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PROPOSED FINDINGS OF FACT REGARDING COMPLIANCE WITH ALL APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

Owner: Barbara Van Cleave Halvorson; Richard M. Van Cleave, Trustee of the James Wallace Van Cleave Trust under Will f/b/o Richard M. Van Cleave; National City Bank and Richard M. Van Cleave, Co-Trustees of the Barbara Morse Van Cleave Trust under Will f/b/o James Wallace Van Cleave, III

Applicant: Faulkner Real Estate and Hollenbach-Oakley

Project Name: Westport Road Apartments

Location: 8211 Old Westport Road

Proposed Use: Apartments

Engineers, Land Planners and Landscape Architects: Gresham Smith & Partners

Attorneys: Bardenwerper, Talbott & Roberts, PLLC

Request: Rezoning from R-4 to R-6

The Louisville Metro Planning Commission, having heard testimony before its Land Development & Transportation Committee, in the Public Hearing held on June 20, 2013 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

INTRODUCTORY STATEMENT

WHEREAS, this proposal is for a 216-unit upscale apartment community on property located on the north side of Westport Road, east of Old Westport Road, containing approximately 16.63 +/- acres; it is wedged between the Islamic School of Louisville on the west and the former Mother of Good Counsel Catholic Parish, now Portland Christian School, to the east; the site is appropriate for an apartment community among other reasons because Westport Road was recently widened to five lanes with the new interchange near Lyndon Lane and Herr Lane; in anticipation of the completion of that new interchange and widening of Westport Road from that interchange all the way east to the Snyder Freeway, Louisville Metro Government commissioned a study that resulted in the Westport Road Corridor Small Area Plan; it included representatives of area neighborhoods and small cities (such as the Cities of Lyndon, Graymoor-Devondale, Meadow Vale, Langdon Place and Plantation) plus representatives of Westport Middle School, the North East Louisville Business Association (NELBA), the Eastern Area Community Ministries (EACM) and Metro Councilmen Downard and Stuckel; DPDS planning staff and representatives of agencies of such as Economic Development also participated; the referenced Westport Road Plan studied neighborhood history, demographics,

neighborhood characteristics, and land use, mobility, economic development and urban design priorities and ended up making recommendations on all of these fronts; specifically as respects the subject property, it recommended this property for multi-family use; so the subject property is located along a brand new major arterial, in close proximity to an interstate highway interchange to the west, not too far from an interstate highway interchange to the east, therefore with great access to all parts of metro Louisville, and yet the property also adjoins about 100 + acres dedicated to conservation easement and includes some historic elements; given the Westport Road Plan, the appropriateness of apartment communities along an arterial highway in close proximity to schools and places of worship, as noted, and communities like Lyndon and St. Matthews with loads of shopping, two major local developers who have survived the recent real estate depression (i.e., Faulkner Real Estate and Hollenbach-Oakley) have joined forces to develop this site; observing that it contains certain historic resources, they have also devised a plan to protect the resources that are important and merit saving; and that PowerPoint images presented at the public hearing show an apartment community better planned than the one laid out in the Westport Road Plan and one that also goes to significant, costly efforts to salvage the old historic homestead in ways that are further described below; and

WHEREAS, apartments are the one form of development demonstrated to be in significant current demand, as this community slowly emerges from the recent real estate depression; apartment communities have recently been approved all over Metro Louisville; this is a particular location where other new apartment communities are not presently planned – the closest ones located east of Hurstbourne Parkway near the Snyder Freeway and at Hurstbourne Parkway and Dorsey lane; that gives this one some added importance; and all of these proposed apartment communities are expected to fill part of the gap that exists in quality rental housing yet this is an area that appears to be particularly underserved; and

COMMUNITY FORM – GUIDELINE 1

WHEREAS, the subject property is located in the Suburban Neighborhood Form District which is characterized by predominately residential uses that vary from low to high density and that blend compatibility into existing landscape and neighborhood areas; high density uses are supposed to be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas; and this Suburban Neighborhood Form District is also supposed to contain diverse housing types in order to provide housing choice for differing ages and incomes; and

WHEREAS, the proposed apartment community for the subject property will be in the low end of the high density range, but that is appropriate, as stated, because of its location along a major arterial in close proximity to interstate highway interchanges and to areas of shopping, worship, schools and employment; other community facilities are also located in close proximity with easy access to and from this site; and therefore, this application fully complies with this Guideline of the Comprehensive Plan; and

