

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
October 1, 2018**

A Special Meeting of the Louisville Metro Planning Commission was held on October 1, 2018 at 6:30 p.m. at Shelbystur Campus, Founders Union Building, located at 450 N. Whittington Parkway, Louisville, Kentucky.

Commission Members Present:

Vince Jarboe, Chair
Marilyn Lewis, Vice Chair
David Tomes
Jeff Brown
Lula Howard
Rob Peterson
Ruth Daniels

Commission Members Absent:

Donald Robinson
Rich Carlson
Emma Smith

Staff Members Present:

Emily Liu, Director, Planning & Design Services
Joe Reverman, Assistant Director, Planning & Design Services
Joe Haberman, Planning & Design Manager
Brian Davis, Planning & Design Manager
Julia Williams, Planning & Design Supervisor
Joel Dock, Planner II
Tony Kelly, MSD
Beth Stuber, Engineering Supervisor, Transportation Planning
Will Ford, Communications Specialist, Develop Louisville
Molly Clark, Associate Planner
Paul Whitty, Legal Counsel
Sue Reid, Management Assistant

The following matters were considered:

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APPROVAL OF MINUTES

SEPTEMBER 20, 2018 PLANNING COMMISSION MEETING MINUTES

Opening Statement:

00:02:43 Chair Jarboe called the meeting to order and swore in all those who had signed up to speak (see recording for detailed presentation).

00:06:01 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Minutes of the Planning Commission meeting conducted on September 20, 2018.

The vote was as follows:

Yes: Commissioners Brown, Howard, Daniels, and Chair Jarboe

Abstain: Commissioners Tomes, Peterson, and Vice Chair Lewis

Absent: Commissioners Carlson, Robinson, and Smith

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CASE NUMBER 18ZONE1014

Request:	Change in zoning from C-1 to C-2, Commercial with conditional use permit and revised detailed district development plan for golf driving range and entertainment center; variances for setback, height, and stream buffer encroachments; waiver of landscape buffer and consideration of lighting report and lighting height
Project Name:	TopGolf at Oxmoor Center
Location:	7900 Shelbyville Road
Owner:	WMB 2, LLC & TWB Oxmoor 2, LLC
Applicant:	TopGolf USA Louisville, LLC
Representative:	Dinsmore & Shohl, LLP – Clifford Ashburner
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Joel P. Dock, AICP, Planner II

The staff report prepared for this case was incorporated into the record. The Commission Members received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at Planning and Design Services offices, 444 South 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:

00:07:24 Joel Dock presented the case and showed a Powerpoint presentation. Mr. Dock stated the requests for consideration by the Planning Commission. Mr. Dock stated this is a redevelopment of a former anchor department store. Mr. Dock reviewed the Case Summary, Zoning & Form Districts, Development Plan, Technical Review, and Staff Findings. Mr. Dock stated staff has received and made documentation of all the interested party comments. Mr. Dock stated these communications have been made available to the Planning Commission prior to Public Hearing. Mr. Dock reviewed the Required Actions of the Planning Commission (see recording for detailed presentation).

00:18:03 Steve Porter stated he understands that the police are turning people away. Chair Jarboe inquired as to how many, and Mr. Porter stated at least seventeen people. Chair Jarboe stated that, low a number, what he'd like to do is see if we could go one-in and one-out; he's not going to postpone this hearing for that low of a number. Chair Jarboe stated if it gets to an unmanageable number, then the Planning

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Commission will take that into account. Chair Jarboe stated that would mean postponing this to find another date and a place larger than this. Mr. Porter stated he sure does not want to postpone, but he also wants to comply with Kentucky State Law and the open meetings act. Chair Jarboe asked if there were any empty seats, and the audience indicated there were. The meeting was paused for a few moments to allow persons who were waiting to be seated (see recording for detailed presentation).

Cross-Examination of Mr. Dock:

00:21:55 Steve Porter cross-examined Mr. Dock. Mr. Porter stated page two of the staff report indicates the poles are 175 feet. Mr. Porter asked if Mr. Dock knows if that is from current grade or is the project going to be built up or whatever. Mr. Dock stated he believes the applicant can better answer that question, but he believes it's from the grade of the parking lot and measured from that point (see recording for detailed presentation).

00:22:40 Mr. Porter stated page 3 of the staff report regarding noise, Mr. Dock basically doesn't make any conclusions of his own, but states that a sound study was provided and can be found in the hearing materials and then he quotes from that sound study. Mr. Porter asked Mr. Dock if he or anybody else on staff did any independent examination of that sound study, or get any sound expert to take a look at it. Mr. Dock stated staff did not, they relied on the evidence provided by the applicant (see recording for detailed presentation).

00:23:15 Mr. Porter stated also on page three under lighting Mr. Dock stated the lighting report is a light plan. Mr. Porter stated looking at that report he didn't see any real details as to how many lamps and what their lumens were, and we've got one side report that was provided about the major fixtures that light the field that say 58,000 lumens, but he didn't see anything in that lighting report; it wasn't labeled as a lighting plan, it didn't show exactly where lights were to be located, so he was just curious if Mr. Dock had something else besides what is in that lighting report. Mr. Dock stated if the Planning Commissioners could note LDC 4.1.3, B-6 – B, Recreational Facilities shall be required to submit a lighting plan for review and approval by the Planning Commission, and then how it defines that lighting plan it simply states "the plan shall document the effect of lighting on adjacent residential areas. The Planning Commission may require modification of the lighting plan or impose condition on its approval as necessary to mitigate the impacts of its lighting", and staff found that the lighting report was sufficient to meet that requirement (see recording for detailed presentation).

