

**MINUTES OF THE MEETING  
OF THE  
LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

**June 25, 2015**

A meeting of the Land Development and Transportation Committee was held on Thursday, June 25, 2015, at 1:00 PM in the Old Jail Building, located at 514 West Liberty Street, Louisville, Kentucky.

**Committee Members present were:**

Vincent Jarboe, Chair  
Donnie Blake, Vice-Chair  
Jeff Brown  
Cliff Turner

**Committee Members absent were:**

Carrie Butler

**Staff Members present were:**

Jon Baker, Legal Counsel  
Joe Reverman, Planning Manager  
Brian Davis, Planning Supervisor  
Christopher Brown, Planner II  
Sue Reid, Management Assistant (minutes)

The following matters were considered:

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**Approval of Minutes**

**Approval of the June 11, 2015 LD&T Committee Meeting Minutes**

On a motion by Commissioner Brown, seconded by Commissioner Blake, the following resolution was adopted:

**RESOLVED**, the Land Development and Transportation Committee does hereby **APPROVE** the minutes of its meeting conducted Thursday, June 11, 2015.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, and Jarboe.**

**NO: No one.**

**ABSTAIN: Commissioner Turner**

**NOT PRESENT: Commissioner Butler.**

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**New Cases**

**Case No. 15DEVPLAN1060**

Request:	Category 3 Plan
Project Name:	Kindred Square
Location:	680 S. Fourth Street
Owner:	Kindred Healthcare Operating, Inc.
Applicant:	Kindred Healthcare Operating, Inc.
Representative:	Frost Brown Todd LLC and Sabak, Wilson & Lingo, Inc.
Jurisdiction:	Louisville Metro
Council District:	4 – David Tandy
Case Manager:	Brian Davis, AICP, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**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.**

**Agency Testimony:**

00:03:48 Brian Davis presented the case (see recording and staff report for detailed presentation.)

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

Timothy W. Martin, Frost Brown Todd, 400 W. Market Street, Louisville, KY 40202

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

00:07:51 Timothy Martin spoke on behalf of the applicant. He responded to questions posed by Commissioner Brown in regard to the sidewalks.

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

No one spoke.

**The following spoke neither for nor against:**

No one spoke.

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**00:10:19 Commissioners' deliberation.**

On a motion by Commissioner Blake, seconded by Commissioner Brown, the following resolution was adopted:

**WHEREAS**, the Land Development and Transportation Committee finds that there does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements are not applicable in the Downtown Form District when the floor area ratio is greater than 1.0; and

**WHEREAS**, the Committee further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development will be provided; and

**WHEREAS**, the Committee further finds that provisions of sufficient open space, including the square located between the building and South Fourth Street, will be provided; and

**WHEREAS**, the Committee further finds that the Metropolitan Sewer District will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring; and

**WHEREAS**, the Committee further finds that the overall site design and land uses are compatible with the existing and future development of the area; and

**WHEREAS**, the Committee further finds that the plan conforms to the applicable guidelines and polices of the Comprehensive Plan and to the requirements of the Land Development Code, now therefore be it

**RESOLVED**, the Louisville Metro Land Development and Transportation Committee does hereby **APPROVE** the requested Category 3 Development Plan.

**The vote was as follows:**

**YES: Commissioners Turner, Blake, Brown, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioner Butler.**

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**CASE NO. 15DEVPLAN1066**

Request:	Detailed District Development Plan and Waivers
Project Name:	Point Blank Range and Gun Shop
Location:	330 N. English Station Road
Owner:	Middletown Partners LLC
Applicant:	Point Blank Range & Gun
Representative:	Land Design & Development, Inc.
Jurisdiction:	Middletown
Council District:	19 – Julie Denton
Case Manager:	Brian Davis, AICP, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**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.**

**Agency Testimony:**

00:13:35 Brian Davis presented the case (see recording and staff report for detailed presentation.)

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

Kevin Young, 503 Washburn Ave., Louisville, KY 40222

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

00:18:52 Kevin Young discussed the waivers on behalf of the applicant.

