

**PLANNING COMMISSION MINUTES**  
**October 31, 2019**

**PUBLIC HEARING**

**CASE NO. 18ZONE1063 ONLY**

Request: Change in Zoning from R-4 to C-2 with conditional use permit for mini-warehouse, variance and waiver  
Project Name: Freys Hill Commercial  
Location: 3331 Freys Hill Road  
Owner: Freys DevCo, LLC  
Applicant: Freys DevCo, LLC  
Representative: Bluestone Engineers, PLLC  
Jurisdiction: Louisville Metro  
Council District: 17 – Markus Winkler  
**Case Manager: Joel P. Dock, AICP, Planner II**

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

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

**Agency Testimony:**

01:35:29 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

01:40:24 Commissioner Brown asked if there are any R-4, Single Family Residential uses on the property currently. Mr. Dock said yes, it's one single vacant R-4 property. There is an existing non-residential use on the property as well.

01:41:00 Commissioner Mims asked if the amount of tree canopy removal qualifies for the provision of the new Tree Ordinance. Mr. Dock said this case was filed in 2018 and exempt from the new ordinance. Commissioner Mims asked if the strip to Freys Hill will be a secondary access. Mr. Dock stated it's a secondary exit only and read binding element 10. Commissioner Mims asked how people will access the property. Commissioner Brown said other access is still open and available. Mr. Dock added, one activity center is disconnected and the other provides access to the site. Commissioner Mims asked if the applicant has submitted a joint access agreement. Mr. Dock said yes, they're required to provide cross-access. Mini-warehouse facilities are low interaction and low traffic generators.

01:45:20 Commissioner Howard asked why all the buildings are encroaching 30 feet into the side property line (CUP item B). Mr. Dock said relief is being requested

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from item B in conjunction with a 50 foot non-residential to residential variance as well as the 35 foot landscape buffer area.

**The following spoke in favor of this request:**

Chris Crumpton, Bluestone Engineers, 3703 Taylorsville Road, Suite 205, Louisville, Ky. 40220

**Summary of testimony of those in favor:**

01:46:51 Mr. Crumpton gave a power point presentation. Almost half the rear of the site is being preserved in tree canopy. The stream buffer is being preserved as well. There's no problem providing additional screening for the AT&T Service Center but they are a commercial use as well.

01:49:41 Commissioner Howard asked Mr. Crumpton to explain why all the buildings encroach into the 30 foot property line areas. Mr. Crumpton said he doesn't think the setback should be required at 50 feet. Also, the existing access drive is in that location and it's difficult to design a storage facility that requires maneuvering of vehicles around the buildings. The access drive is in the same location (along the property line).

**Deliberation**

01:51:27 The commissioners agree that the zoning change, new and more appropriate use, CUP, variance, waiver and development plan are all in compliance. Commissioner Howard, however does not agree with the conditional use permit relief item B. All the buildings did not have to encroach into the required areas. There are too many buildings.

**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.**

**Zoning Change from R-4, Single-family Residential to C-2, Commercial**

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposed district results in a minimal expansion into a residential area. However, the district boundaries are relatively similar and consistent with the extent of the C-2 zoning district locating to the north and west of the proposed district that is located in the Regional Center form district. No residential uses are present to the immediate south of the subject property and large majority of the district, which abuts a vacant residential parcel, provide secondary access only to the primary use within the district; The proposed higher intensity district is located immediately adjacent to near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned as the site adjoins an activity center providing access and a major arterial roadway providing access to the interstate, retailers, services, offices, and nearby industries; Primary access to the district is through an activity center having similar intensities and access to a major arterial roadway; thus, traffic impacts will be consistent with the use of the major arterial; the proposed district allows for certain uses that may produce noise, but the location of the site reduces those impacts as the site does not adjoin, at this time, residential uses and immediately abuts similar intensities within the Regional Center form district; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the district is appropriately located and slightly expands an existing activity center. Infrastructure is sufficient to support the use; the proposed non-residential use is located in the NFD at a location where impacts are minimized due to its location immediately adjoining a regional center. Access and connectivity is obtained via major roadway; The proposed district allows for retail development where sufficient population exists or is anticipated to support it; the development pattern is compact and integrated into an existing activity center; The proposed district is compatible with those districts present in the activity center; the proposed district does not eliminate the ability to provision mixed-uses including residential or office components; the proposed district will allow for commercial uses; the placement of the district is consistent with the abutting center. No residential uses are present abutting the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the development will respect natural features as no relief from the protected waterway buffer has been requested and the streambank will be maintained; MSD has preliminarily approved the proposal in order to prevent the potential for severe erosion problems. The developable area of the subject site does not appear to interfere with environmental features; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the subject site does not

