

AN ORDINANCE AMENDING ARTICLES 4-7 AND 4-8 OF THE LAND SUBDIVISION REGULATIONS TO ALTER THE ALLOWABLE SURETIES ACCEPTABLE BY THE URBAN COUNTY GOVERNMENT. (PLANNING COMMISSION).

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Articles 4-7 and 4-8 of the Land Subdivision Regulations to alter the allowable sureties acceptable by the Urban County Government; and

WHEREAS, the Planning Commission did recommend APPROVAL of the text by a vote of 8-0; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on December 8, 2016 and January 12, 2017; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

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

Section 1 – That Articles 4-7 and 4-8 of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government are hereby amended as follows:

ARTICLE 4. MAJOR SUBDIVISION PLAN PROCEDURE

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 or insurance bond 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 are acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety are 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 by the 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(d)(9)(c) SURETY FOR PRIVATE STREETS - All private street improvements (excepting only the final course of asphalt and possibly the sidewalks) shall be constructed in compliance with the approved improvement plan before the final subdivision plan is recorded. For the final course of asphalt only, the developer shall be permitted to post a surety in favor of the final maintenance association responsible for the private street, and shall note such requirement on the final plat of the property. For any sidewalks not yet constructed, the developer shall be permitted, at the time of recordation of the final plat, to post a surety in favor of the final maintenance association responsible for the private street, as long as it is also in favor of the Urban County Government. This shall not be construed to hold the Urban County Government responsible for the construction of such sidewalks other than to the extent of the funds provided by the surety; and neither this, nor any action by the Urban County Government relative to the enforcement of the required construction of such sidewalks and/or the surety, therefore, shall be construed as acceptance of responsibility by the Urban County Government for the construction, maintenance or dedication of such sidewalks as public infrastructure. The amount of the surety for the private street shall be 10% of the cost of the installed private street plus 100% of the cost of the final course of asphalt. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate. When private streets are permitted, the surety that is submitted in favor of the Urban County Government for the infrastructure shall not include an amount equal to the surety for private streets. The amount of the surety for the sidewalks shall be 100% of the cost of the construction of the sidewalks. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate.

4-7(e) CERTIFICATION OF PLANNING COMMISSION APPROVAL AND RECORDING - Within one (1) year of the Commission's approval, or conditional approval, unless a time extension has been granted prior to the expiration date, the following steps shall be completed, or else the Commission's approval, or conditional approval, becomes null and void: (1) The developer shall fully comply with any conditions of approval placed on the plan by the Commission and shall submit the completed original plan drawing to the Division of Planning; (2) The plan shall be certified by the Commission's Secretary if it is in conformance with all requirements; (3) The plan shall be recorded in the plat records of the Fayette County Clerk by the Division of Planning at the developer's expense; and (4) Required copies shall be made of the recorded plan by the Division of Planning at the developer's expense.

4-7(f) RECORDING OF A PORTION OF A FINAL PLAN - The Division of Planning shall be authorized to permit a developer to record a final plan that has been approved or conditionally approved by the Commission in smaller land increments than depicted on the final plan. For any such developer's request, the Division of Planning shall review the proposal with the Division of Engineering to ensure that no problems in provision of streets, storm drainage, or sanitary sewers would result. In any disputed cases, the request will be forwarded to the Planning Commission for final judgment.

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 COMPLETION OF PUBLIC IMPROVEMENTS - Public improvements that were not completed prior to certification of the final plan by the Urban County Engineer shall be completed in conformance with the approved improvement plan and with the submitted schedule for completion. In the event the public improvements are not completed as provided in the schedule for completion, or repaired as required, the Urban County Engineer shall, in writing, advise the Planning Commission, which shall have the authority to call the surety posted in favor of the Urban County Government and cause the work to be constructed or repaired, as appropriate.

4-8(a) PRE-FINAL INSPECTION AND FIRST REDUCTION IN THE SURETY - Within thirty (30) days of the certification of the final plan by the Urban County Engineer, the Division of Engineering shall inspect the public improvements. If the Division of Engineering finds that portions of the work on the public improvements that were included in the punch list have now been completed, a first reduction in the surety shall be permitted, when so requested by the developer. The reduction in the surety shall equal the cost of those punch list items that are found to be complete.

