

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
June 4, 2020**

A meeting of the Louisville Metro Planning Commission was held on Thursday, June 4, 2020 at 1:00 p.m. at 1:00 p.m. via Cisco Webex Video Teleconferencing. On the recommendation of the Louisville Metro Department of Health and Wellness regarding congregate events and social distancing, the special Planning Commission meeting set for today was held online.

Commissioners present:

Vince Jarboe, Chair
Marilyn Lewis, Vice Chair
Robert Peterson
Lula Howard.
Rich Carlson *arrived approx. 1:15 p.m.*
Ruth Daniels
Jeff Brown
Jim Mims
Pat Seitz

Commissioners absent:

None

Staff members present:

Emily Liu, Director, Planning & Design Director
Joe Reverman, Planning & Design Assistant Director
Joe Haberman, Planning & Design Manager
Brian Davis, Planning & Design Manager
Julia Williams, Planning Supervisor
Travis Fiechter, Legal Counsel
Laura Ferguson, Legal Counsel
Beth Stuber, Transportation Planning
Tony Kelly, MSD
Rachel Dooley, Management Assistant

The following matters were considered:

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APPROVAL OF MINUTES

May 21, 2020 PLANNING COMMISSION REGULAR MEETING MINUTES

00:04:20 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of the Planning Commission meeting conducted on May 21, 2020.

The vote was as follows:

YES: Commissioners Brown, Seitz, Mims, Daniels, Peterson, Lewis, Jarboe

NO: None

NOT PRESENT: Commissioners Carlson

ABSTAINING: Commissioners Howard

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CONSENT AGENDA

CASE NO. Planning Commission Bylaws and Policies

Project Name: Planning Commission Bylaws and Policies – Virtual Meetings

Case Manager: Brian Davis, AICP, Planning & Design Manager
Presented by: Joe Reverman, Planning & Design Assistant Director

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.)

Agency Testimony:

00:05:41 Joe Reverman read the Bylaws and Policies Amendment Article VI, Section 6: Virtual Meetings. He stated the Policy and Procedures Committee requests Planning Commission to adopt the official policies regarding virtual meetings in the future (see recording for detailed presentation.)

00:08:15 Commissioner Jarboe stated Policy and Procedures Committee agreed with the virtual meeting language.

00:08:38 Commissioner Seitz asked if people can attend the Planning Commission meeting virtually during conditions when public meetings in person are allowed. Joe Reverman replied this Bylaw and Policies Amendment section refers to allowing virtual meetings during special circumstances. When meetings return to normalcy in terms of public meetings they will be held in person.

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.

00:11:50 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis, was adopted

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Bylaws and Polices Amendment

The vote was as follows:

YES: Commissioners Brown, Howard, Seitz, Mims, Daniels, Peterson, Lewis, and Jarboe

NO: No one.

PRESENT AND NOT VOTING: Commissioners Carlson

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BUSINESS SESSION

CASE NO. BE_Final Order_3741 S. Hurstbourne Parkway

Project Name: BE_Final Order_3741 S. Hurstbourne Parkway
Case Manager: Laura Ferguson, Jefferson County Attorney's Office

Agency Testimony:

00:13:17 Laura Ferguson detailed the citation issued on November 7, 2019 for the violations of Binding Element #1 and #3. Ms. Ferguson stated this citation was not appealed and the violations have not been corrected as of today's meeting. She discussed the final order process for this site (see recording for detailed presentation.)

00:15:43 Commissioner Brown asked if the owners could bring the site into compliance by filing an application to amend those binding elements. Laura Ferguson replied the site can apply for a revised plan.

00:16:05 Commissioner Mims asked if the state requires a permit for car sales and if so, how would they obtain it. Joe Reverman replied the state does require a license and a sign off from the zoning office. Planning and Design has not been asked to verify the zoning for a license on this site.

00:017:07 Commissioner Howard noted if the property owner wishes to amend these binding elements, they would have to notify neighbors. Joe Reverman stated they would have to notify neighbors and hold a public meeting.

The following spoke in favor of this request:

No one spoke.

The following spoke in opposition to this request:

No one spoke.

Deliberation

00:17:50 Planning Commission deliberation (see recording for detailed presentation.)

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.

00:18: 27 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution based on testimony heard today was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the binding element Final Order as presented during the Planning Commission Meeting.

