

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
September 27, 2018**

A meeting of the Louisville Metro Planning Commission was held on September 27, 2018 at 6:30 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Vince Jarboe, Chair
Marilyn Lewis, Vice Chair
Jeff Brown
Lula Howard
David Tomes

Commission members absent:

Rich Carlson
Ruth Daniels
Robert Peterson
Donald Robinson
Emma Smith

Staff Members present:

Emily Liu, Planning and Design Director
Joe Reverman, Planning and Design Assistant Director
Brian Davis, Planning and Design Manager
Beth Stuber, Transportation Planning
Travis Fiechter, Legal Counsel
Pamela M. Brashear, Management Assistant

Others Present:

Tony Kelly, Metropolitan Sewer District
Brian Bingham, Metropolitan Sewer District

The following matters were considered:

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PUBLIC HEARING

CASE NO. 18SUBDIV1022

Request: Conservation Subdivision Creating 624 Buildable Lots on 237.16 acres
Project Name: Covington by the Park
Location: 4501 Taylorsville Lake Road, 15400 Taylorsville Road, and 4200, 4201 and 4111 Yellow Brick Road
Owner: Long Run Creek Property Development, Inc.
Applicant: Long Run Creek Property Development, Inc.
Representative: Bardenwerper, Talbott & Roberts, PLLC
Mindel Scott & Associates
Jurisdiction: Louisville Metro
Council District: 20 – Stuart Benson
Case Manager: Brian Davis, AICP, Planning & Design Manager

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:05:15 Mr. Davis discussed the case summary, standard of review and staff analysis from the staff report.

00:11:35 Mr. Brian Bingham, MSD Chief of Operations, spoke to address stormwater and wastewater as it relates to the plan. The proposed plan meets all requirements for detention/retention on the site. MSD will continue to review this as construction plans come forward. In regards to wastewater, MSD believes regional wastewater is the best fit for this property and this system. The alternative system that has been proposed by the opposition would not be approved by MSD as proposed. MSD has spent a lot of time and money to acquire and eliminate private package and treatment plants and would not be interested in having third parties operate within their jurisdiction. The Floyds Fork Wastewater Treatment Plant is the most highly regulated treatment plant in the state. As such, it is also the most highly performing wastewater treatment plant in the state.

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00:16:16 Mr. Porter cross-examined Mr. Bingham. He asked Mr. Bingham if it was his opinion that the Floyds Fork Wastewater Treatment Plant is the best in the state. Mr. Bingham replied, yes.

Mr. Porter asked if the amounts of nitrogen and phosphorous are monitored. Mr. Bingham said yes. Mr. Porter asked if these items can contribute to algae blooms that may be harmful to aquatic life. Mr. Bingham said it can be, but it can also contribute to the health of a stream if in the right quantities.

00:17:58 Mr. Porter said sometimes when the creek is low, doesn't the algae create some problems? Mr. Bingham said you can't attribute that to the wastewater treatment and defers any additional comment to the Ky. Division of Water. They set the waste load allocations and limits that go into permits. When MSD expanded the treatment plant, we specifically requested new waste load allocations due to the nature of the stream. We were told no additional allocations would be made. We cut all the permit limits at least by half.

Mr. Porter asked if there could be increased levels of these chemicals if the effluent increases. Mr. Bingham said possibly but the concentrations could also be lower with more water coming out of the plant. Mr. Porter asked if there were tertiary methods of nitrogen treatment being used at the plant. Mr. Bingham said yes.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Diane Zimmerman, 12803 High Meadows Pike, Prospect, Ky. 40059

Summary of testimony of those in favor:

00:20:20 Mr. Bardenwerper spoke on behalf of the applicant and reviewed some of the background and site information related to the case.

Mr. Bardenwerper went over the changes that were made to the plan since the last hearing, which included adding additional open space connections as well as adding two street stubs to break up the sections of road that were out of compliance. The applicant also displayed a potential trail and sidewalk exhibit to show potential (not final) trails and connections to the open space.

