

**CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
MINUTES OF THE APRIL 13, 2010 MEETING**

MEMBERS PRESENT:

Mr. Larry Barrow
Mr. Tony Pfeffer
Ms. Kay Wright
Mr. Robert Huck, TPO
Ms. Cindy Minter, Vice-Chair
Ms. Debbie Blake, Chairperson

MEMBERS ABSENT:

Mr. Justin Verst
Mr. Michael Williams

STAFF PRESENT:

Mr. Ryan Hutchinson, Planner
Ms. Molly McEvoy Boh, Legal Counsel
Ms. Stephanie Turner, Secretary

Ms. Blake called the meeting to order at 7:02 PM. Ms. Blake asked for a roll call. Following roll call, a quorum was found to be present.

Ms. Blake asked if everyone had reviewed the March 9, 2010 meeting minutes and asked if there were any additions or corrections. Ms. Minter asked that page 5, 4th full paragraph, last sentence be corrected. It currently reads: "There will be no disruption of the community by this division." Ms. Minter advised that the Commission made no such determination and requested that it be corrected to read: "It is the opinion of Mr. Schaeffer that there will be no disruption of the community by this division." Ms. Blake asked that page 4, last paragraph, last sentence on the page be reviewed. She wanted to know if the Commission understood that sentence. The Commission members stated that sentence was correct. Ms. Blake asked that page 5, 1st full paragraph, final sentence be reviewed. It currently reads: "Both explained that the position of Staff and gave them information on how to proceed with their application to the Commission." She stated it did not read properly. Ms. Turner advised the word "that" be removed to correct that statement. The Commission agreed with that assessment. Ms. Blake asked if there were any other comments or corrections. There being none, Ms. Blake called for a motion. Ms. Minter made a motion to approve the March 9th meeting minutes as corrected. Mr. Barrow seconded the motion. A roll call vote found Mr. Barrow, Mr. Huck and Ms. Minter in favor of the motion. Mr. Pfeffer, Ms. Wright and Ms. Blake abstained. Motion passed.

Ms. Blake asked Mr. Hutchinson what business was being presented before the Commission. Mr. Hutchinson asked that case #67-10-PPL-01, Humphreys-Verst Subdivision be untabled and reviewed by the Commission. Ms. Minter made a motion to bring case #67-10-PPL-01 off the table to be reviewed by the Commission. Mr. Huck seconded the motion. A roll call vote found Mr. Barrow, Mr. Pfeffer, Ms. Wright, Mr. Huck and Ms. Minter in favor of the motion. Ms. Blake abstained. Motion passed.

Ms. Blake introduced case #67-10-PPL-01, Humphreys-Verst Subdivision to the Planning Commission and asked Mr. Hutchinson to give the staff report and staff's recommendation to the Commission.

SUBDIVISION: 67-10-PPL-01 Humphreys-Verst Subdivision
APPLICANT: Justin D. Verst
LOCATION: A 7.07-acre area near the intersection of Weaver & Walden Lane, Unincorporated Campbell County.
REQUEST: To approve a Preliminary Plat consisting of four (4) lots, one (1) land addition and remainder tract, with no public improvements.

Considerations:

1. The 2008 Campbell County Comprehensive Plan Update designates the site for low density single family residential and Physically Restrictive Development Area (PRDA). The Campbell County Zoning Ordinance classifies the plat within the R-1C Zone, a single family zone, with central sewage system. Requiring a minimum lot size of 12,500 sq ft, lot widths of 70 feet, minimum front yard setback dimension of 35 feet, side yards of 7 feet (one side) and 20 feet (total both sides), and a minimum rear yard depth of 25 feet, not including flag lots and/or mobile home lots.

Flag lots shall only be used in those locations where due to geometric, topographic and other physical features; it would be impractical to extend a publicly dedicated street to serve lots located in said areas. Flag lots shall be located no further than 250 feet from the right-of-way. The minimum lot area and setback requirements for flag lots shall be two and one-half (2 ½) times the requirements for residential zones.