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BUSINESS SESSION

CASE NO. BE_Final Order_3741 S. Hurstbourne Parkway

The vote was as follows:

YES: Commissioners Brown, Howard, Mims, Daniels, Peterson, Lewis, and Jarboe

NO: No one.

ABSTAINING: Commissioners Seitz and Carlson.

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PUBLIC HEARING

CASE NO. 19-MSUB-0018

Request: Major Subdivision Plan with a Waiver
Project Name: Watterson Trail Subdivision
Location: 6106 South Watterson Trail
Owner/Applicant: Clarence & Lucille Schmitt
Representative: Curtis Mucci, Mindel Scott
Jurisdiction: Louisville Metro
Council District: 23, 24 – James Peden, Madonna Flood
Case Manager: Lacey Gabbard, AICP, Planner I

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:20:08 Lacey Gabbard presented the case via Power Point slide show (see staff report and recording for detailed presentation.) Ms. Gabbard noted the applicant is proposing to create 128 single family residential lots on 34 acres, using the LDC's Development Potential Transfer guidelines (LDC 4.7.7) due the presence of steep slopes greater than 20%.

00:27:26 Commissioner Mims asked if this complies with the Development Potential Transfer requirements. Lacey Gabbard replied the math was done appropriately and the site is following the regulations appropriately.

00:28:45 Commissioner Brown asked if there is colored coded plan that shows the slopes greater than 20%. Lacey Gabbard replied they are using the gray scale plan.

00:29:34 Commissioner Mims asked if the roadway widening discussions have been resolved. Commissioner Brown replied it the proposed roads are maintained by Metro and the level of detail they provided is adequate for approval.

00:30:35 Commissioner Mims asked about the alignment of South Watterson Trail. Lacey Gabbard replied there were discussions between the applicant and Beth Stuber about contacting KIPDA for Watterson Trail. Joe Reverman noted there is a plan to widen Watterson Trail but there is no official construction plan.

00:32:18 In response to a question from Commission Lewis, Lacey Gabbard replied the roads connecting to Spring Villa are public.

The following spoke in support of this request:

James Peden, Metro Council Member, District 23, 601 W. Jefferson Street, Louisville, KY 40202

Curtis Mucci, 5151 Jefferson Boulevard, Louisville, Kentucky, 40219

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Summary of testimony of those in support:

00:33:00 Metro Council Member James Peden and Commissioner Brown discussed the widening for the 10-foot middle turning lane on Watterson Trail (see recording for detailed presentation.) Mr. Peden noted roads connecting to Spring Villa are public roads and questioned the waiver to allow more than 15% of a required rear yard of a buildable lot to be occupied by a drainage easement.

00:39:47 Curtis Mucci, representing the applicant, presented a Power Point slide show (see recording for detailed presentation.) Mr. Mucci noted the open space lots will be permanently preserved as non-buildable open space lots. Curtis detailed the revised plan from the previously proposed plan regarding the depth of the lots and open space, road connections, and the general plan for South Watterson Trail.

00:47:01 Commissioner Carlson asked if there is a way to assure there will be enough space between the easement and constructed home for the resident. Curtis Mucci replied there will be 25 feet of clear space on the lot.

00:49:37 James Peden asked what the average footprint for the proposed homes will be. Curtis Mucci replied the average pad size for housing is 40 feet wide by 50 feet deep including the garage results in a 40-foot back yard average.

00:51:17 Commissioner Brown and Curtis Mucci discussed the land disturbance activity plan (see recording for detailed presentation.)

00:53:17 Commissioner Carlson asked for options to help preserve the open space and to define open space areas from residential areas. Curtis Mucci replied there will be property corners set by the surveyors and it would be up to the property owners to provide fencing if they wish. Commissioner Carlson and Curtis Mucci discussed where the property lines end for open space and the residential homes begin (see recording for detailed presentation.)

00:57:35 Commissioner Seitz commented if the homeowner has adjacent open space, they normally do not construct a fence and homeowners have the opportunity to have their property line staked.

00:58:14 James Peden asked if the new tree ordinance is subject to this site. Julia Williams replied this site does not have to comply as the application for this site was submitted prior to the approval of the new tree ordinance. James Peden and Julia Williams discussed the preservation of trees for this site to comply with the new tree canopy ordinance (see recording for detailed presentation.)

