

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

FEBRUARY 13, 2014

A meeting of the Land Development and Transportation Committee was held on, Thursday, February 13, 2014 at 1:00 pm at the Memorial Auditorium, located at 970 S 4th Street, Louisville, Kentucky.

Committee Members present were:

Donnie Blake, Chair
Vince Jarboe, Vice Chair
Jeff Brown
Clifford Turner

Committee Members absent were:

Tawana Hughes

Staff Members present were:

Emily Liu, Planning & Design Services Director
Joseph Reverman, AICP, Planning Supervisor
Julia Williams, AICP, Planner II
Jessica Wethington, Public Information Specialist
Rebecca Simmons, Management Assistant (Minutes)

Others present:

Pat Barry, MSD
David Johnson, MSD

The following matters were considered:

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Approval of Minutes

January 23, 2014 LD&T Committee Meeting Minutes

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

RESOLVED, that the Land Development and Transportation Committee does hereby **APPROVE** the minutes of its meeting conducted Thursday, January 23, 2014.

The vote was as follows:

YES: Commissioners Turner, Jarboe, and Brown

NO: No one.

NOT PRESENT: Commissioner Hughes

ABSTAINING: Commissioner Blake

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New Cases

CASE NO. 19042

Project Name	Portland Promise Center
Location	1800 Portland Avenue and 1810 R. Portland Avenue
Owner	Portland Promise Center Inc.
Applicant	Portland Promise Center Inc.
Representative	Drew Watkins
Jurisdiction	Louisville Metro
Council District	5 – Cheri Bryant Hamilton
Case Manager	Julia Williams, AICP, 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. 5th Street.)

Request:

Change in zoning from M-2 to CM, a Parking Waiver from Chapter 9.1.3 to reduce the required amount of parking spaces from 63 to 20 and to permit the use of on-street parking spaces not directly abutting the property per Chapter 9.1.10.D, a Waiver from Chapter 10.2.4 to permit the encroachments of and existing building and paving into a required 15' LBA along the northwest property line, a Waiver from Chapter 10.2.4 to reduce the 15' LBA along the northwest property lines to 14' and 11' as indicated on the development plan, and a District Development plan with binding elements.

The following spoke on behalf of Case No. 19042:

Jon Henney, Gresham Smith & Partners, 101 S 5th St #1400, Louisville, KY 40202

Drew Watkins, Portland Promise Center, 1831 Baird St., Louisville, KY 40203

DISCUSSION:

Julia Williams reviewed the requests and case summary/background/site context from the staff report. She explained that she did receive interested party comments from Portland Now requesting a binding element prohibiting certain

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uses on the site. Ms. Williams then reviewed the applicable plans and policies, staff analysis, and staff conclusions from the staff report.

Jon Henney, representing the applicant, explained that this case is a straight-forward zoning request. He showed some exhibits displaying photos of the site and reviewed the intentions for the site. Mr. Henney then reviewed the details of the plan.

Speaker (name inaudible), with the Portland Promise Center, spoke about the center and services it offers.

Drew Watkins, Portland Promise Center, spoke about the proposed plan and the subject property.

Mr. Henney spoke about the proposed rezoning and responded to Commissioner Jarboe's question and clarified the parking waiver request.

It was decided by general consensus that Case 19042 be scheduled for public hearing before the Louisville Metro Planning Commission on April 3, 2014.

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New Cases

CASE NO. 13ZONE1014

Project Name	Eiderdown
Location	979/983 Goss Avenue
Owner	Nineeightthree LLC
Applicant	Nineeightthree LLC
Representative	James Gunnoe
Jurisdiction	Louisville Metro
Council District	10 – Jim King
Case Manager	Julia Williams, AICP, 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. 5th Street.)

Request:

Change in zoning from R-6 to C-2, a Variance to permit encroachments into a 5' side yard setback, and Landscape Waivers

The following spoke on behalf of Case No. 13ZONE1014:

Alan Bryant, 1905 Lynn Way, Louisville, KY 40222

James Gunnoe, 2584 E. Burnett Ave, Louisville, KY 40217

Mike Morris, 927 Goss Avenue, Louisville, KY 40217

DISCUSSION:

Julia Williams reviewed the reviewed the requests, case summary/background/site context, previous cases on the site, technical review comments and staff conclusions from the staff report.

