

Docket No. 14CUP1011



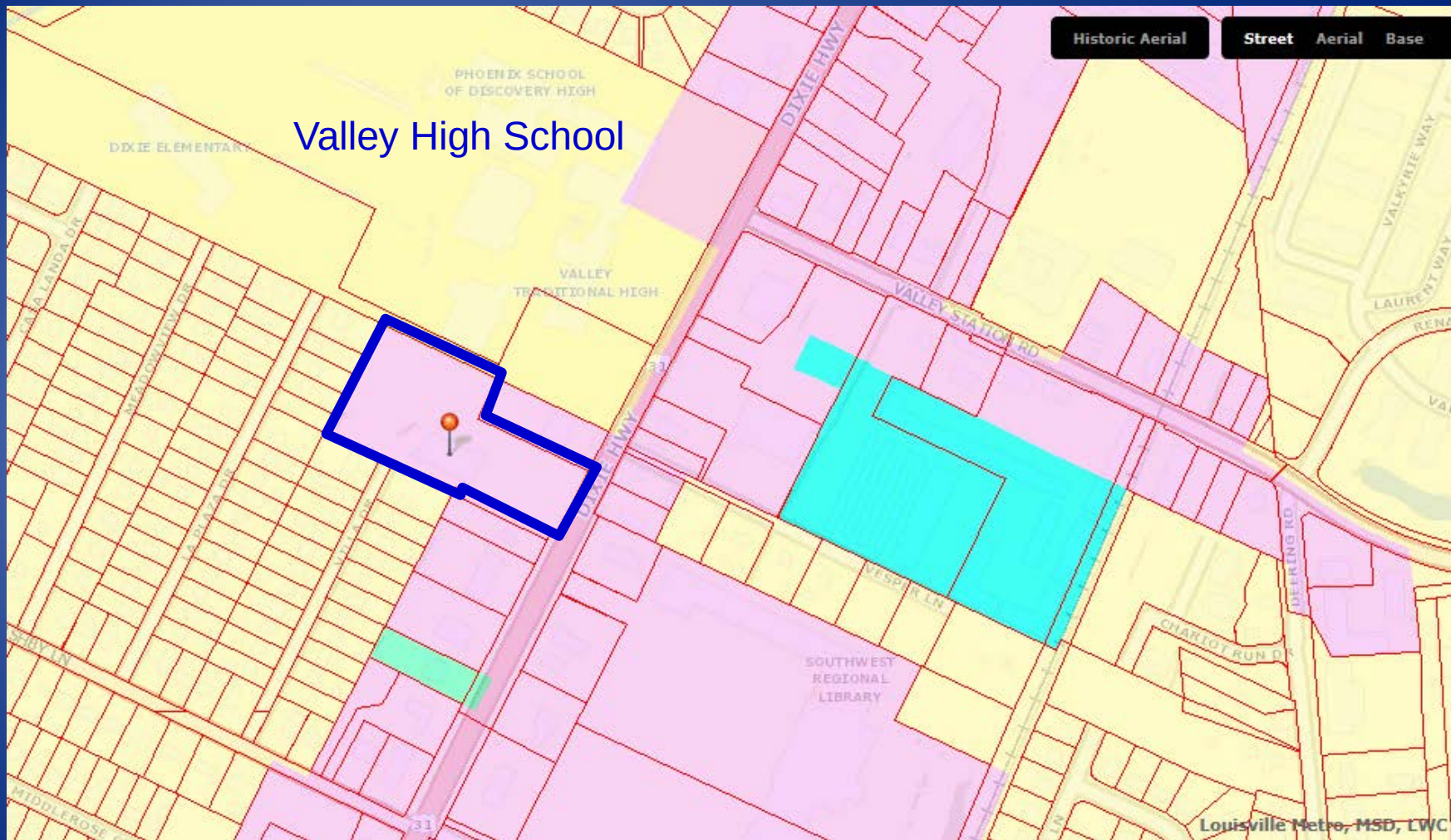
Proposed Conditional Use
Permit (CUP) with waiver to
allow a crematorium unit in the
existing funeral home
located at
10304 Dixie Hwy.

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Tab 1

LOJIC Zoning Map



Existing Newcomer Funeral Home outlined in blue on C-2 and CM zoned land.

Tab 2

Aerial photograph of the site and surrounding
area



Aerial view of Newcomer Funeral Home with rear third of site heavily treed, with institutional and retail uses to the north, south and east, whereas residential uses exist to the west and part of the south



Closer aerial view of Newcomer Funeral Home with rear third of site heavily treed, with institutional and retail uses to the north, south and east; whereas residential uses exist to the west and part of the south

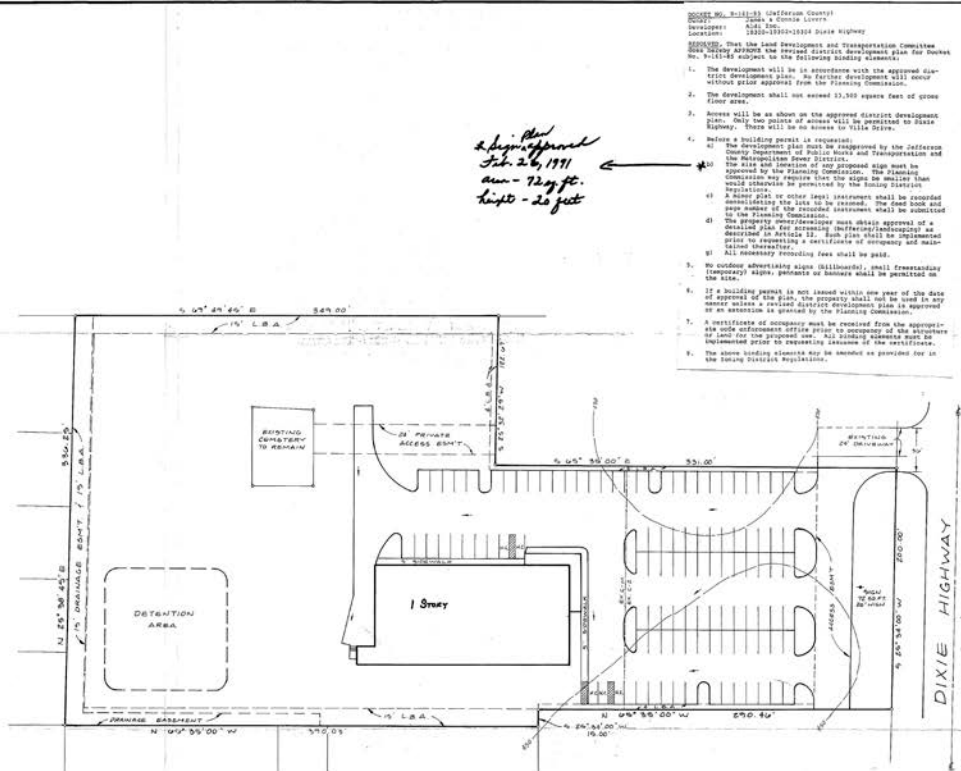


Site plan superimposed on aerial view



Tab 3

Previous development plan



2. Design approved
Feb. 26, 1991
area - 72 sq. ft.
height - 20 feet

Total site
development
18,500 sq. ft.



LOCATION MAP
NO SCALE

<u>DATA</u>	
AREA	4.23 AC.
EXISTING ZONING	C-2 & CM
PARKING REQUIRED	68 SPACES
PARKING PROVIDED (INC. 5 HANDICAP SP)	107 SPACES
BUILDING AREA	13,500 SQ. FT.

LANDSCAPE REQUIREMENT

V.U.A.	48,560 SQ. FT.
5% REQUIREMENT	2,430 SQ. FT.
LANDSCAPE PROVIDED (MIN)	3,270 SQ. FT.

STORM WATER NOTE:
DRAINAGE PATTERN INDICATED BY ARROWS (→) IS FOR CURRENT FUTURE, AND DRAINAGE CONFIGURATION AND SIZE OF DRAINAGE PIPES AND CHANNELS SHALL BE DETERMINED DURING THE CONSTRUCTION PLAN DESIGN PROCESS. DRAINAGE FACILITIES SHALL CONFORM TO M.S.D. REQUIREMENTS.

APPROXIMATE DETENTION VOLUME:
 $(58 - 55) \times \frac{1}{2} \times 4.25 = 25 \text{ AC-FT}$

PEAK DISCHARGE FROM THE DETENTION BASIN SHALL NOT EXCEED THE AVAILABLE CAPACITY OF THE MSD STORM SEWER.

