

Planning Commission
Staff Report
March 15, 2018



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| Case No: | 17SUBDIV1025 |
| Project Name: | Aiken II |
| Location: | Aiken Rd at Johnson Rd |
| Owner(s): | Gilbert K Curry |
| Applicant: | Perfection Builders |
| Jurisdiction: | Louisville Metro |
| Council District: | 19 – Julie Denton |
| Case Manager: | Jay Lockett, Planner I |

REQUEST(S)

- **Variance** from Land Development Code section 7.11.10.C to allow maximum front yard setbacks of up to 40', a variance of up to 15' beyond the allowed 25'.
- **Variance** from Land Development Code section 7.11.10.C to allow minimum side yards to be 0' rather than the required 3' along one side of each lot, a variance of 3'.
- **Major Preliminary Subdivision (Conservation Subdivision)** to create 178 buildable lots on approximately 55.07 acres.

CASE SUMMARY/BACKGROUND

The applicant is proposing to develop a large vacant agricultural tract under the Conservation Subdivision regulations contained in Land Development Code section 7.11. The site is located south of the intersection of Johnson Rd and Aiken Rd in eastern Jefferson County. The applicant is requesting two variances from the setback regulations contained in 7.11.10.C relating to front and side setbacks. The variances are requested in order to accommodate a unique design style, with variable front setbacks and homes with side courtyards.

STAFF FINDING

There are two ponds on the western side of the site, which are to be conserved and utilized as detention basins to serve the development. The application of the conservation subdivision regulations will allow for a more clustered development pattern, and will conserve a significant contiguous area of land as open space. By utilizing the conservation subdivision regulations, the proposal claims two bonus buildable lots, for a total of 178. Under standard subdivision regulations, the lot would allow for 176 units to be created. The reduced lot sizes permitted by the conservation subdivision regulations allows for significantly less land to be cleared and developed, and less impervious surface to be constructed.

The variance requests are adequately justified and meet the standard of review.

TECHNICAL REVIEW

The preliminary subdivision adheres to all applicable Land Development Code and Cornerstone 2020 policies, and has received preliminary approval from the Metropolitan Sewer District. Transportation Planning staff has indicated that the subdivision is in order, pending comment from the Kentucky Transportation Cabinet, who has jurisdiction over Johnson Rd and Aiken Rd.

The applicant has completed the required Traffic Impact Study. Kentucky Transportation Cabinet has yet to make any recommendations for improvements within the right-of-way as of the publication of this report.

CONSERVATION SUBDIVISION CREDIT TABLE

| | |
|--|------------------|
| Conservation Space Required | 709,815 SF (30%) |
| Conservation Space Provided | 710,146 SF (30%) |
| Full Credit Conservation Area | 710,146 SF |
| Tree Canopy Required | 455,748 SF |
| Tree Canopy Provided | 455,748 SF |
| Conventional Subdivision Lot Yield | 176 |
| Open Space Credit Lots (5%) | 9 |
| Tree Canopy Credit Lots (10%) | 0 |
| Total Buildable Lots Allowed Under 7.11 | 185 |
| Lots Requested | 178 |

INTERESTED PARTY COMMENTS

Several neighbors and area citizens have contacted staff via phone and email. Concerns were voiced about runoff and traffic, as well as the perceived loss of rural character in the area. Neighbors have also expressed concern at the concept and variance to allow a 0' side setback for some homes within the development.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE TO ALLOW MAXIMUM FRONT YARD SETBACKS TO EXCEED THE ALLOWABLE 25' BY UP TO 15'

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare since homes in the subdivision will still maintain adequate yards and setbacks around structures. All provisions for safe circulation of traffic and access to utility infrastructure will be maintained.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since the mix of older and newer homes in the area have varied setbacks and a mixed rural and suburban character.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since all appropriate access and utilities will be provided within the subdivision.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations, as the mixed setbacks allowed by the request will create a varied streetscape that is in keeping with the spirit of the Conservation Subdivision regulations which encourage flexibility of housing design.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances, but is rather a design choice.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship, as the subdivision could still be developed as proposed with standard setbacks.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions taken subsequent to the adoption of the zoning regulations.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE TO ALLOW MINIMUM SIDE YARDS TO BE 0' RATHER THAN THE REQUIRED 3'

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare since homes in the subdivision will still maintain adequate space around structures. All provisions for safe circulation of traffic and access to utility infrastructure will be maintained.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since the mix of older and newer homes in the area have varied setbacks and a mixed rural and suburban character.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since all appropriate access and utilities will be provided within the subdivision.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations, as the home layouts allowed by the request will create a unique neighborhood that is in keeping with the spirit of the Conservation Subdivision regulations which encourage flexibility of housing design.

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STAFF: The requested variance does not arise from special circumstances, but is rather a design choice.

