

PLANNING COMMISSION MINUTES
December 17, 2020

PUBLIC HEARING

CASE NO. 20-ZONE-0056

Request: Change in Zoning from R-4 to R-5A with Detailed District Development Plan, Binding Elements, and Associated Waivers and Variance

Project Name: S English Station Road Multi-Family Location: 999 & 1007 S English Station Road

Owner: 1007 S English Station Road

Applicant: Sunshine English Station Development LLC

Representative: Bardenwerper Talbott & Roberts

Jurisdiction: Louisville Metro

Council District: 20 - Stuart Benson

Case Manager: Dante St. Germain, 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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:59:45 Dante St. Germain presented the case and showed a Power Point presentation (see recording for detailed presentation.)

02:11:11 Ms. St. Germain discussed proposed binding elements.

02:12:47 Commissioner Mims disclosed that he does have some ownership interest in the apartment community across the street from this site; however, he said that should not affect his ability to fairly review this case.

The following spoke in support of this request:

William Bardenwerper, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Nick Pregliasco, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

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Derek Triplett, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Diane Zimmerman, traffic engineer (was present but did not speak)

Summary of testimony of those in support:

02:13:21 William Bardenwerper, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

02:25:58 Derek Triplett, an applicant's representative, discussed topography, drainage, tree canopy, project design, and road improvements along South English Station Road (including turning lanes).

02:30:19 Mr. Bardenwerper resumed his presentation.

02:33:13 Referring to a slide in his presentation, Mr. Bardenwerper discussed in more detail the proposed binding elements.

02:39:08 Joe Reverman, Assistant Director of Planning & Design Services asked for more clarification on roadways. The entrance on the south will require a bond on that road - is that included on the Tract 1 road-bonding? Mr. Bardenwerper said a bond is required whenever a developer does any work in a public right-of-way. The main road through the patio homes communities would be bonded; the road on the south that goes into the apartments would not be bonded, because it doesn't connect with anything. Mr. Reverman said Metro would likely require that to be bonded as a private street. See recording for detailed discussion.

The following spoke in opposition to this request:

No one spoke.

02:42:49 Commissioners' deliberation.

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.

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02:48:58 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard today, and the applicant's findings of fact, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that this "Application Package" complies with Plan Element 4.1, its five Goals and their Objectives plus the following Policies; as to Goal 1, Policies 2, 2.1, 3.1.3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 23, it complies as follows, in addition to the other ways set forth above and below: the site is located in the Neighborhood Form District which encourages medium and high density uses and a range of housing opportunities, notably including multi-family dwellings which can be condominium patio homes and rental apartments, which this plan proposes; proposed density in this instance is barely in the medium range, as contemplated by these Policies; stacked 3-story apartments constitute 172 of the planned units, and patio homes make up the other 54 units; their designs, square footages, rental rates and sales prices are also contemplated by these Policies as appropriate for this Form District and this specific neighborhood; located as this proposed multi-family zoned community is just a short drive south down S. English Station Road from a sizeable commercial activity center and a very short distance from Christian Academy school, travel distances for purposes of shopping and school are reduced, and walking and biking become very real possibilities; this helps contribute to improved air quality; the frontage improvements along S. English Station Road to add a center turn lane will improve the existing condition of the frontage and stub streets are being provided to the east and north; the brick and quality siding components and traditional style and design of these buildings assure compatibility with the north-adjointing patio home style condominium buildings and also nearby apartment buildings across S. English Station Road; landscaping, screening and buffering beyond the bare minimums also helps assure appropriateness for the neighborhood and compatibility with adjoining residential uses; and as a consequence of what surrounds this proposal and the fact that this is a proposed multi-family community, same as the north and west adjoining uses, impacts such as traffic, odors, lighting, noise and aesthetic factors will not prove to be nuisance factors; and

WHEREAS, the Commission further finds that, as to Goal 2, Policies 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16 and 17, it complies as follows, in addition to the other ways set forth above and below: the proposed multi-family community is located in a Neighborhood Form District, very near already built shopping and other multi-family zoned communities and in close proximity to a school; as such, and with good pedestrian and vehicular access along S. English Station Road with street and sidewalk connections to other neighborhoods, the proposed multi-family community is part of a

