

Planning Commission

Staff Report

April 7, 2022



Case No:	21-ZONE-0104
Project Name:	Old Preston Highway Apartments
Location:	10410 & 10414 Old Preston Highway
Owner(s):	Skaggs Family Trust
Applicant:	Highgates Development
Jurisdiction:	Louisville Metro
Council District:	24 – Madonna Flood
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Change in zoning** from R-4 Single Family Residential to R-7 Multi-Family Residential
- **Variance** from Table 5.3.1 to allow a structure to encroach into the required street side yard setback along a private road (required: 15', requested: 7.5', variance: 7.5') (22-VARIANCE-0036)
- **Detailed District Development Plan** with Binding Elements

CASE SUMMARY/BACKGROUND

The subject site is located on Old Preston Highway north of the intersection with Interchange Drive and consists of two contiguous parcels. The applicant proposes to rezone the property in order to construct a new 174-unit multi-family development.

An institutional use, single-family and large-lot single-family development are located to the north and south. Fishpool Creek is located the west, with the Commerce Crossings industrial park located across the creek. Old Preston Highway is separated from Preston Highway to the east by a small undeveloped strip of land owned by the Kentucky Transportation Cabinet, and undeveloped land and large-lot single-family development with a commercial proposal are located to the east across Preston Highway.

STAFF FINDING

Staff finds that the proposed zoning change meets the guidelines of the Comprehensive Plan. The variance is adequately justified and meets the standard of review. The site plan meets the requirements of the Land Development Code, and generally meets the guidelines of the Comprehensive Plan.

TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

MSD and Transportation Planning have provided preliminary approval of the proposal.

INTERESTED PARTY COMMENTS

Staff has received two phone calls from an interested neighbor concerned about tree canopy buffering her property from the site. Neighbors spoke at the Land Development and Transportation Committee meeting with concern about sinkholes and blasting. Staff received an email from the pastor of the adjacent church with concerns about the exact location of the property line and the trees between the site and the church property.

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.

While Old Preston Highway currently serves as a frontage road, the site has adequate access to Preston Highway at the Interchange Drive intersection. More limited access to Preston Highway is available at the Commerce Crossings and Maple Springs Drive intersections. Preston Highway is a developing commercial corridor at this location, with goods and services readily available nearby. While transit is not available along this section of Preston Highway currently, the developing commercial corridor along with the proposed zoning district, which would permit higher-density residential development, may reasonably attract transit in the future. A major employment center is accessible from the site.

The proposed zoning district is generally in compliance with the plan elements and CHASE principles of Plan 2040. All other agency comments should be addressed to demonstrate compliance with the remaining Goals, Objectives and Policies of Plan 2040.

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 VARIANCE FROM TABLE 5.3.1

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health, safety or welfare as the decreased setback will not create a visual obstruction or impact sight lines.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the buildings are not yet constructed and will only be visible to persons on the private road.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the affected structure will be constructed according to building code, including all fire codes.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations as the requested variance is needed because a private road, in the form of a defined access easement, is being provided to a developed parcel that has no public road frontage. The private road would not be necessary if the affected parcel had public road frontage.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because of the developed parcel in the rear of the site which has no public road frontage.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or 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 create an unnecessary hardship on the applicant by requiring the reduction of the size of the affected structure so as to not encroach into the setback.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no construction has yet taken place and the variance is being sought at this time.

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: Fishpool Creek runs through the site to the west. Required stream buffers are being provided. A small amount of steep slope is present on the site, which is being preserved. Tree canopy is being preserved around the creek and slopes. The site is on karst terrain, and karst features on the site will be mitigated during development.

- (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: Open space is being provided in compliance with the requirements of the Land Development Code.

- (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 in compliance with existing and planned future development in the area. The proposal would provide an increase in the variety of housing in the

neighborhood by permitting higher-density multi-family housing near a developing commercial corridor and major arterial street.

- (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 Land Development Code and Plan 2040.

REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-4 to R-7
- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Detailed District Development Plan with Binding Elements**

