street. (Council District 3) **(Endris Engineering)**

   Note: The Planning Commission originally approved this plan at their July 14, 2011, meeting, subject to the following conditions:
   1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
   2. Urban County Traffic Engineer's approval of street cross-sections and access.
   3. Building Inspection's approval of landscaping.
   4. Approval of street addresses as per e911 staff.
   5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
   6. Clarify status of public infrastructure dedication and appropriate certifications.
   7. Denote Plunkett Street sidewalk transition.
   8. Addition of conditional zoning restrictions.
   9. Resolve proposed utility easement conflict with dumpster location.

   Note: The applicant now requests reapproval of the plan.

   The Staff Recommended: **Reapproval**, subject to the original conditions.

3. DP 2012-99: ARCADIA INVESTMENTS, LOTS 3, 4 & 5 (AMD) (2/13/13)* - located at 1590, 1600 and 1610 Leestown Road. (Council District 2) **(The Roberts Group)**

   Note: The purpose of this amendment is to add a gas station and add buildable area.

   The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
   1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
   2. Urban County Traffic Engineer's approval of street cross-sections and access.
   3. Building Inspection's approval of landscaping and landscape buffers.
   4. Addressing Office's approval of street names and addresses.
   5. Urban Forester's approval of tree preservation plan.
   6. Division of Fire's approval of emergency access and fire hydrant locations.
   7. Division of Waste Management's approval of refuse collection.
   8. Resolve utility easement and building conflict prior to building permit on Lot 5.

4. DP 2012-100: COVEY RIDGE DEVELOPMENT, LOT 1A (AMD) (2/13/13)* - located at 5521 Athens-Boonesboro Road. (Council District 12) **(The Roberts Group)**

   Note: The purpose of this amendment is to increase the building floor area on an existing development.

   The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
   1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

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

2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.

5. DP 2012-101: COLDSTREAM RESEARCH CAMPUS, UNIT 1B, LOT 14B (2/13/13)* - located at 824 Bull Lea Road.
(Council District 2) **(Strand & Associates)**

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.

6. DP 2012-102: COLDSTREAM RESEARCH CAMPUS, UNIT 3, LOT 7 (2/13/13)* - located at 1698 McGrathiana Parkway.
(Council District 2) **(Strand & Associates)**

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection location.
10. Complete tree canopy information and timing of tree planting plan.
11. Denote access to existing pump station to the approval of the Division of Water Quality in accordance with third party agreement.
12. Resolve cul-de-sac details (and possible median).

7. DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD) (2/13/13)* - located at 3100 Pimlico Parkway.
(Council District 8) **(GRW)**

Note: The purpose of this amendment is to add a new restaurant with a drive-through facility.

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote as a "Final Development Plan" in plan title.
9. Identify B-6P/P-1 zoning boundary and denote 60' building line from that line.
10. Resolve owners signatures for all lots affected.

8. DP 2012-106: SOUTH ELKHORN VILLAGE (AMD) (2/13/13)* - located at 4379 Old Harrodsburg Road.
(Council District 10) **(EA Partners)**

Note: The purpose of this amendment is to add parking and an existing access point.

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.

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

4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Dimension walkways and outdoor patio areas.
10. Dimension all access points.
11. Addition of applicable trees and landscaping information from approved development plan.
12. Addition of all applicable notes from approved development plan.
13. Delete parking note.
14. Resolve existing and proposed restaurant uses in relation to off-street parking requirements.

9. DP 2012-108: EASTLAND BOWLING LANES (AMD) (2/13/13)* - located at 750 East New Circle Road. (Council District 5) **(Vision Engineering)**

Note: The purpose of this amendment is to add a car dealership, and to revise parking and circulation.

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Correct note #6.
10. Correct note #11.

10. DP 2012-111: BLUEGRASS BUSINESS PARK, LOT 4 (PEMBERTON FARM & BURKE, HOCKENSMITH & MAGGARD, UNIT 5 (2/13/13)* - located at 2151 & 2221 Georgetown Road. (Council District 2) **(Strand & Associates)**

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection locations.
10. Clarify proposed detention areas on the north of the property.
11. Document compliance with Article 18 landscaping requirements on plan.
12. Division of Water Quality approval of crushed rock surface for equipment storage areas and dust control measures.
13. KDOT approval of proposed entrance on Georgetown Road.

11. DP 2011-19: HAMBURG PLACE OFFICE PARK, LOT 12-A (AMD) (2/26/13)* - located on Pink Pigeon Parkway and Vendor Way. (Council District 6) **(Vision Engineering)**

Note: The Planning Commission originally approved this plan at their March 10, 2011, meeting and reapproved this plan at their October 11, 2012, meeting, subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Addition of proposed easements on Lot 13.

Note: The applicant now requests a continued discussion in order to revise the layout of the approved development on this plan.

The Subdivision Committee Recommended: **Approval**, subject to the original requirements:

In conclusion, Mr. Sallee said that the items identified on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission or the audience to permit discussion. He noted that the Commission previously postponed PLAN 2012-129F at the applicant's request.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. Robert Layton asked that DP 2012-99: ARCADIA INVESTMENTS, LOTS 3, 4 & 5 (AMD) be removed from the Consent Agenda to allow further discussion.

The Chair noted that the Commission previously postponed PLAN 2012-129F at the applicant's request, and a request had been made for DP 2012-99 to be heard by the full Commission.

Action - A motion was made by Mr. Brewer, seconded by Ms. Mundy and carried 11-0 to approve the remaining items listed on the Consent Agenda, removing DP 2012-99: ARCADIA INVESTMENTS, LOTS 3, 4 & 5 (AMD).

B. PERFORMANCE BONDS AND LETTERS OF CREDIT – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 11-0 to approve the release and call of bonds as detailed in the memorandum dated December 13, 2012, from Ron St. Clair, Division of Engineering.

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

The procedure for consideration of these remaining plans is as follows:
- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

1. PRELIMINARY SUBDIVISION PLAN

a. PLAN 2012-113P: TUSCANY, UNIT 9 (12/30/12)* - located at 1970 Winchester Road (a portion of). (Council District 6) **(EA Partners)**

Note: The Planning Commission continued this item from their November 8, 2012, meeting.

The Subdivision Committee Recommended: **Postponement**. There are several internal street issues that need to be addressed concerning street connectivity, patterns and stub streets to undeveloped residential areas.

Should this plan be approved, the following conditions should be considered:
1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Discuss connections to future development areas to the northeast and southwest.
8. Discuss timing of street connectivity to Battery Street.
9. Discuss proposed street pattern and the number of lots served by only one access.
10. Discuss plan boundaries.
11. Discuss electric utility crossing of existing gas easement.

Staff Presentation – Mr. Taylor presented the preliminary subdivision plan for Tuscany, Unit 9, located on a portion of 1970 Winchester Road. He noted that the Commission had previously approved Unit 8, which is proposed to connect to Unit 9. He directed the Commission's attention to the latest submission, and oriented them to the subject property and to the nearby street system. He said that this proposal will be located just off Battery Street, which is constructed off Patchen Wilkes Drive, near Winchester Road. He then said that this proposal shows two future connections to Trade Center Drive, which would ultimately connect to Villa Medici Pass. He added that Villa Medici Pass would also have a connection to Old Rosebud Road and Sir Barton Way. He said that since the Planning Commission meeting last month, the applicant had submitted a revised proposal that showed an additional access point to the future development toward Winchester Road.

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

Mr. Taylor said that the Planning Commission continued consideration of this item from their November 8, 2012, meeting. He then said that the Subdivision Committee had previously recommended postponement due to the internal street issues that needed to be addressed concerning the street connectivity and stub streets to the undeveloped residential areas in Tuscany. Since last month's Planning Commission meeting, the staff had received a revised submittal of this plan, which addressed the access issues previously identified. As a result, the staff can now recommend approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. ~~Discuss connections to future development areas to the northeast and southwest.~~
7. ~~8.~~ ~~Discuss~~ Resolve timing of street connectivity to Battery Street.
9. ~~Discuss proposed street pattern and the number of lots served by only one access.~~
10. ~~Discuss plan boundaries.~~
11. ~~Discuss electric utility crossing of existing gas easement.~~

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the revised conditions and requested approval.

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

Action - A motion was made by Mr. Cravens, seconded by Ms. Plumlee, and carried 11-0 to approve PLAN 2012-113P: TUSCANY, UNIT 9, subject to the revised conditions as presented by the staff.

2. FINAL SUBDIVISION PLANS

a. PLAN 2012-131F: NATIONAL SUBDIVISION, UNIT 2, BLK B, LOT 1 (AMD) (2/13/13)* - located at 156 South Forbes Road. (Council District 2) **(2020 Land Surveying)**

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

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote graphic scale.
8. Denote north arrow.
9. Provide names and addresses for utility providers.
10. Denote street address of lot on plat.
11. Denote required landscape buffer adjacent to residential zone.
12. Denote tree protection areas on Lot 1A.
13. Resolve required certification relative to the provision of public sanitary sewer service.
14. Provided the Planning Commission grants a waiver for street termination of Texaco Road.

Staff Presentation – Mr. Jarman presented the amended final subdivision plan for National Subdivision, Unit 2, Block B, Lot 1 for property located at 156 South Forbes Road. He directed the Commission's attention to the rendering, and oriented them to the subject property and to the nearby street system. He said that this proposal is located between Leestown Road and Old Frankfort Pike, near the Bluegrass Stockyards. He then said that the purpose of this plat amendment is to subdivide one lot into two lots.

Mr. Jarman said that the Subdivision Committee recommended approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. ~~Denote graphic scale.~~

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

~~8. Denote north arrow.~~
~~9. Provide names and addresses for utility providers.~~
~~10. Denote street address of lot on plat.~~
~~11. Denote required landscape buffer adjacent to residential zone.~~
7. ~~12~~. Denote tree protection areas on Lot 1A.
~~13. Resolve required certification relative to the provision of public sanitary sewer service.~~
8. ~~14~~. Provided the Planning Commission grants a waiver for street termination of Texaco Road.

Planning Commission Questions – Ms. Roche-Phillips asked if there was a gas easement bisecting the property and if the properties are zoned differently. Mr. Jarman said that the property is zoned I-1 and there is a gas easement through the center of Lot 1. He then said that Texaco Road does stub into the property, which raised the issue of terminating the street. He added that the applicant has requested a waiver to Article 6-8(b) of the Land Subdivision Regulations.

Waiver Report – Mr. Martin directed the Commission's attention to the staff's waiver report, and said that the applicant requests a waiver to Article 6-8(b) of the Land Subdivision Regulations. This requires the continuation of improvements to existing streets abutting a lot, but it is currently terminating at a lot boundary line. He then said that the street in question is Texaco Road, noting that the street was constructed in 1938, at approximately the same time that the surrounding residential subdivision was developed.

Mr. Martin then said that the Land Subdivision Regulations would require Texaco Road to continue across the subject lot, which would either intersect with South Forbes Road, and bisect the subject lot, or terminate in a cul-de-sac. He then said that the staff has evaluated the applicant's request for this waiver, and is in agreement that this requirement would impose an undue hardship on the owner by limiting the ability to utilize the two proposed lots, and would affect future improvements on the lot. Therefore, the staff is recommending approval of the requested waiver, for the following reasons:

1. The requirement for the applicant to make improvements to Texaco Road by extending the street across his property will constitute an undue hardship on the applicant.
2. There is no compelling public health and safety reason to connect Texaco Road to South Forbes Road or terminate the street with a cul-de-sac at this point in time. Thus, the intent of the subdivision regulation is being met by this subdivision.

Planning Commission Question – Mr. Penn asked if Texaco Road would be terminated in a cul-de-sac. Mr. Martin said that the street would instead remain as is.

Representation – Justin Drury, 2020 Land Surveying, was present representing the applicant. He said that they are in agreement with the revised conditions recommended by the staff and requested approval.

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

Action - A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 11-0 (Mundy abstained) to approve PLAN 2012-131F: NATIONAL SUBDIVISION, UNIT 2, BLK B, LOT 1 (AMD), subject to the revised conditions as presented by the staff, including the approval of the requested waiver, for the reasons provided by the staff.

b. PLAN 2012-133F: RESERVE AT WALNUT GROVE, UNIT 1E (3/5/13)* - located at 3820 Hatfield Lane.
(Council District 12) **(EA Partners)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this plat is to subdivide one 80-acre lot into two 40-acre lots.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the need for a waiver and to amend an amended development plan.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote details of Urban Service Boundary screening on plat (easement, etc.).
8. Addition of front setback line on both lots.
9. Certification of development plan amendment to add a new access easement prior to plan certification.
10. Provided the Planning Commission grants a waiver to Article 6-4 (c) of the Land Subdivision Regulations.

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

11. Provided the Planning Commission makes a finding on the use of the access easement.
12. Discuss location of access to Lot 2, and possible loss of open space.

Staff Presentation – Mr. Taylor presented the final record plat for the Reserve at Walnut Grove, Unit 1-E, located at 3820 Hatfield Lane. He noted that the purpose of this plat is to subdivide one 80-acre agricultural lot into two 40-acre lots. He directed the Commission's attention to the development plan rendering, and oriented them to the subject property and to the nearby street system off Walnut Grove Lane. He said that this site is located between Winchester Road and Todds Road. He then said that the approved zone change from A-R to EAR-1, along with the Urban Service boundary being established west of this location, resulted in this 80-acre tract.

Mr. Taylor said that the Subdivision Committee had recommended postponement of this plan due to questions regarding the need for a waiver and the need to amend the current development plan. He said that the original development plan had shown the 80-acre tract with one access easement; and with this proposed subdivision proposing two access drives, the development plan also needed to show an additional access to the 40-acre lots. In doing this, the primary concern was whether or not the open space requirement for the EAR-1 zone could be met. He said that the staff did receive a minor amended Final Development Plan for the overall property that does provide the access easements to both lots through the HOA maintained open space. As a result, the staff can now offer a revised list of conditions for the approval of this plan.

Mr. Taylor said that the staff is recommending approval, subject to the following requirements:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote details of Urban Service Boundary screening on plat (easement, etc.) along S43°46'16"E call.
8. ~~Addition of front setback line on both lots.~~

8. ~~9~~. Certification of development plan amendment to add a new access easement prior to plan certification.
9. ~~10~~. Provided the Planning Commission grants a waiver to Article 6-4 (c) of the Land Subdivision Regulations.
10. ~~11~~. Provided the Planning Commission makes a finding on the use of the access easement.
11. ~~12~~. ~~Discuss~~ Resolve location of access to Lot 2, and possible loss of open space.

Mr. Taylor presented the Staff Report on the requested waiver, and said that, as part of the applicant's request, they have asked for a waiver to Article 6-4(c) of the Land Subdivision Regulations. He said that this waiver would allow the subdivision of the 80-acre tract into two 40-acre lots with no street frontage and with vehicular access proposed via an access easement. He then said that the staff does agrees with the applicant that building a public street would constitute a hardship, and approving the requested waiver would not impact the public safety, health and welfare of this area. He added that the staff does recommend approval of the requested waiver, for the following reasons:
1. Strict enforcement of the Subdivision Regulations would constitute a hardship for the applicant due to there being no available frontage for the existing lot.
2. Granting the waiver of the Subdivision Regulations will not negatively impact public health and safety.

Mr. Taylor concluded by saying that, as part of Article 6-8(m) of the Land Subdivision Regulations, the Planning Commission must make a finding to approve the lots that have their sole access via an access easement rather than via a public or private street. He said that the 80-acre agricultural property is located outside of the Urban Service Area, and has no frontage on a public street. He added that the staff believes that allowing the proposed access easement to serve these two proposed 40-acre lots is appropriate for the following reasons:
1. Allowing these two lots to be accessed only via an access easement is appropriate for the proposed development, as there is no ability for the lots to have frontage along a public street.
2. The lots are in the Rural Service Area, and the access proposed will serve as an expansion of the current site access arrangement.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's revised recommendations and requested approval. He noted that the access easement would be built by the developer and maintained by the two 40-acre property owners.

Planning Commission Questions – Mr. Penn said that considering that it may be a while before the second lot is developed, he asked if the access easement would be recorded on the deed for these lots. Mr. Kahly replied that once Unit 1-E is recorded, the 40-acre tract would be created, adding that the access easement leading to these lots would be recorded on Unit 1-C. He said that a note would be placed on both the development plan and the plat reflecting that access easement.

Mr. Penn said that the problem is maintaining access to these lots through an access easement. He then said that if these lots were to develop quickly there may not be an issue; but should only one of these lots develop, there could

be a potential problem with providing access to the second lot, as well as whether or not that access easement was temporary or permanent. Mr. Kahly said that the access easement will be recorded on the final record plat for Unit 1-C as a 12-foot permanent access easement with a 30-foot construction easement around it. He then said that when Unit 1-C is recorded, those two easements would also be recorded providing permanent access.

Staff Comment - Mr. Sallee noted that this plan required an affidavit to be submitted for the posting of a sign, and added that the staff had received that documentation and it appeared to be in order.

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

Planning Commission Questions – Mr. Berkley asked if the lots backing up to the easement have been developed. Mr. Kahly replied no, and said that the four plats that are zoned EAR-1 are currently in Planning Services waiting to be signed. Mr. Berkley then asked if the future buyers would have notice of the easement. Mr. Kahly replied affirmatively.