2. Review of the Preliminary Plat in accordance with the Comprehensive Plan, Zoning Ordinance and Subdivision Regulations results in the following issues:
 - a) The plat indicates a proposal to subdivide a 6.81-acre area for the creation of four lots, one land addition and remainder tract, with no public improvements.
 - b) The plat proposes Lot 3 is to be a land addition of 0.13 acres to 1 Walden Lane.
 - c) The plat proposes 1B (1.59 ac) & 1C (1.31 ac) are to be flag lots. Each of the flag lots has 25 feet of road frontage.
 - d) The plat indicates a house, an outbuilding (shed), septic system and a barn on lot #2 (1.03 ac).
 - e) The total road frontage of all four divisions is 283 feet. Four buildable lots could be divided and meet the minimum requirements with 283 feet of road frontage.
 - f) The remainder tract has approximately 980 feet of road frontage along Weaver Lane, a local road.
 - g) The plat notation indicates a 25 foot R-O-W to be dedicated fronting Weaver Lane.
 - h) The plat does not indicate any ingress/egress easements for the lots.
 - i) The plat indicates the site is not within the 100 year floodplain.

- j) The plat properly indicates contours at five foot intervals as required per the Campbell County Subdivision Regulations.
- k) County records indicate centralized sanitary sewers and water are available for this area.
- l) The plat indicates a portion of tract that is to be a land addition to 1 Walden Lane is within Cold Spring City limits.

Recommendation:

To deny the Preliminary Plat for the Humphreys - Verst Subdivision.

Bases for Recommendation:

The proposed subdivision is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and Zoning Ordinance, except as noted below:

1. CAMPBELL COUNTY SUBDIVISION REGULATIONS SECTION 6.6 A, states:
 “Flag lots shall only be used in those locations where due to geometric, topographic and other physical features; it would be impractical to extend a publicly dedicated street to serve lots located in said areas.”
 - A. *The immediate areas where the four lots are being proposed have 283+ feet of road frontage. Four 70 foot lots can be divided into 283 feet giving each lot the minimum amount of road frontage required for the R-1C Zone*
 - B. *The remaining tract has approximately 980 feet of road frontage. Lot 1B and Lot 1C could be reconfigured along this portion of Winters Lane such that these two lots would have the required 70 feet of required frontage.*
- 2 The proposed division is partially located within the City Limits of Cold Spring. The applicant must prove to Campbell County that they have met all Cold Spring P&Z requirements.

Additional Information:

The City of Cold Spring was contacted about the submitted preliminary plat and asked to provide comments.

Mr. Hutchinson added that, just prior to the meeting tonight, Mr. Verst supplied him with a copy of verification from the City of Cold Spring that his entire property was annexed into the Unincorporated Campbell County. This means the Applicant will not have to go before the City of Cold Spring Planning & Zoning Commission for any type of approval.

Ms. Blake asked which lot was the established house setting on. Mr. Hutchinson stated the home, barn, smokehouse and septic system were all located on lot 2.

Ms. Blake asked the Commission if they had any questions on the staff report. Ms. Minter asked for clarification from Mr. Hutchinson that item #2 listed under “Bases for Recommendation” is no longer relevant. Mr. Hutchinson replied that was correct. Ms. Minter asked about the picture in the presentation that shows the lot numbers as being different from the drawing sent in the packets received by the Commission members. Mr. Hutchinson stated that the original preliminary plat was revised by the Applicant, but that he did not change the presentation he had

prepared. Ms. Blake advised Mr. Hutchinson that she felt the little legend he placed in the lower right hand corner of his presentation slides showing where he stood when the photos were taken was an extremely helpful tool that allowed the Commission to get a better understanding of the site conditions. Mr. Hutchinson stated he would continue to do that in future presentations if it so pleased the Commission.

Ms. Minter asked if the presentation could be taken to the slide showing the buildings located on lot 2. Mr. Hutchinson went first to the topo slide explaining that the portion of the lot with the little gray lines further apart represents the flatter portion of the land. When the lines are close together, there is steeper terrain. Mr. Hutchinson took the photo to the individual pictures of the house, barn and smokehouse. Ms. Minter asked that he go to the slide that show the overall layout of lot 2 and where these features were on the lot. Mr. Hutchinson moved to that slide. Ms. Minter asked that Mr. Hutchinson point out the outline of the remainder parcel. Mr. Hutchinson complied. Ms. Minter asked if they were given an incorrect drawing in their packets as the drawing she had in front of her did not reflect the full remainder parcel. Mr. Hutchinson reviewed her drawing stated that the drawing she had is the correct drawing. It is not required to show the entire remainder parcel on a subdivision plat. The only concern of Staff is to confirm that the remainder parcel would still meet the requirements for a conforming lot.

Mr. Huck asked if the existing barn is going to remain on lot 1C. Mr. Hutchinson stated that the existing barn will remain; however, it is located on lot 2. All structures were on lot 2. Per the Zoning Ordinance, if the barn was platted to be on lot 1C, it would have to be removed. You can only have an accessory structure in the R-1C Zone if you have a primary residence on site.

