

Planning Commission

Staff Report

June 2, 2022



Case No:	21-ZONE-0059
Project Name:	Oak Grove Road Subdivision
Location:	10212 & 10302 Oak Grove Road
Owner(s):	Estate of Doris Ann Parker, The Parker Living Trust
Applicant:	JS Acquisitions LLC
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel, 23 – James Peden
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Change in zoning** from R-R Rural Residential to R-4 Single Family Residential
- **Waivers**
 - #1 from 7.3.30.E to allow a rear yard to overlap a drainage easement by more than 15% (21-WAIVER-0099)
 - #2 from 5.9.2.A.1.a.ii to omit required stubs to abutting vacant parcels (21-WAIVER-0122)
- **Detailed District Development Plan/Major Preliminary Subdivision** with development potential transfer and Binding Elements

CASE SUMMARY/BACKGROUND

The subject site is located on Oak Grove Road west of the intersection with Thixton Lane and consists of two contiguous parcels. The applicant wishes to rezone the property to R-4 with a development potential transfer in order to construct a new 180-lot single-family subdivision, a reduction from the prior proposal of 263 lots.

Oak Grove Road is a secondary collector and scenic corridor at this location. The development is also proposed to utilize access from Mossy Creek Way, a local road going through an adjacent subdivision (Creek View). Cedar Creek runs through the property to the west.

The site is located within the study area for the Fern Creek Small Area Plan. The site is located in Quadrant III (the Southwestern Quadrant) and is within the Preservation Strategy Area, where the agricultural, rural character of the area is proposed to be preserved.

The site was downzoned from R-4 to R-R under areawide rezoning docket number 9868, on the recommendation of the neighborhood plan.

STAFF FINDING

Staff finds that all technical issues have not been resolved at this time, and the case is not ready for a public hearing.

Staff further finds that the proposed zoning change does not meet the guidelines of the Comprehensive Plan. The site is located in a less-developed area of Louisville Metro, and the Fern Creek Small Area Plan recommends retaining agricultural, rural development. The scale of the proposed development is

out of proportion to the infrastructure available, even with the proposed reduction in lots from the original plan, as the larger lots in the new proposal could be subdivided again in the future to increase the number of lots from the current proposal.

The waivers are adequately justified and meet the standard of review.

The site plan meets the requirements of the Land Development Code but does not generally meet the guidelines of the Comprehensive Plan.

TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

Fern Creek Small Area Plan (2003)

The site is located within the study area for the Fern Creek Small Area Plan. The site is located in Quadrant III (the Southwestern Quadrant) and is within the Preservation Strategy Area, where the agricultural, rural character of the area is proposed to be preserved.

MSD has provided preliminary approval of the proposal. Transportation Planning still has one outstanding technical issue which has not been resolved as of the date of publication of this report:

- A planning study of the roads serving the development was requested from the applicant by Transportation Planning. The planning study was to include a topographic survey and property survey to find the limits of disturbance and determine how much right-of-way is available for proposed improvements. The roads serving the site should be designed for 12' travel lanes and 6' earth shoulders. The planning study was also to include collision data and analysis of the surrounding roads and intersections, as well as capacity at intersections and turn-lane warrants.

The applicant has proposed binding elements in addition to the ones in Attachment 4 of this staff report:

- Developer to construct a right-hand turn lane on eastbound Thixton Lane between the west side of Old Bardstown Road to the east side of New Bardstown Road, per details from the Kentucky Transportation Cabinet.
- Developer to widen Oak Grove Road from the subject site north to Independence School Road, and Independence School Road from Oak Grove Road to Cedar Creek Road to 18' width where deficient.
- Developer to widen Independence School Road from Oak Grove Road to Thixton Lane, and Thixton Lane east to Bardstown Road to 18' width where deficient.
- Developer to construct safety improvements including new headwall, guardrails or shoulder improvements as requested by Louisville Metro Public Works to address the headwalls shown at the June 2, 2022 Planning Commission public hearing.
- All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast survey shall be done in a manner consistent with Kentucky Blasting regulations.
- Covenants, Conditions and Restrictions shall include a notice that the stub streets could potentially become connections.

INTERESTED PARTY COMMENTS

Numerous interested party emails have been received, either requesting additional information or in opposition to the request. Some of the comments related to some clearing that was performed on the property in order to conduct geotechnical work prior to the approval of the zoning change.

STANDARD OF REVIEW FOR REZONING

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING

The site is located in the Neighborhood Form District

The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas.

The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages, incomes and abilities. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to, large lot single family developments with cul-de-sacs, traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero-lot line neighborhoods with open space, and high density multi-family housing.