Ms. Beatty asked if the access easement would be recorded on the first lot, and if the access easement would be noted on the development plan. Mr. Taylor replied that the purpose of amending the development plan is to have the access easement shown through Unit 1-C. He then said that the buyers of the lots near the access easement would be made aware that access would be provided to each of the two 40-acre lots. He added that the reason the plats have not yet been certified is that the change to the open space must be verified on the recently submitted development plan. He said that the development plan amendment for Unit 1-C must establish the access easement before either access can be shown to Unit 1-E. Ms. Beatty asked if the staff was agreeable to the applicant's request. Mr. Taylor replied affirmatively. Mr. Sallee clarified that, as the development plan is approved as of today, it only provides one access easement to an 80-acre parcel. He then said that the applicant is proposing an independent access to each of the two 40-acre parcels.

Mr. Penn said that the 80-acre tract is inside the Rural Service Area and is proposed to be subdivided into two 40-acre tracts. Mr. Kahly said that until the lots on Unit 1-E are recorded, the 80-acre tract is essentially land-locked. Mr. Penn asked if the land could be subdivided even further. Mr. Kahly said that there is no way to get the lots smaller than 40 acres in size.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 11-0 to approve PLAN 2012-133F: RESERVE AT WALNUT GROVE, UNIT 1E, subject to the revised conditions as presented by the staff, granting the waiver to Article 6-4 (c) of the Land Subdivision Regulations, and approving the finding for the access easement, as presented by the staff.

3. DEVELOPMENT PLANS

a. DP 2012-91: MICHAEL GENTRY, DVM PROPERTY, LOT 2 (AMD) (12/30/12)* - located at 101 Sand Lake Drive. (Council District 7) **(JE Black)**

Note: The Planning Commission postponed this plan at their November 8, 2012 meeting. The purpose of this amendment is to add a one-story building and parking on Lot 2.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the sight distance for the proposed access at the rear of Lot 2.

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote adjacent property information.
10. Addition of Lot 1 information to development plan.
11. Addition of access information from adjacent lot to Sand Lake Drive.
12. Extend sidewalk along Richmond Road frontage.
13. Addition of grease trap note to the approval of the Division of Water Quality.
14. Correct note #8.
15. Addition of entrance detail note per previous plan.
16. Discuss need for connection to Lot 1.
17. Discuss Sand Lake Drive access alignment with Zaxby's property.

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

18. Discuss access agreement to 50' access easement.
19. Discuss note #9.
20. Discuss note #15 (relative to note #12 on the approved plan).

Staff Presentation – Mr. Taylor presented the development plan for the Michael Gentry, DVM Property, located at 101 Sand Lake Drive. He directed the Commission's attention to the development plan rendering, and oriented them to the location of the subject property and to the nearby street system. He said that this site is located near the intersection of Richmond Road and Man O' War Boulevard. He then said that the purpose of this development plan amendment is to add a one-story building and associated parking on Lot 2, which is current vacant. He noted that access would be provided via Sand Lake Drive, as well as access to a private access easement to the rear of the site, which connects to Eagle Creek.

Mr. Taylor said that the Subdivision Committee had recommended postponement of this plan amendment due to questions regarding the sight distance for the proposed access at the rear of Lot 2. He said that the staff has since received a revised submittal that addressed those issues previously identified by the Subdivision Committee. Based upon that recent submittal, the staff can now recommend approval of this final development plan, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote adjacent property information.
10. Addition of Lot 1 information to development plan.

~~11. Addition of access information from adjacent lot to Sand Lake Drive.~~

11. ~~12.~~ ~~Extend~~ Connect sidewalk ~~along Richmond Road frontage~~ from Lot 1 to Lot 2.
12. ~~13.~~ Addition of grease trap note to the approval of the Division of Water Quality.

~~14. Correct note #8.~~
~~15. Addition of entrance detail note per previous plan.~~
~~16. Discuss need for connection to Lot 1.~~
~~17. Discuss Sand Lake Drive access alignment with Zaxby's property.~~
~~18. Discuss access agreement to 50' access easement.~~

13. ~~19.~~ ~~Discuss~~ Revise note ~~#9~~ 11 to the approval of the Division of Engineering.

~~20. Discuss note #15 (relative to note #12 on the approved plan).~~

14. Document that landscaping will be provided in accordance with the Richmond Road Ordinance along the lot frontage of Richmond Road.

Mr. Taylor explained that when the previous development was approved, information was shown that has been removed from this development plan. He then said that the staff would like that information added back to this plan (condition #10). He noted that a sidewalk was constructed across Lot 1, and the staff recommends the sidewalk be connected from Lot 1 to Lot 2 (condition #11). Mr. Taylor said that the applicant would need to document that landscaping will be provided in accordance with the Richmond Road Ordinance along the lot frontage of Richmond Road (condition #14).

Representation – Jim Black, J.E. Black, was present representing the applicant. He said that they are in agreement with the staff's recommendations and requested approval.

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

Action - A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 11-0 to approve DP 2012-91: MICHAEL GENTRY, DVM PROPERTY, LOT 2 (AMD), subject to the revised conditions as presented by the staff.

b. DP 2012-99: ARCADIA INVESTMENTS, LOTS 3, 4 & 5 (AMD) (2/13/13)* - located at 1590, 1600 and 1610 Leestown Road. (Council District 2) **(The Roberts Group)**

Note: The purpose of this amendment is to add a gas station and add buildable area.

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.

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

5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Resolve utility easement and building conflict prior to building permit on Lot 5.

Staff Presentation – Mr. Taylor presented the amended development plan submitted for property located at 1590, 1600 and 1610 Leestown Road. He said that the purpose of this amendment is to add a gas station, as well as 7,000 square feet to the existing Kroger store. He directed the Commission's attention to the development plan rendering, and oriented them to the location of the subject property and to the nearby uses. He said that this proposal is located inside New Circle Road on Leestown Road in the Meadowthorpe Shopping Center.

Mr. Taylor then said that there is a restrictive note listed on the development plan that does not allow some building development within 400 feet of the center line of Leestown Road. A gas station is noted on this list; however, the applicant is proposing the new gas station beyond the 400' restrictive zone. He said that, as for the 7,000 square-foot expansion to the Kroger building, this square footage was transferred from the outlot that was noted on a previous development plan.

Mr. Taylor said that the Subdivision Committee had recommended approval of the applicant's proposal, subject to the conditions listed on today's agenda. He added that the staff had received several emails from the nearby residents expressing their concerns and/or support of this proposal, and those were circulated to the Commission members for their review.

Representation – Bob Cornett, The Roberts Group, was present, along with Todd Metzmeier, Kroger Company. He said that in 2008 his client had requested that the Meadowthorpe Neighborhood Association amend the restrictive note to allow the gas station to be placed on an outlot along Leestown Road. He then said that the design review committee had approved this proposal at that time, but the neighborhood association had voted against their request.

Mr. Cornett said that the shopping center is now under different ownership; and they had informally presented the new proposal to the neighborhood association, who had the same concerns as they did in 2008. Since that time, Kroger has worked with the new shopping center owner and redesigned their proposal to place the gas station just outside of the 400-foot restrictive area, which complies with all zoning regulations and engineering manuals.

Mr. Cornett then said that when a gas station is proposed there is always a concern with the possibility of increased traffic. This project does not require a traffic study to be done; but in 2008, Kroger had obtained a traffic study that showed the traffic increasing less than 60 trips per day. He said that Kroger's research showed that 23 percent of the customers who purchased items from the store also purchased gas at the fuel center the same day. Mr. Cornett said that, as part of traffic management, inter-connectivity between shopping centers was one of the requirements of the regulations. He then said that there is a connection between the Meadowthorpe Shopping Center and the Townley Shopping Center, adding that having this connection, traffic would flow between the two shopping centers and would not generate more flow onto Leestown Road.

Mr. Cornett said that this proposal meets the requirements, and they are in agreement with the staff's recommendations and requested approval.

Todd Metzmeier said that they have been working on this new proposal for several years, and the new shopping center owner and the Kroger Company would like to submit this development plan to the Commission for consideration. He then said that the neighborhood association has denied their request twice to amend the restrictive note, which would allow a gas station to be placed inside the 400-foot area. He said that they understand the neighborhood association's position because they fought hard for this restriction in the beginning. Those requirements, however, are balanced for the shopping center to expand and to allow satellite buildings to be added so long as all requirements are met. He said that this proposal does accomplish and meet all requirements of the regulations.

Mr. Metzmeier noted that there are several letters in opposition to this request, and there was a concern that the traffic study was biased. He then said that the previous traffic study was paid by and provided by the Kroger Company at the request of the Meadowthorpe Neighborhood Association. He added that the second traffic study was paid by the Kroger Company and the new shopping center owner, but the neighborhood association selected the company who provided the traffic study. As of today, there has been no rebuttal study disputing the reports.

Mr. Metzmeier said that the neighborhood association has requested that this proposal be denied until such time as the New Circle Road and Leestown Road improvements have been implemented. He then said that restricting the use of the property would burden the shopping center owner and the Kroger store beyond current code and law. In addition, closing the access point between the Meadowthorpe Shopping Center and the Townley Shopping Center would be detrimental to public safety.

Mr. Metzmeier respectfully requested approval of this plan, as it meets and satisfies all requirements of record.

Planning Commission Questions – Ms. Roche-Phillips asked if the original development plan included a gas station. Mr. Metzmeier said that this shopping center was built in the late 80s; and, at that time, most grocery stores did not offer a fuel station. Ms. Roche-Phillips then asked, when Kroger took over the Winn Dixie store, if a fuel station was proposed at that time. Mr. Metzmeier said that the previous shopping center owner had proposed a fuel station; however, the neighborhood had to agree to alter the development plan.

Ms. Beatty asked how many pumps are being proposed. Mr. Metzmeier said that there are 5 dispensers, which means there would be 10 gas pumps.

Audience Comments –Coleman Bush, 324 Pelican Lane, said that Mayor Gray stated in the "Fresh Start Plan" that nothing is as important to a community as neighborhoods' health and safety. He then said that several traffic studies can be done, but no one can tell you what traffic is like in an area other than a resident of that area. He added that, at times, the traffic in this area is unbearable and it is dangerous to everyone. To exacerbate the situation, simply because of Kroger's business model that calls for a fuel station, does not make sense. He said that the improvements to New Circle Road, as well as the crossover diamond being added, will bring more traffic to this area. He requested that the Commission reject this development plan.

Bruce Quick, 291 Burke Road, said that it is "insane" to add gas stations or more stores to the Meadowthorpe Shopping Center. This signalized intersection on Leestown Road is a mess and will continue to get worse. He then said that he has not met anyone who agrees with this proposal, nor do they want this proposal to go forward. He requested that the Commission reject this development plan.

Shirley Young, 220 Boiling Springs Drive, said that her opposition is not an attack on Kroger, but instead, a request to protect the Meadowthorpe neighborhood, as well as the people who work in and travel this area. She then said that her house is in close proximity to the Kroger store and she can hear and see traffic jams, car accidents and horns blowing from Leestown Road, adding that the PM traffic can be exhausting. She said that with the increased traffic and accidents in this area, road rage is becoming apparent and it is a mistake to exacerbate the situation. She urged the Commission to reject this request.

Planning Commission Questions – Mr. Brewer said that in Ms. Young's email correspondence she had mentioned other gas stations in the area, and asked where those other gas stations are located. Ms. Young said that there is one gas station in the Townley Shopping Center, as well as two gas stations at the corner of Forbes Road and Leestown Road.

Audience Comments (cont.) - Bob Layton, 1470 North Forbes Road, was present, and said that he is the Vice President of the Meadowthorpe Neighborhood Association, and they were not invited to give input on this process this round; therefore, as a whole, he could not represent them. He then said that he was present on his own behalf, and he wanted to thank Mr. Taylor and Mr. Neal for the information they had provided him. Mr. Layton said that they are in opposition to the fuel station and the 7,000 square-foot expansion. He then said that there is a provision in Article 21 that states if certain conditions exist, the Commission is authorized to deny the request.

Mr. Layton thanked the Commission for the residents' opportunity to submit their information and request the Commission to disapprove this application for the reasons found in Article 21-4(d) and Article 21-7(e) of the Zoning Ordinance. He then said that these two articles state that disapproval is appropriate if there are existing traffic problems relating to the development of a property, and if the amendment adversely affects the public health, safety and welfare or alters the essential character of the development as it was originally approved. He added that even though the gas station restriction only applies to the 400-foot area, the requirements for the gas station do meet the outlot requirements. A gas station does not meet what was originally approved and envisioned for this area. He said that he had compared the traffic between the Meadowthorpe Shopping Center and Bryan Station Shopping Center on December 10th and 11th between the hours of 4:30 p.m. and 5:00 p.m.; the traffic count for the Meadowthorpe area was 412 vehicles and the traffic count for the Bryan Station area was 566 vehicles. The difference between the two shopping centers would be a 37 percent increase in traffic flow into the Meadowthorpe Shopping Center. The gas station would not only impact the traffic flow; but it would impact the shopping center itself since there are only two entrances, unlike the Bryan Station Shopping Center, which has 4 entrances. He added that the Bryan Station Shopping Center is the most comparable location in Lexington. Both have similar uses and both are near the New Circle Road intersection. He said that the Meadowthorpe Shopping Center entrance is less compatible to handle an increased flow of traffic. He then said that the State of KY has already authorized road improvements for Leestown Road and Georgetown Road, as well as the double crossover diamond; and this proposal would lead the city to spend more money to improve Leestown Road inside New Circle Road to accommodate the increased flow of traffic. Mr. Layton said that they are willing to speak with the Kroger Company and see if there is a middle ground in resolving this issue; but at this time, they are requesting the Commission to disapprove this request.

Planning Commission Questions – Mr. Wilson asked if Mr. Layton was Vice President of the Meadowthorpe Neighborhood Association. Mr. Layton replied affirmatively. Mr. Wilson then asked where the neighborhood

association stands on this request. Mr. Layton said that Kroger did not invite the neighborhood association to speak about this request, but they had opposed this type of request twice in the past.

Audience Comments (cont.) - Richard Murphy, attorney, was present representing Anderson Communities, the developer of the Townley Shopping Center. He directed the Commission's attention to the development plan rendering and oriented them to Peabody Way, which is the access easement between the two shopping centers. He said that when his client developed the Townley Shopping Center, the private road between their development and the Meadowthorpe Shopping Center, was constructed. He added that this road is maintained by the Merchant Association, and the road does have curb and gutters; but it is also narrow with only two lanes. He said that the applicant is relying on this road to help make the gas station a more viable feature for the Kroger Store, which would provide it with two exits. One exit would be the Meadowthorpe Shopping Center entrance and the other would be through the Townley Shopping Center. He believes that the traffic from the gas station would cut through Townley Shopping Center to make a quicker exit at the Taylor Drive intersection to allow drivers to get to New Circle Road. He said that the signalized light at the Meadowthorpe Shopping Center needs to be adjusted, as well as an additional left turning lane added to handle the increase in traffic.

Mr. Murphy said that the applicant had stated that they had done the traffic study several years ago, but they have not taken into account the impact that the increased traffic would have on Peabody Way. He then said that they are requesting the Commission to disapprove this request, until it is determined that this proposal would not gridlock the Townley Shopping Center.

Planning Commission Questions – Mr. Penn asked if Leestown Road was made into a 4-lane highway, if his client would feel the same. Mr. Murphy said that they would still have the same problem, adding that Leestown Road in front of their development is already 4 lanes in width. Mr. Penn confirmed that if Leestown Road was further made into 4 lanes past Peabody Way toward town, his client would have the same problems. Mr. Murphy replied affirmatively, and said that people would use Peabody Way to make a quicker exit through the Townley Shopping Center in order to miss one traffic light at the Meadowthorpe Shopping Center.

Ms. Blanton asked if the applicant had engaged Mr. Murphy's client. Mr. Murphy replied negatively, and said that they just recently learned of this proposal. Ms. Blanton then asked if there are any other preventable solutions, such as preventing a left hand turn from the gas station on to Peabody Way. Mr. Murphy said that they have not seen any possible solutions, and this is one reason their request should not be approved at this time.

Ms. Mundy said that condition #6 required the Division of Fire's approval of emergency access and fire hydrant locations, and asked if staff had any concerns with the pumps being proposed so close to the access point. Mr. Taylor said that, at the Technical Committee Review, the staff did not hear of any public safety concerns expressed.

Rebuttal – Mr. Cornett said that he understands traffic is a problem in Lexington, but it is not always as bleak as it appears. He then said that the Bryan Station Shopping Center is a 90,000 square-foot building, and the Meadowthorpe Shopping Center would be expanded to a 60,000 square-foot building. He added that Peabody Way is a platted access easement that ties the two shopping centers together. He said that it was mentioned that they need the access to stay open, but that was incorrect. He then said that they do not need that access for their truck movement because their trucks are smaller. Mr. Cornett said that there was an issue expressed as to whether or not the intersection at the Townley Shopping Center could handle the increased traffic, and asked what would happen once the remaining land on their development is completed. He asked if traffic is so bad in this area there should be a ban on all building permits for new commercial development.

Planning Commission Questions – Ms. Beatty asked if this development plan amendment is an "all or nothing" scenario. Mr. Cornett said he could not answer that question. Mr. Metzmeier said that the main reason for the expansion is to be able to provide more of a selection and to keep items in stock for their customers. He then said that this store is too small to handle its current volume and they have thought about their capital investment and decided that this is the route they wanted to pursue.

