

**Planning Commission  
Staff Report**  
August 6, 2015



Case No:	15DEVPLAN1042
Request:	Revised Detailed District Development Plan, Binding Elements, and Sidewalk Waivers
Project Name:	Bush Farm Retirement Community
Location:	2400 Arnold Palmer Blvd.
Owner:	LF Land Company, LLC
Applicant:	Cameron General Contractors
Representative:	Mindel, Scott & Associates, Inc.
Jurisdiction:	Louisville Metro
Council District:	19 – Julie Denton
Case Manager:	David B. Wagner – Planner II

**REQUEST**

- Revised Detailed District Development Plan
- Binding Elements
- Sidewalk Waiver #1 to omit the sidewalk required along Bush Farm Road per LDC 5.8.1
- Sidewalk Waiver #2 to omit the sidewalk required along Old Henry Road per LDC 5.8.1

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

\*\*\*At its July 15, 2015 meeting, the DRC forwarded this case to the August 6, Planning Commission. Since the DRC meeting, a Variance request has been added to allow the building to exceed the maximum allowed height of 35'. The Variance will need to be approved by the Board of Zoning Adjustment.

This request is to construct a three story assisted living residence with a building footprint of 65,910 SF and including 130 dwelling units. Two wings of the building will be connected by a 26,102 SF common area facing Arnold Palmer Boulevard which is a local level road and the main access point for the site. The site also has two narrow frontages on Old Henry Road (a parkway) and the longest frontage is along Bush Farm Road. The plan shows a full access point to Bush Farm Road and two points of access to a potential nursing home facility to the northwest. All required landscaping, open space, and parking have been provided as shown on the plan. The open space includes the common area inside the building as well as an outdoor area that includes a walking path and benches. A 20' LBA is shown along the east property lines where single family residences and a golf course are located. Five garage buildings are provided which will house 40 parking spaces in addition to the outdoor spaces.

Existing Zoning District: R-5A, Multi-Family Residential

Proposed Zoning District: N/A

Form District: Neighborhood

Existing Use: Vacant

Proposed Use: Assisted Living Residence

Minimum Parking Spaces Required: 83

Maximum Parking Spaces Allowed: 231

Parking Spaces Proposed: 152

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Vacant	R-5A	N
<b>Proposed</b>	Assisted Living Residence	R-5A	N
<b>Surrounding Properties</b>			
<b>North</b>	Multi-Family Residential, Golf Course	R-5A	N
<b>South</b>	Single Family Residential, Office, Vacant	R-4, OR-3, C-1	N
<b>East</b>	Single Family Residential	R-4	N
<b>West</b>	Vacant	R-4	N

### PREVIOUS CASES ON SITE

- 9-99-99: Rezoning from R-4 to R-5A for multi-family residential patio homes and a Sidewalk Waiver along Bush Farm Road
- Plat Book 53, Page 25: Dedication of Arnold Palmer Boulevard

### INTERESTED PARTY COMMENTS

- Staff has received concerns from numerous property owners in the area. Concerns listed by these nearby homeowners are as follows: the primary entrance being located on Arnold Palmer Boulevard instead of Bush Farm Road, lack of safe access to Old Henry Road from Arnold Palmer Boulevard since there is no traffic signal, Bush Farm Road would be a safer access to Old Henry Road since it has a signal and can handle more traffic as a collector level road, the density is too high and the 3 story structure is out of character with the single family homes nearby, the traffic study doesn't address the congestion in the area, poor communication from the owner and developer, and insufficient landscape buffers along Arnold Palmer Boulevard for the length of the property.

### APPLICABLE PLANS AND POLICIES

- Cornerstone 2020
- Land Development Code
- Old Henry Road Subarea Plan: Pages 20 and 21 discuss preserving the low density residential land uses in the eastern area of the study boundaries which includes this site. The study recommends approving residential developments that have a density of no more than five dwelling units per acre.

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1 of LDC 5.8.1 to not provide a sidewalk along Bush Farm Road:

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since the Sidewalk Waiver was approved on the previous plan and no sidewalks have been constructed on this side of the street to the southeast of the site.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate.

Since no sidewalks have been built along this side of the street, it would be inappropriate to require this development to build sidewalks that are unlikely to connect to adjacent sidewalks in the future. Therefore, the request does not specifically violate Cornerstone 2020.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since not having to build the sidewalks would allow the developer to not waste resources on unnecessary sidewalks.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the developer would be wasting resources on an infrastructure project that is not needed.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2  
of LDC 5.8.1 to not provide a sidewalk along Old Henry Road:**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will adversely affect adjacent property owners since the developer has been offered the fee-in-lieu of building sidewalks. This fee could be used to help develop the sidewalk infrastructure within the surrounding area since the KTC will be building the sidewalks at this location.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate.