The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycle and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to support physical activity for all users and invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets.

Following is staff's analysis of the proposed rezoning against the Goals, Objectives and Policies of Plan 2040.

The proposal would add housing to Louisville Metro and to the surrounding neighborhood. However, the Fern Creek Small Area Plan recommends retaining agricultural and rural land in Quadrant III.

Additionally, the scale of the proposal is out of proportion to the existing infrastructure, especially transportation infrastructure. The applicant will need to widen Independence School Road and improve the intersection at Thixton Lane and Bardstown Road to accommodate traffic. A planning study for these improvements was requested from the applicant and has not been provided as of the date of publication of this report.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 7.3.30.E

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

STAFF: The waiver will not adversely affect adjacent property owners as the overlap between the rear yard and the drainage easement is not likely to be visible outside the property or increase drainage off the property.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address overlap between required yards and drainage easements.

- (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 as the overlap is made necessary by MSD generally requiring drainage easements to be in rear yards.

- (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: 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 excess rear yard be reserved on lots that have the drainage easement, negatively impacting the building envelopes.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 5.9.2.A.1.a.ii

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

STAFF: The waiver will not adversely affect adjacent property owners as the affected property to the west is being provided with a stub. The properties to the north are being developed with single-family construction and are unlikely to redevelop in the foreseeable future.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages connectivity, and the property to the west is being provided with a stub. The properties to the north are unlikely to redevelop in the foreseeable future.

- (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 as a stub is being provided to the west.

- (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: 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 stub to the west is being provided and stubs to the north would not provide usable connections.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR SECTION 4.7.5.B TO ALLOW LAND DISTURBING ACTIVITY ON SLOPES GREATER THAN 20% ON LOTS CREATED BY MAJOR SUBDIVISION

Land disturbing activities on slopes greater than 20% is permitted on lots created by major subdivision after the effective date of this regulation only if the activity is in keeping with the Comprehensive Plan and the proposed activity complies with the following standards:

- (a) The Commission finds that the design and configuration of the development results in the minimum disturbance of slopes greater than 20% necessary to accommodate the proposed use of the site; and,

STAFF: The applicant must demonstrate to the Commission that the design and configuration of the potential building construction is the minimum disturbance of slopes greater than 20%.

- (b) Compatible on-site utilities (electric, phone, cable) are placed in a common trench; and,

STAFF: The applicant has placed a note on the plan indicating that compatible utilities shall be placed in a common trench unless otherwise required by the applicable agencies.

- (c) The Planning Commission may approve the activity if the geotechnical report opines and demonstrates that:
a. The slope's ground surface and subsurface are not unstable;
b. Development of the slope and associated mitigation measures will not increase the degree of risk of slope instability both on- site and on adjacent lands; and,
c. If a geotechnical report is required, the applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and

foundations to be constructed on the site as recommended in the geotechnical report will be implemented.

STAFF: A geotechnical report has not been provided by the applicant. The applicant will provide the geotechnical report at the construction phase of development.

- (d) The activity is in keeping with the Comprehensive Plan.

STAFF: The activity is in keeping with the Comprehensive Plan as Plan 2040 encourages the conservation of natural resources, including steep slopes and streams. The majority of the slopes on the property will be preserved, as will the stream buffer. Without the development potential transfer provision being applied to the site, more of the slopes would be disturbed by home building activities.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP

- (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: The site is fully wooded and required tree canopy will be provided. Cedar Creek runs through the site to the west, and the required buffer will be provided. Steep slopes are being preserved with a development potential transfer.

- (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, and Metro Public Works has approved the preliminary development plan.

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

STAFF: No open space provisions are pertinent to the proposal. Steep slopes are being preserved.

- (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 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.

- (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 is not compatible with existing development in the area. The general neighborhood is characterized by large-lot single-family development and the infrastructure necessary for a development of this size is not yet in place. The applicant would

need to improve Independence School Road, and potentially also the intersection at Thixton Lane and Bardstown Road.

- (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 requirements of the Land Development Code. It does not comply with applicable guidelines and policies of Plan 2040 as the site is not located close to transit, goods and services, or employment centers. Sidewalks would be provided within the development, but there is no existing sidewalk network to which to connect. The scale of the development is not in proportion to the infrastructure serving the site.

REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-R to R-4
- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Detailed District Development Plan/Major Preliminary Subdivision** with development potential transfer and **Binding Elements**

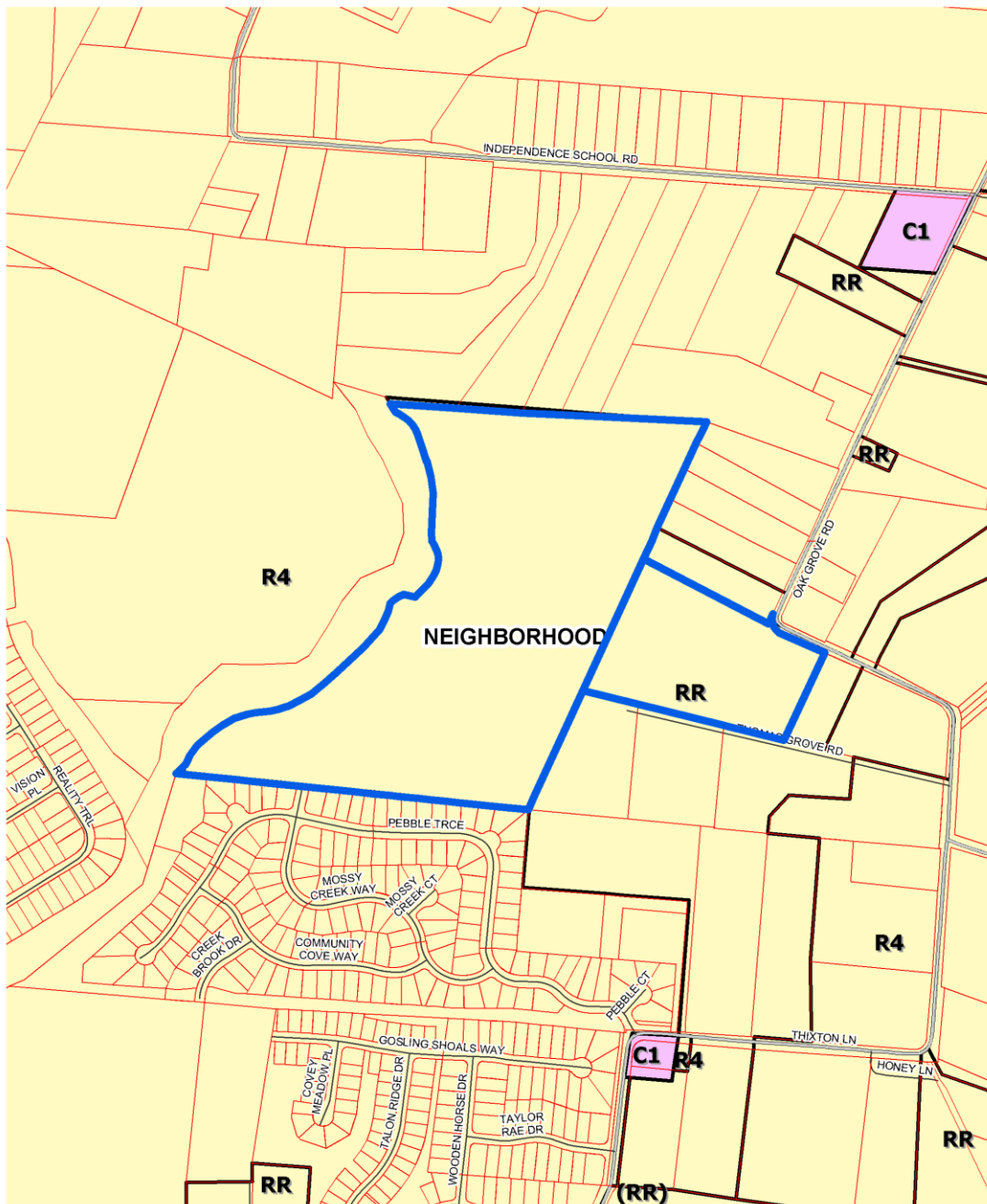
NOTIFICATION

Date	Purpose of Notice	Recipients
05/06/2022	Hearing before LD&T	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 22
05/18/2022	Hearing before PC	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 22&23
05/18/2022	Hearing before PC	Sign Posting on property
05/22/2022	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Staff Plan 2040 Checklist
4. Proposed Binding Elements

1. Zoning Map



10212 & 10302 Oak Grove Road

feet



630

Map Created: 4/20/2021



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COUNTY METROPOLITAN SEWER DISTRICT (MSD),
LOUISVILLE WATER COMPANY (LWC),
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2. Aerial Photograph



