

Development Review Committee

Staff Report

July 16th, 2014



Case No:	14DEVPLAN1075
Request:	Revised General Plan and Detailed District Development Plan with Landscape Waivers
Project Name:	Middletown Commons
Location:	13315 Shelbyville Road
Owner:	GBT Realty Corporation
Applicant:	GBT Realty Corporation
Representative:	Gresham Smith & Partners
Jurisdiction:	Middletown
Council District:	19 – Jerry Miller
Case Manager:	Christopher Brown, Planner II

REQUEST

- Waiver #1: Landscape waiver from Chapter 10.2.4.B of the 2004 Land Development Code to allow a retaining wall to encroach into the required landscape buffer
- Waiver #2: Landscape waiver from Chapter 10.2.10 of the 2004 Land Development Code to allow a 5' sidewalk to encroach into the vehicular use area landscape buffer
- Amendment to Binding Elements
- Revised General/Detailed District Development

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The site is located in the northwestern quadrant of Shelbyville Road / I-265 Interchange with frontage on Shelbyville Rd and N. English Station Rd and has a main access from Data Vault Drive.

Zoning District: C-1, Commercial
Form District: SMC, Suburban Marketplace Corridor
Existing Use: Vacant
Proposed Use: Mixed Commercial Retail & Restaurant
Minimum Parking Spaces Required: 1,030
Maximum Spaces Allowed: 1,755
Parking Spaces Proposed: 1,168
Plan Certain Docket #: 10723

The applicant is proposing to construct a 237,005 SF shopping center known as Middletown Commons on two lots with 6 out lots. Along North English Station Road, a mixed commercial, 20,800 SF portion of this shopping center will be located with a connection to the larger shopping center. On Lot 5, the applicant is proposing a 4,000 retail use. All the proposed uses are retail or restaurant across the detailed level lots. There are two focal point areas within the property. One is located at the western intersection of North English Station Road and Data Vault Drive. The other is located along the pedestrian path from Shelbyville Road to the main structure. These create a sense of relationship to the outdoor amenity areas and help to establish an identity for the larger commercial development. The focal points will provide for street furniture, pedestrian lighting, large planter areas and colored concrete that match the color schemes of the overall development.

Throughout the development, pedestrian connections and required tree canopy will be provided in accordance with the Land Development Code. Complete pedestrian connections will occur along Shelbyville Road, North English Station Road and Data Vault Drive. They will connect to the interior of the property along all access drives. The pedestrian connection for Lot 5 will come directly from walk along Shelbyville Road. The rear of the lot will contain a pedestrian connection to Lot 1 and Lot C. The 5' sidewalk will encroach into the required vehicular use area landscape buffer. The proposed development meets the majority of landscaping requirements on the site with 20% tree canopy provided and 7.5% of the VUA SF in interior landscaping. Along the northern property perimeter are adjacent to the Louisville Water Company site an 8' retaining wall has been requested to encroach into the required landscape buffer. All previous granted waivers and variances will be followed on the site.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant	C-1	SMC
Proposed	Mixed Commercial	C-1	SMC
Surrounding Properties			
North	Water Storage Tower	R-4	SW
South	ROW/Mixed Commercial	C-1	SMC
East	Gene Snyder	N/A	N/A
West	Mixed Commercial	C-2	SMC

PREVIOUS CASES ON SITE

10723: The Planning Commission and City of Middletown approved a change in zoning from R-4 and R-7, residential, to C-1, commercial, a change in form district from Suburban Workplace to Suburban Marketplace Corridor, a conditional use permit for outdoor alcohol sale and consumption for restaurants in C-1 zoning, a variance to reduce the required yard along the northern property line from 50' to 25' and approval of a detailed district development plan.

13DEVPLAN1051: Revised general/detailed district development plan was approved for Middletown Commons with landscape waivers granted along Shelbyville Road and Gene Snyder Freeway scenic corridors as well as encroachments and reductions of landscape buffers along the northern property perimeter. Variances were approved for pavement encroachment and building setbacks for Lot 1 of the proposed development.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
2004 Land Development Code (Middletown)

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS
(North Property Perimeter Retaining Wall)**

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

STAFF: The waiver will not adversely affect adjacent property owners since the property is a Louisville Water Company site used for a maintenance facility and industrially zoned beyond this property.