Ms. Roche-Phillips asked, since there is concern with the increase in traffic impacting Peabody Way, if Kroger would share the maintenance and upkeep of the road. Mr. Metzmeier replied affirmatively, and said that they would be willing to provide an additional left turn lane out of the shopping center onto Leestown Road, but they would need some consideration with the landscaping at the entrance.

Mr. Wilson asked why Kroger didn't meet with the neighborhood association and the adjacent developer if they are willing and open for additional discussions at this time. Mr. Metzmeier said that it was mentioned that the neighborhood association was not invited to meet with them, but that is slightly disingenuous. He said that they knew of this proposal and Kroger had shared the traffic studies and the proposal with them. He added that Kroger had offered to landscape the area opposite the shopping center in front of the neighborhood, but their efforts went nowhere.

Discussion - Ms. Blanton said that, in reviewing the submitted email correspondence, some of those responses were in opposition and some were in favor of this proposal. However, the Commission can not micromanage Kroger's business; and if this proposal complies with the regulations, then it should be approved.

Ms. Roche-Phillips said that the Commission has been down this path before with the Chinoe Road gas station. It was concluded that these things can be ministerial unless there is a specific concern. She added that with the Chinoe Road request, the landscaping and setbacks were an issue; but with this request those issues have not been mentioned.

Mr. Owens asked if the setback requirement for this proposal has been met through the 400-foot restrictive area. Mr. Taylor replied affirmatively, and noted that this plan complies with that restriction.

Ms. Plumlee expressed her belief that Kroger should have worked with the neighborhood and the Townley Shopping Center developer before coming to the Commission.

Ms. Beatty said that she understands the traffic concern; but for this store, she believes the expansion would be beneficial. She then said that if the Commission approves this request it would not prevent the Kroger Company from working with the Townley Shopping Center developer regarding Peabody Way. Mr. Taylor said that they could work together but those would be through private discussions between Kroger and the Townley Shopping Center. He then said that they can agree to share the cost independent of the Commission's considerations.

Ms. Roche-Phillips asked if the Peabody Way were proposed to be closed would the Commission need to consider that proposal. Mr. Taylor replied affirmatively.

Mr. Wilson said that he appreciated the community coming out to express their concerns with this proposal, but it appears to be in the best interest of the community.

Action - A motion was made by Mr. Wilson, seconded by Ms. Blanton, and carried 10-1 (Plumlee opposed) to approve DP 2012-99: ARCADIA INVESTMENTS, LOTS 3, 4 & 5 (AMD), subject to the conditions listed on today's agenda.

Note: A recess was declared by the Chair at 3:12 p.m., and the meeting re-convened at 3:18 p.m.

Note: The next two items were heard simultaneously.

c. DP 2012-103: HAMBURG EAST, LOT 2 (2/13/13)* - located at 2500 Polo Club Boulevard.
(Council District 12) **(HDR Engineering)**

Note: This property requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection locations.
10. Provided the Planning Commission makes a finding of significant compliance with the adopted Big Box Guidelines.
11. Denote proposed easements.
12. Provided the Planning Commission makes a finding of significant compliance with the EAMP.
13. Addition of exaction information and amounts to the approval of the Division of Planning.
14. Denote as a Preliminary Subdivision Plan in title.
15. Discuss location of proposed right-in and right-out.
16. Discuss proposed townhouse circulation and access.
17. Discuss lighting proposed for canopy and stores.
18. Discuss interior pedestrian system and outdoor amenities.

d. PLAN 2012-130F: HAMBURG EAST, LOTS 2, 2A, 2B & 2C (AMD) (2/13/13)* - located at 2500 Polo Club Boulevard.
(Council District 12) **(HDR Engineering)**

Note: The purpose of this amendment is to subdivide one lot into four lots and to dedicate a new public street.

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and arterial screening.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Addition of minimum front yard setbacks (building lines).
8. Denote listing of private utility providers.
9. Addition of access easement maintenance certifications to plat.
10. Addition of landscape buffer areas along arterials.
11. Provided the Planning Commission grants a waiver to Article 4-7(d)(l) (substantial completion).

Staff Presentation – Mr. Martin presented the final development plan and the amended final record plat for Hamburg East, Lots 2, 2A, 2B & 2C for property located at 2500 Polo Club Boulevard. He directed the Commission's attention to an aerial photograph, and oriented them to the subject property and to the nearby street system. He said that this proposal is located near the corner of Polo Club Boulevard and Man O' War Boulevard, adjacent to the interstate. He then directed the Commission's attention to the final record plat rendering, and said that the purpose of this amendment is to subdivide one lot into four lots and to dedicate a new public street. He then said that this property is zoned CC and the property adjacent to this proposal is zoned EAR-3 with a TA overlay. He added that the EAR-3 lot is not subject to development at this time. He noted that access would be provided through a new local public street off of Polo Club Boulevard.

Mr. Martin directed the Commission's attention to the final development plan rendering, and said that the applicant is proposing a 155,000 square-foot building for the Costco store and 8,000 square-foot buildings for each of the two outlots along Polo Club Boulevard with associated parking. He then said that the applicant is also proposing a fuel station between the two outlots, for members only. He added that the accesses for this development are being provided through a local public street that connects with Polo Club Boulevard. Mr. Martin said that, in order to meet the requirements of the CC zone, the applicant has proposed mixed areas for the outlot near the entrance of this site, consisting of commercial use on the ground floor and residential on the upper floors. He then said that the applicant is also proposing commercial use for the outlot to the rear, as well townhouses along the interstate. Mr. Martin said that the service road for the Costco store is being provided at the rear of the building near the interstate. He then said that there would be pedestrian connectivity throughout the property, as well as open space provided, which is part of the CC requirements.

Mr. Martin said that the Subdivision Committee recommended approval of the development plan, subject to the list of conditions on today's agenda. He briefly explained that conditions #1 through #9 are standard sign-off conditions from the different utilities and divisions of the LFUCG, and gave a brief explanation of the remaining conditions, noting that these are "cleanup" items. He indicated that, as part of this request, the Commission must make a finding of significant compliance with the EAMP, as well as make a finding of significant compliance with the adopted Big-Box Guidelines. Mr. Martin indicated that there are several discussion items listed on the agenda, and gave a brief explanation of each. He said that that the proposed townhouse circulation and access was a concern with the staff; however, the applicant has adjusted the townhouse layout, removing the conflict with the floodplain, as well as adding an emergency access. He then said that another concern was with the lighting for the proposed canopy and stores and the pedestrian system and outdoor amenities. He said that pedestrian connectivity is a requirement for the CC zone and the Big-Box requirements, and the applicant has provided sidewalks throughout the development and along the public street. As for the lighting within the development, the staff was concerned with light spillage into the future residential area; but with the review of the submitted elevations, staff is comfortable with the style of lighting. He said that initially the applicant had proposed a right-in and right-out for Outlot 3; but since that time, they have agreed to revise their development plan, removing that potential conflict. He added that they have also submitted a note to the staff agreeing to pay for the installation of a stop light at the main entrance to serve their development.

Planning Commission Question - Mr. Owens said that the right-in and right-out is shown on the development plan on Outlot 3, and asked how the staff would ensure that the applicant would be resolving that conflict. Mr. Martin said that the staff had received a note stating that the applicant was agreeable to remove the right-in and right-out from the development plan.

EAMP Compliance Report – Mr. Martin directed the Commission's attention to the staff report, and said that, as part of the Expansion Area Master Plan, a report is required to be presented to the Commission. He then said that there are three major EAMP infrastructure items that are associated with this development; other requirements include the future land use element, the design features and criteria, the community design element and the infrastructure element. He briefly explained that the staff does find that the Final Development Plan for Hamburg East, Lot 2 is in substantial compliance with the Future Land Use, Infrastructure and Community Design Elements of the Expansion Area Master Plan, for the following reasons:

1. The use and proposed development meet the definition of the Community Center land use category of the EAMP that have been planned along Polo Club Boulevard and the uses allowed in the CC zone.
2. Many principles of the EAMP, including orientation of the buildings and parking, pedestrian connections and a well defined neighborhood have been incorporated into the design of the CC development.
3. Although the planned regional sanitary sewer pump station has not been constructed, the design phase is complete, and construction of the facility should be completed in 2013 to coincide with the completion of the Big Box (Costco) portion of the development. Should this timing be problematic, provisions for sanitary sewer service have been agreed upon by the applicant and the LFUCG Division of Water Quality.

Mr. Martin said that, as part of this report, the staff is recommending that the following condition be added:

a. Denote on the development plan that no Certificate of Occupancy shall be issued until the proposed street is completed in accordance with the Engineering Manuals and accepted by the Division of Engineering; and that sanitary sewer service shall be provided to the approval of the Division of Engineering and the Division of Water Quality.

Waiver Report – Mr. Martin directed the Commission's attention to the waiver report, and said that the applicant has requested a waiver to Article 4-4(d)(1) of the Land Subdivision Regulations, which pertains to the required completion of public improvements to allow the recordation of a record plat prior to construction of the sanitary sewer line(s) and a local street to serve the proposed new lots. He then said that the waiver would allow the complete bonding of the 1,800 linear foot section of the required gravity sewer line serving the lots and the proposed 1,000 linear feet of local street as well. He added that the waiver would allow the public improvements and the site development for the proposed Costco Store to be coordinated. He noted that by approving this waiver, it would allow the plat to be recorded, and construction and public improvements could begin.

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

1. The requested waiver would relieve an exceptional hardship for the applicant by allowing the coordination of the sewer line extension and proposed public street with the site development and construction of the proposed Costco Store.
2. Granting the waiver will not negatively impact public health and safety, as the completion of road improvements and the provision of sanitary sewer service will be completed prior to the issuance of a Certificate of Occupancy.

He added that this recommendation is made subject to the following additional requirement:

a. Denote*:* No Certificate of Occupancy for Lot 2A shall be issued until the public street is constructed in compliance with the Engineering Manuals and accepted by the Division of Engineering; and sanitary sewer service is provided and accepted by the Division of Engineering and the Division of Water Quality.

In conclusion, Mr. Martin said that the staff is recommending approval of PLAN 2012-130F and DP 2012-103, as presented.

Planning Commission Questions - Ms. Plumlee asked if a bus stop would be provided. Mr. Martin said that that would be addressed with the Big-Box Report.

Big-Box Guidelines Report – Mr. Sallee directed the Commission's attention to the staff report on Big-Box Guidelines, and said that this report relates directly to condition #10 listed on the agenda for DP 2012-103. He then directed the Commission to the applicant's submitted renderings. He said that the applicant has provided not only building elevations for the staff to review, but also a landscaping plan to demonstrate their compliance with these guidelines.

Mr. Sallee said that, since this development is located in the CC zone, there are 13 Big-Box guidelines that are applicable. He then said that the physical design of the building must have uninterrupted facades, which would be done with insets, offsets, and the use of canopies. He added that the building heights and textures must be varied, and the applicant has proposed parapet walls, as well as different textures to break up of the visual appearance of the building. Mr. Sallee then said that each Big-Box building must clearly delineate the customer entrances; and for this proposal, the entrance would be placed at the corner of the building, not in two separate locations. Mr. Sallee said that the loading dock at the rear must be screened to minimize views from the interstate, and the applicant has indicated on the landscape plan that there will be berms along this area, as well additional screening if needed.

Mr. Sallee said that the parking area has been designed to allow pedestrian movement to be parallel to moving cars, and will minimize the need for pedestrians to cross parking aisles and landscape areas where reasonably possible. He then said that the walkways and sidewalks at the customer entrance are covered with an awning, and the bike rack will be placed near the proposed customer entrance.

Mr. Sallee concluded by saying that the development plan and elevations submitted to the staff demonstrate considerable compliance with these adopted design guidelines, with the exception of Guideline 10 that requires at least two pedestrian oriented amenities. He then said that the staff is recommending approval, for the following finding:

1. The proposed development, as submitted, demonstrates considerable compliance with the adopted Big-Box Design Guidelines.

Mr. Sallee added that this recommendation is subject to the following conditions:
a. Clearly identify and label the alternative surface for the pedestrian walkway serving the front entrance of the store.
b. Provide the two required pedestrian amenities to comply with Guideline 10.
c. Label canopies in front of the store.
d. Clearly identify and label the sidewalks along the store front(s).
e. Provide a walkway along the northwest side of the fueling station directly to Polo Club Boulevard.

Planning Commission Question – Mr. Owens clarified that conditions "a through e" should be added to the development plan recommendations. Mr. Sallee replied affirmatively.

Representation – Ben Edelen, HDR Engineers, was present representing the applicant, along with Patrick Madden, Madden Place and Jackie Frank with Costco. He said that they are in agreement with the staff's recommendations and requested approval. He pointed out that they have been discussing the possibility of a bus stop with LexTran, and they are agreeable to provide one for this site.

Mr. Frank said that they had reviewed the guidelines and they understand that pedestrian connectivity and amenities are important. He then said that they have incorporated a pedestrian plaza with enhanced paving and scored concrete and benches near the proposed LexTran stop near the entrance of the shopping center. He then said that they would be exceeding the landscaping requirement by providing a greater density and a larger species than what is required by the LFUCG Ordinance. He added that, as far as the canopy lighting, it would be suspended in the trellis, concealing the light source. They would also be using shields to help create a zero footcandle with no visible lamp source.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. Larry Ridenour, residing at 3064 Roundway Down, was present. He said that the Gleneagles Neighborhood Association was in favor of this request, but their Board had concerns with the design of the intersection of Man O' War Boulevard and Polo Club Boulevard. He requested that the design be reviewed for better efficiency. He then said that too much parking is also a concern due to the potential impact on the stormwater management goals for this area.

Staff Comments - Mr. Martin said that there has been an overall discussion among the staff regarding the future requirements and improvements to Polo Club Boulevard and Man O' War Boulevard.

Planning Commission Questions – Ms. Roche-Philips said that this development is a sea of parking and there is concern with the adjacent floodway and stormwater system. She asked if there would be permeable paving provided. Mr. Martin said that this development will be required to meet the water quality features that are applicable for this area. He then said that the type of features may be permeable pavers or some other type of paving. He added that the Best Management Practices would be utilized for this development.

Ms. Roche-Phillips asked if there is a maximum number of parking spaces for the CC zone. Mr. Martin replied no, and said that there is not a maximum number for parking in the CC zone. Mr. Sallee said that there are only maximum parking spaces set for the defined Infill areas.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 11-0 to approve PLAN 2012-130F: HAMBURG EAST, LOTS 2, 2A, 2B & 2C (AMD), subject to the conditions as presented by the staff, including granting the waiver to Article 4-7(d)(l) (substantial completion).

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 11-0 to approve DP 2012-103: HAMBURG EAST, LOT 2, subject to the conditions listed on the agenda, deleting conditions 15 through 18, and adding conditions a through e, as indicated on the report for compliance with the Big-Box Guidelines; including making a finding of significant compliance with the adopted Big-Box Guidelines, and making a finding of significant compliance with the EAMP, as presented by the staff.

Note: The next two items were heard simultaneously.

e. DP 2012-107: HAMBURG PLACE FARM, SIR BARTON WAY OFFICE PARK, PH 2, LOT 18 (AMD) (2/13/13)* - located at 2540 Sir Barton Way. (Council District 6) **(Vision Engineering)**

Note: The purpose of this amendment is to add an office use to Lot 18A.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the proposed access and the lack of improvements proposed to Sir Barton Way.

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

Should this plan be approved, the following requirements should be considered:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection locations.
8. Resolve status and termination of Sanford Way.
9. Resolve landscaping or maintenance of the shared access with Lot 17.
10. Discuss proposed access to Sir Barton Way.

f. PLAN 2012-134F: HAMBURG PLACE FARM (SIR BARTON WAY OFFICE PARK) PHASE 2, LOTS 18A-18C (AMD) (2/13/13)* - located at 2540 Sir Barton Way. (Council District 6) **(Vision Engineering)**

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

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the termination of a proposed public street.

Should this plan be approved, the following conditions should be considered:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
8. Addition of north arrow.
9. Reorient vicinity map to match plat.
10. Addition of maintenance note for drainage and other easements.
11. Addition of 20' building line on Sanford Way frontage.
12. Remove Lot 17 from plat.
13. Dash adjoining lot lines.
14. Correct owner's certification.
15. Resolve status of Sanford Way as a public or private street and the need for a waiver.
16. Resolve improvements necessary to Sir Barton Way for new street.

Staff Presentation – Mr. Taylor presented the amended final record plat and the amended final development plan for Hamburg Place Farm, Sir Barton Office Park, Phase 2, Lots18A-18C for property located at 2540 Sir Barton Way. He directed the Commission's attention to the renderings for both plans, and oriented them to the location of the subject property and to the nearby street system. He said that this proposal is located near the Hamburg Shopping Center just off Sir Barton Way, adjacent to the interstate. He noted that Wal-Mart and Lowes are just some of the nearby uses in this area. He said that the purpose of the request is to subdivide one lot into three lots and add an office use on one of the new lots. The use on Lot 18A would be a branch bank with its associated parking. He then said that access would be provided from Sanford Way, just off Sir Barton Way. No uses are currently planned for the other two lots.