Mr. Pfeffer asked if the recommendation to not have a flag lot meant that Staff's desire is to see lots 1B and 1C to be expanded to show 70 feet of road frontage. Mr. Hutchinson confirmed that would allow the lots to be recorded without having flag lots. Mr. Pfeffer continued that this would reduce the size of lot 2 and that would be one acceptable way to reconfigure the lots to meet current zoning regulations. Mr. Hutchinson confirmed that was correct. Each lot only requires 70 feet of road frontage in the R-1C Zone. Staff only recommends flag lots be approved in areas where there is geometric, topographic and other physical feature making it impractical to extend a publically dedicated street or otherwise unable to divide their property. Mr. Pfeffer asked that Staff does not consider the features of this lot as being applicable in this case. Mr. Hutchinson stated that was correct. The Applicant could obtain easements for their septic system allowing them to actually divide the lots differently. They have 940 feet of road frontage. There shouldn't be a reason for the Applicant to need a flag lot. They also have the ability to swing lot 1C to come off of Weavers Lane to obtain the needed 70 feet of road frontage. Mr. Pfeffer asked if the septic system on lot 2 was potentially located on another lot with an easement. Mr. Hutchinson stated that was correct. Mr. Pfeffer asked what if the owner of lot 1B wanted to place a driveway or road over the area where the septic system was located. Would that be an issue? Mr. Hutchinson stated they would stipulate in the easement for the septic system that no road or driveway would be permitted over the septic system area.

Mr. Barrow asked who owned lot 2. Mr. Hutchinson stated that all of the land was owned by Mr. Humphreys with Mr. Verst being the applicant. Mr. Barrow asked that if the Applicant took the easement for lot 1C and went to Weavers Lane and made it 70 feet wide, it would eliminate the need for that flag lot. Mr. Hutchinson stated it would not be an easement; it would be actual road frontage of 70 feet and would therefore qualify it as a legally conforming lot and not a flag lot. Mr. Barrow asked if there would be 155 feet between the driveways. Mr. Hutchinson stated that is correct that if lot 1C was to hug the side

of lot 2 and meet Weavers Lane and be 70 feet wide, it would be legally conforming lot not a flag lot and would have 155 feet until the next lot. They are only required to have 70 feet between driveways in this zone.

Ms. Blake asked if there were any additional questions of Staff. There being none, Ms. Blake asked the Applicant to come forward, state their name and address and their association to the case. Applicant stepped forward and identified himself as:

Mr. Justin D. Verst
1 Walden Lane
Cold Spring, KY 41076
Co-Applicant

Mr. Verst reminded the Commission that they were on the February agenda and were snowed out that night. They had made several changes to the plat that they originally submitted due to concerns expressed by Staff. Originally, there were 3 flag lots to be approved. They removed a portion of lot 3 and made it a land addition to Mr. Verst's adjacent lot. Lot 1A was widened to 70 feet to eliminate a flag lot. Originally, there was only 50 feet at the back of the proposed lots and it was revised to allow for 70 feet there as well. Mr. Verst has worked to meet Staff's recommendations, but 2 flag lots remain on the plat for their approval.

Mr. Verst was accompanied by his father-in-law, Dr. Wallace Humphrey, who is the owner of the property at this time. Dr. Humphrey was a Biology Professor at Thomas More College for 40 years. He is very concerned about conservation, ecology and wildlife preservation. Due to Dr. Humphrey's hearing loss, Mr. Verst would be speaking on his behalf. Mr. Verst provided some history of the area in question as being the childhood home of the owner, Dr. Humphreys. He was born and raised in the house on lot 2. Growing up, his family used the smokehouse and barn located on the lot. Dr. Humphreys turned 83 last week and currently resides in his home to the west of the lots reflected in the drawings.

Dr. Humphrey has five daughters. Mr. Verst married one of his daughters and lives directly adjacent to the proposed lots. He has a daughter currently living in the house on lot 2 and two other daughters living adjacent to their property and directly across the road from them, as well as a sister living across the road from him. This is more like a family compound for Dr. Humphrey. He wants to keep the land in the family and as undisturbed as possible. The family often camp in the area behind the lots on the remainder parcel. It is combination hayfield/campground now. Mr. Verst has spoken with Dr. Humphrey about purchasing the land so that he could continue with Dr. Humphrey's desires to maintain and conserve the area.