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

No one spoke.

**The following spoke neither for nor against:**

No one spoke.

**00:26:06 Commissioners' deliberation.**

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On a motion by Commissioner Brown, seconded by Commissioner Turner, the following resolution was adopted:

**WAIVER #1: Section 10.2.4. to allow a utility easement to encroach more than 50% into the landscape buffer area**

**WHEREAS**, the Land Development and Transportation Committee find that the waiver will not adversely affect adjacent property owners since the area is along right-of-way and plantings will be provided; and

**WHEREAS**, the Committee further finds that Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants; and

**WHEREAS**, the Committee further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the easements are existing and relocation would be very expensive; and

**WHEREAS**, the Committee further finds that landscape materials will be provided within the area, now therefore be it

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**RESOLVED**, that the Land Development and Transportation Committee does hereby **RECOMMEND APPROVAL** to the City of Middletown of Waiver #1, Section 10.2.4. to allow a utility easement to encroach more than 50% into the landscape buffer area based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Turner, Blake, Brown, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioner Butler.**

On a motion by Commissioner Brown, seconded by Commissioner Turner, the following resolution was adopted:

**WAIVER #2: Section 5.6.1.B.1 and C.1 to waive the 60 percent (of the building length) animating features and 50 percent windows and/or doors on the Aiken Road building façade**

**WHEREAS**, the Land Development and Transportation Committee finds that the requested waiver will not adversely affect adjacent property owners because other design measures have been implemented so as not to be out of character with development in the vicinity; and

**WHEREAS**, the Committee further finds that Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. The proposal is for a non-residential use. The Land Development Code provides building design standards for non-residential and mixed use buildings.

The proposed building will utilize a variety of materials to create visual interest; and,

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**WHEREAS**, the Committee further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant's proposed use is not conducive to having lots of windows and many windows could be deemed a security risk for the site; and

**WHEREAS**, the Committee further finds that the strict application of the regulations could deprive the applicant of full use of the building given the nature of the added security and protection that is needed for the operation, now therefore be it

**RESOLVED**, that the Land Development and Transportation Committee does hereby **RECOMMEND APPROVAL** to the City of Middletown of WAIVER #2, Section 5.6.1.B.1 and C.1 to waive the 60 percent (of the building length) animating features and 50 percent windows and/or doors on the Aiken Road building façade, on the condition the applicant provides the three trees that were recommended within the Land Development Code, based on the staff report with the change the letter "C" on that justification and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Turner, Blake, Brown, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioner Butler.**

On a motion by Commissioner Brown, seconded by Commissioner Turner, the following resolution was adopted:

**WAIVER #3: Sections 5.5.2.B.1 to not provide vehicular and pedestrian connections between parking lots of abutting developments**

**WHEREAS**, the Land Development and Transportation Committee finds that the waiver will not adversely affect adjacent property owners since the connection is located at the rear of an existing Walmart's loading area; and

**WHEREAS**, the Committee further finds that Guideline 2, policy 13 calls to encourage adjacent development sites to share entrance and parking facilities in order to reduce the number of curb cuts and the amount of surface parking. Guideline 7, policy 13 calls for the requirement of joint and cross access easements according to standards set forth in the Land Development Code, to



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reduce traffic on major thoroughfares and to reduce safety hazards. Guideline 7, policy 16 calls for the promotion of joint access and circulation systems for development sites comprised of more than one building site or lot. The purpose of the requirements to be waived are to allow similar, compatible non-residential and multi-family uses to access adjacent sites without use of the main road to reduce curb cuts, the amount of surface parking, and to reduce traffic on the main thoroughfare.