10212 & 10302 Oak Grove Road

feet

630

Map Created: 4/20/2021



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3. Staff Plan 2040 Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	7. Locate higher density and intensity uses 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.	✓	The proposal is not for higher density or intensity zoning.
2	Community Form: Goal 1	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	✓	The proposed zoning district is not substantially different in scale, intensity or density in comparison with surrounding development.
3	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would permit new development providing residential uses.
4	Community Form: Goal 3	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	No wet or highly permeable soils are evident on the site. Severe, steep and unstable slopes are being avoided by development.
5	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	-	The proposal would provide the required stream buffer around Cedar Creek. The Fern Creek Small Area Plan recommends preservation of the agricultural, rural character of the area. The proposal would remove significant tree canopy.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Community Form: Goal 4	3. Encourage preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies.	NA	No historic assets are evident on the site.
7	Mobility: Goal 1	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The proposal is not for higher density or intensity zoning.
8	Mobility: Goal 2	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access to the site is via Oak Grove Road, a secondary collector at this location, and Mossy Creek Way, a local road.
9	Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The proposal would permit development in an area that is not easily accessible by bicycle, transit, pedestrians or people with disabilities, with the only access available by car. However, increased density would make the site more attractive to transit and the neighborhood is likely to redevelop at some point to provide more neighborhood-serving uses and employment opportunities.
10	Mobility: Goal 3	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	-	Oak Grove Road and Thixton Lane are narrow roads. The applicant will need to improve Independence School Road to standard width but shoulders cannot be provided along the whole length of all the roads serving the development. The proposal would permit development at 4.84 dwelling units/acre with the only access via these narrow roads.
11	Mobility: Goal 3	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Transportation Planning has approved the proposal.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Mobility: Goal 3	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	Transportation Planning has approved the proposal.
13	Mobility: Goal 3	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Transportation Planning has approved the proposal.
14	Mobility: Goal 3	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	No direct residential access to high speed roadways is proposed.
15	Community Facilities: Goal 2	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The relevant utilities have approved the proposal.
16	Community Facilities: Goal 2	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	Louisville Water Company has approved the proposal.
17	Community Facilities: Goal 2	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has approved the proposal.
18	Livability: Goal 1	5. Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.	-	The proposal would change a large agricultural, rural site to a single-family subdivision. The Fern Creek Small Area Plan encourages the preservation of the agricultural, rural character of the neighborhood.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
19	Livability: Goal 1	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	-	The site is located on karst terrain. Significant remediation of the karst features on the site will be needed to develop it. Preservation of karst features is not a priority for the site plan. The applicant has not yet provided a geotechnical report to indicate how hazards from karst terrain will be mitigated.
20	Livability: Goal 1	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	The floodplain is being avoided by development.
21	Housing: Goal 1	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	The proposed zoning district would permit single-family detached housing.
22	Housing: Goal 1	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The proposal, with the development transfer, would permit smaller lots and less expensive homes in the neighborhood. The area is not well connected or close to shopping or transit routes, or medical or other supportive facilities, but increased density would make the neighborhood more attractive to redevelopment providing these types of services.
23	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	-	The proposal would permit inter-generational mixed-income development, but the site is not connected to the neighborhood or surrounding area.
24	Housing: Goal 2	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	The site is not in proximity to a multi-modal transportation corridor or within proximity to amenities providing neighborhood goods and services. The increased density provided by the development would make the area more attractive to redevelopment providing these types of services.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
25	Housing: Goal 3	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	The proposal would increase the variety of ownership options and unit costs in Louisville Metro, and expand the opportunities for people to live in quality, variably priced housing in locations of their choice.
26	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	No existing residents will be displaced by the proposal.
27	Housing: Goal 3	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	R-4 zoning would permit accessory apartments.

4. **Proposed Binding Elements**

1. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
2. 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.
3. 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.
4. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a) Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b) A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of trees and fences within buffer areas and other issues required by these binding elements / conditions of approval.

- c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
5. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
6. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
7. A note shall be placed on the preliminary plan, construction plan(s) and the record plat that states, "Construction fencing shall be erected to protect trees on site and 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 areas."
8. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
- a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
9. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
10. All street signs shall be installed by the Developer, and shall conform with 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 residence on 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.
11. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
12. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
13. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land

Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.

14. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
15. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
16. The applicant/developer shall improve Independence School Road from Oak Grove Road to Cedar Creek Road to Department of Works standards, and complete all required improvements no later than recordation of the 160th lot.
17. A right-turn lane on Thixton Lane at the intersection of Bardstown Road shall be constructed by the applicant/developer as shown at the December 16, 2021 Planning Commission hearing. All construction shall be completed and the right-turn lane shall be operational no later than recordation of the 160th lot.
18. All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur, and be offered pre- and post-blast surveys. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.