00:24:49 Mr. Porter stated on that same page, how many fixtures were provided – the fixtures that are going to light the field, how many of them are there? Mr. Dock

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stated staff was not given a specific number of fixtures (see recording for detailed presentation).

00:25:12 Mr. Porter asked if staff was given any information on the fluorescent lighting fixtures in each driving bay; there are 102 driving bays – was staff given any information on those fixtures? Mr. Dock stated the applicant indicated that the lighting fixture was the Gamechanger 500, to which they provided the lighting technical guide, but the number of fixtures or specifics about the lighting in each bay, staff wasn't provided any additional information (see recording for detailed presentation).

00:25:54 Mr. Porter stated the staff report on page 4 says under 48 feet and 40 feet; were you provided with any elevations that showed those footages? Mr. Dock stated specific elevations no, but the applicant did provide an email of the height, and then a letter provided to Planning Commission staff (see recording for detailed presentation).

00:26:19 Mr. Porter stated "but no elevations of the building to show that". Mr. Dock replied "no" (see recording for detailed presentation).

00:26:39 Mr. Porter stated on page 3 of the staff report Mr. Dock says that the golf driving range will be illuminated by a fixture that emits 58,000 lumens; a fixture. Isn't it 16 or 17 fixtures that are 58,000 lumens apiece? Mr. Dock stated staff was not given a number of fixtures (see recording for detailed presentation).

00:27:13 Chair Jarboe advised Mr. Porter that this information is going to be coming from the applicant, and he's wondering why he's asking staff all these questions. Mr. Porter stated he's asking staff these questions because staff said that everything's fine with the lighting, everything's fine with the traffic, everything's fine with the noise; they relied on whatever the applicant provided and they didn't have adequate information in order to be able to make any type of **(inaudible)**. Mr. Porter stated "Mr. Chairman, you know full well that if a staff report looks positive then that just makes it that much harder for the opposition, and I'm just trying to show that the staff did not have enough information to make a good judgement, and they made a judgement" (see recording for detailed presentation).

00:28:13 Cliff Ashburner stated if Mr. Porter has questions for the staff he's fine with him asking questions to actually try and get new information out of this report, but if he wants to testify, then testify after we do (see recording for detailed presentation).

00:28:26 Mr. Porter stated he believes everything he's done has been in question form. Mr. Porter stated asking staff another question on page 4 – does the lighting plan, it's actually lighting report but you're saying it's a lighting plan, does it say that the fixtures that will light the field will be fully shielded as in compliance with the Land

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Development Code? Mr. Dock stated there's no reference in that lighting report to be fully shielded, no (see recording for detailed presentation).

00:29:05 Mr. Porter asked if that is a requirement of the Land Development Code. Mr. Dock stated he was going to cite a couple of sections from the Lighting Section. Mr. Dock stated in Part C, Item B, it states that all fixtures in all Form Districts that emit more than 3,500 lumens shall be fully shielded. Mr. Dock stated then in the Recreational Facilities Section it states that all fixtures used for recreational facilities lighting – well that's not applicable because it's not within 500 feet of a residential use; so no, it just simply says that lighting shall be fully shielded, that's correct (see recording for detailed presentation).

00:30:19 Mr. Porter stated that Mr. Dock concluded in his staff report that this Topgolf Facility was not within 500 feet of a residential use. Mr. Porter asked how many feet is it from the end of the field to the driveway to the senior citizen housing. Mr. Dock stated he just read the definition of residential use – it's a use associated with permanent occupancy in the form of a dwelling unit (see recording for detailed presentation).

00:31:02 Mr. Porter asked if a driveway is a use associated with a residential unit. Mr. Dock said no. Mr. Porter said the answer is no, the driveway is not part of a residential unit. Mr. Porter said "I don't know what I'm going to do with my driveway". Mr. Porter stated also on page 4, how far is it from the lighting fixtures and the field of the proposed facility from the R-6 property with the Oxmoor Farm and Bullitt house. Mr. Dock stated staff didn't measure any distances from the proposed use to residential zoning districts, only the information contained in the staff report (see recording for detailed presentation).

00:32:01 Mr. Porter stated the property right next door just to the east is zoned R-6, apartment, multi-family, even though the applicant has put on there commercial multi-family; it is not commercial, it's multi-family, that's all, R-6. Mr. Porter asked what happens when somebody builds apartments or condominiums or homes on that property, is then Topgolf subject to the Code within the 500 feet and they would have to change their setup? Mr. Dock stated Topgolf facility would be nonconforming to the regulations at that point (see recording for detailed presentation).

00:32:44 Mr. Porter stated "a question about the Hurstbourne Small Area Plan – can you tell me what you found out about that and who gave you information?" Mr. Dock stated that plan is not fully adopted by all legislative bodies requiring action, and that information was obtained through conversations with the Advanced Planning staff who monitors and conducts those studies (see recording for detailed presentation).

