

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
October 15, 2018**

A Special Meeting of the Louisville Metro Planning Commission was held on October 15, 2018 at 6:30 p.m. at Shelbyhurst Campus, Founders Union Building, located at 450 N. Whittington Parkway, Louisville, Kentucky.

Commission Members Present:

Vince Jarboe, Chair
Marilyn Lewis, Vice Chair
David Tomes
Jeff Brown
Lula Howard
Rob Peterson
Ruth Daniels
Donald Robinson
Rich Carlson

Commission Members Absent:

Emma Smith

Staff Members Present:

Joe Reverman, Assistant Director, Planning & Design Services
Joe Haberman, Planning & Design Manager
Brian Davis, Planning & Design Manager
Julia Williams, Planning & Design Supervisor
Joel Dock, Planner II
Tony Kelly, MSD
Beth Stuber, Engineering Supervisor, Transportation Planning
Jessica Wethington, Communications Specialist, Louisville Forward
Paul Whitty, Legal Counsel
Chris Cestaro, Management Assistant

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PUBLIC HEARING

Opening Statement

00:00:11 Chair Jarboe called the meeting to order and swore in all those who had signed up to speak (see recording for detailed presentation). He noted that this hearing is a CONTINUATION of the October 1, 2018 Planning Commission public hearing, and that tonight's hearing will pick up where the October 1st hearing concluded. Ninety minutes will be granted to hear testimony from the remaining 39 speakers who had signed up to speak in opposition at the October 1st hearing. At the conclusion of those speakers, the lighting waiver request will be heard followed by applicant rebuttal and Commissioner's deliberation.

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Approval of Minutes

Approval of the minutes of the September 27, 2018 Planning Commission public hearing.

02:39:10 On a motion by Commissioner Howard, seconded by Commissioner Tomes, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Minutes of the Planning Commission meeting conducted on September 27, 2018.

The vote was as follows:

Yes: Commissioners Howard, Lewis, Brown, Jarboe, and Tomes.

Abstain: Commissioners Robinson, Carlson, Daniels, and Peterson.

Absent: Commissioner Smith.

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PUBLIC HEARING

CASE NUMBER 18ZONE1014

Request: *Cont'd from Public Hearing October 1, 2018* Change in zoning from C-1 to C-2, Commercial with conditional use permit and revised detailed district development plan for golf driving range and entertainment center; variances for setback, height, and stream buffer encroachments; waiver of landscape buffer, lighting waiver, and consideration of lighting report and lighting height

Project Name: TopGolf at Oxmoor Center
Location: 7900 Shelbyville Road
Owner: WMB 2, LLC & TWB Oxmoor 2, LLC
Applicant: TopGolf USA Louisville, LLC
Representative: Dinsmore & Shohl, LLP – Clifford Ashburner
Jurisdiction: Louisville Metro
Council District: 18 – Marilyn Parker
Case Manager: Joel P. Dock, AICP, Planner II

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

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Resume Testimony of those in opposition

The following citizens signed in to speak in opposition to the request at the October 1, 2018 Planning Commission public hearing before the hearing was adjourned (Please see noted video time stamps for detailed presentations):

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299
Suzanne Higdon, 8325 Croydon Circle, Louisville, KY 40222
Barbara Bailey, 8916 Linn Station Road, Louisville, KY 40222
Fr. Jonathan Erdman, 7813 Shelbyville Road, Louisville, KY 40222