Mr. Taylor said that the Subdivision Committee had recommended postponement of these two requests because of questions regarding the termination of a proposed public street, as well as the proposed access into the property from Sir Barton Way. He then said that when this request was presented to the Subdivision Committee, it had been indicated that Sanford Way would be a public street that would connect with the Wal-Mart Shopping Center parking lot. That connection is shown on the adjacent development plan as an off-site connection for future development to the area. He said that the applicant had proposed Sanford Way terminating and stubbing into the adjacent property, which would have required a waiver of the Land Subdivision Regulations.

Mr. Taylor then said that the staff received a revised submittal from the applicant indicating that Sanford Way would be a private access easement instead of a street. He added that the access would be partially constructed, delaying the connection to the Wal-Mart Shopping Center, until it is known what would be developed on the remaining two lots. He said that the applicant would construct the access in conformance with the standards of a public street in order to possibly dedicate the street at a later time and request a waiver if needed.

Mr. Taylor said that, as a result of the revised submittal proposing an access easement instead of a street, the staff can now recommend approval of PLAN 2012-134F, subject to the following requirements:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

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

2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.

~~8. Addition of north arrow.~~

8. ~~9.~~ Reorient vicinity map to match plat.
9. ~~10.~~ Addition of maintenance note for drainage and other easements.

~~11. Addition of 20' building line on Sanford Way frontage.~~
~~12. Remove Lot 17 from plat.~~
~~13. Dash adjoining lot lines.~~
~~14. Correct owner's certification.~~
~~15. Resolve status of Sanford Way as a public or private street and the need for a waiver.~~

10. ~~16.~~ Resolve improvements necessary to Sir Barton Way for new street.

Mr. Taylor briefly explained that the applicant would need to resolve the improvements necessary to Sir Barton Way for the new street to be constructed. He then said that there was a concern with providing a right turn onto Sanford Way from Sir Barton in the event that the connection is made over to the Wal-Mart Shopping Center. The applicant has proposed a new right turn lane on the development plan, but it would also need to be shown on the record plat.

Mr. Taylor directed the Commission's attention to the staff handout for DP 2012-107, and said that the staff is also recommending approval of the development plan, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection locations.

~~8. Resolve status and termination of Sanford Way.~~

8. ~~9.~~ Resolve landscaping along and/~~or~~ maintenance of the shared access with Lot 17.

~~10. Discuss proposed access to Sir Barton Way.~~

Mr. Taylor said that when this development was first approved there was an established shared access between Lots 17 and 18. However, the applicant does not want reciprocal access between these two lots; therefore, they would need to ultimately resolve the landscaping and/or maintenance between the two lots.

Representation – Matt Carter, Vision Engineering, was present representing the applicant. He said that they are in agreement with the revised conditions for these plans, and requested approval. He said that Sanford Way would be constructed and designed to meet all public street requirements. He then said that, at some point in the future, they would be coming back to the Planning Commission requesting the waiver to terminate Sanford Way.

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

Action - A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 11-0 to approve PLAN 2012-134F: HAMBURG PLACE FARM (SIR BARTON WAY OFFICE PARK) PHASE 2, LOTS 18A-18C (AMD), subject to the revised conditions as presented by the staff.

Action - A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 11-0 to approve DP 2012-107: HAMBURG PLACE FARM, SIR BARTON WAY OFFICE PARK, PH 2, LOT 18 (AMD), subject to the revised conditions as presented by the staff.

g. DP 97-20: COLDSTREAM RESEARCH CAMPUS, UNIT 1-A, LOTS 17 & 18 (AMD) (3/5/13)* - located off Bull Lea Road. (Council District 2) **(Strand Associates)**

Note: The Planning Commission originally approved this plan at their February 20, 1997, meeting, subject to the following conditions:

1. Urban County Engineer's approval of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of revised parking and circulation.
3. Building Inspection's approval of landscaping.
4. Correct Commission's certification.
5. Review by the Technical and Subdivision Committee prior to plan certification.

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

Note: The applicant now requests reapproval of the plan.

The Staff Recommends: **Reapproval**, subject to the original conditions, revising the following:
1. Urban County Engineer's ~~approval~~ acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of revised parking and circulation, street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.

Staff Presentation – Mr. Martin directed the Commission's attention to a rendering of the amended development plan for Coldstream Research Campus, Unit 1-A, Lots 17 & 18. He said that the Planning Commission had previously approved this request on February 20, 1997, and the applicant now requests a reapproval of the plan. He directed the Commission's attention to the rendering and oriented them to the surrounding street system, noting that the subject property is located on Bull Lea Road, near Citation Boulevard. He then said that the uses on the property include research facilities and office buildings, adding that there is associated parking on site.

Mr. Martin said that the staff is recommending reapproval of this request, subject to the previous conditions listed on today's agenda, revising conditions #1, #2, and #3, and adding a new condition #6 to update/correct the stormwater notes on this development plan to match the notes that are currently listed on all Coldstream development plans. He then said that the applicant was not present at today's meeting due to a conflict, but they are aware of the new condition and are agreeable to adding these notes to this development plan.

Chair Comments - Mr. Owens concurred that the applicant did have a conflict, but they did convey that they were in agreement with the staff's recommendations.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for reapproval. There was no response.

Action - A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 11-0 to reapprove DP 97-20: COLDSTREAM RESEARCH CAMPUS, UNIT 1-A, LOTS 17 & 18 (AMD), subject to the original conditions, revising conditions #1, #2, and #3, and adding a new condition #6 to correct the stormwater notes on this development plan to match the notes that are currently listed on all Coldstream development plans.

h. DP 2006-119: NDC, UNIT 1-A, LOTS 21D & 21E (AMD) (3/6/13)* – located at West Reynolds Road and Ruccio Way. (Council District 9) **(Midwest Engineering)**

Note: The Planning Commission originally approved this plan at their September 14, 2006, meeting, subject to the following conditions:
1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree preservation areas.
5. Greenspace Planner's approval of the treatment of greenways/bike trails.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Solid Waste's approval of refuse collection.
8. Approval of street names and addresses per e911 staff.
9. Correct site statistics (zoning).
10. Update plan with all current information.
11. Complete and clarify labeling of all building lines and easements.
12. Remove the word "proposed" from Lot(s) 21D and 21E.
13. Delineate fronts of new buildings.
14. Denote: There shall be no outdoor sales in front of the building line.
15. Delete access point from Lot 21E inside the curve of Ruccio Way.
16. Identify the offset setback as required by Article 12-7(b) in the Zoning Ordinance.

Note: The applicant now requests reapproval of the plan.

The Staff Recommends: **Reapproval**, subject to the original conditions, revising the following:
3. Building Inspection's approval of landscaping and landscape buffers.

Staff Presentation – Ms. Gallt directed the Commission's attention to a rendering of the amended development plan for NDC, Unit 1-A, Lots 21D & 21E. She said that the Planning Commission had previously approved this request on September 14, 2006, and the applicant now requests a reapproval of the plan. She directed the Commission's attention to the rendering and oriented them to the surrounding street system, noting that the subject property is located at the corner of West Reynolds Road and Ruccio Way. She said that the applicant wants to build a small structure on site; however, since this plan was signed more than 5 years ago, the Planning Commission must take action to reapprove it.

Ms. Gallt said that the staff is recommending reapproval of the applicant's request, subject to the original conditions, revising one condition:
3. Building Inspection's approval of landscaping and landscape buffers.

Representation – Tom Lambdin, Midwest Engineering, was present representing the applicant. He said that they are in agreement with the staff's recommendations and requested reapproval.

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

Action - A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 11-0 to reapprove DP 2006-119: NDC, UNIT 1-A, LOTS 21D & 21E (AMD), subject to the original conditions, revising the following:
3. Building Inspection's approval of landscaping and landscape buffers.

VI. ZONING ITEMS - The Zoning Committee met on Thursday, December 6, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS
The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:
- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

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

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

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

Note: The Planning Commission considered this request at its meeting on November 15, 2012, and a motion for approval received a tie vote of 4-4. The Commission will have the opportunity to either reconsider that motion, or consider another motion.

1. ANDERSON CAMPUS RENTAL PROPERTIES, LLC, ZONING MAP AMENDMENT & SOUTH BROADWAY PLACE & LYNN GROVE ADDITION ZONING DEVELOPMENT PLAN

a. MARV 2012-19: ANDERSON CAMPUS RENTAL PROPERTIES, LLC (2/13/13)* - petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 1.976 net (2.731 gross) acres, for properties located at 116 & 118 Simpson Avenue; 1100-1110 Prospect Avenue; and a portion of 101 & 103 Burley Avenue. A dimensional variance is also requested with this zone change.

LAND USE PLAN AND PROPOSED USE
The 2007 Comprehensive Plan (Sector 4) recommends a combination of future land uses for the subject property – Medium Density Residential (MD) future land use for the 10 parcels that have frontage along Simpson and Prospect Avenues and Greenspace/Open Space future land use for the rear portion of 101 and 103 Burley Avenue. The applicant proposes redeveloping the subject property with a mixture of townhouses and apartment buildings; a total of 78 dwelling units are proposed, with 108 bedrooms, and associated off-street parking, for a residential density of 39.47 dwelling units per net acre (28.56 units per gross acre). A dimensional variance is also being requested with this zone change.

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

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

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

1. The requested High Density Apartment (R-4) zoning for the subject property is not in agreement with the 2007 Comprehensive Plan's recommendation for Medium Density Residential land use, defined as 5–10 dwelling units per net acre. However, a recent zone change request has been granted in the immediate area that has created a major change of a physical and economic nature and that has changed the basic character of the area that were not anticipated by the 2007 Comprehensive Plan. The rezoning of adjacent properties to the R-1T zone has increased the permitted density of land use in this area over that recommended by the Plan.
2. The proposed R-4 zone is appropriate for several reasons:
   a. The proposed development, including the expansion of University Village Apartments, will create a step-down in density from a very high density residential land use, to the planned redevelopment with frontage along Burley Avenue.
   b. The highest density development in the neighborhood will be situated adjacent to the railroad, thus buffering the single-family residences from the noise and dust associated with the Norfolk-Southern rail corridor.
   c. The University Village Apartments, located to the north, are also zoned R-4 and the proposed zoning will allow for the two developments to be integrated.
3. This recommendation is made subject to approval and certification of ZDP 2012-110: South Broadway Place & Lynn Grove Addition prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES

1. Reduce the project exterior yard requirement for a group residential project from twenty (20) feet to three (3) feet for the southwestern property line.

The Staff Recommends: **Approval of the requested setback variance from 20 feet to 3 feet**, 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, as the Group Residential Project portion of the development will be interconnected through shared parking and other amenities with the townhouses and detached single-family residential structures to which the required setback applies.
b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The applicant's proposal for a unified development that transitions and incorporates a variety of residential types and densities is compatible with the surrounding neighborhood.
c. The unique circumstance that applies to this Project is that the required project exterior yard is unnecessary due to the applicant's desire to blend the proposed housing types and shared parking lot. This is a unique circumstance that does not typically apply to most Group Residential Projects, because the purpose of the exterior yard is to buffer adjacent properties from a typically more intense apartment complex.
d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely not result in a more compatible development proposal.
e. The circumstances surrounding this request are not the result of actions taken by the applicant, but rather by the desire to retain and blend three detached single-family homes on Burley Avenue with the new townhouses and apartments as a unified development.

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

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a Zoning Compliance Permit, a building permit and all applicable Federal, State, and Local approvals.

c. ZDP 2012-110: SOUTH BROADWAY PLACE & LYNN GROVE ADDITION (2/13/13)* - located at 116, 118 & 201 Simpson Avenue; 99-101 and 109-119 Burley Avenue and 1100-1110 Prospect Avenue.

(Barrett Partners)

Note: The purpose of this amendment is to incorporate new townhomes and apartments into the existing multi-family development.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.

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

3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Provided the Planning Commission grants the requested variances.
7. Denote that a waiver of the proposed Simpson Avenue street termination will be required at the final development plan stage.
8. Denote that Urban County Council closure of Prospect Avenue will be required prior to certification of final development plan.
9. Denote compliance with Article 18 requirements for zone-to-zone screening.
10. Resolve extent of proposed underground storm water detention and timing of improvements at final development plan.
11. Resolve proposed townhouse lotting on private street.

Zoning Presentation: Ms. Wade presented the staff report, explaining that the petitioner is proposing to rezone the subject property, which is comprised of 12 parcels, from R-1D to R-4. The property is approximately two acres in size, located along Simpson Avenue, Prospect Avenue, and Burley Avenue. Ms. Wade noted that the rendered zoning map does not reflect a recent zone change approved for property on Burley Avenue to R-1T. She said that the rest of the American Avenue area is zoned R-1D, with the exception of the University Village apartment complex property to the north, which is zoned R-4. Other zoning in the area includes R-2, closer to the University of Kentucky campus on the other side of the Norfolk-Southern railroad. To the southwest of the subject property is South Broadway and Virginia Avenue is located to the north. The neighborhood is typically accessed via Simpson Avenue, Burley Avenue, or Export Street from Virginia Avenue. The area primarily consists of single family residential uses, with the exception of the apartment complex on Virginia Avenue.

Ms. Wade displayed an aerial photograph of the subject property and surrounding area, noting the location of the University Village apartments to the north; the subject parcels with frontage on Prospect Avenue, which connects Burley Avenue and Simpson Avenue; the two parcels with frontage on Simpson Avenue; the rear portion of the two parcels on Burley Avenue; and the area to the south that was recently rezoned to R-1T. The petitioner is proposing to incorporate those townhouses and single family residences, along with the University Village apartments to the north, and the townhouses and apartments proposed along with this request, into one development. Ms. Wade said that the subject property is essentially the portion of the development between the Burley Avenue townhouses and the University Village apartments to the north. The applicant is proposing to construct 78 dwelling units, with a total of 108 bedrooms, in 72 apartments and six townhouse units. Ms. Wade noted that the property before the Commission at this hearing is only part of a larger development plan, so the total number of units will be larger.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Medium Density Residential land use for the subject property, as well as Greenspace for portions of the two Burley Avenue parcels. The subject property is part of the area that was studied for the South Broadway Corridor Plan, which was adopted in 1990. Several of the recommendations from that Plan related to the subject property and the immediate vicinity, including: Recommendation 13, which called for establishing a buffer along the railroad tracks to help mitigate the noise, vibration and dust associated with train traffic; Recommendation 14, which called for redeveloping properties in the area for Medium Density Residential use, due to the structural condition of most of the buildings; and Recommendation 35, which suggested addressing existing stormwater issues along the railroad tracks. Some of those drainage issues were addressed during the development of the University Village apartments, but the rear portions of the Burley Avenue properties are still low-lying, and a detention basin is located there. Ms. Wade said that the recommendations of the South Broadway Corridor Plan were adopted as part of the 1996 Comprehensive Plan, and the 2007 Plan includes many of those recommendations as well.

Ms. Wade said that the 2007 Comprehensive Plan recommendation calls for up to 10 units per acre. The applicant is proposing 39.5 dwelling units per acre on the property, so the proposed development cannot be found to be in agreement with the Plan recommendations. Therefore, the staff evaluated both the appropriateness of the proposed R-4 zone, and whether or not there had been an economic, physical, or social change in the immediate area. Ms. Wade stated that the staff found that the recent rezoning created a physical or economic change to the area that was not anticipated by the 2007 Comprehensive Plan, which would justify a zone change. She noted that, in the 2007 Plan, there is a "line" between the high density apartment uses on the north side of Simpson Avenue, and the medium density uses on the south side. When the zone change was approved on Burley Avenue, that line crossed over into the single-family area; so moving the land use buffer to include the area along Burley Avenue made sense to the staff. The staff also found the proposal to be appropriate. Of note to the staff is that the petitioner is proposing to maintain residential uses in the area in a manner similar to that recommended by the Comprehensive Plan, and they are proposing to locate the highest densities nearest the railroad tracks, with townhouses as a "step-down" to the nearby single-family units.

Ms. Wade said that, at the time of the nearby rezoning, staff was concerned about the parking configuration and that traffic would be going through the single-family residential area to access the townhouses. With the petitioner's proposal to close Prospect Avenue and a portion of Simpson Avenue, most of that traffic would be moved to Simpson, which is already a more heavily-used local street, and would remove the traffic and parking from Burley

Avenue, which the staff believes is a positive as well. The R-4 zone proposed by the petitioner is also compatible with the existing University Village development. For these reasons, the staff concluded that the proposed rezoning to R-4 is appropriate, and they are recommending approval. The Zoning Committee also recommended approval.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, explaining that the area proposed for rezoning overlaps an existing area to the north, which is already zoned and is governed by a final development plan. Referring to a rendered copy of the development plan, he noted the area proposed for rezoning, and explained that the petitioner intends to incorporate it and the remainder of the original plan into one cohesive development.

Mr. Martin briefly oriented the Commission to the location of the subject property, noting that Prospect Avenue is proposed to be closed. He said that the petitioner proposes to construct a five-story apartment building and several townhouses, and extend Simpson Avenue into the subject property to serve as parking and an access point to the development. The petitioner proposes to construct three new apartment buildings in the interior of the property, and townhouse units closer to Burley Avenue, near the townhouse units proposed at the time of the more recent rezoning. Mr. Martin said that the development plan submitted in conjunction with that zone change depicted a circulation pattern that took traffic from Burley Avenue, through the development, and back out onto either Prospect or Burley Avenue. The petitioner is now proposing to make the access from Burley Avenue one-way only, so that traffic will be forced to move back through the proposed development and out to Simpson Avenue. The petitioner is also proposing to construct a pedestrian bridge to cross the railroad tracks and connect the proposed five-story apartment building with the University of Kentucky. Mr. Martin said that the petitioner is proposing to construct 72 new dwelling units in the area proposed for rezoning; 26 new units in the area of the plan amendment, including apartments and six townhouses; and 15 townhouses in the Burley Avenue area.