NOTICE
PERMITS SHALL BE ISSUED
ONLY IN CONFORMANCE WITH THE
BINDING ELEMENTS OF THIS DISTRICT
DEVELOPMENT PLAN

LOOSELY AND
 APPROVED DISTRICT
 DEVELOPMENT PLAN
 DOWNEY NO. 7-161-85
 APPROVAL DATE Dec. 13, 1990
 EXPIRATION DATE Dec. 13, 1991
 APPROVED BY James Bond
 APPROVED

PRELIMINARY APPROVAL
DEVELOPMENT PLAN
SHALL COMPLY WITH ORDINANCE #79
CONDITIONS: _____
BY: ALMA
DATE: 11-27-90
JEFFERSON COUNTY
DEPT. OF PUBLIC WORKS

PRELIMINARY APPROVAL

Conditions of Approval: SAN SEVERO COURT
TO SECURE ANIMATED MUFFLER SHOP
BEHIND POND TO COURT, INTERVALL
SHOULD AVAILABLE BY L.E. CANTONE

WAS

Sanitary Inspector _____ Date _____
City Health Officer _____ Date _____

**LOUISIANA & JEFFERSON COUNTY
MUNICIPAL WATER DISTRICT**

RECEIVED

NOV 29 1990

LOUISVILLE & JEFFERSON COUNTY
PLANNING COMMISSION

9-161-85

REVISÉ 9-107-8
DISTRICT DEVELOPMENT PLAN

OWNER
JAMES A. & CONNIE LIVERS
P.O. BOX 40
ELIZABETHTOWN, KENTUCKY 42702

DEVELOPER
ALDI INC.
486 EAST STOP 18 ROAD
GREENWOOD, INDIANA 46142

FILE 1489
1
Sheets in Set



SABAK, WILSON & LINGO, INC.
ENGINEERS, LANDSCAPE ARCHITECTS & PLANNERS
315 WEST MARKET STREET, LOUISVILLE, KENTUCKY 40202 (502) 584-6377

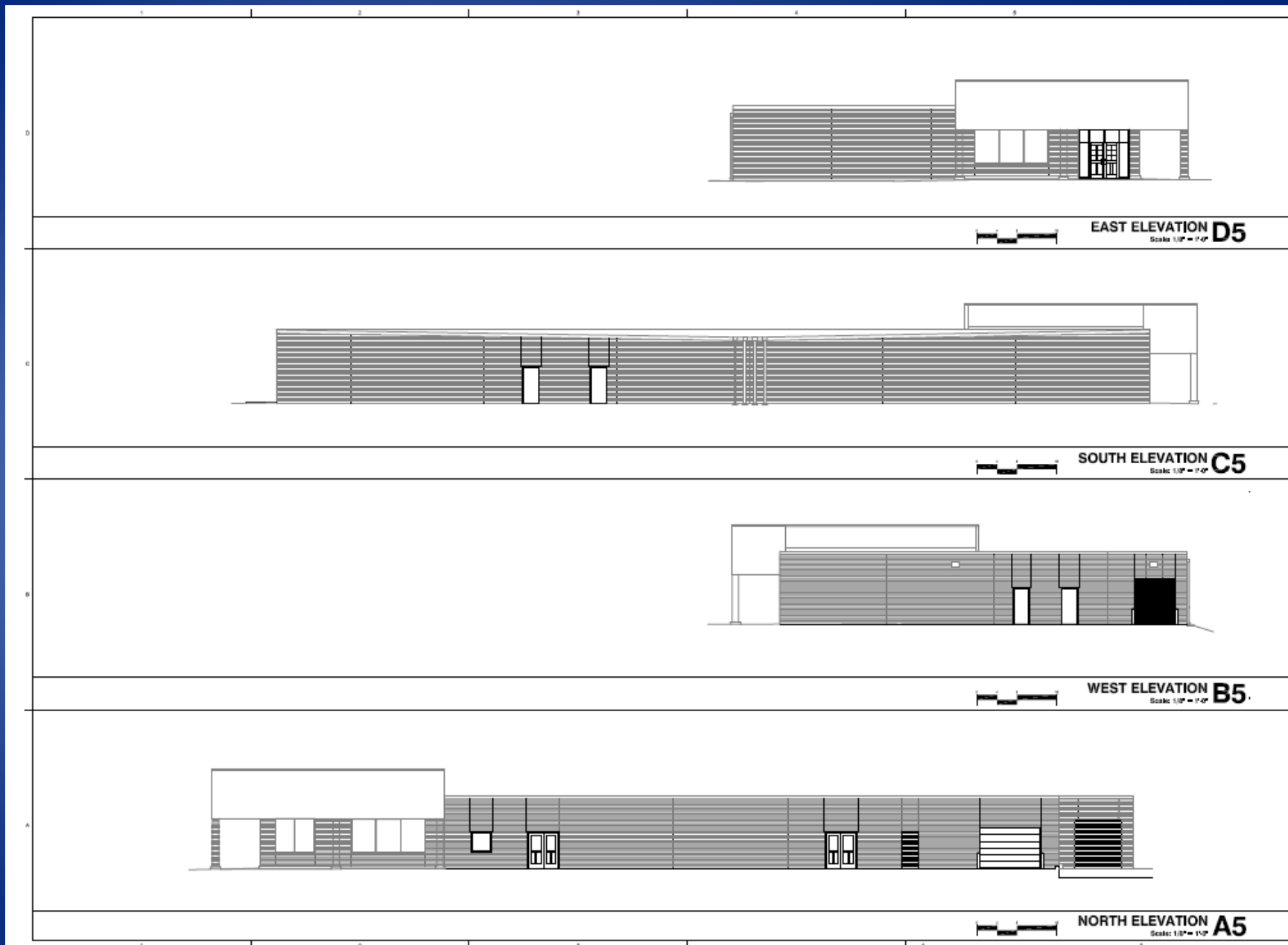
Tab 4

Current development plan



Tab 5

Building Elevations



Revised elevations for existing Newcomer Funeral Home in former Aldi Grocery Store

Tab 6

Ground level photographs of the site

Louisville Chapel


Newcomer
Funeral Homes





East view of rear of Newcomer Funeral Home building



East view of rear of Newcomer Funeral Home building



East view of rear of Newcomer Funeral Home building; to right of photograph is the existing drainage swale and new landscaping along south property line



East view of south side of Newcomer Funeral Home building; to right of photograph is the existing drainage swale and new landscaping along south property line



West view along south line of Newcomer Funeral Home property; to left of photograph is the existing drainage swale and new landscaping and new fencing



West view along south line of Newcomer Funeral Home property; to left of photograph is the existing drainage swale and new landscaping and new fencing



West view of west fence line along rear of Newcomer Funeral Home property; slats were recently installed in this fence along rear line in order to block view shed



North view of west fence line along rear of Newcomer Funeral Home property; slats were recently installed in this fence along rear line in order to block view shed



South view of west fence line along rear of Newcomer Funeral Home property; slats were recently installed in this fence along rear line in order to block view shed



Old cemetery at center of large park-like area at rear of Newcomer Funeral Home property; this new black wrought iron-style fence was installed by Newcomer when it significantly cleaned up this rear open space area after it located here in place of Aldi



North view of old cemetery at center of large park-like area at rear of Newcomer Funeral Home property; in rear view is JCPS property which includes Valley High School



North view of JCPs property which includes Valley High School; a fence separates the JCPs and Newcomer Funeral Home properties



Another north view of JCPS property which includes Valley High School; a fence separates the JCPS and Newcomer Funeral Home properties; note also the old cemetery to the far right of photograph

Tab 7

Interior photos of the existing Newcomer Funeral
Home



View of one of the chapel rooms in Newcomer Funeral Home



Family break room in Newcomer Funeral Home



Hallways leading to chapel and other rooms in Newcomer Funeral Home



Proposed crematory viewing room



Proposed crematory room and equipment



Proposed crematory room; note viewing window to left of photograph



Proposed crematory room ventilation ductwork



Proposed crematory room ventilation ductwork

Tab 8

Crematory detail



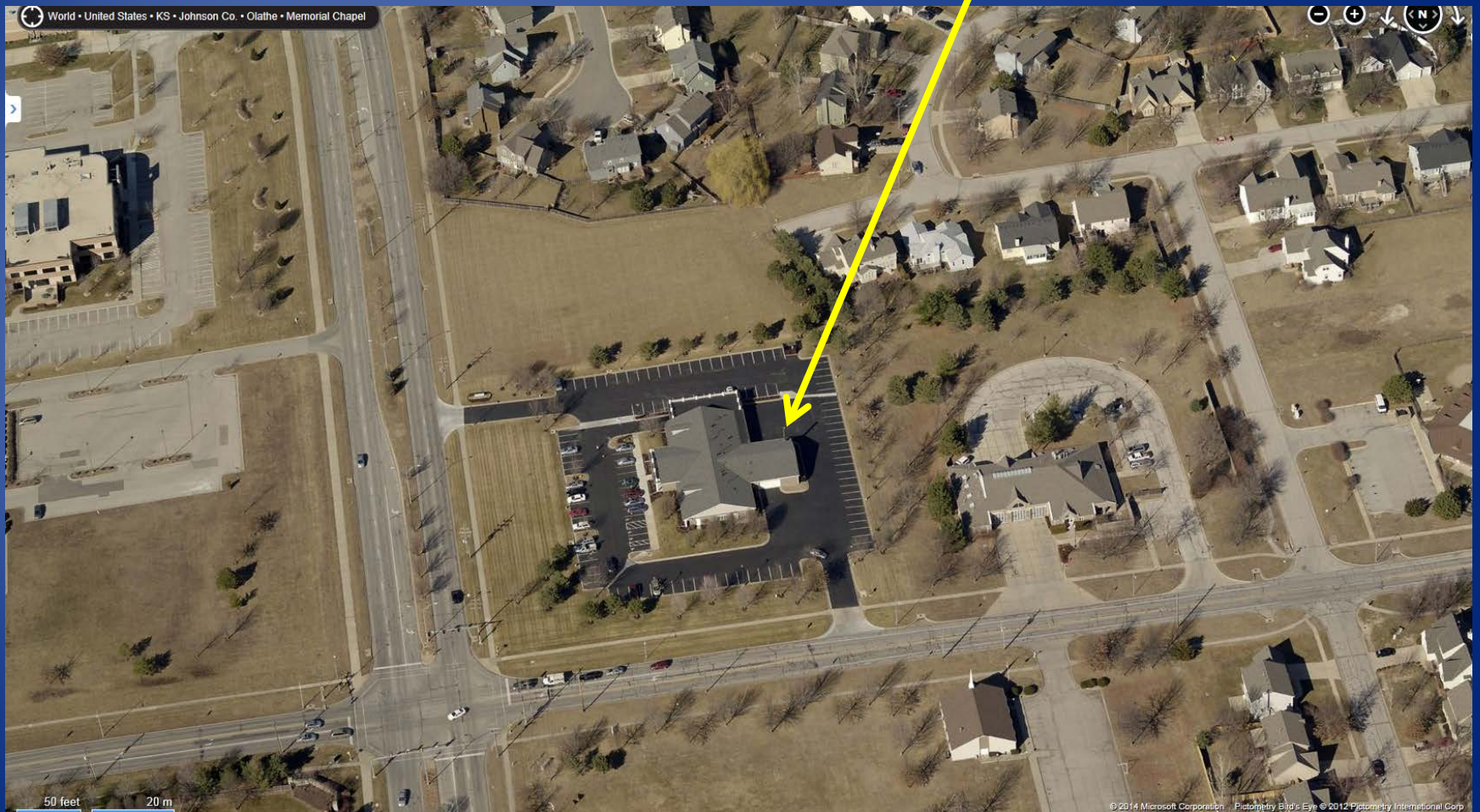
Tab 9

Other Newcomer Funeral Home facilities
adjoining residential neighborhoods, which is
where funeral homes are typically located