The following spoke in opposition to this request:

No one spoke.

Commissioner Deliberation:

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PUBLIC HEARING

CASE NO. 19-MSUB-0018

01:00:49 Commissioners' deliberation (see recording for detailed presentation.)

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.

Waiver

01:10:38 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, Applicant's Justification, and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the rear yards overlap with a drainage easement that will only affect the property owners of the new lots. The parcels that are adjacent to the new lots are developed with single-family homes or are identified by PVA as agricultural uses; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address drainage easements, and addresses yard requirements only as buffers between incompatible uses. The adjacent uses are not incompatible with the proposed use; 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 as the overlap is made necessary by a drainage easement to the rear of the new lots, which is the appropriate place for a drainage easement; and

WHEREAS, the Commission further finds that the 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 by requiring the applicant to move the easement or extend the rear yards, either of which would reduce the usability of the property; now therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver of Land Development Code section 7.3.30.E to allow more than 15% of a required rear yard of a buildable lot to be occupied by a drainage easement (20-WAIVER-0009) **AND** that the staff will go by the applicant proposed revised plans in determining the extent of the waiver.

The vote was as follows:

YES: Commissioners Carlson, Howard, Seitz, Mims, Daniels, Peterson, Lewis, and Jarboe.
NO: Commissioner Brown.

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CASE NO. 19-MSUB-0018

Major Subdivision Plan

01:13:21 On a motion by Commissioner Howard, seconded by Commissioner Brown, the following resolution, based on the Standard of Review and Staff Analysis, Applicant's Justification, and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the applicant must demonstrate to the Commission that the design and configuration of the utility easement and potential building construction is the minimum disturbance of slopes greater than 20; and

WHEREAS, the Commission further finds that the applicant has placed a note on the plan indicating that compatible utilities shall be placed in a common trench unless otherwise required by the applicable agencies; and

WHEREAS, the Commission further finds that a geotechnical report was required and provided by the applicant. The applicant must demonstrate compliance with all other provisions to the Commission; and

WHEREAS, the Commission further finds that the activity is in keeping with the Comprehensive Plan as Livability Goal E2 encourages the minimization of the impact of changing land use on natural features and ecosystems. This guideline is not violated because a portion of the steep slope areas are located in open space lots that will not be disturbed by the development; now therefore be it

RES, the Louisville Metro Planning Commission does hereby **APPROVE** the Major Subdivision Plan with review of land disturbing activity on slopes greater than 20% **SUBJECT** to the following Conditions of Approval:

1. The development shall be in accordance with the approved Major Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by planning commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).

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- b. Preliminary drainage considerations (retention/detention, ditches large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
3. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
 4. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
 5. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
 6. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights of way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
 7. Open space/conservation lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
 8. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
 9. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.

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10. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
11. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
12. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
13. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
14. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
15. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

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The vote was as follows:

YES: Commissioners Carlson, Howard, Seitz, Mims, Daniels, Peterson, Lewis, and Jarboe.

NO: Commissioner Brown.

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BUSINESS SESSION

CASE NO. 19-DDP-0077

Request: District Development Plan with Amendment to Binding Elements
Project Name: FKC Dialysis Center
Location: 4730 Champions Trace Lane
Owner/Applicant: Mahesh Kumar Jindal, Two Beans Properties, LLC
Representative: Ann Richard, Land Development & Design
Jurisdiction: Louisville Metro
Council District: 10 – Stuart Benson
Case Manager: Lacey Gabbard, AICP, Planner I

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:15:25 Lacey Gabbard presented the case via Power Point slide show (see staff report and recording for detailed presentation.) Ms. Gabbard noted this case was continued to today's meeting to allow the applicant to resolve access issues with a neighboring property owner, these issues have been resolved.

The following spoke in support of this request:

Ann Richard, 503 Washburn Avenue, Louisville, Kentucky, 40222

Kyle Galloway

Summary of testimony of those in support:

01:19:30 Ann Richard, representing the applicant, presented a Power Point slide show (see recording for detailed presentation.) Ms. Richard detailed the DDP with amendment to binding elements, aerial views of the site, and elevations.

01:21:47 Commissioner Mims inquired about the driveway connection between the adjacent property owner. Ann Richard detailed the existing access easement from a previous minor plat and there is no cross access resulting in the requested curb cut access on Champions Trace Lane.