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contain buildings, sites, districts or landscapes that are recognized as having historic or architectural value; the developable area of the subject site does not include a protected waterway that will be left largely undisturbed; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is through areas of similar intensity and would not create a nuisance; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to encourage short trips easily made by walking or bicycling; the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to be accessible by bicycle, car, transit, pedestrians and people with disabilities; the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to promote public transit and pedestrian use; the district is consistent with adjoining development and the connectivity of this development allows for an integration of uses to create walkable centers and centers with convenient access to multi-modal transportation; the development will have a limited impact of the transportation network as it is appropriately located and connected to the adjoining regional center; the development will bear or share in rough proportionality the costs of transportation facilities and services made necessary by development; the development will provide improvements in accordance with long-range transportation plans and level of mobility criteria for all modes of travel, if any; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the development will provide improvements in accordance with long-range transportation plans and level of mobility criteria for all modes of travel, if any; the subject property appears to have an adequate supply of potable water and water for fire-fighting purposes; the Metropolitan Sewer District (MSD) has preliminarily approved the development of the subject property; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposed commercial district along a major arterial street where nuisances and activities of the proposed use will not adversely affect adjacent areas; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, a karst survey has been performed and no features were identified; the Metropolitan Sewer District (MSD) has

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preliminarily approved the development of the subject property to mitigate negative development impacts to the integrity of the regulatory floodplain.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential to C-2, Commercial on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Mims, Peterson, Tomes and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Conditional Use Permit for mini-warehouse (LDC 4.2.35) with relief from item 'B'**

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis to include the justification for the relief from item 'B' as well as the mitigation of the fence was adopted.

**WHEREAS**, the proposal is consistent with the Comprehensive Plan as the proposed use is located immediately adjacent to or near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned as the site adjoins an activity center providing access and a major arterial roadway providing access to the interstate, retailers, services, offices, and nearby industries. The use is consistent with adjoining development and the connectivity of this development allows for an integration of uses to be accessible by bicycle, car, transit, pedestrians and people with disabilities. The use is a limited traffic generator and is located to the rear of an activity center; thus, it does not occupy viable street frontage more appropriate for higher interaction uses; and

**WHEREAS**, the proposal is compatible with surrounding uses and the general character of the form district as the proposal is integrated into the adjoining regional activity center. The subject property will be screened from adjacent vacant residential land; and

**WHEREAS**, the Louisville Metro Planning Commission finds, necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use will be provided; and

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**WHEREAS**, the Louisville Metro Planning Commission further finds mini-warehouses may be allowed in the C-2 District where the premises abut on a roadway classified as a collector or major or minor arterial as designated on Comprehensive Plan Core Graphic 11, Roadway Classification, or by the Director of Works, upon the granting of a Conditional Use Permit and compliance with the listed requirements.

A. The property shall be landscaped so as to blend in with the surrounding area and shall be screened and buffered from adjacent uses of a non-industrial nature.

B. No building, structure or pavement shall be located closer than 30 feet to side property lines or property lines abutting residential areas. This area is reserved as a landscape buffer area.

