

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
December 19, 2019**

A meeting of the Louisville Metro Planning Commission was held on December 19, 2019 at 1:00 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  
Robert Peterson  
Jeffery Brown  
Richard Carlson  
Lula Howard  
Ruth Daniels  
Jim Mims

**Commission members absent:**

David Tomes

**Staff Members present:**

Joe Reverman, Planning and Design Assistant Director  
Brian Davis, Planning and Design Manager  
Steve Hendrix, Planning and Design Coordinator  
Dante St. Germain, Planner II  
Lacey Gabbard, Planner I  
Beth Stuber, Engineering Supervisor  
John Carroll, Legal Counsel  
Travis Fiechter, Legal Counsel  
Laura Ferguson, Legal Counsel  
Pamela M. Brashear, Management Assistant

The following matters were considered:

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**APPROVAL OF MINUTES**

**DECEMBER 5, 2019 PLANNING COMMISSION REGULAR MEETING MINUTES**

On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on December 5, 2019.

**The vote was as follows:**

**YES: Commissioners Brown, Howard, Peterson and Jarboe**

**NOT PRESENT FOR THIS CASE: Commissioners Daniels, Mims and Tomes**

**ABSTAINING: Commissioners Carlson and Lewis**

**DECEMBER 9, 2019 PLANNING COMMISSION NIGHT HEARING MEETING MINUTES**

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted.

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on December 9, 2019.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Howard, Lewis and Jarboe**

**NOT PRESENT FOR THIS CASE: Commissioners Daniels, Mims and Tomes**

**ABSTAINING: Commissioner Peterson**

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**PUBLIC HEARING**

**CASE NO. 19-DDP-0041**

Request: Appeal of DRC's decision regarding the sidewalk waivers  
Project Name: Dafco Expansion  
Location: 6851 Cane Run Road  
Owner(s): Jeff Milucky, Dameron Alloy Foundries  
Applicant: Todd Magner, Koetter Construction  
Jurisdiction: Louisville Metro  
Council District: 12 – Rick Blackwell  
**Case Manager: Lacey Gabbard, AICP, Planner I**

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:**

00:05:54 Ms. Gabbard discussed the case summary, standard of review and staff analysis from the staff report.

00:08:23 Chair Jarboe asked if TARC gave a reason for abandoning the pad. Ms. Gabbard said there will be route changes in the future.

**The following spoke in favor of this request:**

Courtney Gilmore, Koetter Construction, 7393 Pete Andreas Road, Floyds Knob, Indiana 47119

**Summary of testimony of those in favor:**

00:09:04 Ms. Gilmore stated this case is being brought back because the main dispute was the TARC pad but it's no longer being required.

00:09:54 Commissioner Lewis asked for more background information. Ms. Gilmore said she originally asked for the waiver because there are no other sidewalks in the area. TARC was requiring a pad and stop. Ms. Gabbard showed where the current stop is located.

**Deliberation**

00:12:17 Commissioner Carlson said the TARC stop and sidewalks were discussed at the DRC meeting.

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00:12:54 Commissioner Brown stated the Land Development Code, LDC speaks of the Suburban Workplace promoting alternative modes of transportation. The sidewalk is constructible and necessary on Cane Run because of the two lanes and high speed.

00:13:44 Mr. Carroll, legal counsel, asked if the development plan was approved and the waivers denied. Commissioner Brown said that's correct. Chair Jarboe said the development plan is part of the request today. Ms. Gabbard said it should not be.

00:15:35 Commissioner Carlson said the sidewalks will be beneficial.

00:15:43 Commissioner Daniels stated it's a high traffic area and sidewalks are needed.

00:16:01 Commissioner Howard stated this will be the beginning of other people providing sidewalks in the area.

00:16:28 Commissioner Lewis said we need to follow the Comprehensive Plan.

00:16:49 Commissioner Peterson agrees with the previous comments from the commissioners.

00:16:57 Commissioner Mims said the sidewalk will lead to nowhere, but there's no mechanism for them to be comprehensively built.

00:18:02 Chair Jarboe stated he knows the area very well and there's not a lot of pedestrian traffic, but both lots on both sides are open and they would be required to have sidewalks.