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large mixed residential, retail and school activity center; also, as such, it will add to the opportunities existing and planned in this high growth area of Louisville Metro to reside in close and convenient proximity to places of employment, food, shopping and education; and given all that is proximate to and surrounds this particular site, and given the particular design of this proposed multi-family community, it appears as though this development and the larger community, including the activity center of which this development is a part, has the overriding feel of having been always planned this way; and

WHEREAS, the Commission further finds that, as to Goal 3, Policies 1, 2, 3, 6, 9, 10 and 13, it complies as follows, in addition to the other ways set forth above and below: the detailed district development plan (DDDP) filed with the rezoning application for this proposed multi-family community includes a community clubhouse and communal open space for use by residents (both of the apartments and condominium owners); and those spaces will be maintained in perpetuity by the owner of the apartment community; and

WHEREAS, the Commission further finds that, as to Goal 4, this is not a historic site with historic buildings; and

WHEREAS, the Commission further finds that, as to Goal 5, this proposed multi-family community is neither large nor public enough to include an element of public art; and

WHEREAS, the Commission further finds that this Application Package complies with Plan Element 4.2, its three Goals and their Objectives plus the following Policies; as to Goal 1, Policies 1, 2, 3, 4 and 6; Goal 2, Policies 1, 2, 3, 4, 5, 6, 7 and 8; and Goal 3, Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20 and 21, it complies as follows, in addition to the other ways set forth above and below: This proposed multi-family community (located as it is within an existing and growing mixed use activity center, with good access off both arterial and local streets and thereby well connected as it is proposed to be close to a nearby school, restaurants, retail shopping and other residential developments and communities) is clearly part and parcel of good pedestrian, bicycle and road networks; locating their development along and with access to and from those networks, the aforementioned developer will at its cost construct sidewalks and the S. English Station Road right-of-way improvements to add a turn lane as depicted at the public hearing; in doing so, it will prepare construction plans that will assure safe access with good site distances and turning radii; bike racks and handicapped parking spots will be installed as and where required near buildings; all drive lanes, parking spaces and stub connections are designed in accordance with Metro Public Work and Transportation Planning (MPW&TP) requirements; also a Traffic Impact Study (TIS) was completed by Diane Zimmerman and was submitted in accordance with MPW&TP requirements; TARC service is generally unavailable in

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areas like this, but is available nearby along Shelbyville Road; and all necessary utilities are located proximate to this site and accessible by it via public right of way or easements; and

WHEREAS, the Commission further finds that this Application Package complies with Plan Element 4.3, its three Goals and their Objectives plus the following Policies; as to Goal 2, Policies 1, 2 and 3, it complies as follows, in addition to the other ways set forth above and below: Christian Academy school is located across S. English Station Road with an access road to it situated almost directly across from the proposed principal point of access to this proposed multi-family community; a fire station is located a short distance away down Shelbyville Road at Urton Lane; and a public library and community center are located in the heart of Middletown, the nearest municipality to this site; and

WHEREAS, the Commission further finds that this Application Package complies with Plan Element 4.4, its two Goals and their Objectives, plus the following Policies; as to Goal 2, Policies 1 and 3, it complies as follows, in addition to the other ways set forth above and below: as Louisville Metro's population continues to grow, so does demand for housing of all types; this proposed multi-family community is part of a developer response to that demand, and as such both stabilizes and offers increased opportunities for employment in the building trades and associated industries; and it also increases the tax base essential to the provision of government services; and

WHEREAS, the Commission further finds that this Application Package complies with Plan Element 4.5, its four Goals and their Objectives plus the following Policies; as to Goal 1, Policies 5, 7, 8, 10, 11, 12, 13, 15, 16, 23, 26, 27, 28, 29, 30, 31, 32, 33 and 35; and Goal 4, Policies 1 and 2, it complies as follows, in addition to the other ways set forth above and below: the DDDP filed with this application shows how storm water is proposed to be addressed, including where detention is anticipated to be located such that post development rates of run-off will not exceed pre-development conditions; sanitary sewer service is available at the nearby Floyds Fork regional wastewater treatment plant; it can be accessed via lateral extension to and from an existing nearby manhole; there are no minimally impacted regulated streams or other protected waterways that are directly affected by this proposed development, although measures will be taken to assure that erosion and sediment impacts are fully controlled and/or mitigated; as mentioned above, given the location of this proposed multi-family community in a large existing and expanding activity center, air quality impacts will be minimized because vehicle miles travelled are reduced; and