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

STAFF: 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 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The adjacent areas to the site are not residential in nature and used for public infrastructure and industrial beyond the Louisville Water Company site. The retaining wall will still allow buffering to be provided to meet the intent of the guidelines; therefore, the waiver will not violate specific guidelines of Cornerstone 2020.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow the proposed retaining wall as needed for the proposed development to the rear of the structures.

- (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 by requiring the elimination of the needed retaining wall or extending the buffering into needed vehicular use area for access to the rear of the buildings.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS
(Sidewalk Encroachment)**

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

STAFF: The waiver will not adversely affect adjacent property owners since the buffer is in an area adjacent to the interior access road.

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

STAFF: 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 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The adjacent areas to the out lot are along the access road and the overall site will be providing the required planting materials while meeting the pedestrian connection requirements; therefore, the waiver will not violate specific guidelines of Cornerstone 2020.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow the needed pedestrian connectivity to be provided from the out lot.

- (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 by requiring the elimination of the needed sidewalk or extending the buffer further into the site with elimination of parking or vehicular use area.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DEVELOPMENT PLAN 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 pedestrian transportation within and around the development and the community has been provided and the vehicular transportation meets the needs of the proposed development.

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

STAFF: The open spaces requirements of the site are met with the focal point and amenity areas to be provided throughout the property.

- 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. The buildings will follow the proposed pattern book to incorporate the property into the larger Regional Center.

- 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 with the proposed master plan pattern book that establishes a unique character for the development and unifies the appearance of the lots in their building, landscape and amenities area design. It meets the requirements of the Land Development Code with the exception of the requested waivers. The requested waivers follow the intent of the Comprehensive Plan and the 2004 Land Development Code.

TECHNICAL REVIEW

- Actions require final approval by the City of Middletown based upon recommendations by the Development Review Committee.

STAFF CONCLUSIONS

The standard of review for the requested landscape waivers has been met. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Development Review Committee must determine if the proposal meets the standards for granting landscape waivers and a revised general and detailed district development plan as established in the Land Development Code.