Since Guideline 7, Policy 1 states that those who propose new developments should reasonably share in the costs of the public facilities and services made necessary by development, and the KTC will build the sidewalks needed along this street, the developer should utilize the fee-in-lieu as offered by Transportation Review and share in the overall sidewalk infrastructure in the area. Therefore, this request would violate guidelines of Cornerstone 2020.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant since the fee-in-lieu has been offered to the developer.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant because the developer is normally required to provide sidewalks as part of the request for development.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP AND AMENDMENT TO BINDING ELEMENTS**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Appropriate open space has been provided for this development as required by LDC regulations.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code except for the sidewalk waiver and variance requests. The site is located just outside a Suburban Workplace Form District and across the street from future commercial and office uses. It would help to create a buffer between the single family residences to the east and the commercial and office uses and the parcel to the north – part of this previous rezoning – has been developed as multi-family residential.

However, the Old Henry Road Subarea Plan recommends this site to be used only for low density residential dwellings. Although the lot to the north was also rezoned R-5A with this site, it was indeed developed at a density of less than five. Also, part of the applicant's justification for the rezoning in the minutes of Docket #9-99-99 was that the patio homes complied with the density recommendation of five dwelling units per acre or less. The request for a three story structure also appears to be somewhat out of character for the surrounding development pattern of single family homes and patio homes and there is a binding element that limits development on the site to a horizontal property regime.

### **TECHNICAL REVIEW**

- The proposal complies with the requirements of the LDC except for the Sidewalk Waiver and Variance requests. The Variance will need to be approved by the Board of Zoning Adjustment.
- MSD and Transportation Review have given preliminary approval for the plan.
- The applicant's proposed location for a full access to Bush Farm Road, which was a point of contention discussed at the DRC meeting, has been given preliminary approval from Transportation Review.
- The applicant is requesting to remove existing binding element #9 which limits development to a horizontal property regime and to amend #3.d and #3.e to allow the minor plat and crossover agreement to be recorded by the time permitting occurs so as to not hold up transmittal of the approved plans. The remaining revisions to the binding elements are to clean up the existing ones and make them separate from the patio homes to the north except for an additional binding element (BE #3.g) requiring all required Variances to be approved by the Board of Zoning Adjustment.

### **STAFF CONCLUSIONS**

#### Revised Detailed District Development Plan, Binding Elements, and Sidewalk Waivers

Staff analysis in the standard of review section of the staff report indicates the proposed Sidewalk Waiver #1 is justified.

Staff analysis in the standard of review section of the staff report indicates the proposed Sidewalk Waiver #2 is not justified.

Staff analysis in the standard of review section of the staff report indicates the proposed RDDDP and Binding Elements are not justified.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must determine if the proposal meets the standards for granting an RDDDP, Binding Elements, and Sidewalk Waivers established in the Land Development Code.

#### Required Actions

- Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must **APPROVE** or **DENY** the Sidewalk Waivers #1 and #2, Revised Detailed District Development Plan, and Binding Elements listed in the staff report.

