

Representation – Rory Kahly, EA Partners, indicated that the applicant was in agreement with the staff's recommendation. He noted that the basin in question was created with the construction of Hays Boulevard. He added that through the middle of Gess Property there is a Regional Stormwater Management facility with multiple basins with some of those associated with a CLOMR.

Commission Comments & Questions – Mr. Penn asked if the pond was constructed. Mr. Kahly replied affirmatively and said that upstream from this area the ponds held water, but as for this basin he did not remember it holding water. Mr. Penn asked if the basin was designed for storm water retention or detention. Mr. Martin said that in speaking with Stephen Parker, who was with the Division of Engineering, but is now with the Division of Traffic Engineering, there is a combination of detention basins and wetlands that are part of the Regional Stormwater Management System for this area.

Citizen Comments - There were no audience members present to speak to this request.

Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 8-0 (Brewer, Drake and Owens absent) to approve the minor development plan for PLN-MNSUB-16-00035: GESS PROPERTY, UNIT 8, as recommended by the staff.

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

Note: Mr. Drake returned to the meeting at this time.

1. SRA 2016-4: AMENDMENT TO ARTICLE 4-7 OF THE LAND SUBDIVISION REGULATIONS - to alter the allowable sureties acceptable by the Urban County Government.

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Text ~~dashed through~~ indicates a deletion, and text underlined indicates an addition to the existing Land Subdivision Regulations.)

4-7(d)(9) PERFORMANCE / WARRANTY SURETY - The developer shall post a combination performance and warranty surety, which shall be both to ensure the completion of public improvements, as indicated by the punch list, and for the repair of infrastructure that is found to be defective due to improper workmanship or defective materials.

4-7(d)(9)(a)ACCEPTABLE SURETIES - Acceptable sureties shall generally be an irrevocable letter of credit in favor of the Urban County Government from a bank with offices in Lexington-Fayette County. For sureties less than \$5,000, cash, certified check, or money order is acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety is acceptable.

4-7(d)(9)(b)DETERMINATION OF THE AMOUNT OF THE SURETY - The total amount of the combination surety shall be ten percent (10%) of the total cost of the installed infrastructure, including roads, sanitary sewer system and storm water facilities, plus one hundred percent (100%) of the cost of the items included on the punch list of incomplete work. Where the sanitary sewer pumping station has been constructed, and all pumping equipment installed, but electrical service has not been provided to the facility, the entire cost of the pumping station shall be included in the surety. The cost of roads, sanitary sewers, storm water facilities and the punch list items shall be based upon the unit cost of each construction item which is a part of the plan. The unit costs for public improvement construction items shall be determined ~~annually in conformance with the procedure established in the Procedures Manual and shall be available from the~~ by Division of Engineering. The surety shall also include an additional twenty percent (20%) of the amounts listed above to provide for inflation and administrative costs, should the surety be called; and the Urban County Government must cause the work to be constructed or repaired, as appropriate.

4-7(g) NO OCCUPANCY PERMIT - No person shall allow occupancy of any building until the Division of Building Inspection has verified that the private utilities (water, electricity, telephone, and, where applicable, sanitary sewers, access to a public street or private street or access easement, stormwater infrastructure and natural gas), or public sanitary sewer pumping station, are completed in such a fashion that such utilities are available for use on the property in question.

4-8(c) COMPLETION OF UTILITIES AND FINAL COURSE OF ASPHALT ~~Only when all utilities have been installed, the base courses of the roadway have been completed for at least one year and the project engineer has certified the same to the Division of Engineering, shall the developer install the final course of asphalt. Any defective areas of the base courses of pavement must be identified by the project engineer and corrected or reconstructed, including removal of portions of the pavement in order to obtain a uniformly compacted base prior to the installation of the final surface. Completion of utilities and final course of asphalt shall be in conformance with the current edition of the Procedures Manual.~~ Upon installation of the final surface, the amount of the surety may be reduced by an amount equal to 10% of the cost of the base courses; but in no case shall the reduction be more than 10% of the cost of the final surface.