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Brooks Bower, 9300 Seaton Springs Parkway, Louisville, KY 40222
Jennifer Barker, 9011 Old Whipps Mill Road, Louisville, KY 40242
Patrick Kersting, 506 Bedfordshire Road, Louisville, KY 40222
Margaret Reinhart, 8211 Camberley Drive, Louisville, KY 40222
Greg Wehr, 904 Rugby Place, Louisville, KY 40222
Philip Cooper, 312 Buckingham Terrace, Louisville, KY 40222
Christopher Jari, 213 Bellemeade Road, Louisville, KY 40222
Jean Corwin, 8617 Blackpool Drive, Louisville, KY 40222
Karen Shore, 903 Oxmoor Woods Parkway, Louisville, KY 40222
Corina Papabathini, 8316 Nottingham Parkway, Louisville, KY 40222
Rick Tobe, 502 Bedfordshire Road, Louisville, KY 40222
Charles Ballard, 8903 Linn Station Road, Louisville, KY 40222
Amy Craft, 305 South Lyndon Lane, Louisville, KY 40222
Jenny Nichols, 8323 Croydon Circle, Louisville, KY 40222
Elizabeth and Matt Farreri, 8325 Croydon Circle, Louisville, KY 40222
Ben Jackson, 8716 Linn Station Road, Louisville, KY 40222
Bob Gunnell, 8703 Stockport Road, Louisville, KY 40222
Bryan Barber, 8201 Nottingham Parkway, Louisville, KY 40222
Linda Surbeck-Raddatz, 701 Oxmoor Woods Parkway, Louisville, KY 40222
Linda Higgins, 8206 Paddington Drive, Louisville, KY 40222
Col. Richard Evans, 911 Colonel Anderson Parkway, Louisville, KY 40222
Bob Crawford, Old Dorsey Place, Louisville, KY 40223
Joe Kresovsky, 8308 Croydon Circle, Louisville, KY 40222
Robert Rodosky, 220 South Lyndon Lane, Louisville, KY 40222
Rita Ellis, 1329 Leighton Circle, Louisville, KY 40222
Lisa Jarrett, 311 Buckingham Terrace, Louisville, KY 40222
Marc Norton, 1103 Colonel Anderson Parkway, Louisville, KY 40222
Meg Cloern, 503 Bedfordshire Road, Louisville, KY 40222
Greg Hahn, 115 South Whipps Mill Road, Louisville, KY 40222
Sherrilyn Rhode, 8209 Camberley Drive, Louisville, KY 40222
Paul Ayers, 807 Colonel Anderson Parkway, Louisville, KY 40222
Vickie Barea, 1000 Nottingham Parkway, Louisville, KY 40222
Michael Perkins, 531 Nottingham Parkway, Louisville, KY 40222
Pam Levin, 1325 Leighton Circle, Louisville, KY 40222
Dr. Jack Early, 9002 Hurstwood Court, Louisville, KY 40222-5716
Cynthia Smith, 1101 Oxmoor Woods Parkway, Louisville, KY 40222

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David Franck, 713 Colonel Anderson Parkway, Louisville, KY 40222
Don Kincaid, 1007 Oxmoor Woods Parkway, Louisville, KY 40222
Bob Dermody, 8212 Paddington Drive, Louisville, KY 40222
Henry Frick, 8616 Blackpool, Louisville, KY 40222
Gerald and Helen Nicolas, 8202 Paddington, Louisville, KY 40222
Bryce Schuster, 1004 Oxmoor Woods Parkway, Louisville, KY 40222
Kim Willis, 8303 Cheshire Way, Louisville, KY 40222
Rick Meir, 8306 Salford, Louisville, KY 40222
Barbara Cole, 8303 Croydon Circle, Louisville, KY 40222
Janet and Clarence Yuen, 704 Nottingham Parkway, Louisville, KY 40222
Dewayne Craft, 305 South Lyndon Lane, Louisville, KY 40222

Resumed Testimony of those in opposition:

00:02:58 Suzanne Higdon

00:14:38 Charles Ballard

00:20:40 Amy Craft

00:34:04 Jenny Nichols

00:45:11 Matt Ferreri

00:51:46 Steve Porter, the opposition's representative, said he objected to any limitation on the number of people who will be allowed to speak tonight. Paul Whitty, legal counsel for the Planning Commission, said Mr. Porter had agreed to a 90-minute time limit for this testimony.

00:52:38 Cliff Ashburner, the applicant's representative, said there are standard time limits for speakers at any public hearing and neither side asked for additional time. He discussed the extra time that has already been given to the opposition, and noted that the applicant has already shortened their presentation to fit it in to the allotted 60 minutes. Mr. Porter asked anyone who is speaking in opposition tonight to please keep

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it short and try not to repeat what others have said. Mr. Porter and Commission Chair Jarboe discussed time limits.

- 00:55:38** Ben Jackson
- 00:59:27** Robert Gunnell
- 01:02:42** Bryan Barber
- 01:03:44** Helen Nicolas
- 01:05:06** Linda Surbeck-Raddatz
- 01:10:55** Linda Higgins
- 01:11:44** Bob Crawford
- 01:14:52** Joe Kresovsky
- 01:17:28** Robert Rodosky
- 01:26:50** Rita Ellis
- 01:28:58** Lisa Jarrett was called and said she concurred with previous speakers.
- 01:29:03** Marc Norton
- 01:30:49** Meg Cloern
- 01:32:18** Greg Hahn
- 01:34:48** Sherrilyn Rhode
- 01:35:26** Paul Ayers

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01:36:14 Henry Frick, Bob Dermody, Don Kincaid, and Pam Levin were called but either declined to speak or were not present.