**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.**

**1. Waiver of Land Development Code section 5.8.1.B to not provide the sidewalk along Cane Run Road (19-WAIVER-0060)**

**2. Waiver of Land Development Code section 5.9.2.A.1 to not provide the pedestrian access from Cane Run Road to the building entrance (19-WAIVER-0060)**

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On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution based on the applicant not providing sufficient evidence to overturn the DRC decision was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **DENY** the appeal of the Development Review Committees' (DRC) decision denying a waiver of the Land Development Code section 5.8.1.B to not provide the sidewalk along Cane Run Rd. and a waiver of the Land Development Code section 5.9.2.A.1 to not provide the pedestrian access from Cane Run Rd. to the building entrance thus **UPHOLDING** the DRC denial.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Tomes**

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**CASE NO. 19-ZONE-0057**

Request: Change in zoning from R-4 to R-7, with Detailed District Development Plan and Binding Elements  
Project Name: Clover Senior Housing  
Location: 108 Urton Lane  
Owner: Middletown Fire Protection District  
Applicant: Clover Communities Urton LLC  
Representative: McBride Dale Clarion  
Jurisdiction: City of Middletown  
Council District: 19 – Anthony Piagentini  
**Case Manager: Dante St. Germain, AICP, Planner II**

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:**

00:21:45 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

Robert Sweet, McBride Dale Clarion, 5721 Dragon Way, Suite 300, Cincinnati, Ohio 45227

Robert Jack, Clover Development, 348 Harris Hill Road, Williamsville, N.Y. 14221

**Summary of testimony of those in favor:**

00:27:24 Mr. Sweet gave a power point presentation. The proposal is for a senior age-restricted apartment development for active seniors, not a rehabilitation center or nursing home. The pitch roof style will reinforce the residential character. The proposal is consistent with the Comprehensive 2040 Plan – a mixed use neighborhood and is a low traffic generator.

00:30:53 Commissioner Mims asked if the plan is consistent with fair housing. Mr. Jack said the Fair Housing Act has a provision for age restriction for 55 and above. There will be no children and grandchildren living there.

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00:31:51 Commissioner Daniels stated, considering you have 125 units and it is a senior housing complex, why do you only provide 6 ADA parking spaces? Mr. Sweet said a large amount of the residents don't drive and 6 is typical for all their sites.

**Deliberation**

00:32:46 Planning Commission deliberation.

**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.**

**Zoning Change from R-4 to R-7**

On a motion by Commissioner Carlson, seconded by Commissioner Lewis, the following resolution based on the Plan 2040 Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the site is located relatively close to Shelbyville Road, a transit corridor, and is located in an activity center featuring commercial and office uses; the will be provided to protect residents from the impact of the commercial uses; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal provides new development with residential uses; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the subject site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no distinctive cultural features are evident on the subject site; no historic assets are evident on the subject site; and

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is located in an existing marketplace corridor. The proposal would permit higher density and intensity use; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the site is easily accessible by bicycle, car, transit, pedestrians, and people with disabilities. The proposal would provide housing near an employment center; Transportation Planning has approved the proposal; No direct residential access to high speed roadways is proposed; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, no native plant communities are evident on the subject site; no karst features are evident on the subject site; the subject site is not located in the regulatory floodplain; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would permit an increase in the variety of housing in the neighborhood by allowing senior housing; the proposal would support aging in place by providing an opportunity for senior housing in the neighborhood; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would permit inter-generational, mixed-income development; the proposal is for multi-family residential zoning. The site is located in proximity to multi-modal transportation providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. The site is located in an existing activity center; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal would encourage the provision of fair and affordable housing by increasing the variety of ownership options and unit costs throughout Louisville Metro; no existing residents are present on the site or be displaced; the proposal would allow for innovative methods of housing.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby  
**RECOMMEND** to the city of Middletown the change in zoning from R-4, Single Family

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Residential to R-7, Multi-family Residential on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Tomes**

**Detailed District Development Plan and Binding Elements**

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

**WHEREAS**, there do not appear to be any historic resources or natural resources on the subject site. Tree canopy will be provided; and

**WHEREAS**, 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; and

**WHEREAS**, open space requirements are being met; and

**WHEREAS**, 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; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. The site is adjacent to existing multi-family and commercial development; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the city of Middletown **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

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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 minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. 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.
  - d. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 19, 2019 Planning Commission public hearing. 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

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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. The multi-family units shall be age restricted to 55 years of age and older to comply with the Fair Housing Act and the Housing for Older Persons Act.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Tomes**

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**CASE NO. 19-ZONE-0060**

Request: Change in zoning from R-5B to R-8A with Detailed District Development Plan and associated Landscape Waiver  
Project Name: Hepburn Avenue Rezoning  
Location: 1400 Hepburn Avenue  
Owner: Wilson Property Rentals LLC  
Applicant: Wilson Property Rentals LLC  
Representative: Bardenwerper, Talbott & Roberts  
Jurisdiction: Louisville Metro  
Council District: 8 – Brandon Coan  
**Case Manager: Dante St. Germain, AICP, Planner II**

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:**

00:38:31 Ms. St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

00:48:20 Commissioner Mims asked if the applicant/owner received a Certificate of Occupancy for the units. The 3 additional units would have required the issuance of building permits or the Certificate of Occupancy. Ms. St. Germain said the records only go back so far and she was not able to find any building permits for the additional units.