Mr. Martin stated, with regard to the recommended conditions for approval with this plan, that the applicant will be required to request a waiver for termination of Simpson Avenue at the time of a final development plan for the property. The petitioner is also requesting the closure of Prospect Avenue, which will be required to be completed prior to the certification of a final development plan. The staff is requesting that the petitioner denote compliance with Article 18 of the Zoning Ordinance along the adjacent R-1C area, and along the zone line near the railroad tracks, although there is existing vegetation at that location. Mr. Martin said that condition #10 refers to the petitioner's proposal of a very large underground detention area; he noted the location of that proposed basin on the rendered development plan. He said that the petitioner has already engaged in conversations with the staff of the Divisions of Water Quality and Engineering about the basin, to discuss how it will function. He noted that all detention basins are inspected by the Division of Engineering once a year to ensure that they are functioning correctly. Condition #11 refers to a revision that was made to the original plan in order to satisfy one of the staff's concerns; the staff later determined that the changes made would create the need for an additional variance. Mr. Martin said that that condition can be easily resolved by adding the townhouse lotting back to either a preliminary subdivision plan or the final development plan.

Variance Presentation: Mr. Emmons presented the staff report, explaining that the requested variance is to the project exterior yard for a Group Residential Project along one property boundary. Referring to a rendered graphic, he noted the area where the variance is proposed, as well as the boundary of the Group Residential Project. The project exterior yard for a Group Residential Project is comprised of both the side and rear yard requirements in an apartment or townhouse complex, and is generally required to be either the height of the building, or 20 feet, whichever is less. In this instance, one of the proposed apartment buildings is to be constructed less than 20 feet from the edge of the Group Residential Project boundary. However, because the petitioner is proposing a blend of apartments, townhouses, and single-family residences as one unified development plan, with three single-family units along Burley Avenue, the Group Residential Project boundary could not be extended to the edge of the proposed development along Burley. Rather, the boundary for the Group Residential Project had to be set behind those three single-family residences. Mr. Emmons stated that the purpose of a project exterior yard is typically to provide a buffer in situations where an apartment complex is located close to the property line of a less intense use. In this instance, however, the townhouses and single-family homes along Burley Avenue will share in the parking and other amenities for the overall unified development, thereby decreasing the need for such a buffer. Article 15 states that the purpose of the Infill & Redevelopment regulations is to promote compatibility between new infill projects and older neighborhoods; sometimes variances are needed to achieve that compatibility. Mr. Emmons stated that the staff is recommending approval of the requested variance from a 20' yard to a 3' yard on the southwestern property line, for the reasons as listed in the staff report and on the agenda, subject to the four conditions as listed.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He distributed an exhibit packet to the Planning Commission members, explaining that the focal point of the proposed development will be a five-story apartment building along the railroad tracks, adjacent to University Village. That building is not in the area currently proposed for rezoning, but will be in a portion of the property that is already zoned R-4. Mr. Murphy noted that the larger area is depicted on the development plan because the petitioner intends for the entire complex to be integrated into one cohesive development.

Mr. Murphy stated that the entire parking and circulation system for the development is proposed to be internal, with a "grand entrance" from Simpson Avenue. The petitioner proposes to transition from the large apartment building to smaller buildings and townhouses closer to the single-family residences on Burley Avenue. Prior to the revision of the development plan, all three of the access points led to Burley Avenue; the petitioner believes that the configuration currently depicted represents a great improvement to the traffic pattern. Mr. Murphy said that, by closing Prospect Avenue, the petitioner was able to close two of the proposed access points on Burley Avenue, and make the remaining access "entrance-only." This configuration is intended to encourage all exit traffic to use the signalized intersection at Virginia Avenue, via Export Street.

Mr. Murphy noted that the petitioner is also proposing to construct a pedway across the railroad tracks, which is subject to approval by numerous agencies. Referring to a graphic in his exhibit packet, he noted the proposed terminus of the pedway on UK property, near the planned expanded medical complex. The target residents for the proposed development are medical professionals, rather than UK students, and the petitioner believes that the proposed one- and two-bedroom units will cater specifically to them. The amenities and degree of the luxury of the five-story building will also be geared more toward young professionals than students.

Mr. Murphy stated that the petitioner is in complete agreement with the staff's recommendations. He noted that every Comprehensive Plan in the last 20 yeas, including the 2007 and 2012 Comprehensive Plans, focus on infill as a "strategic component of growth in Lexington." Infill is particularly encouraged near employment centers, and the petitioner contends that the UK Medical Center and its related uses make up the biggest and most important healthcare employers in the state. The petitioner intends to provide housing so that those employees will be able to walk to work via the proposed pedway, and still have some separation from the activities on campus.

With regard to the staff's comments about stormwater, Mr. Murphy said that there is a pipe in the vicinity of the area proposed for the pedway that drains water from the UK property under the railroad tracks. He explained that the petitioner is sharing information with UK about stormwater flows, so that the calculations for their underground detention will ensure that that facility can accommodate runoff from the University, as well as the subject property. The petitioner's engineer recently met with staff of the Divisions of Engineering and Water Quality to craft a series of notes for the plan. In addition, the petitioner will be required to submit a stormwater and sewer study contemporaneously with the Final Development Plan, subject to their approval.

With regard to the recommended conditions for approval of the zoning development plan, Mr. Murphy said that the petitioner is agreeable to adding the lotting pattern back to the plan in order to satisfy condition #11.

Mr. Murphy stated, in conclusion, that the petitioner has been working on the proposed development for the last ten years, and he believes that it will be the best possible solution for the subject property. He added that the apartment complex will have on-site local management, which the petitioner believes will be key to the success of the development.

Dennis Anderson, petitioner, stated that the graphic of the proposed pedway that Mr. Murphy displayed was prepared for him by the University, as part of their collaboration on the pedway and stormwater detention. He stated that the original plan for the subject property included a large parking area near the entrance. He redesigned the development to make the proposed five-story apartment building the centerpiece, adding that he plans to construct an outdoor kitchen, hot tub, and glassed-in fitness center on the roof of the building.

Citizen Opposition: Ginny Daley, 136 Burley Avenue, requested that the Planning Commission disapprove this request because she believes that the proposed development is too dense for the neighborhood and will cause problems with traffic, parking, stormwater, sewer, noise, and trash. She added that she believes that the proposed development will also take away affordable single-family dwellings and replace them with "expensive student barracks."

Ms. Daley stated that she is also concerned that, if the proposed development is approved, the petitioner will pursue additional construction projects in the neighborhood, which is "demoralizing for the residents to live in a constant demolition/construction zone."

Ms. Daley said that she believes that the proposed development will do nothing for the existing residents of the neighborhood. She stated that, since the rezoning in July of 2012, she has been tracking crime in the neighborhood, and has discovered that the majority of the crime occurs in student housing developments, primarily on Simpson Avenue. Expanding that apartment complex, therefore, could cause more crime, and it could spread further into the existing neighborhood. Ms. Daley also said that the scale of the proposed apartment buildings, juxtaposed against the small single-family cottages typical in the neighborhood, "contradicts the Infill & Redevelopment guidelines." Displaying a photograph of appropriate infill that was presented by the Planning staff at a public meeting discussion of the 2012 Comprehensive Plan, Ms. Daley opined that that type of housing would be perfect for the neighborhood. She said that the petitioner owns several such structures in the neighborhood, so he could construct more of those rather than large multi-family dwellings. Ms. Daley read the following from Goal A.2.a. of the 2012 Comprehensive Plan Goals & Objectives:

"Identify areas of opportunity for infill, redevelopment, and adaptive reuse that respect the area's context and design features whenever possible."

Ms. Daley displayed a sketch representing the scale of the existing single-family residences and the proposed apartment buildings, along with the topography of the area. She said that the University Village development is somewhat lower than the single-family residences, so their additional height is not as noticeable. However, she believes that the proposed three-story apartment buildings, located directly behind the small single-family homes, will tower over them.

Ms. Daley stated that she does not agree with the staff's contention that the proposed townhouses will provide a step-down in density, since only a few are proposed at the margins of the apartment development. Referring to the staff's assertion in their findings for approval that locating the highest density development along the railroad track will provide a buffer for the single-family residences, she said that the current residents are not seeking such a buffer. They are not concerned about noise and dust from the railroad, so they do not believe that the placement of the apartment building there will be of any benefit to them. In addition, Ms. Daley said she did not believe that it is appropriate to use any type of housing as a railroad buffer. She said that that would also contradict the Comprehensive Plan Objective that states, "provide well-designed neighborhoods and communities." Ms. Daley also did not believe that the proposed development is better for the residents of that development, the existing neighborhood, or the community.

Faye Atkins, 116 Burley Avenue, stated that she has lived in her residence for 43 years. She said that her home is directly across from Prospect Avenue, which the petitioner is proposing to close, and she is opposed to the proposed development.

Ms. Atkins stated that, when she first moved to Burley Avenue, the area was almost rural in character and the homes were affordable. She said that she wants to be able to sit on her front porch and see grass and trees, not a large apartment development.

Ms. Atkins added that the student residents of the neighborhood have large, noisy parties until the early morning hours and leave liquor bottles and other trash in residents' yards. She added that she was once awakened in the middle of the night by students jumping on residents' vehicles, and she does not believe that it would be appropriate to add even more students to the area.

Priscilla Pemberton, 139 Burley Avenue, stated that she believes that the petitioner "likes money" and wants more students' parents to pay the high rents for his townhouses and apartment units. She said that, contrary to the petitioner's assertions, professionals working at the University of Kentucky will not want to live in the proposed development because the students are too disruptive.

Ms. Pemberton stated that she has lived in her home for 14 years, but she put it on the market when she learned of the proposed development. She asked that the petitioner leave her "nice, little neighborhood" alone.

Mary Fay Miniard, 128 Burley Avenue, said that she believes that the demolition and construction of the proposed development will be uncomfortable for the Burley Avenue residents. She added that those residents are self-supporting, taxpaying citizens, and their desires for their neighborhood should be considered.

Ms. Miniard stated that she and her son had their home built on Burley Avenue 12 years ago, in order for her son, who is a disabled veteran, to be close enough to the area hospitals that he could travel there in a motorized wheelchair, if needed. Their home was paid off just over a year ago, and they are very comfortable there. Their intent was to live there for the rest of their lives without having to make a rent or mortgage payment.

Ms. Miniard opined that, eventually, "big business will prevail," and the entire Simpson/Burley/American Avenue area will be taken over for student housing. She asked that the Planning Commission consider the welfare of those who have purchased homes there, most of whom could not afford to buy a house in a more expensive neighborhood. Ms. Miniard concluded by explaining that she is trying to plan for her future, and would like to have some degree of certainty about whether or not the petitioner or some other developer intends to purchase the rest of the property in her neighborhood.

Petitioner Rebuttal: Mr. Murphy stated that the petitioner understands the neighborhood concerns about security, and he has already met with Commissioner Paulsen to discuss possible Secure by Design features for the subject property. One of those features is the provision of only one access point to Burley Avenue, since it ahs been shown that developments with fewer entrance points are typically better-controlled. The petitioner has centralized, on-site management for the University Village apartments, which will also be the management for the proposed residential development.

With regard to Ms. Miniard's comments about the petitioner's commitment to the community, Mr. Murphy said that the petitioner had become aware of two homeowners in the area, one on Burley Avenue and one on Camden Avenue, who were willing to "trade houses." He stated that the petitioner does not have control over the future of the neighborhood,

since there are a number of other developers working in the area as well. The petitioner contends, however, that a large integrated development such as the one proposed is a better option for the neighborhood than piece-by-piece single-lot development. The petitioner also believes that the proposed development will provide an appropriate step-down of uses for the existing residents, and can help to serve both the neighborhood and the University of Kentucky with needed student housing.

Citizen Rebuttal: Ms. Daley stated, with regard to Mr. Murphy's comments about routing traffic out of the neighborhood via Simpson Avenue, that that area is typically a "major bottleneck" during peak-hour traffic. Referring to the aerial photograph of the neighborhood shown earlier, she said that she believes that residents of the proposed development will instead use the signalized intersection at South Broadway and American Avenue, since there are no other opportunities for drivers to make a left-hand turn out of the neighborhood onto South Broadway. Ms. Daley stated that she appreciates the petitioner's attempt to change the traffic pattern, but she does not believe it will work unless the traffic light configuration changes on South Broadway. She said she does not believe that the neighborhood can support the additional traffic from the proposed 197-bed development.

Chairman Comment: Mr. Owens announced that the hearing was now closed.

Commission Discussion: Ms. Plumlee thanked the neighbors for their attendance, and said that she understands their concerns. She said that, from their perspective, it is difficult to tell if the changes to their neighborhood are "progress or an ultimate taking," and that the proposed rezoning is in agreement with the recommendations of the 2007 Comprehensive Plan and the 2012 Goals and Objectives.

Ms. Roche-Phillips said that, prior to hearing the information provided by the area residents, she was unaware of the "incremental, piecemeal chipping away at the neighborhood." She stated that she would advocate closer study of this area, possibly as a small area plan through the 2012 Comprehensive Plan process, because the area is being heavily impacted by the expansion of the UK Medical Center. Ms. Roche-Phillips added that she had thought this proposed rezoning was a fairly straightforward case, before the neighbors brought their issues to the Commission's attention.

Mr. Penn stated that he had worked and grown up at his family's tobacco warehouse in the Burley Avenue area, and he is very familiar with the neighborhood and the changes that have been occurring there. He said that those changes ultimately resulted in the closure of the tobacco warehouse and storage facility after they were no longer economically viable. Mr. Penn stated that no progress occurs without hurting someone, and he is aware that it is difficult to be forced to leave your home. His major concern, however, is that the neighborhood has become, not a place to live, but "to rent a place and go from one point to the next." Mr. Penn said that someone needs to determine how the more transient residents can coexist with the residents who choose to make the area their permanent home. He said he has great empathy for the residents of this area.

Zoning Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 10-1 (Roche-Phillips opposed) to approve MARV 2012-19, for the reasons provided by staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 11-0 to approve the requested variance, for the reasons provided by staff, subject to the four conditions as listed in the staff report and on the agenda.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 11-0 to approve ZDP 2012-110. subject to the 11 conditions as listed on the agenda.

Chairman Comment: Mr. Owens stated that the Commission recognizes the residents' concerns, and will do everything possible to help rectify their situation.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. **ZOTA 2012-17: AUTOMOBILE & REFUELING STATIONS FOR THE DISPENSING OF COMPRESSED NATURAL GAS OR LIQUEFIED PETROLEUM** (12/21/12)* - petition for a Zoning Ordinance text amendment to define "automobile and refueling stations" and allow for the dispensing of compressed natural gas and any liquefied petroleum in business and industrial zones, either as a principal use or as a conditional use.

INITIATED BY: Urban County Council

PROPOSED TEXT: *(Copies of the proposed text are available upon request)*

Staff Alternative Text:

16-8(c)REQUIRED DISTANCES BETWEEN AUTOMOBILE & VEHICLE REFUELING STATIONS DISPENSING COMPRESSED NATURAL GAS AND / OR LIQUID NATURAL GAS AND OTHER USES – In addition to the requirements of this section (above), no stationary dispensing equipment for compressed natural gas or liquid natural gas associated with an automobile & vehicle refueling station may be located within:

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

(1) ten (10) feet of any sidewalk, walkway, parking lot ~~**and**~~ **or** property line;
(2) fifteen (15) feet of any electrical source ~~**and**~~ **or** any overhead electric utility line;
(3) fifty (50) feet of a right-of-way line, a building on another lot, ~~**and**~~ **or** the nearest rail of any railroad line;
(4) sixty-five (65) feet of a residential zone;
(5) not less than fifty (50) feet of a fire hydrant.

The Zoning Committee Recommended: **Approval of the Staff Alternative Text**, for the reason provided by staff.

The Staff Recommends: **Approval, of the Staff Alternative Text**, for the following reason:

1. The proposed text amendment to Articles 1, 8 and 16 of the Zoning Ordinance will define and permit (either as a principal or conditional use) compressed natural gas (CNG) or liquefied petroleum (LNG) dispensing and refueling stations, which are currently not permitted in Lexington-Fayette County. CNG and LNG are more efficient and cleaner fuel options for personal or fleet vehicles, and providing for such dispensing stations for a broader range of fuel is environmentally friendly.

Staff Presentation: Ms. Wade presented the staff report, noting that this request was initiated by the Urban County Council in October; so the Planning Commission must act on it prior to the end of December, and send their recommendation back to the Council.

Ms. Wade stated that the Council's Planning and Public Works Committee met and expressed a desire to permit the dispensing of compressed natural gas or liquefied petroleum in the community because it is a more efficient and cleaner-burning fuel for large trucks, busses, fleet vehicles, and personal automobiles. These dispensing locations could be beneficial to over-the-road truck drivers traveling through the state, as well as local companies who could share fueling stations for their vehicle fleets.