Per Mr. Verst, instead of a development plan, this is more of an anti-development plan. Their goal is to divide the land in a way that would conserve the areas of interest to the family and provide lots for potential heirs should Dr. Humphrey pass away. The Applicants want to do this now so that they can prevent any disagreements among the five daughters that may result in the parcel being sold to a land developer. Their fear is that the parcel would be sold off and then divided into a larger number of lots that would intrude on the family conservation efforts and privacy.

Mr. Verst commented that this plat is very similar to the case that was heard during the March 2010 meeting. It also contained flag lots with issues pertaining to a private drive. Mr. Verst encouraged the Commission to approve this plat as well despite Staff's recommendation for denial.

Mr. Verst distributed a handout to assist in rebutting some issues that was presented by Staff. A copy is attached to the meeting minutes. Ms. Minter stated that the Commission likes to receive materials prior to the meeting so that they have an opportunity to review them properly. She asked Mr. Hutchinson to, in future, encourage all applicants to submit their information to Staff so that it can be mailed with their meeting packets. Mr. Verst stated that Mr. Hutchinson had no knowledge of his intention to distribute any information to the Commission. Mr. Hutchinson advised Applicant and Commission that this handout would be made part of the record.

From Mr. Verst's handout, he first addressed Staff's suggestion that they just divided the land into 4 lots that were 70 feet wide. This would cut the lots up in a manner that would cause the barn, smokehouse and/or septic system to be on different lots. If they are not on the same lot, they would be required to remove them from the premises as they are considered accessory structures and there is no primary residence on those other lots. This would defeat the family desire to preserve their history. Mr. Verst explained that Dr. Humphrey's goal is to provide two of his daughters with 1 acre lots, one of those lots being lot 2. The barn and smokehouse are used by the family and are of historical value to the family. They don't want to tear them down or move them. In order to include these items with the house on lot 2, they had to measure out 155 feet to contain them on one lot.

Mr. Verst next addressed Staff's suggestion that the lots 1B and 1C be reconfigured to have the required 70 feet of road frontage by coming off of Weaver's Lane. This solution is unacceptable to the Applicant because of the grading issues, it would require that they clear trees that they are trying to preserve, and the driveway would have to cross a creek. The manner in which they are laid out right now is on top of the ridge and a more economical and ecological value. The second issue with this suggestion is that it would involve land that is not in the process of being purchased by Mr. Verst. It was also mentioned that, if the family desired to subdivide that portion of the remainder property fronting Weaver's Lane, these lots would hamper any potential layout for that area. The suggestion that the Applicant cut a 70 foot wide strip to border the easterly perimeter of lot 2 and front Weaver's Lane would also be an issue. This would create a lot that is most unusual and contrary to other lots in the nearby community.

Mr. Verst addressed why it was impractical to extend a public street. By trying to force a public street up on the ridge, the house, barn, smokehouse and septic system would be destroyed. If they tried to put a street along the side of the ridge, they would be destroying treed areas they are trying to save at this point. A public street would destroy the wooded areas for the detention pond and road. By Mr. Verst's calculations, they would need 375 feet minimum for the street and the water main costing over \$100,000 dollars making it unaffordable for the family. Campbell County would be impacted because they would be forced to maintain a public street that serves only the immediate family users without any addition to the tax base. The public street would force a higher density rate than the family is seeking to justify the cost. Weaver's

Lane itself would be impacted because it is a narrow road and might not be capable of handling that type of increase in usage.

Mr. Verst concluded that the Subdivision Regulations stated that it must be impractical to extend the public street. It does not specify that the extension must be due to geometric or topographical. The cost alone would meet the requirements to prove the street was impractical to extend. Mr. Verst asked the Commission to approve the plat for the reasons he listed.

Ms. Blake asked if the Commission had any questions of the Applicant. Ms. Minter asked Legal Counsel to clarify Mr. Verst reference to the case presented to the Commission in March 2010. Ms. McEvoy Boh stated that each case presented to the Commission is a case-by-case situation for review and consideration. There is no blanket policy requiring the Commission to approve the plat. This is a separate case and has different issues addressing it. Mr. Verst stated that he had reviewed the agenda and minutes of the previous meeting and felt the cases are very similar. Ms. Minter stated, in her opinion, this plat was very different situation than the case previously heard by the Commission.

Ms. Minter asked the Applicant why this subdivision plat was being prepared if their intention was to preserve the area. Mr. Verst replied that there were two previous out-sales from the original parcel. Once the third out-sale was proposed for lot 2, it was required to be submitted following the Subdivision Plat. Lots 1A, 1B and 1C were divided off for future family members who may want to build there. Mr. Verst does not anticipate any development to occur for the next 10-15 years. Ms. Minter asked why those three specific lots were not left as one parcel since there is no immediate need for them. Mr. Verst stated the reasoning was because they had to submit a subdivision plat and they did not desire any more than three additional sites in that area.

