

# DOCKET NO. 17SUBDIV1025

PROPOSED CONSERVATION SUBDIVISION TO ALLOW 178  
LOTS ON 55.07 +/- ACRES ON PROPERTY LOCATED AT THE  
NORTHEAST CORNER OF AIKEN AND JOHNSON ROADS

C/O PERFECTION BUILDERS

Attorneys: Bardenwerper Talbott & Roberts, PLLC

Land Planners, Landscape Architects & Engineers: Mindel Scott & Associates



Search Addresses



Cr... Basic Aerial Base Labels

Hermitage Ridge Farms Subd.

Flat Rock Road

R4

(R4)

Sutherland

Aiken Road

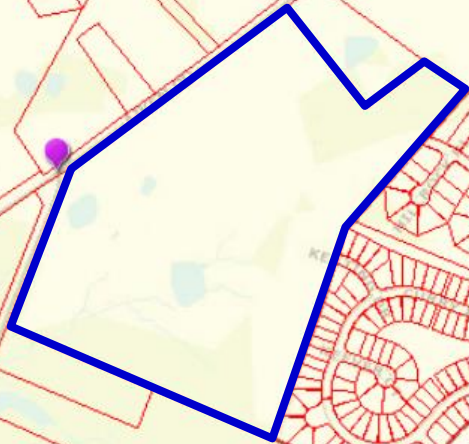
Redwood/Indian Fields Subd

Johnson Road

Polo Fields

R5A

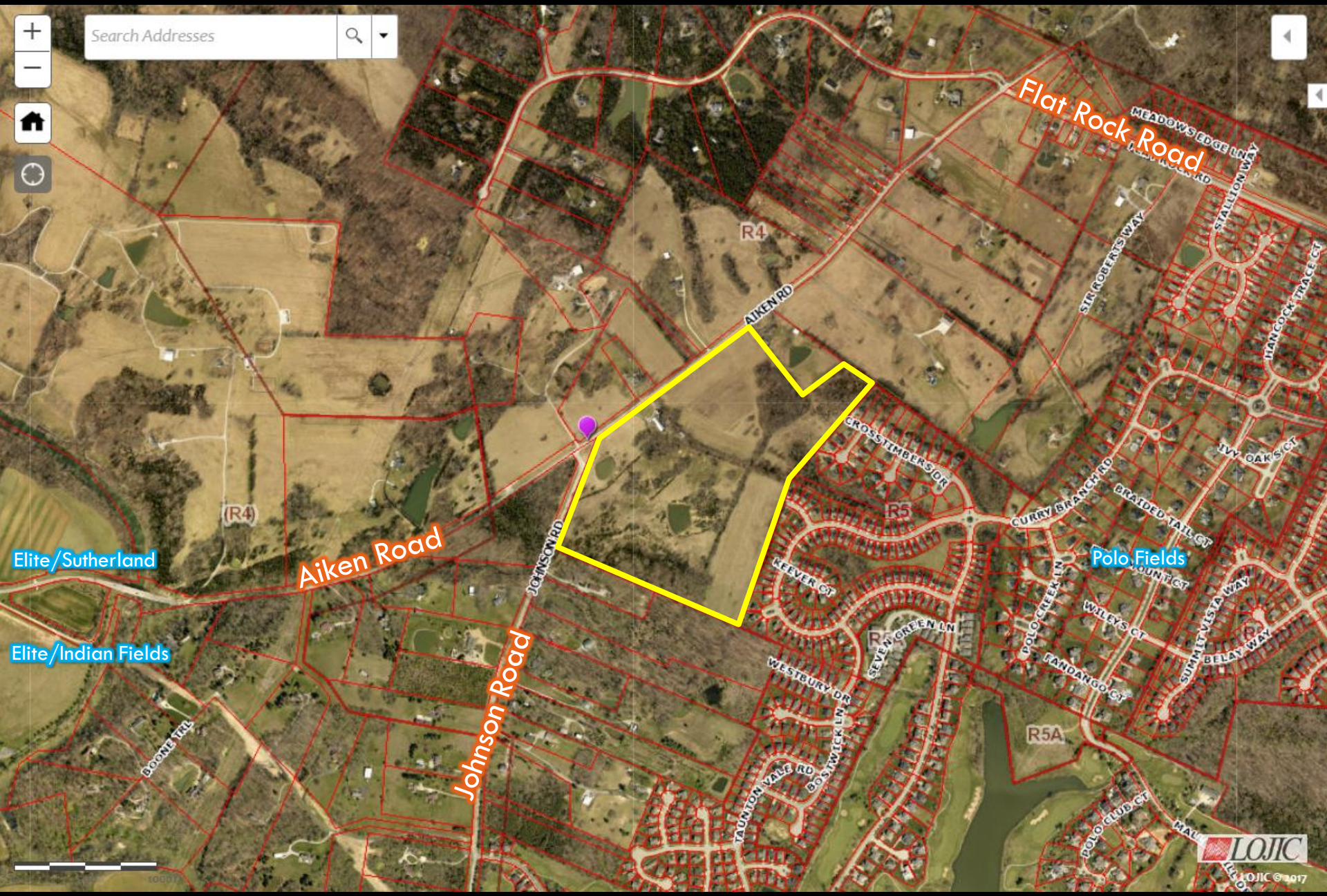
R5A







Search Addresses



Elite/Sutherland

Elite/Indian Fields

Aiken Road

Johnson Road

Flat Rock Road

Polo Fields

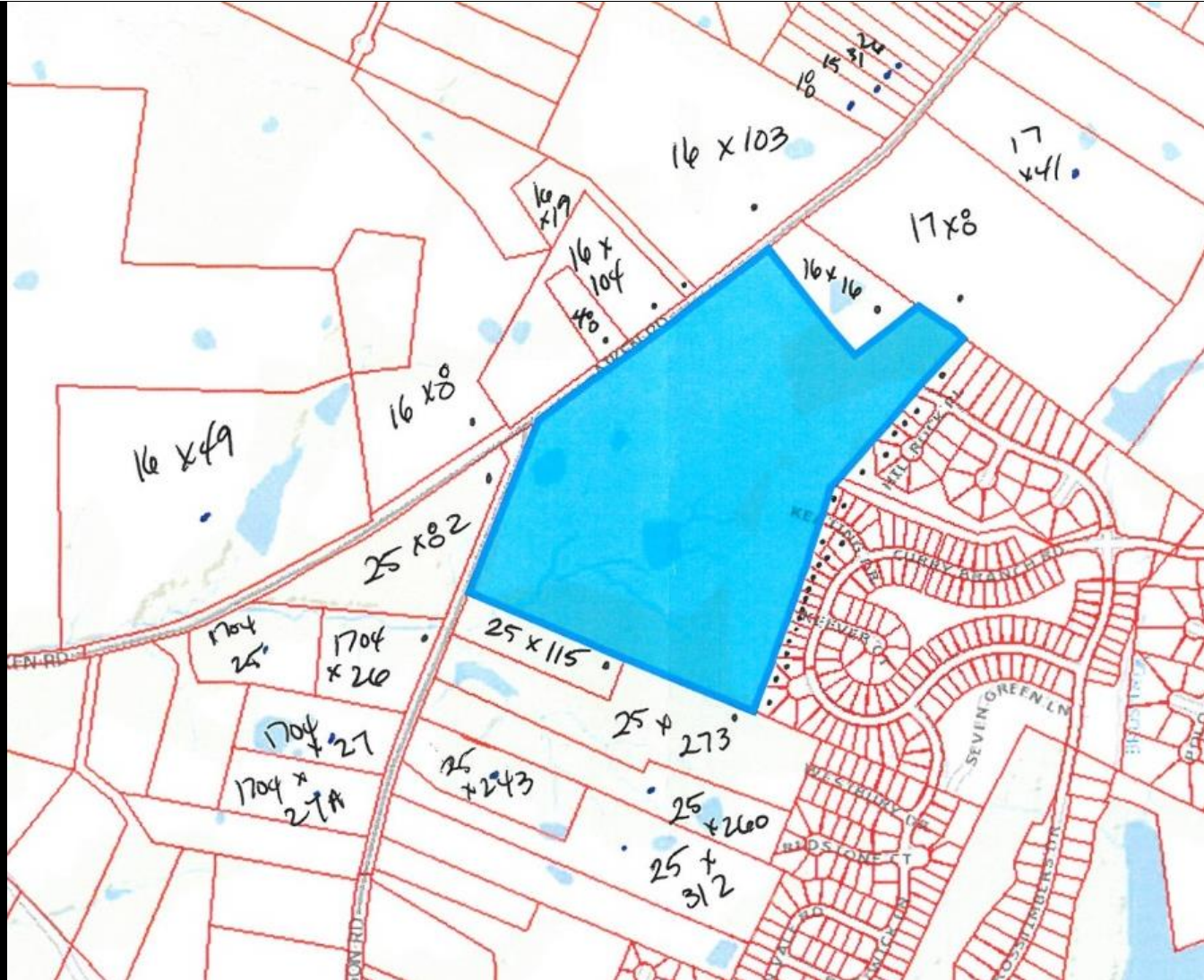
R4

R5

R5A



Adjoining property owner notice list map wherein 56 neighbors were invited to the various neighborhood meetings and the subsequent LD&T and Planning Commission public hearing.



BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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(502) 426-6688 • (502) 425-0561 (FAX) • WWW.BARDLAW.NET