01:25:20 Commissioner Carlson and Ann Richard discussed a separate ambulance entrance/exit for the building (see recording for detailed presentation.)

The following spoke in opposition to this request:

No one spoke.

Commissioner Deliberation

01:26:43 Commissioners' deliberation (see recording for detailed presentation.)

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BUSINESS SESSION

CASE NO. 19-DDP-0077

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.

01:29:06 On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the applicant is requesting a variance (19-VARIANCE-0076), to be heard by the Board of Zoning Adjustment, to allow encroachment of the proposed pavement into the middle and outer portions of the 100 foot stream buffer. The Planning Commission does not act on this request. Other than the stream, there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, the Commission further finds that the provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, the Commission further finds that there are no open space requirements pertinent to the current proposal. Future multi-family development proposed on the subject site will be required to meet Land Development Code requirements; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; now therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Development Plan **SUBJECT** to the following Binding Elements:

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1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The appropriate variance shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
 - c. 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 plans shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 4, 2020 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
5. If a certificate of occupancy (building permit) is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the 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.

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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 the development of the site, shall be responsible for compliance with these binding elements.

The vote was as follows:

YES: Commissioners Carlson, Brown, Howard, Seitz, Mims, Daniels, Peterson, Lewis, and Jarboe.

NO: None

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BUSINESS SESSION

CASE NO. 20-DDP-0020

Request: Revised Detailed District Development Plan with waiver for access and request for substandard lot creation and alternative site design
Project Name: Mary Street Townhomes
Location: 1073 Mary Street
Owner(s): SIMIC
Applicant: Alma Simic
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith
Case Manager: Joel P. Dock, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:31:30 Joel Dock presented the case via Power Point slide show (see staff report and recording for detailed presentation.) Mr. Dock detailed the case summary, technical review, aerial photos, site plan, applicant site images, staff findings, and required actions.

01:37:07 Commissioner Mims and Joel Dock discussed the walls constructed per single family attached unit for fire resistance (see recording for detailed presentation.)

01:37:42 Commissioner Brown asked if the alley is required to be named. Joel Dock replied E-911 has approved for the applicant's requested name for the alley.

The following spoke in support of this request:

Alma Simic, 9915 Constantine Circle, Prospect, Kentucky, 40059

Summary of testimony of those in support:

01:38:47 Alma Simic, applicant, stated the difference between stating the units as single family zero lot line homes rather than town home is an increased cost to build and selling prices.

The following spoke in opposition to this request:

No one spoke.

Commissioner Deliberation

01:42:08 Commissioners' deliberation (see recording for detailed presentation.)

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.

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CASE NO. 20-DDP-0020

Waiver

01:43:47 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the orientation of the structure is unchanged from the previously approved development in case 16ZONE1084 and access does not interfere with the use of adjacent properties; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as access is not obtained through areas of lower intensity, no individual access from residential units to collector level roadways or higher is provided, and the site will maintain pedestrian access and orientation towards the primary street (Mary Street); 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 as access to each unit was constructed with the development; and

WHEREAS, the Commission further finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land as the development is in a well-connected, urban neighborhood with transit service and a variety of housing types and choices, including residences that are oriented towards pedestrian courts and alleys; now therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver of Land Development Code (LDC), section 7.8.60.B.4 to allow lots to front on an alley instead of a public or private street.

The vote was as follows:

YES: Commissioners Carlson, Brown, Howard, Seitz, Mims, Daniels, Peterson, Lewis, and Jarboe.

NO: No one

Revised Detailed District Development Plan

01:45:00 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposed revision does not alter natural or landscape features on the site as private rear yards (formerly side yard) will be maintained; and

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WHEREAS, the Commission further finds that Provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community has been provided as the subject site is in a well-connected urban neighborhood with transit service and pedestrian orientation and connection for the site will be provided; and

WHEREAS, the Commission further finds that the Provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development has been provided; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development; and

WHEREAS, the Commission further finds that the site design is relatively unchanged from the approved development plan in case 16ZONE1084. The proposed revision to create individual lots will not alter the compatibility of the site to the area and is consistent with future development providing for housing choices; and

WHEREAS, the Commission further finds that the development plan conforms to the Comprehensive Plan and Land Development Code and there are no outstanding issues. The proposed revisions to subdivide the property do not alter the character of the area or adversely impact the safe movement of vehicle or pedestrians. Additional house choice is made available with the proposal; now therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan with review of substandard lot creation and alternative site design **SUBJECT** to the 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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.

