

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
February 20, 2014**

A meeting of the Louisville Metro Planning Commission was held on Thursday, February 20, 2014 at 1:00 p.m. in the Central Government Center, located at 7201 Outer Loop, Louisville, Kentucky.

Commission members present:

David Proffitt, Acting Chair
Jeff Brown
David Tomes
Vince Jarboe
Robert Kirchdorfer
Chip White
Robert Peterson

Commission members absent:

Donnie Blake, Chair (recused)
Clifford Turner
Tawana Hughes

Staff Members present:

Emily Liu, Director, Planning & Design Services
John G. Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Joseph Reverman, Planning Supervisor
Julia Williams, Planner II
Matthew Doyle, Planner I
Jessica Wethington, Planning Information Specialist
Tammy Markert, Traffic Planning Coordinator
Cynthia Johnson, Historic Preservation Officer
Chris Cestaro, Management Assistant (minutes)

The following matters were considered:

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Approval of Minutes

Approval of the minutes of the February 6, 2014 regular meeting of the Planning Commission

On a motion by Commissioner Tomes, seconded by Commissioner Jarboe, the following resolution was adopted:

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of the Louisville Metro Planning Commission hearing held on February 6, 2014.

The vote was as follows:

YES: Commissioners Proffitt, Brown, Tomes, Jarboe, and Kirchdorfer.

NO: No one.

NOT PRESENT: Commissioners Blake, Turner, and Hughes.

ABSTAINING: Commissioners White and Peterson.

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Public Hearing

**Case No. 13SUBDIV1000
AND Case Nos. 19173, 19174, and 19219**

Project Name: Glenmary Conservation Subdivision

Location: 10200 Glenmary Farm Drive

Owner/Applicant: Par Golf, LLC
Maria Purcell, Representative
10200 Glenmary Farm Drive
Louisville, KY 40291

Representative: William Bardenwerper
Bardenwerper, Talbott & Roberts PLLC
1000 North Hurstbourne Parkway Suite 200
Louisville, KY 40223

Architect/Engineer: David Mindel
Mindel, Scott & Associates
5151 Jefferson Boulevard
Louisville, KY 40219

Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel

Case Manager: **Julia Williams, AICP, Planner II**

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Request:

Conservation Subdivision and Amendment to a Record Plat.

Agency Testimony:

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Before staff began the presentation, Commissioner Proffitt reiterated that this case is being **continued** from the February 6, 2014 Planning Commission public hearing. At that time, staff made a full presentation of the case, and the applicant gave full testimony. Some opposition testimony did not have a chance to be given on February 6th and would be heard today. The applicant would then be allowed rebuttal time. Commissioner Proffitt added that Chairman Donnie Blake has recused himself from hearing this case or the three minor plat cases also on today's agenda, and he has not participated as a Commissioner in any of the other meetings or hearings regarding these cases.

Julia Williams showed a brief Power Point presentation of highlights of the case (see staff report for detailed presentation.) She addressed one Technical Review comment, which is based on Case No. 19173 (one of the minor plat cases being heard today): the square footage for that case will need to be deducted from the conservation area on the development plan. She said there is still a significant amount of conservation area that the applicant is providing and the square footage that is being deducted will not affect the conservation area.

Ms. Williams reviewed those who were given notice of hearings and meetings regarding this case, and the staff conclusions in the staff report. An e-mail from staff Historic Preservation Officer Cynthia Johnson was handed out to the Commissioners before the meeting began which outlines some of the historic nature of the site and also requesting that a Condition of Approval be placed on the property [e-mail on file].

Commissioner Brown asked if Historic Preservation recommendations were included in the staff report. Ms. Williams said the e-mail was not received in time to be included in the staff report but would be considered an addition to the report.