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STAFF: The circumstances are not the result of actions taken subsequent to the adoption of the zoning regulations.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variance** from Land Development Code section 7.11.10.C to allow maximum front yard setbacks of up to 40'
- **APPROVE** or **DENY** the **Variance** from Land Development Code section 7.11.10.C to allow minimum side yards to be 0'
- **APPROVED** or **DENY** the **Major Preliminary Subdivision Plan**

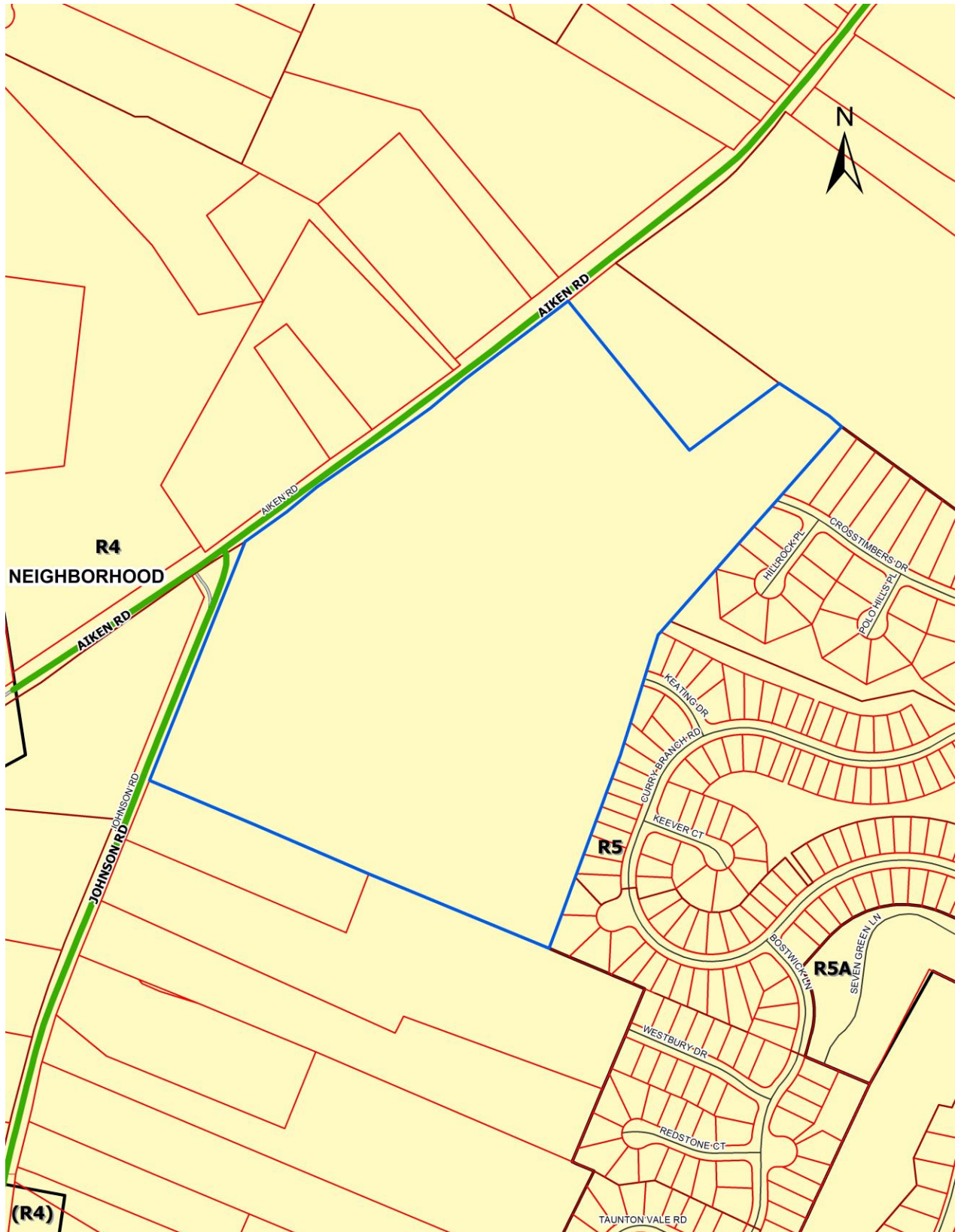
NOTIFICATION

| Date | Purpose of Notice | Recipients |
|---------|------------------------------------|---|
| 2-15-18 | Hearing before Planning Commission | 1 st tier adjoining property owners Attendants of neighborhood meeting Registered Neighborhood Groups in Council District 19 |