Ms. Minter asked what their primary objection was for extending the public street. Mr. Verst replied it was due to cost. There would only be three lots serviced by this proposed public street which would not justify a \$100,000 cost. Ms. Blake asked why they would not seek to extend Walden Lane instead of Weaver's Lane. Mr. Verst replied that Weaver's Lane was the road that fronted the property. Walden Lane is a private, gravel drive that pulls off of Weaver's Lane.

Ms. Minter made a comment about the topographical issues the site faced. In her opinion, the site looks relatively flat along the road frontage. Mr. Verst replied that the flat portion of the ridge is not wide enough to support a public street. Ms. Minter commented that she understands and applauds the family's efforts to conserve as much natural habitat as possible, but is struggling with the design of the lot layout. Mr. Pfeffer added that he also is concerned with the layout. Ms. Minter stated, if the lots are being divided for conservation, it appears there should be a different type of layout. She is also concerned about lot 1A because it isn't a flag lot because it is 70 feet wide, but you have to go back so far to find a buildable spot because of the slope at the beginning. It appears you would be going along a steep hill to get to a potential home site. Mr. Verst commented that the point he is trying to make is why force a public road when our Zoning Ordinance permits flag lots. The houses are going to be in the same area. People have to submit plans with lots with a stem. They are family so they're going to put in one long gravel driveway and just let each the sites pull off that driveway. You want to keep it

private from family. You don't want to make it public. Ms. Minter stated she is not stating it must be a public road. She continued that she just didn't understand why they are doing this on a subdivision plat. Mr. Verst stated again because it was a requirement that the out sale of lot 2 must occur on a Subdivision Plat since the owner previously had two out sales already.

Ms. McEvoy Boh added that just because these lots have road frontage, it appears Mr. Verst is stating that these lots will probably have a private easement agreement between the owners of lots 1A, 1B and 1C to share the use and maintenance of this proposed shared driveway. This would be a private issue that would not be regulated by the Commission. Mr. Verst stated that is exactly what he was intending. Ms. Minter asked Ms. McEvoy Boh if this would need to be placed as a condition to their approval if they were so inclined to approve the plan. Ms. McEvoy Boh stated that would not be necessary. The Commission is reviewing and approving the plan before them. Each of the lots has access to road frontage the right to have individual driveways upon the Commission's approval of the plan. She stated she didn't know if they had the authorization for a curb cut access, but that is a different issue. Mr. Hutchinson stated that this is a local road. If they were fronting an arterial or collector road, there are spacing requirements. There is no spacing requirement for local roads. Each owner could have curb cut access. Ms. McEvoy stated this means each lot could have their own driveway. Mr. Verst is stating that they intend to share a driveway, but that is what he is saying to you today. Next week, they could have a falling out and need individual driveways and that would be fine. They are allowed to have them. You can understand his logic to having a shared driveway, but if you approve it, it means you are approving that he could potentially have those driveways there.

Mr. Pfeffer asked for a clarification from Ms. McEvoy Boh. If they do not have a shared driveway, we could potentially see four driveways there. Ms. McEvoy Boh stated that was correct. Mr. Pfeffer continued that two of those driveways would be on the 25 feet stems. If Mr. Verst tried to push those stems to 70 feet, they would detract from the frontage for lot 2 and preserving the 155 foot lot 2 appears to be Mr. Verst's driving force. Ms. McEvoy Boh stated that appeared correct. Mr. Verst agreed. Mr. Pfeffer continued that, if one of the lots were sold to someone other than a family member, they may want their own driveway. We, as a Commission, are debating whether we would prefer a private driveway or a public street. Mr. Hutchinson corrected Mr. Pfeffer stating we are not debating a private driveway versus a public street. The debate is the flag lot issue. Do you really need two lots with 25 feet stems or 70 foot lots to meet the minimum requirement allowed in the Zoning Ordinance for this zone? The road is just an alternative design option.