The following spoke in opposition to this request:

Donald L. Cox, 500 West Jefferson Street, Louisville, KY 40202

Philip J. Reverman Jr., 10304 Colonel Hancock Drive, Louisville, KY 40291

Peggy Murray, 8017 Cedar Glen Lane, Louisville, KY 40291

Gary Flynn, 8012 Cedar Glen Lane, Louisville, KY 40291

Robert Ford, 10702 Briar Turn Drive, Louisville, KY 40291

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Terri French, 9903 Red Run Court, Louisville, KY 40291

Robert Beard, 7903 Glenmary Farm Court, Louisville, KY 40291

John Noland, 10519 Black Iron Road, Louisville, KY 40291

Paul Williams, 10627 Black Iron Road, Louisville, KY 40291

David Mills, 8023 Cedar Glen Lane, Louisville, KY 40291

Tom and Diana Killen, 10710 Colonel Hancock Drive, Louisville, KY 40291

Jeanette Larkin, 10508 Black Iron Road, Louisville, KY 40291

Al Birch, 10610 Black Iron Road, Louisville, KY 40291

James Ron Person, 10201 Rockfish Court, Louisville, KY 40291

Janet Layten, 10215 Glenmary Farm Drive, Louisville, KY 40291

Summary of Testimony of those in opposition:

Donald Cox discussed the DRC minutes from July 3, 2013 and quoted a passage regarding deed restrictions. The minutes from that previous case noted that the homeowners would have to “address that through private means.” He said homeowner’s have filed litigation against the Planning Commission and Par Golf; the intention is to resolve the whole question about deed restrictions. Mr. Cox said it would be “premature” for this body to take any action until there is judicial determination about the deed restrictions. Jonathan Baker, legal counsel for the Planning Commission, stated that the County Attorney’s Office has received the complaint, but will not speak to the complaint because it is in court. Mr. Baker said testimony will be taken today, and Commissioner Proffitt said the Commission will move ahead.

John Noland said he is concerned about increasing the density of the community and the issues that would bring (increased water runoff, noise, traffic, elimination of greenspace, elimination of century-old trees etc.) He said the original design of the subdivision works well and should not be changed, and expressed strong

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concern about construction traffic and noise. He said the homeowners signed a contract at the time of purchase which stated that there would be no change in the design of the community.

Paul Williams said that, according to the Louisville Metro website, a “conservation subdivision” must set aside a major portion of the acreage for conservation. He said the current proposal shows nothing for conservation; instead, it removes trees and adds more pavement. He said the website also states that, if there are conservation areas declared, those are supposed to be permanent and not subdivided into new construction at a later date. He added that conservation areas are supposed to be paid for to be maintained, and there are no plans stated for that in this proposal. He said that, if this subdivision is approved, it will not save the golf club. The barn will be demolished, and there are no plans to replace it with another structure for storage and maintenance of golf carts and equipment. He said he is concerned that the current proposal is a “prelude” to further subdivision and development of the entire golf course property. He said the proposed homes are out of character with the rest of the neighborhood and discussed what the view would be after development.

Philip J. Reverman Jr. was called but declined to speak.

David Mills showed a Power Point presentation and gave a brief timeline of the proposals, how they have changed over time, and the legislative process. He questioned whether the applicant was really interested in keeping the golf course, mostly because they are planning to raze the historic barn and have no plans to replace it with any type of golf-related storage facility. He described the failed plans to purchase the golf course by the Glenmary Board/homeowners. He emphasized that these plans go against the very reasons why the Glenmary homeowners purchased their homes in the first place. He said this proposal opens the door to complete redevelopment of the golf course, decreases the home values, increases traffic, and will worsen already-existing drainage issues. He also reiterated previous statements from others that, when he purchased his home, he was assured that the area behind his home would remain recreational and would not be built on. Deed restrictions stated this. He said his elected representative (Councilman Engle) would not have a say in this because it was not a zoning issue and therefore the residents would not, either. He said this proposal has nothing to do with conservation but is rather “a logging operation” of mature trees.

Robert Ford was called but declined to speak, other than to say he is opposed.

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Tom Killen was called but declined to speak, other than to say he is opposed.

Diana Killen was called but declined to speak, other than to say she is opposed.

