

Louisville Metro Board of Zoning Adjustment
January 23, 2017

Docket No. 16CUP1084

Modified Conditional Use Permit for a home for
the infirmed and aged on property located at 5217
Chamberlain Lane



Chamberlain Senior Care, LLC

Attorneys : Bardenwerper Talbott & Roberts
Land Planners, Landscape Architects and Engineers: Mindel Scott & Associates

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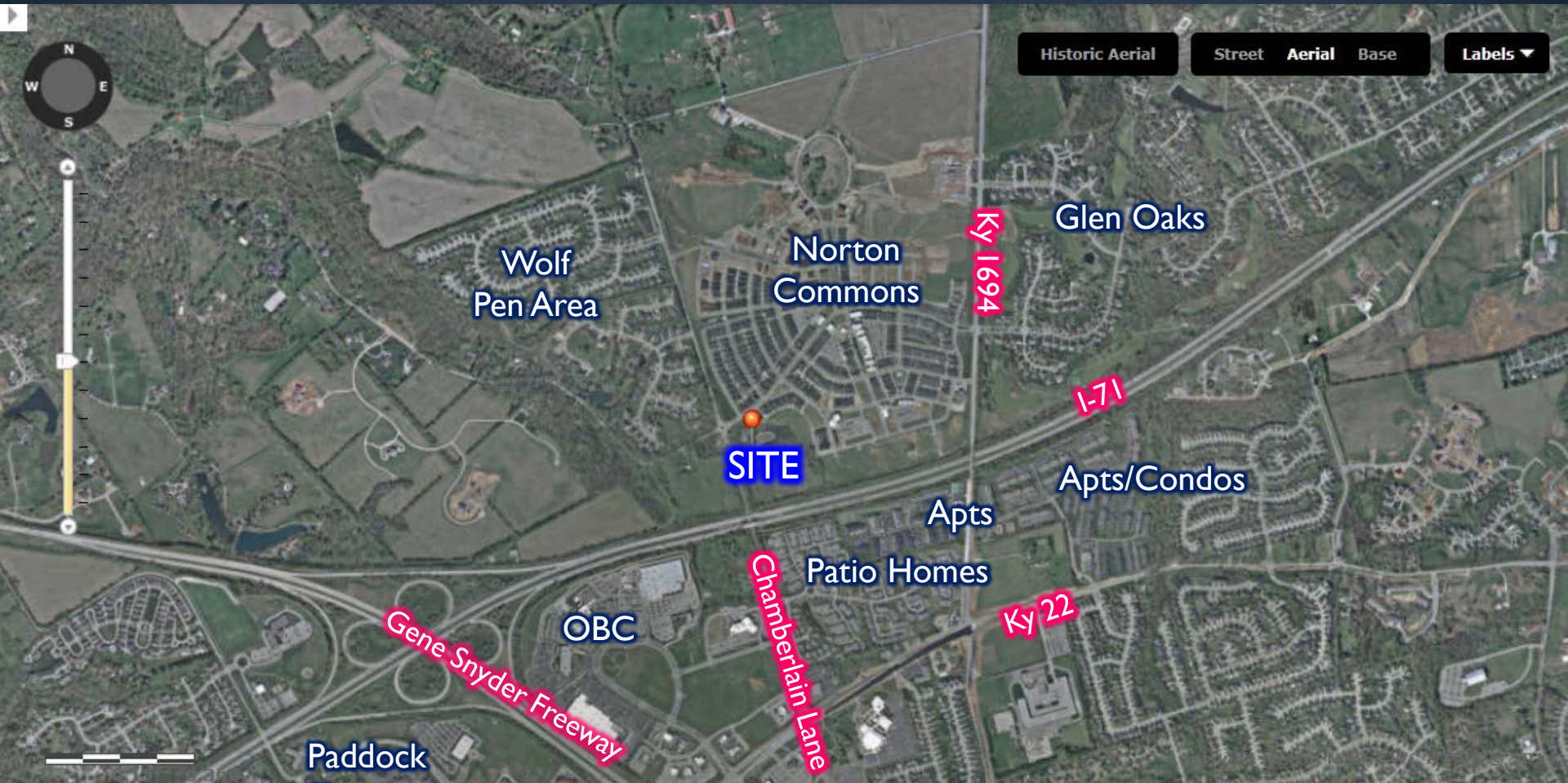