01:36:48 Michael Perkins

01:38:04 Pam Levin

01:40:13 Cynthia Smith was called but either declined to speak or was not present.

01:40:21 Dr. Jack Early

01:46:45 Kim Willis

01:48:21 Barbara Cole

01:51:59 Anna Gibb and Elaine Craft were called but either declined to speak or were not present.

01:52:17 Rick Tobe

01:55:12 Corina Papabathini

02:05:23 Karen Shore was called but either declined to speak or was not present.

02:06:17 Bryce Schuster

02:09:26 **Commissioner Jarboe said new testimony would be accepted from those either for or against.**

02:10:13 Fr. Jonathan Erdman spoke in opposition

02:12:48 Brooks Bower spoke in opposition

02:14:14 Deana E. Karem, Greater Louisville Inc., 614 West Main Street, Louisville, KY 40202 spoke in support

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***Meeting Recessed**

***Meeting Resumed at 2:17:14**

- 02:17:14** Patrick Kersting spoke in opposition
- 02:22:07** Jason___, 223 Pleasantville Avenue, 40206 spoke in support.
- 02:26:44** Jean Corwin spoke in opposition.
- 02:29:39** Christopher Jari spoke in opposition.
- 02:30:37** Philip Cooper spoke in opposition.
- 02:31:50** Greg Wehr spoke in opposition.
- 02:33:37** Laurilee Neutz was called but was not present. She had signed up to speak in support.
- 02:33:43** Candy Fischbach was called but was not present. She had signed up to speak in support.
- 02:33:47** Margaret Reinhart spoke in opposition.
- 02:34:38** Jennifer Barker spoke in opposition.
- 02:35:41** Barbara Bailey spoke in opposition.

Summary of Commissioners' Questions for the Opposition:

02:36:19 Commissioner Carlson asked Julianne West if she had a background in sound engineering / acoustical engineering? She said she did not.

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02:37:19 Commissioner Jarboe asked Mr. Porter about the photos he had taken of the lights at another TopGolf location. Mr. Porter described his location at the time the photos were taken. Commissioner Jarboe asked Mr. Porter if he had any photos of the lights from 2000 feet away. Mr. Porter said no, but he had testimony that the lights and poles could be seen “two miles away.” He showed a photo taken with a drone.

02:39:10 Commissioner Jarboe called for a vote on the minutes from the September 27, 2018 Planning Commission public hearing.

02:41:15 Begin presentation of Waiver Request - Waiver of LDC, section 4.1.3 to not provide fully shielded lighting for golf driving range

Agency Testimony

02:41:18 Joel Dock presented the waiver request and showed a Power Point presentation (see staff report and recording for detailed presentation.)

02:46:25 In response to a question from Commissioner Tomes, Mr. Dock said the height of the proposed light fixtures is 28 feet and 40 feet, respectively.

02:46:40 In response to a question from Commissioner Brown, Mr. Dock discussed a proposed binding element regarding adding sidewalks and a TARC stop. He said the applicant agreed to do this. This is binding element #12 in the October 15, 2018 Addendum to the October 1st staff report.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore & Shohl, 101 S. 5th Street, Suite 2500, Louisville, KY 40202

Nick Page, 215 West Mechanic Street, Hillsdale, MI 49242

Pat Dominic, 608 S. Third Street, Louisville, KY 40202

Keith Pharis, 7110 Austinwood Road, Louisville, KY 40214

Tanner Micheli, 8750 N. Central Expressway, Suite 1200, Dallas, TX 75231

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Summary of testimony of those in favor:

02:47:22 Cliff Ashburner presented the applicant's case regarding the lighting waiver and showed a Power Point presentation (see recording for detailed presentation.)

02:54:45 Nick Page, a representative of Qualite Sports Lighting, explained the Gamechanger LED Luminaires (proposed lighting fixtures.) See recording for detailed presentation.

02:58:20 Keith Pharis, lighting engineer, explained how the new lighting would work and how it differed from the existing lighting (see recording for detailed presentation.) He explained how the lights had been engineered to meet or exceed the Land Development Code.

03:06:12 Mr. Ashburner resumed his presentation.

03:07:06 Pat Dominic explained the proposed enhanced landscaping. More landscaping has been added since the October 1, 2018 Planning Commission public hearing.

