

**PLANNING COMMISSION MINUTES**  
**October 1, 2015**

**PUBLIC HEARING**

**CASE NO. 15ZONE1029**

Request: Change in form district from Regional Center to Suburban Workplace, a change in zoning from R-4, C-2, & M-2 to CM and R-4 to C-2, and waivers

Project Name: New Cut Center

Location: 6112/6120 New Cut Road & 8901 Kessler Ave

Owner: MSRSF Investments LLC.;Settlers Point Business Park,LLC

Applicant: MSRSF Investments LLC.;Settlers Point Business Park,LLC

Representative: Mindel Scott & Assoc.; Bardenwerper Talbott & Roberts, PLLC

Jurisdiction: Louisville Metro

Council District: 13-Vicki Aubrey Welch

**Case Manager: Julia Williams, RLA, 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.)

**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:**

**00:40:45** Brian Davis presented the case on behalf of Julia Williams (see staff report and recording for detailed presentation).

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

Bill Bardenwerper, Bardenwerper Talbott & Roberts, 1000 N. Hurstbourne Pkwy.,  
Louisville, KY 40223

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

**00:52:44** Mr. Bardenwerper spoke on behalf of the applicant and showed a PowerPoint presentation.

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

No one spoke.

**Commissioners' Deliberation**

**01:13:27** The Commissioners discussed the case.

**01:17:37** On a motion by Commissioner White, seconded by Commissioner Peterson, the following resolution was adopted:

**Waiver #2 Outdoor Amenity Area:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners because the amenity area is intended to serve as an outdoor gathering area for facility workers, and for a facility this size an area equivalent to a large subdivision clubhouse is surely enough of a gathering area for the number of workers anticipated inside these facilities, especially since most of them will be located in the office areas, and

**WHEREAS**, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application, and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and not more, because as stated above, the amenity area provided is sufficient and not less than necessary to serve the likely number of employees who will work in these buildings, and

**WHEREAS**, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because by requiring additional amenity area

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beyond the amount provided would necessitate use of an excessive amount of the non-building area of the lot for unused amenity space which is more importantly allocated for delivery vehicles, loading and unloading and employee and customer parking; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** Waiver #2 to reduce the square footage of outdoor amenity area to 10% of the office space instead of 10% of the building footprint, based on the applicant's justification, questions being answered during the testimony, and it would be a personal hardship on the applicant to have to provide 78,000 feet of benches and tables when 1,000 would suffice, but the green space will still be open, manicured and usable.

**The vote was as follows:**

**YES: Commissioners Lewis, Turner, Peterson, Jarboe, Brown, White, Tomes, and Chair Person Blake**

**NO: No one**

**NOT PRESENT: Commissioner Kirchdorfer and Vice Chair Proffitt**

**ABSTAINING: No one**

**Change in form district from Regional Center to Suburban Workplace, Change in zoning from R-4, C-2 and M-2 to CM and R-4 to C-2, and General/Detailed District Development Plan:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the community form district for this area is Regional Center which is characterized by major shopping and employment centers. This large piece of vacant property, although surrounded by a variety of uses, is really more in keeping with the workplace uses on large tracts of land otherwise located at various Snyder Freeway interchanges and along the Outer Loop in this area west of I-65 and the airport. The Suburban Workplace Form District is a form characterized by predominately distribution, warehouse, industrial and office uses where buildings are set back from the street in a landscaped setting, and Suburban Workplaces often contain one or several large scale uses, as proposed in the case of this application for large warehouse, distribution or light manufacturing buildings, and

**WHEREAS**, the Commission further finds that the Intents of this Guideline of the Comprehensive Plan are to promote an efficient use of land and investment in existing infrastructure, to lower utility costs by reducing the need for extensions, to reduce commuting time and transportation-related air pollution, and to encourage commercial revitalization in developing areas, and

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**WHEREAS**, the Commission further finds that this application complies with these Intents of this Guideline because New Cut Road is an arterial highway with adequate traffic-carrying capacity for the proposed warehouse buildings, as evidenced by the letter submitted to DPDS by the District 5 Office of the Kentucky Transportation Cabinet (KTC). Utilities already exist to accommodate these warehouses. Whether the under-utilized or unutilized properties to the north of this one along New Cut Road are developed in a similar manner or commercially, development of this site will help assure those of site and utility access, including cross connectivity; as this larger area is already developed intensively in a similar Workplace Form or with major retail uses (e.g., the nearby Walmart), the area attracts large numbers of employees. As a variety of housing is also located nearby, commuting times can be reduced and transportation-related air pollution will not be exacerbated by this application; those already traveling from distant locations to this area will find more employment opportunities as a consequence of the proposed development of this large vacant property, whereas those residing nearby will shorten their commuting trips between home and work. This particular property was long underutilized as a par 3 golf course and recently has been vacant; and a high quality, attractive new employment opportunity on this site makes more sense than leaving the property unproductive, and