1. Aerial photographs of the site and surrounding area
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3. Settlement Agreement with Norton Commons, LLC and WPPA
4. Settlement plan
5. Approved 5/4/15 CUP plan
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Tab I



Aerial photograph of the site and
surrounding area



Historic Aerial Street Aerial Base Labels

Wolf Pen Area

Norton Commons

Glen Oaks

SITE

Ky 1694

I-71

Apts/Condos

Apts

Patio Homes

Ky 22

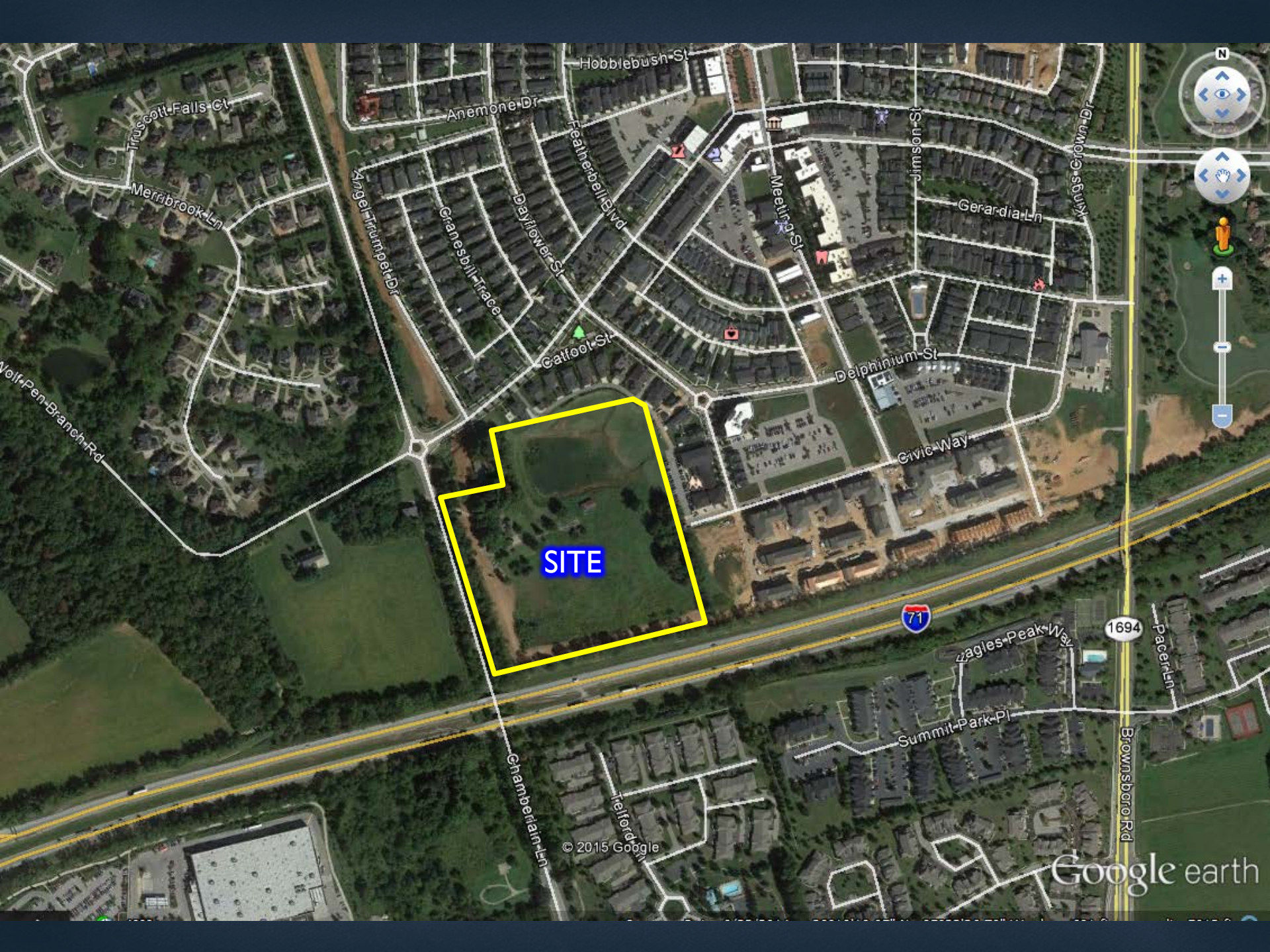
OBC

Gene Snyder Freeway

Chamberlain Lane

Paddock Shoppes





SITE

© 2015 Google

Google earth

Tab 2



Ground level photographs of the
site from Chamberlain Lane



Chamberlain Lane

SITE

View of Chamberlain Lane looking north. Site is to the right.

SITE

Chamberlain Lane



Google

View of Chamberlain Lane looking south towards I-71. Site is to the left.

Tab 3



Settlement Agreement with
Norton Commons and WPPA

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is entered into this 20th day of February 2015 by and between NORTON COMMONS, LLC AND TRADITIONAL TOWN, LLC (collectively herein, "Norton Commons"), CHAMBERLAIN, LLC ("Chamberlain"); HILLS LAND & DEVELOPMENT COMPANY ("Hills Company"), RODNEY J. HENDERSON ("Henderson"); CHAMBERLAIN SENIOR CARE, LLC ("Senior Care"); and WOLF PEN PRESERVATION ASSOCIATION, INC. ("Wolf Pen") (collectively, the "Parties").

RECITALS

WHEREAS Norton Commons is the owner of certain real property (the "Norton Property") that is located adjacent to certain real property that is presently owned by Chamberlain (the "Chamberlain Property");

WHEREAS, Hills Company and Chamberlain as owner and applicant filed an application ("1st Application") seeking certain land use approvals deemed necessary to construct residential apartments on the Chamberlain Property (the "Old Project");

WHEREAS, Hills Company and Chamberlain also sought approval from the Louisville and Jefferson County Metropolitan Sewer District to make use of that certain variable detention retention basin easement (recorded in the Office of the Clerk of Jefferson County, Kentucky in Deed Book 8542, Page 168) (the "Detention Basin") in connection with its development of the Old Project on the Chamberlain Property;