CENTERS – GUIDELINE 2

WHEREAS, the Intents of this Guideline are to promote efficient use of land and investment in existing infrastructure; to lower utility costs by reducing the need for extensions; to reduce commuting time and transportation-related air pollution; to provide an opportunity for a mixture residential development that includes housing types and building styles that accommodates people of different ages and incomes and that are compatible with existing neighborhoods; and to provide vitality and a sense of place in neighborhoods and the community; this application complies with these Intents of this Guideline, among other reasons set forth herein below, because infrastructure such as roads, sewers and the like, are already available; because of the recent Westport Road

improvements and new interstate interchange near Lyndon Lane and Herr Lane, and with easy access to the Snyder Freeway at the Westport Road/Snyder Freeway interchange, this proposed apartment community helps with commuting distances and time and thus tends to improve the overall air quality by reducing commuting times and distances; this proposed apartment community provides for the mixture of residential housing types that the Comprehensive Plan commends, and by “filling in the in-fill”, it helps create a better neighborhood; and this development is located between two places of worship and near several schools, it helps by locating people interested in rental housing locate near where people worship and educate their children and shopping is also located nearby; and

WHEREAS, Policies 4 and 5 of this Guideline appear to apply to this application in that they encourage compact, mixed or compatible development and uses; this is a vacant site located between two places of worship, across Westport Road from a large residential neighborhood and just down Westport Road, east and west of shopping, schools, other community facilities and places of employment, like Eastpoint Business Park, Hurstbourne Green, Shelbyhurst and the Ford Truck Plant and therefore, it fills in the in-fill, so to speak and adds to the mixture of compatible uses; and

WHEREAS, Policy 12 encourages developments, larger but perhaps also of this size, to include a focal point; and the focal points in this proposed apartment community will be the old historic home that will be lovingly restored plus the spring house that will be treated in much the same manner; the PowerPoint presentation shown at the public hearing demonstrates the areas where these features will be retained and how they will be preserved as focal points for this proposed apartment community and the larger area; and

WHEREAS, Policy 16 encourages alternative transportation modes; this proposed apartment community is located along a major arterial, which includes a bus route, and because bicycle facilities and sidewalks are also located in the area and along the frontage of this community, this application also complies with this Policy of this Guideline; and

COMPATIBILITY – GUIDELINE 3

WHEREAS, the Intents of this Guideline are to allow a mixture of land uses and densities near each other as long as they are designed to be compatible with each other; to prohibit the location of sensitive land uses in areas where accepted standards for noise, lighting, odors and similar nuisances could be violated or visual quality could be diminished; and to preserve the character of existing neighborhoods; this application complies with the Intents of this Guideline, among other reasons as set forth below, because it does indeed add a higher density residential use to a mostly lower density residential area; as noted hereinabove, high density residential uses are encouraged along major arterials like the recently widened and improved Westport Road; and as shown in the PowerPoint presentation which was shown at public hearing, the lay-out of this proposed apartment community saves green spaces and especially saves the old historic structures noted above to assure that it is compatible with nearby neighborhoods; unlike commercial uses, an apartment community does not produce noise, lighting, odors or similar nuisances; after all, apartment community residents would be more impacted than neighbors by these kinds of impacts, so the developer has to be sure that they are fully mitigated for its own residents; and as a consequence of this and all else set forth herein below, the character of the existing neighborhood is preserved; and

WHEREAS, Policies 1, 2 and 3 of this Guideline pertain to compatibility of different land and building design, use of building materials, densities, buffers and so on; the PowerPoint presentation shown at the public hearing, demonstrates compatibility in a number of ways including lots of open space, and that becomes easier when three-story, as opposed to just two-story, buildings are used, as

they are here; that allows more land to accomplish other important objectives, such as saving the old historic home and springhouse as noted above; building materials will be high quality masonry products with some modest use of other maintenance free materials; the designs of these buildings as shown at the public hearing and this narrative explain residential compatibility; and nearby buildings are probably not built to the quality of that which has been proposed here; and

WHEREAS, Policies 5, 6, 7, 8 and 9 of this Guideline pertain to impacts such as odors, traffic, noise, lighting and visual impacts; this residential community would not ordinarily produce, and is not expected to produce odors, noise, lighting and other visual impacts; and traffic, as shown on the trip generation numbers, is also minimal, especially relative to the size and capacity of the new Westport Road; and

