

Neighborhood Meet - 2-21-07

- (1) Sign in -
- (2) Process - application, TRC, LDDT
- (3) pricing discussion

TRC - plastic meet
LDDT -

slots - Dave Sales - Inman 701
Main, Ky, Ill.

140

(1) 15 lots - \$250 up + 500,000+ - will proceed at 5.5M

(2) 8 lots - need to see \$700K+ - 5.6 -
need - proforma - on 8 - layout
Show market then
Help market to that market -

Woodridge floor - 27/30 over
Deploy Screen - 1 Street view -
look at screen @ 1

Marketing -

Rock Clause \rightarrow 150k package 25% 400k



Meeting 6/25/07 6:30

Chris Tabuff

- ① Metro record # - NO #
- ② Road - direct rd -
Landscape buffer = large plants) marks -
- ③ Blotting - rock → identity → rock removal;
- ④ Road → 52 million
- ⑤ - Flood's plan / 5 years / built out

Bye

Bill Hancock -)

① - no symbols of neighborhood.

Nowy -

work well (over lots)

no objection in 1 case -

FAX 425-0561

COMMONWEALTH OF KENTUCKY
NO. 06CI08373

JEFFERSON CIRCUIT COURT
DIVISION SEVEN
JUDGE AUDRA J. ECKERLE
PLAINTIFFS

DAVID and JENNIFER METTS

OPINION AND ORDER

vs.

CITY OF INDIAN HILLS

and

LOUISVILLE METRO PLANNING COMMISSION

DEFENDANTS

This action stands submitted on the motion of Plaintiffs, David and Jennifer Metts, to alter or vacate this Court's January 31, 2008, Opinion and Order. Having carefully considered and thoroughly reviewed the record, the arguments of the parties, and the applicable law, the Court will grant the motion.

OPINION

In 2005, John Conti Realty, LLC (hereinafter "Conti") purchased a 1.7-acre lot located at 5101 Moccasin Court in the City of Indian Hills (hereinafter "Indian Hills"), a fourth-class city and municipal corporation. Conti subsequently sought to divide this lot into two separate lots.

In January 2006, Indian Hills adopted Ordinance 06-01 relating to further division of subdivision lots, which states in relevant part:

No residential property boundary line as shown on a subdivision plat of any area in the city, or as such boundary line may exist as of January 1, 2006 (where the boundary line was heretofore changed) shall be relocated or created so as to create an additional lot or lots.

Because Conti's proposal was in conflict with Ordinance 06-01 and out of deference to Indian Hills, the Louisville Metro Department of Planning and Design Services refused to process Conti's application. Consequently, the Louisville Metro Planning Commission (hereinafter "the Planning Commission") also did not review or decide the request.

On September 21, 2006, Conti filed a Complaint in Jefferson Circuit Court alleging that Ordinance 06-01 was void and should not have been enforced by Indian Hills, the Planning Commission or its supporting staff within the Louisville Metro Department of Planning and Design Services. Conti sought summary judgment and on May 16, 2007, Conti's motion was granted due to Indian Hills' failure to respond.

Indian Hills subsequently requested that this Court set aside its May 16, 2007, Opinion and Order arguing that Conti had sold the property in question prior to the Court's Order. On July 9, 2007, this Court set aside its previous Order and remanded the case to allow the purchasers of the property, David and Jennifer Metts (hereinafter "Plaintiffs"), three months to join the suit. On August 8, 2007, Plaintiffs joined the action.

On September 13, 2007, Plaintiffs submitted a motion for summary judgment. After reviewing that motion and the briefs in opposition thereto, on January 31, 2008, this Court denied the motion. Plaintiffs now seek to alter or vacate that Order arguing that the Court: (1) made a factual error; (2) did not address whether the Ordinance is a subdivision or zoning regulation; and (3) did not consider the decision of the Court of Appeals of Kentucky in Conley v. City of

100.211. By order entered January 31, 2008, the circuit court denied the Metts' motion for summary judgment. The Metts then filed a CR 59 motion to alter, amend, or vacate the January 31, 2008, order. By an April 9, 2008, order, the circuit court granted the CR 59 motion to vacate and concluded that "Ordinance 06-01 is void as it was not enacted in accordance with the requirements set forth in KRS Chapter 100." This appeal follows.

Indian Hills has filed an appellate brief with this Court that is wholly deficient. CR 76.12. The brief neither sets forth a statement of points and authorities nor a specific argument on appeal.² See *Pierson v. Coffey*, 706 S.W.2d 409 (Ky.App. 1985). Upon the latter deficiency, Indian Hills included a section in the brief with a heading titled "Argument." This argument section was comprised of one and one-half pages and included only one citation to legal authority. After reviewing the substantive content of the argument presented therein, we were unable to discern any particular allegation of error raised for our review.

As an intermediate appellate court, we are endowed with general appellate jurisdiction by § 111 of the Kentucky Constitution. Consequently, the Court of Appeals is a court of review; our primary task is to review errors that are

² We note that under Kentucky Rules of Civil Procedure 76.12(4)(f), the requirement of including a statement of points and authorities does not apply to briefs of five pages or less. However, Indian Hills' brief is six pages. Notwithstanding, we cannot discern from Indian Hills' brief what specific errors were made by the trial court below and what authority supports its argument.

alleged to have been made by an inferior court. In so doing, we generally limit our review to issues of error raised by parties. *Treacy v. James*, 274 S.W.2d 46 (Ky. 1954); *Herrick v. Wills*, 333 S.W.2d 275 (Ky. 1960); *Ballard v. King*, 373 S.W.2d 591 (Ky. 1963); *Rainey v. Mills*, 733 S.W.2d 756 (Ky.App. 1987). And, if an appellant fails to raise any allegations of error capable of meaningful discernment, we are bound to affirm the circuit court's decision as "if no brief had been filed." *R.E. Gaddie, Inc. v. Price*, 528 S.W.2d 708, 710 (Ky. 1975); see also, *Grief v. Wood*, 378 S.W.2d 611 (Ky.App. 1964). Indeed, this court is ever cognizant that "[i]t is not our function . . . to research and construct a party's legal arguments[.]" *Hadley v. Citizens Deposit Bank*, 186 S.W.3d 754, 759 (Ky.App. 2005).

Nonetheless, we observe that the circuit court's April 9, 2008, order declaring the ordinance void was a summary judgment. A summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Upon review of the April 8, 2008, order, and the record before this Court, we conclude that no material issue of fact existed and that Ordinance No. 06-01 was violative of KRS Chapter 100 as a matter of law.

In sum, we affirm the circuit court's April 9, 2008, order declaring Ordinance No. 06-01 void.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

NICKELL, JUDGE, CONCURS.

COMBS, CHIEF JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Foster L. Haunz
Louisville, Kentucky

**BRIEF FOR APPELLEES DAVID
METTS AND JENNIFER METTS:**

Clifford H. Ashburner
Louisville, Kentucky

JEFFERSON CIRCUIT COURT
DIVISION NINE
JUDGE JUDITH E. McDONALD-BURKMAN
CASE NO. 10-CI-1537

CITY OF INDIAN HILLS, et al.

PLAINTIFF/APPELLANTS

v.

OPINION AND ORDER

LOUISVILLE METRO PLANNING
COMMISSION, et al.

DEFENDANT/APPELLEES

*** **

This matter comes before the Court on Appellants City of Indian Hills and Lee Cory's Appeal of Appellees' Louisville Metro Planning Commission ("Commission") February 4, 2010 approval of a subdivision plan applied for by G. Murray Turner doing business as Turner-Stoll Property ("Turner"). A hearing was held on July 18, 2011, and the matter is now submitted.