WHEREAS, a dispute arose between, in part, Norton Commons, Hills Company, Chamberlain and Henderson pertaining to the 1st Application and its proposed use of the Detention Basin in connection with the proposed development of the Old Project on the Chamberlain Property;

WHEREAS, Norton Commons and Wolf Pen brought an action in Jefferson Circuit Court, Civil Action No. 11-CI-07629, against Louisville Jefferson County Metropolitan Sewer District, Hills Company and Chamberlain, LLC, arising out of the aforementioned dispute (the "State Court Action");

WHEREAS, Chamberlain, LLC filed a lawsuit against Hills Company in Division 1 of the Jefferson Circuit Court, Civil Action No. 14-CI-02967 which was removed to U.S. District Court for the Western District of Kentucky, Case No. 3:14-cv-00448-CRS and Hills Company filed a Third Party Complaint in that action against Henderson, Norton Commons and Wolf Pen (the "Action"). This Action arose out of or was related to the aforementioned dispute;

WHEREAS, Chamberlain, Henderson, Hills Company and Senior Care now desire to construct a related assisted, memory, and independent care living facility (the "New Project") on the Chamberlain Property. The New Project is more particularly defined by the site development plan and renderings (the "New Project Plans") collectively attached hereto as Exhibit A;

WHEREAS, in order to construct the New Project on the Chamberlain Property, Chamberlain, Henderson, Hills Company and Senior Care will need to secure certain land use and other administrative approvals prior to commencing construction of the New Project;

WHEREAS, Norton Commons is willing to withdraw any objection to the New Project and the New Project Plans in accord with the terms of this Agreement;

WHEREAS, in light of the foregoing, the Parties to this Agreement now desire to settle all of the claims alleged, or that could have been alleged in the Action as well as to set forth their agreement regarding the future development of the New Project as described below;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT AND RELEASE