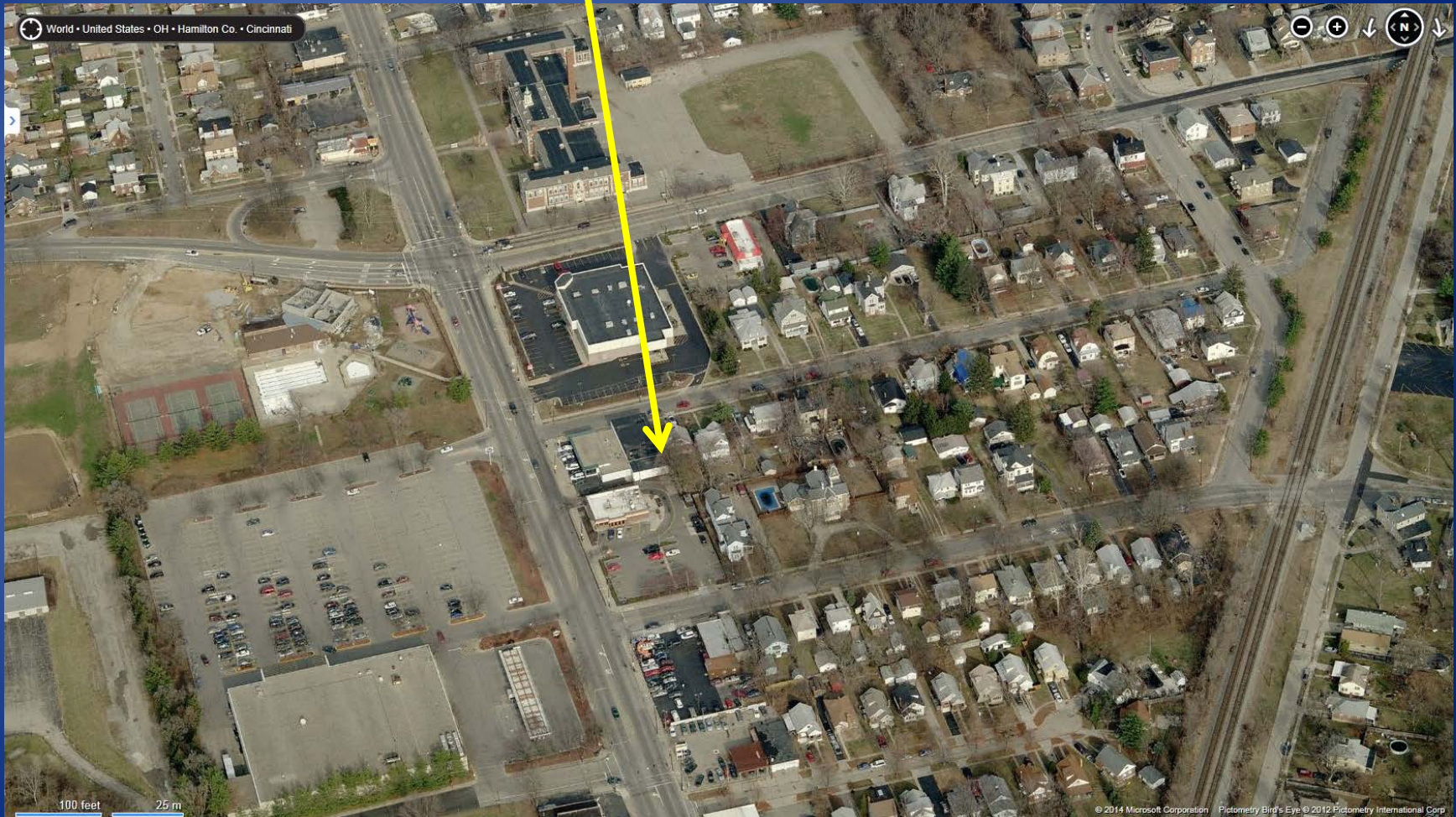
S. Dayton Ohio



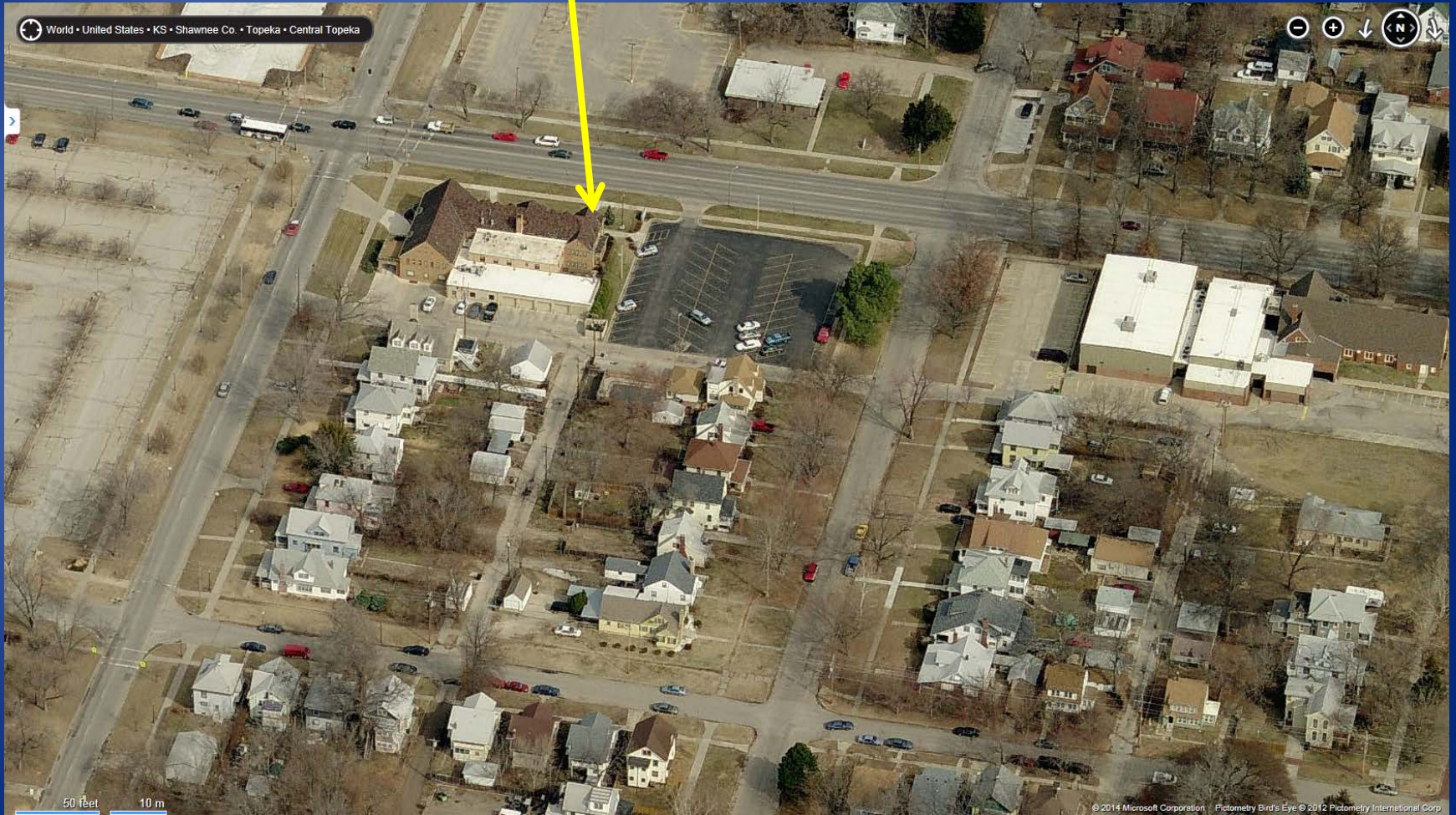
Olathe, Kansas (Kansas City, KS)