4-8(d) RENEWAL OF THE SURETY - When requested by the developer, the Urban County Engineer shall renew the surety for uncompleted items for one additional year, beyond the three years otherwise provided. As a condition of renewals for sureties older than 3 years, the Division of Engineering will require recalculation of the amount of the surety based on the

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

~~current unit prices. Any further renewals or extensions of the surety may only be granted by the Planning Commission upon a finding that there are conditions that prevent the timely completion of the public improvements. As a condition to the extension or renewal, the Planning Commission may require recalculation of the amount of the surety when there has been a significant increase in the cost of the items that are not completed.~~

4-8(e) FINAL REDUCTION / RELEASE OF SURETY - When the developer has completed all required improvements, and the final course of asphalt has been applied for at least one year, the developer may request a final release of the surety. When so requested, the Division of Engineering will conduct a final inspection within thirty (30) days. Upon determination by the Division of Engineering that all improvements have been properly constructed in conformance with the requirements of these Subdivision Regulations, the Zoning Ordinance, the Division of Engineering Technical Manuals and the Division of Engineering Standard Drawings, the Urban County Engineer shall, in writing, notify the Planning Commission, which shall release the surety.

4-8(f) Surety Forfeitures-If a surety is forfeited or called by the Urban County Government, the Corporation, Corporation Principal(s) or developer will be prohibited from submitting a surety to the Urban County Government for a period of three years from the date of forfeiture.

The Subdivision Committee made no recommendation.

The Staff Recommends: Approval, for the following reasons:

1. The proposed text amendment is a timely improvement to the Land Subdivision Regulations that will improve compliance with the public improvements requirements of the regulations.
2. The proposed text amendment is consistent with the public health and safety provisions inherent in the Land Subdivision Regulations.

Staff Presentation – Mr. Martin presented the staff's report on this request.

Commission Comments & Questions – Mr. Cravens asked how was the unit costs determined. Mr. Martin replied that the Division of Engineering determines the unit cost and those cost are based on current prices that are updated yearly. Mr. Cravens indicated said that he had received some phone calls from people who were concerned with this text amendment, and asked how were the unit cost determined today. Mr. Martin replied that the Division of Engineering uses unit prices. Mr. Cravens said that the cost used to be determined through a group of contractors that review and update the actual costs, and asked if Division of Engineering was receiving bids using actual prices from suppliers. Mr. Martin said that it is the staff's understanding that the Division of Engineering uses the actual costs.

Mr. Cravens said that the Performance Bonds and Letter of Credit memorandum listed a plat totaling \$432,210.00, and 30 percent of this amount is in addition to what the cost was because it is broken down to 10 percent of the work to be done first - then 20 percent. He added that this amount could be as much as 60,000.00 dollars over if the cost was missed. Mr. Martin said that the renewal was based on current prices and how those are determined could be increased.

Mr. Cravens said that the language in 4-7(d)(9)(b) reads the surety shall be ten percent (10%), plus one hundred percent (100%), then an additional twenty percent (20%) of the amounts listed. He then said that he wants to know how an established unit cost is tied to something tangible. Ms. Adkins, Division of Engineering, said that Capital Projects group in the Division of Engineering work together with the contractors and developers to determine the actual cost. Mr. Sallee added that the Lexington-Fayette Urban County Government receives bids for this type of work every year so there is data on the unit cost that the LFUCG can rely on to determine how much such improvements will cost the Urban County Government. He then said that it would be logical to say that the per unit cost was the actual cost to the tax payers to build curbs, streets and so forth.

Mr. Cravens said that 4-7(d)(9)(b) is removing text that reads they are reviewed "annually in conformance with the procedure established in the Procedures Manual and shall be available from the" to read "the unit costs for public improvement construction items shall be determined by Division of Engineering". He asked how will the unit cost be determined based on this new language. Mr. Sallee said that the one item that will stay the same is the per unit cost that is used for the bonding purposes and used for estimating the cost for the sureties.

Mr. Cravens said that his concern is removing part of the language in 4-7(d)(9)(b) that establishes only the Division of Engineering will determines the unit costs, and not stating the exact way to determine the cost. Ms. Adkins said that the surety amounts have not increased for some plats over 10 years. Mr. Cravens said that the 4-7(d)(9)(b) has removed "annually in conformance with the procedure established in the Procedures Manual and shall be available from the," leaving "the unit costs for public improvement construction items shall be determined by Division of Engineering". He indicated that the proposed language reads that the Division of Engineering would be determining the unit cost, and asked how the Division of Engineering will determine that cost. Ms. Adkins said that the method will not be changing, only the unit cost. She explained that the staff receives the punch list that is reviewed by the staff, developers and engineers to determine the final punch list items, which then becomes the surety. She said that everyone works together to resolve those issues that need to be completed then release sureties as those get constructed, annually. She then said that after three years if there are still pending items then the unit cost can be adjusted to bring the total amount up to deal with inflation.