1.1 All of the above paragraphs are a part of this Agreement and Release and are not merely recitals.

1.2 CONTINGENCIES OF GENERAL RELEASE. Norton Commons agrees to withdraw any objection to the New Project and New Project Plans to be submitted for review by Chamberlain, Hills Company and Senior Care subject to the following:

a. Approval of the New Project and the New Project Plans by all applicable agencies in substantially the same form as they exist on the date of this Agreement. It is expressly understood and agreed if the New Project or the New Project Plans are materially modified, or otherwise altered, at any time, that Norton Commons reserves the right to oppose at law or otherwise the modified project and any modifications or alterations to the New Project Plans. Further, Chamberlain, Hills Company and Senior Care agree to provide written notification to Norton Commons and Wolf Pen of any proposed modifications, or alterations to the New Project or the New Project Plans at least twenty-one (21) days in advance of applying for any approval by any agency of the modifications, or alterations.

b. Chamberlain, Hills Company and Senior Care agree that upon securing site disturbance permits for the construction of the New Project pursuant to the New Project Plans to record a restrictive covenant that runs with the land against the Chamberlain Property that prohibits in perpetuity: (1) the construction of multi-family residential apartments on the Chamberlain Property; and (2) the use of the Detention Basin easement in connection with any future development of the Chamberlain Property.

1.3 GENERAL RELEASE. Subject to fulfillment of the contingencies described in Section 1.2 and the limited reservation of rights described in Section 1.2a, the Parties to this Agreement hereby mutually agree to settle, waive, release, and discharge any and all legal and equitable claims, demands, actions, or causes of action, regardless of whether now known or unknown, asserted or unasserted, which any of the Parties has or may have as of the date of execution of this Agreement against each other that pertain to the Old Project and development of the New Project pursuant to the New Project Plans, including, but not limited to, claims asserted or that could have been asserted in the State Court Action and/or the Action. The Parties further agree that said releases shall forever release, acquit, hold harmless, and discharge each of the Parties from any and all claims, demands, actions, causes of action, obligations, damages, costs and expenses (including attorneys' fees and legal costs) whether specifically mentioned or not that any of the Parties could have claim existed at or prior to execution of this Agreement with respect to the foregoing matters. Notwithstanding the foregoing, nothing in this Agreement shall be construed to limit or abridge any of the rights of the Wolf Pen and/or its members, with respect to the development of the New Project, including the right to review, comment upon,

support or oppose the New Project and to take any actions authorized under local, state, or federal law to assure compliance with all applicable environmental, zoning, public safety and health requirements with respect to the New Project.

The Parties further agree that upon execution of this Agreement, they will execute an Agreed Order dismissing the Action with prejudice.

Nothing herein shall release any claims any of the Parties have or may have against parties to the State Court Action who are not Parties to this Agreement.

1.4 NON-ADMISSION. The Parties acknowledge and agree that this Agreement shall not be construed in any manner as an admission of any liability or obligation on the part of any Party.

1.5 LEGAL RIGHTS; SEVERABILITY. It is understood and agreed that the terms of this Agreement shall be binding on and inure to the benefit of the Parties' heirs, devisees, successors, and assigns. Chamberlain, Hills Company, Henderson and Senior Care further agree to ensure by recordation or otherwise that any subsequent owners of the Chamberlain Property, are provided with a copy of this Agreement and agree to bound by the terms of this Agreement. The Parties shall have all of the rights and remedies available at law and equity to enforce their respective rights under this Agreement, including the right to seek specific performance of a parties' respective obligations under this Agreement. No action or inaction by any Party shall be taken as a waiver of its right to insist that any other Party abide by the obligations under this Agreement, unless such waiver is in writing, expressly waives such rights, and is signed by legal counsel for the Party making such waiver. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and any illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement. In such event, the Parties agree that such court may impose any lesser restrictions it finds appropriate to protect the interests of the Parties, their heirs, devisees, successors and assigns.

