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2/15/2019

Metro Development Center
Jay Luckett, Case Manager
444 S. 5th Street, 3rd Floor
Louisville, KY 40202
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RE: Additional Justification Statement, Hurstbourne Road Closure Applications:
Stamford Drive 18STREET1003 & Cheffield Drive 18STREET1004

Dear Mr. Luckett:

In support of the above road closure applications, the City of Hurstbourne submits this additional justification statement to: (1) address the concerns of Staff relating to connectivity under the Land Development Code, (2) present the City's evidence supporting the impact of these future connections to the city, and (3) explain the statutory right of the City of make the decision to close these roads. Please add this to the official record in both cases, 18STREET1003 and 18STREET1004.

1. CONNECTIVITY UNDER THE LAND DEVELOPMENT CODE.

The Staff Reports for 18STREET1003 and 18STREET1004 recommend against approving these two closures, based on the Staff's belief that the Land Development Code Chapter 6 requires that streets should be open to possible future extension into adjacent undeveloped land – no matter the impact. However, for these two closures reliance on the general principal of connectivity is irrelevant. The connectivity of the undeveloped land adjacent to each closure was already been provided for in the approval of the Oxmoor Farm development. The approved Binding Elements for the Oxmoor Farm development (Docket No. 9-16-02), do not allow any development in the areas adjacent to Stamford and Cheffield Drive, until a new multi-million-dollar major arterial connection across the Interstate 264 is constructed. Because of this fact, the closure of Stamford and Cheffield cannot possibly landlock any parcel. The

connectivity of the undeveloped land on the other side of each closure will be through the creation of a new internal transportation infrastructure through the Oxmoor Farm development.

To give some perspective of the size of the Oxmoor Farm development, the Minutes for the Planning Commission report that the development would be:

1. Office 947,600 square feet of gross floor area.
2. Specialty Retail 52,000 square feet of gross floor area.
3. Shopping Center with Restaurant 436,000 square feet of gross floor area.
4. Hotel with Conference center 400 rooms.
5. Assisted Living Facility 273 units.
6. Single-Family Residential 44 lots.
7. Condominiums/ Town Houses 110 Units.
8. Apartments 1,294 Units.

Contrary to the Staff Report, the Land Development Code and the Comprehensive Plan does not in fact require connectivity at all costs, but instead the intent of Chapter 6 of the LDC requires a balancing of the impacts of connectivity to the quality of life of residents. In fact, the statement of intent for Chapter 6 of the LDC (Section 6.1.1), states that access management is **“...intended to balance the right of reasonable access to private property with the right of citizens of Louisville and Jefferson County to safe and efficient travel...”** Given the enormous size, scope and potential impact of the Oxmoor Farm development, it is within the discretion of the City of Hurstbourne Commission to reasonably determine that the impacts of connecting local dead-end streets to this 415.88-acre development is contrary to that balancing test.

The City of Hurstbourne’s closure requests are also not contrary to prior planning decisions in this area. In fact, the closure requests support and reinforce those prior decisions and findings. The Planning Commission found when it approved the Oxmoor Farm that:

“... the proposal complies with Policies 7.1, 7.2, 7.3, 7.4, 7.10 and 7.13 because the plan provides for the construction of Bunsen Parkway, a major transportation route connecting St. Matthews and the Shelbyville Road/Oxmoor Mall area with Hurstbourne and Taylorsville Road...”

The City of Hurstbourne agrees with this finding. The only way that the Oxmoor Farm development can provide adequate transportation facilities is to build its own, new system to handle the massive traffic volume. Oxmoor Farm cannot and should not be allowed to rely upon Stamford and Cheffield Drive to absorb part of the traffic load. Given the size, scope and circumstances of the Oxmoor Farm development, it is within the City of Hurstbourne's discretion to reasonably conclude that the impacts outweigh the advantages of connectivity, as it relates to Stamford and Cheffield Drive.

2. IMPACT OF CONNECTIVITY.

The insistence on connecting Stamford and Cheffield Drive to the 415.88-acre Oxmoor Farm development is based on a false assumption that those connections would be little used and have little impact. However, the Oxmoor Farm developer's own traffic study presents a grim picture of the existing traffic situation. The Gresham, Smith and Partners traffic study summarized the precarious traffic conditions in the area in its Table 1-8, which is attached as EXHIBIT ONE. Of the 18 major intersections studied, more than half are at failure during peak times.