Commissioner Mims asked, what is the size of the units? Ms. St. Germain said between 168 square feet and 1152 square feet.

Commissioner Mims asked if the property was once a neighborhood grocery store. Ms. St. Germain said there was a grocery store being operated out of the building, but without approval. A Certificate of Occupancy was requested and denied (never issued). It appears to have been operated anyway because in 1991 a change of use was filed - from a grocery store to 3 residential units.

Commissioner Mims asked if they have room for the additional parking space. Ms. St. Germain said in order to count this as a parking space for this property, it has to be at

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least 80% on the frontage of the property and it's only a little over 50%. They don't need it because they're eligible for a parking reduction.

00:51:38 Commissioner Brown asked if the applicant's smallest unit size is adequate? Is there something in the Land Development or Building Code that makes that determination? Ms. St. Germain said it's in the Ky. Building Code, which states an efficiency dwelling unit must have a living room of not less than 220 square feet and an addition of 100 square feet shall be provided for each occupant in such unit in excess of 2. Other requirements include: has to have a closet, kitchen sink, cooking appliance and refrigeration facilities with some dimensional requirements and a separate bathroom containing a water closet, lavatory, bathtub or shower. Chair Jarboe asked if they could be shared. Ms. St. Germain said in order to be considered a dwelling unit, it has to have an independent bathroom and kitchen facilities for all 6 units.

00:53:20 Chair Jarboe asked if R-7 would be more appropriate to have 4 units in this building. Ms. St. Germain said the Neighborhood Plan specifically states R-5B with a maximum of 2 units. The Comprehensive Plan with the adopted amendment of the Neighborhood Plan wouldn't support anything above 2 units. This property was included in the area wide at the recommendation of the Neighborhood Plan.

**The following spoke in favor of this request:**

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Alexander Wilson, 2113 Arnold Palmer Boulevard, Louisville, Ky. 40245

Melinda Carr, 1280 Deerwood Drive, Frankfort, Ky. 40601

Victoria M. Carr, 1400 Hepburn Avenue #1, Louisville, Ky. 40204

Watson Harding, 1400 Hepburn Avenue #3, Louisville, Ky. 40204

Seth Fischer, 1400 Hepburn Avenue #2, Louisville, Ky. 40204

**Summary of testimony of those in favor:**

00:54:36 Mr. Talbott gave a power point presentation. This building has been around a long time and was originally a grocery store on the 1<sup>st</sup> floor and residential on the 2<sup>nd</sup> floor (1930's). The proposal needs flexibility and density. The present owner is not the one with past violations. This property has had a lot of units for a long period of time (maybe a decade) and in all that time, there have been no complaints or police reports.

Mr. Talbott gave history of the building. There were some instances of having higher residential zoning in the neighborhood. The original Highlands Neighborhood Plan puts

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emphasis on single family homes and duplexes, but it states 'primarily', not 'exclusively' and doesn't say higher density is not allowed.

Mr. Talbott said this property provides affordable housing. All of the units have bathrooms and kitchens. If all the units are not in compliance, we would ask for a reasonable amount of time to bring it in compliance so no one has to be evicted. There are no changes proposed to the structure or use unless it needs to be brought into compliance. The applicant is willing to bind out any uses other than the ability to keep 6 apartments.

01:16:27 Mr. Wilson stated he bought the property and discovered there were some zoning issues. The residents have lived there a long time and it's affordable for them.

Mr. Wilson said he has gotten to know the residents personally and doesn't want to evict anyone.

01:19:41 Ms. Melinda Carr is speaking on behalf of her brother David Manning, a tenant of the 1400 Hepburn Ave. apartments. Mr. Manning is mentally disabled and because of the stigma, finding a place for him to live was a challenge. He enjoys the neighborhood – it's safe and he can walk to almost every service he needs and he has a support system of friends. His apartment is small but that's all he can handle.

01:23:37 Ms. Victoria Carr stated she doesn't want to be kicked out. The apartment is wheelchair accessible.

01:24:31 Mr. Harding said Alex is a great landlord. There are no issues with parking.

01:25:52 Mr. Fischer stated this is the best apartment he's lived in. There are no problems with the neighbors and is a peaceful place to live.

01:27:00 Commissioner Mims asked if there was a notice of violation that prompted the owner to rezone the property. Mr. Talbott said Mr. Wilson became aware of the zoning issues before he closed on purchasing the property and just wanted to bring it into compliance. Mr. Wilson said it was the right thing to do.

01:28:37 Commissioner Mims asked if the tenants have to go through one unit to get to another unit. Mr. Wilson said they are separate units and all have separate entrances.

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01:30:32 Commissioner Peterson asked if there was any thought given to a lower zoning category with a CUP. Mr. Wilson said neighbors at the neighborhood meeting were worried about Airbnb, so no.