1.6 CHOICE OF LAW. This Agreement is made and entered into in the Commonwealth of Kentucky, and shall in all respects be interpreted, enforced, and governed by the laws of the Commonwealth of Kentucky. The language of all parts of this Agreement shall in all cases be interpreted as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

1.7 ENTIRE AGREEMENT. This Agreement constitutes and sets forth the entire agreement between the Parties regarding the matters set forth herein and supersedes any and all prior and contemporaneous oral or written agreements or understandings between them. The Parties acknowledge and agree that no representation, promise, inducement, or statement of intention has been made by any Party that is not expressly set forth in this Agreement. No Party hereto shall be bound by, or liable for, any alleged representation, promise, inducement, or statement of intention not expressly set forth in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect, except by a subsequent written agreement signed by all Parties, or their designated representative.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

NORTON COMMONS, LLC:

By: _____

Title: _____

TRADITIONAL TOWN, LLC:

By: _____

Title: _____

CHAMBERLAIN, LLC:

By:  _____

Title: MSA Director/Member

HILLS LAND & DEVELOPMENT COMPANY:

By:  _____

Title: Vice President

CHAMBERLAIN SENIOR CARE, LLC:

By:  _____

Title: Manager

WOLF PEN PRESERVATION ASSOCIATION, INC.:

By: Tom Fitchell by power of 2-20-2017

Title: Atty / Agent



RODNEY J. HENDERSON

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

NORTON COMMONS, LLC:

By: *Paul A. Allen III*
Title: *Managing Director*

TRADITIONAL TOWN, LLC:

By: *Paul A. Allen III*
Title: *Managing Director*

CHAMBERLAIN, LLC:

By: _____
Title: _____

HILLS LAND & DEVELOPMENT COMPANY:

By: _____
Title: _____

CHAMBERLAIN SENIOR CARE, LLC:

By: _____
Title: _____

WOLF PEN PRESERVATION ASSOCIATION, INC.:

By: _____
Title: _____

RODNEY J. HENDERSON

Tab 4



Settlement plan

Settlement plan – 2/20/15

- Assisted living and memory care
- 168 bedrooms
- Mix of 1, 2 and 3-story buildings (35 ft bldg height)
- 190,000 total sq ft
- **Decel lane included**
 - Why?
 - Proposed apt plan necessitated it
 - TIS recom it
 - MPW & TP approved it
 - NC wanted it



Tab 5



Approved 5/4/15 CUP plan

Approved CUP plan – May 4, 2015

- Assisted living and memory care
- 168 bedrooms
- Mix of 1, 2 and 3-story buildings (35 ft bldg height)
- 190,000 total sq ft
- **Decel lane removed**
 - Why?
 - WPPA didn't want it
 - MPW & TP didn't require it
 - Applicant didn't know that NC wanted it