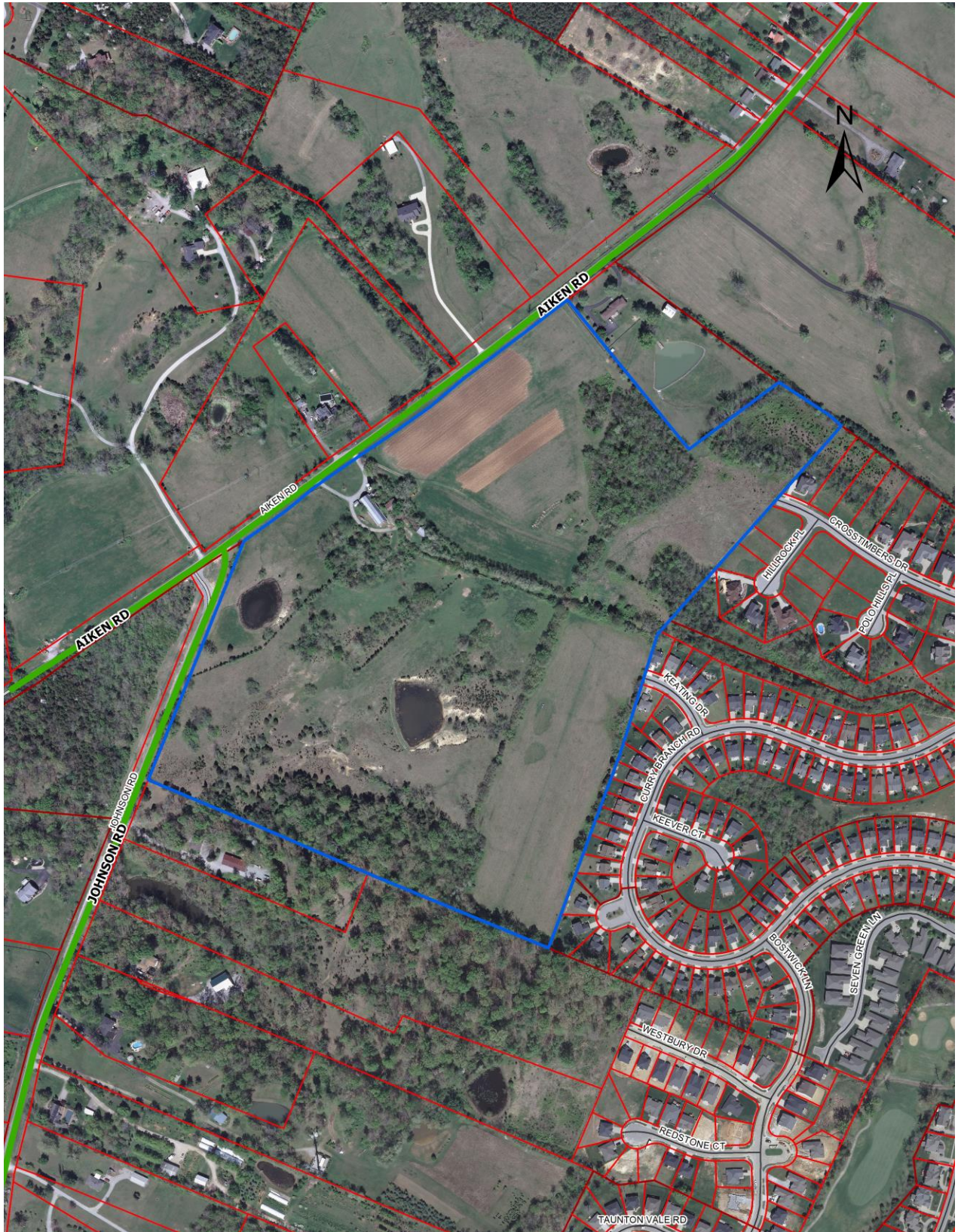
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. **Zoning Map**



2. Aerial Photograph



3. Proposed Conditions of Approval

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
3. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
4. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
5. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
6. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for all stub streets. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
7. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
8. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
9. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.

10. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
11. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
12. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
13. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
14. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
15. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
16. A deed restriction in a form approved by Counsel to the Planning Commission shall permanently prohibit further subdivision or development of conservations areas.
17. The applicant shall submit a Conservation Area Management Plan detailing the entities responsible for maintaining various elements of the property, and describing management objectives and techniques for each part of the property.
18. In the event the party responsible for maintenance of the Conservation Areas fails to maintain all or any portion in reasonable order and condition according to the Management Plan, Louisville Metro Government may assume responsibility for its maintenance and may enter the premises and take corrective action, including provision of extended maintenance. The cost of maintenance may be charged to the Management Entity, or the individual property owners according to the pro-rata share based on the Management Plan. Costs may include administrative costs in taking such actions as well as penalties as provided under these regulations. Such costs shall become a lien on all subdivision properties.

19. Prior to ground disturbance the developer/applicant shall hire a qualified professional archaeologist to examine the project area, evaluate the site for National Register status, determine boundaries, and make recommendations regarding the need for any additional investigations before the project proceeds. A copy of the report shall be submitted to the Kentucky Heritage Council and Planning and Design Services.
20. Prior to the recording of the Record Plat for this development, the applicant shall provide to Planning and Design Services Historic Preservation Staff a completed Kentucky Historic Resources Survey to document the existing structures on site.