Alan Bryant, attorney representing the applicant, spoke about the rezoning request and explained that a liquor license can't be issued without a C-2 zoning. He explained that the use will enhance the neighborhood. Mr. Bryant said that the warehouse building to be demolished is old and dilapidated. He pointed out that there is no interference with any neighbor access to Kreiger or parking. He explained that there was no concern expressed at the neighborhood meeting.

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He said the only issues are the buffer zones, but the staff recommendations cover those.

James Gunnoe, applicant, stated his name for the record.

Mike Morris, representing the German-Paristown Neighborhood Association, stated that the neighborhoods are in favor of the proposal. He spoke about suggested binding elements that have been agreed to and a binding element regarding binding out some C-2 uses to which have not been agreed upon.

Commissioner Blake explained that the commission would not impose binding out uses; but it would have to be an agreement among the parties. He said it would be appreciated if the binding elements were sorted out prior to the public hearing.

Mr. Bryant explained that the applicant does not find anything offensive about the suggestions of the neighbors, but they don't want the binding element binding out uses if it is not required by the Planning Commission. He submitted a copy of binding elements that have been agreed upon.

Commissioner Blake suggested that the binding elements be discussed and settled prior the hearing.

It was decided by general consensus that Case 19042 be scheduled for public hearing before the Louisville Metro Planning Commission on March 20, 2014.

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New Cases

CASE NO. 15792

Project Name	Chamberlain Glen
Location	5217 Chamberlain Ln.
Owner	Chamberlain, LLC
Applicant	Hill Land & Development Company
Representative	Bill Bardenwerper Mindel, Scott & Associates
Jurisdiction	Louisville Metro
Council District	16 – Kelly Downard
Case Manager	Joe Reverman, 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. 5th Street.)

Request:

Change in Zoning from R-4, Single Family Residential, to R-6, Multi-Family Residential; a Detailed District Development Plan

The following spoke on behalf of Case No. 15792:

Michael Tigue, Stites & Harbison,

Tom Fitzgerald, 1600 Dundee Way, Louisville, KY

Bill Bardenwerper, 1000 N. Hurstbourne Pkwy, Louisville, KY

David Tomes,

Scott Porter, MSD, 700 W Liberty St., Louisville, KY 40203

David Johnson, MSD, 700 W Liberty St., Louisville, KY 40203

DISCUSSION:

Joseph Reverman said that a procedural matter should be addressed first. He explained a staff policy that requires that any case sitting idle more than six (6) months to require written request for extension from the applicant. He stated that

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this plan sat for a year and a half without action. Mr. Reverman said the other issue is regarding the neighborhood meeting that was held. He discussed the timeline of the first neighborhood meeting, pre-app meeting, second neighborhood meeting, and the formal filing. He said there is a requirement that the neighborhood meeting be held after the pre-app is filed, and there was one.

Michael Tigie, attorney representing Norton Commons LLC, reviewed the policy regarding plans sitting idle longer than 6 months. He referred to the staff report that discusses a lawsuit under the section titled "Drainage Retention Easement". He pointed out that it is clear that the litigation had no impact on the commission's review on the case. He pointed out that this plan was not, when reviewed by MSD, asked to demonstrate compliance with MS4 water regulations. The reason why they were not asked was because they were considered to be grandfathered because the filing date. Mr. Tigie also pointed out that when the property drains directly into a blue line stream, that fact should be disclosed because it is required to submit an EPSC plan, which never happened. He said the applicant had a neighborhood meeting in March and filed a pre-application in April, but the rule provides that the formal neighborhood meeting is held after the pre-application is filed. He stated that he has no memory of there ever being any other neighborhood meeting. Mr. Tigie explained that this plan is over two years old and there are many neighbors who do not know what this plan is about. He raised concern about the Planning and Design policy not being followed in this matter and said that the case should be removed from the docket and re-filed as the policies mandate.

Tom Fitzgerald, Wolf Pen Neighborhood Association, explained Wolf Pen's interest in this proposal. He explained that the procedures discussed are mandatory and explained the reasons for the process.

Bill Bardenwerper, attorney representing the applicant, addressed pages 88 and 89 of a booklet submitted and discussed the timeline of the meetings held and applications filed. He pointed out that the neighborhood meeting requirement was fulfilled. He also reviewed information about the lawsuit filed by Norton Commons. Mr. Bardenwerper then spoke about the revision and submittal of the traffic study. He explained that the plan would not be any different if the plan was refilled. He recommended that the committee proceed and hear the case.

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There was some discussion about whether there was a neighborhood meeting held on June 13, 2011. Mr. Bardenwerper showed the notice, summary, and sign-in sheet from the meeting.

