

**PLANNING COMMISSION MINUTES**

**MAY 8, 2000**

**Public Hearing and Consideration of Cases**

**DOCKET NO. 9-8-00**

Change in zoning from R-4 Single Family Residential to OR-3 Office Residential, CN Neighborhood Commercial and C-1 Commercial on property located at 4940 Brownsboro Road and 1932 Herr Lane, containing 3.2 acres to be rezoned to OR-3 Office Residential, 0.34 acres proposed to be rezoned to CN Neighborhood Commercial and 15.33 acres proposed to be rezoned C-1 Commercial, being in unincorporated Jefferson County.

Owner: Estate of Samuel J. Stallings,  
By: Dorothy McClure, Executor  
Kentucky Home Life Bldg.  
239 South Fifth Street, Suite 412  
Louisville, KY 40202

Edna B. Stallings  
1822 Fleming Road  
Louisville, KY 40205

Applicant: Thurman/Ballard LLC  
10000 Shelbyville Road, Suite 210  
Louisville, KY 40223

Existing Use: Undeveloped

Proposed Use: Retail, restaurants , offices and a bank  
Staff Case Manager: Steve Lutz, AICP

Notice of this public hearing appeared in The Courier Journal on April 13, 2000, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Development Services offices, 900 Fiscal Court Building.)

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

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

Glenn A. Price, Jr., 3300 National City Tower, Louisville, Kentucky 40202; who submitted: a booklet with various pictures and exhibits, a Shopping Center Market Analysis, Deed of Release of Restrictions, Planning Commission minutes dated 12/6/90, a Deed of Restriction, a transcript for Docket Nos. 9-48-90/10-24-90 dated November 15, 1990, and a draft agreement from the applicant of items that will benefit the Ballard high School Campus.

David Reed, Presnell Associates, Inc., 707 W. Main Street, Louisville, Kentucky 40202, who submitted a copy of his resume.

George Chapman, Chapman & Bell, 3703 Taylorsville Road, Louisville, Kentucky 40220, who submitted a Shopping Center Market Analysis and a letter to Dick Thurman with attached market and marketability conclusions for a proposed shopping center at Herr Lane and Kentucky State Route 22.

Bixler Howland, 12204 Lucas Lane, Louisville, Kentucky 40223.

#### **The following offered comments on the proposal, neither in support nor in opposition:**

Sandy Allen, Principal of Ballard High School, 6000 Brownsboro Road, Louisville, Kentucky 40241.

Fan Waddle, 4300 Darbock Road, Louisville, Kentucky 40207, who submitted her summary of testimony.

#### **The following spoke in opposition:**

Peggy W. Swain, 1804 Crossgate, Louisville, Kentucky 40222.

John Singler, Attorney for Graymoor-Devondale, 108 Legal Arts Building, Louisville, Kentucky 40202.

Mark K. Madison, 10400 Shelby Street, Louisville, Kentucky 40299.

John A. Vezeau, 6709 Greenlawn Road, Louisville, Kentucky 40222, who submitted his summary of testimony.

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

Tari Myers, Principal of Kammerer School, 7315 Wesboro, Louisville, Kentucky 40222.

Pat Martin, 1811 Crossgate Lane, Louisville, Kentucky 40222.

Jerry Hinton, 2326 Thornhill Road, Louisville, Kentucky 40222, who submitted a summary of testimony and a photograph.

Forrest Flaniken, Mayor of Thornhill, 2313 Thornhill, Louisville, Kentucky 40222, who submitted a summary of testimony.

Mark Stiebling, 4923 Grantham Place, Louisville, Kentucky 40222, who submitted a summary of testimony.

Theresa Stanley, 1802 Winsford Place, Louisville, Kentucky 40222, who submitted a summary of testimony, page 11 of a transcript, a history of previous Stallings Property rezoning requests, and a change in numbers of square footage paper.

Kasey Bruwelheide, 1909 Grantham Court, Louisville, Kentucky 40222, who submitted a summary of testimony.

Norm Graham, 500 W. Jefferson Street, Louisville, Kentucky 40202, who submitted findings of fact.

Jon Henney, 7003 Wooded Meadow, Louisville, Kentucky 40241, who submitted a summary of testimony and a Request For Proposals dated September 25, 1997..

Dan Huneke, 6302 Wolf Pen Branch Road, Louisville, Kentucky 40059, who submitted a summary of testimony.

Martha Schaad, 6202 Innes Trace Road, Louisville, Kentucky 40222.