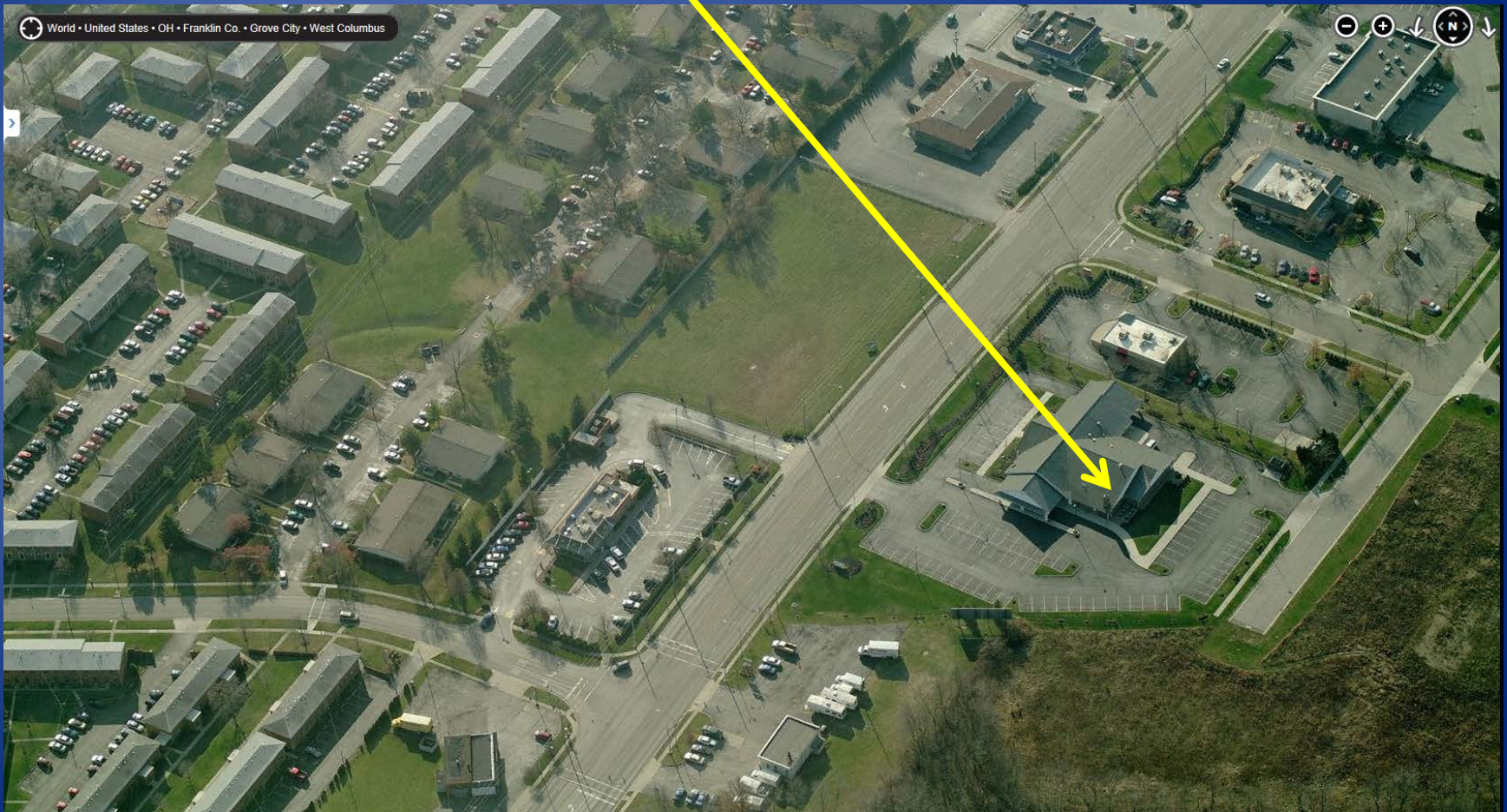
Cincinnati, Ohio



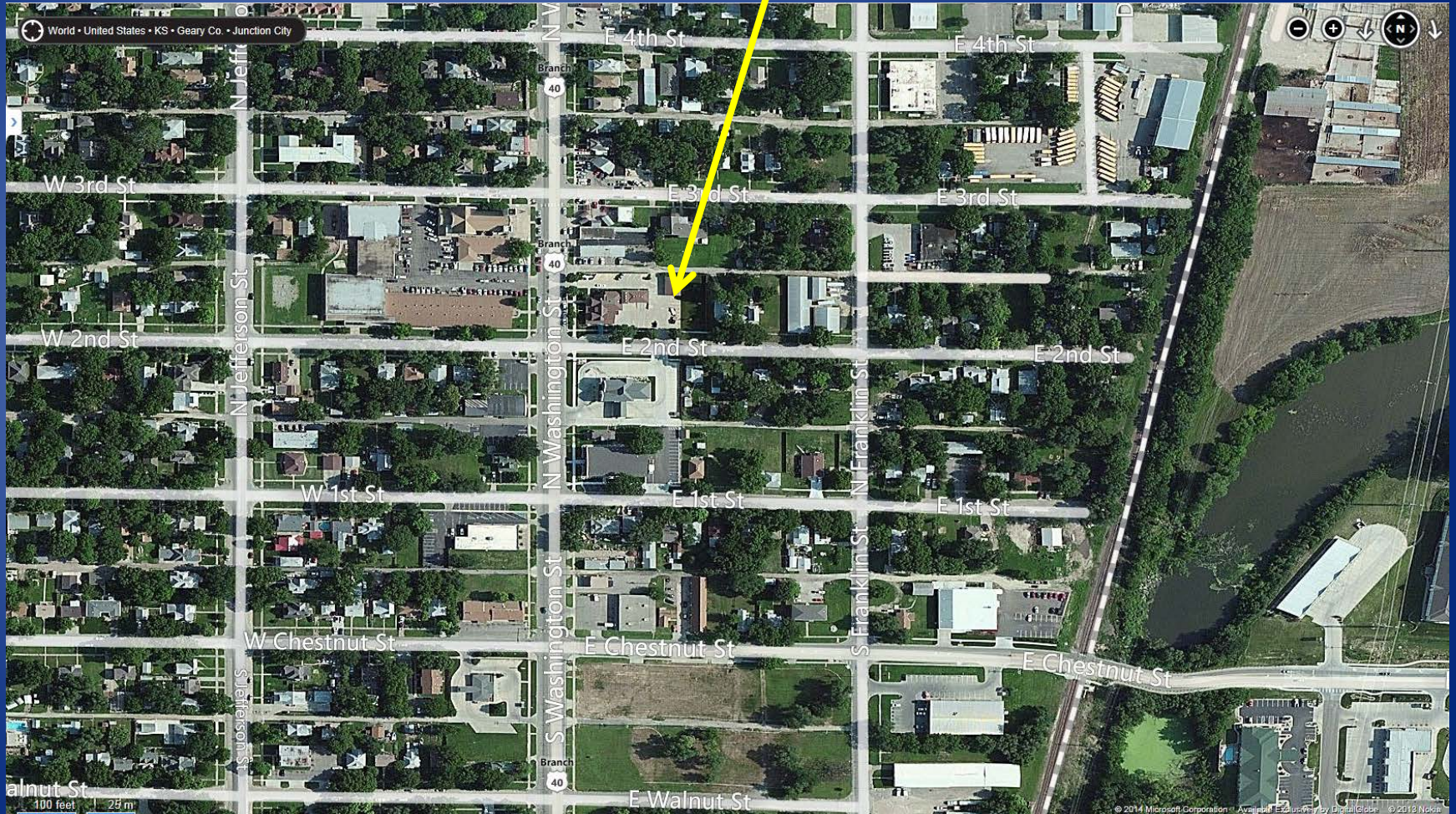
Topeka, Kansas



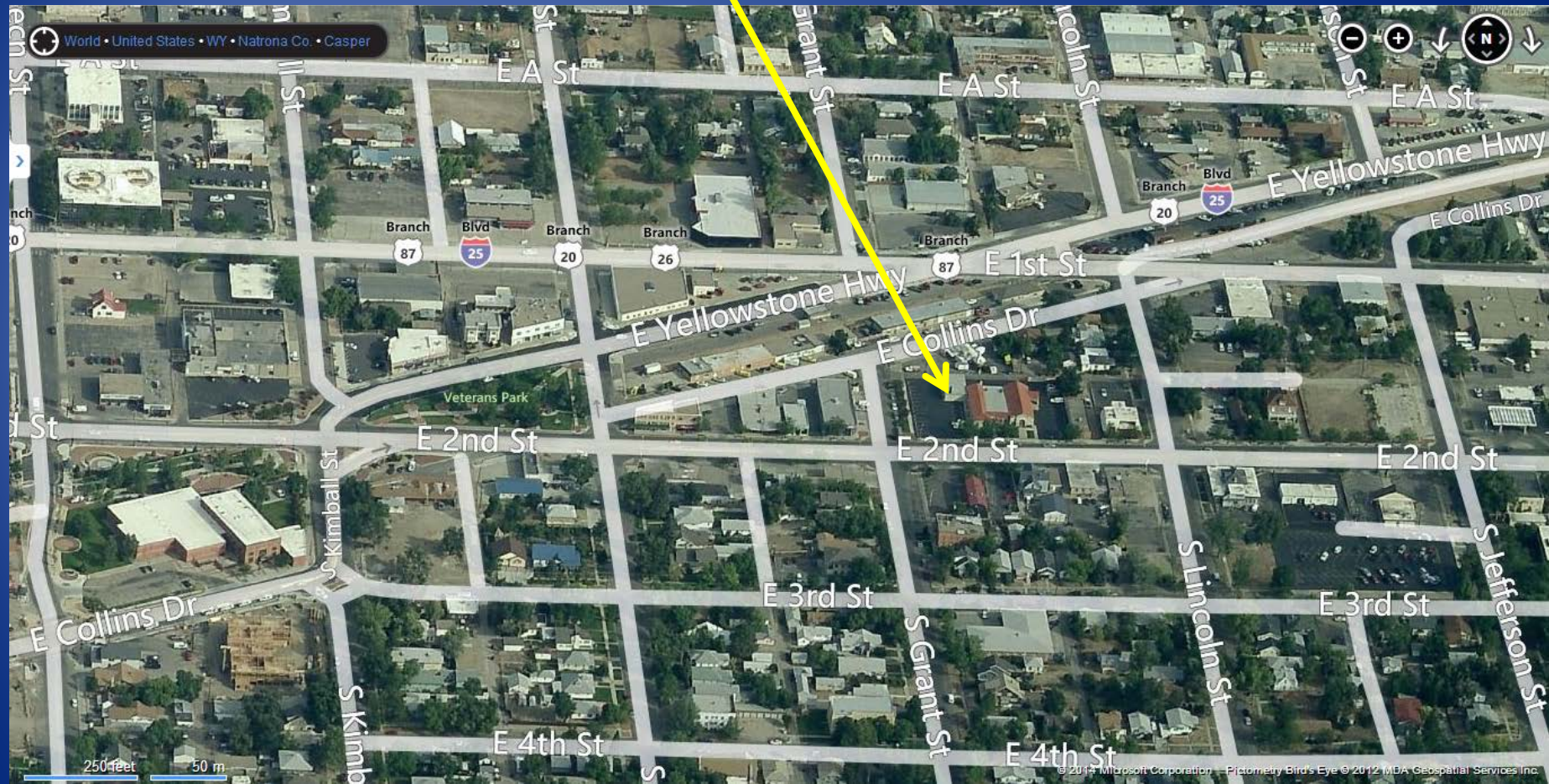
Columbus, Ohio



Junction City, Kansas



Casper, Wyoming



Proposed Louisville, Kentucky



Tab 10

FAQs regarding Funeral Home Crematories



Opening a Crematory

Frequently Asked Questions
for Funeral Professionals

4: What environmental approvals and permits will I need before I can start up my crematory?