4-8(b) ADDITIONAL REDUCTIONS OF SURETY - Additional reductions in the amount of the surety will be permitted. The surety may be reduced only at times provided below. In all cases, the Division of Engineering shall retain the amount of the surety for inflation and administration until the release of the surety. No reduction will be permitted after the completion date has passed, and no reduction will alter the original completion or termination date of the surety.

(1) SECOND REDUCTION - When requested by the developer, a second reduction shall be allowed one year from the Urban County Engineer's certification of the final plan. Within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total amount of the cost of the stormwater facilities, plus the value of all punch list items that are found to have been completed during the first year.

(2) THIRD REDUCTION - At the end of the second year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to the value of the items that are found to have been completed in the second year. If the final course of asphalt has been applied for at least one year, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

(3) FOURTH REDUCTION - At the end of the third year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total cost of the sanitary sewer and pump station facilities plus the value of any items that are found to have been completed in the third year. If the final course of asphalt has been applied for at least one year, and if a previous reduction for the final course of asphalt has not been taken, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the

final course of asphalt.

4-8(c) COMPLETION OF UTILITIES AND FINAL COURSE OF ASPHALT – 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 4 years, the Division of Engineering will require recalculation of the amount of the surety based on the current unit prices.

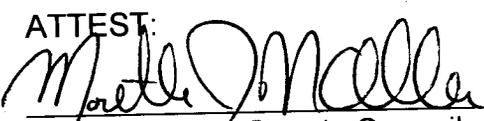
4-8(e) FINAL REDUCTION / RELEASE OF SURETY - When the developer has completed all required improvements, and the final course of asphalt has been applied for at least one year, the developer may request a final release of the surety. When so requested, the Division of Engineering will conduct a final 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 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.

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

PASSED URBAN COUNTY COUNCIL: February 23, 2017


MAYOR

ATTEST:

Clerk of Urban County Council

Published: March 2, 2017-1t

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Rec'd by Bm

Date: 1-19-17

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

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

Having considered the above matter on **December 8, 2016 and on January 12, 2017**, at a Public Hearing, and having voted **8-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **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.

ATTEST: This 19th day of January, 2017.


James Duncan, Secretary

WILLIAM WILSON
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Tom Martin**, Division of Planning and **Doug Burton**, Director, Division of Engineering.

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (6) Berkley, Mundy, Plumlee, Richardson, Smith and Wilson

NAYS: (0)

ABSENT: (3) Cravens, Drake and Penn

ABSTAINED: (2) Brewer and Owens

DISQUALIFIED: (0)

Motion for APPROVAL of SRA 2016-4 carried.

Enclosures: Minutes of PC meeting initiating this request
Staff Report
Applicable excerpts of minutes of Commission's public hearings

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 or insurance bond 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 are acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety are acceptable.

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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.

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(2) THIRD REDUCTION - At the end of the second year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to the value of the items that are found to have been completed in the second year. If the final course of asphalt has been applied for at least one year, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

(3) FOURTH REDUCTION - At the end of the third year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total cost of the sanitary sewer and pump station facilities plus the value of any items that are found to have been completed in the third year. If the final course of asphalt has been applied for at least one year, and if a previous reduction for the final course of asphalt has not been taken, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

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 4 years, the Division of Engineering will require recalculation of the amount of the surety based on the 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.

- A. **ZOTA 2016-6 & SRA 2016-3: AMENDMENTS TO ARTICLES 19 & SUBDIVISION REGULATIONS TO REFLECT CHANGES TO THE ENGINEERING STORMWATER MANUAL** - a text amendment to local ordinances to ensure consistency with the LFUCG Engineering manuals.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: See Attached text

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

The Staff Recommends: Approval, for the following reasons:

1. The proposed text amendments will dovetail with changes approved to the LFUCG Engineering Stormwater Manual, which is a guide to local engineers in the preparation of plans and construction in and near floodplains in Lexington-Fayette County. Those professionals were able to participate in an extensive stakeholder's process over six months, to review and comment on these changes prior to their implementation.
2. These changes will better allow for the vegetative buffer zone near our streams to match Commonwealth of Kentucky requirements for an average width of 50', on streams identified by the US Army Corps of Engineers.
3. The remaining updates to these regulations will improve coordination of the documents used most frequently by the Planning Commission with those used by land development professionals in the preparation of their plan submittals to the LFUCG.