Gary Flynn said he is a professional appraiser who has not been contracted by either side. He handed out exhibits giving an analysis of vacant single-family lots/properties within a three-mile radius of Glenmary, and also gave his opinion of the “highest and best use” of the golf course property [exhibits on file]. He said the vacant lots indicate an over-supply of available properties. He said constructing another subdivision here would decrease the property values of existing Glenmary homes. He said in his opinion there is no market right now for vacant lots. He said the “highest and best use” is not a golf course at this time; nor is it as single-family lots. That use will be determined at a later time, but it is not this proposal. He said subdividing this property could affect the market value of the site and the residents’ homes.

Peggy Murray asked about the difference between R-4 and R-6 zoning categories – she said part of the subject property is zoned R-4 and another part is zoned R-6. Ms. Williams said the applicant is proposing to develop only the R-4 portion of the site. There is a small area that is already zoned R-6, but it is not part of this proposal. Ms. Murray also asked about the “conservation” part of a conservation subdivision. She said the developer is planning to remove trees directly behind her house to put in the 44 lots, and asked if the developer could do that because they were planning to take their conservation percentage from a different part of the acreage. Ms. Williams said that is correct, and using the site plan, she showed the percentage of open space and conservation area is mainly down by the creek area (waterfall and ravine.)

Ms. Murray also asked if the additional acreage of the golf course could also be turned into a conservation subdivision in the future. Ms. Williams said that is correct, and that the owner of the golf course could develop it as either a standard or a conservation subdivision if their percentage of open space meets the minimum requirements.

Ms. Murray said that, 20 years ago, there was a different owner of the golf course who wanted to put in a driving range directly behind her house. She said she has a zero-property line, and the proposed homes would be directly next to her back deck.

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Jeanette Larkin was called but declined to speak, other than to say she is opposed.

Al Birch said this is not a zoning issue; it is about a business that has failed. Just because this business has failed, does not mean that there will never be a future buyer for the golf course and that the course property should not be subdivided. He added that a failed business is unfortunate for the owner, but is still not a justification for subdividing the property.

Terri French said the new Glenmary Board saved the residents of Glenmary a million dollars by stopping the purchase of the golf course. She discussed the issues involved with this attempted purchase by the residents, and added that the course could be saved if residents would go there and buy a membership, instead of trying to buy the course.

Ron Person said he bought his property after the Board voted to buy the golf course; after they bought their property, they found out the Board's purchase is not going to happen after all. He is upset about this and feels it is unfair.

Agency Testimony:

Before the applicant's rebuttal began, Ms. Williams introduced Cynthia Johnson, Historic Preservation Officer for Metro Government. Ms. Johnson briefly reviewed some of the history of the site, from its pre-Civil War structures and uses to the present. She discussed the historic house, pool, and barn; the setting, including the trees, is part of the site that has been determined eligible for National Register status. It is also a site that could be potentially an individual Landmarked site. Its core complex is still intact; this could be impacted by proposed development around it, including removal of the trees that buffer it. These are part of historic landscaping that is still intact. She said Historic Preservation reviewed the plan and found that the proposal adversely impacts the historic resources on the site [see Ms. Johnson's handout, and the staff report.]

At Commissioner Proffitt's request, Ms. Johnson read her comments into the record [on file].

In response to a question from Commissioner Kirchdorfer, Ms. Johnson clarified her recommendation about development occurring only behind the historic house. Commissioner Proffitt asked if she meant that Lots 1-10 and Lots 32-36

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should not be included in the development plan. Ms. Johnson said that was her recommendation in order to maintain the integrity of the historic site.

The following spoke in rebuttal:

William Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway Suite 200, Louisville, KY 40223

David Mindel and Kathy Linares, Mindel, Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Jack Ridge, 9529 Wessex Place, Louisville, KY 40222

Rebuttal:

William Bardenwerper, the applicant's representative, said the only difference between a conservation subdivision and a regular subdivision is the regulation in the Land Development Code. This subdivision is governed by "conservation subdivision" regulations. Using the site plan, Mr. Bardenwerper briefly reviewed the proposal.