In its final Clean Air Act Secondary National Ambient Air Quality Standards rule (April 2012), the U.S. EPA reaffirmed its 2004 decision not to regulate crematories under federal law. The EPA decided that crematories should not be regulated as “solid waste combustion units” because “the human body should not be labeled or considered solid waste.” Instead, the agency left the environmental regulation of cremation to the states. For that reason, it is important to be familiar with your state and local Clean Air Act rules and know how those rules affect crematory construction and operation.

- Depending on the state in which you operate, you may need to obtain an air permit for your crematory. Such permits are typically obtained by submitting an application to the air quality protection division of your state’s department of environmental protection. In some states, notably California, enforcement of air quality regulations is conducted primarily at the county level.

- The intent of these permits is to ensure that the proposed crematory will not emit unacceptable quantities of “products of incomplete combustion” to ambient air. The most basic air permits regulate only “opacity,” which is a measure of whether and to what extent exhaust stack emissions would be visible as smoke.
- Other states’ permits also mandate that the concentrations of particles (“particulate matter”) in the exhaust not exceed a specific numeric limit.
- In general, states with active departments of environmental protection, such as New York, Florida and California, have the most extensive permitting requirements with regard to crematories.
- Some states do not require air permits from crematories, implicitly designating crematories as emission sources that are inherently negligible with regard to their impact on the quality of ambient air.
- Other states require crematories to meet general Clean Air Act standards, covering odors, visible exhaust and particulate emissions.
- In most states, a new crematory will be considered a new source of air emissions. Generally, new sources cannot begin construction without having a state approval in hand. Site preparation work is included in the definition of construction and typically cannot be initiated without state approval.

6: Are crematory emissions likely to harm the environment or the health of my neighbors?

No. A modern, properly operated crematory is not expected to adversely affect the quality of ambient air or the health of your neighbors.

- Nevertheless, some concerns have been raised regarding emissions of mercury from cremation. Cremation of bodies containing silver-mercury dental amalgams may result in releases of these metals to ambient air. Large doses of mercury can harm health, although small amounts to which we are all naturally exposed via food and air are reported to be safe.
- Various scientists and engineers who have quantified emissions of mercury (and other pollutants) from crematories have found that expected impacts are negligible.
 - o Analysts with the Pima County (Arizona) Department of Environmental Quality, relying on exhaust stack emissions testing performed at a crematory in New York, have determined that “mercury emissions from cremators are . . . not a significant concern. With the continued decline in the use of silver amalgam dental fillings, and thus mercury emissions, it would be burdensome and of no environmental benefit to require additional controls for mercury.” (See <http://www.deq.pima.gov/permits/PDF/Crematory/TSD.pdf>).
 - o Analysts in the Bureau of Air Management at the Wisconsin Department of Natural Resources, as another example, have estimated that a facility would have to cremate 25 bodies per day in order to emit enough mercury to require regulatory oversight. (See <http://dnr.wi.gov/files/PDF/pubs/am/AM402.pdf>).
 - o An analysis performed by Green, Zemba and Crouch (2014) demonstrated that even people living very close to a proposed new crematory would not experience unhealthful exposures to mercury or other pollutants. Please contact Dr. Laura Green, NFDA environmental scientist/toxicologist, directly if you would like a copy of the journal article, “Cremation, Air Pollution and Special Use Permitting: A Case Study.” Green can be reached at greenl@cdmsmith.com or 617-452-6079.
 - o Other analysts have determined that mercury emissions from a proposed crematory would be acceptably small under expected conditions regarding 1) numbers of bodies cremated per day, 2) amounts of mercury presumed to be present in those bodies, 3) proximity of nearest neighbors and 4) levels of mercury in air deemed to be acceptably small. See, for example, an analysis of a proposed crematory by Ensafé, 2011 (available at <http://citizens.betterspringhill.org/wp-content/uploads/citizens.betterspringhill.org/2011/11/Assessment-of-Proposed-Crematory-Emissions-11-2011.pdf>).

7: If I plan to open a crematory, how do I address possible neighbors' concerns that a crematory poses a threat to their health?

A proposal to add a crematory to a neighborhood may engender some local concern. It is important that you meet with your neighbors and community leaders, listen to their specific concerns and address these concerns with respect and with facts. This is an opportunity to educate your neighbors and community about your crematory operation, commitment to responsible operation and willingness to work with the neighbors.

- Most people want to base their acceptance or rejection of a new facility on sound science. The weight of scientific evidence does indicate that crematory emissions are safe.
- Whether you and your neighbors reach consensus on a path forward will depend on the particulars of your situation. You may be able to rely on the assessments noted above to show that your proposed crematory will be safe. Or you may need to contract with an environmental scientist to conduct an assessment of your particular proposal in order to demonstrate its expected safety.
- Some community concerns can be addressed by architectural design, the creation of landscape barriers (trees and shrubs), limited signage, etc. Having plans available and being willing to modify them to respond to the concerns of neighbors may go a long way toward enlisting community support.

8: Once I have the approvals for my new crematory and it's up and running, how do I establish and maintain a constructive working relationship with my neighbors and community?

The critical first step in establishing your standing in your community is to ensure that you operate the crematory exactly as your permits require and in compliance with all applicable laws. Even one violation, one instance of dark smoke or odor or one day that exceeds the restrictions on hours of operation can jeopardize your reputation. Do not allow this to happen. Careful and conscientious operation of your crematory is the important first step.

- If you made commitments during the public participation process of the approval procedure, make sure you live up to those commitments.
- Ensure that your facility – inside and out – is impeccably maintained.

- Schedule an open house so that members of the community can visit your facility. Invite neighbors and community leaders to tour your crematory and learn about its operation.
- Participate in local events that provide an opportunity to discuss your business and the standards and good practices your crematory is required to meet.
- Become involved in supporting a community endeavor, such as a nearby school, a neighborhood park or local fair so that your neighbors know that you support them.
- If issues arise, address them directly and promptly.

9: Does NFDA offer any training or best practices addressing proper operation of my crematory?

Yes. NFDA offers comprehensive training through NFDA Cremation Services. As the trusted leader in funeral service, NFDA has set the bar high with a cremation certification program that not only emphasizes professional excellence but reinforces the important role that ethics plays in serving families that choose cremation.

The NFDA Certified Crematory Operator (CCO) Program™ is a one-day, seven-hour training program and is the recognized certification standard for funeral service professionals. The seminar is taught by two funeral directors who, together, have more than 70 years of experience with cremation services.

If your firm offers cremation to families, you and your staff should participate in this program. The NFDA CCO program covers everything you need to know in order to safely and ethically provide cremation services to families. Topics covered include:

- Cremation ethics
- Serving cremation families
- Principles of combustion
- Operating requirements
- Written authorizations
- Liability and risk avoidance
- Public and community relations
- And more!

Even if you do not own your own crematory, the NFDA CCO seminar will provide a broad working knowledge of proper crematory operational procedures, as well as required and prudent administrative actions so you know what to look for when dealing with a third-party cremation provider.

The NFDA CCO program covers every topic that is required by law in states that require certification for crematory operators and has been approved by the Academy of Professional Funeral Service Practice (APFSP) for 7 CE hours and by most state licensing boards for up to 7 CE hours.

For more information about the NFDA CCO program, visit www.nfda.org/cco.

Additionally, NFDA Cremation Services offers a variety of tools and resources to help members meet the needs of families that are choosing cremation. You have the opportunity to expand your knowledge through:

- Webinars, teleconferences and home or online study courses
- Workshops at the NFDA Convention
- Sample legal forms and documents
- Information shared via the NFDA website and publications, including *The Director* and *Memorial Business Journal*
- Contact the NFDA Cremation Hotline at 800-228-6332 or cremation@nfda.org

10: What support and expertise can NFDA provide if I encounter opposition to opening a crematory?

NFDA has many resources available to help you respond to questions that your community may have about your proposed crematory.

Research and information: There are a number of scientific studies that will help reassure your community that a crematory does not pose health or environmental risks. As an NFDA member, you are able to obtain access to some of the best information available to share with your neighbors.

NFDA Cremation Services: Mike Nicodemus, NFDA vice president of cremation services, can provide information, guidance and, if needed, referrals to other experts to help address the questions and issues in your community. Contact Nicodemus at cremation@nfda.org or 800-228-6332, ext. 1565.

Media relations: NFDA offers complimentary advice and guidance to members who have questions and concerns about dealing with the media. Assistance is a phone call or email away. Contact an NFDA member services representative at 800-228-6332 or nfda@nfda.org to discuss your firm's specific needs.

Tab 11

Air Pollution Control District (ACPD) letter
exempting the Newcomer Funeral Home
crematory from permitting because of its non-
impact on air quality



AIR POLLUTION CONTROL DISTRICT
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

KEITH H. TALLEY, SR.
DIRECTOR

May 13, 2014

Darren Miller
Newcomer Funeral Home (ID# 1841)
10304 Dixie Highway
Louisville, KY 40243

Dear Mr. Miller:

After reviewing the equipment located at the Newcomer Funeral Home facility, 10304 Dixie Highway, Louisville, KY 40243, and in accordance with District Regulation 2.02 Section 2, it has been determined that the facility is exempt from permitting. If additional air pollution sources are to be installed that would increase potential emissions above the exemption thresholds of 5 tons per year of Criteria Pollutants or 1000 pounds per year of Hazardous Air Pollutants, please inform the District and submit a permit application.