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4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. 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.
 - c. A minor subdivision plat to create the lots lines as shown on the development plan must be reviewed, approved, and recorded. All declarations, easement agreements, or other legal instruments required of the plat must be recorded simultaneously.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the 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.
6. 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.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 20, 2017 Planning Commission meeting.
8. The Owner / Developer will maintain the transit stop on an as needed basis.
9. A minor subdivision plat, including "Declaration of Cross-Easements" as approved by MSD on May 5, 2020 and contained in the case file of record (both minor plat and revised development plan) in the Planning Commission offices shall be recorded within 30-days of final action of the revised detailed district development plan. No changes shall be made to the declaration as approved by Planning Commission legal counsel on May 12, 2020, unless approved in writing by MSD and the Planning Commission or designee.

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10. In accordance with the “Declaration of Cross-Easements” as identified in binding element #9, lot owners, not MSD, are responsible for all maintenance, service, repairs, and replacement of sanitary sewer lines located on the five lots and are responsible for all stormwater/drainage facilities, features, and conditions on any or all five lots. Lot owners individually and collectively, shall indemnify, defend, and hold harmless MSD with respect to the foregoing responsibilities and are jointly and severally liable to MSD with respect to such obligations. These obligations may be further detailed, but not reduced, by a separate written agreement in the land records.
11. Pedestrian access and orientation directly to Mary Street as required by Land Development Code, section 5.4.1.B.2 and as shown and approved on the renderings and detailed district development plan in case 16ZONE1084, and as provided for on the revised detailed district development plan approved by the Planning Commission on June 4, 2020 shall be restored prior to the issuance of Certificate of Occupancy.
12. The proposed 5’ utility and access/egress easement as shown along the east property line shall be free from obstruction, except fences having gates which shall not be locked. An improved means of access from this easement to Mary Street shall be provided prior to the issuance of Certificate of Occupancy. An improved means of access may include either a direct individual connection from this easement to Mary Street or connection to the pedestrian access as noted in Binding element #11.

The vote was as follows:

YES: Commissioners Carlson, Brown, Howard, Seitz, Mims, Daniels, Peterson, Lewis, and Jarboe.

NO: No one

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CASE NO. 20-RSUB-0001

Request: Revised major Preliminary Subdivision Plan with review of wetland buffer area crossing and cul-de-sac length
Project Name: The Breakers at Prospect
Location: 7800 Sutherland Farm Road
Owner/Applicant: The Breakers at Prospect, LLC
Representative: Dinsmore & Shohl, LLP; Sabak, Wilson, & Lingo, Inc.
Jurisdiction: City of Prospect
Council District: 16 – Scott Reed
Case Manager: Joel P. Dock, AICP, Planner II

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:46:30 Mr. Dock asked Commissioners to consider continuing this case due to several requests. Commissioner Jarboe replied the commissioners have been notified of this request to continue until an in person public hearing can be held and deferred to the applicant to explain this request.

The following spoke in support of this request:

Cliff Ashburner, 101 South Fifth Street, suite 2500, Louisville, Kentucky, 40202

Summary of testimony of those in support:

01:47:32 Cliff Ashburner, representing the applicant, stated he is not requesting to continue this case to date uncertain. The revised major preliminary subdivision plan allows for the preservation and removal of disturbances of 3 wetland areas on the property and the reduction of the number of lots.

The following spoke in opposition to this request:

Randy Strobo, 239 South Fifth Street, Louisville, Kentucky, 40202
John Clark, 6823 Windom, Prospect, Kentucky, 40059

Summary of testimony of those in opposition:

01:49:08 Randy Strobo, representing the Sutherland Community Association, expressed his clients have had difficulties to get access to information and attend this meeting. Mr. Strobo stated John Clark would like to speak on behalf of the HOA.

01:52:55 John Clark stated he sent in a comment to the case manager to request this case be continued to such a time people can attend in person.

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Commissioner Deliberation

01:53:58 Commissioners' deliberation to decide to continue this case or hear the opposition today. They concluded to hear the case and opposition today (see recording for detailed presentation.)