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00:33:25 Mr. Porter stated on page 7 of the staff report, you say that the proposal is compatible with surrounding uses, what uses are you referring to? Mr. Dock stated the staff report states on Item 2 of the Standard of Review for the Conditional Use proposal, "the proposal is compatible with surrounding uses and the general character of the Form District as the design of the entertainment facility integrates itself with the recently approved development at the center", and then it goes on to find that the structure is being centrally located in the area of the former anchor department store, distance from each roadway is being provided to accommodate parking (see recording for detailed presentation).

00:34:30 Mr. Porter asked if Mr. Dock took into account the residential uses, or did he just look at what was inside the Form District. Mr. Dock stated he thinks the staff report covers his answer (see recording for detailed presentation).

00:34:46 Mr. Porter stated page 9 of the staff report states the 175 foot poles do not alter the essential character of the neighborhood. Mr. Porter stated these are visible two miles away, does not that alter the essential character of the neighborhood? Mr. Dock said "so staff states in, I believe Item B of the Standard of Review and Staff Analysis for Variance that while the netting exceeds the maximum allowed height, it does not contain a mass or bulk associated with a building of similar height (see recording for detailed presentation).

00:35:35 Mr. Porter asked if Mr. Dock knows how tall the Oxmoor Mall is, the mall property itself? Mr. Dock said he does not (see recording for detailed presentation).

00:35:51 Mr. Porter stated page 13 of the staff report states the building height, which would include the poles and the nets, that they are compatible with existing and projected future development in the area. Mr. Porter asked if the 175 foot poles and netting structure compatible with what existing development and what projected future development (see recording for detailed presentation).

00:36:20 Mr. Ashburner stated "Mr. Chairman, if I can, this is an argument, these are not questions. He's putting a question mark at the end of statements, and I think it should be counted against his time at this point". Mr. Ashburner stated he can make his case; he's got 75 minutes to make it without participating in this sham examination (see recording for detailed presentation).

00:37:02 Mr. Porter asked Mr. Dock what existing and projected future development are the 175 foot poles and netting compatible with? Mr. Dock stated he would just cite the statement that he provided under Item E (see recording for detailed presentation).

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The following spoke in favor of the request:

Cliff Ashburner, 101 S. 5th Street, Suite 2500, Louisville, KY 40202

Pat Dominic, 608 S. Third Street, Louisville, KY 40202

Keith Pharis, 7110 Austinwood Road, Louisville, KY 40214

Mitchell Green, 3 HMB Circle, Frankfort, KY 40601

Diane Zimmerman, 12803 High Meadows Pike, Prospect, KY 40059

Kendall Merrick, 7900 Shelbyville Road, Louisville, KY 40222

Tanner Micheli, 8750 N. Central Expressway, Suite 1200, Dallas, TX 75231

Summary of testimony of those in favor:

00:38:57 Cliff Ashburner spoke in favor of the request and showed a Powerpoint presentation. Mr. Ashburner reviewed the requests contained in the proposal. Mr. Ashburner stated other persons present on behalf of the proposal included Tanner Micheli (Topgolf), Keith Pharis (lighting expert), Mitch Green (sound expert), Diane Zimmerman (traffic expert), and Pat Dominic (Sabak, Wilson & Lingo) who will talk about how Topgolf and the restaurants will really transform Oxmoor Center and make it much, much better in terms of tree canopy and open space. Mr. Ashburner stated the question that has been asked over and over is “why not put it someplace else”. Mr. Ashburner stated it occurred to him if they came to town and they just talked to a real estate broker, the real estate broker would just show them a big property, a place that’s big enough to hold a Topgolf; but if they came to town and they talked to a planner, they would say you know your Comp Plan, you know your community; where should we put Topgolf. Mr. Ashburner stated if you read Cornerstone 2020, the only place that Topgolf should go is in a Regional Center, and a Regional Center is exactly what we’re talking about tonight. Mr. Ashburner read the description of Regional Center. Mr. Ashburner stated what’s unique about Regional Centers is they are intense areas of development; they are, in fact, the most intense form areas outside of the Central Business District. Mr. Ashburner stated Regional Center and Campus both contain a maximum building height of 150 feet. Mr. Ashburner stated our Form Districts govern how tall buildings can be, not our Zoning Districts. Mr. Ashburner referred to the site plan. Mr. Ashburner stated a Committee of the Commission has already seen and approved this plan, which is for three restaurants and a pedestrian plaza north of Topgolf. Mr. Ashburner stated they get to about 1,300 feet before they get to the first residential home. Mr. Ashburner referred to a phasing plan from when Oxmoor Farm was rezoned. Mr. Ashburner stated Oxmoor Farm is sort of landlocked; there are a couple of main ways to get into the property – Christian Way and Oxmoor Lane. Mr.

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Ashburner stated the Planning Commission saw fit, based on traffic conditions at the time, to demand that the project be phased. Mr. Ashburner stated we don't plan for the past, we plan for the future. Mr. Ashburner stated Pat Dominic's firm has worked with both Brookfield and Topgolf to plan the southern portion of the mall, so he was going to ask him to come up and explain that (see recording for detailed presentation).