William B. Bardenwerper  
Direct dial: 426-0389, ext. 135  
Email: WEB@BARDLAW.NET

November 22, 2017

Re: Proposed Conservation Subdivision to allow 178 lots on 55.07 +/- acres on property located at the northeast corner of Johnson and Aiken Roads

Dear Neighbor:

We are writing to invite you to a meeting we have scheduled to present neighbors with our preliminary conservation subdivision plan as described above.

Accordingly, we will be filing a plan for pre-application review on November 27<sup>th</sup> with the Division of Planning and Design Services (DPDS) that will be assigned a case number and case manager. At the meeting, we will have that information and will also show and explain to neighbors the draft plan so that we might hear what thoughts, issues and concerns you may have.

In that regard, a meeting will be held on Thursday, December 7<sup>th</sup> at 7:00 p.m. at the Middletown Fire Station located at 108 Urton Lane, Louisville, KY 40223. This location may not be as close to the site as we would like it to be. However, we are limited in our locations based on what facilities are available for these kinds of meetings as well as schedule conflicts.

If you cannot attend the meeting but have questions or concerns, please call us at 426-6688 or the land planning and engineering firm representatives David Mindel or Curtis Mucci at 485-1508.

Sincerely,



William B. Bardenwerper

Cc: Hon. Julie Denton, Councilwoman, District 19  
Brian Davis, Planning Manager, Planning & Design Services  
Rich Heareth, Perfection Builders  
David Mindel & Curtis Mucci, Mindel Scott & Associates



# Conceptual R-4 Plan





# Proposed Conservation Subdivision Plan



Johnson Road

Aiken Road

Flat Rock Road

Polo Fields

# Proposed Conservation Subdivision Plan



**Aiken Road**

**Johnson Road**

JOHNSON ROAD

AIKEN ROAD

CROSTIMBERS DRIVE

KEATING DR

Polo Fields



# Proposed Conservation Subdivision Plan



	<u>R-4 Standard Sub.</u>	<u>R-4 Conservation Sub.</u>
Density	4.84 du/a max	3.23 du/a actual
Lot Count	185 @ 3.35 du/a practical	178 @ 3.23 du/a actual
Lot SF	9,000 sf min	Variable < 9,000 sf
Lot Width	60 ft min	35, 45, 50 ft actual
Open space	0% provided	30% provided