Mr. Hutchinson stated that Mr. Verst has obviously well thought out the design and arguments. There are items that Staff acknowledges are a concern for you such as preserving the smokehouse and the barn. The septic system could be located on another lot and just place an easement to protect lot 2's use of it. Mr. Hutchinson thought there was a sewer access in front of lot 2. Mr. Verst replied that the sewer access was on the corner of Walden Lane. Lot 2 has a septic system they use. The sewer is available across the street from these lots. Lots 1A, 1B and 1C would also use septic systems. Mr. Hutchinson stated that the overall design is Staff's concern. It's not rather or not you can have four lots. It's just their layout. Mr. Verst replied that the family's desire to keep lot 2 intact is the real issue with getting 70 foot lots. Mr. Hutchinson stated that you could make lot 1C 70 feet wide by pulling it to the east off Walden

Lane. Mr. Verst stated that would mean the road would have to cross a creek. Mr. Hutchinson rebutted that it was already stated a private gravel drive would be place on site for all three lots to access. Mr. Verst is in control of the property which means he could install the private drive with easements in place to protect lot 1C usage of the private drive. This would eliminate another flag lot.

Ms. Blake asked if there were any other questions for the Applicant. There being none, Ms. Blake advised the Applicant he could be seated and opened the floor for discussion among the Commission. Ms. Minter stated that she appreciates Mr. Verst intentions and purpose, but she is concerned with the potential of these sites to get sewer access since it is so close versus another septic system. By allowing septic systems on these sites, is the Commission potentially hampering the movement of the sanitary sewage system? She also feels that lot 1B could be widened to 70 feet and just allow an easement for the septic system for lot 2's use. Mr. Verst stated that the septic system and the barn are in the same line. By placing the septic system on another lot, you would be interfering with the barn's placement as well. Mr. Pfeffer added he sees Ms. Minter's point of view, but doesn't see an answer that will allow the old farmhouse and the accessory structures to remain on one lot. There isn't an easy answer for the family. Ms. Minter stated that is true and, looking at this from a historical perspective, the smokehouse becomes an issue.

Ms. Blake stated she commends Dr. Humphrey's intentions, but is there any possibility to redesign the lot layout. Ms. Minter stated that she isn't convinced they have an option that would allow them to do that. Mr. Pfeffer asked Staff what the disadvantage of having flag lots from Staff's perspective. Mr. Hutchinson stated that you had a safety issue for police and fire to respond to sites in a timely manner should an emergency arise on a flag lot. From a land design perspective, you will have neighbors who have ambiguous lot lines. If they don't know where the true lot lines are, you are setting up for disputes among neighbors especially with shared driveways. Land designers like to see right angle lines in the lots. Prior to Mr. Hutchinson's employment, the County asked for regulations to be put in place regarding flag lots for safety issues. It is for this reason there are regulations in the Subdivision Regulations for flag lots. Staff does not feel that these lot lines are appropriate for this subdivision. They have enough road frontage to be able to make divisions that would not require flag lots being used. Ms. McEvoy Boh stated that despite the concerns stated the Subdivision Regulations allow flag lots if you can determine there are very specific "geometric, topographic and other physical features; it would be impractical to extend a publicly dedicated street" in place that the Applicant is stating make the flag lot practical and necessary. The Commission is the fact finders for this specific case to insure that these conditions exist on site to allow the flag lots.

Ms. Wright asked if the barn was located on lot 1C. Mr. Hutchinson stated that the barn was located on the back portion of lot 2. The dashed line is actually showing the flag lot width. Ms. Minter pointed out on Ms. Wright's drawing the correct lot line for lot 2. Mr. Hutchinson stated that it is only in the A-1 Zone that you can have a barn without a principal structure. These lots are in the R-1C Zone.

Ms. Minter asked if the terms of their options are to approve or deny. Can we suggest to the Applicant that they go back and consider alternative designs? Ms. McEvoy Boh stated you can

approve or deny and give specific information on why the plan was denied so that the Applicant can consider adjusting and refilling a new plan or to address in the appeal. It's either approve or deny. Mr. Hutchinson stated that the Commission could always ask the Applicant if he had a desire to alter the plan to accommodate their concerns and allowing the Applicant to request the case be tabled. They could submit a new plan for review by Staff and then presented to the Commission at a later date. This is entirely the Applicant's decision to do so. If the Applicant feels this is the best plan they have, the Commission can deny the request allowing the Applicant to appeal their decision. Mr. Verst began to speak out, but Ms. Blake reminded him that this was a discussion issue among the Commission.