00:52:20 Pat Dominic spoke in favor of the request. Mr. Dominic reviewed the site plan. Mr. Dominic stated the existing Sears store was 50 feet tall; the top of this super-structure is 53 feet tall, so the height of the structure and the mass of the structure is very similar to the existing Sears. Mr. Dominic stated this proposal will totally re-energize the southern part of Oxmoor Mall. Mr. Dominic stated they have a brand new entrance coming in off of Oxmoor Way and they have totally reconfigured the parking areas around the southern end of the mall to accommodate Topgolf. Mr. Dominic stated they've always been concerned with traffic calming and elements that can help reduce speeds on those kind of through roads, and he thinks they've done that with this plan. Mr. Dominic stated the facility itself it actually considered impervious area, although it functions as green space, it will look as green space, but from a storm water management standpoint it's considered impervious. Mr. Dominic stated with all the new landscape islands that are being installed, they actually have two acres less impervious cover on this site than what it has originally. Mr. Dominic described the proposed landscaping and tree canopy. Mr. Dominic stated he wanted to talk about the stream buffer variance that they're asking for. Mr. Dominic stated they're not really changing anything that's going on at the edge of the stream, but because they have existing encroachments, to bring that into compliance they need to ask for variances. Mr. Dominic stated that happens an awful lot on redevelopment sites (see recording for detailed presentation).

00:57:18 Mr. Ashburner continued to review the site plan. Mr. Ashburner stated the buffer you see here is really not intended to completely obscure Topgolf; it is intended to mute that end of the outfield so when you're driving in you'll see a nice green screen that, over time, will reach a fairly significant height. Mr. Ashburner stated that is something that has not been done at any other facility in the country. Mr. Ashburner stated this is another way that Topgolf is trying to be a good community partner in reacting to concerns that have been expressed by those who are here tonight. Mr. Ashburner reviewed the plan elevations. Mr. Ashburner asked that Keith Pharis come up and talk about the lighting design that he came up with (see recording for detailed presentation).

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00:59:26 Keith Pharis spoke in regard to the lighting design for both the parking area and also the overall facility. Mr. Pharis, referring to the presentation, stated what you're looking at here is foot candle measurements taken on-site with a foot candle meter with the existing pole lights in place. Mr. Pharis stated the existing pole lights consist of a combination of metal-halide fixtures on 50 foot poles, and some of the fixtures have been modified with LED array fixtures. Mr. Pharis stated as you look at this map, the brightness beneath the fixture is to emulate what the brightness on the pavement would be. Mr. Pharis stated the next slide is the new lighting. Mr. Pharis stated if you want to compare the number of poles there, those are 50 foot tall poles, each lamp on those poles are most likely in the 100,000 lumen range so each pole with a triple head would have 300,000 lumens. Mr. Pharis stated there's been mention that the Topgolf lighting is 58,000 lumens, but those are singular fixtures; there's 16 to 17 total fixtures and as you can tell here there's many, many more and they don't stop at the curve of the Topgolf facility and they're not mounted underneath a 40 foot canopy and then down at 27 feet with a tilt control. Mr. Pharis stated the new lighting design, as you see they have added light around the entire perimeter of the facility. Mr. Pharis stated all of the fixtures around the perimeter of the facility on the outside are pointed inward to the site; they have backside shields so there is no illumination that can be seen from off-site looking back at the parking lot; they are all mounted at 30 foot rather than 50 foot. Mr. Pharis stated the upper fixtures are 42 feet, they are not cut-off fixtures. Mr. Pharis stated the lighting report refers to them as "highly directional" and that's because they're a flood light type of fixture, so they're aiming being angled is very precise. Mr. Pharis stated you can literally go from dark to light by taking a step, that's how precisely these beam angles are set. Mr. Pharis referred to a slide of the proposed lighting and indicated the point where the light would project. Mr. Pharis stated on Christian Way, the horizontal light output is zero, there is no light trespass. Mr. Pharis stated there's been mention that the fixtures are 58,000 lumens and they're directed at the resident areas. Mr. Pharis stated that's not really true. Mr. Pharis stated they're here, and the residences are that way, but they're tilted at a five degree angle. Mr. Pharis stated are you going to be able to see that there is a light over there – yes; is that light going to be in your eyes – no, it's just not. Mr. Pharis described how lighting illumination dissipates. Mr. Pharis reviewed examples of proposed lighting as well as existing lighting at other Topgolf facilities at various times of day and night (see recording for detailed presentation).

01:09:48 Cliff Ashburner reviewed a comparison between the old and new lighting systems. Mr. Ashburner showed an overhead view of a Topgolf facility that opened

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about two weeks ago that has the new lighting system. Mr. Ashburner stated Topgolf is about creating a great experience and about being a great community partner, and that means taking into consideration all the things that the folks who are here tonight care about, and that includes light intrusion and noise as well. Mr. Ashburner reviewed a Visibility Study that was conducted at the proposed site. Mr. Ashburner stated we're going to hear a lot about Topgolf being in a neighborhood. Mr. Ashburner stated we're not in a neighborhood, we're in a Regional Center surrounded by Campus, then you get to the neighborhood itself. Mr. Ashburner stated there are lots of other Topgolfs that are much closer to residential than what we're talking about tonight. Mr. Ashburner showed some examples of other Topgolf locations. Mr. Ashburner stated he was going to ask Mitch Green to come up and talk about sound issues (see recording for detailed presentation).