WHEREAS, Policies 10, 11, 12, 13, 14, 15 and 16 of this Guideline all pertain to housing types, including density in appropriate areas, and the importance of appropriate/inclusive housing; this proposed apartment community, while intended to be upscale, is also expected to be affordable enough so that it doesn't just market itself to the very highest income type renters; that is not to say that it is going to be a subsidized type rental housing community, but rather that, because there is a large range of rental needs within this community, this particular proposed apartment community is expected to include upper range rents, just not at the very upper end, rather somewhere short of that, while not sacrificing quality; indeed because of the location of this proposed apartment community near large acreage preserved in perpetuity for agriculture/conservation purposes and because of some of the extraordinary features of this site which will be preserved, such as the historic home and spring house, it could be that, in the end, this apartment community attracts only the highest demographic group of renters; in the end, the market will determine the rental profile and rental rates; and naturally this community will welcome the elderly and handicapped; and

WHEREAS, Policies 21, 22, 23 and 24 of this Guideline are intended to deal with transitions, buffers, setbacks and minimizing the impacts of parking; as can be seen from the development plan, especially the colored site plans that were part of the PowerPoint presentation shown at the public hearing, parking is distributed throughout the apartment community and not located in just one central place which helps to distribute the impacts of parking; and transitions, buffers and required setbacks as set forth in the Land Development Code are met; and

OPEN SPACE - GUIDELINE 4

WHEREAS, the Intent and Policies 1, 2, 3, 5, 6 and 7 of this Guideline all pertain to open space, natural resources and the design and maintenance of same; this proposed apartment community, as explained above, will include significant open space, especially the two historic elements that are two important focal points as clearly evidenced in the PowerPoint shown at the public hearing; the look of those historic features today and how they will be rehabilitated and maintained by the apartment owner, is partly shown in that PowerPoint presentation; and sidewalks and access between those open spaces should also be plainly visible; and

NATURAL AREAS, SCENIC AND HISTORIC RESOURCES - GUIDELINE 5

WHEREAS, the Intent and Policies 1, 2, 3 and 4 of this Guideline pertain, in a way similar to Guideline 4, to natural features, historic resources and the like; as shown in the images contained in the PowerPoint presentation presented at the public hearing, the important natural features/historic resources, notably the historic home and spring house, will be maintained and rehabilitated so that they are preserved for posterity, and how they look today and how at least the main residential structure is anticipated to look in the future are contained in those PowerPoint images as were discussed in detail at the public hearing; and

ECONOMIC GROWTH AND SUSTAINABILITY – GUIDELINE 6

WHEREAS, the Intents of this Guideline are, among other things, to ensure the availability of necessary usable land to facilitate residential development and to reduce public and private cost of land development; this proposed apartment community complies with this Guideline, as it does with all the others, in this instance because it is, as stated above, a new apartment community in an area where new apartment communities have not recently been developed and that will help address the significant rental demand that exists here, as it does elsewhere in Metro Louisville; and because infrastructure is located at this site, most notably the recently rebuild Westport Road and nearby Westport Road/I-264 interchange, developing at this in-fill location helps reduce the public and private costs for land development; and

CIRCULATION AND TRANSPORTATION FACILITY DESIGN – GUIDELINE 7 & 8

WHEREAS, the Intents of these two Guidelines are to provide for safe and proper functioning of street networks; to ensure that new developments do not exceed the carrying capacity of streets; to ensure good internal and external circulation; to address congestion and air quality; to provide for safe and convenient accommodations with special mobility requirements of elderly and handicapped; and to provide an efficient, safe and attractive system of roadways, transit roads, sidewalks and pathways; this proposed apartment community addresses all of these Intents of this Guideline, among other reasons because the new Westport Road can easily accommodate the added relatively small amount of additional traffic from this proposed development; Westport Road was improved in part because of carrying capacity problems that previously existed, but also to ensure better means of access across the community; locating an apartment community at this subject property, near the referenced interstate interchanges, helps move traffic to and from this site around the larger community in a relatively easy manner; Westport Road surely is not at capacity, given that it is brand new; the engineering firm (GS&P) that has worked on this plan has also made certain that internal and external circulation and access are well designed within the parameters of Metro Works' transportation design manual; public transportation, to the extent it exists now or in the future along Westport Road, will have access to residents in this proposed apartment community; by locating this apartment community at an in-fill site with easy access to an arterial road and interstate interchanges, helps address transportation-related air quality issues in this community; this plan has been designed to address any requirements of the elderly and physically challenged; and the setback along Westport Road, the provision of sidewalks and pathways and the protection of significant resources, such as the historic buildings, and preservation of open space around them help protect and enhance the public enjoyment of attractive corridors; and

WHEREAS, Policies 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Guideline 7 all pertain to specific design requirements to ensure transportation impact mitigation, appropriateness of the local transportation network, adequacy of parking and specific site design in accordance with Metro