This action involves a proposed subdivision application filed by Turner in early 2007. First-tier adjacent property owners received notice of a Technical Review Committee ("TRC") meeting, held on May 6, 2008. At that meeting, neighbors voiced concerns regarding, inter alia, steep slopes, drainage, compliance with Indian Hills ordinances, sidewalks, and an access road's status as a private road. After the TRC meeting, the application was forwarded to the Land Development & Transportation ("LD&T") Committee. After a 19-month delay due to an unrelated court action challenging Indian Hills' ordinance prohibiting further subdivision, the LD&T Committee reviewed the application on December 10, 2009. At that meeting, opponents argued the TRC did not conclude the application met the regulations. Expert testimony concerning deficiencies in the drainage concept plan and sediment and erosion control plan

was offered. Opponents asked for the plan to be returned to TRC for further review; instead, LD&T forwarded it to the full Planning Commission.

The first public hearing before the Planning Commission was scheduled for January 7, 2010. However, on January 6, 2010 Indian Hills passed Ordinance 10-2, which adopted new provisions of the Land Development Code, making them applicable to any then-pending applications. Because of the recent code change, the Planning Commission's hearing was rescheduled for January 21, 2010. A new report was prepared, which concluded the proposals were compliant, but did indicate a sidewalk waiver was necessary and recommended that waiver be denied. At the January 21st meeting, the opponents offered expert testimony that the drainage plan was inadequate, and they again raised issues related to regulatory compliance. At the end of the testimony both a motion to approve and a motion to deny the sidewalk waiver failed, as there were doubts as to whether Poplar Hill Road was a public or private road. A second hearing before the Planning Commission was scheduled for Feb. 4, 2010.

Prior to the February hearing, a new report was completed, in part concluding the application satisfied the regulations, and a recommendation against the sidewalk waiver was issued. On February 2, 2010, Turner's counsel sent an email to counsel for the Planning Commission regarding the sidewalk waiver issue. Counsel had also prepared a PowerPoint presentation for the February 4th hearing, and forwarded an electronic copy of the presentation to the Commission prior to the hearing. Despite objections by the opponents' counsel, the PowerPoint presentation was permitted at the hearing. The commission did sustain objections to two of the slides, but Plaintiffs allege the Commission members may have already viewed

the excluded slides prior to the hearing. Except for the two excluded slides, the PowerPoint presentation was a summary of the information already in the record. At the conclusion of the February 4th meeting, the Commission voted to approve the subdivision, which constituted final agency action for purposes of this appeal.

In Parrish v. Kentucky Bd. of Med. Licensure, 145 S.W.3d 401 (Ky.App.2004), the Kentucky Supreme Court set forth the standard of review when addressing an administrative agency's decision. Parrish stated:

[T]his statute essentially reiterates the tripartite test for arbitrariness to be applied in all cases of judicial review of an administrative agency's actions set forth in American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, (379 S.W.2d 450, 456 (Ky.1964)). This tripartite test requires us to determine whether the agency exceeded its statutory powers, whether it employed proper procedures to provide adequate due process, and whether there is substantial evidence to support the agency's decision. So long as the Board's findings of fact are supported by substantial evidence, they are binding on the reviewing court, even if there is conflicting evidence in the record. (Urella v. Kentucky Bd. of Med. Licensure, 939 S.W.2d 869, 873 (Ky.1997)).

Parrish, 145 S.W.3d at 408. The fact that the evidence before an agency would allow alternative reasonable decisions does not give a reviewing court the right to substitute its judgment for that of the agency. Oldham Farms Dev., LLC v. Oldham County Plan. and Zoning Commn., 233 S.W.3d 195, 196 (Ky.App.2007).

Appellants allege due process was denied to them in that the entire land development process is biased in favor of developers and against any opponents, in part due to *ex parte* communications between the commission and developers, and that the plan was approved despite the fact it did not comply with the subdivision regulations.

The Commission acknowledges that it has attempted to streamline the development application and approval process. It attempts to reduce the dreaded bureaucratic red tape.

This was for both developers and the general public. Referring to the public as "customers" in the Case Management System's policies and procedures does not erase the fact that the Commission is a governmental agency charged with reviewing land development plans. The use of the word "customer" merely reflects an attempt in recent years to inform the public the agency is there as a service to the taxpayers, and is attempting to provide those services more efficiently than in years past.

Due process requires that the opponents be given a meaningful opportunity to object to the proposed development. The record is fraught with letters from opponents, mailed notices from the Commission to affected residents informing them of scheduled public hearing, records from multiple hearings indicating which neighbors were in attendance, who spoke at the hearing, and the content of their statements. Appellants do not suggest they were not heard, but that the Commission had pre-decided the outcome, so their objections fell on deaf ears. The record reflects the Commission acknowledged the opponents' concerns, and reviewed the subdivision proposal to ensure compliance with the Land Development Code. Due process is not thwarted simply because the opposition was unable to sway the Commission to deny the proposal.

Ex parte communications make administrative agency decisions voidable, not void per se. National-Southwire Aluminum Co. v. Big Rivers Electric Corp., 785 S.W.2d 503, 515 (Ky.App.1990); see also Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority, 685 F.2d 547, 564 (D.C.Cir. 1982). To be improper, the *ex parte* communication must be relevant to the merits of the proceeding, and legitimate procedural and status inquiries are not forbidden. However, even legitimate contacts may be attempts to

influence the outcome. Louisville Gas and Elec. Co. v. ex rel. Cowan, 862 S.W.2d 897, 900 (Ky.App.1993). If an improper *ex parte* contact is made, it will void an agency decision only if the decision was tainted to the point where it was unfair to the innocent party or to the public interest. Id., at 901. To determine the extent of the taint of improper contacts, the Court must analyze (1) if the improper contacts may have influenced the agency's ultimate decision; (2) if the contacting party benefitted from the decision; (3) if the contents of the contact were disclosed; and (4) if vacation and remand would serve a useful purpose. Id., quoting PATCO, 685 F.2d, at 564-65.

The first *ex parte* contact between Turner and the Commission involved an email sent on or about February 2, 2010 to the Commission regarding the sidewalk waiver. In the email, Turner's counsel states the relevant provision for the sidewalk issue was not adopted by Indian Hills, and was therefore not applicable to the proposed project. The Court agrees that mere procedural questions do not necessarily rise to an improper *ex parte* communication. However, it must be pointed out that to argue what law applies is clearly substantive, and not procedural. The contact resulted in the Commission changing its decision on the sidewalk waiver issue, obviously conferring a benefit to Turner. It is unclear when or how Appellants discovered this contact, but it was addressed in an email from Appellant Lee Cory's attorney on February 4, 2010. The email was also placed in the record, as were all *ex parte* contacts, and thereby disclosed. In the email from Mrs. Cory's attorney, he questioned why he was not a recipient of the email when it was sent to the Commission. This request suggests to the Court that it is standard, even if not prudent, for *ex parte* communications to occur between parties and the Commission. While the communication did address a substantive issue and may have influenced

the Commission's decision, any taint involved is harmless as the Commission would have needed to address the applicability of the ordinance in question upon formal objection by Turner. Appellants have not argued whether the ordinance should apply; their only objection is the manner in which Turner brought the issue before the Commission. Vacating the decision and remanding to the Commission on this issue would be fruitless.

The second *ex parte* communication between Turner and the Commission concerns the PowerPoint presentation that was emailed to Commission members prior to the February 2010 public hearing. The presentation was to present the voluminous material in the case in a visually concise manner. The information on all except two slides were based on the file as it stood at the time. Appellant's counsel objected to the presentation before the hearing, but was overruled except for the two improper slides. Appellants argue the entire PowerPoint presentation was an improper *ex parte* contact, and impermissibly tainted the Commission's decision. The presentation was an overview of the evidence for the convenience of the Commission. Two slides that may have been seen prior to the public hearing are not likely to have swayed the Commission to a decision it had been favoring for months as the record reflects. Therefore, this *ex parte* communication was also harmless.

Therefore, after careful consideration of the record, applicable law, and being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Appellants City of Indian Hills and Lee Cory's Appeal and Complaint is **DENIED**.

The Louisville Metro Planning Commission's approval of the proposed subdivision plan is **AFFIRMED**.