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Clubhouse











































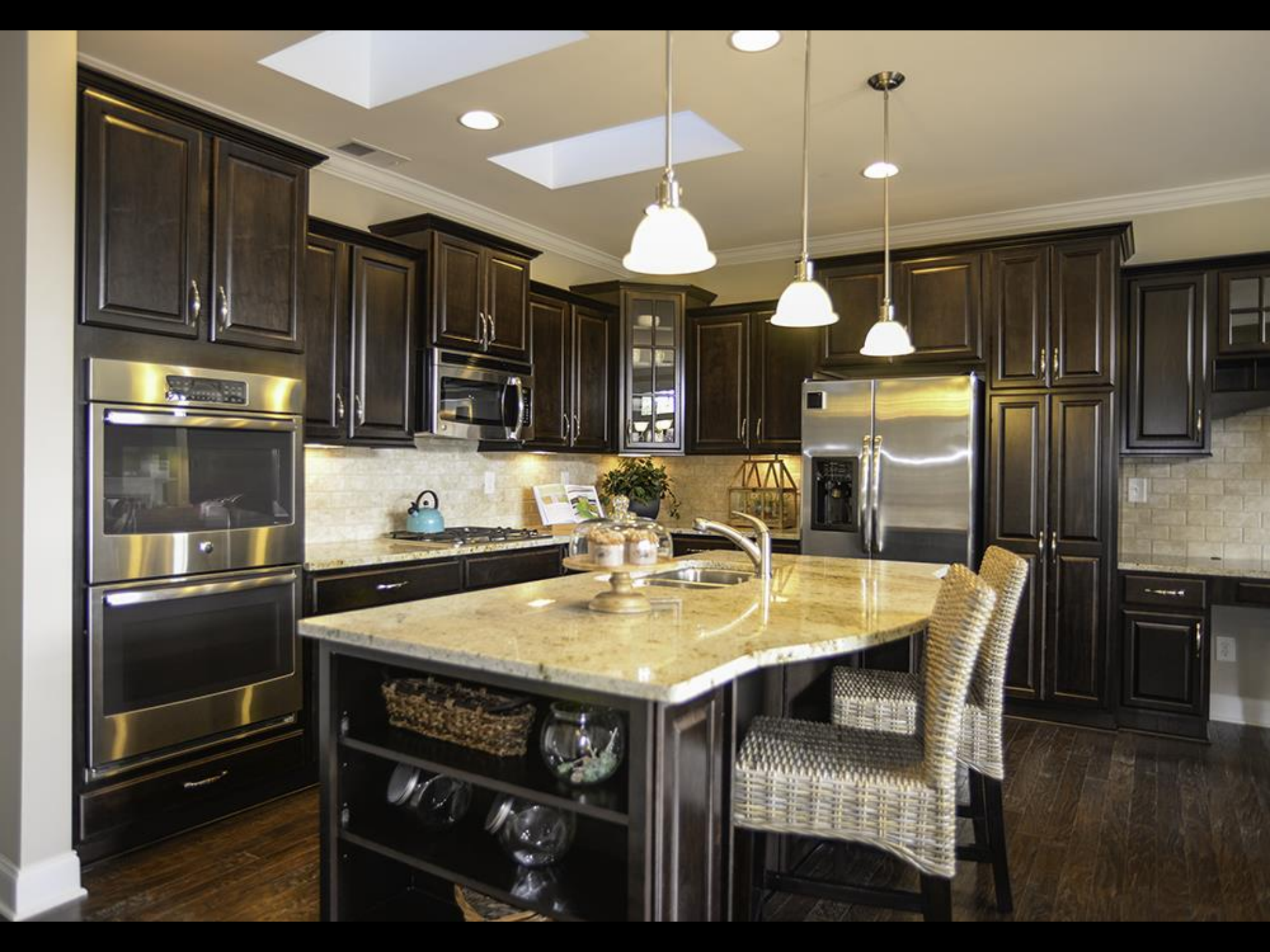












final report

January 29, 2018  
Revised February 22, 2018

## Traffic Impact Study

*Aiken II Subdivision  
16907 Aiken Road  
Louisville, KY*

Prepared for

Louisville Metro Planning Commission  
Kentucky Transportation Cabinet



**Table 1. Peak Hour Trips Generated by Adjacent Subdivisions**

	A.M. Peak Hour			P.M. Peak Hour		
	Trips	In	Out	Trips	In	Out
Flat Rock Ridge by Ball Homes 116 lots	87	22	65	117	74	43
Inverness Homes 40 lots	33	8	25	42	27	15
Hills - Lake View 40 lots	33	8	25	42	27	15
Hills - Glen Lakes 41 lots	34	9	25	43	27	16
Bryant Farms by Ball Homes 102 lots	77	19	58	104	65	39
<b>Total 339 lots</b>	<b>264</b>	<b>66</b>	<b>198</b>	<b>348</b>	<b>220</b>	<b>128</b>

**Table 2. Peak Hour Trips Generated by Site**

Land Use	A.M. Peak Hour			P.M. Peak Hour		
	Trips	In	Out	Trips	In	Out
Single Family Detached (178 lots)	131	33	98	177	111	66

**Table 3. Peak Hour Level of Service**

Approach	A.M.			P.M.		
	2017 Existing	2022 No Build	2022 Build	2017 Existing	2022 No Build	2022 Build
<b>Aiken Road at Johnson Road</b>						
Aiken Road Westbound (left)	A 7.4	A 7.6	A 7.7	A 8.5	A 9.2	A 9.6
Johnson Road Northbound	B 13.6	C 22.2	C 20.9	B 12.0	C 18.7	B 12.6
<b>Aiken Road at Flat Rock Road</b>						
Aiken Road Eastbound (left)	A 7.8	A 7.8	A 7.8	A 7.5	A 7.5	A 7.5
Aiken Road Westbound (left)	A 7.4	A 7.5	A 7.5	A 8.4	A 8.8	A 8.8
Flat Rock Road Northbound	B 13.8	C 18.1	C 18.4	C 16.3	C 23.6	C 24.1