**WHEREAS**, the Commission further finds that applicable Policies 1, 2, 4, 5, 7, 9, 11, 14, 15 and 16 of this Guideline all pertain to where activity centers are located and how they are designed. This application complies with these applicable Policies of this Guideline given that another warehouse/distribution/light industrial facility in an area and along an interstate highway where like-kind uses exist means that this location for these warehouses is site-appropriate. This application helps retain employment within an area where other workplace activities are located, and this development will include new buildings that are Land Development Code (LDC) design-compliant, as shown in the PowerPoint presentation at the Public Hearing, and

**WHEREAS**, the Commission further finds that the Intents of this Guideline are to allow a mixture of land uses near each other as long as they are designed to be compatible with each other, to prohibit the location of sensitive land uses in areas where accepted standards for noise, lighting, odors or similar nuisances might be violated, and to preserve the character of existing neighborhoods, and

**WHEREAS**, the Commission further finds that this application complies with these Intents of this Guideline given that the site plan accompanying this application, as further explained in the PowerPoint presentation shown at the Public Hearing, illustrates an attractive design of this site, with new and attractive buildings, with landscaped setbacks with suitable buffering and LDC compliant tree canopy, and

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**WHEREAS**, the Commission further finds that applicable Policies 1, 2 and 4 of this Guideline pertain to the assurance of compatibility through design. The elevation renderings accompanying this application demonstrate that the proposed buildings will be attractive as LDC design-compliant; and the site plan shows how setback areas will be landscaped and new large open space will be retained where LDC required tree canopy will be provided, and

**WHEREAS**, the Commission further finds that applicable Policies 5, 6, 7, 8 and 9 of this Guideline all pertain to the potential nuisances caused by odors, traffic, noise, lighting and aesthetics; the LDC specifically addresses these issues, such as lighting by requiring that it be directed down and away from residential properties. The LDC also addresses aesthetics by requiring buildings, including ones of these kinds, be designed in ways to break up long expanses of non-descript facades. It is anticipated that no odors will be involved with the warehouse/distribution/light industrial activities that are expected in these buildings; and all activities, except trucks coming and going (mostly during normal working hours) will occur within the proposed buildings, and

**WHEREAS**, the Commission further finds that applicable Policies 17, 18 and 19 of this Guideline pertain to the location of industries near other industries and the handling of hazardous materials. This application complies with these applicable Policies of this Guideline because these proposed warehouse/distribution/light industrial buildings are located significant distances from nearby residential properties, and hazardous materials are not anticipated at this site, and

**WHEREAS**, the Commission further finds that applicable Policies 21, 22, 23, 24 and 29 pertain to transitions, screening, bufferings, setback and impacts from parking, loading and delivery. The development plan accompanying this application, especially the colored site plan shown as part of the PowerPoint presentation shown at the Public Hearing, demonstrate that most of the LDC required setbacks are provided; and other facilities of this kind, which the principals of this applicant entity have developed and constructed elsewhere around Metro Louisville, exist and function in compatible, not disruptive ways with their neighbors, and

**WHEREAS**, the Commission further finds that the Intents of this Guideline are to assure the availability of necessary land to facilitate industrial development, to reduce public and private costs for land development, and to ensure that regional scale workplaces and industrial land uses have access to people, goods and services and appropriate locations to conduct their businesses, and

**WHEREAS**, the Commission further finds that this application complies with these Intents of this Guideline given that the Outer Loop west of I-65 and other Snyder Freeway interchanges are where facilities of this same kind proliferate; as evidenced by

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the above-referenced letter from KTC, New Cut Road has adequate traffic-carrying capacity for these two warehouse buildings, which is also as recent, previous traffic studies relative to this site have determined, and

**WHEREAS**, the Commission further finds that applicable Policies 1, 2, 3, 4, 5, 8 and 10 of this Guideline all pertain to preserving workplaces, assuring good access to them, locating industries proximate to transportation facilities and the redevelopment of older industrial areas. This application complies with all of these applicable Policies of this Guideline given that this property has remained underutilized or vacant for years. This site is a good one for the warehouse/distribution/light industrial buildings as proposed. This site's access off New Cut Road provides good access to the Snyder Freeway and thus to airport, I-65, I-64 and I-71; and the principals involved with the entity associated with this application have developed, constructed and managed facilities of this kind all over Metro Louisville, and this will be a new facility like the newest of the kind that it recently constructed, and