Ms. Wade stated that the Zoning Ordinance currently defines "automobile service station," by a broad definition that permits dispensing of fuel in most of the business zones. However, the Ordinance also prohibits above-ground storage of flammable materials, specifying compressed natural gas as one of those materials; so the regulations are working against one another. For that reason, the Planning and Public Works Committee asked the Council to initiate a text amendment to regulate a dispensing location as a principal use in the B-3, B-4, I-1, I-2, and B-5P zones, and as a conditional use in the B-1, B-2, B-2A, and B-6P zones. The zones that would allow these dispensing locations as a principal use are linked to major corridors or arterials, interstates, and industrial areas, and would allow alternative fuel dispensing to be co-located with traditional service stations, or to serve businesses with fleet vehicles in industrial areas. The zones where dispensing locations are proposed to be regulated as conditional uses were selected because they are typically located closer to residential areas; requiring Board of Adjustment approval will allow those situations to be evaluated on a case-by-case basis.

Ms. Wade said that additional restrictions are proposed to Article 16 to provide for setbacks from the dispensing equipment: a 10' setback from sidewalks, walkways, parking lots and property lines; a 15' setback from electrical sources or overhead electrical lines; an additional 50' setback from a right-of-way line, building on another lot, or railroad line; and a 65' setback from a residential zone. A restriction is also proposed to require that a fire hydrant must be located within 50 feet of the dispensing equipment. Based on research published by the American Planning Association, these setbacks are common throughout the country, and they allow for some spacing and buffering between incompatible uses. Ms. Wade displayed a diagram of a natural gas dispenser, noting that it is similar in appearance to a typical gasoline pump, with the exception of the compressor, dryer, and storage tanks, which must all be located above ground. The location of that equipment above ground does create more of a hazard than typical underground gasoline storage tanks.

Ms. Wade stated that the staff had one proposed modification to the text that was initiated by the Council. They are recommending to change the wording of Article 16-8(c) from "and" to "or" in order to indicate that the list is inclusive, rather than exclusive. Ms. Wade said that the staff and the Zoning Committee both recommended approval of this proposed text amendment with the alternative text, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Penn said that, with the low cost of natural gas, it is likely to become more useful in agricultural areas as a means to operate grain dryers more efficiently. He asked if dispensing stations would be permitted in the B-1 zones in rural areas, and as conditional uses in the A-R zone. In addition, Mr. Penn questioned whether the equipment, if allowed in rural areas, would be above ground or underground. Ms. Wade responded that, regardless of the location, the equipment would need to be above ground. She added that a dispensing system for the use of a private owner, with no commercial aspect, would not need to be regulated; such a use in the B-1 zone would be conditional. A representative of Columbia Gas Company attended the Zoning Committee meeting and provided additional information about the use of compressed natural gas, noting that those systems are currently available for use in heating private homes.

Ms. Mundy asked if there is a provision in the Zoning Ordinance for electric fueling stations as well. Ms. Wade answered that there are currently no such provisions in the Ordinance. Although the APA recommends locating electric stations in parking garages and other similar areas, the staff is not aware of any demand in Lexington-Fayette County at this time. Mr. Sallee added that, in a parking garage, such a station would likely be considered an accessory use. He said that

regulating the stations located "out in the open" would be more questionable. Ms. Wade noted that the community should encourage such stations as an alternative energy source.

Citizen Comment: There were no citizens present to comment on this request.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 9-0 (Brewer and Berkley absent) to approve ZOTA 2012-17, with the staff alternative text.

2. **ZOTA 2012-18: MODIFY REGULATIONS FOR WALL SIGNAGE IN THE P-1 AND MU-1 ZONES** (1/1/13)* - petition for a Zoning Ordinance text amendment to modify the requirements for a third wall sign in the Professional Office (P-1) and Mixed-Use 1: Neighborhood Node (MU-1) zones.

INITIATED BY: Urban County Council

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

ARTICLE 17: SIGN REGULATIONS

17-7(e) PROFESSIONAL OFFICE ZONE (P-1) AND MIXED-USE 1: NEIGHBORHOOD NODE ZONE (MU-1)
Permitted signs may be either free standing or wall mounted, as specifically noted; signs shall be non-illuminated, indirectly illuminated, or internally illuminated unless otherwise specified. No free-standing sign shall exceed ten (10) feet in height.

(1) One free-standing ~~I~~identification or ~~B~~business ~~signs, limited to one free-standing~~ sign per building ~~and one wall-mounted sign per street frontage, with a maximum of two such wall-mounted signs per building; free-standing sign~~ not to exceed forty (40) square feet in area with a ~~; wall-mounted sign not to exceed five percent (5%) of the wall area to which it is attached;~~ minimum setback of ten (10) feet ~~for a free-standing identification sign~~.

(2) ~~(Note: Where~~ One wall-mounted identification or business sign for buildings with one street frontage, not to exceed five percent (5%) of the wall area to which it is attached. When a free-standing sign is not utilized on a lot with only one street frontage, a second wall-mounted sign on a different building face shall be permitted as regulated above in place of the permitted free-standing sign.~~)~~

(3) Two wall-mounted identification or business signs for buildings with two street frontages, located on separate wall faces, not to exceed five percent (5%) of the wall area to which the signs are attached.

(4) Three wall-mounted identification or business signs for buildings three (3) stories or taller with two street frontages, located on separate wall faces, not to exceed five percent (5%) of the wall area to which the signs are attached. Signs not located on a street frontage shall not be placed on a building face directly adjacent to any residential zone.

(Re-number remaining sections)

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

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

1. The proposed text amendment will allow a slight adjustment to the otherwise permitted signage in the Professional Office (P-1) and Mixed Use: 1 Neighborhood Node (MU-1) zones. Obtaining a third wall sign is already permitted in a Professional Office Park setting, and this amendment will provide more flexibility within the community for similarly situated buildings and multi-tenant buildings.
2. The community's signage has been regulated in a tiered approach so that the least intensive business zones have the least intensive signage, and the most intensive business zones permit a greater number of signs, and ones that may be taller or larger in size. The proposed text remains consistent with the existing tiered approach of *Article 17: Sign Regulations*.

Staff Presentation: Ms. Wade presented the staff report, explaining that the proposed text amendment would permit a third wall sign in the P-1 and MU-1 zones, on buildings three stories tall or greater, if the building has frontage on at least two streets. She added, however, that such a third sign would not be permitted next to a residential zone. This would provide the ability for tenants in larger, multi-tenant buildings to better address their signage needs. Ms. Wade noted that the proposed text amendment would also continue the philosophy of using a "step-down" approach to signage, i.e., concentrating more intense signage in the more intense business zones. She stated that the staff and the Zoning Committee are recommending approval, for the reasons as listed in the staff report and on the agenda.

Citizen Comment: There were no citizens present to comment on this request.

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

Action: A motion was made by Ms. Beatty, seconded by Ms. Plumlee, and carried 9-0 (Brewer and Berkley absent) to approve ZOTA 2012-18, for the reasons provided by staff.

VII. COMMISSION ITEMS – The Chair announced that any item a Commission member would like to present would be heard at this time.

A. CT 2012-1 (12/13/12)* – An application for construction of a 199' cellular tower monopole in the Agricultural Rural (A-R) zone, at 1811 Iron Works Pike.

Staff Recommendation
The staff recommends approval. Although the application does not meet the yard requirements of the Zoning Ordinance along one property line, the height-to-yard ratio will be met on the remaining three sides. According to information contained in the Uniform Application, the proposed location is the most feasible location for the proposed tower, which is needed to remedy the situation of 8% call blockage in the area (more specifically within AT&T's search ring).

Granting the requested height-to-yard variance is justified because, although the tower could theoretically be located nearer the center of the property where it would meet all yard requirements; practically speaking, where it is proposed is the most logical with regard to the function of the farm and the amount of paving that would be required for the access road if located elsewhere on the property. The applicant has tried to locate on other properties in the area and has been unsuccessful in attempts to negotiate an alternative location. The subject property is deep enough to accommodate the proposed tower, allowing it to be 1,250 feet from the roadway of a designated Scenic Byway, and is one of only a few in the area that is large enough to accommodate the tower that is not under PDR protection. Granting the landscape variance is justified due to the amount of natural screening on the property in the area where the tower is proposed, by way of tree lines and existing buildings.

This Recommendation of Approval is subject to the following conditions:
1. That the proposed tower be constructed in the location and in the manner depicted on the site plan submitted as part of the Uniform Application, unless required by the Planning Commission to be central to the property.
2. That the fenced area be screened by an 8-foot privacy fence, according to the requirements of Article 25.
3. That any applicable permits be obtained from the Division of Building Inspection prior to construction and/or deployment of the tower.

Chairman Comment: Mr. Owens stated that he must disqualify himself from hearing this item, since he is an adjacent property owner.

Staff Presentation: Ms. Rackers began the staff's presentation by circulating to the Commission several letters of opposition to this request, as well as the petitioner's Alternative Site Analysis, which provides an explanation as to why the subject property was chosen for the location of the proposed tower.

Ms. Rackers stated that the petitioner is proposing to construct a monopole tower on the subject property located at 1811 Iron Works Pike. She briefly oriented the Commission members to the location of the property, which is slightly less than three miles west of Russell Cave Road and south of Maddoxtown, which is an historic rural settlement. The tower is proposed to be 195 feet in height, with a three-foot lightning arrestor and a one-foot base pad, for an overall height of 199 feet. The petitioner is proposing to locate the tower in a 2,500 square-foot area, approximately 1,250 feet from Iron Works Pike on the eastern side of the property. The tower enclosure is proposed to be surrounded by an eight-foot chain link fence, with an eight-foot privacy fence around it as well, in order to protect the tower and equipment and provide a buffer for the agricultural uses on the property. Ms. Rackers said that the petitioner is proposing to provide access to the tower via an existing gravel road on the farm, which would be improved and extended with asphalt or some other suitable hard paving surface prior to the construction of the tower. Displaying an aerial photograph of the property, Ms. Rackers noted the proposed location of the tower and the existing gravel road.

Ms. Rackers stated that the petitioner would like to allow for future co-location for other carriers on the proposed tower, which could help to alleviate the need for additional towers in this portion of Fayette County in the future. The petitioner indicated that, currently, service in the area is less than desirable, with 8% of all calls either being dropped or unable to be completed. While those service issues can be considered a minor nuisance to most private customers, adequate service is critical for the proper function of enhanced 911 operations.

Ms. Rackers said that the 2007 Comprehensive Plan recommends Core Agricultural and Rural Land Use (CARL) for the subject property, which is surrounded on three sides by agricultural properties, several of which are PDR-protected. The University of Kentucky College of Design's Rural Settlement Study, which was completed between 2003 and 2006, noted that the entire Maddoxtown community, as well as many of the individual properties within it, are eligible for National Register of Historic Places designation and local H-1 overlay zoning. However, no one has pursued such designations since the completion of that study in 2006. The entire Iron Works Pike area could possibly be eligible for National Register designation as well. As part of the research process prior to construction of the proposed cell tower, the National Historic Preservation Act of 1966 required the completion of a Section 106 Review by the Division of Historic Preservation staff and the Kentucky Heritage Council. Those entities determined that the proposed cell tower would have no adverse impact on historical or

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

archeological resources for the subject property or the surrounding area. Iron Works Pike and Russell Cave Road are both designated as Kentucky Scenic Byways, and at least two of the citizens who submitted letters in opposition to the request noted that they did not believe it would be appropriate to locate a cell tower in the vicinity. Ms. Rackers stated that Article 25, however, does allow the location of a tower along a Scenic Byway, provided the tower uses an alternative design; has a minimized profile; or is located at least 300 feet away from the roadway. This tower is proposed to be located approximately 1,250 feet away from the road. While the tower will be visible for miles around, including from the Scenic Byways, it will be lower than the 450-foot tower on the nearby Clear Channel Radio property, and could possibly be less visible than the cluster of radio towers on that property. The base of the tower is proposed to be screened by existing buildings and mature trees, and the profile of the tower will be minimal in order to reduce visual impact as much as possible. Ms. Rackers displayed several photo simulations provided by the petitioner, predicting what the view of the tower might look like from the nearby roadways.

Ms. Rackers stated that, although the tower will be visible, the staff believes that the improvements to enhanced 911 service are more important to the community as a whole. Since 911 is an essential service, the construction of the proposed tower will be consistent with the Comprehensive Plan Objective of "providing, improving and developing essential public and private facilities in areas where they are not existing or they are deficient."

Ms. Rackers said that, in searching for a site for the proposed tower, the petitioner approached Fayette County Public Schools and Clear Channel Radio to discuss possible co-location opportunities in this area, both of which refused the petitioner's proposal. The petitioner then chose the subject property, which was also located within the search ring, based on the depth of the property, which could allow construction of the tower more than 1,200 feet from the roadway. The petitioner is unable to co-locate on another structure because there are no other structures in the area of sufficient height to allow for co-location. Because the petitioner has agreed to allow other carriers to co-locate on the proposed tower, however, this request does meet the co-location requirement of Article 25.

Ms. Rackers stated that the subject property is zoned A-R, as are all of the other properties in the vicinity with the exception of the Maddoxtown settlement. The petitioner contends in their Uniform Application that the subject property is the most feasible within the designated search ring. The minimum lot size in the A-R zone is 40 acres, and the subject property is 27.2 acres in size, which makes it a non-conforming lot. Some questions have been raised as to whether the location of a cell tower on the subject property would make it more non-conforming. The staff believes, however, that the cell tower is similar to any other utility, and that the location of a tower there would not make the property more non-conforming. Ms. Rackers said that Article 25 states that any cell tower lease area may not take a property below its minimum lot size, making it non-conforming. The petitioner, however, is not proposing to use a long-term lease; rather, they are proposing to use an easement agreement with the property owners, which is in the process of being recorded. That proposed easement would function similarly to any other utility easement, in that it would allow access to the utility facilities but would not reduce the lot size or require a lot subdivision. Therefore, the proposed cell tower would not violate Article 25 or KRS.100.

Ms. Rackers stated that the petitioner is also requesting two variances: one to the height-to-yard ratio, and one to waive the landscaping requirements. The distance between the base of the proposed tower and the property line is approximately 85 to 95 feet. Displaying a rendering of the site layout, Ms. Rackers said that a 1:1 height-to-yard ratio would require that there be 195 feet on all sides of the tower to serve as a fall zone. The only side that will not meet the required height-to-yard ratio is the eastern portion of the property; the proposed configuration meets all of the other setback requirements. The petitioner could construct the tower in the middle of the subject property, which would not require a variance; but that would require more paving and would disrupt the farming operations on the property. The staff believes that locating the tower in the middle of the property would therefore be more disruptive than constructing it at the proposed location, which they feel is a justification for recommending approval of this proposed variance. Ms. Rackers stated that Article 25 allows both height-to-yard variances and landscape waivers, provided that enough plant material exists to screen the base of the tower. The staff also believes that there is enough existing plant material to screen the base of the tower, so they also support the requested landscaping waiver.

Ms. Rackers stated that the staff is recommending approval of this request, along with the two requested variances, subject to the conditions as listed on the agenda.

<u>Commission Questions</u>: Mr. Wilson asked if the "service gap" referred to signal strength or capacity. Ms. Rackers answered that that referred to capacity.

Mr. Penn asked how the tower area could be leased or divided from the subject property, which is a non-conforming lot, without conflicting with the regulations of KRS.100. Ms. Rackers responded that the petitioner is proposing an easement agreement, rather than a lease or subdivision. Mr. Penn asked why the staff was equating the proposed easement with other utility easements. Ms. Rackers answered that the easement is proposed to allow access to the tower for maintenance. Mr. Penn asked if other cell towers in Lexington-Fayette County have been similarly situated. Ms. Rackers replied that, if other towers are platted, it is not because it was a requirement to do so, but rather because it was a part of a particular lease agreement. Mr. Penn asked if a plat would be required if the subject property was a conforming 40-acre tract. Ms. Rackers answered that it would not, as plats are never required for cell towers. Mr. King added that, to his knowledge, a plat has never been required for a cell tower. He said that, if the property was subdivided, it would have to meet the requirements for how it was zoned. Mr. Penn said that it was his understanding that the preferred location for a cell tower was in a park or on school property, rather than private property. Mr. King responded that some communities who made such a recommendation ran into problems because it pushed the contractual obligations—and the revenues that went along with them—to public entities,

rather than private entities. Ms. Rackers added that placement of cell towers on government-owned properties is encouraged by Article 25, but is not required.

Mr. Berkley asked if there will be any type of lease agreement between the petitioner and the property owner. Ms. Rackers answered that there would be no lease. Mr. Berkley asked if any type of monthly payment would be made to the property owner. Ms. Rackers answered that she was not sure how payments would be made for an easement agreement, but the petitioner's representative might be able to provide more information. Mr. Berkley noted that the Commission members had received a letter from the Fayette Alliance that referenced a similar case. Ms. Rackers explained that, originally, a lease agreement was proposed; however, once it was determined that such a lease agreement could violate Article 25 and KRS.100, the petitioner and property owner arrived at the easement agreement. She added that the letter from Fayette Alliance was written prior to the drafting of the easement agreement. Mr. Berkley asked if the easement agreement could be considered as a lease, if payment is made to the petitioner; and, if so, would the case cited in the Fayette Alliance letter become an issue. Ms. Jones answered that the Law Department had reviewed that case, and determined that it was completely different, in that it involved the division of a 97-acre tract into 523 separate lots for single-family homes. She added that easements are often paid for, and she did not believe that the payment aspect would make this agreement a lease.