01:15:41 Mitchell Green stated he has been doing acoustical measurements in and around Kentucky and the southern states for a little over 19 years. Mr. Green stated he has been taking noise measurements in the built environment that entire time. Mr. Green stated his firm was hired to study all the residential houses within the project limits for the Louisville/Southern Indiana Ohio River Bridges project. Mr. Green stated they have evaluated noise in neighborhoods based on sound generating sources such as freeways. Mr. Green referred to a slide depicting the site and stated they were asked to perform an analysis to see what the noise levels might be at the closest residential properties. Mr. Green stated what they used to project the noise out based on Topgolf was Topgolf performed a comprehensive noise study at one of their facilities in Gilbert, Arizona. Mr. Gilbert stated they performed noise measurements at 17 sites around that facility; they did both short term measurements and long term measurements, and the results of that study were they had a site called Site A that was about halfway down the driving range of the Gilbert, Arizona facility that they measured during peak noise hours when most of the drive bays were full. Mr. Green stated the conclusion of that study was that that point halfway down the driving bay would be representative of a Topgolf facility operating near capacity to use that noise level to project noise level at other planned Topgolf facilities. Mr. Green stated the value of that noise level was 61 decibels. Mr. Green stated they used acoustical calculations to project noise levels. Mr. Green reviewed the findings of their calculations (see recording for detailed presentation).

01:28:00 Mr. Ashburner stated he was going to ask Diane Zimmerman to come up and give findings on traffic (see recording for detailed presentation).

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01:28:08 Diane Zimmerman stated she prepared the Traffic Impact Study for this site. Ms. Zimmerman stated she is a licensed professional engineer in the State of Kentucky and she has been working in the transportation engineering field for over 32 years, and has prepared slightly over 400 Traffic Impact Studies in the last 20 years. Ms. Zimmerman stated Topgolf is a regional destination so the question is where will the majority of this traffic come from in our region to access this site. Ms. Zimmerman stated what is depicted on the screen is the percentages of where she believes traffic will approach. Ms. Zimmerman reviewed her findings. Ms. Zimmerman reviewed her findings from the trip generation and stated there would be an overall reduction in traffic (see recording for detailed presentation).

01:30:27 Cliff Ashburner stated we've talked a lot about Topgolf tonight, but Topgolf is not going to exist in a vacuum, it is going to become part of Oxmoor Center. Mr. Ashburner stated he would like to have Kendall Merrick come up and talk about her role as the general manager of Oxmoor Center and how she sees Oxmoor Center's place in our community (see recording for detailed presentation).

01:30:51 Kendall Merrick stated she has been in the real estate management industry for 29 years and has been leading Oxmoor Center for the past four. Ms. Merrick spoke in regard to Oxmoor Center's position in the community and the many local business contracted to support the operation. Ms. Merrick stated Oxmoor Center provides a platform to support local retail business growth. Ms. Merrick stated Oxmoor Center has also provided support to community groups, nonprofit organizations, and schools. Ms. Merrick stated malls across the nation are taking steps to evolve and meet the changing needs and interests of consumers. Ms. Merrick stated they are adding an acre of green space at Oxmoor Center that does not now exist. Ms. Merrick stated they are replacing an empty department store with a vibrant redevelopment that will create more than 500 new jobs and create hundreds of millions of dollars in economic impact and millions in tax revenues and they are not asking for any tax breaks or government incentives (see recording for detailed presentation).

01:38:24 Tanner Micheli, Director of Real Estate Development for Topgolf, stated they would not be successful if they were not community partners and they were not good neighbors in the community. Mr. Micheli stated more than half their venues are located near residential communities that are closer than the Hurstbourne community. Mr. Micheli stated they would not be opening their 50th venue by the end of this year if it wasn't for the support of the communities they enter. Mr. Micheli stated one of their

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core values is caring, and they live that to their core. Mr. Micheli stated they will not have the impact that is perceived by some people here. Mr. Micheli stated they will be good partners and great community members (see recording for detailed presentation).

01:39:33 Mr. Ashburner submitted letters in support from people who could not be in attendance tonight (see recording for detailed presentation).

01:40:49 Meeting was recessed.

01:40:56 Meeting was reconvened.

The following citizens spoke in favor of the request (Please see noted time stamps for detailed presentations):

Bill Frey, 4706 Indian Hills Green, Louisville, KY 40207
Hunter Ellington, 600 W. Main Street, Louisville, KY 40202
Michael Blair, 7600 Lancelot Ct., Louisville, KY 40222
James Calton, 10112 Settlers Crest Ln., Louisville, KY 40299 (on behalf of James Calton, 1400 N. Hurstbourne Pkwy., Louisville, KY 40223)
Brian Forrest, 1014 Fulham Ct., Louisville, KY 40222
Allyn Freibert, 8411 Nottingham Pk., Louisville, KY 40222
Mike Mackin, 8914 Cromwell Hill Rd., Louisville, KY 40222
Shane Uttich, 808 Rugby Pl., Louisville, KY 40222
Casey Nelson, 8512 Cheffield Drive, Louisville, KY 40222
Michael Tabor, 1307 Leighton Circle, Louisville, KY 40222
Todd Chandler, 3715 Hycliffe Ave., Louisville, KY 40207
Dr. Nick Passafiume, 10719 Jimson St., Prospect, KY 40059
Milton Seymore, 2906 Aspendale Court, Louisville, KY 40241
Brandon Jones, 60 Indian Hills Trail, Louisville, KY 40207
David Aikens, 717 Winding Oaks Trail, Louisville, KY 40223
Chris Casconi, 8909 Uppincott Road, Louisville, KY 40222
Jeremy LaMontagne, 3520 Dayton Ave., Louisville, KY 40207
Mike Harlan, 1321 Leighton Circle, Louisville, KY 40222
John Fishbach, 1228 Hogarth Drive, Louisville, KY 40222
Charles Crosby, 1242 Hogarth Drive, Louisville, KY 40222
Bryce Koon, 2108 S. Pope Lick Rd., Louisville, KY 40299
Chase Norcini, 13607 Terrace Creek Dr., #202, Louisville, KY 40245