Judith McDonald
JUDITH E. McDONALD-BURKMAN, JUDGE
JEFFERSON CIRCUIT COURT

DATE: 8-23-11

Distribution to:

- Hon. Robert W. Griffith
- Hon. Lauran M. Sturm
- Hon. William B. Bardenwerper
- Hon. Nicholas R. Pregliasco
- Hon. Jonathan Baker
- Hon. Theresa Senninger
- Hon. Thomas Fitzgerald

AUG 23 2011
R
CLERK OF COURT

RENDERED: OCTOBER 4, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001738-MR

THE CITY OF INDIAN HILLS
AND LEE CORY

APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 10-CI-001537

LOUISVILLE METRO PLANNING
COMMISSION; G. MURRAY TURNER;
JANET TURNER; AND G. MURRAY
TURNER, D/B/A TURNER-STOLL PROPERTY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, STUMBO AND THOMPSON, JUDGES.

THOMPSON, JUDGE: The City of Indian Hills (City Council) and Lee Cory
appeal from a decision by the Jefferson Circuit Court affirming the administrative
approval of a subdivision plan by the Louisville Metro Planning Commission. The

appellants claim the approval of the subdivision plan was arbitrary and violated their due process rights.

As background, we discuss the respective roles of the Planning Commission and the City within the Louisville Metro area, and the Planning Commission's method for approving subdivisions. Land usage within the City is partially controlled by the Planning Commission, which makes rulings on land development proposals throughout the Louisville Metro area, and partially controlled by the City. The Planning Commission can adopt subdivision regulations in accordance with KRS 100.273 and KRS 100.281. These regulations must conform to its comprehensive plan. Although the City can pass ordinances relating to land development, its ordinances must be consistent with statutes and the Planning Commission's subdivision regulations.

The Planning Commission or its delegate has the power to approve final subdivision plats. KRS 100.281(1). Approval of a subdivision plat is a ministerial act and, therefore, the Planning Commission or its delegate does not exercise any discretion. *Snyder v. Owensboro*, 528 S.W.2d 663, 664 (Ky.App. 1975). If there is compliance with relevant laws and regulations, a subdivision plat must be approved. *Id.* at 664-665; *Wolf Pen Preservation Ass'n, Inc. v. Louisville & Jefferson County Planning Commission*, 942 S.W.2d 310, 311-312 (Ky.App. 1997).

In the Louisville Metro area, the Planning Commission uses the Case Management System for Development Review (case management system) to

streamline the approval of subdivisions. Applications are assigned a case manager and can be approved at hearings before specified committees within the Planning Commission, or may proceed through a series of hearings before different committees with final approval or denial resting with the full Planning Commission.

In 2007, G. Murray Turner, Janet Turner and G. Murray Turner d/b/a Turner-Stoll Property (the Turners) sought to subdivide 10.1 acres of land into twelve residential building lots and two open space lots, to be known as the Poplar Hill Place Subdivision. The Turners submitted an application for a subdivision with a preliminary plan to the Planning Commission.

Case manager Julia Williams was assigned to oversee the proposed Poplar Hill Place Subdivision plan and submitted the proposal to be reviewed by various governmental subdivisions for compliance with their regulations. Revisions were made to the plan based upon various agency concerns.

Affected property owners received notice of the proposed Poplar Hill Place Subdivision and were invited to attend public meetings. Public comment was invited and the Planning Commission received numerous emails and letters opposing the subdivision proposal. The opposition included neighbors such as Cory, a non-practicing attorney, and the City Council, which passed a resolution opposing the project.

The Technical Review Committee (TRC) hearing was scheduled for August 7, 2007, and then rescheduled for May 6, 2008. At the TRC hearing,

additional compliance requirements were raised, including the project's need for a geotechnical report. Many in the opposition testified regarding potential problems with the plan, its failure to conform to the appearance of the neighborhood and desired changes. Unable to reach a consensus, the TRC made no findings and forwarded the proposal to the Land Development and Transportation Committee (LD&T) for a hearing.

The LD&T hearing was scheduled for May 22, 2008, and then rescheduled for December 19, 2009.¹ At the hearing, the LD&T reviewed a staff report concluding that the proposal satisfied the City's current Land Development Code (LDC), except for the request for a sidewalk waiver. Conflicting evidence was offered as to whether Poplar Hill Road was a public road, whether existing drainage plans and the size of a proposed retention basin were sufficient and whether erosion could be properly prevented. At the end of the meeting, the LD&T agreed to continue the hearing to the Planning Commission to discuss only the issues of drainage, steep slopes, erosion control and whether the road was public or private.

Following the LD&T meeting, Williams and the Planning Commission received numerous emails, letters and other contact from the opposition. On December 7, 2009, Charles C. Cash, Jr., the Planning

¹ The delays in both the TRC and LD&T hearings resulted from the Planning Commission waiting for a determination at both the circuit court and appellate court levels as to whether the City's Ordinance 06-01, which prohibited all subdivision of land, was void for failing to comply with KRS Chapter 100. The circuit court determined that the ordinance was void and this decision was affirmed on appeal. *City of Indian Hills v. Metts*, 2008-CA-000891-MR, 2009 WL 3047548 (Ky.App. 2009) (unpublished).

Commission's Director of Planning and Design Services, sent an email to opposition members explaining the Planning Commission believed the subdivision plan complied with all applicable codes. However, Cash explained the opposition could urge the City to adopt the 2006 version of the LDC, which would provide additional limitations on developing environmentally sensitive areas.

On January 6, 2010, the City passed Ordinance 10-02 adopting certain sections of the LDC (2006), which included portions of chapters four, six, seven and ten.² The adopted portions of chapter four concerned development standards for sites containing inactive cemeteries, environmental constraints, steep slopes, waterways and wetlands, and karst, and a table on erosion prevention and sediment control. The adopted portion of chapter six was only part 6.3.4, which concerned the release or modification of private access easements. The adopted portions of chapter seven governed subdivision regulations. The adopted portions of chapter ten concerned tree canopy and landscaping. Ordinance 10-02 stated it was effective for all pending land use applications that had not received a full hearing before the Planning Commission.

Passage of the ordinance resulted in the delay of the scheduled hearing until January 21. During this delay, the Planning Commission staff advised the Turners of additional requirements under the LDC. The Turners promptly complied with these requirements and accordingly adjusted their proposed subdivision plan. The Planning Commission staff prepared a report

² References to the LDC from this point forward will be referring to the portions of the LDC (2006) adopted by the City through Ordinance 10-02.

opining the plan complied with the LDC. It indicated a sidewalk waiver was required to proceed with the plan and recommended the waiver be denied.

At the Planning Commission's January 21, 2010, public hearing on the Poplar Hill Place Subdivision proposal, the Turners again asked that the subdivision plan and sidewalk waiver be approved. The Planning Commission was provided with letters and emails opposing the proposal. Williams reported the project met the requirements for erosion and drainage and all government agencies stated the project was in compliance with their requirements. During this hearing, engineer Greg Eastham testified on behalf of the opposition that the drainage plan was inadequate, not designed to appropriate standards and likely to cause further flooding problems on Blakenbaker Lane. The opposition continued to question whether the proposal complied with the LDC.

After a closed business hearing, the Planning Commission scheduled another hearing for February 4, 2010, on the issue of whether Poplar Hill Road was a private or public road and counsel for both sides were invited to provide their positions on the status of the road. Attorneys for each side submitted detailed memos on this issue on January 28, 2010, which were made part of the record. The memo from the Turners' counsel included relevant documentary evidence from deeds on which the road was mentioned.

On February 2, 2010, the Turners' counsel sent an email to the Jefferson County Attorneys advising the Planning Commission staff, arguing the sidewalk waiver was unnecessary following the adoption of the LDC. By the

following day, two county attorneys specifically agreed with this analysis and forwarded their response to Williams. These emails were made a part of the record. Counsel for the opposition was not copied on the email to the county attorneys, but an email sent by opposition counsel to Turners' counsel indicated they knew and objected to this contact by February 4, 2010.