Please feel free to contact me if you have any questions at 502-574-5141 or
Narathip.Chitradon@louisvilleky.gov.

Sincerely,

Narathip Chitradon
Engineer I
Air Pollution Control District

Tab 12

Statement of Compliance filed with the CUP application with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG • 1000 N. HURSTBOURNE PARKWAY • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
(502) 426-6688 • WWW.BARDLAW.NET

DETAILED STATEMENT OF COMPLIANCE WITH THE APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

<u>Owners/Applicant:</u>	Newcomer Funeral Service Group
<u>Location:</u>	10304 Dixie Highway
<u>Engineer:</u>	Prism Engineering and Design Group, LLC
<u>Proposed Use:</u>	Funeral Home w/ Crematory
<u>Requests:</u>	Conditional Use Permit to allow a crematory within the existing Newcomer funeral home

INTRODUCTORY STATEMENT

Newcomer Funeral Service Group (“Newcomer”) operates funeral homes at approximately 23 locations in 8 different states. Newcomer operates a funeral home on Juneau Drive off Shelbyville Road in Middletown, which is a location very similar to this one in that it is just off of a major arterial (in that case US 60/Shelbyville Road and in this case off Dixie Highway). Both in this case and at Juneau Drive in the Middletown, there are adjoining streets along which there is located both residential and commercial development. Funeral homes have traditionally operated in both commercial, office, and multi-family residential zoning districts with a Conditional Use Permit. Much like churches (but which legally cannot be regulated with discretionary permits), funeral homes are much more residential in nature than they are commercial. Both serve the spiritual needs of people; both are not very often considered peak hour traffic generators; neither generate regular amounts of activity, but rather tend to generate activities at off peak hours on less than regular occasions; and both are often considered, because of their quiet nature and lack of nuisances associated with them, to be good residential neighbors. That is why, as said, funeral homes are permitted within multi-family and office zoning districts with a Conditional Use Permit, as is being requested in this case for a small crematory within the existing funeral home already properly zoned.

In this particular case, as said, the funeral home already exists. And further, as said, what Newcomer would like to add is a small crematory within its existing funeral home building. The reason for this is because, whereas it might add a crematory to the Middletown site, that building is simply not large enough, like this one is, to accommodate the crematory facility. Furthermore, cremations are becoming more and more prevalent throughout the United States. Indeed, even though Kentucky has a lower percentage of cremations than most other states, when those present at the neighborhood meeting in this case we asked by a show of hands, they responded that they anticipated that they would be cremated when they died.

To this, Ren Newcomer, the principal owner of this company, explained the importance of “chain of custody” when the deceased are entrusted by loved ones to a funeral home company. Right now, in most instances of cremation, a body must be taken from the funeral home to a

remote location (presently right now for Newcomer across the river to Indiana). In such instances, the chances of a break in the chain of custody are always possible, even remotely so. But psychologically, probably more than anything else, this is a reason why Newcomer, and an increasing number of other funeral homes elsewhere, want to locate cremation facilities within their own funeral homes – i.e., in order to give families a certain peace of mind. They thus know that, even if the body leaves the facility for cremation (for example, in the case of a funeral at Newcomer’s Middletown funeral home) at least the body did not leave the care and protection of the Newcomer funeral home operators. Funerals are very emotional times, and the remains from a cremation are often cherished by loved ones within urns kept within their loved ones’ homes or other cherished places. Knowing that these remains are those of their loved ones is very important. So this is not a money-making venture for Newcomer but rather a very valuable community service, one people mostly postpone thinking about until a love one dies.

Fortunately, there are zero adverse impacts of cremation on the communities that exist nearby, whether that be residential, commercial or other. The only possible impacts that can even be conceived of would be smoke and odors. Yet the local Air Pollution Control District (APCD) does not even regulate these activities because they know, and have said, that crematories have no adverse environmental impacts. Nevertheless, this applicant has decided to submit what it is doing via application to APCD in order to obtain a written determination regarding same.

Furthermore, some states other than Kentucky have regulations governing cremation facilities that are more significant than Kentucky’s. The equipment that Newcomer will be installing in this facility will comply with the highest, strictest regulations of those other states, such as Ohio and California.

GUIDELINE 1 – COMMUNITY FORM

The subject property is located in the Suburban Marketplace Corridor Form District which is characterized by a mixture of uses, including offices, shops, restaurants and services. The existing Newcomer Funeral Home is such a service that is appropriate in an area such as this, especially as it is located next door to another institutional type use, i.e., a school which has greater impacts on its neighbors than this funeral home and crematory could possibly have on it. Together all these uses constitute a large activity center, and yet this use has the shortest hours of operation, least peak hour traffic impacts, and no nuisances, unlike the others.

GUIDELINE 2 – CENTERS

The Intents of this Guideline are, among other things, to promote an efficient use of land and investment in existing infrastructure, to reduce commuting time and transportation-related air pollution, to provide an opportunity for neighborhood centers which include a diversity of goods and services, and to encourage vitality and a sense of place in neighborhoods. The existing Newcomer Funeral Home, even with a small crematory in it, complies with these Intents of this Guideline because it fits with no negative impacts. By adding a crematory to this existing Newcomer Funeral Home in the community that it serves, Newcomer makes access to cremation services, with confidence in the chain of custody explained above, available close by to the very residents it serves. And with significant investment of this kind in a building that was renovated last year after Newcomer purchased the property from the Aldi grocery store, it assures a sound investment to the area.

Policies 1 and 2 of this Guideline recommend locating activity centers in Form Districts like this. Dixie Highway is clearly a major collector-level street.

Policies 4, 5, 7, 8 and 9 of this Guideline recommend that development be compact and that activity centers include a mixture of uses that are desirable, one with the other, and, when close to residential areas, they serve the day-to-day needs of nearby residents at locations such as intersections where one intersecting street is classified as collector or above. As stated, Dixie Highway is at least a major collector level street. This funeral home with crematory serves the day-to-day needs of families in nearby neighborhoods and also along busy corridors such as these.

GUIDELINE 3 - COMPATIBILITY

The Intents of this Guideline are to allow a mixture of land uses as long as they are designed to be compatible with each other and, in the process, to preserve the character of existing neighborhoods. The Newcomer Funeral Home with crematory is already designed to look very residential in character. It is only one story, not two-story like other residences in this area. So it is even shorter than the maximum height allowed in the nearby residential zoning districts. As such, it preserves the character of the existing neighborhood by not detracting from it aesthetically or in terms of building design and materials. The crematory will be placed within the existing building, so no one will even know it is there.

Policies 1, 2, 3 and 4 of this Guideline all address the issue of compatibility by reference to design, building materials, types of uses, including buffers, open space, landscaping and so on. This application complies with these Policies of this Guideline because the Newcomer Funeral Home building is a very nice looking mostly brick building. These materials are familiar to the area. Further, the site plan filed with this application shows that probably the rear one-third to one-half of the site is left as open space, and the sides of the parking and maneuvering areas also include significant amounts of green space, which will be pleasantly landscaped in accordance with the Land Development Code, indeed beyond its requirements because of fencing residents want and that Newcomer has promised.

Policies 5, 6, 7, 8 and 9 of this Guideline pertain to nuisance issues, such as odors, traffic, noise, lighting and other visual impacts. This application complies with these Policies of this Guideline because no smoke odors will be created as explained in the Introductory Section of this Compliance Statement. Also, this is a non-peak-hour generating traffic use; noise is also not associated with funeral homes; lighting already complies with the Land Development Code lighting standards; and, visually speaking, the building and perimeter landscaping are or will be of high quality intended to assure that this building, this use and the associated parking fit within the neighborhood and do not create adverse visual impacts. Despite that, added screening has been promised by Ren Newcomer and will be added on three sides.

Policies 21, 22 and 23 of this Guideline pertain to transitions, buffers and setbacks. As clearly visible on the development plan filed with this application, there is a significant amount of rear yard open space, which is already nicely landscaped with large existing trees, thus assuring a good transition from this use to adjoining residential properties. Buffers meet the requirements of the Land Development Code as do setbacks.

Policy 24 of this Guideline pertains to parking, loading and delivery. The development plan filed with this application was designed to assure that points of access are located where they

should have minimal impacts on the local street systems. Parking is not proximate to nearby residential properties, of course, and because of the nature of this funeral home use, the parking lots most times of most days will be empty.

GUIDELINES 4 and 5 – OPEN SPACE AND NATURAL AREAS/SCENIC RESOURCES

The Intents and these two Guidelines are to enhance the quality of life through the provision of open space and to preserve important natural resources. This application complies with these Intents because significant open space is preserved at the rear of this site, and both that area and perimeters, include quality nicely landscaped buffers. This site is not over-built, and the new crematory does not involve an addition to the existing building.

Policies 2, 5, 6 and 7 of Guideline 4 and Policy 1 of Guideline 5 all pertain to the design of open space, the conservation of natural resources and natural features and the maintenance of open space. This application complies with these Policies of these Guidelines because the open space, especially at the rear, conserves and protects the natural resource/feature which is the wooded area where an old cemetery has been surrounded with a new black wrought-iron style fence. The property is already well maintained as one would expect of a funeral home, such as the Newcomer Funeral Home, which wants to continue to create a high quality, peaceful setting for its clients and visitors who utilize its services at times when peace and comfort in a quiet setting are highly desirable, if not essential. The crematory changes not one thing about any of this.

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

The Intents of this Guideline, among other things, are to ensure the availability of necessary usable land for all types of development and to reduce public and private costs for land development. This application complies with these Intents of this Guideline because this is a perfect location, large enough to not over-build/over-crowd the site right next to a school where there will be no added public costs for the crematory added to the inside of the existing building.