01:31:47 Commissioner Lewis said there are 6 units, but how many people living there? Mr. Wilson said 9. Also, how are those numbers controlled? Commissioner Mims said it would be a Building Code matter.

01:33:33 Commissioner Mims asked if the applicant would object to Code Enforcement inspecting the units. Mr. Wilson said no.

01:35:30 Commissioner Mims asked, how can you assure this committee that the apartments will remain affordable? Mr. Wilson said he's unsure of the correct language, but is willing to put in that approval is contingent upon being a percentage below market value.

01:36:35 Commissioner Carlson asked if there is a Certificate of Occupancy for 6 dwelling units in this building. Mr. Wilson said no. What is the footprint for the 1<sup>st</sup> floor? Mr. Wilson said the total building is almost 5,000 square feet, with most of the units being 700-1100 square feet. Is there a unit that's only 168 square feet? Mr. Wilson said he hasn't measured the units but an appraisal was done. Do all the units have sloped ceilings? Mr. Wilson said no, the pictures reflect the attic unit on the front side of the building. Does the attic unit have all sloped ceilings? Mr. Wilson said no, but the walls are sloped.

01:41:03 Chair Jarboe asked of the 6 units, how many means of egress are there (by door)? Mr. Wilson said everyone on the top floors have to come down the main stairwell, and there are several doors to exit on the 1<sup>st</sup> floor.

01:44:44 Mr. Carroll, legal counsel, asked Mr. Talbott to explain the Neighborhood Plan for this property. Mr. Talbott said it's a lengthy document but there is no language that says a higher level of residential is prohibited.

01:45:59 Ms. St. Germain stated the building footprint is 2,369 square feet. Mr. Talbott said the building appears to be larger than that.

**The following spoke in opposition to this request:**

Jim Scorch, 1503 East Breckenridge Street, Louisville, Ky. 40204  
Rick Sweeney, 1328 Hepburn Avenue #2, Louisville, Ky. 40204

**Summary of testimony of those in opposition:**

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01:46:33 Mr. Scorch, President of the Original Highlands Neighborhood Association, stated the association is opposed to the zoning change. Commercial encroachment is a problem in the neighborhood and if this exclusion was made, it would invite future exclusions and possibly sacrifice the residential integrity. Hopefully the residents can stay in their apartments because there is no wish to evict anyone.

01:50:00 Mr. Sweeney stated he has lived there 22 years and was on the board to create the neighborhood plan. The concerns are as follows: try to encourage single family moving back in; the only evidence of 6 units has been this year; and the possibility of flipping the property.

Mr. Sweeney stated, a vision was established as to how the neighborhood would be developed and encourage use. Hopefully the time, money and effort will not have been wasted.

02:02:10 Chair Jarboe asked, if you wanted only duplexes, then why wasn't the language more forceful? The plan doesn't prohibit more units. Mr. Sweeney said he doesn't think the neighborhood plan was designed to say 'only duplexes', but the direction was very well expressed. We also knew the existing units would be grandfathered in. Mr. Reverman added, it's fairly typical for neighborhood plans to not be very specific, but is more of a comprehensive plan with broad goals and objectives.

**Rebuttal**

02:05:05 Mr. Talbott stated the only thing that is relevant today is the fact that there are no complaints or problems. The Small Area Plan allows it and is supported by Plan 2040 in terms of diversity of housing types, socioeconomic levels and intergenerational diversity. There's no evidence of any adverse impacts. A binding element will be added for code compliance if any changes need to be made.

02:07:55 Commissioner Lewis asked if R-8A allows a maximum of 6 units. Mr. Talbott said after calculating the density, it will be a maximum of 6, but is willing to have a binding element to that effect. Commissioner Peterson asked if there is a non-conforming use approach that could be taken and not raising it to the R-8A. Mr. Talbott said he's not aware of any. Commissioner Howard asked if there was any record of the non-conforming use for the 3 units. Mr. Talbott said he has not reviewed that in detail because we're requesting the rezoning.

**Deliberation**

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02:09:56 Commissioner Mims stated the availability of safe and affordable housing will continue to be an issue as we move into the next decade and can support it as long as inspections deem the apartments to be safe (need binding element).

02:10:59 Commissioner Peterson stated he would hate to see the tenants lose their homes. Also, we don't want to set a precedent.

02:11:54 Commissioner Brown stated this board/body is not the final decision. R-8A is appropriate for the entire area, unfortunately there is the Small Area Plan that strongly opposes the higher density. Plan 2040 would support this density and diversity in housing.

02:13:16 Commissioner Lewis stated the proposal provides affordable housing, diversity of housing and doesn't appear the neighbors have had any issues, but the zoning change belongs to the land and not the owner. Although this owner is doing what's right, it doesn't mean the next owner will. There needs to be a binding element limiting the number of people living in the units.