On February 4, 2010, the day of the hearing, Cory sent an email to Williams requesting certain binding elements be included in the subdivision plans. Williams forwarded this email to the Turners' counsel for a response. The Turners' counsel replied to Williams's email and stated he prepared a set of PowerPoint slides to present at the hearing to demonstrate Poplar Hill Road was a public road. Opposing counsel was not copied on this email.

At the hearing, the Planning Commission received the staff report, heard a summary from Williams, heard the Turners' PowerPoint presentation and testimony from the opponents. The staff report presented to the Planning Commission explained all the technical review issues had been addressed. It explained the Poplar Hill Place Subdivision proposal complied with requirements of the LDC: There were no graveyards, no unstable soils had been identified on the steep slopes, there were no waterways or wetlands found and a karst survey had been conducted and no karst features were found. The staff report opined the subdivision could properly be accessed from Poplar Hill Road. The report accepted Poplar Hill Road was a private road but explained the subdivision parcels had a right to access it. The report also explained the requirement of a sidewalk

Private
Road

waiver was removed after the Turners brought it to the staff's attention because the adopted portions of the LDC did not have a sidewalk requirement.

At the hearing, the opposition's counsel objected to the inclusion of the Turners' PowerPoint slides in the record, arguing the case management system provided for closure of the case file prior to the public meeting. After a vigorous discussion, the Planning Commission passed a resolution allowing all evidence to be considered. The presentation proceeded but, according to the appellants, the Planning Commission sustained the objections to two of the slides, which contained an affidavit from one of the Turners regarding the public status of the road. The remaining slides were derived from evidence in the case file as attachments to the Turners' January 28, 2010, memo.

The Turners' presentation provided evidence the subdivision could properly access Poplar Hill Road whether it was a public or private road. The Turners relied on language contained in various plats that Poplar Hill Road was a "right of way" and "dedicated" to support their contention the road was public. Alternatively, the Turners argued even if the road was private, the subdivided properties had a right to use Poplar Hill Road because a 1968 rededication deed allowed all parcels to be subdivided and have access to the road.

Members of the opposition testified they believed the road was private. They testified the City did not maintain Poplar Hill Road and they collectively paid for maintenance of the road.

At a closed business session, the Planning Commission found the proposed Poplar Hill Place Subdivision met the requirements of the subdivision regulations and the LDC and determined the proposed subdivision had legal access to Poplar Hill Road. It then approved the subdivision plan subject to certain conditions.

The appellants filed an appeal pursuant to KRS 100.347(2) in the Jefferson Circuit Court alleging their due process rights were violated by the Planning Commission's approval of the subdivision plan. The court upheld the Planning Commission's decision, determining its decision was not arbitrary and the parties received appropriate due process. This appeal followed.

We review the administrative action of the Planning Commission for arbitrariness and can only reverse its decision if the Planning Commission acted beyond its statutory authority, failed to provide due process or made factual findings not supported by the evidence. *American Beauty Homes v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450, 456-457 (Ky. 1964). "At its core, arbitrariness review is concerned primarily with the product of legislative or administrative action, and not with the motive or method which produced it." *Hilltop Basic Resources, Inc., v. County of Boone*, 180 S.W.3d 464, 469 (Ky. 2005) (internal quotation and brackets omitted).

Agency decisions are considered reasonable and not arbitrary if they are supported by substantial evidence. *American Beauty Homes*, 379 S.W.2d at 456-457. We do not review commission decisions *de novo* and will not substitute

our judgment for that of a commission even if the facts could support alternative reasonable decisions. *Oldham Farms Development, LLC v. Oldham County Planning and Zoning Commission*, 233 S.W.3d 195, 196 (Ky.App. 2007).

We review questions of law *de novo*. *Keogh v. Woodford County Board of Adjustments*, 243 S.W.3d 369, 372 (Ky.App. 2007). However, when there is room for alternative interpretations, either because a statute is ambiguous or silent on an issue, we give deference to an administrative agency's interpretation of the statutes and regulations it is charged with implementing and will not conclude that its interpretation is unreasonable or unlawful. *Commonwealth, ex rel. Stumbo v. Kentucky Public Service Comm'n*, 243 S.W.3d 374, 380 (Ky.App. 2007).

The appellants' first argument is their due process rights were violated because the Planning Commission's approval resulted from *ex parte* contacts which were inappropriate because it was serving a quasi judicial function. The appellants claim two *ex parte* contacts occurred: (1) the email in which counsel for the Turners argued that the sidewalk waiver did not apply; and (2) the PowerPoint presentation on whether there was appropriate access to Poplar Hill Road.

The claim of inappropriate *ex parte* contacts resulting in a potential loss of impartiality of the deciding body is viewed differently if it occurs in an administrative context rather than in a court of law. In the administrative context, quasi adjudicatory determinations are governed by an informal concept of impartiality, which allows the merging of the investigatory and adjudicative roles.

Hilltop Basic Resources, Inc., 180 S.W.3d at 468. “[T]he rule in Kentucky is that . . . *ex parte* contacts make administrative agencies’ decisions voidable, not void *per se*.” *Louisville Gas and Elec. Co. v. Commonwealth, ex rel. Cowan*, 862 S.W.2d 897, 900 (Ky.App. 1993).

If an improper *ex parte* contact has been made, it will void an agency decision where the decision was tainted so as to make it unfair either to the innocent party or to the public interest the agency is supposed to protect. The question of whether a decision has been tainted requires analysis of whether the improper contacts may have influenced the agency’s ultimate decision; whether the contacting party benefitted from the decision; whether the contents of the contact were disclosed; and whether vacation and remand would serve a useful purpose.

Id. at 901 (internal citation omitted).

When we apply this analysis to the email contact regarding the sidewalk waiver, it is evident this contact influenced the Planning Commission’s staff report and ultimate decision. It caused the Planning Commission to realize it had been applying the previous LDC to this matter, rather than the current LDC. Therefore, what had been a discretionary matter under the prior LDC, became a ministerial matter under the current LDC because no sidewalks were required.

This change in the Planning Commission’s perception of what law applied resulted in a benefit to the Turners. However, we do not believe the Planning Commission’s decision should be vacated. The contents of the contact were disclosed and opposing counsel had the opportunity to respond but failed to do so. The appellants do not claim the law required a sidewalk waiver before the plan

could be approved. Remanding on this issue would serve no purpose because the ultimate result would remain the same.

The record does not support the appellants' claim that the PowerPoint presentation constituted *ex parte* contact. The appellants argue the Planning Commission received copies of the presentation prior to the hearing but do not reference any record support for this assertion. While an *ex parte* email by Turners' counsel referred to the presentation, the print-out of that email does not show the email had any attachments and the email also fails to state the PowerPoint presentation was attached. A written copy of the presentation in the record has a handwritten notation it was received at the hearing. We determine no *ex parte* contact occurred regarding the PowerPoint presentation. However, if such contact occurred, it would be harmless error because the evidence contained in the presentation was already part of the record.

The appellants' second argument is the Planning Commission's administrative process was flawed because the TRC failed to make factual findings and LD&T failed to resolve technical issues as required by the LDC and the Planning Commission's own rules. The appellants assert such a failure requires a new administrative proceeding. We disagree.

The process for approving proposed subdivisions is not as rigid as the appellants suggest. The Planning Commission is responsible for approving subdivisions, but can either exercise this authority directly or delegate it. KRS 100.277(2); KRS 100.282(1); *Snyder*, 528 S.W.2d at 644. The rules governing the

Planning Commission simply provide certain authorization to the TRC and LD&T to take enumerated actions, but do not require them to exercise such delegated power. Any decision ultimately rests with the Planning Commission. *See* LDC 7.2.20 (D) (2006); Bylaws, Louisville Metro Planning Commission, Article III (C), (E), (F) and (G) and Article VII §1(A)(1)(d) and §2(A)(4); Policies, Louisville Metro Planning Commission, 4.07.01; Case Management System for Developmental Review (2006).