Flat Rock Road Southbound	B 10.2	B 10.4	B 10.4	B 13.6	C 15.3	C 15.4
<b>Aiken Road at Entrance</b>						
Aiken Road Westbound (left)			A 7.6			A 8.9
Entrance Northbound			C 16.7			C 19.1

*Key: Level of Service, Delay in seconds per vehicle*



**Table 4. 2032 Peak Hour Level of Service**

	A.M.			P.M.		
Approach	2017 Existing	2032 No Build	2032 Build	2017 Existing	2032 No Build	2032 Build
<b>Aiken Road at Johnson Road</b>						
Aiken Road Westbound (left)	A 7.4	A 7.6	A 7.7	A 8.5	A 9.5	A 10.0
Johnson Road Northbound	B 13.6	D 29.7	D 26.5	B 12.0	C 22.5	B 14.0
<b>Aiken Road at Flat Rock Road</b>						
Aiken Road Eastbound (left)	A 7.8	A 7.9	A 7.9	A 7.5	A 7.5	A 7.6
Aiken Road Westbound (left)	A 7.4	A 7.5	A 7.5	A 8.4	A 9.1	A 9.1
Flat Rock Road Northbound	B 13.8	C 22.2	C 22.7	C 16.3	D 31.0	D 31.8
Flat Rock Road Southbound	B 10.2	B 10.6	B 10.6	B 13.6	C 16.6	C 16.8
<b>Aiken Road at Entrance</b>						
Aiken Road Westbound (left)			A 7.6			A 9.1
Entrance Northbound			C 18.2			C 21.5

*Key: Level of Service, Delay in seconds per vehicle*

## CONCLUSIONS

Based upon the volume of traffic generated by the development and the amount of traffic forecasted for the year 2022 and 2032, there will be a manageable impact to the existing highway network, with Levels of Service remaining within acceptable limits. The delays experienced in the area will increase within acceptable limits. A westbound left turn lane on Aiken Road at Johnson Road will be provided. An eastbound right turn lane will be required at the proposed entrance.