Ms. Wright asked Staff about the septic system for lot 2 if it would force lot 1B to remain a flag lot. Mr. Hutchinson replied that they could get an easement for the septic system if it were forced onto another lot, but the septic system could be used as justification for the allowance of lot 1B as a flag lot if the Commission so desired. Mr. Barrow asked Staff for confirmation that lots 1B and 1C are the flag lots, but lot 1A is not a flag lot. There is lot 2 which is 155 feet wide sitting between the potential driveways for lots 1B and 1C. Mr. Hutchinson replied that was correct. The lot width requirement for this zone is 70 feet and lot 1A meets this requirement. Lots 1B and 1C do not and are therefore considered flag lots. The location of the driveways really doesn't concern us because there is no space requirement for this zone. Since there are no easements reflected on the drawing, we have to assume each lot will have their own driveway.

Ms. McEvoy Boh stated that what you are approving is what is on the paper. If they do a private easement, it would not come back before the Commission. That is a private issue between the homeowners and does not involve the Commission. Mr. Hutchinson stated in Staff's review of the plan that there were no easements reflected on the plan. Ms. McEvoy Boh again stated if they did an easement it would not come back before the Commission. Mr. Hutchinson stated they had the option to make that a condition should the plan be approved and have them placed on the final plat. If you do approve, Staff would recommend that you place the condition on that the easements would need to be shown on the final plat. There are no conditions currently because Staff is recommending denial. Without the easements clearly identified on the plat, it leaves the future open to disagreements between neighbors. Ms. McEvoy Boh added that if there is an issue in the future and it is the result of a private easement, the Commission and Staff cannot support either side as it would be purely legal issue between the neighbors. If it is clearly reflected on the approved plat, the issue is avoided in the legal system, because the easements are clearly reflected. It is not an issue of the Commission if neighbors are fighting. It is in the general well being of the community if the Commission can head off as many of these potential issues as possible.

Ms. Minter re-asked her previous question of if the Commission can make the easement a condition to approval of the final plat. Ms. McEvoy Boh stated it would again be an issue that the Applicant would have to agree to do or the condition is useless. Ms. Minter asked Ms. Blake for authorization for the Applicant to address the question of reflecting the easements on the final plat. Ms. Blake agreed. Mr. Verst stated that he has already addressed as many concerns of Staff as he could on this plan being submitted for approval. It is clear in his opinion that the flag lots are essential and necessary. Since the family does not intend to build upon the lots in the near future, they would prefer not placing any easements on the final plat. If they do a shared

driveway, they will prepare the necessary legal documents and record them with the County Clerk's office and provide a copy to Staff at that time if it is the desire of the Commission. Ms. McEvoy Boh asked Mr. Hutchinson if that is something Staff monitors. Do they review private easements prior to recording? Mr. Hutchinson replied that it was not normal for Staff to review a private easement prior to recording. That is why it is important to reflect these on the plats, it may not be exact, but it is approximate.

Mr. Hutchinson stated that the issue at hand is if the area is flat enough to extend a public street. It is so that makes the need for flag lots unnecessary and unjustified. Are there concerns on the property owner's part for the accessory structures on lot 2? Yes. Can those concerns be remedied without the use of flag lots? Yes. Your perspective is to mesh all the information you have before into a decision that is right and fair in this case.

Ms. Minter asked Ms. Blake for authorization for the Applicant to provide feedback on the Commission's discussion. Ms. Blake agreed. Mr. Verst restated that he revised his plan already to address as many concerns of Staff as possible. They removed one of the flag lots. They would revise again, but he doesn't feel like that is an option for him. He must keep lot 2 as outlined to keep the accessory structure with the principal residence. They need to maintain at least 1 acre of land for lot 2 due to septic system regulations. It is currently down to 1.03 acres. They cannot take any land from the proposed lot 2 to remove the flag lot status of either lots 1B or 1C. If there were a way to remove those flag lots, he would have done it. He has worked with Staff in past in his capacity as County Attorney and he looks forward to working with them in the future. Every corner will be pinned. Any easements necessary will be recorded. He doesn't know how else to incorporate Staff's suggestions.

Ms. Minter stated that with lot 2 having the septic system and needing at least 1 acre is a concern of the Applicant. She understands he feels the easements would be premature to be on the final plat. Mr. Barrow agreed with Ms. Minter and stated he understands Mr. Verst's concern with placing the easements on the final plat. As long as the future easements are recorded by the County Clerk, he has no issue approving the plat as is. Ms. McEvoy Boh asked the question of when the easements should be required to be filed. Ms. Minter stated it probably be before they could build. Mr. Hutchinson stated that the next step is the final plat. The Commission has three options immediately available. First, the Commission can state they want the preliminary plat resubmitted with the easements; second, that the easements must be on the final plat; or last that the easement be resubmitted to the Commission 5-10 years down the road. Ms. McEvoy Boh reminded the Commission that even though an easement is on the plat it does not mean they must make use of it. They can each still have an individual driveway.

