



**PLANNING COMMISSION MINUTES**  
**May 23, 2019**

**PUBLIC HEARING**

**CASE NO. 19DEVPLAN1003**

Ken Blacketer, 15300 Beckley Crossing Drive, Louisville, KY 40245

David Bright, 10001 Taylorsville Road, Louisville, KY 40299

David Steff, 7812 Applevue, Louisville, KY 40228

**Summary of testimony of those in support:**

01:12:15 William Bardenwerper, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) He noted that the proposal is for 181 units overall – this should be corrected on the submitted plan.

01:22:37 Ron Thomas, an applicant's representative, explained how it was determined that this is a wetland, what's been done in terms of delineation, what the Army Corps of Engineers had to say, and what the effect would be of developing on wetlands. See recording for his detailed presentation. He noted that the land survey was presented to the Army Corps of Engineers and they approved the delineation. They issued a JD ("Jurisdictional Determination").

01:24:04 He said the wetlands that were found in the area now known as "Phase III" were "low-quality wetlands" – it had been drained and was used for farming up until about a decade ago. The Corps will still be involved in the review process, as well as the Kentucky Division of Water. Mitigation will be involved.

01:26:53 Kevin Young, an applicant's representative, reviewed the design of Phase III. Mr. Bardenwerper explained some delineations of one of the exhibit aerial photos. Eric Senn explained how the applicant's drainage improvements should help a neighbor who has been having a great deal of flooding and drainage issues on his property. He explained the new detention basin that is planned and how that will reduce the flow from their property.

01:30:05 Mr. Bardenwerper summarized the presentation.

01:34:11 Tony Kelly, with MSD, said MSD has met with the engineers, the downstream property owner, the Councilman, and the developer multiple times. He said the applicant will install an 18-inch low-flow pipe, and explained the water "stacking" and reduction, detention, drainage, etc. He said the applicant is required to have Corps of Engineers approval prior to MSD's construction approval.

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00:36:18 In response to a question from Commissioner Jarboe, Mr. Kelly discussed the functioning of detention basins #1 and #2. He said that the applicant has reduced flow to the pre-development flow rate, but he said the capacity of the downstream system is a problem. By adding the proposed improvements, the flow rate will be reduced, allowing the downstream system to “catch up”.

01:39:02 In response to a question from Commissioner Carlson, Mr. Kelly said basin #1 cannot be enlarged any more. He added that the property owner downstream is having erosion control issues, but this is not the developer’s fault, but is MSD’s responsibility. He said MSD is working to find a solution for this property owner. Detaining currently-undetained water into basin #2 and adding an 18-inch pipe will reduce water from going downstream.

01:43:32 Travis Fiechter, legal counsel for the Planning Commission, asked if a stub street shown on the plan is going to go into or over detention basin #1. Mr. Kelly said a stub street allows MSD to have access to detention basins to maintain them. Mr. Lockett pointed out specific details of stub streets on the plan. Mr. Bardenwerper pointed out a connection, built by the applicants, that allows one part of Apple Valley to have access to another part of Apple Valley.

**NOTE: David Steff spoke after those in opposition.**

02:02:55 David Steff, president of the Apple Valley Homeowners Association, spoke in support. He said the building designs are good, and the applicants have been responsive. He discussed some of the drainage problems discussed by Mr. Coates and Mr. Boyer. Using an aerial photo, he pointed out 4 acres of MSD that was bought in 1999 after a bad flood to build a detention basin for the stream. He discussed the stream and why its flow/shape can cause water backups. He said MSD connected pump stations at the end of Apple Valley Drive but then neglected to re-grade the land that was excavated. Water has since “never drained right to the creek”.

**The following spoke in opposition to this request:**

James Coates, 7619 East Manslick Road, Louisville, KY 4022

Michael Boyer, 7621 East Manslick Road, Louisville, KY 40228

John Torsky, representing Councilman James Peden, 601 West Jefferson Street, Louisville, KY 40202

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**Summary of testimony of those in opposition:**

01:45:55 James Coates, a property owner who lives directly behind the development, said major water he gets in his backyard after rain events. He said the detention basins are not helping his property.

01:47:52 Michael Boyer said water is bypassing the basins from Phase I and Phase II and have turned his backyard into "a swamp". He said the increase of water pressure and volume has caused tremendous damage on his property. He said the tree damage alone is between \$10,000-\$12,000, all damage done in the last two years since the development started. He described his interactions with the developers and Mr. Bardenwerper. He said he has also had issues with the residents of the complex; the applicants mowing on his property; and broken concrete dumped onto his property. During the construction of Phase II, he said there was excavation on his property. He asked about the approved Landscape Plan which shows a fence running from the west side down and across the back of the property (17LSCAPE1064). He said he asked the applicant about this fence, and the applicant said he knew nothing about it.

01:55:13 John Torsky, representing Councilman James Peden, said he wanted to make sure the applicant's previous statements about this project are on the record. He read many comments from the applicants from previous meetings into the record (see recording for his detailed presentation.)