He discussed the conservation subdivision regulations, which he says are reflecting the market demand for small-lot homes, which are now taking the place of formerly-popular condominium developments, clustered around an open space. He said the conservation subdivision regulations were devised so that an applicant does not need to go through a discretionary review process, as they would for a rezoning. He said this hearing is a ministerial review process, no different than a minor plat request. He said the neighborhood meeting was held not only to explain the proposal to residents but to explain this aspect of the law.

He brought up the Indian Springs case, in which the applicant parceled off a portion of the site for commercial use. He said that was approved by the Planning Commission because that case was a ministerial review, similar to this case. He then discussed the Glenmary residents' decision to purchase the golf course, and the several lawsuits that are still in court regarding this property.

Mr. Bardenwerper addressed Mr. Cox's statements regarding the Kentucky Constitution, Section 19. He said zoning laws were enacted well before the deed

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restrictions were put in place; the deed restrictions were imposed pursuant to a subdivision that was approved under the statute that was already enacted.

Mr. Bardenwerper addressed Mr. Cox's statements about the power of the Planning Commission to amend any record plat. Mr. Bardenwerper read the LDC regulation into the record which states that the Planning Commission does have that authority. Mr. Bardenwerper discussed old law versus new law.

He then discussed the issue of the deed restrictions which, he said, will ultimately be decided in court. He said this is not an issue that can be decided by the Planning Commission, because it is not within the Commission's purview to enforce deed restrictions, per State law. He cited a 2006 survey that showed 12 encroachments into the golf course by residents of Glenmary, utilizing the recreationally restricted land for purposes other than recreation.

Mr. Bardenwerper said the standards of review are the conservation subdivision regulations and the minor plat regulations; anything else "is outside the law." He said the staff report and testimony shows that this subdivision complies with those regulations. He said the applicant would prefer that the homeowner's association complete the purchase of the course at the price that was contracted.

In response to Ms. Johnson's testimony, Mr. Bardenwerper said those were recommendations, not obligations or requirements. He said the applicant would agree to hire a qualified preservation consultant to document the site; otherwise, he would ask that the plan be approved as shown.

After Mr. Bardenwerper concluded his testimony, Commissioner Proffitt asked if anyone else needed to speak as part of the rebuttal. Mr. Bardenwerper said they were available to answer questions as needed.

Commissioner Proffitt asked Mr. Cox if he had any questions for Mr. Bardenwerper based on his rebuttal testimony. Mr. Cox asked if there is a contract to develop this property with someone. Mr. Bardenwerper said there is "an option contract" for the purchase of this property to develop it as a conservation subdivision. This contract has existing contingencies that it needs to be approved as a conservation subdivision plan and there needs to be an existing golf course. Commissioner Proffitt asked if the homeowner's association had proper financing to purchase the property. Mr. Bardenwerper said there was, and there is also suitable financing for the developer to purchase this land to build a conservation subdivision. Mr. Cox said this was false.

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Mr. Cox asked, if the restrictions of record are valid, doesn't the conservation subdivision violate the deed restrictions? Mr. Bardenwerper questioned the enforceability of the deed restrictions, since they have been repeatedly violated by the residents.

Mr. Cox and Mr. Bardenwerper discussed a "no waiver clause" and the attempt to selectively enforcement of some of the deed restrictions. Commissioner Proffitt asked Mr. Cox how this and other deed restriction issues apply to the Land Development Code subdivision regulations. Mr. Cox said that, in making a determination whether or not to allow an amendment of a plat, the Commission has to take into consideration whether the proposed amendment is legal. Commissioner Proffitt asked Mr. Cox if the deed restriction issue is the basis of his argument in the lawsuit. Mr. Cox said it is one of his arguments; if a developer comes in and wants to do something that he has no legal right to do, the Commission cannot vote to go ahead and do it. He said this should be decided by a court first. He added that, with a lawsuit pending, there will not be any development on this site. Mr. Bardenwerper said that, if the Commission accepted that argument, then the Planning Commission would never decide any case that has a pending lawsuit or a threatened lawsuit associated with a case.