Because of the site's location in relation to the rest of the development and topographic challenges it would be difficult to construct a connection to the property to the south. The entrance has been placed on Aiken Road to help eliminate additional traffic congestion on North English Station Road; and

**WHEREAS**, the Committee further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the topography of the area is not conducive to connection; and

**WHEREAS**, the Committee further finds that while requiring the connection would not deprive the applicant of the reasonable use of the land, the connection would require additional grading work that would significantly alter the layout of the parking and building, now therefore be it

**RESOLVED**, that the Land Development and Transportation Committee does hereby **RECOMMEND APPROVAL** to the City of Middletown of WAIVER #3: Sections 5.5.2.B.1 to not provide vehicular and pedestrian connections between parking lots of abutting developments, based on the staff report with amendment to letter "D", and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Turner, Blake, Brown, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioner Butler.**

On a motion by Commissioner Brown, seconded by Commissioner Turner, the following resolution was adopted:

**Detailed District Development Plan**

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**WHEREAS**, the Land Development and Transportation Committee finds that there does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements are not applicable in the Downtown Form District when the floor area ratio is greater than 1.0; and

**WHEREAS**, the Committee further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development will be provided; and

**WHEREAS**, the Committee further finds that there are no open space requirements for this proposed development; and

**WHEREAS**, the Committee further finds that the Metropolitan Sewer District will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring; and

**WHEREAS**, the Committee further finds that the overall site design and land uses are compatible with the existing and future development of the area; and

**WHEREAS**, the Committee further finds that the plan conforms to the applicable guidelines and polices of the Comprehensive Plan and to the requirements of the Land Development Code, now therefore be it

**RESOLVED**, that the Land Development and Transportation Committee does hereby **RECOMMEND APPROVAL** to the City of Middletown of the Detailed District Development Plan and the following Binding Elements, on the condition that the applicant addresses the technical issues by providing handicap ramp crossing at the intersection of English Station and Aiken Road, a pedestrian connection from the Aiken Road frontage and provide two short term bike parking spaces on site, based on the staff report and testimony heard today.

- 1) The following uses permitted in a C-2 district will not be allowed in any phase of Middletown Station Center:
  - (a) Bowling Alleys
  - (b) Ice Storage Houses
  - (c) Funeral Homes
  - (d) Veterinary Hospitals
  - (e) Automobile Garages and used Car Sales Area, except as part of a new automobile sales agency.
  - (f) Dance Halls

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- (g) Kennels
  - (h) Monument Sales
  - (i) Plumbing and Heating Shops
  - (j) Refrigerated Lockers
  - (k) Sign Painting
  - (l) Skating Rinks
  - (m) Storage Garages
  - (n) Trade Schools
  - (o) Upholstery and Furniture Repair Shops
- 2.) The development shall not exceed **15,080 square feet** ~~730,245~~ of gross floor area. ~~(Tract A to have 537,981 sf retail and 1,738 non-retail; Tract B to have 36,040 sf retail; Tract B1 to have 8,450 sf restaurant; Tract B2 to have 5,450 sf restaurant/bank; and Tract D to have 17,500 sf office. The remaining square footage is taken up by outlots.)~~ Prior to the submittal of any detailed plan for tracts A, B and D, an updated traffic study shall be submitted at the direction of Planning and Design staff.
- ~~3.) The only permitted development identification signs shall be located as shown on the approved general district development plan. The primary entrance sign shall not exceed 255 square feet in area per side and 40 feet in height. The secondary entrance signs (2) shall not exceed 71 square feet in area per side and 10 feet in height. No sign shall have more than two sides.~~
- 4.) The size and location of any proposed freestanding sign must be approved by the Planning Commission and the City of Middletown. The Planning Commission or the City of Middletown may require that the signs be smaller than would otherwise be permitted by the Zoning District regulations.
- 5.) There shall be no direct vehicular access from **the property to N. English Station Road.** ~~outlots to Shelbyville Road.~~
- ~~6.) There shall be no further creation of outlots along Shelbyville Road. Outlots are subject to all original binding elements.~~
- 7.) 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 and to the City of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.

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- 8.) No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
- 9.) 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 Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - ~~b. The appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.~~
  - 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 reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.~~
- 10.) A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
- 11.) There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
- 12.) 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.