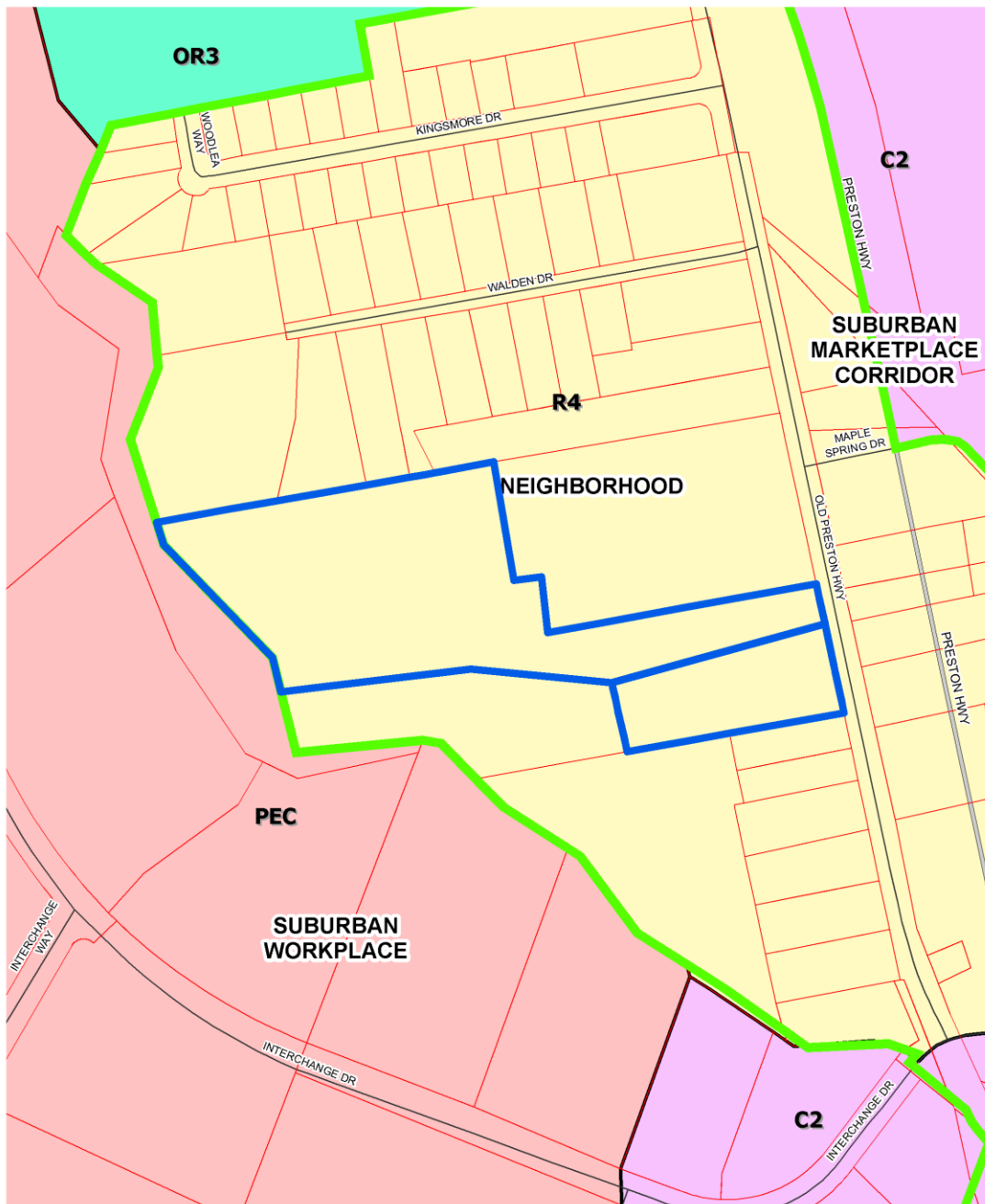
NOTIFICATION

Date	Purpose of Notice	Recipients
11/18/2021	Hearing before LD&T	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 23 & 24
03/24/2022	Hearing before PC	1 st and 2 nd tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 13, 23 & 24
01/18/2022	Hearing before PC	Sign Posting on property
01/22/2022	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



10410 & 10414 Old Preston Hwy

feet

280

Map Created: 7/21/2021



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2. Aerial Photograph



10410 & 10414 Old Preston Hwy

feet

280

Map Created: 7/21/2021



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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 site is located across from Preston Highway, a major arterial at this location, and in proximity to a major employment center at Commerce Crossings.
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.	✓	Appropriate transitions between uses substantially different in scale and intensity will be provided.
3	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would provide new 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 or unstable slopes are being preserved.
5	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	No distinctive cultural features are evident on the site.

#	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.	✓	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 proposed zoning district, along with the developing commercial corridor at Preston Highway, would reasonably attract transit in the future.
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 Old Preston Highway, a local road at this location, in proximity to Preston Highway, a major arterial.
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 site is easily accessible by bicycle and car. Transit may be located nearby along Preston Highway in the future as the commercial corridor develops and density increases. Access by pedestrians and people with disabilities will be improved as the sidewalk network along Old Preston Highway develops.
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.	✓	Transportation Planning has approved the proposal.
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.
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.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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.	✓	Tree canopy will be preserved along the slopes and around the creek to the west. Required tree canopy will be provided on site.
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.	✓	Karst features are located on the site and will be mitigated by the applicant during construction.
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 the development on the site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
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 proposal would increase the variety of housing types in the neighborhood.
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 would support aging in place by providing an increased variety of ownership options and price points in the neighborhood.
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 encourage inter-generational mixed-income development by increasing the variety of housing options and price points in the neighborhood.
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 in proximity to employment opportunities and to neighborhood goods and services. The proposal is for higher density residential zoning. The site is located near existing activity centers.
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 encourage the provision of fair and affordable housing in Louisville Metro by increasing the variety of ownership options and unit costs in the neighborhood.
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.	✓	The proposed zoning district would permit innovative methods of housing.

4. Proposed Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. 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:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. 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.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - d. An access easement in a form acceptable to the Planning Commission legal counsel shall be created granting access to the property located at 10412 Old Preston Highway as shown on the approved development plan 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.
 - e. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 7, 2022 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.
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. 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 surveys shall be done in a manner consistent with Kentucky Blasting Regulations.
8. A qualified geotechnical consultant shall perform a full Karst reconnaissance and report to locate as many Karst features as possible prior to construction. A record of this survey shall be filed with Planning and Design Services within 30 days of completion of the survey.
9. A qualified geotechnical consultant's services be retained during construction to call if/when sinkholes are encountered. Care shall be taken during earthwork to investigate and properly remediate potential sinkholes, per the geotechnical engineer's recommendations.
10. The surface shall be thoroughly proof rolled after cutting and before placing fill.