Mr. Bardenwerper presented an overview of the number of proposed lots and amount of open space dedicated.

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00:52:24 Commissioner Brown asked about the signal warrant for the entrance at Routt Road. Ms. Zimmerman confirmed the signal was not warranted at this time but could be justified if the retail portion is developed. Mr. Bardenwerper said the signal would be revisited if and when the rezoning case comes forward. If the rezoning case does not get approved or move forward then they would most likely need to come back and address the signal at a later date.

The following spoke in opposition to this request:

Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299
Bert Stocker, 16313 Crooked Lane, Fisherville, Ky. 40023
Mike Farmer, 15100 Old Taylorsville, Fisherville, Ky. 40023
Randy Strobo, 239 South 5th Street, Suite 917, Louisville, Ky. 40202
Jeff Frank, 16509 Bradbe Road, Louisville, Ky. 40023
Teena Halbig, 6505 Echo Trail, Louisville, Ky. 40299
Randall Arendt, 6 Sparwell Lane, Brunswick, Maine 04011
Peter Bodnar, 8801 Dawson Hill Road, Louisville, Ky. 40299
Marshall Fall, 849 Aviation Parkway, Smyrna, Tn. 37167

Summary of testimony of those in opposition:

00:56:52 Mr. Porter spoke in opposition to the request on behalf of the Fisherville Area Neighborhood Association and individual property owners within the area.

Mr. Porter stated there are two major points: the current plan does not meet the requirements of 7.11 for conservation subdivisions and that there is another viable method of wastewater treatment that should be implemented (land treatment). The Planning Commission does have discretion to deny the plan or require the applicant to make changes to the plan.

01:06:01 Mr. Stocker gave a power point presentation and reviewed traffic related information pertinent to the case.

Mr. Stocker pointed out items that he felt were not correct in the traffic impact study and discussed several items including tree canopy loss, heat island effect and how these will change if this plan is approved.

01:13:58 Mr. Farmer stated this is the last rural area of Jefferson County and the last living creek. The approval of this development will change this area of Jefferson County forever. The South Floyds Fork Study was supposed to have been finalized

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before now, and asked why the development should move forward before the study is completed.

01:17:50 Mr. Strobo represents the Friends of Floyds Fork and Jeff Frank and gave a power point presentation.

Mr. Strobo spoke about ongoing discussions between MSD and the State Division of Water about Floyds Fork. There are water quality issues and nutrient issues that need to be addressed. It is the Planning Commission's responsibility to protect water quality and cited examples from the Land Development Code that supports this opinion.

01:25:34 Mr. Frank spoke about the water quality issues that affect Floyds Fork today and what could happen if the Covington by the Lake plan is approved and constructed, both from a wastewater and stormwater standpoint.

01:39:32 Ms. Halbig stated the watershed has long faced development due to its location. The proposal presents a threat to the ecology and future of the Floyds Fork watershed.

01:47:18 Mr. Arendt submitted a handout into the record. His points outline why he believes the application is incomplete or out of compliance and should either be denied or returned to the applicant to fulfill the submittal requirements of the Land Development Code.

02:17:32 Mr. Bodnar stated our ecosystem is already weakened. Trying to implement new designs or other mitigation will not help.

02:19:16 Mr. Fall explained a viable alternative to sewer extensions that could be used on properties/developments like this one. They use the land application technique throughout Tennessee.

02:22:32 Mr. Porter provided a summary of the opposition's statements.

02:25:25 The Planning Commission members asked questions to those who spoke in opposition of the proposal.

Rebuttal

02:49:52 Mr. Bardenwerper mentioned people that work in Jefferson County but commute (38.7%). They don't contribute anything towards taxes because they don't live here. Subdivisions are ministerial and that is the law.

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03:03:30 Mr. Bardenwerper remarked, "The Conservation Subdivision Regulation actually says that the application shall be accompanied by following supporting documentation and additional information as deemed necessary by the Planning Director or designee." The application has been deemed complete.