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- 13.) The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 25, 2015 Land Development & Transportation Committee ~~November 29, 2006 Development Review Committee~~ meeting.
- 14.) No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
- 15.) At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.

**The vote was as follows:**

**YES: Commissioners Turner, Blake, Brown, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioner Butler.**

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**CASE NO. 15DEVPLAN1067**

Request:	Revised Detailed District Development Plan with Landscape Waiver and Binding Element Amendments
Project Name:	King Louie's Place
Location:	598 & 600 N. English Station Road
Owner:	Blind Squirrel LLC
Applicant:	Blind Squirrel LLC
Representative:	Michael F. Tigue
Jurisdiction:	Middletown
Council District:	19 – Julie Denton
Case Manager:	Christopher Brown, Planner II

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the LD&T meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**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.**

**Agency Testimony:**

00:30:52 Christopher Brown presented the case (see recording and staff report for detailed presentation.)

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

Michael Tigue, 401 S. 4<sup>th</sup> Street, Louisville, KY 40202

00:37:07 Michael Tigue presented the case on behalf of the applicant and discussed the proposed amendments to the binding elements.

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

Kirk O'Brien, 805 N. English Station Road, Louisville, KY 40223

00:57:20 Kirk O'Brien spoke in opposition to the request. Mr. O'Brien stated he was speaking in opposition to some of the proposed binding elements. He

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stated he also had a couple of issues with the existing development plan. Mr. O'Brien referred to general note number 26 in regard to the Aiken Road intersection. Mr. O'Brien stated he does not think binding elements number 32, 33 and 34 are really viable, so he would advise against approval of all three of those as proposed. Mr. O'Brien also questioned the number of proposed parking spaces. He said he was afraid of people parking just anywhere they can in the event of a major entertainment event. He suggested adjusting the capacity of the amphitheater to solve the parking space dilemma. Mr. O'Brien also suggested the City of Middletown should contract the services of a professional engineer to update Exhibit B of binding element number 28.

**The following spoke neither for nor against:**

No one spoke.

**01:16:05 Commissioners' deliberation.**

On a motion by Commissioner Brown, seconded by Commissioner Blake, the following resolution was adopted:

**Waiver #1: Landscape Waiver from Chapter 10.2.4 of the Land Development Code (Middletown) to eliminate the required landscape buffer and associated plantings between the C-M and EZ-1 zoning boundary**

**WHEREAS**, the Land Development and Transportation Committee finds that the waiver will not adversely affect adjacent property owners since the buffer is located within the interior of the proposed development; and

**WHEREAS**, the Committee further finds that Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights

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and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The waiver will not violate specific guidelines of Cornerstone 2020 since the proposed buffer to be eliminated is located within the interior of the site and would prevent needed circulation between the two tracts; and

**WHEREAS**, the Committee further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the buffering is located along an interior zoning boundary and not a property perimeter; and

**WHEREAS**, the Committee further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the required buffering and planting would prevent proper circulation between the two tracts and areas needed for parking associated with the proposed uses, now therefore be it

**RESOLVED**, that the Land Development and Transportation Committee does hereby **RECOMMEND APPROVAL** to the City of Middletown of Waiver #1: Landscape Waiver from Chapter 10.2.4 of the Land Development Code (Middletown) to eliminate the required landscape buffer and associated plantings between the C-M and EZ-1 zoning boundary since it is internal to the site based on the staff report and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Turner, Blake, Brown, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioner Butler.**

On a motion by Commissioner Brown, seconded by Commissioner Blake, the following resolution was adopted:



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**Detailed District Development Plan**

**WHEREAS**, the Land Development and Transportation Committee finds that there does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, the Committee further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Transportation Planning has approved the preliminary development plan. A contribution will be made to Metro Public Works toward the installation of a traffic signal at N English Station Rd and Aiken Rd; and

**WHEREAS**, the Committee further finds that there are no open space requirements with this development; and

**WHEREAS**, the Committee further finds that the Metropolitan Sewer District has approved the preliminary development plan, indicating the proposal will not have negative impacts to the floodplain, or have negative impacts to nearby properties; and