**WHEREAS**, the Commission further finds that the Intents of these Guidelines are to assure the safe and proper functioning of street systems, to assure that roads such as New Cut Road do not exceed their carrying capacities, and to ensure that internal and external circulations are safe, that transportation facilities have adequate carrying capacity and that alternative means of transportation are accommodated, and

**WHEREAS**, the Commission further finds that this application complies with these Intents of these Guidelines given all that is said above and given further that these proposed warehouse/distribution/light industrial buildings will be low-peak hour traffic generating uses. The New Cut Road access for these buildings has been approved by KTC as evidenced above. New Cut Road is a wide enough arterial highway that leads from Outer Loop to the Snyder Freeway to the Watterson Expressway, providing easy access to I-65, I-64 and I-71 as well as to the airport; and there are no serious current access issues as respects to the proposed use of this property for two warehouse buildings, and

**WHEREAS**, the Commission further finds that applicable Policies 1, 2, 3, 10, 11, 12, 13, 14, 16, 17 and 18 of Guideline 17; applicable Policies 7, 9, 10 and 11 of Guideline 8; and Policies 1, 2, 3 and 4 of Guideline 9 all pertain to the specific issues that Metro Public Works and Transportation Planning, in consultation with KTC District 5, have asked be addressed on the detailed district development plan filed with this application. Those agencies have their particular standards which elaborate more specifically as to these particular policies; this application complies with those standards and these applicable Policies of these Guidelines because Mindel Scott & Associates, Inc. and BTM Engineering have experience with the particular standards of these agencies, and accordingly MSA and BTM have designed the DDDP accompanying this application

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with particular attention to the issues of access, internal circulation, adequacy of parking, adequacy of loading and maneuvering, site design and alternative means of transportation to the extent applicable. These agencies have reviewed the DDDP in detail, and have given their preliminary stamp of approval, thus assuring compliance with these applicable Policies of these Guidelines, and

**WHEREAS**, the Commission further finds that the Intents and applicable Policies 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12 of this Guideline pertain to the issues of assuring that the hydraulic capacity of natural systems is accommodated so to ensure that drainage systems designs minimize damage to streams and nearby properties and also that floodplains not be adversely affected so as to increase area flooding, and

**WHEREAS**, the Commission further finds that this application complies with these Intents and applicable Policies of this Guideline given that the DDDP has been designed to assure that drainage is captured by internal catch basins and delivered to side-saddle detention areas along the existing stream. Post development rates of runoff cannot exceed predevelopment conditions, which is the purpose of detention included within this DDDP. Floodplain filling and compensation will occur with this development, and in the Pond Creek watershed that requires compensation for fill for a 1.5 to 1.0 ratio. MSD has assured the adequacy of the stormwater management system and floodplain compensation, such that the DDDP has received MSD's preliminary stamp of approval, thus demonstrating compliance with these applicable Policies of this Guideline, and

**WHEREAS**, the Commission further finds that the Intents and applicable Policies of these Guidelines seek to assure that water and air quality are protected. This application complies with the Intents and applicable Policies of these Guidelines given that regulations promulgated by MSD and the Air Pollution Control District (APCD) as to water and air quality will be fully addressed if not on the submitted DDDP then pursuant to construction plans filed post approval. This application must assure eventual compliance with MSD's soil erosion and sedimentation control plus water quality ordinances. A large wetlands mitigation area is provided, which will be in compliance with MSD's Floodplain Management Ordinance; and as to air quality, locating this facility in close proximity to workforce housing as well as to commercial activities and facilities of a like-kind assures minimizing vehicle miles traveled, thus reducing impacts on air quality, and

**WHEREAS**, the Commission further finds that the Intents and applicable Policies 1, 2, 4 and 6 of this Guideline seek to assure that facilities of this or any kind provide adequate screening, buffering and landscaping to protect adjoining uses. This application complies with these Intents and applicable Policies as demonstrated on the color site

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plan accompanying this application and given that a large open green space will be retained where LDC required tree canopy will be preserved and/or provided; and

**Waiver #1 to not provide a sidewalk along Outer Loop and a portion of New Cut Road as indicated on the Development Plan:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since there are no other sidewalks along Outer Loop on the south side between South Ditch and Outer Loop. A partial sidewalk is being provided along New Cut road from the entrance north. South of the New Cut entrance begins the Gene Snyder interchange, and