Ms. Beatty asked, with regard to the staff's reference to enhanced 911 as an "essential service," how services are determined to be either essential or non-essential. Ms. Rackers answered that there is no set definition, but the staff believes that enhanced 911 is an essential service. Ms. Beatty asked if there are currently problems with the enhanced 911 service in the vicinity of the subject property. Ms. Rackers answered that the petitioner indicated that they are currently experiencing dropped calls in that vicinity, which could be critical in an emergency situation.

Ms. Roche-Phillips said that the Commission should be focusing on this request in terms of land use compatibility, rather than on lease terms and easement agreements.

Petitioner Presentation: Todd Briggs, AT&T, was present representing the petitioner. He said that the petitioner's search ring for a particular area is based on the need to address a coverage gap, which can be either physical (no signal penetrates the area), or capacity (too few towers in the area to handle the call capacity). The petitioner currently has three towers in the vicinity of the subject property: one on Swigert Avenue, one at the Horse Park, and one near the Bourbon County line, but those towers are not capable of handling the voice and data volume the petitioner is currently experiencing. Russell Cave Road was designated by the Kentucky Transportation Cabinet as a rural major collector, and Iron Works Pike as a rural minor collector. Since both of those roadways are heavily traveled for rural roads, the search ring was developed to place a fourth tower somewhere in that general vicinity. Mr. Briggs said that, once the search ring area is determined, a site acquisition firm begins looking for viable candidates. The petitioner considered 14 parcels within the search area; out of those 14, three parcels were deemed appropriate. The other two property owners were not interested in the petitioner's proposal, so the subject property was determined to be the best candidate.

Mr. Briggs stated that the tower is proposed to be located 1,300 feet from the roadway, in a grove of mature trees that should minimize its appearance from Iron Works Pike. The type of monopole tower proposed is also considered to be the least visually intrusive, and it will not be lighted. Mr. Briggs noted that the nearby Clear Channel Radio property has four towers, the tallest of which is approximately 500 feet in height, and they are lighted and painted red and white.

Mr. Briggs said that the petitioner believes that the proposed location is the most appropriate for the tower. He said that the petitioner is in agreement with the staff's conditions, and he requested approval.

Commission Questions: Mr. Wilson asked if the cell tower signals would interfere with the nearby radio signals. Mr. Briggs responded that the petitioner submitted a study that indicated that there would be no interference issues with the radio signals. He added that, since all of those communications are regulated by the FCC, the petitioner would be required to resolve any issues that arose post-construction. He added that it is not unusual for a cell tower to be located near broadcast towers. Mr. Wilson asked if it would cause problems if the broadcast company increased the power to their towers. Mr. Briggs answered that the main concern with the location of cell towers near broadcast facilities is the possibility of the broadcast signal being rebroadcast by the cell tower. He added that the broadcast company can "de-tune" the cell tower facility to prevent those issues.

Mr. Penn asked how permanent the proposed tower would be, and how the property owner will be paid. Mr. Briggs answered that the petitioner and the property owner entered into an easement agreement for 25 years. Mr. Penn asked if the road to the tower would be blacktopped, and the petitioner would have access only to that portion of the property. Mr. Briggs responded that the access is existing, but the blacktop will be installed as required by the Zoning Ordinance. Mr. Penn asked if the petitioner proposes to use the farm road for access to the tower, or construct a separate road that has security. Mr. Briggs answered that the petitioner proposes to use that existing farm road, but the tower compound will be gated and locked. Mr. Penn asked why the nearby radio station was unwilling to allow the construction of the tower on their property, if the petitioner could ensure that the tower would not interfere with their broadcast signal. Mr. Briggs replied that he did not know the reason why, but the radio station neglected to entertain the petitioner's offer. Mr. Penn asked if the petitioner would need to construct another tower between the subject property and the Horse Park, should they reach capacity for the proposed tower in the near future. Mr. Briggs answered that the petitioner does not anticipate a need for an additional tower in the area in the near future. Mr. Penn stated that technology can change a great deal in 25 years. He said that he is concerned about allowing the

construction of a cell tower in a rural area along a Scenic Byway, as well as the petitioner's possible need for an additional tower in the vicinity in the near future. Mr. Briggs responded that the three existing towers in the area cannot handle the current capacity. Mr. Penn asked if emergency services use the petitioner's towers. Mr. Briggs answered that the residents make 911 calls from their cell phones, which use the petitioner's towers. He added that that service is particularly important since many residents have given up their landline phones and have only cell phone service to use in case of an emergency. Mr. Penn asked if a 911 call made on a cell phone from his home, which is in the vicinity of the subject property, would use the petitioner's tower at the Horse Park. Mr. Briggs answered that each tower has its own coverage pattern, based on topography, and other features that could possibly block the signal.

Mr. Brewer asked if FCPS and Clear Channel Radio gave reasons as to why they did not want to permit construction of the proposed tower on their properties. Mr. Briggs responded that FCPS indicated that they are no longer permitting the location of cell towers or structures on any of their properties, and Clear Channel was simply not interested. Mr. Brewer asked if the petitioner has increased their offer. Mr. Briggs replied that the offer was not financial, so it could not be increased. Mr. Brewer asked if any compensation was provided for the 25-year lease of a property. Mr. Briggs answered that compensation is provided, but it is not part of the discussion at the time that the site acquisition company approaches a property owner to gauge their interest in allowing the construction of a cell tower on their property. He added that the discussions with FCPS and Clear Channel never reached the point of negotiating compensation. Mr. Brewer said that he believed that, if the petitioner had offered money to those two entities, they might have been more willing to consider the proposition.

Mr. Brewer asked if the petitioner could increase the power to the three existing towers in the area in order to handle the additional capacity, rather than construct another tower. Mr. Briggs answered that the petitioner could broadcast their signal in a wider swath, but that would bring in even more users, which would increase the capacity load on the existing towers. Mr. Brewer asked how the petitioner would handle a capacity gap in a different area, such as downtown. Mr. Briggs responded that, if a tower site is "maxed out" with regard to usage, the petitioner has to construct another tower. He added that, in the downtown area, there are many more tower sites due to the higher usage rate than in rural areas. Mr. Brewer stated that he did not understand why the petitioner could not simply increase the capacity of the existing towers in the area. Mr. Briggs responded that each site has a limit. He said that it would be much easier and less expensive to simply "boost the signal" or increase capacity to the existing towers, rather than constructing a new tower. Mr. Brewer asked if the petitioner could build another tower immediately adjacent to one of their existing towers. Mr. Briggs responded that the towers work together as a network, to cover an area. He said that adding a tower on an existing site would not help to solve the capacity issue in the vicinity of the subject property. Mr. Brewer opined that the subject property is "the wrong place to put a cell tower," given the community's investment in protection of rural areas and greenspace.

Ms. Roche-Phillips asked if, when the proposed tower reaches capacity at some point in the future, the petitioner will seek an additional site in the area, or increase the size and/or signal strength of the tower. Mr. Briggs answered that, based on the engineer's study, the petitioner does not anticipate the need for additional capacity in the vicinity of the subject property in the near future. Following Ms. Roche-Phillips's reiteration of her question, Mr. Briggs responded that, should additional capacity be required, the petitioner would construct another tower rather than adding height to an existing tower. He noted that adding height to a tower could help to address coverage issues (where there was no signal), but not capacity issues. The petitioner also prefers to keep towers below 200 feet in height so they do not have to be lighted.

Ms. Beatty stated that the broader, technical issues raised as part of this discussion might be more appropriately discussed at a Commission work session. She said that she is concerned about the need for more towers in the community as the number of cell phone users increases. Mr. Briggs responded that there is no need to "fear the proliferation of towers" in the next few years, noting that the most recent tower in the community was added five or six years ago. He also stated that the petitioner chooses co-location on existing towers whenever possible, and proposes to construct this tower to allow for co-location of other carriers, as well.

<u>Citizen Opposition</u>: Cliff Ashburner, attorney, was present representing several property owners in the area who are concerned about the proposed cell tower and the precedent that could be set by the easement arrangement behind it. His clients believed that the proposed tower would be "just too much" for the subject property. While they respected the petitioner's efforts to find an appropriate site on which to construct a new tower, they did not believe that it can be done on the subject property.

Mr. Ashburner stated that, in 2000, the state of Kentucky began allowing local governments to regulate the location of cell towers; prior to that, local entities were permitted only to make recommendations to the Public Service Commission. The intent of those regulations was to permit the construction of towers, while protecting the character of the community.

With regard to the proposed easement agreement, Mr. Ashburner said that he and his clients do not believe that it is possible to permit the placement of a cell tower on an easement without destroying the intent and several provisions of Article 25. They believe that creating an easement on the subject property for the proposed cell tower would amount to the subdivision of a non-conforming lot, which is certainly prohibited. In addition, Mr. Ashburner stated his belief that the requested variances were not adequately justified, and the tower will have a negative impact on surrounding properties. He explained that, since 2000, a cellular telecommunication facility has been defined as a "lot, tract, or parcel," not an easement. A change to Article 25 in 2003 recognized that long-term lease areas were being used for cell towers.

Mr. Ashburner stated, with regard to Ms. Jones's comments, that he did not agree with her interpretation of the Sizemore case, to which she referred. He said that he believes that any attempt to lease a defined area of land meets the definition of "subdivision" as defined in the Subdivision Regulations, which is the same as KRS.100. He read the following into the record from the staff report from the 2003 text amendment, which referred to the use of a lease area on a non-conforming lot:

> "In cases where a cellular antenna tower or antenna is located on a portion of a property whose subdivision is based on a long-term lease, recognizing that long-term leases were being used, the lease area shall not take the parent tract below the minimum lot requirement."

Mr. Ashburner said that the Memorandum of Easement that was submitted to the Planning Commission looks very similar to a Memorandum of Lease. It provides for an "exclusive easement," which he believes implies exclusive possessory rights. The fact that the easement area will be surrounded by locked fencing, which makes it inaccessible to anyone other than the petitioner, reinforces that assertion, as does the defined 25-year term of the agreement. Mr. Ashburner stated that the reason a cell tower cannot be placed in an easement is that the required height-to-yard ratio must be measured based on the boundary of the lot or the long-term lease area. He said he believes that the initial application for the proposed tower was filed with a long-term lease, on a property that was too small, and then someone realized that the lease would violate Article 25. Mr. Ashburner opined that, if the Planning Commission accepts that interpretation, every tower that follows this case will be located on an easement, and the Commission will lose their ability to regulate the location of towers the way it was intended when Article 25 was written in 2000.

Mr. Ashburner stated that the subject property is not only non-conforming in size, but it might be non-conforming in use, or illegally used, as well. The property has 10 single-family residences on its 27 acres, although not all of those structures meet the yard requirements of the Zoning Ordinance. Mr. Ashburner displayed several photographs of the subject property, noting the location of the principal residence; the 10 tenant homes, particularly the nine located along Maddox Lane; and several barns and other structures typical to an agricultural use. He noted that the subject property is 13 acres below the minimum lot size of 40 acres in the A-R zone. The Memorandum of Lease that was provided by the petitioner included a legal description of 2,500 square feet for the tower area, and any future co-location could require a larger, 10,000 square-foot area. The removal of that area from use by the easement agreement would serve to drop the property even further below the minimum lot size. Mr. Ashburner added that the principal use of the subject property is a residence; it was his belief that any addition of another use to a lot that is already non-conforming is contrary to Article 4 of the Zoning Ordinance. He added that only one principal structure is permitted on a lot in the A-R zone, and opined that the building at the base of the proposed cell tower would serve as another principal structure on the subject property. Mr. Ashburner read the following excerpts into the record from the Zoning Ordinance:

> "Where a non-conforming use is the primary use, the building in which it is located shall be deemed a principal structure."
>
> "There shall be no more than one principal structure and its accessory structures on any lot or parcel of land in the agricultural zone."
>
> "An accessory use or an accessory structure is a use or structure subordinate to the principal use or building on a lot, and serving a purpose customarily incidental to that purpose."

Mr. Ashburner said that he and his clients contend that a cell tower is not an accessory structure to a residence.

Mr. Ashburner stated that he and his clients also do not agree with the staff's interpretation that the proposed tower will not be disruptive to the viewshed on the Scenic Byway. He said that, if cell towers are to be permitted at all in agricultural zones, they must have an alternative design such as a bell or clock tower, church steeple, or something similar. If a tower cannot be constructed with an alternative design, for which no evidence has been presented that such a design has been attempted in this case, then it is recommended that the monopole be camouflaged. Mr. Ashburner stated, with regard to Ms. Beatty's question about the distinction between essential and non-essential services, that a reasonable distinction would be which ones have condemning authority. He said that, if a property owner cannot reach an agreement with the water company and they need access to the property, they have the ability to condemn a portion, pay the difference in value, and provide the service. That power, however, has not been given to cell tower companies. In addition, Article 25 recognizes the difference between cell service providers and other utilities, by permitting utility poles to be used as a site for co-location for cell towers.

Mr. Ashburner stated that the applicant carries the burden of proof in determining if their proposal complies with the Zoning Ordinance and the Comprehensive Plan, and he and his clients do not believe that that has been proved in this case.

Raymond Jackson, 1795 Iron Works Pike, stated that his property is located just to the east of the subject property. He displayed several photographs of his property, noting the proximity of the proposed road and cell tower site to his property line; that the road does not currently exist; noting the existing mature trees that are proposed for screening the base of the cell tower, which he believes are old and unhealthy; an existing cave on his property, above which is a sinkhole that provides drainage from all the nearby properties into the cave; and an existing well in the sinkhole, which could possibly be contaminated during the construction process for the cell tower. Mr. Jackson stated that he has been farming on his property for 20 years, and he has had several of his horse boarding clients tell him that they will relocate their animals if the proposed

cell tower is constructed. He believes that the tower will negatively impact both his business and his enjoyment of the beauty of his property and the surrounding area.

Martha Jane Mulholland, 2245 Iron Works Pike, stated that her L-shaped property wraps around the proposed cell tower site. She asked that the Commission members please note the letter they received from her neighbor, Mr. Kessler, whose daughter--the youngest Olympic equestrian in history—has garnered a great deal of positive press for Lexington. Ms. Mulholland stated that her property is protected as part of the PDR program, and she does not believe that the location of the proposed cell tower is appropriate in PDR areas.

Ms. Mulholland said that she and Mr. Kessler reside in that portion of Fayette County because of the beauty and equine-friendly nature of the area. She said that they do not believe that another cell tower is needed in the area, and they ask that the Planning Commission honor their commitment to the PDR program, and disapprove this request.

Stacy Mitchell, 2043 Iron Works Pike, stated that she lives two parcels west of the subject property. She said that she and her husband run a small thoroughbred operation, and they recently placed their farm in the PDR program. She believes that the proposed cell tower is a "betrayal to the area" and she does not want the northern end of Lexington, which has retained its natural beauty, to look like the south side of the city.

Ms. Mitchell stated that the last issue she fought was the proposed development of the Kingston Farm, and she indicated at that time that the interstate was a good buffer between the proposed commercial uses and the adjacent rural areas. She and her neighbors believe that the cell tower located on the Horse Park property should provide sufficient coverage for the area. Ms. Mitchell said that she believes that this proposal could set a negative precedent for the area, and the regulations should not be changed for one applicant.

Bill Howard, 1916 Iron Works Pike, stated that he made a major investment in his farm four or five years ago in order to increase the number of stalls on his property in time for the World Equestrian Games. He said that, each year, his customers bring their horses from all over the world to stay during the summer months. Many visitors to Lexington tour his farm each year to see several historical markers, and he houses the horses of several famous people as well.

Mr. Howard stated that one of his customers recently expressed interest in building a house and arena on the property immediately adjacent to the subject property. Upon learning about the proposed cell tower, that individual decided not to purchase the property and bring their business to Lexington. He added that he does not believe that the proposed site is the most appropriate for the new cell tower.

Wayne Richardson, 3527 Huffman Mill Pike, stated that he has lived in Maddoxtown his entire life, and has built two homes there. He said that Maddoxtown, which was created by freed slaves, is designated as a Historic Hamlet, and includes the 145-year-old Maddoxtown Baptist Church and cemetery, which are located near the subject property.

Mr. Richardson said that he has had problems with the owners of the subject property, who "have a history of broken promises." He stated that the property owner originally intended to built one single-family residence on the portion of the property adjacent to Maddoxtown, but there are now nine rental homes there. Those structures were formerly separated from Maddox Lane by a fence, but the property owner took down the gate in order to provide access to the rental homes, which have Iron Works Pike addresses. Mr. Richardson said that Maddox Lane is no longer maintained by LFUCG, and the residents have been informed that Lexington Fire Department vehicles can no longer access their homes due to the poor condition of that roadway. The Maddoxtown residents have approached the owner of the subject property in an attempt to get some assistance with maintaining Maddox Lane, but have had no success. In addition, Mr. Richardson stated that the subject property is not used as a farm, but as a source of income via tenant homes.

Mr. Richardson stated that Article 25 refers to ensuring that an "appropriate location" is found for cell towers, and he does not believe that the subject property is such a location. He added that Article 13 requires that historic elements of the community, including rural hamlets, be preserved and protected; and he appreciates that the PDR program offers such protection to important historic area such as Maddoxtown.

Everett Talbert, Maddoxtown resident, read the following excerpt into the record from Article 25 of the Zoning Ordinance:

> "No cellular antenna tower shall be permitted in or within 1,200 feet of a Local Historic Settlement."