02:14:28 Commissioner Howard stated this is a corner lot and was built as a mom/pop commercial/residential structure and has not always been completely residential.

02:17:26 Commissioner Carlson said his concerns are: respecting and following the neighborhood plan; and making sure it is a code compliant/safe structure.

02:20:16 Chair Jarboe stated binding element 6 says a Certificate of Occupancy must be received from the appropriate Code Enforcement Dept. prior to occupancy of the structure. If approved, isn't that when inspections would occur and make sure the applicant is compliant? Commissioner Carlson said that's a standard binding element. The trigger for a Certificate of Occupancy is a building permit and there won't be any building permits for this request.

02:21:40 Commissioner Daniels stated she's concerned about the apartments being in compliance and is reluctant to approve it before having that information.

02:22:47 Commissioner Howard stated neighborhood plans are attached to the comprehensive plan and are to be used as a guide. The comprehensive plan takes precedence over the neighborhood plan but is used to help make decisions with the study area plan.

02:23:40 Chair Jarboe stated this case is an exception. It would be best to delay the case to allow an overview of the units.

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02:25:25 Commissioner Peterson stated the wording will need to be in such a way as not to hold the building accountable to today's standard (more stringent) because it's a very old structure and some aspects need to be grandfathered. As long as it's safe for the tenants.

02:27:53 Mr. Fiechter, legal counsel, stated zoning is permanent and the structures are relatively temporary. I don't think we've ever placed the primary concern of zoning on the condition of the current existing building.

02:28:54 Ms. St. Germain stated the applicant agrees to continue this case to allow a building inspector a chance to look at the property for compliance.

02:29:14 Mr. Talbott stated we would like to get this approved today but also want it to be safe. A binding element could be drafted and Bardenwerper, Taobott and Roberts could send a certified letter to Codes and Regulations to come and inspect the property. If the zoning is approved and they're not satisfied, it will be shut down. Another option is to go to a lower zoning standard. Also, the limit for people in the building is 12 and we will follow that.

02:31:18 Mr. Fiechter, legal counsel, stated the issue with immediately requesting Codes and Regulations to inspect the building prior to Metro Council approval is that Metro Council would have to reopen the record to accept new evidence. That puts the burden on them to have potentially another full public hearing, which they don't normally do on zoning matters.

02:32:16 Mr. Talbott requests that if the case is continued, do not open it back up for additional testimony.

02:32:42 Commissioner Mims read 2 binding elements into the record.

02:34:20 Chair Jarboe said he agrees that there should not be additional testimony if this case is continued.

**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.**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

**PLANNING COMMISSION MINUTES  
December 19, 2019**

**PUBLIC HEARING**

**CASE NO. 19-ZONE-0060**

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the January 23, 2020 Planning Commission meeting to discuss the results of the inspection by Codes and Regulations and for the affordable housing binding element.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Mims, Peterson and Jarboe**

**NOT PRESENT AND NOT VOTING: Commissioner Tomes**

**PLANNING COMMISSION MINUTES**  
**December 19, 2019**

**PUBLIC HEARING**

**CASE NO. 19-FFO-0006**

Request: 19-FFO-0006, Floyds Fork Overlay Review  
Project Name: Montevista  
Location: 15203 Shelbyville Road  
Owner: Highview Baptist Church Inc.  
Applicant: New Cingular Wireless PCS, LLC  
Representative: David Pike, Pike Legal Group, PLLC  
Jurisdiction: Louisville Metro  
Council District: 19 – Anthony Piagentini  
**Case Manager: Steve Hendrix, Planning and Design Coordinator**

**NOTE: Commissioner Carlson left and did not vote on this case.**

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:**

02:37:58 Mr. Hendrix discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

David A. Pike, Pike Legal Group, PLLC, P.O. Box 369, Shepherdsville, Ky. 40165-0369  
Brian Matthews, AT&T, 534 Armory Place, Louisville, Ky. 40202

**Summary of testimony of those in favor:**

02:44:45 Mr. Pike gave a power point presentation. Cell tower cases are completely different from all other types of cases. There are unique statutory provisions at both the state and federal levels, which help guide the commission regarding the allowable areas of inquiry and this is a vital emergency and personal communications link in our network. We have waived confidentiality so the public can have access to all documentation submitted. All the procedural guidelines of the Ky. revised statutes and local regulations have been followed and we have met all the required filing criteria.

03:10:25 Commissioner Mims disclosed the fact that he and Mr. Pike worked on a project together in the past (~2 decades ago). Is there still a Floyds Fork Overlay, FFO committee? Mr. Davis said the Planning Commission will act on it today. Mr. Hendrix added, the FFO criteria is outlined in the staff report.