**WHEREAS**, the Committee further finds that the proposal integrates into the mixture of commercial, office and industrial uses along this portion of N English Station Rd. The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening are provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks with the exception of the previously approved relief along North English Station Road; and

**WHEREAS**, the Committee further finds that the proposal conforms to the Comprehensive Plan and Land Development Code. The proposal integrates into the mixture of commercial, office and industrial uses along this portion of N English Station Rd. The proposal is located adjacent to existing industrially zoned and used properties to take advantage of special infrastructure needs. The site has access from N English Station Rd with existing commercial, office and industrial uses, and the proposed transportation facilities are compatible with and support access to surrounding lands, now therefore be it

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**RESOLVED**, that the Land Development and Transportation Committee does hereby **RECOMMEND APPROVAL** to the City of Middletown of the Revised Detailed District Development Plan and the Binding Element Amendments provided by the applicant today based on the staff report and testimony heard today, with the following revisions:

**Binding Elements:**

1. The development shall be in accordance with the approved revised district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the LDC. Any changes/additions/alterations of any binding element(s), or development plan revisions and all landscape plans shall be submitted to the Planning Commission or the Planning Commission's designee, and to the City of Middletown for review and approval; any changes/additions/alterations not so referred and so approved shall not be valid.
2. No freestanding sign shall exceed 100 square feet in area per side and 10 feet in height. All illumination shall be internal. No sign shall have more than two sides. There shall be no new off-premises signs.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site, other than the existing outdoor advertising sign, and the proposed freestanding signage and attached signage permitted by the Middletown Sign Ordinance. The City of Middletown must approve the final signage package prior to construction, which signage package must show the placement, size, scale and type of materials of the signs.
4. Construction fencing shall be erected at the edge of the area of development in accordance with the tree preservation plan prior to any grading or construction to protect the existing tree stands and their 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Louisville Metro Department of **Develop Louisville Divisions of Construction Review and Transportation Planning** ~~Inspections, Permits and Licenses,~~ ~~Louisville Metro Public Works,~~ Metropolitan Sewer District and City of Middletown.
  - b. 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.
  - c. The property owner/developer must obtain approval by the Planning Commission and the City of Middletown of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be consistent with the concept landscape plan shown at the May 9, 2013 Middletown City Commission meeting, shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the required landscaping without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC and the City of Middletown shall be reviewed and approved before issuance of a building permit.
  - e. The drainage construction pan must also be approved by the City of Middletown.
  - f. The name, address and telephone number of the construction manager for the project must be disclosed to the City of Middletown.
  - g. The City of Middletown hereby designates the City Mayor as it approval authority for plans, permits, and other approvals required by these binding elements.
6. At such time as the adjoining property to the north or the south of the subject property is redeveloped and cross access is required as part of said redevelopment, a reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel and the City of

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Middletown granting access in the location shown on the approved development plan to the adjoining property being redeveloped shall be created and recorded; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services at the request of the Director of Planning and Design Services.

7. The style and design of the addition to the existing building shall be as shown on the renderings presented at the ~~March 7, 2013 Planning Commission public hearing~~ **June 25<sup>th</sup>, 2015 LD&T public meeting.**
8. The style and design of the indoor soccer facility building shall be as shown on the rendering presented at the ~~May 9, 2013 Middletown City Commission meeting~~ **June 25<sup>th</sup>, 2015 LD&T public meeting.** No building permit for the indoor soccer facility may be issued until access to public sanitary sewers is available or the facility's connection to septic facilities is reviewed and approved by; (a) Louisville Metro Health Department, and (b) the City of Middletown. No building permit for the amphitheater stage or overhead structures may be issued until access to public sanitary sewers is available.
9. All access drives and parking areas must be constructed to the standards of the Land Development Code and in accordance **with the approved revised district development plan** ~~in accordance with the Access Drive Exhibit attached hereto as Exhibit A.~~ All cars must be parked in marked spaces and the access drives shall be kept free from parked cars. Curbing shall be installed along the access drives leading to the rear portion of the site to prevent vehicles from parking in the grass, and "No Parking" signs shall be installed, the number and placement of which shall be approved by the City of Middletown as part of the final signage package (cf. binding element no. 3).
10. If a building permit for any portion of the development is not issued within two years from the date of the City of Middletown's approval herein, the property shall not be used in any manner unless a revised district development plan is approved by the City of Middletown or an extension is granted by the Planning Commission and the City of Middletown.
11. A certificate of occupancy must be received from the appropriate code enforcement department and the City of Middletown prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of a certificate of