03:13:12 Commissioner Carlson asked Mr. Ashburner if a binding element could be created which states that the enhanced landscaping would be installed as presented at tonight's hearing. Mr. Ashburner said the applicant has drafted one and sent it to Mr. Dock for review. In response to another question from Commissioner Carlson, Mr. Ashburner said that landscaping would be planted at the end of the construction phase.

03:14:05 Commissioner Carlson asked why the light fixtures could not be attached to the poles which would hold the nets. Mr. Ashburner explained about lighting the field.

03:15:24 Commissioner Carlson asked what times the lights would be turned off at night, and if a binding element could be drafted to ensure this time. Mr. Ashburner said the binding element proposed by the applicant said the field lights would be dimmed by 50% at closing time, and turned off two hours after closing.

03:16:48 Commissioner Peterson asked if these lights had been used at other TopGolf facilities. Mr. Ashburner said they are in use at several other locations.

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Commissioner Peterson also asked if the applicant would consider modifying the hours of operation. Mr. Ashburner said that decision would have to be made by the General Manager.

03:18:38 Commissioner Tomes asked if there will be an outfield LED sign. Mr. Ashburner said there will not.

03:19:08 Commissioner Brown asked for clarification about the types of lighting on the facility (parking lot lighting and the "Gamechanger" lighting.)

03:19:37 In response to a question from Commissioner Jarboe, Mr. Ashburner addressed concerns about glare, particularly as it could affect Christian Way and homes on Paddington (see recording for detailed presentation.)

03:23:11 Commissioner Lewis asked what time the current lights are turned off in the Oxmoor parking lot. Mr. Ashburner said he did not believe that the lights were actually turned off, but were reduced to "security setting" about an hour after the mall closes.

03:24:23 Commissioner Tomes asked Mr. Pharis if he had done any lighting on the freeways. Mr. Pharis said he had not, that freeway / roadway lighting is different. Commissioner Tomes asked Mr. Pharis about "high-mass poles". Mr. Pharis said he knows what they are and what kind of illumination they put out. Mr. Page said he had done sports lighting. Mr. Pharis discussed some normal street lighting in Louisville, specifically the acorn-type of fixtures, that have no glare control. The fixtures proposed for use at the TopGolf facility are different, and are designed to be angled and used differently.

03:26:39 Commissioner Howard asked if any of the lighting design issues had changed from the presentation made at the October 1, 2018 Planning Commission public hearing. Mr. Pharis said it had not.

Cross-Examination of Applicant Representatives:

03:28:22 Mr. Porter asked Mr. Page if he has installed the Gamechanger fixtures at other TopGolf locations. Mr. Page said he was involved with the design, not the

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installation. Mr. Porter asked Mr. Page if he could “see” the lights from 1200 feet away. Mr. Page said glare is relative to the ambient light, and the amount of light seen is relative to the position of the lights and the viewer (see recording for detailed discussion.) The visibility of the luminaires was discussed.

03:33:41 Mr. Porter asked Mr. Pharis if he was complying with the Land Development Code regarding lighting. Mr. Pharis said his company was exceeding the LDC lighting requirements. Mr. Porter asked about the difference between “light trespass” and “glare” and said Mr. Ashburner’s answer to Commissioner Jarboe’s questions had to do with foot-candles. Mr. Pharis said “glare” is the light emitting from a luminaire with an intensity great enough to reduce a viewers’ ability to see and, in extreme cases, causing momentary blindness. Mr. Pharis stated that no one will be impaired by glare anywhere off that field.

03:35:39 Mr. Porter asked if anyone living 1200 feet away from the facility will see the field lights through the bedroom window? Mr. Pharis said he works with measurements and calculus. He said the amount of light from this facility will be 0.15 footcandles total, average light trespass.

The following spoke in opposition to the Waiver request:
Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Summary of testimony of those in opposition:

03:37:10 Steve Porter spoke in opposition and showed a Power Point presentation. He testified that the total application is in violation of Cornerstone 2020 and the Land Development Code (see recording and case file for detailed presentation.)

04:09:01 There was a discussion between Commissioner Jarboe, Mr. Ashburner and Mr. Porter regarding the amount of testimony time.

04:10:17 Mr. Porter referred the Commissioners to a list of violations of the LDC and Cornerstone 2020.

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04:11:07 Mr. Ashburner asked Mr. Porter if “multi-family residential” counts as “residential”. Mr. Porter said yes.