A separate traffic study was prepared examining the impacts of intersections in the vicinity. See the study [Aiken Road and Johnson Road Vicinity](#) for full details. On Shelbyville Road at Johnson Road, this development will add two percent to the projected volumes at the intersection. Left turn lanes have been proposed on all approaches, which will significantly improve the operation of the intersection. At the intersection of Old Henry Road and Bush Farm Road, this development will add four percent to the projected volumes at the intersection. The recommended improvement at this intersection is an additional westbound left turn lane (creating dual left turn lanes) on Bush Farm Road.

# Proposed additional binding elements:

- Prior to the issuance of the building permit for the 90th unit, the westbound left turn on Aiken Road at the intersection with Johnson Road shall be constructed.
- The right turn lane on Aiken Road at the entrance shall be constructed with the connection of Keating Drive.

# Two points regarding the Regulatory and Constitutional limits on the subjective application of off-site exactions in ministerial subdivision cases

## 1. OBJECTIVE STANDARD REQUIREMENT:

- LDC Sec. 7.3.10A sets an 18' minimum road width objective standard re: the primary means of access to a subdivision.
- An underpinning principle of all administrative law is that regulations must contain objective standards; subjective ones being illegal.
- The sentence 13 lines down from top of Sec. 7.3.10A (**specifying that “in addition to the roadway width, the Planning Commission may require other offsite improvements to correct conditions that would impede the safe flow of traffic associated with the new subdivision”**) was intended and understood at the time and until now to apply to other narrow road conditions, like a sudden drop-off or culvert alongside that 18' wide or widened road that may need to be improved.
- That language was never intended to subjectively require road improvements unrelated to the access road width or property frontage when all that was occurring was that land was being ministerially subdivided.

- In Snyder v Owensboro, 528 S.W.2d 663, 664 (Ky. 1975), Kentucky’s highest court made clear the legal limits of regulatory authority in a mere subdivision case, to wit: *“KRS 100.281, specifies requirements for the contents of subdivision regulations. The statute plainly contemplates that specific standards shall be set forth, rather than mere broad generalizations with regard to health, safety, morals and general welfare...(emphasis added)”*
- The **bold type-faced and underlined** LDC Section 7.3.10A language on the previous page does not amount to a specific standard, but rather is a broad generalization with regard to safety, which Kentucky’s highest court has said does not cut it.
- An R-4 Conservation Subdivision is entitled to the benefit of the zoning and subdivision regulations without any restrictions on development apart from what specific standards specifically require.

## 2. US SUPREME COURT EXACTIONS TEST:

- Under the US Supreme Court's enunciated two-pronged test for exactions, first an "*essential nexus*" must exist between the designated exaction and the reasonably determined impacts of a proposed development. Second, any exactions must be "*roughly proportional*" to the development's community and infrastructure impacts.
- In a ministerial subdivision case, under the US Supreme Court's "essential nexus"/"rough proportionality" test, a developer's obligations can **only** be extended, under the formulation of LDC Section 7.3.10A in combination with the Road System Develop Charge Ordinance, to the following: (a) dedication of additional right-of-way, (b) frontage improvements, (c) assurance of an 18-foot access from the nearest arterial, and (d) payment of the road system development charge.
- All off-site exactions in a ministerial subdivision case, other than (a) – (c) above, which are objective standards, are to be paid for through the (d) road system development charge (also an objective standard), which was developed following thorough study of needed area road improvements with a *nexus* to anticipated residential developments, which road improvement costs were *roughly apportioned* among all subdivision developers in the area (thus the \$1,000/sf lot fee).

## IN CONCLUSION:

- In reviewing subdivision regulation requirements authorized by KRS 100.281 and considering holdings of both the Kentucky and US Supreme Courts, the Kentucky Court of Appeals has said in Lexington-Fayette Urban County Government v. Schneider, 849 S.W.2d 557 (1992),  
*“While local governments barely have funds for street maintenance, much less construction, they nevertheless may not put unreasonable burdens on developers as a condition precedent to approval of a subdivision. It is one thing to require land dedication and street construction to collector street specifications, but quite another thing to require construction of an expensive public improvement of any type.”*
- That is really important language, especially as respects the ministerial review of subdivisions.