The appellants' third argument is that the Planning Commission failed to close the case file prior to the February 4, 2010, public meeting as required by the case management system and, therefore, the evidence presented in the PowerPoint presentation at the public hearing should have been excluded. The appellants misinterpret both the scope and reach of the case management system.

The Planning Commission must follow its own policy that “[a]ll evidence should be presented at the public hearing. No new or additional evidence may be received into the record after the conclusion of the public hearing.” Policies, Louisville Metro Planning Commission, 7.11. It is not required to follow the case management system adopted by the Louisville Metro Planning and Design Services Department and not by the Planning Commission. To the extent these rules may conflict, the Planning Commission must follow its own policies. However, we do not see any true conflict.

The case management system states as follows:

Case File Complete / Closed

Prior to a public meeting, the case file will be closed. No additional materials should be added to the case file once this occurs. The purpose for this is to ensure that all interested parties have an opportunity to review the complete case file prior to the meeting. All materials that any interested party wishes to be included in a distribution to the committee, board or commission must be in the file and in the appropriate quantity (if not reproducible in a standard photocopy size).

The closing of the case file prior to a public hearing only governs the inclusion of evidence in the case file and does not prohibit new evidence from being presented at a public hearing. The purpose of closing the file is to allow everyone the opportunity to view and respond to material presented to the Planning Commission. If the material is presented at the hearing, other parties will have an opportunity to respond. Excluding any evidence not already in the case file from being presented at the hearing would defeat the purpose of having a public hearing. Additionally, the appellants had appropriate access to the evidence presented during the PowerPoint presentation, which was already available in the case file.

The appellants' fourth argument is the case management system deprived them of a meaningful opportunity to be heard because the public cannot provide comments until the staff has already decided a project is code compliant and submitted its report, resulting in the arbitrary approval of the subdivision plan. We disagree.

The Planning Commission is authorized to use its staff to conduct a preliminary investigation of an application and such use does not violate due process so long as the staff report produced from such investigation "is composed

of competent evidence, all interested parties are given an opportunity to study and respond to the report, and the party preparing the report is available for examination[.]” *Warren County Citizens for Managed Growth, Inc. v. Board of Commissioners of Bowling Green*, 207 S.W.3d 7, 18 (Ky.App. 2006). There is no due process requirement that staff consult with the public outside the invited public comment and hearing process prior to writing reports.

All evidence indicates the staff reports resulted from a proper investigation of the proposal. Additionally, the staff reports were repeatedly revised and adjusted based upon new information, revisions to the proposal and the passage of Ordinance 10-02. At each hearing, the current staff report was available to all parties, they had an opportunity to respond to it and Williams was available for examination. The opposition received all process due.

The appellants fail to provide any support for their implicit contention that the investigatory phase of subdivision approval must be dealt with in a purely adversarial manner. The appellants were given notice and an opportunity to be heard throughout the entire process and voiced their concerns with vigor.

The appellants’ final argument is the Planning Commission’s decision failed to satisfy the LDC’s standards for steep slopes and failed to release private access easements. We disagree.

There is nothing improper about addressing the steep slope requirements by requiring a geotechnical report for review prior to construction plan approval and submitting a plan for mitigation in accordance with the

geotechnical report. This provision addresses the LDC 4.7.5 requirement of minimum disturbance of steep slopes. The LDC does not mandate a reduction in the number of structures allowable under relevant zoning provisions in order to better protect steep slopes from disturbance.

We also defer to the Planning Commission's determination that the subdivision had appropriate access and interpretation that LDC 6.3.4 was inapplicable. The Planning Commission's decision that the subdivision had appropriate access was supported by substantial evidence. *Oldham Farms Development, LLC. v. Oldham County Planning and Zoning Commission*, 233 S.W.3d 195, 196 (Ky.App. 2007). While the Planning Commission did not specify if appropriate access existed because Poplar Hill Road was public or because the private access easement allowed access by subdivision properties, the appellants did not challenge the Planning Commission's failure to make a factual finding on the status of the road. Regardless of the exact basis of the Planning Commission's finding of access, there was substantial evidence to support access whether the road was public or private.

If the road was public, LDC 6.3.4, the provision requiring the release of private access easements would be inapplicable because no release of private easements would be required for a public road. *See City of Louisville v. Louisville Scrap Material Co., Inc.*, 932 S.W.2d 352, 356 (Ky. 1996) (determining evidence was sufficient to establish that a road had been dedicated as a public right of way because it had been used in an open and unrestricted manner by the public for at

least five years and formal acceptance of the dedication by the city was not required under KRS 82.400(3)).

If the road was private, the Planning Commission's interpretation that the LDC did not apply is entitled to deference. LDC 6.3.4(A) provides for the release of easements created by documents or plats approved by the Planning Commission before a private road can provide access to a subdivision. However, all evidence showed Poplar Hill Road was created prior to the existence of the Planning Commission. Therefore, the staff report's conclusion that no release was needed because the easement was specifically excluded from LDC 6.3.4 is a reasonable interpretation of the ordinance. Because LDC 6.3.4 did not apply, each parcel had access to the Poplar Hill Road based on the deed giving the original parcel access for itself and future subdivisions. Accordingly, approval of the plan was not arbitrary.

We determine due process was afforded the appellants at every stage of the administrative process. The appellants received the fair consideration required prior to the approval of a ministerial matter: "notice, a hearing, sufficient opportunity to present their case, cross-examine the opponents, and opportunity to rebut the opponents' arguments and findings of fact." *Houghham v. Lexington-Fayette Urban County Government*, 29, S.W.3d 370, 373 (Ky.App. 1999). No further process is due.

Accordingly, we affirm the Jefferson Circuit Court's decision upholding the Planning Commission's approval of the Poplar Hill Place Subdivision.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Robert W. Griffith
Louisville, Kentucky

Thomas FitzGerald
Frankfort, Kentucky

BRIEF FOR APPELLEE,
LOUISVILLE METRO PLANNING
COMMISSION:

Jonathan Baker
John G. Carroll
Louisville, Kentucky

BRIEF FOR APPELLEES, G.
MURRAY TURNER;
JANET TURNER; AND G.
MURRAY TURNER D/B/A
TURNER-STOLL PROPERTY:

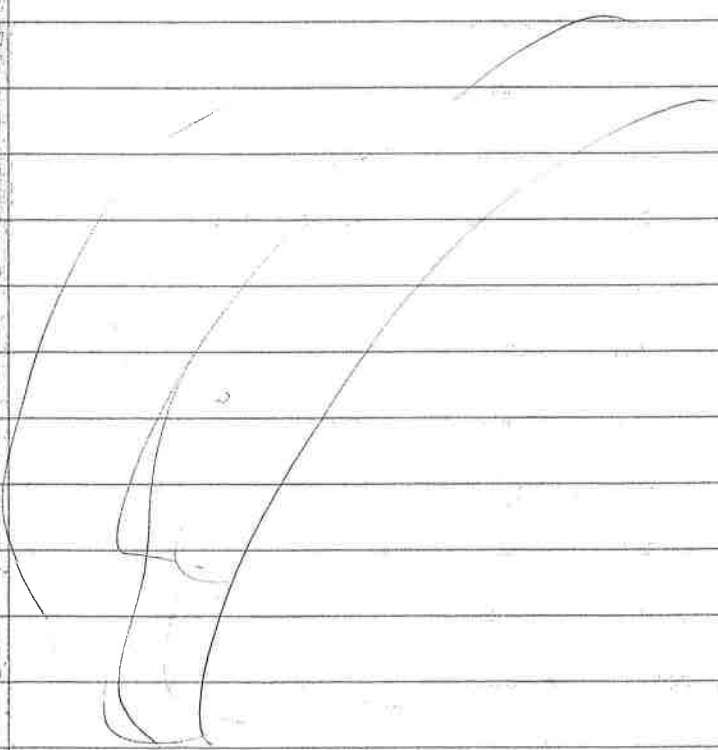
William B. Bardenwerper
Nicholas R. Pregliasco
Louisville, Kentucky

Robbie

Pre Hearing Conference 1/24/11 11:00 AM

Phil/John Connell - County atty office / Bob - Goffitt / Zulony
(Bill B. not present) MCH P.

