

Sidewalk Waiver- 22-CAT2-0021

The Applicant is seeking to add approximately 20 parking spaces to a country club that has been in existence since 1910 on a 182-acre site that is zoned R-1. The Applicant has requested a waiver of LDC Section 6.2.6 to not provide a sidewalk along Indian Hills Trail and also a waiver of the fee in lieu requirement. Indian Hills Trail is primarily in the City of Indian Hills with control over the road. The City of Indian Hills does not want any sidewalks on the road and creating sidewalks at this location would result in sidewalks that never connect to any sidewalks now or in the future. This project is a miniscule portion of a 182-acre tract that has been developed for over 100 years. Additionally, due to the geographic limits, it is impossible to place sidewalks along Indian Hills Trail. The slopes are way too steep immediately next to the road to permit sidewalks to be built. Lastly, the fee in lieu is well more than 5% of the total project of the development and should be waived pursuant to PDS's customary policy.

As support for this waiver, the Applicant submits the following responses to the specific portions of the LDC:

1. LDC 6.2.6 (B)(1) provides that "Sidewalks shall not be required on lots that are five acres or greater in area and developed for single family residential uses unless they connect with an existing sidewalk on one side of the property."

While this section is not directly on point, it further highlights the need for a sidewalk waiver. This property is a 182-acre site that is zoned R-1 for single-family residential use. In the area likely to be required to install the sidewalks (from the Louisville Country Club entrance from Indian Hills Trail to Rio Vista Drive) there are no tracts that front Indian Hills Road. None of these tracts have sidewalks, nor would sidewalks in this area connect with any existing sidewalks on either side of the properties. LDC 6.2.6(B)(1)'s intent to not require sidewalks connections to nowhere on large-lot, single-family residential uses should apply here on an exceptionally large-lot, R-1 zoned property that connects to multi-acre residential lots that have no sidewalks.

With respect to the Methods of Compliance set forth in LDC 6.2.6 (C) the Applicant states as follows:

2. L.D.C. 6.2.6(C) provides: "Sidewalk reduction: The Director of Works and the Director of Planning or designees may allow a reduced sidewalk to be constructed where less than 50% of the street frontage is being developed."

This section is directly on point and gives the Director of Works and Director of Planning full authority to grant a waiver here. NONE of the street frontage is being developed. The parking lot improvement is on less than one-and-a-half acres of a 182-acre tract and is not even accessible from Indian Hills Trail which is approximately a half mile away (see Exhibit A). There are no sidewalks or pedestrian access to the property from any right of way. There are no existing sidewalks to which this sidewalk would connect. There are no sidewalks anywhere along Indian Hills Trail or any other public street in the vicinity of the property providing access to the LCC.

3. L.D.C. 6.2.6(C)(3) provides: "Off-site construction – The Director of Works and the Director of Planning or designees may approve the construction of a sidewalk at an alternative location in the Metro Council district, with consultation of the Metro Council district representative, for a comparable sidewalk length that was required at the development site[.]"

While this section gives authority to require off-site construction, there are no sidewalks in Indian Hills or in the vicinity of LCC, so applying it here would only result in the same problem – creating sidewalks that go to nowhere in a location where sidewalks are not wanted. Moreover, the City of Indian Hills has indicated that it does not want any sidewalks within its jurisdiction. Depending upon the actual linear feet of sidewalks otherwise required, the cost of such construction, which is estimated at \$46,277, would exceed 8% or more of its total project cost of \$559,190.00. This requirement is also an illegal, offsite “exaction” that has no connection to the impact of the development and is constitutionally invalid pursuant to *Lampton v. Pinaire*, 610 S.W.2d 915 (Ky. Ct. App. 1980). The parking lot is on the other side of the property approximately a half mile from Indian Hills Trail (see Exhibit A) and there will be no impact on Indian Hills Trail as a result of its construction. Indian Hills Trail is populated with large single-family lots with no existing sidewalks and will never have sidewalks, so their construction is unwarranted as both a practical matter and under Kentucky law.

4. L.D.C. 6.2.6(C)(4) provides: “Fee in Lieu of Construction – if one of the above methods of compliance cannot be met for the development site, the Director of Works and the Director of Planning or designees may allow the payment in lieu of sidewalk construction.”

The same rationale set forth in the Off-site construction provision (#3, *supra*) applies to the fee-in-lieu. If the requirement is not justified in the first place, a fee-in-lieu should not be an alternative. The City of Indian Hills does not want any sidewalks, and none are within the vicinity. This is no less than an unwarranted and unconstitutional exaction than off-site construction. The parking lot has no impact on Indian Hills Trail or any other area of this Metro district. Additionally, under PDS’s customary policy, if the fee in lieu is more than 5% it is commonly waived. Here, the cost of such construction is estimated at greater than 8% of the total project cost of \$559,190. Under PDS’s policy the fee in lieu should be waived.

Distance from additional parking spaces to Indian Hills Trail - 2606.49 ft