Agency Testimony:

01:58:43 Joel Dock presented the case via Power Point slide show (see staff report and recording for detailed presentation.) Mr. Dock detailed the request, case summary, technical review, area of revision, aerial photos, site plan, applicant site images, staff findings, and required actions. He noted the access easement exhibit for lots 3-8.

02:05:56 Commissioner Mims asked if Louisville Fire District comment on the cul-de-sac length. Joel Dock stated they did not make specific comments on the cul-de-sac length. He noted the fire departments receive plans as part of the agency distribution process. He reached out to the fire departments specifically for the access easements.

02:07:00 Commissioner Carlson asked if the fire departments mention requirement weight limits. Joel Dock read an email discussion with Steven Hanson regarding the cul-de-sac and the weight limit; the bridge should accommodate a 30 ton truck (see recording for detailed presentation.)

02:09:08 Commissioner Lewis and Joel Dock discussed the length for the cul-de-sac and road (see recording for detailed presentation.)

02:10:29 Commissioner Howard asked about the shared private access and noted that the home owners should be notified of the shared drive Joel Dock replied it is recorded in the subdivision plat and that access easement needs to be recorded.

02:11:23 Commissioner Jarboe and Joel Dock discussed the number of lots proposed for this site (see recording for detailed presentation.)

The following spoke in support of this request:

Cliff Ashburner, 101 South Fifth Street, suite 2500, Louisville, Kentucky, 40202
Pat Dominik, 608 South Third Street, Louisville, Kentucky, 40202

Summary of testimony of those in support:

02:12:34 Cliff Ashburner, representing the applicant, presented a Power Point slide show (see recording for detailed presentation.) Cliff Ashburner stated lots 9 and 45 were removed from the plan and there will only be 70 lots on the subdivision. He noted the modified portion of the plan to protect the wetlands and leave them undisturbed (see recording for detailed presentation.) Cliff stated Pat Dominik and Kelli Jones is present for questions.

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02:25:43 Commissioner Mims asked if the cul-de-sac length waiver was considered previously. Cliff Ashburner replied the cul-de-sac is not a waiver it is for review as it was part of the preliminary plan. Joel Dock detailed the provision process for the cul-de-sac that is authorized by the Planning Commission (see recording for detailed presentation.)

02:28:26 Commissioner Mims asked if there is mitigation for the Sutherland drainage impact. Cliff Ashburner stated the representatives are present to speak regarding the drainage impacts. Commissioner Mims and Cliff Ashburner discussed road crossings within the suburban from district (see recording for detailed presentation.)

02:31:17 Bruce Haskell expressed concerns to Cliff Ashburner about drainage of the ponds through a 2" pipe and if the main pond will be lined due to water seepage during the summer months. Cliff Ashburner replied the lake is designed to hold water and hold water back. Mr. Ashburner stated Kelli Jones will be able to further elaborate an answer for this question.

The following spoke in opposition to this request:

Bruce Haskell, 6903 Windham Parkway, Prospect, Kentucky, 40059

Randy Strobo, 239 South Fifth Street, Louisville, Kentucky, 40202

Steve Stowers, 7001 Windham Parkway, Prospect, Kentucky, 40059

John Clark, 6823 Windham Parkway, Prospect, Kentucky, 40059

Matthew David, 6925 Windham Parkway, Prospect, Kentucky, 40059

Meme Runyon, 1201 Story Avenue, Suite 215, Louisville, Kentucky 40206

Heather Wathen, 6309 Walnut Ridge Trail, Prospect, Kentucky, 40059

Summary of testimony of those in support:

02:36:27 Randy Strobo, representing the Sutherland Community Association, presented a Power Point slide show (see recording for detailed presentation.) Mr. Strobo noted there are concerns dealing with water shed and storm water drains from the site. He detailed the pipeline development on the property and the concerns voiced regarding this pipeline.

02:48:48 Steve Stowers stated the meeting from February 2019 minutes noted Sutherland is inadequate to handle new storm water runoff. Mr. Stowers mentioned existing poor water drainage causes flooding on multiple roads and areas. He expressed concerns with the Sutherland deed restrictions, water and sewer connections, protections the neighborhoods have against the increased storm water drainage from the site, and the increased traffic this development will have.

02:55:49 John Clark detailed the drainage system for the Sutherland area (see recording for detailed presentation.) Mr. Clark asked for transparency for the construction of the pond and bridge so they will function as intended.