Bob Goffitt -
Scale back - Drug possession



G. Murray Turner

From: Herrington, Ken III <Ken.Herrington@morganstanley.com>
Sent: Wednesday, October 04, 2017 10:01 AM
To: G. Murray Turner
Subject: FW: Blasting to start on Turner's property

Hi Butch,

I thought that I would share my response to Barbie Tafel about the planned blasting, and my opinion regarding the community opposition.

Good luck.

Ken

From: Herrington, Ken III (Wealth Mgmt MS)
Sent: Tuesday, October 03, 2017 11:16 PM
To: Barbara Tafel
Cc: Chris & Becky LeBoeuf; David Durik; Merritt & Judy Marcus; Kathy Herrington; BB & Roopa Balkbor
Subject: Re: Blasting to start on Turner's property

Barbie,

I find this email so humorous as I have never met nor have ever spoken with Ms. Cory. I live within 100 ft of the property line to Butch Turner's property here at Grove Hill Place and somewhere across Blankenbaker Lane where Ms. Cory reportedly resides. And yes, we do have "fine antiquities" in our residence, but we are not concerned.

I am compelled to add that I personally hold Ms Cory and her ignorant organization, that I forget the name of, and her backers, for us taxpayers in paying many millions more in the much delayed East End Bridge project that should have been approved years ago.

The "historic house" next door to ours that is described and visible from my back porch is a joke and is an eye sore. It has been vacant for the last five years that we have lived here, and many more years prior to our arrival except for the reported raccoons.

Who are these out of touch "snowflake" people that back Ms. Cory who have no idea of reality, and who are they trying to impress?

A very wealthy friend of mine, who could buy this property for cash, looked at this vacant house a couple of years ago said that it would take about \$2M to bring this house to standard and walked away. So who wants to buy this tear down? A buyer would have to be ignorant and extremely wealthy... it will become an ugly monument that will eventually crumble unless wasteful money chases this unproductive and useless structure.

Last year, we had our residence here on Grove Hill thoroughly inspected prior to any demo work that was planned so we are OK with this planned demo work, and do not have a problem. We really want this ugly house on the hill to simply disappear!

I must also add that, as you know, I am an historic colonial period hobbyist and serve on the board of directors of Historic Locust Grove that is located on the other side of our Association property.

Additionally, my family settled here in Kentucky prior to 1775 and paid the price in blood so if this house was "historic" I would have made that very clear in our meetings. This house is definitely not historic, but instead, in my opinion, a ruse by a desperate legal attempt that I find overtly humorous.

I am also compelled to ask, Is this an intellectual attempt to demonstrate or obfuscate authority? Kind of reminds me of an educated privileged 60's child that wants to impress her Community with her power and intellect, but fails to see the big picture. Who are the foolish people who are caught up in this story and why?

Additionally, other than the noise, and the additional deer in our neighborhood that are looking for a new home, this has not really been a problem.

Our Grove Hill Association will get through this. We just hope that the new housing and new neighbors are worthy of our great Community.

Hopefully this will assist you. You or your friends may call me with any questions or comments.

Please also note that these are my personal comments and I do not represent our Grove Hill Place Community.

You may share my comments and this information.

Respectfully,
Ken

Kenneth F. Herrington III

From: "Barbara Tafel" <barbie.tafel@gmail.com>
Date: Tuesday, October 3, 2017 at 5:38:27 PM
To: "Carol Ely" <ely@locustgrove.org>, "Mary Hancock" <ham2325@twc.com>, "Merritt Marcus" <m.marcus@twc.com>, "Herrington, Ken III (Wealth Mgmt MS)" <Ken.Herrington@morganstanley.com>
Subject: Fwd: Blasting to start on Turner's property

I thought that you would like to know about the blasting tomorrow and have forwarded this email. Have they contacted you to advise you ?

Barbie

Barbie Tafel
Kentucky Select Properties
502-552-3259
barbie.tafel@gmail.com

G. Murray Turner

From: Chris LeBoeuf <Chris@dauenhauerplumbing.com>
Sent: Wednesday, October 04, 2017 7:45 AM
To: barbie.tafel@gmail.com
Cc: Herrington, Ken III
Subject: FW: Blasting to start on Turner's property

Barbie:

Thanks Ken for the detailed letter concerning the old house on the Turner property.

I agree with Ken! This "historic" house is in reality a house that has no historical value and is actually a danger to our community (Locust Grove Community Association). I have personally experienced the abundance of raccoons that reside in that house and personally believe that restoration would cost well beyond what anyone would pay for a house that has no historical past or value. I live less than 30ft from Turner's property and I am very pleased with the progress of the new subdivision and I see no evidence or reason to keep the old structure on top of the hill. Please support the removal of the old structure on the top of the hill!

I would only suggest that the raccoons and other animals that have taken up residence in this house be removed by a professional and transported to an area where they will not be a hazard or nuisance to the neighborhood.

Please represent the community and help us make this new development a beautiful and safe addition to our homes.

Thank you, Chris LeBoeuf

Chris LeBoeuf

Dauenhauer Plumbing

Cell: 502-773-4450

Direct: 502-657-1919

Fax: 502-657-1920

From: Herrington, Ken III [mailto:Ken.Herrington@morganstanley.com]
Sent: Tuesday, October 03, 2017 11:16 PM
To: Barbara Tafel
Cc: Chris LeBoeuf; David Durik; Merritt & Judy Marcus; Kathy Herrington; BB & Roopa Balkbor
Subject: Re: Blasting to start on Turner's property

Barbie,

I find this email so humorous as I have never met nor have ever spoken with Ms. Cory. I live within 100 ft of the property line to Butch Turner's property here at Grove Hill Place and somewhere across Blankenbaker Lane where Ms. Cory reportedly resides. And yes, we do have "fine antiquities" in our residence, but we are not concerned.

I am compelled to add that I personally hold Ms Cory and her ignorant organization, that I forget the name of, and her backers, for us taxpayers in paying many millions more in the much delayed East End Bridge project that should have been approved years ago.

The "historic house" next door to ours that is described and visible from my back porch is a joke and is an eye sore. It has been vacant for the last five years that we have lived here, and many more years prior to our arrival except for the reported raccoons.

To: Tony Steier

Mon, Jul 17, 3:55 PM

Butch

I received a message
from Lee Cory today
I will forward it to you
Thanks

12312560195

Hi Tony this is Lee Corey
calling on Monday
morning. Tim Winters
asked me to let you and
Butch know that he
would be willing to
donate his design
services which as you
know are outstanding to
anyone who would be
interested in restoring the

To: Tony Steier

know are outstanding to
anyone who would be
interested in restoring the
more house on Butch's
property. If you have any
questions about that give
me a call or give Tim a
call if you have any
interest but I think that's
a

17047059044

Long msg Call MBOX
Voice Writer service

Got it- that sounds great-
since you know him how
about reaching out to him
before Thursday- see if
he will confirm that and
we can go from there

Mon, Jul 17, 5:18 PM

I will call him in the
morning. Thanks

Tue, Jul 18, 4:22 PM

Tony, I just want to clarify
a couple of things. First,
I'll will get the ball rolling
to facilitate a meeting
between Butch Turner

To: Tony Steier

Tue, Jul 18, 4:22 PM

Tony, I just want to clarify a couple of things. First, I'll will get the ball rolling to facilitate a meeting between Butch Turner and Tim Winters. Second, I will have to discuss Butch's request for another continuance with the other petitioners. As you and I discussed before, when we refused to drop the case, there is no reason to delay landmarking the house. However, there are some who would push to drop the landmark case, if Turner would reduce the

To: Tony Steier

another continuance with the other petitioners. As you and I discussed before, when we refused to drop the case, there is no reason to delay landmarking the house. However, there are some who would push to drop the landmark case, if Turner would reduce the number of houses to be built.
If you want to discuss further, call me.