Commissioner Tomes said that, if the golf course goes out of business, then the courts will decide bankruptcy or foreclosure issues and a judge will determine what happens to this property, regardless of deed restrictions or Planning Commission decisions. Mr. Cox said that property sold under a judicial sale is still subject to easements and restrictions of record. He added that this property has been through foreclosure more than once.

In response to another question from Commissioner Tomes, Mr. Bardenwerper gave specifics about the negotiated original price and reduced prices of the golf course.

Mr. Noland said the rules of the Glenmary subdivision include providing garages on the side or back of the residences. He said the current subdivision plan does not follow that rule, and also has encroachments; most of them appear to be gardens. He said there are laws prohibiting buying a piece of property, removing all the trees, and then reselling the property. He asked Mr. Bardenwerper what would happen to the Glenmary residents if the applicant does this. Mr. Bardenwerper said the applicant will comply with regulations.

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Mr. Noland asked about some of the encroachments shown on the plan – will they all be “recreational” (for example, like gardens)? Mr. Bardenwerper discussed the variety of different types of encroachments, and recreational uses.

Mr. Noland also asked if the proposed homes would comply with the subdivision rules regarding the location of parking and garages. Mr. Bardenwerper said it is the applicant’s intent to comply with the restrictions. He said the homes for these lots have not been designed yet.

Janet Layten said Mr. Bardenwerper had stated that the plan was in compliance; however, the staff report states that “...the applicant needed to explain how views to open land from existing roadways were being protected per 7.11.5.C.3. “[see page 3 of the staff report.] She asked Mr. Bardenwerper to explain how the views were being protected, as well as the other issues that staff raised in the staff report. Kathy Linares said these issues were discussed at the first hearing. To protect the views from the existing roadways, she said the frontages of the proposed homes along Black Iron Road have been reduced, there will be greenspace provided along that road as well. She said the applicant had discussed the possibility of putting in evergreen trees along the rear of the properties to provide a solid screen for the residents behind them. She discussed the decision to align an access to Black Iron with Bohannan Station (sp).

Regarding historic preservation, Mr. Bardenwerper said that had been addressed with his response to Ms. Johnson’s presentation with Conditions of Approval.

Ms. Layten asked Mr. Bardenwerper if he was saying that providing greenspace in one corner was inadequate to protect the view of the current residents. Mr. Bardenwerper said the regulation is intended to give design input. He said that the applicant complies with the standards.

Ms. Layten again asked David Mindel how this was going to protect the view. Mr. Mindel reviewed the landscaping /tree planting proposals. Mr. Mindel also discussed parking and provisions for using/protecting the pool.

An unidentified citizen asked Mr. Bardenwerper if the conservation areas would be deeded to the new owner, as part of the purchase of these properties by the developer. Mr. Bardenwerper said the open spaces would be maintained by the purchaser of the conservation subdivision, and then ultimately by the owners of the lots within that subdivision. The citizen then asked if any future development

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on the conservation areas would be at the discretion of the individual owners. Mr. Bardenwerper said yes, but there are regulations about how much open space there has to be.

The citizen also asked where golf carts and maintenance items would be stored, if the barn was torn down. Mr. Mindel said a building would be added on to the south side of the existing clubhouse for storage, although this has not been designed yet.

Ms. Murray asked if the applicant would still be able to do a conservation subdivision if the barn is still standing. Mr. Bardenwerper said the applicant is still planning to remove the barn because keeping it would cost the applicant some valuable lots. He said the barn is not in good repair and it would be better to have a new maintenance facility. Ms. Murray asked if the conservation subdivision could go forward without the minor plats (referring to Case Nos. 19173, 19174, and 19219.) Mr. Bardenwerper said yes. Commissioner Proffitt said those are separate cases to be heard after this one. Those plats are not involved with this case.

Ms. Murray and Mr. Bardenwerper briefly discussed the lawsuit.