Works' Transportation design manual; the development plan, through the expert testimony of consulting engineering firm of GS&P, demonstrates compliance with all of these Guidelines; and this development plan received the preliminary stamp of approval from Transportation Planning, thus demonstrating compliance with all of these Policies of this Guideline; and

WHEREAS, Policies 4, 5, 7, 8, 9, 10 and 11 of Guideline 8 raise many of these same issues; the answer to the question of compliance is that the detailed development plan evidences compliance of all the Metro Works' transportation design manual requirements; and this development plan received the preliminary stamp of approval from Metro Works; and

BICYCLE, PEDESTRIAN TRANSIT – GUIDELINE 9

WHEREAS, the Intents and Policies of this Guideline are to assure bicycle access, pedestrian safety and the accommodation of mass transit; and the development plan accompanying this application addresses all of those requirements; and

FLOODING AND STORMWATER – GUIDELINE 10

WHEREAS, the Intents and Policies of this Guideline are to assure that flooding and storm water are addressed; to the extent that the creek along Westport Road ever floods, it is because of storm water management issues; at time of filing, MSD had not required the applicant and its engineers to include detention on the development plan and that is because sometimes it makes more sense for storm water to immediately enter an existing storm water system, such as the creek along this property's frontage; and as with Metro Works, MSD gave its preliminary stamp of approval to this development; and

WATER QUALITY -- GUIDELINE 11

WHEREAS, the Intent and Policies of this Guideline are to assure that water quality is not degraded due to water pollution and erosion; the normal way that this Guideline is addressed is through construction plan and actual construction compliance with the soil erosion and sedimentation requirements of MSD which this applicant will fully comply; and

AIR QUALITY -- GUIDELINE 12

WHEREAS, the Intents and Policies of this Guideline are to support an efficient land use pattern that reduces trip distances between work, shopping and home and to encourage development with densities that encourage mass transit; because this application is for an apartment community in the lower end of the high density range along a major arterial with easy access to interstate interchanges, this application addresses all of these Intents and Policies of this Guideline in exactly the way that it is supposed to; and by promoting higher density at an in-fill location, such as this, near shopping, near schools, near places of worship, near places of work and along an arterial with easy access to the interstate, commuting times are reduced, and air quality benefits; and

LANDSCAPE CHARACTER – GUIDELINE 13

WHEREAS, the Intents and Policies of this Guideline are to protect and enhance landscape character; and this application complies with the Intents and Policies of this Guideline because it will fully comply with the Land Development Code and provide landscaping in addition where required or needed to mitigate adverse impacts on adjoining properties; and

* * *

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books, on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby recommends to the Louisville Metro Council that it rezone the subject property from R-4 to R-6.

PROPOSED FINDINGS OF FACT FOR VARIANCE

A Variance from Chapter 5, Part 3, Section 5.3.1.c.2, Table 5.3.1 to exceed the maximum building height to allow a maximum building height of 40-feet for all 3 story buildings and to allow a maximum building height of 50-feet for all 4 story buildings.

WHEREAS, the applicant has listened to people who attended the neighborhood meeting and their professional representatives that they would prefer taller buildings and less ground coverage than more shorter buildings and greater ground coverage; and

WHEREAS, the Variance will not adversely affect the public health, safety or welfare because taller buildings allow the applicant to increase open space, save more trees and protect more environmental resources; and

WHEREAS, the Variance will not alter the essential character of the general vicinity because the taller buildings are set back significant distances from adjoining properties, and in any event on one side is the 5-lane Westport Road, on another side is an Islamic worship center and school, on another side is the former Our Mother of Good Counsel Catholic Church and School/now Portland Christian School, and on the other side is mostly large open fields; and

WHEREAS, the Variance will not cause a hazard or a nuisance to the public for all the reasons set forth above, notably the facts that there are no close by low rise single family homes that will be affected; and

WHEREAS, the Variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the overall objective is not to cram in more units but rather to utilize the property at a density that also works with lower rise buildings but in this instance instead saves land for open space, tree and cultural protection; and

WHEREAS, the Variance arises from special circumstances, which do not generally apply to land in the general vicinity given that, as noted above, this site is not surrounded by low rise single family homes, and it also includes trees and environmental/cultural features worthy of protection; and

WHEREAS, strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship because the applicant would otherwise have to utilize more ground to accommodate the same amount of density yield which is essential to the economics of this proposed project; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought but rather are the result of trying to address preferences expressed by neighbors and their professional representatives and to preserve the environmental and cultural amenities;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves the Variance.