02:58:39 Matthew David stated concerns with the quality of the connected waterways and presented his submitted comment to Commissioners. Mr. David presented PDF documents recounting the LDC for construction near water sources, the well head protection area map, and impact to the water ways due to construction (see recording for detailed presentation.)

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03:23:17 Meme Sweets Runyon, President and CEO of River Fields Inc, stated there is a 45-acre nature preserve north of this development. Ms. Runyon spoke of the process for the trust for historic preservation, management of the wetlands, construction of the bridges over the wetlands, and the protection of the adjacent neighborhoods (see recording for detailed presentation.)

03:28:39 Bruce Haskell stated concerns with Phase 1 and proper maintenance/construction of the ponds.

03:29:18 Joel Dock stated Planning and Design wetland reviews are done through MSD.

03:30:34 Tony Kelly, MSD, stated there is no design requirement for the Phase 1 pond liner and must always contain 5 feet of water as per MSD. Mr. Kelly noted the easement was granted by MSD which allows the developer to put in a pipe.

00:35:25 Pat Dominik stated there was study on the storm water and current construction in Phase 1 have all the appropriate permits and approvals. Mr. Dominik noted they have addressed concerns voiced from the previous meeting from the Sutherland Neighborhood. He noted the boring studies show the first 4-6 feet of cover material on the site is clay; also evident by the existing pond on the site. Pat Dominik recounted the impact study of run from the 12"-18" pipe into the adjacent neighborhoods and to the constructed pond (see recording for detailed presentation.)

03:43:17 Commissioner Jarboe asked if the drainage changes need to be approved. Cliff Ashburner noted previous discussions for the locations for the drainage pipes and changes would be brought to Construction for approval.

03:45:19 Heather Wathen stated concerns with the wetland impact, the involvement of Corps of Engineers, potential loss to the historic qualities of this site, and the drainage plan (see recording for detailed presentation.)

Rebuttal

03:50L50 Cliff Ashburner addressed the practical impact of the site, the easement for the pipe line, the conducted research for well head protection area for wetlands and the adjacent 45-acre wetland preserve (see recording for detailed presentation.)

03:55:52 Commissioner Carlson asked who will own and maintain the bridge that will be constructed over the wetlands. Cliff Ashburner replied the City of Prospect will own the right of way and be responsible for the maintenance. Commissioner Carlson and Cliff Ashburner discussed the process for the dedication of the right of ways for the City of Prospect (see recording for detailed presentation.)

03:57:19 Commissioner Mims asked if the Louisville Water Company were contacted for this development plan and what their response was. Joel Dock replied the Louisville Water company conducted their review as though there was no well head protection area and they have no objections (see recording for detailed presentation.) Commissioner Mims and Cliff Ashburner

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discussed the outreach to the neighboring HOA's and the easements (see recording for detailed presentation.)

04:04:11 Commissioner Howard asked about the historic home on the site. Cliff Ashburner stated the house is to remain and other historical features will remain. Joel Dock noted all those features will be subject to a 30 day hold for wrecking ordinance.

Commissioner Deliberation

04:05:54 Commissioners deliberation (see recording for detailed presentation.)

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.

04:09:54 On a motion by Commissioner Brown, seconded by Commissioner Seitz, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Major Preliminary Subdivision Plan with wetland buffer area crossing and cul-de-sac length as shown on the preliminary plan and subject to existing conditions of approval:

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
3. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
4. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address

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number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

5. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights of way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
6. Open space shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
7. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
8. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
9. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
10. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
11. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.

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- b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
12. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
13. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
14. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
15. Limits of disturbance/building envelopes as shown on the preliminary plan shall be shown and recorded with the record subdivision plat.
16. There shall be no signage (other than required street signage) for the Breakers at Prospect at the Innisbrook/Sutherland Farm Road entrance at US Highway 42 or along any portion of Sutherland Farm Road except within the limits of the approved subdivision. Signage on Sutherland farm Road shall be restricted to 2 stone pillars (1 on each side of the road) and shall not exceed 10 feet in height.

The vote was as follows:

YES: Commissioners Carlson, Brown, Howard, Seitz, Mims, Daniels, Peterson, Lewis, and Jarboe.

NO: No one

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ADJOURNMENT

The meeting adjourned at approximately 5:16 p.m.

Chair

Planning Director