**PLANNING COMMISSION MINUTES**  
**December 19, 2019**

**PUBLIC HEARING**

**CASE NO. 19-FFO-0006**

03:12:52 Commissioner Brown asked how much of the 34,000 easement area has tree canopy now. Mr. Pike said a lot of it is because it will help with screening. The trees to be removed will only be what's necessary for the compound and there will be plantings added in for mitigation.

03:14:05 Commissioner Mims asked if the monopole will be higher than the church steeple. Mr. Pike said yes it is. We modelled the steeple to see if it would work and it will not provide adequate coverage. How many antennae will be located on the pole? Mr. Matthews said there will be 6 antennae on site (typical). Also, if another company wants to add antennae, are the pole and infrastructure adequate? Mr. Pike replied, yes, it's pre-engineered for multiple wireless carriers and is built with adequate structural integrity. Co-location is favored at the local, state and federal levels and it's smart.

03:17:09 Chair Jarboe asked, why can't the tower be closer to the church and away from the neighboring homes? Mr. Pike said the commission would need to have different setbacks. The proposed site is the portion the church is willing to lease and they have a master plan for extensive additional expansion at this location.

**The following spoke in opposition to this request:**

Robin Higdon, 110 Valhalla View Drive, Louisville, Ky. 40245  
John Higdon, 110 Valhalla View Drive, Louisville, Ky. 40245  
Michael R. Mouser, 15207 Shelbyville Road, Louisville, Ky. 40245  
Abdul Haq, 203 Ash Run Road, Louisville, Ky. 40245

**Summary of testimony of those in opposition:**

03:19:25 Mrs. Higdon stated that technology is an important part of life and the cell towers are necessary. It needs to be balanced and should not be located near homes. Adults, children and animals are exposed to the harmful effects which could result in health risks, safety hazards and financial hardships.

Mrs. Higdon said the proposed tower is 80 yards away from her home and she has a petition signed by over 200 people in opposition. In 2013, the World Health Organization, WHO performed a comprehensive study that stated electromagnetic fields are possibly carcinogenic to humans. It has been widely published. There are many examples of the public not being protected. We should learn from the past.

Mrs. Higdon stated the cell tower/compound will have a generator that runs on diesel fuel and could be a potential hazard. The following were not addressed in the applicant's proposal: storage tank; secondary containment system in case of a leak;

**PLANNING COMMISSION MINUTES**  
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**PUBLIC HEARING**

**CASE NO. 19-FFO-0006**

and it will be above a downward slope area which has a small runoff waterway 80 feet from the tower that could eventually reach the Floyds Fork system. There are studies that state the tower will devalue homes. The applicant will be getting rid of a lot of trees which won't screen the tower anyway. There are other options that need to be explored.

03:38:36 Mr. Higdon asked, how big is the diesel storage tank and how many gallons will be stored? The tower will be very unsightly and the church could move it 50 feet and not have to cut down any trees. The applicant's drawings show 4 antennae, will there be 4 or 6?

03:42:15 Mr. Mouser stated when he was an Electronic Technician for radios in the military and couldn't get near the antennae because of the radio waves, which doesn't go into the skin but the bone marrow. The proposal will decrease the value of the property. There's also a lot of wildlife. It should be placed where all the other poles are located so as not to be intrusive.

03:47:32 Mr. Haq stated he owns 2 properties he bought in 2009.

Mr. Haq said he's been a doctor for 35 years and radiation does have an effect on human health. Mr. Haq will be building another medical complex and states people will avoid coming there because of the cell tower's close proximity.

**Rebuttal**

03:49:34 Mr. Pike said he's sensitive to people's concerns but it is important to remember the legalities of this proceeding (he listed the things that cannot be considered).

Mr. Pike said there will be 6 antennae. The co-location potential is encouraged under the terms of the local regulations and state law. The diesel generators are necessary and batteries will last only 4-6 hours and in the event of a power outage, that's when it is most important to be able to provide continuous communications. Regarding generator noise, we go above and beyond what is typically required. Noise from a generator during an emergency is accepted by the Noise Ordinance based on public safety necessity. There are federal mandates to provide backup power which supersedes local ordinances and state law.

03:55:07 Mr. Fiechter asked if they are complying with FCC regulations concerning radio frequency emissions. Mr. Pike said yes.

**PLANNING COMMISSION MINUTES**  
**December 19, 2019**

**PUBLIC HEARING**

**CASE NO. 19-FFO-0006**

03:55:48 Commissioner Mims asked if the generators would be tested in the daytime, night or on the week days. Mr. Pike stated it will only run continuously when there's a power outage. It will be tested periodically in the daytime, on a week day and just for a few minutes (remotely tested now).