THE COMMISSION ADJOURNED FOR 10 MINUTES AND RESUMED THE HEARING AT 3:35 P.M.

NOTE: Commissioner Proffitt stated that the following three plats to be heard were related to Case No. 13SUBDIV1000 and will be heard now, before a vote is taken. He said all of the cases will be voted on at the same time.

Project Name:	Par Golf Minor Plat
Location:	10200 Glenmary Farm Drive
Owner/Applicant:	Par Golf, LLC Maria Purcell, Representative 10200 Glenmary Farm Drive Louisville, KY 40291

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Representative: William Bardenwerper
Bardenwerper, Talbott & Roberts PLLC
1000 North Hurstbourne Parkway Suite 200
Louisville, KY 40223

Architect/Engineer: David Mindel
Mindel, Scott & Associates
5151 Jefferson Boulevard
Louisville, KY 40219

Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel

Case Manager: **Matthew R. Doyle, Planner I**

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Request:
Amendment to Record Plat

Project Name: Par Golf Minor Plat

Location: Parcel 2580-0437-0000 (Colonel Hancock Drive)

Owner/Applicant: Par Golf, LLC
Maria Purcell, Representative
10200 Glenmary Farm Drive
Louisville, KY 40291

Representative: William Bardenwerper

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Bardenwerper, Talbott & Roberts PLLC
1000 North Hurstbourne Parkway Suite 200
Louisville, KY 40223

Architect/Engineer: David Mindel
Mindel, Scott & Associates
5151 Jefferson Boulevard
Louisville, KY 40219

Jurisdiction: Louisville Metro
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Request:
Amendment to Record Plat

Project Name: Par Golf Minor Plat

Location: Parcel 2535-000A-0000 (Colonel Hancock Drive)

Owner/Applicant: Par Golf, LLC
Maria Purcell, Representative
10200 Glenmary Farm Drive
Louisville, KY 40291

Representative: William Bardenwerper

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Bardenwerper, Talbott & Roberts PLLC
1000 North Hurstbourne Parkway Suite 200
Louisville, KY 40223

Architect/Engineer: David Mindel
Mindel, Scott & Associates
5151 Jefferson Boulevard
Louisville, KY 40219

Jurisdiction: Louisville Metro
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Request:
Amendment to Record Plat

Agency Testimony:

Matthew Doyle presented the case and showed a Power Point presentation (on file; see staff report for detailed presentation.) These cases were heard at DRC on July 3, 2013. Mr. Doyle reviewed the notice procedures and discussed who received notice of these cases (see staff report.) During the July 3rd DRC meeting, Stephen Porter (representative for the Glenmary residents) stated that a few of the property owners adjacent to the site for Case No. 19219 off of Colonel Hancock Drive did not receive notice. This was an oversight which was corrected for the Planning Commission public hearing. He added that the Commissioners at DRC had asked whether deed restrictions affect their decision. They were informed by legal counsel at that time that deed restrictions are not binding in these cases.

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He addressed the notices on each record plat which states that “There shall be no further subdivision or re-subdivision of the land into a greater number of lots than originally approved.” He said that this notice has appears on almost every record plat. The same language for amending a record plat was in the 1988 regulations. The process for amending a record plat was briefly outlined.

In response to a question from Commissioner Proffitt, Mr. Doyle explained that the purposes of a record plat for each of the three lots is to change the land use from “recreational” to “buildable”. Mr. Doyle clarified that it’s not for the purpose of connecting golf cart paths or any other use; it’s simply for the possibility of sale.

Before anyone else spoke, Commissioner Proffitt stated that, since these three cases are related to Case No. 13SUBDIV1000, the testimony given in that case will also be applied to these cases. Both Mr. Bardenwerper and Mr. Cox both agreed; therefore there was no opening testimony from either attorney. Mr. Bardenwerper was given opportunity to answer questions/concerns on behalf of the applicant.