GENERAL EPSC NOTES

1. Install stone bag inlet protection and filter fabric inlet protection as soon as possible after drainage structures have been installed. Stone bag curb inlet protection to be installed after curb is poured.
2. Install reinforced silt fence behind curb after curb is poured.
3. Slopes to be roughened by method of tracking once topsoil has been removed.
4. Topsoil stockpile shall be seeded and strawed for stabilization with silt fence downstream of stockpile.
5. Contractor to remove sediment from temporary sediment basin when sediment reaches marked elevation of the clean out stake at 456.0.
6. All other structures are to be cleaned once deposited sediment reaches 1/3 the height of the structure
7. Contractor is responsible for removal of dirt from vehicles leaving the site.
8. Erosion and Sediment Controls are to be inspected every seven calendar days and after every storm event that equals or exceeds 1/2 inch of precipitation.
9. All pipes are to be flushed once site has been stabilized.
10. After final stabilization, all erosion and sediment control measures are to be removed.

EROSION PREVENTION AND SEDIMENT CONTROL NOTES:

1. The approved Erosion Prevention and Sediment Control (EPSC) plan shall be implemented prior to any land-disturbing activity on the construction site. any modifications to the approved EPSC plan must be reviewed and approved by MSD's private development review office. EPSC bmp's shall be installed per the plan and MSD standard.
2. Detention basins, if applicable, shall be constructed first and shall perform as sediment basins during construction until the contributing drainage areas are seeded and stabilized.
3. Actions must be taken to minimize the tracking of mud and soil from construction areas onto public roadways.
4. Soil tracked onto the roadway shall be removed daily. Soil stockpiles shall be located away from streams, ponds, swales and catch basins. Stockpiles shall be seeded, mulched, and adequately contained through use of Silt Fence.
5. All stream crossings must utilize low-water crossing structures per MSD standard drawing ER-02.
6. Where construction or land disturbance activity will or has temporarily ceased on any portion of a site, Temporary site stabilization measures shall be required as soon as practicable, but no later than 14 calendar days after the activity has ceased.
7. Sediment-Laden groundwater encountered during trenching, boring or other excavation activities shall be pumped to a sediment trapping device prior to being discharged into a stream, pond, swale or catch basin.

POPLAR HILL PLACE

PRELIMINARY SUBDIVISION PLAN

ADDRESSES:
 INBAKER LANE
 E, KY 40207
 220, LOT 22
 4, PG. 242

DEVELOPER:
 TURNER-STOLL PROPERTY
 440 SOUTH SEVENTH ST
 SUITE 300
 Louisville, Ky 40203

PREPARED BY:
 LAND DESIGN & DEVELOPMENT, INC.
 503 WASHBURN AVENUE, SUITE 101
 LOUISVILLE, KENTUCKY 40222
 PHONE: (502) 426-9374
 FAX: (502) 426-9375

R HILL ROAD
 E, KY 40207
 220, LOT 6
 7, PG. 806

OWNERS:
 MURRAY G. & JANET TURNER
 10 POPLAR HILL ROAD
 Louisville, Ky 40207

RECEIVED

JAN 19 2010

JOB: 06175
 WM# 9675

COUNCIL DISTRICT - 16
 FIRE PROTECTION DISTRICT - HARRODS CREEK PLANNING
 DESIGN SERVICES DATE: 5/18/07
 CASE NO.: 9243

000668

DETENTION BASIN CALCULATIONS (REVISED FOR SCS METHOD)

DETENTION
(ORIGINAL)

EQUATIONS:

$$Q = \frac{(P - I_a)^2}{(P - I_a) + S} \quad I_a = 0.2S \quad S = \frac{1000}{CN} - 10$$

Q = RUNOFF, in CN = CURVE NUMBER

P = PRECIPITATION, 4.5 in (FOR 100 YR STORM)

VOL = LAND AREA x Q LAND AREA = 9.3 ac.

	CN	Q (in)	VOL (ac-ft)
EXISTING	73	1.90	1.47
PROPOSED	83	2.73	2.11

VOLUME REQUIRED = VOL_p - VOL_x = 2.11 - 1.47 = 0.64 ac-ft

VOLUME PROVIDED = 0.70 ac-ft (AT 100 YR STORAGE ELEV.)

APPROXIMATELY 10% ADDITIONAL STORAGE VOLUME PROVIDED

X = ΔCRA/12

ΔC = 0.50 - 0.

A = 10.0 AC

R = 2.8 INCH

X = (0.15)(10)

REQUIRED X

PROVIDED B

TOTAL =

=

Basin Volume Calculations

Elev	Area (ac)	Inc. Vol (ac ft)	Total Vol (ac ft)
453	0		
454	0.08	0.027	0.03
456	0.12	0.199	0.23
458	0.17	0.289	0.51
459	0.20	0.185	0.70
460	0.23	0.215	0.91