C. No outside storage shall be allowed on the property.

D. No storage of toxic or hazardous materials shall be allowed on the property.

E. There shall be no retail or wholesale sales or distributing activities on site.

F. Loading doors and vehicle maneuvering areas shall be located away from the exterior of the property.

G. No structure on the site shall be taller than one story and shall not exceed 15 feet in height (except for one freestanding sign as allowed in H below).

H. Signs - Only one freestanding sign shall be allowed and shall conform to limits established for the form district in which the sign is located.

The applicant is requesting relief from item 'B' to allow structures and pavement to be closer than 30' to side property lines. The relief is appropriate but also avoidable with a reduction in the area of disturbance. The relief, however, has a limited impact on adjoining properties as the site abuts vacant residential land and a non-residential use in the residential zone. The use is limited in its interaction and activity, and potential nuisances created at 30' as opposed to 21' would be unremarkable.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the conditional use permit for mini-warehouse pursuant to the Land Development Code section 4.2.35 with relief from item 'B'.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Mims, Peterson, Tomes and Jarboe**

**NO: Commissioner Howard**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Variance from Land Development Code, section 5.3.1 to omit the 50' non-residential to residential setback along the southeastern property line**

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**WHEREAS**, the requested variance will not adversely affect the public health, safety or welfare as the movement of pedestrian and vehicles would not be affected, and it would not encroach upon residential property; and

**WHEREAS**, the requested variance will not alter the essential character of the general vicinity, as the development is located adjacent to a regional activity center having a collection of uses and designs; and

**WHEREAS**, the requested variance will not cause a hazard or nuisance to the public as sight lines for the movement of pedestrians and motorists are not impacted and the proposal calls integration of uses with an adjoining regional activity center; and

**WHEREAS**, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposal will not adversely affect the public health, safety or welfare or alter the essential character of the general vicinity; and

**WHEREAS**, the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the site is adjacent to a residential zone which is common for the rear or side of development along commercial or major arterial corridors; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the proposal will not adversely affect the public health, safety or welfare or alter the essential character of the general vicinity; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred and relief has been appropriately requested.

**WHEREAS**, the variance will not adversely affect the public health, safety or welfare because the south property line abuts an existing ATT maintenance facility and a vacant piece of property; and

**WHEREAS**, the variance will allow the storage buildings to be constructed adjacent to the access drive and not set back an additional 20 feet from the drive. There is currently an existing drive in place; and

**WHEREAS**, the variance will not cause a hazard or nuisance since the existing ATT facility operates like an industrial maintenance center, and the other adjoining property is vacant; and

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**WHEREAS**, the variance will not allow an unreasonable circumvention of the requirements since the access drive is already in place and cannot be relocated; and

**WHEREAS**, the Louisville Metro Planning Commission finds, this variance arises since the property is a “flag lot” and the access drive runs along the south side of the property; and

**WHEREAS**, the Louisville Metro Planning Commission further finds no buildings are being proposed, however the access drive is currently existing and runs along the south property line where the setback is required.

**Waiver from LDC, section 10.2.4 to eliminate 35’ LBA along the southeastern property line and adjacent to residentially zoned LWC property**

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the waiver will not adversely affect adjacent property owners as the majority of the abutting properties are vacant and another property contains a non-residential use. A large portion of this property line associated buffer contains an existing gravel driveway encroachment that will be improved for secondary access only; and

**WHEREAS**, Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The developer will provide a solid, 8’ privacy-style fence the property line, except where adequate screening by tree masses is currently provided. If those tree masses are lost, the fence will be extended to fill in the gaps; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the majority of the land subject to waiver has a width that is less than the buffer requirement and the area is being used for secondary accessed. The mini-warehouse and secondary access will be screened by a privacy fence; and



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**WHEREAS**, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as screening will be provided and adjacent property owner will not be affected.