01:59:34 Commissioner Carlson asked how much of the flooding/drainage issues on Mr. Coates' and Mr. Boyer's properties had occurred since this project had been built. Mr. Boyer said Mr. Coates has seen an increase in mud in his backyard, which is there a week after a rain event.

02:02:18 The Commission went into Recess at approximately 3:00 p.m.

**\*NOTE: During the recess, Commissioner Jarboe left the meeting and Commissioner Lewis took his place as Acting Chair.**

The Commission resumed.

**02:02:55 David Steff spoke in support, after those in opposition (his testimony is recorded under "Summary of testimony of those in support")**

**Rebuttal:**

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02:05:45 Mr. Bardenwerper presented the applicant's rebuttal. David Bright, one of the applicants, said he was not aware of soil erosion or concrete dumping on anyone else's property. Mr. Bardenwerper said the neighbors' properties are in an existing floodplain, which may explain their severe water issues. He introduced a floodplain map into the record.

02:07:02 Mr. Bardenwerper called Kevin Young to the stand to recount his past conversations with Councilman Peden about the development capability of this site (see recording.)

**Deliberation:**

02:11:49 Commissioners' deliberation.

02:27:16 Commissioner Carlson and Commissioner Brown discussed flooding issues. Commissioner Brown said there are portions of the site that are in the floodplain and Mr. Kelly had already testified that MSD has already identified work they need to do, regardless of this development.

02:28:32 Mr. Kelly discussed downstream improvements that will be done by MSD as soon as funding is available. This will be done regardless of what development happens on this site. There is no timetable to determine when funding will be available.

02:29:44 Commissioner Tomes and Commissioner Brown discussed road connections proposed for Phase III. Commissioner Tomes also said he understood that any mitigation that's done for wetlands has to be done within the same watershed. In response to a question from Commissioner Carlson, Mr. Kelly said the boundaries of the watershed are determined by the Corps of Engineers.

02:35:10 Commissioner Carlson asked where the replacement wetlands would go, and what will be done about the connectivity. He felt it would be advantageous to have a second access. Mr. Bardenwerper said the connectivity issue was addressed in 2015/2017; he said Councilman Peden did not want access or connectivity to Apple Valley from this development. Mr. Bardenwerper and Commissioner Carlson discussed connectivity to Beulah Church Road. See recording for detailed discussion.

02:40:08 Mr. Thomas discussed watersheds and wetlands.

02:41:37 Mr. Kelly corrected himself and said that a wetland can be replaced outside of this immediate area.

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**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.**

**Revised Detailed District Development plan**

02:44:54 On a motion by Commissioner Tomes, seconded by Commissioner Peterson, the following resolution, based on the applicant's justification and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that there are wetlands in the area of the new proposed buildings as delineated on the RDDDP based upon an Army Corps of Engineers Wetland Evaluation. Impact fees will be required to obtain a Corps permit for work as needed. The applicant is also planning a new detention basin and floodplain compensation area not previously shown on the prior plan to address any impacts; and

**WHEREAS**, the Commission further finds that the internal street and pedestrian layout as currently approved will remain with the addition of one additional street with sidewalks along the entire new additional street; and

**WHEREAS**, the Commission further finds that the development is required to have 15% open space (or 1.2 acres) and the proposed development as shown on the RDDDP has 41% open space (or 3.3 acres). The Recreation Open Space requirements are also being satisfied; and

**WHEREAS**, the Commission further finds that the applicant is proposing a new 23,000 square foot detention basin and floodplain compensation area not previously shown on the prior plan. The 23,000 square foot proposed detention basin is approximately twice the size of what is regulatory required; and

**WHEREAS**, the Commission further finds that the style, design and proposed landscaping will be the same as the remainder of the apartment community already constructed and thus will be compatible with the site and the surrounding area; and

**WHEREAS**, the Commission further finds that the proposal in conformance with the Comprehensive Plan and Land Development Code for all the same reasons as found in

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the original rezoning of the property and the subsequent approvals of the various sections of this project; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised Detailed District Development plan, **SUBJECT** to the following **existing** binding elements:

1. The development shall be in accordance with the approved revised district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The revised development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits, Transportation Planning Review and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

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- d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
5. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
6. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs) and other issues required by these binding elements / conditions of approval.
  - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 2, 2017, Planning Commission meeting.



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8. A 6 ft. high solid wood shadow box fence shall be provided along the north property line between the multi-family portion of the Ashton Park 2 project adjoining the Fountains Condominiums. This new fence shall tie into the existing Fountains Condominiums fence and shall be stained the same color as the existing fence.
9. The applicant shall install landscaping as shown on the proposed landscape plan presented at the February 2, 2017, public hearing.
10. The connection from Appleview Lane to Appletree Way shall be labeled as "No Parking" on both sides.

**The vote was as follows:**

**YES: Commissioners Tomes, Peterson, Lewis, and Howard.**

**NO: Commissioners Daniels, Brown, and Carlson.**

**NOT PRESENT: Commissioners Smith, Robinson, and Jarboe. .**