Tab 6



Approved 5/4/15 elevations

Approved CUP elevations

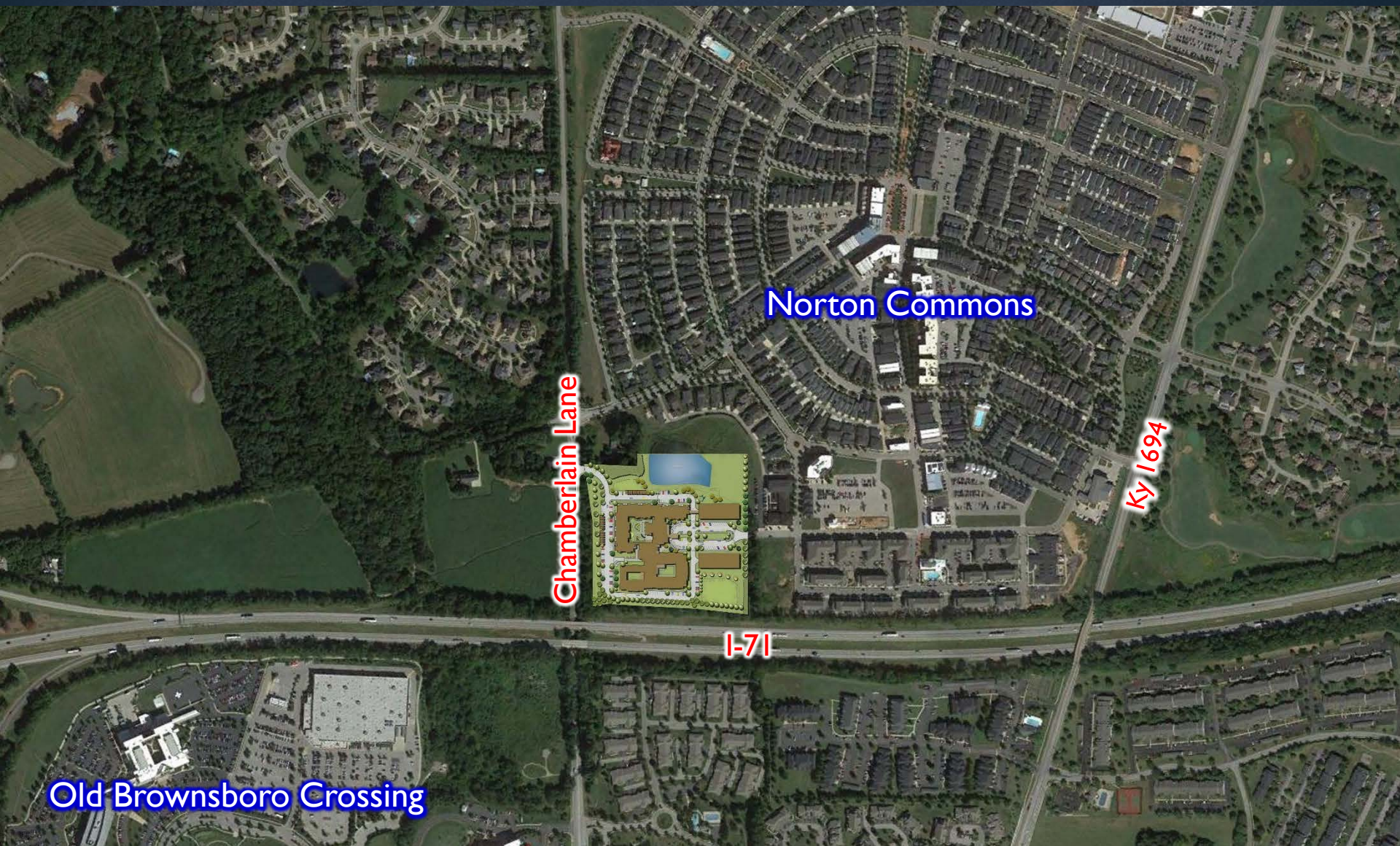


Tab 7



Proposed Modified CUP plan

Proposed Modified CUP plan

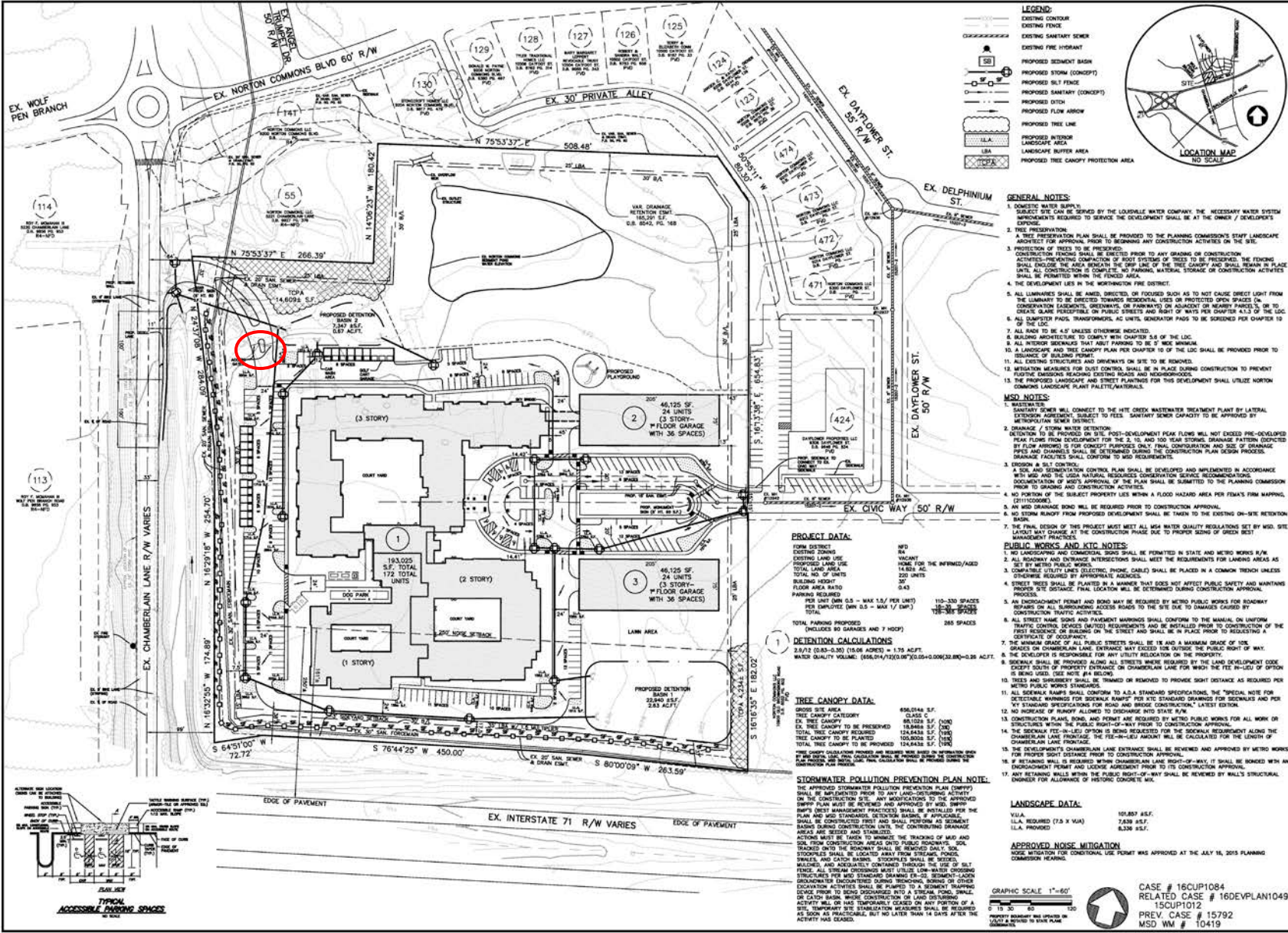


Proposed 1/23/17 Modified CUP plan

- Assisted living and memory care
- 220 bedrooms
(increase of 52 bedrooms)
- Mix of 1, 2 and 3-story buildings
(35 ft bldg height)
- 285,275 total sq ft
(increase of 95,275 sq ft)
- **Decel lane again included**
-- Why?
 - Settlement plan required it
 - NC demands it
 - MPW & TP approves it
 - Applicant is working with WPPA to tolerate it
- **Access gate also included**
-- Why?
 - WPPA wants it (although NC doesn't want it)



Proposed Modified CUP plan. An access gate is circled in red.



REVISOR'S CONDITIONAL USE PLAN

CHAMBERLAIN SENIOR CARE

5217 CHAMBERLAIN LANE
PROSPECT, KY 40059