**WHEREAS**, the waiver will not adversely affect adjacent property owners because the buffer is along the existing access drive, as well as the neighboring property is currently being operated as an AT&T service center; and

**WHEREAS**, the waiver will not violate the Comprehensive Code because there is no other location to put the access drive, and this access drive has been in place since the property was created; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow the access drive to the property to remain in place; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create unnecessary hardship on the applicant, since no access would be able to be provided to the property.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** a variance from the LDC, Land Development Code, section 5.3.1 to omit the 50 foot non-residential to residential setback along the southeastern property line and a waiver from the LDC, section 10.2.4 to eliminate 35 foot landscape buffer area along the southeastern property line and adjacent to residentially zoned Louisville Water Company property.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Mims, Peterson, Tomes and Jarboe**

**NO: Commissioner Howard**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

**Detailed District Development Plan and Binding Elements**

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis was adopted.

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**WHEREAS**, 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 will be provided. The developable area of the subject site does not appear to interfere with environmental features. The subject site does not contain buildings, sites, districts or landscapes that are recognized as having historic or architectural value. The Metropolitan Sewer District (MSD) has preliminarily approved the development of the subject property to mitigate negative development impacts to the integrity of the regulatory floodplain; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as cross connectivity for pedestrians and vehicles to access the subject site will be provided through an abutting regional center; and

**WHEREAS**, the protected waterway buffer at the rear of the site will be preserved; and

**WHEREAS**, 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; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the proposal is compatible with surrounding uses and the general character of the form district as the proposal is integrated into the adjoining regional activity center. The subject property will be screened from adjacent vacant residential land; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan. No residential uses are present to the immediate south of the subject property and large majority of the district, which abuts a vacant residential parcel, provide secondary access only to the primary use within the district. The proposed non-residential use is located in the NFD at a location where impacts are minimized due to its location immediately adjoining a regional center. Access and connectivity is obtained via major roadway. The Metropolitan Sewer District (MSD) has preliminarily approved the development of the subject property to mitigate negative development impacts to the integrity of the regulatory floodplain. The developable area of the subject site does not appear to interfere with environmental features. The subject site does not contain buildings, sites, districts or landscapes that are recognized as having historic or architectural value.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

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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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works 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 certificate of occupancy or building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the development site and the adjoining property at 10500-10520 Westport Road. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
3. 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.
4. 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.

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5. The developer and/or property owner shall be responsible for restoration of the streambank within the protected waterway as follows:
  - a. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.
  - b. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless the County determines such vegetation would be inadequate to re-stabilize the bank. In instances where the County determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the County shall be utilized.
  - c. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.
  
6. Tree and Vegetation Removal within the protected waterway shall be subject to the following:
  - a. Existing, healthy trees and vegetation within the Buffer Area shall be preserved, except for those areas designated by the Limits of Disturbance on the approved district development plan. Trees and vegetation shall be restored in accordance with Binding Element #5 for all areas within the buffer that lie between impervious surfaces and the Limits of Disturbance.
  - b. This provision shall not prohibit any of the following: Removal of dead or diseased trees/vegetation (provided a live root system stays intact); removal of noxious weeds; Removal of non-native trees/vegetation that threaten native species growth or reintroduction; removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or removal of any other tree/vegetation that is a threat to the public health or safety; Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project
  
7. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
  
8. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

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9. An 8' privacy-style fence shall be provided along the south property line and extend from the eastern-most building of the mini-warehouse facility to a point 30' from the right-of-way of Freys Hill Road. The fence will be intermittent where tree masses on adjacent property provide greater screening. At such time as those tree masses may be lost, the fence shall be continued to leave no gaps in screening.
  
10. Access to Freys Hill Road shall be an exit only. The gate shall be 30' from the right-of-way of Freys Hill Road and be clearly marked as an 'exit only'.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Mims, Peterson, Tomes and Jarboe**

**NO: Commissioner Howard**

**NOT PRESENT AND NOT VOTING: Commissioner Lewis**

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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Site Inspection Committee**

No report given.

**Planning Committee**

No report given.

**Development Review Committee**

No report given.

**Policy and Procedures Committee**

No report given.

**CHAIRPERSON/DIRECTOR'S REPORT**

No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 3:50 p.m.

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**Chair**

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**Planning Director**