Staff Presentation – Mr. Sallee presented the staff's report on the text amendment to local ordinances to ensure consistency with the LFUCG Engineering manuals. This report include the propose changes to Articles 1, 6 and 19 (A copy of Articles 1, 6 and 19 is attached as an appendix to these minutes).

Mr. Sallee also presented the further changes to Article 19-10(a) & (b) and Article 19-12(c) & (e), dated October 7, 2016. These changes were submitted by Richard Walker of Tetra Tech, who suggested replacing the words Commissioner of Public Works with the Commissioner of Planning, Preservation and Development for the Floodplain Appeals Committee and removing "and the lowest opening" from Article 19-12(c). (A copy of Article 19-10(a) & (b) and Article 19-12(c) & (e), dated October 7, 2016 is attached as an appendix to these minutes).

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

Commission Comments & Questions – There were none.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson and carried 8-0 (Berkley, Brewer and Penn absent) to approve **ZOTA 2016-6 & SRA 2016-3**, as recommended by the staff, and recognizing the changes to Article 19-10(a) & (b) and Article 19-12(c) & (e), dated October 7, 2016.

- B. **INITIATION OF A TEXT AMENDMENT TO IMPLEMENT CHANGES TO FINAL PLAT PROCEDURES** – The staff will request that the Planning Commission initiate a text amendment to Article 4-7 of the Land Subdivision Regulations. These were recently considered by the Commission at a Work Session, and have been proposed by the Division of Engineering.

Staff Presentation – Mr. Sallee presented the submitted changes to Article 4-7, dated October 11, 2016. (A copy of proposed changes to Article 4-7 is attached as an appendix to these minutes).

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

Commission Comments & Questions – There were none.

Action - A motion was made by Ms. Plumlee, seconded by Ms. Richardson and carried 8-0 (Berkley, Brewer and Penn absent) to initiate a text amendment to Article 4-7 of the Land Subdivision Regulations.

- C. **ADOPTION OF 2017 MEETING & FILING SCHEDULE** - The Chair will announce that the Commission will consider adoption of the "Official Meeting and Filing Schedule for 2017" at this time. Once adopted, the staff will distribute copies of the 2017 schedule for use by the Commission and the general public.

Action - A motion was made by Ms. Mundy, seconded by Mr. Owens and carried 8-0 (Berkley, Brewer and Penn absent) to adopt the Official Meeting and Filing Schedule for 2017.

VII. **STAFF ITEMS** – There were none.

- A. **PLANNING COMMISSION REAPPOINTMENTS** – Mr. Duncan indicated that the Urban County Council unanimously reappointed Mrs. Mundy, Mr. Brewer and Mr. Owens to the Planning Commission.

- B. **STAFF MEMBER** – Mr. Duncan welcomed Planner Chris Bronczyk, Planning Services, to the Division of Planning.

STAFF REPORT ON PETITION FOR LAND SUBDIVISION REGULATIONS TEXT AMENDMENT

**SRA 2016-4: AMENDMENT TO ARTICLE 4-7(D)(9)(A),(B),(G)& 4-8(C)(D)&(F):
MAJOR SUBDIVISION PLAN PROCEDURE**

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.

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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.

STAFF REVIEW:

At the request of the Division of Planning staff, the Planning Commission has initiated this amendment to the requirements that regulate performance/warranty sureties for the completion of public improvements as required by the Land Subdivision Regulations. This amendment was requested by the staff on behalf of the Division of Engineering. The Division of Engineering has been reviewing the surety requirements for several months in an effort to increase their effectiveness and to ensure that all required public infrastructure improvements are completed as designed and in a timely manner. Several small revisions have previously been made over the past few years to address issues that arose, including the bonding of private sidewalks to include the Urban County Government and including street trees as a bondable item.

Although the concern that sureties would not cover the actual cost of completing the public improvements is not new, the downturn in the economy known as the "Great Recession" heightened this concern. The downturn did not result in a significant increase of forfeitures but did emphasize the need to address the ability of the surety requirements to insure completion of the required public improvements while minimizing the potential cost to the Urban County Government. Some subdivisions were not "completed" with street trees and sidewalks, after developers allowed their sureties to be collected by the LFUCG.