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Paula Bemiss, 9002 Lyndon Lakes Pl., Louisville, KY 40242

Will Brooks, 2122 Middle Lane, Louisville, KY 40216

Angela Youngman, 6600 Poplar Forest Court, Louisville, KY 40291

Tyler Glick, 1101 Windsong Way, Louisville, KY 40207

Neville Blakemore, 41 Mockingbird Valley Drive, Louisville, KY 40207

Testimony of those in favor:

01:41:48 Bill Frey

01:46:31 Hunter Ellington

01:48:45 Michael Blair

01:50:12 James Calton

01:54:01 Brian Forrest

01:55:53 Allyn Freibert

01:58:35 Mike Mackin

01:59:42 Shane Uttich

02:04:18 Casey Nelson

02:06:01 Michael Tabor

02:07:44 Todd Chandler

02:08:41 Dr. Nick Passafiume

02:12:39 Milton Seymore

02:16:31 Brandon Jones

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02:18:02 David Aikens
02:20:46 Chris Casconi
02:22:22 Jeremy LaMontagne
02:24:28 Mike Harlan
02:27:51 John Fishbach
02:28:07 Charles Crosby
02:29:08 Bryce Koon
02:30:06 Chase Norcini
02:31:10 Paula Bemiss
02:33:07 Will Brooks
02:34:25 Angela Youngman
02:40:03 Tyler Glick
02:41:04 Neville Blakemore

Summary of Commissioners Questions for the Applicant:

02:42:24 Commissioner Brown asked about the hours of operation. Tanner Micheli stated weekdays typical hours of operation are 9:00 a.m. to 12:00 a.m., for some it's 11:00 p.m.; Fridays and Saturdays until 2:00 a.m. (see recording for detailed presentation).

02:43:06 Commissioner Brown asked if this site was required (per Land Development Code Section 4.3.1) to provide fully shielded lights, or is it not a strict requirement for the recreational facility because it's greater than 500 feet from a

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residential use. Mr. Ashburner cited the Code, in part, as follows: all fixtures used for recreational facilities, lighting within 500 feet of any residential use shall be fully shielded or shall be designed or provided with sharp cut-off capability so as to minimize up-light, spill-light, and glare. Mr. Ashburner stated they believe they comply with that section based on "or be designed or provided with sharp cut-off capability". Mr. Ashburner stated you've heard the testimony of Mr. Pharis about the ability to focus and aim the lights that they have, and that's how they believe that they comply with the Code. Commissioner Brown stated that's what he was wondering, was that Gamechanger Fixture, that name brand, would fulfill that. Mr. Ashburner stated as Mr. Pharis testified, it is not a fully cut-off fixture. In order to have a fully cut-off fixture light, any recreational facility, it would have to be much, much higher than anything anybody would want. Mr. Ashburner stated right now we've got 50 foot, non-cut-off fixtures at Oxmoor and you'd be required to go probably to 100 feet in order to have a fully shielded fixture that would just light the field. Mr. Ashburner stated that would most likely result in more light trespass than the Gamechanger 500, which is what we're talking about (see recording for detailed presentation).

02:45:21 Commissioner Brown stated he thinks it came up during the cross-examination with Joel, they were asking about the total number of lights, which he doesn't think is really relevant here, it's really about what that illumination was at the ground level whether that's one fixture or one hundred fixtures, is that correct? Mr. Ashburner stated the typical number at a facility is sixteen, eight per floor, that light the field. Mr. Dock read the Land Development Code definition of fully shielded, or shielded, also known as cut-off light fixture: a lighting fixture constructed in such a manner that no more than 2.5% of the lamp lumens either directly from the lamp or diffusing element or indirectly by reflection or refraction from any part of the luminaire are not emitted above the horizontal plain through the lowest direct light from any part of the luminaire. Mr. Dock stated simply put, that there's no direct up-light from that light, so he thinks the applicant should answer whether or not those lights emit a light upwards and if it doesn't he thinks it meets the intent of this regulation (see recording for detailed presentation).

02:46:50 Mr. Pharis described how the proposed lighting will function. Mr. Pharis referred to the Powerpoint presentation for examples. Mr. Pharis stated there's no such thing as a sports light of this type that is full cut-off. Mr. Pharis stated this is a sports lighting fixture, again, it's not a football lighting fixture which is massive, this is a small

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four inch by two foot that's tilted down to reduce the glare and to reduce any kind of light that would enter in your eye (see recording for detailed presentation).

02:50:37 Commissioner Brown asked why they couldn't just rotate the facility 180 degrees and orient it toward Oxmoor Lane. Mr. Ashburner stated first, because you can't hit golf balls into the sun, and in the afternoon obviously if it's facing west you're going to find that you're looking into the sun quite a bit. Mr. Ashburner stated the other thing is that it really doesn't solve the objection because there are residential uses to the west as well. Mr. Ashburner stated what he's heard so far, and what he's read so far, aiming a light anywhere near a residential use, even in the direction of a residential use, is a point of contention of the opponents, and he thinks that's not really solved by flipping the building (see recording for detailed presentation).