The following spoke during the public discussion:

William Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway Suite 200, Louisville, KY 40223

Philip J. Reverman Jr., 10304 Colonel Hancock Drive, Louisville, KY 40291

Al Birch, 10610 Black Iron Road, Louisville, KY 40291

Doug Ratterman, 10308 Colonel Hancock Drive, Louisville, KY 40291

Summary of public discussion:

Philip Reverman said he lives in the home and lot adjacent to that in Case No. 19174. He said he had spoken at the February 6, 2014 Planning Commission public hearing. He added that, when he purchased his lot, he also was told that the property next to his lot was and would always remain “recreational”. He was assured that there would never be any kind of residential or commercial development on that lot. He said he believed that, when the new owners bought the golf course, that these assurances went with the property. He said that any

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house built on the property next to his would have to be built right on the property line – that there was no other way for it to fit. He said that would put the house about 8-10 feet away from his home. He questioned why these cases are being heard at a public hearing if this is a “ministerial review” that the Planning Commission would have to approve if the requests meet the LDC requirements. He said the Commission should address compatibility issues.

Mr. Bardenwerper said the reason more lots were not requested is because the applicant and Mr. Mindel determined that only these three lots were potentially buildable. Other areas had access issues, utility issues, etc. and were not deemed suitable. He said the developer could have put lots here at the time the development was built. He said there will be a five-foot side yard adjoining Mr. Reverman’s property, so the new home will not sit on the property line. Any house built there would meet all the required LDC setback regulations. He said houses can fit on the three lots in conformance with minimum standards already set forth in the Covenants, Conditions, and Restrictions.

Mr. Bardenwerper said the statute says that any subdivision can actually be approved by staff because it is a ministerial action – these minor plat requests can be delegated.

Al Birch asked Mr. Doyle if these lots would become “buildable”. Mr. Doyle said that was correct. Mr. Birch said that doesn’t necessarily mean they will be built on. Mr. Doyle said that was correct, that no permits have been pulled for any type of construction at this time. He asked if one lot could be used for an entrance, if the rest of the golf course would be developed. Mr. Doyle said that, as long as it meets the R-4 zoning district regulations, it could.

Doug Ratterman asked, if homes are built here, what homeowner’s association would these new residents belong to and who would be responsible for maintenance issues (snow removal, etc.) for these properties? Mr. Bardenwerper said the new homeowners would have their own HOA. Mr. Ratterman asked if they would have identical requirements and deed restrictions to Glenmary. Mr. Bardenwerper said that, as of now, there would probably be a sub-association within the larger association that would take care of maintenance issues, its own open space, etc. He said the ultimate goal is to have the new homeowners become part of the Glenmary HOA.

Conclusion of public discussion.

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Commission Discussion:

Jonathan Baker, legal counsel for the Planning Commission, clarified for the Commissioners what the Commission's authority is. He said there is a "judicial track" that has the jurisdiction to make the decision on the deed restrictions, and reiterated that the Planning Commission does not have authority to enforce deed restrictions.

Commissioner Proffitt mentioned some options that the Commission could take today, and suggested continuing the case indefinitely until the litigation regarding the deed restrictions is resolved. Commissioner Jarboe asked what would be involved in a continuance. Mr. Baker discussed some possible outcomes.

Mr. Baker, Mr. Bardenwerper, and Mr. Cox discussed legal issues related to this case and how the Planning Commission's actions could affect them.

Commissioner Brown said he thinks that the minor plats do comply with the Land Development Code; however, he feels that the conservation subdivision plan does not meet the intents of the regulations. He feels that the views from the existing roadways are not being protected; also, the applicant is proposing the demolition of a historic structure to get more space for development. He said he could go ahead with the minor plats as an administrative issue, but would ask for some revisions to the conservation subdivision to better meet the intents of the regulations.

Commissioner Jarboe said he agrees with Commissioner Brown, and was particularly concerned because he feels that the applicant did not do enough for historic preservation on the property. He said he was not sure whether a continuance was warranted.