Policy 6 of this Guideline pertains to activity centers, mentioned at Guideline 2 regarding activity centers, which are to be located at intersections where at least one of the intersections, as stated heretofore, is a collector level street. The funeral home with crematory is located on a very busy arterial – i.e., Dixie Highway. Where better? Surely not in an industrial area.

GUIDELINES 7 & 8 – CIRCULATION AND TRANSPORTATION FACILITY DESIGN

The Intents of these two Guidelines, among other things, are to provide for safe and proper functioning of the street networks, to ensure that new developments do not exceed the carrying capacity of streets, to ensure that internal and external circulation of all new developments provide safe and efficient travel movements, and to provide for the safe and convenient accommodation of the special mobility needs of elderly and handicapped people. This application complies with the Intents of these two Guidelines because Dixie Highway is adequate, as presently built, to handle the mostly off-peak traffic generation of this existing Newcomer Funeral Home with crematory. Accommodations are, of course, already existing for the elderly and physically challenged, since, after all, many of the people visiting the funeral homes are often the elderly who suffer from physical challenges.

Policies 1, 2, 9, 11 and 14 of Guideline 7 pertain to the impacts of proposed development, including the customary need to dedicate additional right-of-way and to assure ease and safety of access and internal circulation. The application complies with these Policies of this Guideline because, among other things, Dixie Highway can handle the mostly off-peak traffic generated on the irregular occasions that funeral homes and crematories normally operate. They are seldom busy more than a few hours of every day, and they don't even necessarily hold services or conduct related activities every day of every week. That means that funeral services are utilized mostly off-peak, as irregular uses serving the special needs of people living in nearby neighborhoods. The crematory will operate during normal business hours. Because of this, Newcomer Funeral Home does not and will not have a noticeable impact on the existing street systems, which can accommodate the mostly off-peak hour traffic generated on infrequent occasions. Other than that, the site plan has been designed by an engineer taking into account the normal design standards of Metro Transportation Planning. By the time this application is reviewed by the Planning Commission, the plan will have received its preliminary stamp of approval.

Policy 10 of this Guideline pertains to the adequacy of parking. The amount of parking complies with the standards of the off-street parking regulation of the Land Development Code. Parking is adequate under standards of the off-street parking regulation.

GUIDELINE 9 – BICYCLE, PEDESTRIAN AND TRANSIT

The Intents and Policies of this Guideline are to assure that new development supports alternative forms of transportation. Although transit service is highly unlikely to be necessary for a funeral home, and although bicyclists are also highly unlikely to utilize its facilities, because it is located where it is, these forms of transportation are accommodated. But mostly, as respects pedestrians, the concern is that people visiting the funeral home can safely walk from the parking lots and drop-off areas into the funeral home building. This is especially true of the elderly and physically challenged. Those needs are accommodated.

GUIDELINES 10 and 11 – STORMWATER AND WATER QUALITY

The Intents and Policies 1, 2, 3, 4, 6, 7, 10 and 11 of these Guidelines all pertain to floodplains and stormwater management. Stormwater is addressed through the existing stormwater management plan. The development plan previously received the stamp of approval from MSD.

GUIDELINE 12 – AIR QUALITY

The Intents and Policies of this Guideline pertain to protecting air quality. This application complies with these Intents and Policies because locating a funeral home with a crematory of this kind near neighborhoods with large support population, like this one, reduces travel distances, thus helping to control adverse air impacts. And there is zero evidence that the crematory will create any adverse air quality consequences. Statements to the contrary are unsupported by credible evidence.

GUIDELINE 13 – LANDSCAPE CHARACTER

The Intents and Policies 1, 2, 4, 5 and 6 of this Guideline all pertain to protecting natural vegetation, to the maximum extent possible, and landscaping a site appropriately as required by the Land Development Code or otherwise necessary to protect the surrounding area. As the

development plan filed with this application clearly shows, much of the site was left open and in its native state. Trees were retained to the maximum extent possible. Landscaping was also added in full compliance with the Land Development Code and probably in excess thereof because of the nature of this facility and the desire of Newcomer to assure that this property provides an aesthetically pleasant and peaceful setting. Newcomer has promised neighbors added fence screening.

GUIDELINE 15 – COMMUNITY FACILITIES

The Intents and Policies of this Guideline are to appropriately locate a community facility and ensure the highest quality design and compatibility with other nearby development. Policies 1, 5, 6 and 7 particularly apply to a funeral home and crematory facility of this kind, which, although perhaps not by definition a community operated facility like a fire or police station, library or government office, nevertheless, much like a church, a funeral home and crematory are those types of facilities that definitely serve a community need, much more so than it serves as a community convenience. In most places, a funeral home and crematory would be considered a community facility almost at the same level as the type of community facilities just mentioned. This is a perfect location, in the midst of a significant support population along a major arterial, for a facility of this kind.

* * * *

For all of the above reasons and others identified on the Detailed Development Plan submitted with this application, including conditions of approval to be addressed with neighbors and presented by the time of Board of Zoning Adjustment (BOZA) review, this application complies with all other relevant and applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

Respectfully submitted,

William B. Bardenwerper
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Tab 13

Proposed findings of fact pertaining to
compliance with the Comprehensive Plan

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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PROPOSED FINDINGS OF FACT REGARDING COMPLIANCE WITH ALL APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

<u>Owners/Applicant:</u>	Newcomer Funeral Service Group
<u>Location:</u>	10304 Dixie Highway
<u>Engineer:</u>	Prism Engineering and Design Group, LLC
<u>Proposed Use:</u>	Funeral Home w/ Crematory
<u>Requests:</u>	Conditional Use Permit to allow a crematory within the existing Newcomer funeral home

The Louisville Metro Board of Zoning Adjustment, having heard testimony in the Public Hearing held on July 21, 2014 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

INTRODUCTORY STATEMENT

WHEREAS, Newcomer Funeral Service Group ("Newcomer") operates funeral homes at approximately 23 locations in 8 different states; Newcomer operates a funeral home on Juneau Drive off Shelbyville Road in Middletown, which is a location very similar to this one in that it is just off of a major arterial (in that case US 60/Shelbyville Road and in this case off Dixie Highway); both in this case and at Juneau Drive in the Middletown, there are adjoining streets along which there is located both residential and commercial development; funeral homes have traditionally operated in both commercial, office, and multi-family residential zoning districts with a Conditional Use Permit; much like churches (but which legally cannot be regulated with discretionary permits), funeral homes are much more residential in nature than they are commercial; both serve the spiritual needs of people; both are not considered peak hour traffic generators; neither generate regular amounts of activity, but rather tend to generate activities at off peak hours on less than regular occasions; and both are often considered, because of their quiet nature and lack of nuisances associated with them, to be good residential neighbors; that is why, as said, funeral homes are permitted within multi-family and office zoning districts with a Conditional Use Permit, as is being requested in this case for a small crematory within the existing funeral home already properly zoned; and

WHEREAS, in this particular case, as said, the funeral home already exists; and further, as said, what Newcomer would like to add is a small crematory within its existing funeral home building; the reason for this is because, whereas it might add a crematory to the Middletown site, that building is simply not large enough, like this one is, to accommodate the crematory facility; furthermore, cremations are becoming more and more prevalent throughout the United States; and

WHEREAS, Mr. Ren Newcomer, a principal owner of this company, explained the importance of "chain of custody" when the deceased are entrusted by loved ones to a funeral home company;

right now, in most instances of cremation, a body must be taken from the funeral home to a remote location (presently right now for Newcomer across the river to Indiana); in such instances, the chances of a break in the chain of custody are always possible, even if only remotely so; but psychologically, probably more than anything else, this is a reason why Newcomer, and an increasing number of other funeral homes elsewhere, want to locate cremation facilities within their own funeral homes – i.e., in order to give families a certain peace of mind; they thus know that, even if the body leaves the facility for cremation (for example, in the case of a funeral at Newcomer’s Middletown funeral home) at least the body did not leave the care and protection of the Newcomer funeral home operators; funerals are very emotional times, and the remains from a cremation are often cherished by loved ones within urns kept within their loved ones’ homes or other cherished places; knowing that these remains are those of their loved ones is very important; and what is proposed is a community service, one people mostly postpone thinking about until a love one dies; and

WHEREAS, there are no identified adverse impacts of cremation on the communities that exist nearby, whether that be residential, commercial or other; the only possible impacts that can even be conceived of would be smoke and odors; yet the local Air Pollution Control District (APCD) does not even regulate these activities because they know, and have said, that crematories have no adverse environmental impacts; this applicant has decided to submit what it is doing via application to APCD in order to obtain a written determination that it is not a regulated activity; and APCD has issued such a letter; and

WHEREAS, some states other than Kentucky have regulations governing cremation facilities that are more significant than Kentucky’s; the equipment that Newcomer will be installing in this facility will comply with the highest, strictest regulations of those other states, such as Ohio and California; and

GUIDELINE 1 – COMMUNITY FORM

WHEREAS, the subject property is located in the Suburban Marketplace Corridor Form District which is characterized by a mixture of uses, including offices, shops, restaurants and services; the existing Newcomer Funeral Home is such a service that is appropriate in an area such as this, especially as it is located next door to another institutional type use, i.e., a JCPS property occupied in part by Valley High School, which arguably has greater impacts on its neighbors because of traffic and noise than this funeral home and crematory could have on it; and all these uses constitute a large activity center, and yet this use has the shortest hours of operation, least peak hour traffic impacts, and no nuisances, unlike the others; and