02:51:40 Commissioner Brown stated given the height of that net, what's the probability that someone could leap the enclosure and the ball could go out. Mr. Ashburner stated it's as close to zero as can be. Mr. Ashburner stated he can shank a golf ball like nobody's business, and he was not able to get it out, it's very, very difficult. Mr. Pharis stated they've done studies and their net poles have increased in height over the years. Mr. Pharis stated they have done studies to show how tall the nets need to be in order to keep the balls within the netting (see recording for detailed presentation).

02:52:36 Commissioner Brown said comparing the trips and the way they were distributed with The Cedars, is the 3% distribution by Christian Way and Lyndon Lane, do you think that was higher or lower with The Cedars compared to Topgolf. Ms. Zimmerman stated she based that on the existing count that Lyndon and Oxmoor Woods Parkway seems to reflect and the traffic that's coming across the back side of the mall today, that there seems to be some desire to go that way, whether or not it's cut through traffic coming all the way from Hurstbourne Lane through to Shelbyville Road or if their destination really is within the City of Hurstbourne. Commissioner Brown said you showed a reduction in the traffic generated, so it wasn't really a 3% increase. Ms. Zimmerman stated the counts were made after Sears had closed, and so the analysis was done by adding the traffic from Topgolf to the traffic that was present (see recording for detailed presentation).

02:54:01 Commissioner Lewis stated you've shown us several locations and used the Arizona location as a demonstration; does Topgolf only come in one size? Can we assume that the number of bays in the location proposed here is the same as the

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number of bays in those other locations? Mr. Micheli stated they're proposing 102 bay venue here, and Gilbert is also 102 bay venue, 65,000 square feet. Commissioner Lewis asked if that was pretty much the standard everywhere, and Mr. Micheli said yes (see recording for detailed presentation).

02:54:40 Chair Jarboe asked Mr. Micheli if he could think of a location that's similar to size to Louisville that they already have locations open – where is the music played? Mr. Micheli stated the music is played from speakers that they have mounted up in the ceilings. Chair Jarboe asked if this was everywhere throughout the venue. Mr. Micheli stated throughout the venue, all pointed back inward, nothing is projected outward. Mr. Micheli stated that's also a lesson learned that they have adapted over the years, that they need to be pointing the speakers downward at 45 degree angles, and that presents the lowest output of sound (see recording for detailed presentation).

02:55:19 Chair Jarboe asked if they also had DJ's and if that was on the weekends, Friday or Saturday night. Mr. Micheli said that's right, he wouldn't say that couldn't happen on a Thursday night, it's more unlikely. Mr. Micheli stated any music entertainment that comes into the venue is required to tie into their audio system where they have decibel controls over that audio system, so that prevents somebody from coming in and playing too loud (see recording for detailed presentation).

02:55:50 Chair Jarboe stated he doesn't have a lot of experience with recreational facilities that are open til 2:00 a.m. selling alcohol, and he thinks that's a bone of contention with the opposition and he wanted to ask about that – what happens at a typical Topgolf at one o'clock in the morning. Mr. Micheli stated its people enjoying the Topgolf experience. Mr. Micheli stated if there were people enjoying and having a good time and doing it in an unsafe manner, then they wouldn't have the support of the communities that they're in across the country. Mr. Micheli stated they have many mayors and council members that have written support letters of Topgolf, they have a director of risk management and safety, and they provide the utmost level of care as it relates to safety. Chair Jarboe asked if their receipts are mostly still golf at that time, and Mr. Micheli said they are. Mr. Micheli stated people don't come to Topgolf necessarily just to experience the food, but people are there to play Topgolf and enjoy the experience (see recording for detailed presentation).

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Shamus Greene, 9911 Shelbyville Road, Suite 100, Louisville, KY 40299
Alec Van Ryan

Testimony of those neither for nor against:

02:58:01 Shamus Greene

02:58:55 Alec Van Ryan

Cross-Examination of Applicant Representatives:

03:01:36 Steve Porter stated he had some questions of Mr. Pharis on the lighting. Mr. Porter stated you are familiar with the Metro Louisville Land Development Code, and Mr. Pharis said yes. Mr. Porter stated your report says that the parking lot lights are going to comply with the Code because they have so many lumens over the limit and they are going to be fully shielded and at 30 feet, is that correct? Mr. Pharis stated that is correct. Mr. Porter said but yet you don't say the same thing about the field lights, the 58,000 lumen lights, those are not fully shielded even though many of them at least half of them probably the ones at the top will be higher than 30 feet, is that correct? Mr. Pharis said that is correct. Mr. Porter said so those lights would be in violation of the Land Development Code. Mr. Pharis stated he thinks he has pretty well addressed that issue. These fixtures are highly directional; the intent of the Code as written is to reduce the effects of light trespassing glare in nearby residential areas. Mr. Pharis stated he thinks he has fully and completely addressed how that would happen with these fixtures. Mr. Porter stated Mr. Pharis said in his testimony that no light would be going in anybody's windows or anything like that, is that correct. Mr. Pharis stated that is his opinion, yes. Mr. Porter asked Mr. Pharis how many Topgolfs he has been to at night. Mr. Pharis stated he has not been to Topgolf. Mr. Porter said so you do not know firsthand the result of these 58,000 lumen, sixteen times, what they will do. Mr. Pharis stated he does from 32 years' experience. Mr. Porter asked Mr. Pharis what is the correlated color temperature of the Gamechanger and Mr. Pharis said it is 5,700. Mr. Porter said at 5,700 isn't that LED light in the blue range as opposed to in the yellow

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or orange range, and Mr. Pharis said that is correct (see recording for detailed presentation).