Commissioner White said he agreed with Commissioners Brown and Jarboe regarding the minor plats, and also about the historic preservation aspects. He said no one seems to know if there are archeological or historical items in the ground on this site. He said he was especially concerned about the promises that had been made to homeowners at the time they purchased their properties and built their homes, which promises are now being changed. He said this proposal could have an impact on the entire community – the Planning Commission is supposed to address the impacts to communities that are not addressed by the technical issues.

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Commissioner Kirchdorfer said he agrees with concerns raised by Commissioner Brown about whether the conservation subdivision guidelines are being met. He also agreed with Commissioner Brown's comments on the minor plats.

Commissioner White discussed some of the citizen testimony heard today regarding promises made by the original developer to current homeowners. He also expressed concerns about the compatibility impacts to the community and the neighborhood that go beyond the technical guidelines of the LDC.

Commissioner Peterson said the homeowners purchased their properties expecting the golf course/land to remain there, and discussed the possibility of the homeowners still purchasing the golf course property. He said he also had concerns about the conservation subdivision. He said he was in favor of a continuance for that.

Commissioner Tomes spoke at length about deed restrictions, the right to subdivide property, and the law and rights according to KRS. He said he would be in favor of continuing this to better examine the LDC and KRS regulations.

Commissioner Proffitt suggested pulling the three plats away from the subdivision request. Mr. Baker discussed some options the Planning Commission could have in these cases. He suggested not separating the three minor plats from the conservation subdivision request as they relate to the issue of the deed restrictions. The Commissioners discussed possible options for action.

Commissioner White said he agreed with Mr. Baker.

Commissioner Tomes said he feels that the three minor plats are a ministerial action; the deed restrictions are a matter for the courts.

The Commissioner discussed the procedures each feels should be taken when deciding and/or voting on these cases.

Commissioner Brown made a motion, seconded by Commissioner Tomes, to approve Case Nos. 19173, 19174, and 19219, based on the staff report and the evidence and testimony presented today, and on the grounds that the applicant met the letter of the law in the Land Development Code; that proper notification

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was provided to the adjoining property owners above and beyond what is required in the Land Development Code.

Commissioner White said he would have no problem approving two of the plats, but not Case No. 19713. He read his justification out of the Bylaws of the Louisville Metro Planning Commission (Purpose). He reiterated that the purpose of the Planning Commission can be to “look past the technicalities”. Mr. Baker said that the Commissioners are obligated to articulate, based on the evidence, why a case does or does not meet the regulations of the Land Development Code that apply to it.

Commissioner Kirchdorfer asked if a previous lot had already been added via minor plat to this subdivision. Mr. Doyle clarified that Case No. 15654, approved in 2011, which created a buildable lot. There was a proposal in 2006, but that was withdrawn.

Commissioner Brown withdrew his motion.

Case No. 13SUBDIV1000

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the **March 20, 2014** Planning Commission public hearing to allow the Commissioners time to review and consider the conservation subdivision regulations in the Land Development Code, and the testimony given, in greater detail.

The vote was as follows:

YES: Commissioners Proffitt, Brown, Tomes, Jarboe, Kirchdorfer, White, and Peterson.

NO: No one.

NOT PRESENT: Commissioners Blake, Turner, and Hughes.

ABSTAINING: No one.

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On a motion by Commissioner Peterson, seconded by Commissioner White, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** these cases to the **March 20, 2014** Planning Commission public hearing to allow the Commissioners time to review and consider the regulations in the Land Development Code, and the testimony given, in greater detail.

The vote was as follows:

YES: Commissioners Proffitt, Tomes, Jarboe, Kirchdorfer, White, and Peterson.

NO: Commissioner Brown.

NOT PRESENT: Commissioners Blake, Turner, and Hughes.

ABSTAINING: No one.

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STANDING COMMITTEE REPORTS

Land Development and Transportation Committee

No report given.

Legal Review Committee

No report given.

Planning Committee

No report given.

Policy and Procedures Committee

No report given

Site Inspection Committee

No report given.

ADJOURNMENT

The meeting adjourned at approximately 4:50 p.m.

Chairman

Division Director