GUIDELINE 2 – CENTERS

WHEREAS, the Intents of this Guideline are, among other things, to promote an efficient use of land and investment in existing infrastructure, to reduce commuting time and transportation-related air pollution, to provide an opportunity for neighborhood centers which include a diversity of goods and services, and to encourage vitality and a sense of place in neighborhoods; the existing Newcomer Funeral Home, even with a small crematory in it, complies with these Intents of this Guideline because it fits with no identified negative impacts; by adding a crematory to this existing Newcomer Funeral Home in the community that it serves, Newcomer makes access to cremation services, with confidence in the chain of custody explained above, available close by to the very residents it serves; and with significant investment of this kind in a

building that was renovated last year after Newcomer purchased the property from the Aldi grocery store, it assures a sound investment to the area; and

WHEREAS, Policies 1 and 2 of this Guideline recommend locating activity centers in Form Districts like this; and Dixie Highway is clearly a major arterial-level street where significant commercial, institutional and other activities are congregated; and

WHEREAS, Policies 4, 5, 7, 8 and 9 of this Guideline recommend that development be compact and that activity centers include a mixture of uses that are desirable, one with the other; and when located close to residential areas, they serve the day-to-day needs of nearby residents at locations such as intersections where one intersecting street is classified as collector or above, and yet Dixie Highway is actually a major arterial level street; and this funeral home with crematory serves the day-to-day needs of families in nearby neighborhoods and also along busy corridors such as Dixie Highway; and

GUIDELINE 3 - COMPATIBILITY

WHEREAS, the Intents of this Guideline are to allow a mixture of land uses as long as they are designed to be compatible with each other and, in the process, to preserve the character of existing neighborhoods; the Newcomer Funeral Home with crematory is already designed to look very residential in character; it is only one story, not two-story like other residences in this area; so it is even shorter than the maximum height allowed in the nearby residential zoning districts; as such, it preserves the character of the existing neighborhood by not detracting from it aesthetically or in terms of building design and materials; and the crematory will be placed within the existing building, so no one will even know it is there; and

WHEREAS, Policies 1, 2, 3 and 4 of this Guideline all address the issue of compatibility by reference to design, building materials, types of uses, including buffers, open space, landscaping and so on; this application complies with these Policies of this Guideline because the Newcomer Funeral Home building is a very nice looking mostly brick building; these materials are familiar to the area; further, the site plan filed with this application shows that probably the rear one-third to one-half of the site is left as open space, and the sides of the parking and maneuvering areas also include significant amounts of green space, which will be pleasantly landscaped in accordance with the Land Development Code, indeed beyond its requirements because of fencing residents want and that Newcomer has already installed; and

WHEREAS, Policies 5, 6, 7, 8 and 9 of this Guideline pertain to nuisance issues, such as odors, traffic, noise, lighting and other visual impacts; this application complies with these Policies of this Guideline because no smoke or odors will be created that will be notable or cause negative impacts on nearby neighbors; this is a non-peak-hour generating traffic use; noise is also not associated with funeral homes; lighting already complies with the Land Development Code lighting standards; and, visually speaking, the building and perimeter landscaping are or will be of high quality intended to assure that this building, this use and the associated parking fit within the neighborhood and do not create adverse visual impacts; and despite that, added screening has been installed by Newcomer; and

WHEREAS, Policies 21, 22 and 23 of this Guideline pertain to transitions, buffers and setbacks; as clearly visible on the development plan filed with this application, there is a significant amount of rear yard open space, which is already nicely landscaped with large existing trees,

thus assuring a good transition from this use to adjoining residential properties; and buffers meet the requirements of the Land Development Code, as do setbacks; and

WHEREAS, Policy 24 of this Guideline pertains to parking, loading and delivery; the development plan filed with this application was designed to assure that points of access are located where they should have minimal impacts on the local street systems; and parking is not proximate to nearby residential properties, and because of the nature of this funeral home use, the parking lots most times of most days will be empty; and

GUIDELINES 4 and 5 – OPEN SPACE AND NATURAL AREAS/SCENIC RESOURCES

WHEREAS, the Intents and these two Guidelines are to enhance the quality of life through the provision of open space and to preserve important natural resources; this application complies with these Intents because significant, recently cleaned-up open space is preserved at the rear of this site, and both that area and perimeters include quality nicely landscaped buffers; this site is not over-built; and the new crematory involves only a small addition to the existing building; and

WHEREAS, Policies 2, 5, 6 and 7 of Guideline 4 and Policy 1 of Guideline 5 all pertain to the design of open space, the conservation of natural resources and natural features and the maintenance of open space; this application complies with these Policies of these Guidelines because the open space, especially at the rear, conserves and protects the natural resource/feature which is the wooded area where an old cemetery has been surrounded with a new black wrought-iron style fence; the property is already well maintained as one would expect of a funeral home, such as the Newcomer Funeral Home, which wants to continue to create a high quality, peaceful setting for its clients and visitors who utilize its services at times when peace and comfort in a quiet setting are highly desirable; and the crematory changes nothing about any of this; and

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

WHEREAS, the Intents of this Guideline, among other things, are to ensure the availability of necessary usable land for all types of development and to reduce public and private costs for land development; this application complies with these Intents of this Guideline because this is a good location, large enough to not over-build/over-crowd the site right next to a school where there will be no added public costs for the crematory added to the inside of the existing building; and

WHEREAS, Policy 6 of this Guideline pertains to activity centers, mentioned at Guideline 2 regarding activity centers, which are to be located at intersections where at least one of the intersections, as stated heretofore, is a collector level street; and the funeral home with crematory is located on a very busy arterial – i.e., Dixie Highway; and

GUIDELINES 7 & 8 – CIRCULATION AND TRANSPORTATION FACILITY DESIGN

WHEREAS, the Intents of these two Guidelines, among other things, are to provide for safe and proper functioning of the street networks, to ensure that new developments do not exceed the carrying capacity of streets, to ensure that internal and external circulation of all new developments provide safe and efficient travel movements, and to provide for the safe and convenient accommodation of the special mobility needs of elderly and handicapped people; this application complies with the Intents of these two Guidelines because Dixie Highway is adequate, as presently built, to handle the mostly off-peak traffic generation of this existing Newcomer Funeral Home with crematory; accommodations are already existing for the elderly

and physically challenged, since, after all, many of the people visiting the funeral homes are often the elderly who suffer from physical challenges; and

WHEREAS, Policies 1, 2, 9, 11 and 14 of Guideline 7 pertain to the impacts of proposed development, including the customary need to dedicate additional right-of-way and to assure ease and safety of access and internal circulation; the application complies with these Policies of this Guideline because, among other things, Dixie Highway can handle the mostly off-peak traffic generated on the irregular occasions that funeral homes and crematories normally operate; they are seldom busy more than a few hours of every day, and they don't even necessarily hold services or conduct related activities every day of every week; that means that funeral services are utilized mostly off-peak, as irregular uses serving the special needs of people living in nearby neighborhoods; the crematory will operate during normal business hours; Newcomer Funeral Home does not and will not have a noticeable impact on the existing street systems, which can accommodate the mostly off-peak hour traffic generated on infrequent occasions; other than that, the site plan has been designed by an engineer taking into account the normal design standards of Metro Transportation Planning; and this application has received its preliminary stamp of approval; and

WHEREAS, Policy 10 of this Guideline pertains to the adequacy of parking; the amount of parking complies with the standards of the off-street parking regulation of the Land Development Code; and parking is adequate under standards of the off-street parking regulation; and

GUIDELINE 9 – BICYCLE, PEDESTRIAN AND TRANSIT

WHEREAS, the Intents and Policies of this Guideline are to assure that new development supports alternative forms of transportation; although transit service is highly unlikely to be necessary for a funeral home, and although bicyclists are also highly unlikely to utilize its facilities, because it is located where it is, these forms of transportation are accommodated; as respects pedestrians, the concern is that people visiting the funeral home can safely walk from the parking lots and drop-off areas into the funeral home building; and this is especially true of the elderly and physically challenged and those needs are accommodated; and

GUIDELINES 10 and 11 – STORMWATER AND WATER QUALITY

WHEREAS, the Intents and Policies 1, 2, 3, 4, 6, 7, 10 and 11 of these Guidelines all pertain to floodplains and stormwater management; stormwater is addressed through the existing stormwater management plan, which has received the preliminary stamp of approval from MSD; and

GUIDELINE 12 – AIR QUALITY

WHEREAS, the Intents and Policies of this Guideline pertain to protecting air quality; this application complies with these Intents and Policies because locating a funeral home with a crematory of this kind near neighborhoods with large support population, like this one, reduces travel distances, thus helping to control adverse air impacts; and there is no credible evidence that the crematory will create adverse air quality consequences; and

GUIDELINE 13 – LANDSCAPE CHARACTER

WHEREAS, the Intents and Policies 1, 2, 4, 5 and 6 of this Guideline all pertain to protecting natural vegetation, to the maximum extent possible; landscaping a site appropriately is required by the Land Development Code as necessary to protect the surrounding area; as the development plan filed with this application clearly shows, much of the site was left open and in its native state; trees were retained to the maximum extent possible; landscaping was also improved to assure compliance with the Land Development Code and because of the nature of this facility and the desire of Newcomer to assure that this property provides an aesthetically pleasant and peaceful setting; and

GUIDELINE 15 – COMMUNITY FACILITIES

WHEREAS, the Intents and Policies of this Guideline are to appropriately locate a community facility and ensure the highest quality design and compatibility with other nearby development; Policies 1, 5, 6 and 7 particularly apply to a funeral home and crematory facility of this kind, which, although perhaps not by definition a community operated facility like a fire or police station, library or government office, nevertheless, much like a church, a funeral home and crematory are those types of facilities that serve a community need; and this is a good location, in the midst of a significant support population along a major arterial, for a community facility of this kind; and

* * *

WHEREAS, for all the reasons explained in the public hearing and also in the public hearing exhibit books, on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan;

NOW, THEREFORE, the Louisville Metro Board of Zoning Adjustment hereby approves the Conditional Use Permit and waiver from Section 4.2.60.B with respect to the 200 ft minimum setback from property containing a residential use