Mr. Cravens said that the text amendment is proposing to removing the language "annually in conformance with the procedure established in the Procedures Manual and shall be available from the" in 4-7(d)(9)(b). He then said that the staff has stated that the current procedure will still be used, but the proposed text amend removes that procedures. Mr. Martin said that if the Planning Commission were to request for a surety to be called and increased that amount would be determined by the Division of Engineering to through the unit prices. Then there would be 20 percent added for inflation and administrative cost.

Mr. Cravens said that one of the plats shown on the Performance Bonds and Letter of Credit memorandum reads \$432,210.00, and then 10 percent would be added to that amount, plus an additional 20 percent. Mr. Cravens asked how are the original amounts determined on the Performance Bonds and Letter of Credit memorandum. Mr. Martin said that the surety would be recalculate with the current unit prices. Mr. Cravens asked how the prices are calculated in the beginning. Mr. Martin replied that the prices are calculated with the current unit prices in the beginning. Mr. Cravens then asked how the prices would be determined in the future if the text amendment was removing the original procedure, which was through bids. He then said that according to the text amendment the Division of Engineering would determine those unit prices. Mr. Martin said that the Division of Engineering would be determining those amounts on unit prices that are established through the bid they receive.

Mr. Cravens asked why the staff was suggesting to remove the language "annually in conformance with the procedure established in the Procedures Manual and shall be available from the" in 4-7(d)(9)(b). Mr. Martin said that the Procedures Manual will still be used. Mr. Cravens said that the proposed deletion removes the Procedures Manual. Mr. Sallee said that the Procedures Manual will still exist if the text amendment was adopted. The only material changes would be whether or not the Commission feels that this procedure should still be identified in Procedures Manual. He then said that the Division of Engineering did not believe it was still necessary, but the Planning Commission could still make that a requirement, if section 4-7(d)(9)(b) were unchanged. Mr. Martin said that the text amendment suggest that the unit cost for public improvements shall be determined, not annually, but by the current year through the Division of Engineering. Mr. Sallee said that this change allows the Division of Engineering the flexibility to determine the unit price every six months or every two years, depending on how things fluctuate. Mr. Cravens said that the Division of Engineering wants to raise the amount. Mr. Sallee replied that it is possible, and explained that a few years back there was a problem with getting concrete so prices were wildly fluctuating. Mr. Martin added that unit prices can decrease, they do not always increase. He then said that the Division of Engineering is trying to have some flexibility as to where they start. Mr. Cravens replied that the staff does not want to wait a year until they change the price. Mr. Martin said the staff wants the option to look at the current prices of what is happening.

Mr. Cravens said that from the developer's side there is a large amount of money required that is either cash or a Letter of Credit that goes against the developer's line of credit. He then said that it would be better if the unit prices could be calculated on a reliable number. Mr. Martin replied that the price is calculated on something that the developers could rely on.

Mr. Berkley asked if the text could be changed to read "market based unit cost." Ms. Brown said that she could not speak for the Division of Engineering, but in speaking with Director Doug Burton a few months back, the unit prices are based on market prices.

Mr. Penn asked if that language is noted in the Procedure Manual. Ms. Brown replied that she is unsure; however, the former process in the manual was to convene a group of industry professionals and establish the unit prices to be reflective of the market prices. Mr. Penn replied that would make sense. Mr. Cravens said that that is how the process is done now, but the proposed text amendment is taking that away. Ms. Brown replied that may be the current process in the Procedures Manual.

Mr. Drake said that he understood the concern with prices changing more often than annually, and suggested to remove the word "annually" because it would still specify the methodology, which is the Procedures Manual. Mr. Wilson clarified that Mr. Drake is suggesting to strict the word annually from 4-7(d)(9)(b) to retain the flexibility and retain the Procedures Manual. Mr. Drake replied affirmatively.

Mr. Cravens asked how often are the amount of the bonds updated. Ms. Brown replied that the Law Department was unsure. Mr. Cravens said that there are too many answers of "don't know," "we're unsure" and so forth. Ms. Adkins said that the bonds are reviewed annually and should a project be completed, the developers will request that the staff provide a review before the surety expiration date. Mr. Cravens replied that the unit price would not change. Mr. Martin said that a developer could take advantage of a reduction in the unit cost even though it was not done annually. He then said that the Division of Engineering would be allowed to review a project at that moment in time to make a determination.

Mr. Cravens asked if the Procedures Manual sill still be used. Mr. Martin replied affirmatively. Mr. Cravens then asked why is the words "Procedures Manual" are proposed to be marked out.