03:13:57 Mr. Bingham returned to the podium to address questions from Commissioner Tomes.

Deliberation

03:17:56 Commissioner Tomes stated even though there are changes he would make if he were developing the site, the plan is in keeping with the regulation and feels it should be approved.

03:20:08 Commissioner Lewis said the plan meets the standards and she is satisfied with responses from MSD.

03:21:10 Commissioner Brown stated the proposal is compliant and the added condition of approval to address the intersection improvement is a plus.

03:22:29 Commissioner Howard stated the proposal preliminarily meets the requirements and the plan will go through changes so this isn't the last plan. The Land Development Code, slopes and terrain will force changes as they move forward with the implementation of the plan.

03:24:18 Chair Jarboe stated he believes, for the most part, that this is a ministerial action but there is some latitude as far as the conservation part. It's not the percentage of the open land, but the quality. The plan is in order.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Major Preliminary Conservation Subdivision

On a motion by Commissioner Brown, seconded by Commissioner Lewis, the following resolution based on the Staff Analysis and testimony heard today was adopted.

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Major Preliminary Subdivision (Conservation Subdivision) to create 624 buildable lots on approximately 237.16 acres **SUBJECT** to the following Conditions of Approval:

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. 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 Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
3. 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.

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4. 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.
5. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
6. 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.
7. 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.
8. 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.
9. 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 larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
10. 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

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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.

11. 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.
12. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
13. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
14. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
15. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
16. A deed restriction in a form approved by Counsel to the Planning Commission shall permanently prohibit further subdivision or development of conservations areas.

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17. The applicant shall submit a Conservation Area Management Plan detailing the entities responsible for maintaining various elements of the property, and describing management objectives and techniques for each part of the property.
18. In the event the party responsible for maintenance of the Conservation Areas fails to maintain all or any portion in reasonable order and condition according to the Management Plan, Louisville Metro Government may assume responsibility for its maintenance and may enter the premises and take corrective action, including provision of extended maintenance. The cost of maintenance may be charged to the Management Entity, or the individual property owners according to the pro-rata share based on the Management Plan. Costs may include administrative costs in taking such actions as well as penalties as provided under these regulations. Such costs shall become a lien on all subdivision properties.
19. Front entry garages shall be setback a minimum of 24 feet from the right-of-way.
20. The applicant shall work with staff landscape architect regarding screening along Taylorsville Lake Rd. to screen lots 14-30 as identified on the plan reviewed at the August 2, 2018 public hearing particularly to include additional large shrubs to provide additional ground level screening between the rear facing lots on Taylorsville Lake Rd.
21. Developer shall have the option of constructing or to pay Metro Public Works to construct a dual left-turn lane on westbound Taylorsville Rd. to southbound Taylorsville Lake Rd. and for a continuous right-turn lane on westbound Taylorsville Rd. also at its intersection with Taylorsville Lake Rd., commencement of said construction to begin or payment to be made prior to the issuance of the 50th house building permit in this development. Construction plans for the design of these improvements shall be required to be provided by the developer prior to the work order for the first phase of development. Metro Public Works has agreed as part of this condition of approval, to request the System Development Charge (SDC) Oversight Committee to designate this improvement a Road Project within Zone C so that any costs associated with it will be eligible for a SDC credit. Developer shall be limited to 100 building permits until this road improvement is completed.

The vote was as follows:

YES: Commissioners Brown, Howard, Lewis, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Carlson, Daniels, Peterson, Robinson and Smith

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STANDING COMMITTEE REPORTS

Land Development and Transportation Committee

No report given.

Site Inspection Committee

No report given.

Planning Committee

No report given.

Development Review Committee

No report given.

Policy and Procedures Committee

No report given.

CHAIRPERSON/DIRECTOR'S REPORT

No report given.

ADJOURNMENT

The meeting adjourned at approximately 10:10 p.m.

Chair

Planning Director