Mr. Pfeffer stated that he keeps trying to justify what is being presented. Staff is recommending that there could be some improvement to the geometric shaping of the lots possibly. When you start looking at what changes need to occur to rectify the geometric shape of the lots, does it improve the overall plan or make matters worse? Mr. Pfeffer stated he does not really see any improvement. There aren't any topographical issues on site that Mr. Pfeffer sees that would support the need for a flag lot. However, it is when you get to the "other physical features" part that allows Mr. Pfeffer to justify the approval of the plat. The need to maintain 1 acre for lot 2 with the smokehouse and barn on site thereby requiring 155 feet of road frontage be dedicated to

lot 2 is a physical feature in his mind. Ms. Minter asked if she understood what he was saying correctly. The need to maintain 1 acre for lot 2 for the septic system is a feature. The potential historical nature of the smokehouse, because they are not historical judges to make the determination absolute, is also a qualifying feature. Mr. Pfeffer stated that was correct. Ms. Minter asked Ms. McEvoy Boh if that would be considered sufficient justification for approval of the plat. Ms. McEvoy Boh stated that would be enough. She stated you could also state that the geometric shape is affected because of these same features as well as the act of conservation could be a feature. Ms. Minter asked if there was a need for an easement for a shared driveway prior to issuance of any building permits should be considered at this time. Mr. Hutchinson stated that as Staff he would recommend you not make the condition as private easements are not normally presented to Staff for review as it would be extremely difficult to track that. Either require it be present on the final plat or don't do it at all. When they submit their request for a building permit, the inspector is not going to go back to this case to confirm if an easement is a requirement. Ms. Minter stated that the condition should be that the easement be on the final plat. Mr. Verst stated that the issue with that is that the final plat will be submitted within the next 2 weeks. If they are not building for 10-15 years, they don't even know where to place the easement. As part of the financial review process in obtaining a loan to build, the bank will require proof of access. They would have to present a recorded easement to the bank. There is no possibility, in Mr. Verst's opinion, that the easement would be legally recognized and recorded. Therefore, it is unnecessary to require it be present on the final plat. Ms. Minter stated she understands his point of view, but she has seen several situations where the family is getting along now, but years down the road are in conflict and begin issues with access to property where no easement was recorded. Ms. Blake agreed. Mr. Verst stated it would not be an issue because it would be in writing and it would be recorded. Mr. Barrow stated that what they have on paper before them is solid and whatever they do years down the road in a private agreement doesn't affect the Commission. They each have access to the local road should they desire it. Mr. Pfeffer agreed. If an easement needs to be established, there are options to allow the recording the easement at a future date. There is no reason to force the easement at this time. Ms. McEvoy Boh stated that was correct. They each have individual access to the road. If they determine that it is logical to save cost and share a driveway that is their right and does not involve the Commission and the County. Neither does the Commission or County want to be involved in these types of private issues. She recognized from Staff's perspective, it is better to have these issues addressed at this time if needed, but this does not appear to apply to this situation.

Ms. Blake asked for a motion, Ms. Minter made a motion to approve case #67-10-PPL-01, Humphrey-Verst Subdivision Plat. She noted that the flag lots should be approved based upon information submitted that a finding that due to geometric, topographic and other physical features exist on this site that justifies flag lots. She noted that the need to maintain 1 acre for lot 2 for the septic system requirements as a geometric and physical feature, as well as the potential historical nature of the smokehouse. Ms. Minter noted that item #2 listed under the Bases for the Recommendation in the Staff report does not apply. She cited the following as her findings of fact and basis for the motion: the proposed subdivision is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and Zoning Ordinance. Mr. Barrow seconded the motion. A roll call vote found

Mr. Barrow, Mr. Pfeffer, Ms. Wright, Mr. Huck and Ms. Minter in favor of the motion. Ms. Blake abstained. Motion passed.

There being no other items before the Commission, Ms. Blake asked Mr. Hutchinson if he would be presenting the Director's Report. Mr. Hutchinson stated there was no Director's Report for this evening.

Ms. Blake asked the Commission if there were any additional items for discussion. There being none, Ms. Blake called for a motion to adjourn. Ms. Minter made a motion to adjourn. Mr. Pfeffer seconded the motion. An oral vote found everyone in favor. None opposed. Motion passed. Meeting adjourned at 9:05 PM.

Respectfully Submitted,

Approved:

Peter Klear, AICP
Director of P&Z

Deborah Blake
Chairperson