The recommended changes more clearly define the amount and type of sureties that are acceptable; determination of costs; verification of required infrastructure; completion requirements and renewal of the surety. A significant addition, not previously included in the procedures, includes a penalty for forfeiture that restricts any Corporation, its Principals or a developer from submitting another surety to the Urban County Government for three years from the date of the forfeiture.

The Planning Staff agrees with the Division of Engineering's proposed changes and believes they will improve compliance with the Land Subdivision Regulations and minimize costs to the Urban County Government should a future forfeiture occur. This is consistent with the public health and safety intent of the Land Subdivision Regulations.

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.

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 or insurance bond 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 are acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety are 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~~ by the 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(d)(9)(c) SURETY FOR PRIVATE STREETS - All private street improvements (excepting only the final course of asphalt and possibly the sidewalks) shall be constructed in compliance with the approved improvement plan before the final subdivision plan is recorded. For the final course of asphalt only, the developer shall be permitted to post a surety in favor of the final maintenance association responsible for the private street, and shall note such requirement on the final plat of the property. For any sidewalks not yet constructed, the developer shall be permitted, at the time of recordation of the final plat, to post a surety in favor of the final maintenance association responsible for the private street, as long as it is also in favor of the Urban County Government. This shall not be construed to hold the Urban County Government responsible for the construction of such sidewalks other than to the extent of the funds provided by the surety; and neither this, nor any action by the Urban County Government relative to the enforcement of the required construction of such sidewalks and/or the surety, therefore, shall be construed as acceptance of responsibility by the Urban County Government for the construction, maintenance or dedication of such sidewalks as public infrastructure. The amount of the surety for the private street shall be 10% of the cost of the installed private street plus 100% of the cost of the final course of asphalt. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate. When private streets are permitted, the surety that is submitted in favor of the Urban County Government for the infrastructure shall not include an amount equal to the surety for private streets. The amount of the surety for the sidewalks

shall be 100% of the cost of the construction of the sidewalks. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate.

4-7(e) CERTIFICATION OF PLANNING COMMISSION APPROVAL AND RECORDING - Within one (1) year of the Commission's approval, or conditional approval, unless a time extension has been granted prior to the expiration date, the following steps shall be completed, or else the Commission's approval, or conditional approval, becomes null and void: (1) The developer shall fully comply with any conditions of approval placed on the plan by the Commission and shall submit the completed original plan drawing to the Division of Planning; (2) The plan shall be certified by the Commission's Secretary if it is in conformance with all requirements; (3) The plan shall be recorded in the plat records of the Fayette County Clerk by the Division of Planning at the developer's expense; and (4) Required copies shall be made of the recorded plan by the Division of Planning at the developer's expense.

4-7(f) RECORDING OF A PORTION OF A FINAL PLAN - The Division of Planning shall be authorized to permit a developer to record a final plan that has been approved or conditionally approved by the Commission in smaller land increments than depicted on the final plan. For any such developer's request, the Division of Planning shall review the proposal with the Division of Engineering to ensure that no problems in provision of streets, storm drainage, or sanitary sewers would result. In any disputed cases, the request will be forwarded to the Planning Commission for final judgment.

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 COMPLETION OF PUBLIC IMPROVEMENTS - Public improvements that were not completed prior to certification of the final plan by the Urban County Engineer shall be completed in conformance with the approved improvement plan and with the submitted schedule for completion. In the event the public improvements are not completed as provided in the schedule for completion, or repaired as required, the Urban County Engineer shall, in writing, advise the Planning Commission, which shall have the authority to call the surety posted in favor of the Urban County Government and cause the work to be constructed or repaired, as appropriate.

4-8(a) PRE-FINAL INSPECTION AND FIRST REDUCTION IN THE SURETY - Within thirty (30) days of the certification of the final plan by the Urban County Engineer, the Division of Engineering shall inspect the public improvements. If the Division of Engineering finds that portions of the work on the public improvements that were included in the punch list have now been completed, a first reduction in the surety shall be permitted, when so requested by the developer. The reduction in the surety shall equal the cost of those punch list items that are found to be complete.