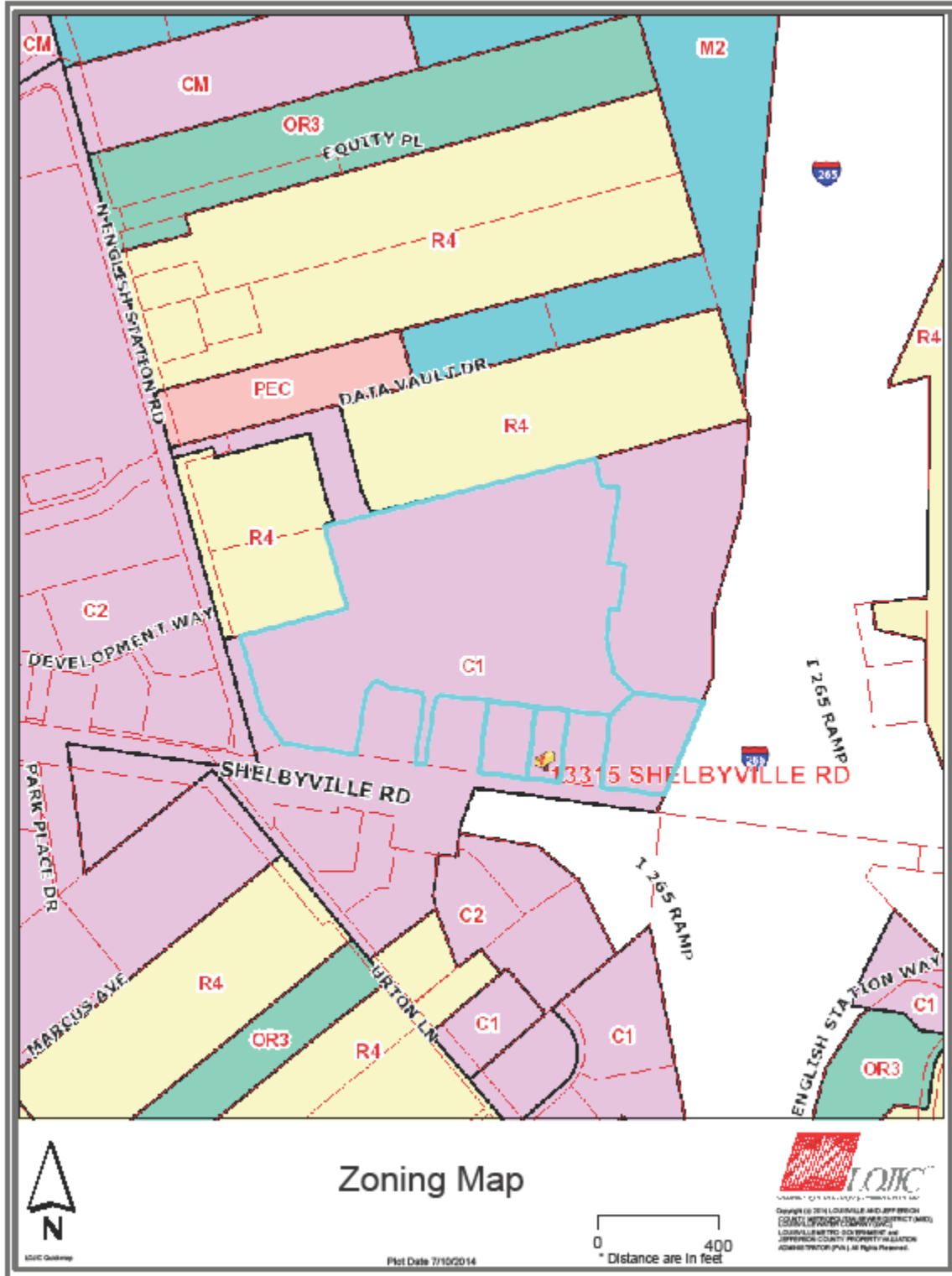
NOTIFICATION

Date	Purpose of Notice	Recipients
07/01/14	Hearing before LD&T	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups

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, 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 and to the City of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development of each tract/building or phase of this project, the applicant, developer, or property owner shall obtain approval from the Planning Commission and City of Middletown of building design in accordance with Chapter 5 of the LDC. The façade elevations shall be in accordance with the Suburban Form District building design standards.
3. Use of the subject site shall be limited to office, retail, restaurants, bank and hotel, and other uses permitted in the C-1 district. There shall be no other use of the property unless prior approval is obtained from the Planning Commission. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The Planning Commission may require a public hearing on the request to amend this binding element.
4. The development shall not exceed 272,000 square feet of gross floor area.
5. Signs shall be in accordance with the City of Middletown sign regulations.
6. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
7. The access to the site must be provided from the curb cut on Shelbyville Rd, N. English Station Rd and Data Vault Drive as shown on the development plan.
8. 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.
9. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or alteration permit or demolition permit is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and 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 by the Planning Commission and the City of Middletown 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. Any landscaping shown in the scenic corridor must be installed and maintained as possible after clearing. There shall be no removal of the existing landscaping or required landscaping without City Commission approval. In the event any tree or landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact.