**WHEREAS**, the Commission further finds that Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. Sidewalks along Outer Loop and the south portion of New Cut would not be appropriate at this time due to the South Ditch and Gene Snyder constraints, and

**WHEREAS**, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since there are no other sidewalks to connect to along the south side of Outer Loop due to the South Ditch. Bridging across the South Ditch would be an additional expense. South of the entrance along New Cut Road is the Gene Snyder interchange where the ramps and expressway are expansive, and

**WHEREAS**, the Commission further finds that providing the sidewalks would create an unnecessary hardship on the applicant due to the environmental constraint of the South Ditch and the physical constraint of the Gene Snyder expressway; and

**Waiver #3 to not provide a VUA LBA between the parking lot and the private access easement on Lot 2:**

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners since the roadway is internal to the site and will dead end at lot 3, and

**WHEREAS**, the Commission further finds that the waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors



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and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The waiver will not violate guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting roadways. The roadway will act more like a drive lane than a roadway, and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the roadway acts more like a drive lane. There is TCPA indicated on the opposite side of the roadway that will provide trees in the area, and

**WHEREAS**, the Commission further finds that providing the VUA LBA would create an unnecessary hardship on the applicant since the roadway acts more like a drive lane. There is TCPA indicated on the opposite side of the roadway that will provide trees in the area; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND to the Louisville Metro Council** that the requested Change in form district from Regional Center to Suburban Workplace, and the requested change in zoning from R-4, C-2, & M-2 to CM and R-4 to C-2 be **APPROVED**; and does hereby **APPROVE** Waiver #1 to not provide a sidewalk along Outer Loop and a portion of New Cut Road as indicated on the Development Plan, and Waiver #3 to not provide a VUA LBA between the parking lot and the private access easement on Lot 2, and the General/Detailed District Development Plan, based on the staff report and applicant's testimony and **SUBJECT** to the following Binding Elements:

**Proposed Binding Elements**

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. The development shall not exceed 450,000 square feet of gross floor area for Lot 2. The development shall not exceed 330,000 square feet of gross floor area for Lot 3.

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3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:

The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.

Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.

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.

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.

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.

A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the

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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.

7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
8. 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.
- ~~9. The applicant/subject property owner shall provide a vehicular connection to the adjacent non-residentially zoned properties within the area labeled on the approved development plan as "Access Easement for Future Connection to Adjacent Property". At such time as the Adjacent Property is proposed for development/redevelopment requiring Planning Commission or Transportation Planning approval, the exact location of the vehicular connection shall be determined by the Planning Commission or Transportation Planning with input from the affected property owners. At the time of commencement of construction on the Adjacent Property of said plan for development/redevelopment, the applicant/subject property owner shall be required to construct all portions of the vehicular connection that exist on the property that is the subject of this approved development plan. The applicant/subject property owner shall provide DPDS an access and crossover easement agreement in a form acceptable to Planning Commission legal counsel and shall record same prior to DPDS transmittal of the approved development plan in this case to the office(s) responsible for permit issuance.~~
9. The Applicant/Owner of the Subject Property shall provide a vehicular connection to the adjacent non-residentially zoned property ("Adjacent Property") within the area labeled on the approved development plan in this case as "Access Easement for Future Connection to Adjacent Property". At such time as the Adjacent Property files a new or revised detailed district development plan for development/redevelopment requiring Planning Commission or Transportation Planning approval, the exact location of this vehicular connection shall be

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determined by the Planning Commission or Transportation Planning with input from the Applicant/Owner of the Subject Property and the owner of the Adjacent Property. At the time of commencement of construction on the Adjacent Property in accordance with said detailed district development plan, the Applicant/Owner of the Subject Property shall be required to construct said vehicular connection on the Subject Property to the extent that the owner of the Adjacent Property grants the same rights to cross access as required herein. The Applicant/Owner of the Subject Property shall provide DPDS with an access and crossover easement agreement in a form acceptable to Planning Commission legal counsel and shall record same prior to DPDS transmittal of the approved development plan in this case to the office(s) responsible for permit issuance.

10. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval.
11. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
12. The design of the outdoor amenity area is required to be approved by the Planning Commission or designee. The amenity area shall be shown on the landscape plan submitted for approval.

**The vote was as follows:**

**YES: Commissioners Lewis, Turner, Peterson, Jarboe, Brown, White, Tomes, and Chair Person Blake**

**NO: No one**

**NOT PRESENT: Commissioner Kirchdorfer and Vice Chair Proffitt**

**ABSTAINING: No one**