4-8(b) ADDITIONAL REDUCTIONS OF SURETY - Additional reductions in the amount of the surety will be permitted. The surety may be reduced only at times provided below. In all cases, the Division of Engineering shall retain the amount of the surety for inflation and administration until the release of the surety. No reduction will be permitted after the completion date has passed, and no reduction will alter the original completion or termination date of the surety.

(1) SECOND REDUCTION - When requested by the developer, a second reduction shall be allowed one year from the Urban County Engineer's certification of the final plan. Within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total amount of the cost of the stormwater facilities, plus the value of all punch list items that are found to have been completed during the first year.

(2) THIRD REDUCTION - At the end of the second year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to the value of the items that are found to have been completed in the second year. If the final course of asphalt has been applied for at least one year, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

(3) FOURTH REDUCTION - At the end of the third year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total cost of the sanitary sewer and pump station facilities plus the value of any items that are found to have been completed in the third year. If the final course of asphalt has been applied for at least one year, and if a previous reduction for the final course of asphalt has not been taken, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

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 4 years, the Division of Engineering will require recalculation of the amount of the surety based on the 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.

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

~~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.

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

- A. **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 or insurance bond 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 are acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety are 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~~ by the 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(d)(9)(c) SURETY FOR PRIVATE STREETS - All private street improvements (excepting only the final course of asphalt and possibly the sidewalks) shall be constructed in compliance with the approved improvement plan before the final subdivision plan is recorded. For the final course of asphalt only, the developer shall be permitted to post a surety in favor of the final maintenance association responsible for the private street, and shall note such requirement on the final plat of the property. For any sidewalks not yet constructed, the developer shall be permitted, at the time of recordation of the final plat, to post a surety in favor of the final maintenance association responsible for the private street, as long as it is also in favor of the Urban County Government. This shall not be construed to hold the Urban County Government responsible for the construction of such sidewalks other than to the extent of the funds provided by the surety; and neither this, nor any action by the Urban County Government relative to the enforcement of the required construction of such sidewalks and/or the surety, therefore, shall be construed as acceptance of responsibility by the Urban County Government for the construction, maintenance or dedication of such sidewalks as public infrastructure. The amount of the surety for the private street shall be 10% of the cost of the installed private street plus 100% of the cost of the final course of asphalt. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate. When private streets are permitted, the surety that is submitted in favor of the Urban County Government for the infrastructure shall not include an amount equal to the surety for private streets. The amount of the surety for the sidewalks shall be 100% of the cost of the construction of the sidewalks. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate.

4-7(e) CERTIFICATION OF PLANNING COMMISSION APPROVAL AND RECORDING - Within one (1) year of the Commission's approval, or conditional approval, unless a time extension has been granted prior to the expiration date, the following steps shall be completed, or else the Commission's approval, or conditional approval, becomes null and void: (1) The developer shall fully comply with any conditions of approval placed on the plan by the Commission and shall submit the completed original plan drawing to the Division of Planning; (2) The plan shall be certified by the Commission's Secretary if it is in conformance with all requirements; (3) The plan shall be recorded in the plat records of the Fayette County Clerk by the Division of Planning at the developer's expense; and (4) Required copies shall be made of the recorded plan by the Division of Planning at the developer's expense.

4-7(f) RECORDING OF A PORTION OF A FINAL PLAN - The Division of Planning shall be authorized to permit a developer to record a final plan that has been approved or conditionally approved by the Commission in smaller land increments than depicted on the final plan. For any such developer's request, the Division of Planning shall review the proposal with the Division of Engineering to ensure that no problems in provision of streets, storm drainage, or sanitary sewers would result. In any disputed cases, the request will be forwarded to the Planning Commission for final judgment.

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 COMPLETION OF PUBLIC IMPROVEMENTS - Public improvements that were not completed prior to certification of the final plan by the Urban County Engineer shall be completed in conformance with the approved improvement plan and with the submitted schedule for completion. In the event the public improvements are not completed as provided in the schedule for completion, or repaired as required, the Urban County Engineer shall, in writing, advise the Planning Commission, which shall have the authority to call the surety posted in favor of the Urban County Government and cause the work to be constructed or repaired, as appropriate.