TAX BLOCK 0006; LOTS 26 & 53
D.B. 8749; P.C. 892

OWNER
CHAMBERLAIN SENIOR CARE, LLC
9545 KENNEDY ROAD, SUITE 402
CINCINNATI, OH 45244

DEVELOPER
GUTMAN DEVELOPMENT GROUP, LLC
9545 KENNEDY ROAD, SUITE 402
CINCINNATI, OH 45244

MINORAL, Scott & Associates, Inc.
Planning & Engineering
10000 W. WOODLAND BLVD., SUITE 200
CINCINNATI, OH 45244

MSA

Vertical Scale: N/A
Horizontal Scale: 1"=50'
Date: 1/27/15
Job Number: 2566
Sheet: 1

GRAPHIC SCALE 1"=60'

CASE # 16CUP1084
RELATED CASE # 16DEVPLAN1049,
15CUP1010
PREV. CASE # 15792
MSD MW # 10419

Tab 8



Proposed Modified CUP Elevations

Proposed Modified CUP Elevations



Proposed Modified CUP Elevations



Proposed Modified CUP Elevations



Tab 9



Proposed entrance exhibit showing
the deceleration lane and Chamberlain
Lane retaining wall

Entrance exhibit



Chamberlain Lane



Chamberlain Lane retaining wall