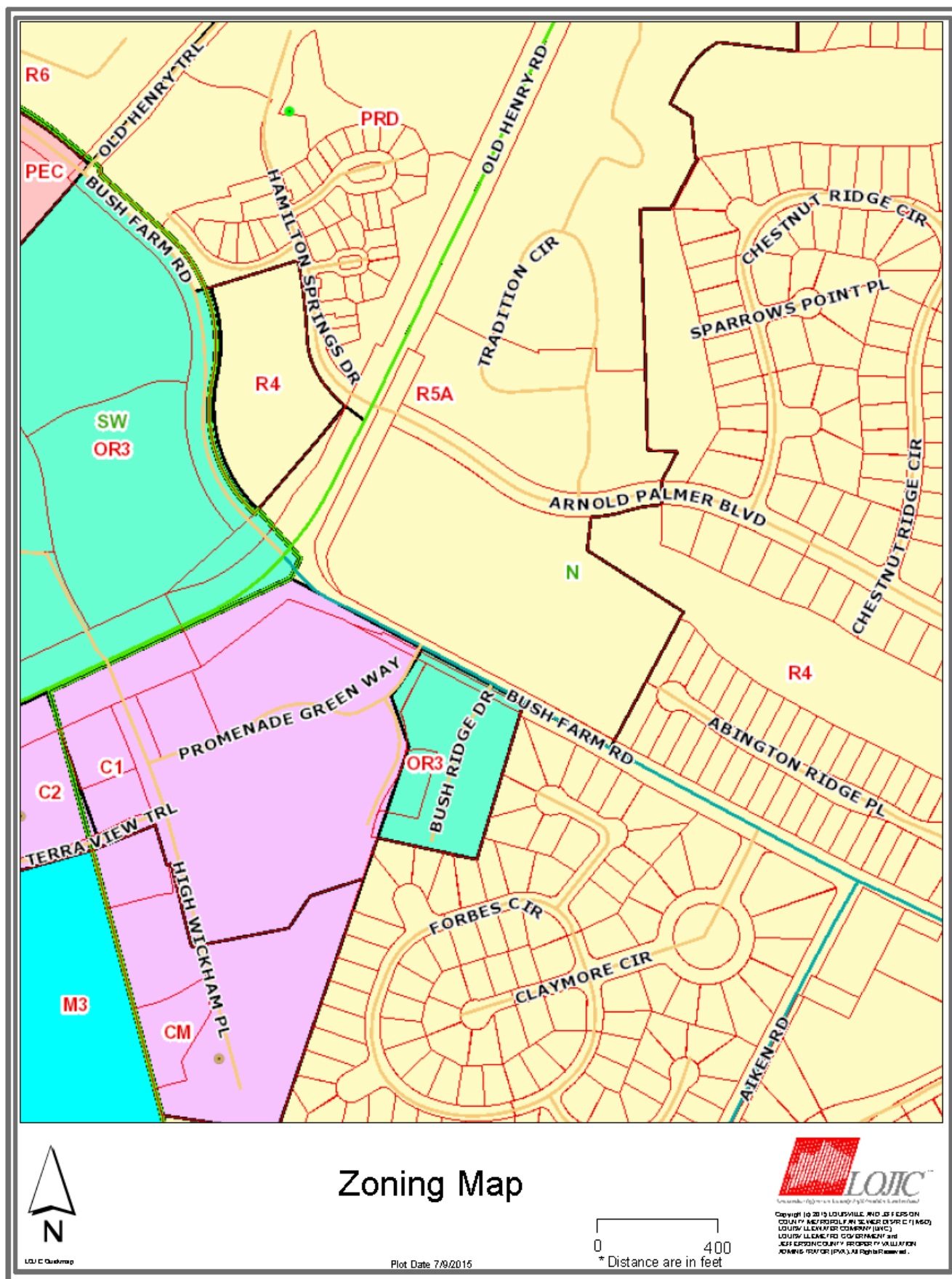
#### NOTIFICATION

Date	Purpose of Notice	Recipients
7/2/15	Meeting before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers to Council District 19 Notification of Development Proposals