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occupancy unless specifically waived by the Planning Commission and the City of Middletown.

12. 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.
13. If work is required within a utility easement causing removal or damage of required landscape materials, the property owner will be responsible for replacement of materials according to the approved landscape plan.
14. These binding elements may be amended as provided in the Zoning District Regulations and upon the additional approval of the City of Middletown.
15. A minimum of fifty percent (50%) of the parking lot lighting adjacent to the soccer field and indoor soccer building shall be turned off after 11:00 p.m.
16. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
17. The dumpsters shown on the approved plan is the only dumpsters allowed on the site and they shall be screened from view, kept secured and picked up.
18. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency and the City of Middletown, from an engineer or other qualified professional stating that the lighting of the proposed development is in compliance with the Land Development Code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted.
19. The approved construction plan for drainage and the drainage/detention structures must also be presented and approved by the City of Middletown, prior

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- to and as a condition of any building permit application and/or for any Occupancy Permit and/or bond release. Additionally, the improvements shown on said construction plans must be fully complete prior to the application or Occupancy Permit and/or bond release. All occupancy permits must receive the prior approval of the City of Middletown. The Property Owner (s), and their heirs, successors and assigns, are liable to construct and keep maintained all the detention and drainage facilities on the development plan and construction plans, and keep them permanently maintained in a high state of functioning.
20. The Applicant, its successors and assigns, hereby consents and agrees that the City of Middletown has full right and authority to take any and all appropriate direct legal action against Applicant, its successors and assigns, to enforce these binding elements and inspect the premises to determine compliance with the binding elements.
  21. Until the property is connected to sanitary sewers, annual inspection reports by a licensed professional shall be submitted to the City of Middletown by the property owner evidencing the current condition of the septic system and a timeline, if applicable, to complete any needed remediation of unacceptable conditions.
  22. The subject property shall connect to public sanitary sewers at such time as a sewer line is constructed within 2000 feet of the subject property and the easements needed for connection have been granted.
  23. In conjunction with the minor plat creating the lot lines as shown on the development plan, easements shall be granting to provide each lot the right to access and use the septic system and lateral field. For so long as the subject property is using an septic system, the subject property shall not be further subdivided unless appropriate easements are granted allowing the newly created lots to access and utilize the septic system and lateral field.
  24. Prior to requesting a building permit for any building or structure, if access to sanitary sewers is not available, -the property owner shall obtain approval from the Louisville Metro Health Department for a septic/sewage disposal system to accommodate the building(s) for which the permit is requested.
  25. The capacity of the amphitheater shall not exceed 800 people.