- 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. Approval of the Tree Preservation Plan and a Tree Inventory by Middletown is required prior to clearing or removal of trees.
 - e. A major record plat must be recorded creating Tracts 1, 2 and 3, private access easements and designate a portion of Data Vault Drive as public road as shown on the development plan.
 - f. The appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
10. A certificate of occupancy must be received from the appropriate code enforcement department, after review and approval by the City of Middletown, 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 and the City of Middletown.
 11. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line or permitted on the site.
 12. 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.
 13. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the Land Development Code.
 14. The final style and design of each building shall be reviewed and approved by the Planning Commission, DRC, or LD&T Committee and the City of Middletown and be consistent with the general style and design presented at the October 24th LD&T meeting, prior to obtaining building permits for individual buildings.
 15. Construction plans, bond, and KTC permit are required by Metro Public Works prior to road construction approval and issuance of MPW encroachment permit. Construction approvals for the site shall not be granted until such time as Kentucky Transportation Cabinet (KTC) improvements as shown on the development plan have been let for construction and bonds have been secured and encroachment permits issued for improvements which are the responsibility of the developer. Developer shall not request a Certificate of Occupancy (CO) for the site until all offsite road improvements as shown on the development plan, approved road improvement exhibit dated 02/16/10 and included in the BTM Engineering Traffic Impact Study (TIS) have been constructed and any required signal installations and modification have been implemented.
 16. Prior to submittal of a revised development plan (or a construction plan if no revised development plan is required) or approval of the office building, which shall also require the approval of the City of Middletown, shown on the detailed district development plan approved at the February 19, 2010 Planning Commission public hearing ("Plan") or any other construction generating a greater number of trips (as estimated by the most current version of the ITE Trip Generation Manual) than would be generated by the uses shown on the Plan, an updated traffic study shall be submitted and approved by Metro Public Works and the Kentucky Transportation Cabinet. If Metro Public Works or the Kentucky

Transportation Cabinet determines that additional roadway improvements are required, based on the traffic study, such improvements shall be made by the applicant prior to the issuance of a certificate of occupancy. If such additional roadway improvements are not directly necessitated by the applicant's impact on the roadway network, the applicant shall contribute a proportionate share, based on trip generation, for those improvements to Metro Public Works, and shall delay construction until such time as the improvements have been constructed.

17. Developer shall be responsible for any required utility relocations, final surface overlay, signage, signal installation and striping associated with required road improvements to Shelbyville Road, North English Station Road, Data Vault Drive and the portions of the proposed entrance drive within the right-of-way.
18. All street signs shall be installed by the Developer and shall conform to 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 structure with access from 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.
19. An encroachment permit and bond may be required by Metro Public Works for roadway repairs on all surrounding access roads to the site due to damages caused by construction traffic activities.
20. Per the approved road improvement exhibit dated 02/16/10, Metro Public Works requirements and KTC requirements, the applicant shall provide the following:
 - a. For Shelbyville Road, install a right turn lane for the proposed right-in-right-out access. Turn lane shall measure 150' in storage length with a 100' taper.
 - b. The southbound approach from North English Station Road at its intersection with Shelbyville Road shall be widened to provide an additional southbound left turn lane. The widening shall continue northward on North English Station to accommodate required taper lengths as necessary.
 - c. Developer shall be responsible for signal installation at N. English Station and Data Vault Dr. and required modifications to the existing traffic signal at the intersection of N. English Station and Shelbyville Road.
 - d. If proposed KTC multiuse path along Shelbyville Road frontage has not been installed at the time of site construction, the area of the path shall be pregraded per KTC requirements. If path has been installed at the time of site construction, the path will be relocated to accommodate Shelbyville Road improvements per KTC requirements.
21. The applicant shall contribute a proportionate share, not to exceed \$10,000, to the cost of the installation of a traffic signal at the intersection of N. English Station Road and Aiken Road (N). This contribution shall be made at the request of Metro Public Works at such time as Metro Public Works is prepared to install this signal.
22. Once the site is cleared, it must be seeded with grass and kept free from overgrowth (weeds or grass over one foot high) and secured, as best is possible, from dumping. In any event the site must be kept in compliance with City of Middletown Ordinances #15, Series 1984; #5, Series 1987, #8, Series 1982.
23. The development shall be substantially in accordance with the "Development Design Guidelines & Pattern Book," as presented at the October 24th, 2013 LD&T meeting.
24. An irrevocable access easement required to the Louisville Water Company site adjacent to the proposed development is required to be submitted to staff and legal counsel for the Planning Commission for final approval prior to building permits.

4. **Existing Binding Elements**

23. The development shall be substantially in accordance with the "Development Design Guidelines & Pattern Book," as presented at the ~~October 24th, 2013 LD&T~~ July 16th, 2014 **Development Review Committee** meeting.