03:07:06 Meeting was recessed.

03:07:12 Meeting was reconvened.

The following spoke in opposition of the request:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Summary of testimony of those in opposition:

03:07:14 Steve Porter showed a Powerpoint presentation and referred to Topgolf in other locations. Mr. Porter stated you've heard testimony that there are places where Topgolf locates near residences, but in our peer cities they are not. Mr. Porter stated many of the Topgolfs are in small townships, small suburbs that need something and are trying to develop a whole commercial center. Mr. Porter stated he does not know what the Land Development Code is in other cities, they may not be as concerned about this kind of light, but we are. Mr. Porter said this is about the Comprehensive Plan and the Land Development Code, and if this project does not comply with those, then it should not fly. Mr. Porter referred to additional photographs of Topgolfs in other locations. Mr. Porter showed an aerial photograph of the proposed Topgolf at Oxmoor and pointed out some of the residential properties. Mr. Porter stated all of those are under 500 feet, so they believe that they qualify for the limitations in the Code. Mr. Porter stated he thinks it would not comply if they stayed open past eleven o'clock because the Code says that a recreational facility within this 500 feet must not have any lights after eleven o'clock and they must be fully shielded also. Mr. Porter stated there has been talk about the fabulous tree line that's going to protect the City of Hurstbourne. Mr. Porter showed pictures of the trees in the winter when there are no leaves. Mr. Porter stated this case is not about saving Oxmoor and it is not about stopping Topgolf in Louisville. Mr. Porter stated his clients do not want to stop Topgolf from coming to Louisville; what they want to stop is Topgolf from imposing its lights, its 175 foot poles, its noise, its traffic, its operating hours until 2:00 a.m. and lights on all night near any subdivision, near any houses, near any residences in Jefferson County and Louisville Metro. Mr. Porter stated what this case is about is the Comprehensive Plan 2020 and

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the Land Development Code and they believe there are violations of all of those. Mr. Porter stated he has given the Commission a statement of non-compliance and this is what they would ask the Commission to adopt as the findings of fact and conclusions in this case. Mr. Porter reviewed some of the statements from the statement of non-compliance (see recording for detailed presentation).

The following citizens spoke in opposition of the request (Please see noted time stamps for detailed presentations):

Steve Higdon, 8325 Croydon Circle, Louisville, KY 40222

Anita Davis, 311 Buckingham Terrace, Louisville, KY 40222

Mary Masick, Mayor, City of Hurstbourne, 8 Muirfield Place, Louisville, KY 40222

Dr. Larry Odom-Groh, Mayor, City of Bellemead, 206 Dorchester Rd., Louisville, KY 40223

Coty Young, 9000 Linn Station Road, Louisville, KY 40222

Julianne West, 314 Buckingham Terrace, Louisville, KY 40222

Julie Adams, 213 South Lyndon Lane, Louisville, KY 40222

Suzanne Higdon, 8325 Croydon Circle, Louisville, KY 40222

Testimony of those in opposition:

03:46:19 Steve Higdon

03:54:16 Anita Davis

04:04:16 Mary Masick

04:10:49 Dr. Larry Odom-Groh

04:12:42 Coty Young

04:29:34 Julianne West

04:44:03 Julie Adams

04:50:24 Suzanne Higdon

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05:02:40 Chair Jarboe advised Suzanne Higdon that he would have to interrupt her testimony because we have run out of time. Chair Jarboe stated the case would have to be continued and provided a brief overview of guidelines for the next meeting.

05:03:47 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **CONTINUE** Case Number 18ZONE1014 to a Special Night Hearing on October 15, 2018 at 6:30 p.m. at Shelbyhurst Campus, Founders Union Building, 450 N. Whittington Parkway, 2nd Floor, Louisville, Kentucky.

The vote was as follows:

Yes: Commissioners Tomes, Brown, Howard, Peterson, Daniels, Vice Chair Lewis, and Chair Jarboe

Absent: Commissioners Carlson, Robinson, and Smith


NOTE: The following citizens had signed in to speak in opposition, but were unable to be heard due to time constraints:

Charles Ballard	Amy Craft	Jenny Nichols
Elizabeth Ferreri	Ben Jackson	Bob Gunnell
Bryan Barber	Gerald & Helen Nicolas	Bryce Schuster
Linda Surbeck-Raddatz	Linda Higgins	Col. Richard Evans
Bob Crawford	Joe Kresovsky	Robert Rodosky
Rita Ellis	Lisa Jarrett	Marc Norton
Meg Cloern	Greg Hahn	Sherrilyn Rhode
Paul Ayers	Vickie Barea	Henry Frick
Bob Dermody	Don Kincaid	Pam Levin
Michael Perkins	David Franck	Cynthia Smith
Dr. Jack Early	Kim Willis	Rick Moir
John Cole	Janet & Clarence Yuen	Dwayne Craft
Rick Tobe	Corina Papabathini	Karen Shore


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ADJOURNMENT

The meeting adjourned at approximately 12:00 a.m.



Chairman



Division Director