WHEREAS, the Commission further finds that this Application Package complies with Plan Element 4.6, its three Goals and their Objectives, plus the following Policies; as to Goal 1, Policies 1, 2 and 3; Goal 2, Policies 1, 2 and 3; and Goal 3, Policies 1, 3 and 4,

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it complies as follows, in addition to the other ways set forth above: designed as it is as part stacked apartment buildings in close proximity to I-64 and part patio homes adjacent to other patio homes, this proposed multi-family community will serve a different role and purpose as other similarly designed patio home and apartment style communities in this area of Louisville Metro; because of the number of bedrooms, it's possible that renters and condominium owners, taking advantage of proximity to the nearby Christian Academy school, will have children; and because of the different style and design of the patio home units, they can probably expect empty-nesters are their principal occupants; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 1 because the requested zoning district would not allow for higher density or intensity uses; and the requested zoning district would not allow uses that are substantially different in scale and intensity compared with existing development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 2 because the proposal would permit new development of residential uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 3 because no wet or highly permeable soils are evident on the site. Development on severe, steep or unstable slopes shall conform to the geotechnical report recommendations; and

WHEREAS, the Commission further finds that the proposal meets the intents of Community Form: Goal 4 because no distinctive cultural features are evident on the site. The historic building has been documented and demolished; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 1 because the proposed zoning district would not permit higher density and-intensity uses; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 2 because access to the site is via S English Station Road, a secondary collector at this location, and is routed through areas of similar intensity development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Mobility: Goal 3 because Transportation Planning has approved the proposal; and no direct residential access to high speed roadways is proposed; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Community Facilities: Goal 2 because the relevant utilities have approved the proposal; and MSD and Louisville Water Company have approved the proposal; and

WHEREAS the Commission further finds that the proposal meets the intents of Livability: Goal 1 because tree canopy will be preserved on the site as well as slopes and water courses; the site is located on karst terrain. No karst features were evident on the site; and the site is not located in the regulatory floodplain; and

WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 1 because the proposed zoning district would permit a variety of housing types which would reflect the Form District pattern; and the proposal would permit aging in place by increasing the variety of housing available in the neighborhood; and

WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 2 because the proposal would encourage inter- generational, mixed-income development; and

WHEREAS, the Commission further finds that the proposal meets the intents of Housing: Goal 3 because the proposal would increase the variety of ownership options and unit costs throughout Louisville Metro; no existing residents will be displaced by the proposal; and the proposal would permit the use of innovative methods of housing; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Change in zoning from R-4 Single Family Residential to R-5A Multi-Family Residential be **APPROVED**.

The vote was as follows:

YES: Commissioners Lewis, Peterson, Brown, Mims, Howard, Daniels, Seitz, Sistrunk, and Jarboe.

ABSENT: Commissioner Carlson.

Variance from Table 5.3.1 to reduce the side yard setback on Tracts 1 and 2 from 5' to 0' (5' variance) as shown on the development plan (20-VARIANCE-0129)

02:50:06 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis evidence and testimony heard today, was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare as the only affected properties are the ones on the site; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the variance is unlikely to be noticeable from the public street; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as sight lines will not be affected by the proposed variance; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the proposed lots are irregular in shape and the variance is needed in order to have the lots and buildings in their proposed configuration; and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the total site is constrained with slopes and streams, so that the buildable areas of the site are reduced; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring the lot lines and structures to be redesigned, resulting in fewer allowed units; and

WHEREAS, the Commission further finds that the circumstances not are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no construction has yet taken place and the variance is being sought at this time; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from Table 5.3.1 to reduce the side yard setback on Tracts 1 and 2 from 5' to 0' (5' variance) as shown on the development plan (20-VARIANCE-0129)

The vote was as follows:

YES: Commissioners Lewis, Peterson, Brown, Mims, Howard, Daniels, Seitz, Sistrunk, and Jarboe.