**Deliberation**

03:57:02 Commissioner Lewis said it complies with the law and is a ministerial approval.

03:57:25 Commissioner Brown said there is some discretion in the Comprehensive Plan. The commission is seeing these types of cases where the church has a lot of available land but places the cell tower closest to the neighbors (doesn't agree with this). I haven't seen any reason why they can't relocate on the property to both minimize the impact to the abutting land uses and minimize the impact to the tree coverage.

03:58:19 Commissioner Peterson stated he would like the applicant to make sure there's not another place on the property to meet their criteria and avoid the tree canopy.

03:59:06 Commissioner Mims said he disagrees with Commissioners Brown and Peterson. It's being located in the place that has the least amount of impact on the broader area.

04:01:06 Commissioner Howard said if it's not approved today, it will automatically be approved December 23, 2019. There is a 60 day deadline. It meets the Land Development Code.

04:03:27 Commissioner Daniels said she prefers another location. Also, there is a concern for the trees.

04:04:23 Chair Jarboe said he appreciates the neighbors coming today. The case is ministerial and the church has property rights as well as the neighbors.

**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.**

**This is an application for a proposed 125 foot monopole tower with a four foot lightning arrestor for a total structural height of 129 feet within an approximate**

**PLANNING COMMISSION MINUTES**  
**December 19, 2019**

**PUBLIC HEARING**

**CASE NO. 19-FFO-0006**

**5,625 square foot compound area. An eight foot wooden privacy fence with 19 White Pines will buffer the compound area.**

On a motion by Commissioner Mims, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis, Applicant's Findings and the evidence and testimony provided today was adopted.

**WHEREAS**, the Planning Commission finds, based on the staff report and the evidence and testimony presented in the case record and at the public meeting, that the Applicant has met all requirements for a complete Uniform Application as set forth in KRS Chapter 100 and the Development Code; and

**WHEREAS**, the Planning Commission further finds that the Applicant has demonstrated its need to construct a wireless communications facility in the proposed location in order to meet the service needs of its customers as a wireless communications carrier licensed by the Federal Communications Commission (FCC); and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and the Development Code in that the wireless communications facility is designed to provide improved wireless in-building service coverage to area users and for emergency response services; and

**WHEREAS**, the Planning Commission further finds that the proposed wireless communications facility is designed to minimize impact on the character of the surrounding area and is consistent with the Plan 2040 Comprehensive Plan and Development Code requirements in that the proposed tower has been designed at the minimum height necessary to meet service objectives for the site, will not require tower lighting and will not emit or produce loud noise, odors, smoke, automobile exhaust or other noxious smells, dust, dirt, litter or junk; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and Development Code in that the wireless communications facility has been designed to minimize effects of the installation on nearby land uses and values and to address compatibility issues as an unlighted facility which includes appropriate screening and on-site landscaping; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan in that the wireless communications facility is designed to avoid duplication of service facility infrastructure by providing additional new co-location opportunities for other wireless communications carriers; and

**PLANNING COMMISSION MINUTES**  
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**CASE NO. 19-FFO-0006**

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and Development Code requirements in that there was no evidence of record of available highway rights-of-way, existing utility towers, commercial centers, government buildings, high-rise office structures or high-rise residential structures that will satisfy the Applicant's need for providing service in the area; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and Development Code requirements in that the Applicant has presented evidence demonstrating that the proposal will not negatively affect nearby land uses and values; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and Development Code requirements in that the Applicant has presented evidence demonstrating that the proposal is designed to address compatibility issues such as co-location, mass, scale, siting, abandonment and removal of antenna tower structure; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan in that the proposed location avoids impact on scenic byways to the greatest extent possible on the subject property, and that the unlighted monopole tower design will minimize and such impact; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan in that Applicant has filed evidence into the case record demonstrating that the Kentucky State Historic Preservation Officer has found that the proposed tower will have "No Adverse Effect" on historic resources in close proximity to the site; and

**WHEREAS**, the Planning Commission further finds that the proposal is in compliance with all Development Code design guidelines applicable to new development located within the Floyds Fork Overlay District, and that Applicant has filed a "Statement of Compliance" in the case record and provided additional supporting evidence at the public hearing demonstrating such compliance; and

**WHEREAS**, the Planning Commission further finds that the wireless communications facility design and the proposed location on the property complies with all applicable Design Standards under the Development Code, including applicable landscape buffer, maximum height, setback, parking and vehicular access requirements.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Floyds Fork Overlay Review (19-FFO-0006) and Cell Tower (19-CELL-0005), a 125-

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**PUBLIC HEARING**

**CASE NO. 19-FFO-0006**

foot monopole wireless communications tower with attached antennas and a 4-foot lightning arrestor (for a total structure height of 129 feet) along with associated ground equipment located within a fenced compound.