David Mindel, Mindel Scott & Associates, briefed the committee on what was discussed at the neighborhood meeting.

Mr. Reverman pointed out that there was an article in the Courier Journal that referenced a neighborhood meeting held in June 2011.

It was decided that there was, in fact, a neighborhood meeting held on June 13, 2011.

Mr. Tigue explained the items pending with the lawsuit and said he has no legal responsibility to do anything at the moment. He pointed out that there was over a year and a half with nothing done with the plan and no extension was requested, thus the plan has expired.

Mr. Bardenwerper responded to comments about the lawsuit and explained the reason for the motion to include the Planning Commission.

Mr. Mindel explained that the plan was submitted for MSD review. He said that an EPSC plan is done before construction approval.

Mr. Bardenwerper stated that the applicant will comply with MS4 regulations.

Mr. Bardenwerper explained that there were other cases under similar situations that were not required to be re-filed.

Commissioner Blake pointed out that this was an internal policy and is not listed in the Land Development Code (LDC) as a requirement.

Jonathan Baker, legal counsel, explained the options for the committee with regard to the procedural issues raised.

Commissioner Blake recognized that the plan will not be changed and that he agreed that if this is forwarded, this will just be another legal issue. He posed the question as to whether the applicant would think it would be better to go through the application process than to have all these issues hanging.

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Mr. Bardenwerper said no and recognized that there are substantive concerns when neighbors come forward. But these things raised are not substantive. He said his main reason to push the case forward is the fact that the owner would like to have a resolution to the case. He said the only reason this issue has been raised is to slow the case down.

Mr. Tigue said he is not asking the Planning Commission to change the binding elements. He spoke further about the applicant attempting to get his clients to sue the Planning Commission.

Mr. Fitzpatrick explained that the decision needs to be made based on the rules, which should be upheld.

Mr. Bardenwerper explained the reasoning for wanting the Planning Commission to be included in the staff report because the court cannot make a decision whether there was a violation in binding elements unless they hear from the Planning Commission.

Scott Porter, legal counsel with MSD, explained that MSD has moved to set the matter for status conference on Monday. He said it is intended to go before the judge and either ask for a date to resolve this or let the matter stand as submitted on the briefs.

David Johnson, MSD, explained the concept erosion control plans no longer being required.

Commissioner Brown recognized the expiration date for the plan and said that he was not sure an open-ended plan can be done. He said there has to be some type of time deadline for plans.

Commissioner Jarboe raised concerns about keeping plans tied up with matters such as these, thus leading the applicant to not continue pursuing the plan.

Mr. Reverman explained that the policy regarding plans sitting idle for 6 months or longer being in place since 2006. He stated that he could not think of another plan in which this policy was enforced.

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Commissioner Jarboe said it does not make sense to go through this process if the judge has not ruled yet. Mr. Reverman said that the litigation is not concerning the issue before the commission today.

Mr. Baker further explained the matter before the committee.

Commissioner Jarboe pointed out that the applicant stated they are willing to comply with the MS4 regulations and with the fees being waived, the pains to the applicant in re-filing would be minimal.

Commissioner Blake said he has never heard this issue come up before the commission. He said he was not quite sure why the applicant wouldn't want to move forward because the plan is not going to change and they will be living up to the MS4 requirements. He said he has real concerns about this plan going back and forth anyway. Commissioner Blake said it may not be a bad idea for there to be another neighborhood meeting and would be beneficial for all parties involved. He said the six month policy is arbitrary; it is a short period of time.

Commissioner Turner explained that his questions had been satisfied.

There was some discussion about the options before the committee with regard to actions with regard to hearing the case.

Commissioner Blake stated he did not agree with the policy, the six month time frame is arbitrary. He also said he could not see the policy stopping the case from moving forward. He pointed out that the committee determined that the neighborhood meeting was held, but it would be beneficial to hold another meeting.

On a motion by Commissioner Jarboe, the following resolution was adopted.

RESOLVED, that the Land Development & Transportation Committee does hereby determine that the case should not proceed at this meeting and the applicant shall be required to resubmit the plan for the reviewing process, also any related fees shall be waived.

The vote was as follows:

YES: Commissioners Jarboe, Brown, and Blake

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NO: Commissioner Turner

NOT PRESENT & NOT VOTING: Commissioner Hughes

ABSTAINING: No one.

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The meeting adjourned at approximately 3:08 pm.

Chairman

Division Director