Mr. Wilson said that from what the staff had stated this text amendment is based on the Procedures Manual, but at the same time those words, "Procedures Manual," have been removed from the language. He then said that Mr. Drake had made a suggestion to take the word "annually" out, but keep the words "Procedures Manual." He asked why did the staff not recommended leaving the Procedures Manual in the language and modify the word annually. Mr. Martin replied that the Planning Commission is welcome to recommend whatever they feel is appropriate. Mr. Sallee said that the basic draft was provided by the Division of Engineering. Mr. Martin said that under 4-8(c) is reads "Completion of utilities and final course of asphalt shall be in conformance with the current edition of the Procedures Manual." He then said that the Division of

Engineering may want to tighten things up a little bit and make the language easier and cleaner for the current Procedures Manual.

Mr. Wilson asked if the Commission could postpone this item to get a better explanation from the Division of Engineering. Mr. Martin replied affirmatively. Mr. Sallee said that since the hearing has begun on this request, the staff would encourage the Commission to continue this item, rather than postpone it, to the next hearing date.

Mr. Penn asked if the text amendment is approved, then would the Performance Bonds and Letters of Credit be approved by the Division of Engineering, and not the Planning Commission. Mr. Martin said that the text amendment is a condition of renewals and/or extensions for sureties would be granted by the Division of Engineering, but the Planning Commission would still approve the release and call the bonds. Mr. Penn said that he was agreeable with that.

Mr. Wilson asked the Commission members if they were in agreement with the staff's explanation or wished to continue this item to the January 12th meeting.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Smith and carried 8-1 (Brewer and Owens absent) to continue **SRA 2016-4: AMENDMENT TO ARTICLE 4-7 OF THE LAND SUBDIVISION REGULATIONS** to the January 12, 2017, meeting.

- b. PLN-MJDP-16-00055: COMMUNITY VENTURES PROPERTY, LLC (2/19/17)* - located at 2167 N. Broadway.
(Council District 1) **(Carman & Associates)**

Note: On November 22, 2016, the applicant submitted an application after the adopted filing deadline of 4 p.m. (the previous day) that was set by the Planning Commission in the Official Meeting & Filing Schedule. The applicant is now requesting the Planning Commission to consider a one-time waiver of the filing deadline for this Final Development Plan in order to allow this item to appear on the January 12, 2017, Planning Commission docket.

Staff Presentation – Mr. Sallee presented the adopted Planning Commission Bylaw, which was distributed at this time.

Representation – Jacob Walbourn, attorney, requested the Planning Commission to consider a one-time waiver of the filing deadline for this Final Development Plan to allow this item to appear on the January 12, 2017, Planning Commission docket.

Commission Comments & Questions – Mr. Penn asked what hardship it would cause if this request was delayed for one month. Mr. Walbourn replied it could delay the beginning process for construction. He said that with the next filing deadline being in January, this item would not be placed on the Planning Commission docket until February. He added that if his client timed it right, they could have the plan certified by the beginning of March, which is the beginning of construction season. Mr. Penn then asked delaying would back this project up one month. Mr. Walbourn replied affirmatively, and said that in speaking with the Commissioner Paulsen and the Planning staff, this is the first request that has been impacted with the Planning Commission abolished the late filing.

Mr. Wilson said that at first his reaction was different because this request was related to the Bylaw; however, with the time of the year, he would be agreeable to consider a one-time waiver this time.

Action - A motion was made by Mr. Berkley, seconded by Mr. Drake to approve **PLN-MJDP-16-00055: COMMUNITY VENTURES PROPERTY, LLC** to appear on the January 12, 2017, Planning Commission docket.

Commission Discussion – Mr. Penn said that for the Commission members to do their job right in the Subdivision & Zoning Committee's, the staff has to have adequate time to do their job right. He indicated that the amount of late filings that were submitted were not allowing that to happen, which was the reason late filing was removed. He said that he does not want to place an undue hardship on his client, but he is very much committed to sticking with the rules and procedures because it makes everyone's job work well, including the Committee's. He then said that he is very much committed to the current filing deadlines and not bringing back the late filings procedure. Mr. Walbourn said that he understood.

The motion carried 9-0 (Brewer and Owens absent).

VII. STAFF ITEMS – There were none.

VIII. AUDIENCE ITEMS – There were none.

IX. NEXT MEETING DATES

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building).....	December 14, 2016
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 15, 2016
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building).....	January 5, 2017
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	January 5, 2017
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	January 12, 2017

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