The City of Hurstbourne commissioned its own engineering study by Yarger Engineering in 2007 (which Yarger Engineering updated in 2019 in preparation for this hearing), to review the original traffic data from the Oxmoor Farm development, specifically to judge for itself the impact of the future connection of streets such as Stamford and Cheffield Drive. That study, which is attached as EXHIBIT TWO, concluded that there could be 20 times (20% instead of 1%) more cut through traffic than predicted by the Oxmoor Farm developer:

- 12. The Rezone Study indicates that the amount of anticipated cut through traffic from the new development via Lyndon Lane could be 1-2% but no traffic was assigned to Lyndon Lane, or to any of the other stub streets that are proposed to connect such as Oxmoor Woods Parkway or Linn Station Road. This seems to contradict the information in the Hurstbourne Area Transportation Study and Small Area Plan, which estimates that 40% of the traffic in Hurstbourne (excluding Shelbyville Road and Hurstbourne Parkway) is cut through. While numbers are not directly comparable, the order of magnitude does suggest that the Rezone Study's estimate of no cut**

through traffic is unrealistic. One or two percent would also be unrealistically low. This type of assignment where all new traffic is assigned to the major roads is appropriate when the roads receiving the new traffic have sufficient capacity to handle the total traffic after all improvements. That is not the case here according to the Rezone study.

- 13. The Hurstbourne Area Transportation Study and Small Area's estimate of 40% cut through traffic has a lot of problems with it, but even accounting for problems, an estimate of 20% is not unrealistic and is likely to peak during rush hour traffic for Shelbyville Road and Hurstbourne Parkway due to congestion on the main roads.**
- 16. Given that some of the intersections are way over capacity and will continue to be that way even with optimized signals, the traffic assignment should have been adjusted to use alternate routes to account for motorists' natural inclination to find the shortest travel time route....**

Yarger Engineering concluded:

In conclusion, we believe that there are serious issues with the Rezone Study and find its estimates of future cut through traffic caused by the new development (none) to be substantially low. The estimate seemed to ignore the potential for additional cut through traffic from existing traffic avoiding the new congestion caused by the development. Bunsen Parkway may reduce some of the existing cut through traffic, but the Rezone Study also failed to quantify it. Simply assuming that they will balance out without providing a justification is not an acceptable practice when trying to identify the impacts on Hurstbourne from a new, very large development like Oxmoor Farms."

It is within the City of Hurstbourne's discretion to make the reasonable and objective determination that the impacts of the 415.88-acre Oxmoor Farm development on the City by cut-through traffic will be far more detrimental to the city's transportation infrastructure than predicted. Certainly, that determination is well within Comprehensive Plan 2040, Goal 2 under Mobility, which recommends, **"Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances."**

3. STATUTORY RIGHT TO CLOSE.

The Land Development Code is not the only standard or law applicable to road closures. Kentucky Revised Statutes Section 82.405 controls the road closure process and has been interpreted by the Kentucky Court of Appeals in their 2004 opinion in City of Worthington Hills v. Worthington Fire Protection District, 140 S. W. 3d 584 (Ky. App.2004), to give cities “unquestionable authority to close.”

The Court in the Worthington Hills case determined that the City did have to go through the process of submitting its closure application to the Planning Commission, but the Court was very clear that KRS 82.405 gave the City the power to make the ultimate decision. **“In sum, we hold the City is not bound by the decision of the Jefferson County Planning Commission under KRS 100.324(4). We also do not believe the City is required to obtain the approval of the Jefferson County Fiscal Court pursuant to KRS 178.070, KRS 178.115, or KRS 178.116, to close a public way. Rather, we are of the opinion the City possesses the singular authority to effectuate a closure of Halifax Drive under KRS 82.405(1) and (2)....”**

The Worthington Hills case also made very clear that “abutting” property owners to a closure are only those who touch the closure area. The revised configuration of the City of Hurstbourne’s strip closure leaves a three-foot strip of right of way at the end of Stamford and Cheffield. This configuration serves to allow the City to install and maintain bollards and reflectors to mark the end of the road. However, the new configuration also creates a 100 percent consent closure under KRS 82.405(2). This is because only the four adjacent homes now touch the closure area and the City has obtained notarized consents agreeing to the closure from each of those property owners. The City has met the requirements of KRS 82.405(2) for a 100 percent consent closure and has a statutory right to summarily close these two roads.

Sincerely,



John Singler, Attorney for the City of Hurstbourne

Cc City Commission