ABSENT: Commissioner Carlson.

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Waivers:

- **#1** from 10.2.10 to omit the required Vehicular Use Area Landscape Buffer Area (VUA LBA) on Tracts 1 and 2 as shown on the development plan (20-WAIVER-0094)
- **#2** from 10.2.7 to not provide the required tree plantings within the 35' LBA on the southern property line on Tract 2 (20-WAIVER-0095)

02:51:23 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis evidence and testimony heard today, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the only affected properties are on the subject site; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages adequate buffering between uses which are of substantially different intensity or density. The two properties affected are of similar intensity and density, and will be the same zoning district. The lack of VUA LBA will be on both sides of the property line; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as putting the property line in another location to permit the required VUA LBA would unnecessarily require the shifting of some of the buildings from their current proposed configuration; and

WHEREAS, the Commission further finds that 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 new property line would have to be moved to a less advantageous position, and require the site be reconfigured to permit the required VUA LBA; and

(Waiver #2) WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the adjacent property contains I-64; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as there will be considerable tree canopy remaining to buffer the view from I-64 on the interstate right-of-way. Tree canopy on the subject site within the proposed LBA does not exist currently as a result of the transmission lines; and

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WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the overhead electric transmission lines prevent the required tree plantings from being placed within the required LBA; and

WHEREAS, the Commission further finds that 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 transmission lines extend parallel to the property line and I-64, so there is nowhere else within the required LBA that the plantings could be placed. Total required tree canopy will be provided on the site; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver #1 from 10.2.10 to omit the required Vehicular Use Area Landscape Buffer Area (VUA LBA) on Tracts 1 and 2 as shown on the development plan (20-WAIVER-0094); **AND** Waiver #2 from 10.2.7 to not provide the required tree plantings within the 35' LBA on the southern property line on Tract 2 (20-WAIVER-0095).

The vote was as follows:

YES: Commissioners Lewis, Peterson, Brown, Mims, Howard, Daniels, Seitz, Sistrunk, and Jarboe.

ABSENT: Commissioner Carlson.

Detailed District Development Plan

02:56:24 On a motion by Commissioner Brown, seconded by Commissioner Seitz, the following resolution, based on the Standard of Review and Staff Analysis evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that tree canopy, slopes and water courses will be conserved to the greatest extent possible on the site. No historic assets are evident on the site; and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

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WHEREAS, the Commission further finds that open space in excess of the required minimums are being provided on the site, through amenities shared between Tract 1 and Tract 2; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure 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; and

WHEREAS, the Commission further finds that the overall site design is compatible with the existing and future development of the area. The neighborhood is characterized by relatively recent multi-family and single-family development; and

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Land Development Code with the exception of the requested waivers and variance; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following 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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor plat or legal instrument shall be recorded creating the property lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - c. 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. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument. Said instrument shall state, in addition to other provisions, that occupants of Tract 1 shall be permitted to utilize the open space amenities of Tract 2 and vice versa.
 - d. 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. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 17, 2020 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
5. 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.

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6. 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.
7. Prior to developer requesting a Certificate of Occupancy ("CO") on the first patio home units, developer shall request Metro Public Works ("Public Works") to inspect the the road infrastructure to the access roads leading to the patio homes to determine what amount of bond, if any, the developer shall be required to post prior to CO issuance. The stub road to the property line to the east shall be built to the east property line prior to release of said bond, if applicable. The developer can request a bond release and Public Works to inspect the road infrastructure to the patio homes for same whenever the road infrastructure construction is complete.
8. The roadway connections on the patio home Tract 1 to the north and east shall remain open and available to thru traffic.
9. The proposed roadway improvements to S. English Station Rd. shall be substantially similar to the exhibits presented at the 12/17/20 Planning Commission hearing. Detailed design to be coordinated with Public Works and Transportation Planning during construction plan process. The proposed roadway improvements shall be completed prior to issuance of the certificate of occupancy for the fourth apartment building on the site.

The vote was as follows:

YES: Commissioners Lewis, Peterson, Brown, Mims, Howard, Daniels, Seitz, Sistrunk, and Jarboe.

ABSENT: Commissioner Carlson.