Mr. Talbert stated that Maddoxtown was incorporated as a settlement in Fayette County in the 1880s, following the Civil War. The first church and school were constructed there in 1875, and the school building still exists today. Mr. Talbert has many relatives who are buried in the cemetery there, as well as many veterans who were Maddoxtown residents. He said that Maddoxtown is just as historic as the Ashland estate, the Mary Todd Lincoln House, and the Hunt-Morgan House, and he believed that it would be inappropriate to locate a cell tower in its immediate vicinity.

Jeannie Owens stated that she and her husband own the property immediately adjacent to the subject property, at 1901 Iron Works Pike. She said that their property has been designated as a Bluegrass Conservancy easement, and can only be used

for agricultural purposes. Displaying a photograph of a monopole cell tower with two banks of antennas, Ms. Owens stated that that is the type of view that would be visible from her home if the petitioner constructs the proposed tower and allows another carrier to co-locate on it. She stated that the intent of Article 25 is:

> "To provide cellular telecommunication towers in appropriate locations throughout the community, at sites which provide adequate service while protecting the character and the value of surrounding property, and protecting the view from the residential areas."

Ms. Owens stated that she had three letters, from the most prominent real estate agents in the area, all stating that a cell tower in the proposed location will devalue the nearby properties. She said that she had had a contract for the sale of her property, but the potential buyer withdrew his offer upon learning about the proposed cell tower, because he did not want it to be part of his view after making a $2,000,000 investment in a home, barn, and horse training arena.

Ms. Owens noted that Iron Works Pike is not only a Kentucky Scenic Byway; it was also designated as such in 1996 by the U.S. Department of Transportation Federal Highway Administration. She said that there are radio towers located there, but they were constructed in 1950, well before there were any regulations regarding such construction.

Displaying a photograph of the existing tree stand on the subject property, Ms. Owens stated, with regard to the petitioner's assertion that there are existing mature trees in place to screen the base of the proposed cell tower, that there is no foliage on the trees in the winter, and many are dead or in decline. She said she did not agree that they will provide sufficient screening for the tower. In addition, possible future co-location could result in expansion of the proposed building at the base of the tower, or additional buildings. Ms. Owens concluded by requesting that the Planning Commission disapprove this proposal.

Brenda Combs, 3547 Maddox Lane, explained that her street is located between Iron Works Pike and Huffman Mill Pike, and it is considered a private lane. Maddox Lane is not paved or maintained, and it is in very poor condition. The nine tenant homes on the subject property all access this substandard roadway as well. Ms. Combs stated that all of the residents on Maddox Lane have landline phones, and the proposed cell tower would provide no advantage for them.

Robert Barton, 4095 Huffman Mill Pike, stated that he lives approximately one mile from the subject property and is very familiar with the area. He said that there are five cell towers within a four-mile area near the Fayette/Scott County line, and there no problems with coverage in that vicinity. Mr. Barton suggested that the petitioner consider one of the following government properties as a possible location for a new tower: Northside Library, Linlee School, Kearney Hills Golf Course, Blackburn Correctional Facility, or the Hume Road area. He added that there are also several large private properties in the northwestern end of the county that could provide a more appropriate location for the tower. Mr. Barton also noted that the petitioner owns a small parcel across the interstate from the Horse Park which could likely accommodate the structure needed at the base of the tower. He stated that he would submit his list of properties to the petitioner.

Rita Stevenson, 3467 Samuel Lane, asked that, should the Planning Commission choose to approve this request, they stipulate that the cell tower must be accessed via 1811 Iron Works Pike. She said that she believes that, although the petitioner has declared intent to use an existing farm road on the subject property to access the proposed tower, they are actually planning to use Maddox Lane. She said that that is a private roadway, it is in poor condition, and it cannot handle the additional traffic that might result from the construction and maintenance of the tower, especially heavy trucks.

Carl Brewer, owner of the subject property, stated, with regard to Ms. Stevenson's remarks, that the proposed tower will be accessed only via Iron Works Pike, and not via Maddox Lane. With regard the access from Iron Works Pike, he said that it is not currently graveled or paved, as that was not necessary for the agricultural operations on the property. That farm road will be paved and drainage will be installed prior to construction of the tower, in order to avoid creating additional storm water runoff on the adjoining properties. Mr. Brewer agreed with several of the objectors that the condition of Maddox Lane is a problem, and it has been since the roadway was made private several years ago.

With regard to one previous speaker who indicated that he had had problems with Mr. Brewer's family in the past, Mr. Brewer stated that his father purchased their property in the 1950s and was always a "wonderful friend to Maddoxtown." With regard to the comments about the rental homes on the subject property, he said that those parcels are legally platted, and they were all approved before the 40-acre rule took effect.

Mr. Brewer noted that he did not solicit the petitioner for the placement of a tower on his property. Rather, the applicant approached him and made an offer. Mr. Brewer suggested at the time that the applicant contact the nearby church instead, as it could probably use the income generated by leasing space to the applicant for a cell tower. With regard to Mr. Barton's suggestions for other tower locations, Mr. Brewer said that none of those properties were located in the search ring, and the Russell Cave Elementary School property was too small.

Mr. Brewer stated, with regard to some of the objectors' comments that another tower is not needed in the area, that the petitioner's studies indicate that it is. He said that there are several other visible towers in the area, some of which are lighted or painted so as to increase their visibility. Mr. Brewer concluded by noting that, if cell towers had a negative impact on horse breeding or boarding operations, there would not be a tower located at the Horse Park.

Mr. Cravens asked if there were rebuttal comments. None were offered.

Motion: A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 9-0 (Owens recused; Berkley absent) to disapprove CT 2012-1, for the following reasons:

1. The property ("Property"), which is located at 1811 Iron Works Pike, contains approximately 27 acres and is located in the A-R zoning district.
2. Ten (10) dwelling units and multiple accessory structures, including two barns and three garages are already located on the Property.
3. The proposed Telecommunications Tower ("Tower") would be a 199' tall monopole and would be designed to hold more than one antenna system.
4. The Tower would be located on a 50' by 50' tract of land, enclosed by a fence, on which equipment associated with the Tower will be located. Should co-location occur, the tract of land will expand to 100' by 100'.
5. Single Family detached dwellings are allowed in the A-R zone.
6. The minimum lot size in the A-R zone is 40 acres.
7. The Property is non-conforming as to size.
8. Iron Works Pike and Russell Cave Road are both Scenic Corridors and Kentucky Scenic Byways.
9. The Tower would not be accessory to the principal single family detached dwelling located on the Property.
10. Article 25-9(c) of the Zoning Ordinance states, among other things, that the applicant who seeks approval of the location of a cellular antenna tower must establish by "a clear preponderance of the evidence" that: (1) the application meets all requirements of the Zoning Ordinance; (2) the application is in agreement with the Comprehensive Plan; (3) the site is appropriate for a cellular antenna tower and the tower will not adversely affect the health, safety, and welfare of the adjoining area; and (4) the tower will not alter the essential character of the surrounding area.
11. The Zoning Ordinance includes the following provisions:
    A. Article 4-2 states that it is the intent of the Zoning Ordinance to permit the non-conformities established in Article 4-1 (uses, structures, and lots) to continue until they are removed, but not to encourage their survival. It is also intended that non-conformities shall not be enlarged or extended beyond the scope and area of their operation at the time of the adoption or amendment of the Ordinance.
    B. Article 4-5(a) provides that a non-conforming lot may not be further subdivided in a manner that increases its non-conformity.
    C. Article 3-1 provides that there shall be no more than one principal structure and its accessory structure on any lot of parcel of land in an agricultural zone or in any residential zone.
    D. Article 8-1(b) provides that the only principal uses in the A-R zone are (i) land used solely for agricultural purposes and (ii) single-family detached dwellings.
    E. Article 25-4 states that towers "shall be sited at locations that minimize their adverse effect on residential uses in the immediate area."
    F. Article 25-4(d) provides that towers shall not be located along Scenic Byways if there will be a negative impact on the scenic qualities and views from the road, unless such tower is co-located on an existing tower or a utility pole or designed as an Alternative Cellular Antenna Tower, that is, a tower made to look like something else.
    G. Article 25-5(m) states that, "In cases where a cellular antenna tower or antenna is located on a portion of a property whose 'subdivision' is based on a long-term lease, the leased area shall not take the parent tract below the minimum lot requirement for the zone in which it is located."
12. The location of the Tower on the Property fails to meet all the requirements of the Zoning Ordinance for the following reasons:
    A. The location of the Tower on the Property would violate the requirement that there shall be only one principal structure located on a lot in an agricultural zone.
    B. The location of the Tower on the Property would violate the requirement that where a cellular antenna tower or antenna is located on a portion of a platted lot, the occupancy of part of the platted lot by the Tower shall not take the remainder of the platted lot below the minimum lot requirement for the zone in which it is located, and since the Property is already a non-conforming lot, the possession of any part of the lot by the Tower, owned by a party other than the owner of the platted lot, will take the parent tract further below the minimum lot requirement of 40 acres.
    C. The location of the Tower on the 27 acre lot, on which there are already ten (10) dwelling units, and multiple accessory structures, including two barns and three garages, will increase the non-conformity of the Property.
    D. The Tower will have an adverse affect on the safety of the property immediately to the east of the Property because it will be too close to the property line.
    E. The Tower will harm the welfare of the surrounding properties by adversely affecting the value of the surrounding properties.
    F. The location of the Tower on the Property will alter the essential character of the area because it will increase the intensity of the use of the Property to an extent that is not compatible with the area and is contrary to the intent of the Zoning Ordinance and the Comprehensive Plan.

B. PFR 2012-4: DEPARTMENT OF MILITARY AFFAIRS AND BLUEGRASS STATION – COMMONWEALTH OF KENTUCKY DEPARTMENT FOR FACILITIES AND SUPPORT SERVICES (1/5/13)* – a Public Facility Review for the proposed construction of a warehouse/office space for use by multiple agencies on the Bluegrass Station property.

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

SUMMARY FINDINGS: Although not in compliance with the Land Use Element of the Comprehensive Plan, the text of the 2007 Plan, as cited, clearly supports the proposed improvements to the Bluegrass Station property. The Goals, Objectives and text that reference environmental stewardship and protection, as well as provision of employment opportunities and economic development, will be enhanced by the proposed additional use of the property, provided Best Management Practices are used when grading the property and constructing the proposed building.

STAFF RECOMMENDATION: Approval, as requested. Although exempt from zoning regulations, safety, health, and environmental health issues must be considered when doing any type of construction, particularly when it is for the purpose of human habitation/use. It is therefore recommended that any permits that would generally be applicable to construction, including a land disturbance permit from the Division of Engineering, a building (and any other applicable) permit from the State, and an inspection by Lexington-Fayette County's Division of Fire (Fire Marshal), be obtained prior to construction and/or occupancy of the building.

Staff Presentation: Ms. Rackers presented the staff report on this request for a Public Facility Review, and briefly oriented the Commission to the location of the subject property on Briar Hill Road near Haley Road. The subject property, which is approximately 332 acres in size and is zoned A-R, is known as Bluegrass Station. Although part of the subject property is located in the Avon Rural Activity Center, the portion that is the subject of this PFR is not located within that boundary. The surrounding uses and zoning are nearly all agricultural, with the exception of the industrial center located across the road from the subject property.

Ms. Rackers stated that the petitioner is proposing a combination office/warehouse building of approximately 200,000 square feet in size, with 154,000 square feet of warehouse space and 46,000 square feet devoted to offices. The petitioner is also proposing to construct a 100,000 square-foot addition at some point in the future. Access to the property is provided via Briar Hill Road, and there is an existing extensive and complex road system throughout the property. There are also several existing parking areas located throughout the Bluegrass Station property, and the petitioner is proposing to construct a new parking area adjacent to the new building, which could accommodate up to 768 employees.

Ms. Rackers said that the 2007 Comprehensive Plan recommends Core Agricultural and Rural (CARL) use for the portion of the subject property that is not included in the Rural Activity Center; that portion of the property is recommended for Light Industrial use. The intent of the CARL land use category is to allow for the rural activities typically associated with agricultural activities in Fayette County. According to the Rural Land Management Plan, that land use category is for "the protection and enhancement of land for agricultural purposes, in order to ensure viability of the agricultural economy." The RLMP also states that non-agricultural uses should be kept to a minimum in those areas. The Avon Rural Activity Center was constructed around the time of World War II, and it operated until 1992. The facility was originally constructed for military and defense purposes, and it is still associated with those types of uses, with the National Guard headquarters and several other military-related uses located there. Because this new construction is proposed, not on the portion of the property that is located within the Rural Activity Center, but on the part recommended for agricultural uses, this request cannot be said to be in agreement with the recommendations of the Land Use Element of the Comprehensive Plan. The text and the Goals & Objectives of the 2012 Comprehensive Plan, however, do support this proposal. Ms. Rackers read the following excerpt, regarding the mission of the Urban County Government's planning efforts:

> "…to provide a vision for physical development that will allow Lexington-Fayette County to grow and prosper, promoting economic development and viable job development, while preserving the quality of life that makes it a desirable place to work and live; and protecting and enhancing existing neighborhoods, downtown, and the rural Bluegrass cultural landscape."

There are eight Themes listed in the Comprehensive Plan that also provide a guide for planning efforts in Fayette County, one of which is: "Enabling the creation, growth, and retention of jobs that promote a strong, progressive and diversified urban and rural economy." Ms. Rackers stated that both the Mission Statement and the Themes of the Comprehensive Plan support this proposal. In addition, 29 Goals & Objectives of the 2007 Comprehensive Plan support this proposal.

Ms. Rackers stated that Bluegrass Station is a bit of an oddity, in that it is a major employment center, located in a rural area, and surrounded almost entirely by agricultural land, some of which is PDR-protected. The property was once owned by the Federal government, but is currently owned by the Commonwealth of Kentucky. The proposed building is the result of a "build-to-suit" project, for the use and benefit of both the Department of Military Affairs and Bluegrass Station. The property must be conveyed to the developer, who will construct the facility for the defense contractor for use for military-related activities. The Department of Military Affairs and Bluegrass Station will then lease the property for 15 years, at which time it will revert to the ownership of the State.

Ms. Rackers said that there is an existing creek on the subject property, but there is no FEMA floodplain associated with it. Due to the presence of the creek, however, the use of Best Management Practices will be critical, particularly with regard to the grading and site preparation for the construction of the new building. She stated that, because the pertinent portion of the subject property is recommended for CARL use, it would be more appropriate to locate the proposed building on the portion of the property located within the Rural Activity Center; however, there is no vacant space in that area in which to construct a building of the size proposed. Therefore, the staff believes that the proposed location is the most logical and readily available space on the property, and they are recommending approval of this request. Ms. Rackers asked that the Planning Commission

find this request to be in compliance with the Comprehensive Plan, and require that all necessary permits be obtained prior to construction.

Commission Questions: Mr. Penn asked how this proposal can be considered as not entailing an expansion of the Rural Activity Center. Ms. Rackers answered that, although it is a use similar to those located in the Rural Activity Center, the subject portion of the property is not located within that boundary.

Director Comments: Mr. King stated that only the Planning Commission can expand the Rural Activity Center, the boundaries of which were established by the Commission as part of the Comprehensive Planning process. He said that a government entity, which is exempt from zoning, and the Comprehensive Plan control the subject property, and they can construct the proposed building on it. Mr. King explained that this situation is analogous to that of Bluegrass Airport; in that case, a runway and portion of a building extend outside the boundary of that Rural Activity Center as established by the Planning Commission, but the Commission has no power to address the issue. He added that there was some discussion as part of the recent Comprehensive Plan update about expanding the Rural Activity Center boundaries, but the Goals & Objectives that were adopted were very firm about not expanding those boundaries. Mr. King acknowledged that it would be more appropriate to locate the new building within the Rural Activity Center, if possible; however, the staff believes that the proposed portion of the property provides the best available location, since it was once heavily used for military purposes.

Petitioner Representation: Steve Collins, representative for the petitioner, thanked the staff and the Commission members for their service.

Citizen Comments: There were no citizens present to discuss this proposal.

Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 10-0 (Berkley absent) to approve PFR 2012-4, for the reasons provided by staff.

C. INITIATION OF ZONING ORDINANCE TEXT AMENDMENTS – Mr. King stated that the Commission had two options with regard to this item: they could either initiate the four requested text amendments based upon the language discussed at their work session, or postpone the initiation to their first meeting in January.

Action: A motion was made by Ms. Beatty, seconded by Ms. Mundy, and carried 10-0 (Berkley absent) to postpone the initiation of the four proposed text amendments to the January 17, 2013, Planning Commission meeting.

VIII. STAFF ITEMS – No such items were presented.

IX. AUDIENCE ITEMS – No such items were presented.

X. NEXT MEETING DATES

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) ..... December 19, 2012
Work Session, Thursday, 1:30 p.m., 2nd Floor Council Chambers…… December 20, 2012
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) ..... January 10, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building) ..... January 10, 2013
Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2nd Floor Council Chambers ..... **January 17, 2013**
Work Session, Thursday, 1:30 p.m., 2nd Floor Council Chambers ..... January 24, 2013
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers..... **January 31, 2013**

IX. ADJOURNMENT - There being no further business, a motion was made to adjourn the meeting at 7:55 PM.

_____
Mike Owens, Chair

_____
Lynn Roche-Phillips, Secretary

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