**The vote was as follows:**

**YES: Commissioners Howard, Lewis, Mims, Peterson and Jarboe**

**NO: Commissioners Brown and Daniels**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson and Tomes**

**PLANNING COMMISSION MINUTES**  
**December 19, 2019**

**PUBLIC HEARING**

**CASE NO. 19-CELL-0005**

Request: 19-CELL-0005, Cell Tower  
Project Name: Montevista  
Location: 15203 Shelbyville Road  
Owner: Highview Baptist Church Inc.  
Applicant: New Cingular Wireless PCS, LLC  
Representative: David Pike, Pike Legal Group, PLLC  
Jurisdiction: Louisville Metro  
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**Case Manager: Steve Hendrix, Planning and Design Coordinator**

**NOTE: Commissioner Carlson left and did not vote on this case.**

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:**

02:37:58 Mr. Hendrix discussed the case summary, standard of review and staff analysis from the staff report.

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**Summary of testimony of those in favor:**

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**PUBLIC HEARING**

**CASE NO. 19-CELL-0005**

03:12:52 Commissioner Brown asked how much of the 34,000 easement area has tree canopy now. Mr. Pike said a lot of it is because it will help with screening. The trees to be removed will only be what's necessary for the compound and there will be plantings added in for mitigation.

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**This is an application for a proposed 125 foot monopole tower with a four foot lightning arrestor for a total structural height of 129 feet within an approximate**

**PLANNING COMMISSION MINUTES**  
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**PUBLIC HEARING**

**CASE NO. 19-CELL-0005**

**5,625 square foot compound area. An eight foot wooden privacy fence with 19 White Pines will buffer the compound area.**

On a motion by Commissioner Mims, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis, Applicant's Findings and the evidence and testimony provided today was adopted.

**WHEREAS**, the Planning Commission finds, based on the staff report and the evidence and testimony presented in the case record and at the public meeting, that the Applicant has met all requirements for a complete Uniform Application as set forth in KRS Chapter 100 and the Development Code; and

**WHEREAS**, the Planning Commission further finds that the Applicant has demonstrated its need to construct a wireless communications facility in the proposed location in order to meet the service needs of its customers as a wireless communications carrier licensed by the Federal Communications Commission (FCC); and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and the Development Code in that the wireless communications facility is designed to provide improved wireless in-building service coverage to area users and for emergency response services; and

**WHEREAS**, the Planning Commission further finds that the proposed wireless communications facility is designed to minimize impact on the character of the surrounding area and is consistent with the Plan 2040 Comprehensive Plan and Development Code requirements in that the proposed tower has been designed at the minimum height necessary to meet service objectives for the site, will not require tower lighting and will not emit or produce loud noise, odors, smoke, automobile exhaust or other noxious smells, dust, dirt, litter or junk; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and Development Code in that the wireless communications facility has been designed to minimize effects of the installation on nearby land uses and values and to address compatibility issues as an unlighted facility which includes appropriate screening and on-site landscaping; and

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan in that the wireless communications facility is designed to avoid duplication of service facility infrastructure by providing additional new co-location opportunities for other wireless communications carriers; and,

**PLANNING COMMISSION MINUTES**  
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**CASE NO. 19-CELL-0005**

**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan and Development Code requirements in that there was no evidence of record of available highway rights-of-way, existing utility towers, commercial centers, government buildings, high-rise office structures or high-rise residential structures that will satisfy the Applicant's need for providing service in the area; and

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**WHEREAS**, the Planning Commission further finds that the proposal is consistent with the Plan 2040 Comprehensive Plan in that Applicant has filed evidence into the case record demonstrating that the Kentucky State Historic Preservation Officer has found that the proposed tower will have "No Adverse Effect" on historic resources in close proximity to the site; and

**WHEREAS**, the Planning Commission further finds that the proposal is in compliance with all Development Code design guidelines applicable to new development located within the Floyds Fork Overlay District, and that Applicant has filed a "Statement of Compliance" in the case record and provided additional supporting evidence at the public hearing demonstrating such compliance; and

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Floyds Fork Overlay Review (19-FFO-0006) and Cell Tower (19-CELL-0005) a 125-

**PLANNING COMMISSION MINUTES  
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foot monopole wireless communications tower with attached antennas and a 4-foot lightning arrestor (for a total structure height of 129 feet) along with associated ground equipment located within a fenced compound.

**The vote was as follows:**

**YES: Commissioners Howard, Lewis, Mims, Peterson and Jarboe**

**NO: Commissioners Brown and Daniels**

**NOT PRESENT AND NOT VOTING: Commissioners Carlson and Tomes**

**PLANNING COMMISSION MINUTES  
December 19, 2019**

**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 5:20 p.m.

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**Chair**

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**Planning Director**