#### ATTACHMENTS

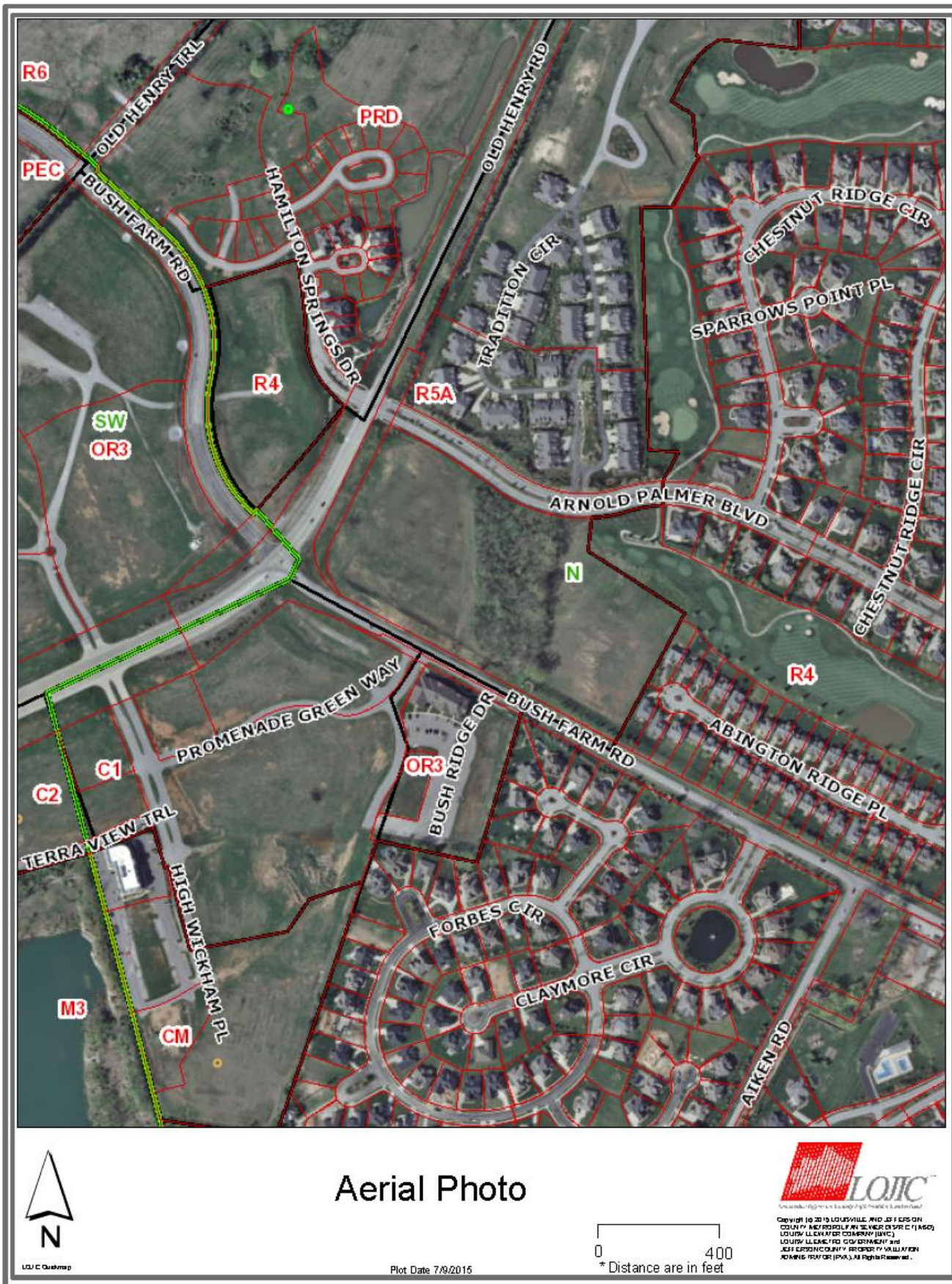
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

## 1. Zoning Map





2. Aerial Photograph





### **3. Existing Binding Elements**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The density of the development shall not exceed 4.35 dwelling units per acre (192 units on 44.1 acres).
3. There shall be no freestanding sign permitted on site without prior approval. Monument style signs that meet the size and height limits established in the "Policies for Future Development Along Designated Parkways" may be approved by DPDS staff. Signs that exceed those limits are permitted only if approved by LD&T or the Commission. LD&T or the Planning Commission may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.
4. Lighting shall be consistent with lighting established in the Lake Forest Subdivision.
5. 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.
6. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
  - a. The development plan must receive full construction approval from the Jefferson county Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. A minor subdivision plat shall be recorded dedicating additional right-of-way to Bush Farm Road to provide a total of 40 feet from the centerline, and a dedication of an additional 35 feet of right of way (as shown on the plan) for Old Henry Road. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - d. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) described in Article 12 and in conformance with the Parkway Policy prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - e. The applicant shall submit a plan by the Planning Commission staff landscape architect showing tree/tree masses to be preserved prior to beginning any construction procedure (i.e., clearing, grading, demolition). Any modification of the tree preservation plan requested by the applicant may be approved by the planning Commission staff landscape architect if the changes are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
    1. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography and other significant site features (LOJIC topographic information is acceptable).
    2. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.)
    3. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.

4. Location of construction fencing for each tree/tree masses designated to be preserved.
7. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
8. 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.
9. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
10. Development of the site shall be restricted to a horizontal property regime, KRS 381.805 et. Seq. Format, as those laws presently exist.
11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 6, 2000, Planning Commission meeting.

#### **4. Proposed Binding Elements**

1. The development shall be in accordance with the approved 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 development plan must receive full construction approval from Develop Louisville 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.
  - d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan.
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded.
  - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

- g. The appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
- 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 15, 2015 Development Review Committee meeting.
- 7. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
- 8. Lighting shall be consistent with lighting established in the Lake Forest Subdivision.