4-8(a) PRE-FINAL INSPECTION AND FIRST REDUCTION IN THE SURETY - Within thirty (30) days of the certification of the final plan by the Urban County Engineer, the Division of Engineering shall inspect the public improvements. If the Division of Engineering finds that portions of the work on the public improvements that were included in the punch list have now been completed, a first reduction in the surety shall be permitted, when so requested by the developer. The reduction in the surety shall equal the cost of those punch list items that are found to be complete.

4-8(b) ADDITIONAL REDUCTIONS OF SURETY - Additional reductions in the amount of the surety will be permitted. The surety may be reduced only at times provided below. In all cases, the Division of Engineering shall retain the amount of the surety for inflation and administration until the release of the surety. No reduction will be permitted after the completion date has passed, and no reduction will alter the original completion or termination date of the surety.

(1) SECOND REDUCTION - When requested by the developer, a second reduction shall be allowed one year from the Urban County Engineer's certification of the final plan. Within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total amount of the cost of the stormwater facilities, plus the value of all punch list items that are found to have been completed during the first year.

(2) THIRD REDUCTION - At the end of the second year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to the value of the items that are found to have been completed in the second year. If the final course of asphalt has been applied for at least one year, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

(3) FOURTH REDUCTION - At the end of the third year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total cost of the sanitary sewer and pump station facilities plus the value of any items that are found to have been completed in the third year. If the final course of asphalt has been applied for at least one year, and if a previous reduction for the final course of asphalt has not been taken, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

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 4 years, the Division of Engineering will require recalculation of the amount of the surety based on the 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.

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

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 indicated that the Planning Commission continued consideration of this item from the December 8, 2016, meeting due to concerns with the proposed language that was presented on the staff report and how the unit prices were calculated. He added that Doug Burton Director, with the Division of Engineering, was present to address those concerns from the Commission.

Mr. Burton said that due to a scheduling conflict he was not able to attend the December 8th meeting, but he did have the opportunity to watch the video recording of the meeting, and he was since able to speak with Mr. Cravens and Mr. Wilson about their concerns.

Mr. Burton said that, as the language reads now, the unit prices are generated at a conference that is held every December with the construction industry. He explained that the unit prices have not been adjusted for several years because the Urban County Government does not have the negotiating power that the development industry does. This means the unit prices were being based on unit prices that we as a government entity could not acquire. He then said that if a contractor puts out a bid for an item, that contractor has the power to negotiate a lower bid; whereas, the LFUCG does not have that ability. Mr. Burton said that several years ago it was determined that using bids for small public construction projects could determine the real unit price that is used through the Division of Engineering and other departments. He then said that the Division of Engineering uses eight different contractors to attain the lowest bid for any project that needs to be done.

Mr. Burton said that how the unit prices are determined for the sureties is through averaging the prices of the different contractors that they use. He explained the reason this process is being done this way is because should the Division of Engineering ever need to call a 20 year old surety to finish a project that the developer did not complete, that surety would be based on unit prices from 20 years ago, which would create a huge financial gap. This change would allow the unit prices to be more competitive and allow a surety to be renewed every 4 years. The Division of Engineering has not yet called a surety, but if that were to happen, that surety would be subjected to the newer unit prices, not the original unit price when it was first opened. He said that the proposed language will help protect the LFUCG and the tax payers from old unit prices by being able to obtain competitive prices and complete projects that the developers did not finish.

Commission comments – The Chair said that Mr. Cravens was not present for today's hearing, but he wanted to extend his appreciation in providing them a one-on-one tutorial as to what this proposed change meant. He also extended the Commission's apologies to Ms. Adkins, who was caught up in the confusion at the December 8th meeting.

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

Commission questions – The Chair asked if the Subdivision Committee had reviewed the text amendment. Ms. Plumlee replied negatively. The Chair asked if the Committee would like time to review the proposed changes or move on. Ms. Plumlee replied that the Commission should move on. The Chair indicated that he was ready for a motion on this request.

Mr. Owens indicated that he was not present for the December 8th meeting; therefore, he would be abstaining from voting on the motion.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Smith and carried 8-0 (Brewer and Owens abstained; Cravens, Drake and Penn absent) to approve **SRA 2016-4: AMENDMENT TO ARTICLE 4-7 OF THE LAND SUBDIVISION REGULATIONS** - to alter the allowable sureties acceptable by the Urban County Government, as recommended.