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26. In order to avoid conflicts with peak hour traffic, no live music event, play, or other live entertainment at the amphitheater shall be scheduled to end between 5:00 p.m. and 7:00 p.m. on Monday through Friday.
27. ~~Prior to the completion of the widening of N. English Station Road to three lanes and~~ installation of the traffic signal at Aiken Road, the property owner agrees to utilize traffic control personnel for events in the indoor athletic facility upon receipt of a written request by the City of Middletown.
28. Prior to requesting a certificate of occupancy for the amphitheater stage and overhead structures, the applicant shall submit to the City of Middletown a statement by an acoustic consultant certifying that the maximum noise levels produced by the sound system for the amphitheater do not exceed the average and peak ambient noise levels set forth in the Ambient Noise Level Exhibit attached hereto as Exhibit B, at the locations designated therein. A certificate of occupancy shall not be issued for the amphitheater stage and overhead structures until such statement is submitted. The City of Middletown may request periodic monitoring of noise levels to ensure compliance with this binding element. If, at any time, noise levels produced by the sound system for the amphitheater exceed the average and peak ambient noise levels set forth in Exhibit B at the locations designated therein, no events with amplified sound shall be permitted in the amphitheater until additional noise abatement measures have been implemented/installed and a statement is submitted by an acoustic consultant certifying that maximum noise levels from the amphitheater do not exceed the noise levels set forth in Exhibit B. From time to time, the City of Middletown may amend Exhibit B to update the average and peak ambient noise levels at the designated locations. This binding element shall not apply to the ice rink/volleyball courts and seating area around the ice rink/volleyball courts, which may be constructed and used without submitting a statement by an acoustic consultant provided no sound system is installed.
29. No part of the proposed development, including the amphitheater, shall be exempt from the Louisville Metro Noise Ordinance.
30. The Owner/Developer will maintain the transit stop on an as-needed basis.
31. At the time the northern entrance, opposite Aiken Road, is completed, a traffic study shall be submitted to Metro Public Works or Transportation Plan Review and Planning and Design to determine if the southern entrance may remain. Such improvements shall begin within one year of submittal of the traffic study.

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32. The developer shall contribute up to 12% of the cost of the signal installation at Aiken Road and N. English Station Road, not to exceed \$7,000, **if the traffic signal is installed by Metro Public Works or the Kentucky Transportation Cabinet.** This shall be paid within 30 days of the request by the Director of Metro Public Works. The request shall be made to the developer when Metro Public Works obtains the balance of the cost of installation, no sooner than construction plan approval. **The Developer has the option to get approval through Metro Public Works and KYTC to design and install the Aiken Road signal as Developer's own project, upon such terms as the Developer can negotiate, in which the Developer shall not be required to make any monetary contribution to Metro Public Works or KYTC.**
33. Developer and the City of Middletown agree as follows as to the timing of construction and use of the improvements as set forth on the approved development plan:
- a. The amphitheater stage, overhead structures, or sound d system for the amphitheater shall not be constructed and there shall be no live music or entertainment events in the amphitheater area until the widening of North English Station Road to three lanes is complete and open to traffic, or a traffic signal at Aiken Road (temporary or permanent) is installed and operational. Occupancy and use of the restaurant/bar, indoor soccer facility, ice rink and seating area surrounding the ice rink shall not be restricted and said buildings may be constructed and occupied at any time prior to the installation of the traffic signal.
  - b. The outdoor athletic fields may be constructed and used with the following restrictions:
    - 1. No games shall occur on the outdoor fields before 5:30 PM on weekdays. Practice may take place prior to 5:30 PM on weekdays. Games may take place on weekends and national holidays prior to 5:30 PM.
    - 2. Only two fields may be constructed and used until the widening of North English Station Road to three lanes is complete and open to traffic or the traffic signal is installed and operational.
    - 3. The Developer shall schedule the starting game times for the outdoor athletic fields and the indoor games a minimum of 20 minutes apart. Developer shall use best efforts to ensure that the ending times of the games and practices on the outdoor athletic fields and indoor athletic facility do not end at the same time.
  - c. The volleyball courts may be constructed and used with the following restrictions: No games shall occur before 6 PM on weekdays. Games may take place on weekends and national holidays prior to 6 PM.



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34. For purposes of KRS 100.237, the conditional use permit for the amphitheater shall be exercised within two years after the completion of the widening of N. English Station Road to three lanes **or a traffic signal at English Station and Aiken Road (temporary or permanent) is installed and operational.**

**The vote was as follows:**

**YES: Commissioners Turner, Blake, Brown, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioner Butler.**

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**The meeting adjourned at approximately 02:25 p.m.**

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***Chairman***

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***Division Director***