APPROVED

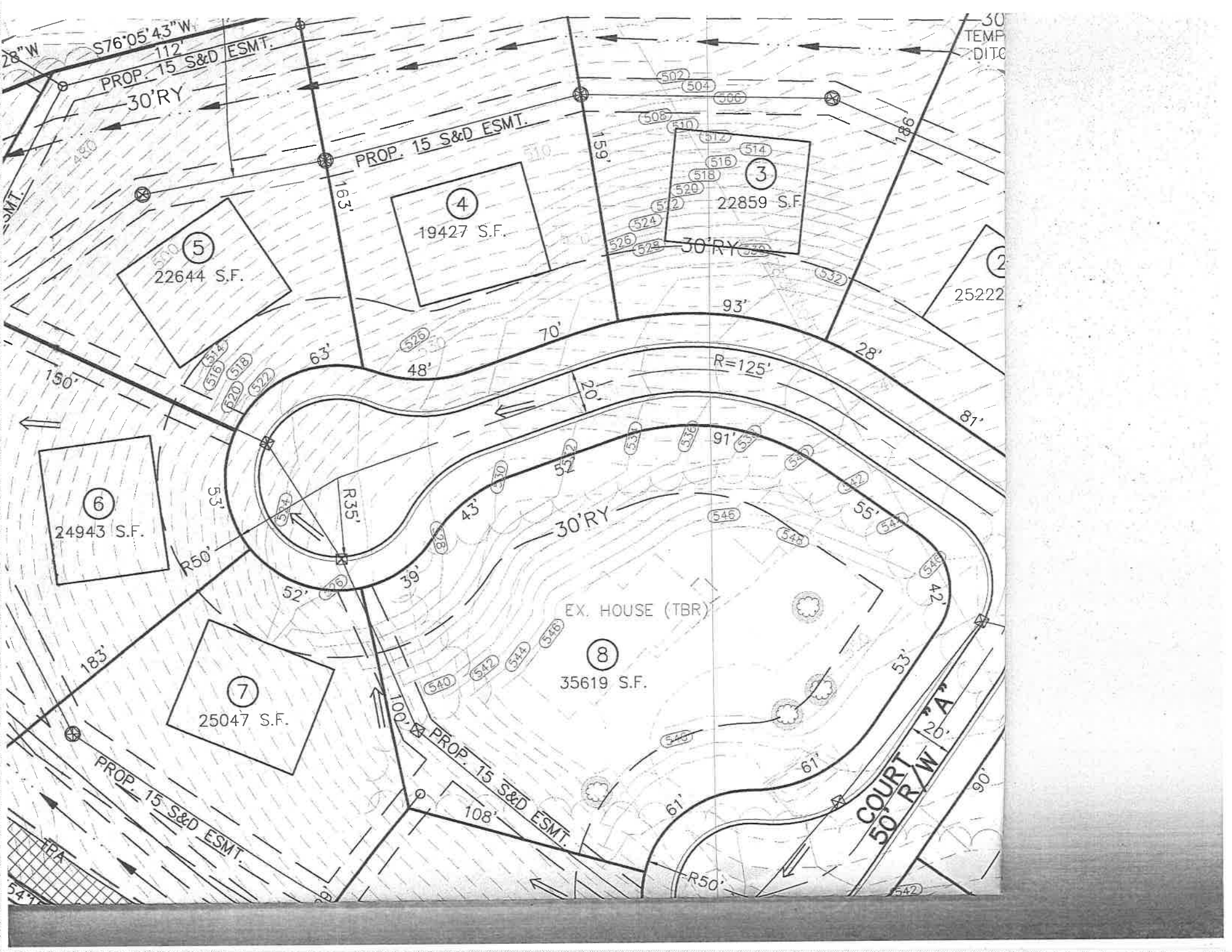
Louisville Metro Planning Commission

1. Scott Miller 02/10/10
Louisville Metro Public Works date
2. P. Bauer 2/10/10
Metropolitan Sewer District date
3. James Miller 2/10/10
Louisville Metro Planning & Design Services date
4. Alison Lawrence for 2/10/10
Louisville Metro Planning Commission date

Checked if conditional approval.
See back of plan for conditions of approval. PIPE SYSTEM

Expiration date 2/24/14

N/R-4
Paul A Lichtefeld
& Karen A Lichtefeld
908 S 8th Street Ste 102
D.B. 6244, PG. 0340



30
TEMP
DITC

28" W
S76°05'43" W
112'
PROP. 15 S&D ESMT.
30' RY

PROP. 15 S&D ESMT.

4
19427 S.F.

3
22859 S.F.

5
22644 S.F.

2
25222

6
24943 S.F.

7
25047 S.F.

EX. HOUSE (TBR)
8
35619 S.F.

PROP. 15 S&D ESMT.

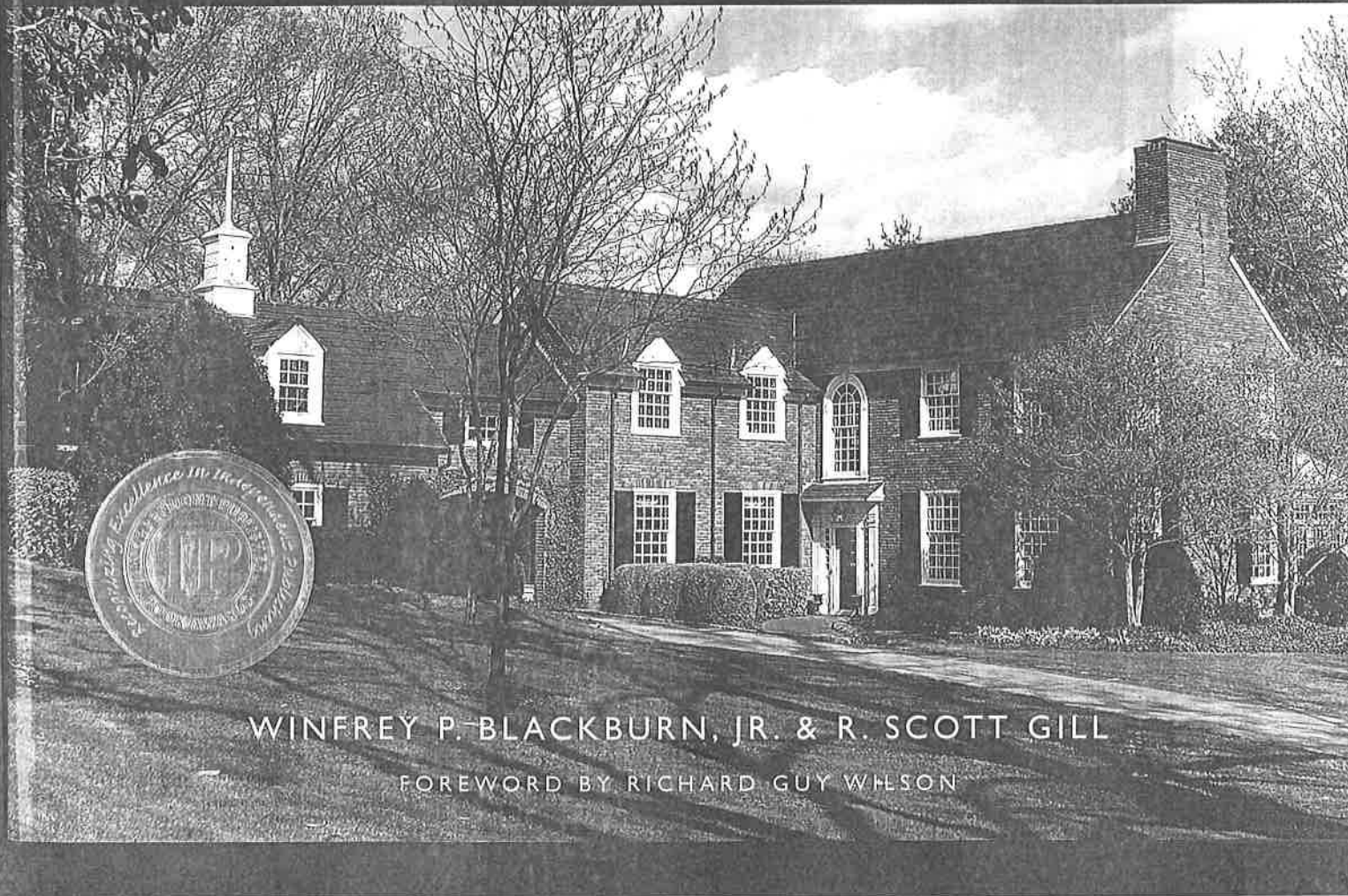
PROP. 15 S&D ESMT.

COURT
50' R/W "A"

TPA
547



KENTUCKY HOUSES
of
STRATTON HAMMON



WINFREY P. BLACKBURN, JR. & R. SCOTT GILL
FOREWORD BY RICHARD GUY WILSON

1949



Harriet Grundy
1650 Bradfordville Road
Lebanon, Kentucky
(Photo by Jay Grundy)

Dr. & Mrs. Carl F. Gobert
107 Beall Avenue
Bardstown, Kentucky

1950



Mr. & Mrs. John Wrege, Sr.
4567 South Skyline
Floyds Knobs, Indiana
(Hammon sketch courtesy private collection)



Mr. & Mrs. Frank K. Noojin
3300 Holmes Avenue, NW
Huntsville, Alabama
(Hammon sketch courtesy The Filson Historical Society)



Mr. & Mrs. George Ellis, Jr.
115 Douglas Drive
Glasgow, Kentucky

Mr. & Mrs. George Olmstead
2109 Eleanor Avenue
Louisville, Kentucky

Mr. & Mrs. Stratton O. Hammon
31 River Hill Circle
Louisville, Kentucky
(See also pages 180 to 185.)

1951



Mr. & Mrs. Laurence H. Byrne
4 Overbrook Road
Louisville, Kentucky



Mr. & Mrs. R.H. Burdette
205 Norris Court
Glasgow, Kentucky

1952

Mr. & Mrs. William E. Barth
2328 Cross Hill Road
Louisville, Kentucky

1953



Dr. & Mrs. Mason Pope
1419 Lexington Road
Richmond, Kentucky



Mr. & Mrs. Charles H.R. Lyon
8 Woodhill Road
Louisville, Kentucky
(Photo by Martin Crane)



Mr. & Mrs. Stratton O. Hammon
30 River Hill Circle
Louisville, Kentucky

Mr. & Mrs. Preston P. Joyes, Sr.
10 Woodhill Road
Louisville, Kentucky
(See also pages 186 to 188.)