Rebuttal:

04:16:46 Mr. Ashburner refuted the opposition testimony and said no experts or studies had been produced. He discussed the Regional Center Form district and sound study of record. He noted that this property is already zoned for outdoor alcohol sales and entertainment due to the current C-2 zoning. He discussed the requested lighting waiver. Mr. Ashburner summarized the applicant’s position and talked about “what happens next” in the rezoning process (see recording for detailed presentation.)

04:41:32 Commissioner Carlson expressed concern about live music. Mr. Ashburner said an example presented by a citizen in opposition was taken at the Nashville facility – this facility will have different attractions. He does not have specific information about the number of nights that live music may be presented; however, he did provide the location where it may be provided and added that this use is currently permitted on the patio. Commissioner Carlson asked if there was any time that these performances would have to conclude. Mr. Ashburner he does not know if there is such a restriction.

04:43:41 Commissioner Carlson asked for clarification about hours of operation. Mr. Ashburner said closing times are midnight during the week, and 2:00 a.m. on Thursdays, Fridays and Saturdays.

04:44:00 Commissioner Carlson asked if there is a binding element regarding sound levels. Mr. Ashburner said one has not been agreed upon yet. Commissioner Carlson and Mr. Ashburner discussed how one could be worded.

04:45:23 Commissioner Carlson also asked about the reason for the 175-foot net poles. Mr. Ashburner said that is the height necessary to keep the golf balls controlled within the facility.

04:46:27 Commissioner Lewis asked if each TopGolf decides their own events at each location. Mr. Ashburner said that, to a certain extent, there are similarities. As far as events, he said that most are “corporate events”. It is up to the General Manager to

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decide what those events are. Commissioner Lewis asked if the Nashville manager might decide to have more concerts than the manager at the Louisville location. Mr. Ashburner said yes. He explained that there is a certain facility at the Nashville location, which will not be at the Louisville location, specifically for music performances.

04:48:11 Commissioner Lewis also asked if TopGolf allows any guests in the outfield. Mr. Ashburner said no. No one is allowed outside the bays.

04:48:42 Commissioner Peterson asked if the applicant would consider limiting the hours of operation. Mr. Ashburner said the applicant could not commit to reducing the hours of operation without knowing what the reduction would be.

04:49:56 Commissioner Tomes asked about if the outdoor music would be shielded from the neighborhood by the building. Mr. Ashburner said it would be. The area is the larger outdoor patio and is on the west side of the building.

04:50:45 Commissioner Carlson and Mr. Ashburner again discussed the hours of operation (see recording for detailed discussion.)

04:54:07 Commissioner Howard said she thought that, per the applicant's statements on October 1st, that the operating hours would be until 11:00 p.m. Monday through Thursday. Mr. Ashburner said the operating hours would be until midnight, not 11:00 p.m. Commissioner Howard said that Mr. Ashburner stated tonight that the hours would be until 2:00 a.m. Thursdays, Fridays, and Saturdays.

04:55:00 While the applicant was getting an answer to Commissioner Howard's question, Commissioner Jarboe asked about traffic cut-through in surrounding neighborhoods. He is also concerned because there are no sidewalks in those neighborhoods. Mr. Ashburner said that, if cars are not sourced when they are counted, there is no way to know where they are coming from.

04:57:06 In response to Commissioner Howard's question, Mr. Ashburner said the closing time on Thursdays is midnight.

04:57:12 Commissioner Brown and Mr. Ashburner discussed lighting binding element #11.

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04:59:32 Commissioner Jarboe announced that tonight's hearing must be concluded by midnight per the agreement with the University of Louisville. He stopped the meeting and announced that this case will be DEFERRED to the October 18, 2018 regular Planning Commission public hearing **for deliberation ONLY. No new testimony will be taken.** It will be first on the agenda for that day.

05:02:13 On a motion by Commissioner Howard, seconded by Commissioner Carlson, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **DEFER** this case to the Business Session of the **October 18, 2018 Planning Commission public hearing, to be held at 1:00 p.m.** at the Old Jail Building, 514 West Liberty Street, Louisville, Kentucky.

The vote was as follows:

Yes: Commissioners Tones, Peterson, Howard, Lewis, Carlson, Robinson, Brown, Daniels, and Jarboe.

Absent: Commissioner Smith.

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ADJOURNMENT

The meeting adjourned at approximately 11:45 p.m.



Chairman



Division Director