Gerard Russell, 6707 Brownsboro Road, Louisville, Kentucky 40222.

# PLANNING COMMISSION MINUTES

MAY 8, 2000

## Public Hearing and Consideration of Cases

### DOCKET NO. 9-8-00

Steve Lutz, Planner II, exhibited photographic slides of the site and surrounding area. He provided a general description of the proposal and identified the following key issues: mass and scale of the project, density/intensity of the proposal and the surrounding area, signage and additional binding elements.

### **SUMMARY OF TESTIMONY OF PROPONENTS: (See transcript for text in full.)**

The Applicant's Exhibits and Market Study were distributed to each of the Commissioners.

Glenn A. Price, Jr., the Applicant's attorney, requested that all documents filed be declared part of the Planning Commission record and that the scheduled speakers be deemed experts in their respective areas. The Chairman, noting no objection, sustained both requests.

He noted that R. D. Thurman, principal member of Thurman/Ballard, LLC, has over 35 years' experience in the development industry in this area and the southeast United States. The subject property is the only vacant site in the area which is capable of supporting a community-level retail center.

David Reed, ASLA, and Vice President of The Presnell Group, described certain Exhibits to the Commission. Referencing an aerial photo (Tab 2), he stated that the site is an infill development which is surrounded by many non-residential uses. He directed the Commission to notice the size, mass, and scale of surrounding buildings and land uses. The buildings we are proposing are very similar. Proposed buffering on the south and western perimeters are significant. No other developments have anything close except the yard at Ballard High School. Tab 3, Land Use, shows the existing pattern of development. The proposed development does not suggest a different pattern of use than the immediate surrounding area and it does offer a transition because of the proposed CN-OR3 zoning. Tab 4 is a site layout plan and development plan.

Tab 5, Requested Plan Revisions, identifies 24 design changes and concessions which the Applicant willingly made as a result of neighbors' requests. This included the creation of the CN-OR-3 transition zone at the south end of the development, increased landscape buffering along the south, retail buildings were downsized, buffering was increased along the western perimeter,

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

parking was decreased. Some residents have complained about traffic on Wesboro Road. The Applicant is willing to shift the access back and has agreed to extend Herr Lane roadway improvements beyond Wesboro Road. The creation of a left turn lane would facilitate traffic along Herr Lane. The grade at the southern portion of the site will be lowered to reduce the apparent height of the buildings.

Tab 6 contains architectural renderings of proposed building styles. Construction materials complement the area and the design is intended to reflect a "village"-style. Rooftop utilities are to be concealed. The proposed restaurants are also similar to existing quality restaurants in the area. Tab 7, buffer/greenspace, identifies all areas of proposed perimeter and interior landscaping. Mr. Reed noted that the Applicant will provide up to 50% more interior landscaping than is required. Approximately 27% of the site will remain "green." Tab 8 is a cross-section of the view from the closest residence to the center. Tab 9 identifies sidewalks and pedestrian access routes.

Tab 10 identifies drainage flow and detention areas. The site, Mr. Reed noted, is actually in the midpoint of an existing drainage system. Metropolitan Sewer District ("MSD") constructed drainage improvements on Ballard High School's property to benefit the residents of Thornhill. Currently only one home in Thornhill remains in the flood plain. Mr. Reed state that the Applicant will provide twice as much on-site detention than is required. The extent of these unsolicited improvements is unmatched by any other development in this area.

Tab 11 identifies proposed roadway improvements. Herr Lane will be widened to four lanes from Kentucky 22 to the Ballard High School intersection. From there, Herr Lane will be widened to three lanes and will continue past the development and eventually taper to two lanes. Mr. Reed stated that a traffic light will be installed at the Ballard High School/Herr Lane intersection and will be paid for by the Developer. The necessary right-of-way for the roadway projects will be obtained from three possible sources: (a) the site, (b) the site and Ballard's property, or (c) completely from Ballard's property. The best scenario would be to take right-of-way from both the site and Ballard High School. The Highway Department has accepted an alternative right-of-way plan in which all right-of-way would come from the Applicant's site. Existing levels of service (LOS) will improve or remain in the acceptable category as a result of

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

these planned improvements. Roadway plans and a traffic study have been reviewed by both the State Highway Department and County Public Works. The Air Pollution Control District has reviewed the air quality analysis for this development and determined that air quality and traffic performance should improve (see Tab 12).

At the Commission's request, Mr. Reed reviewed key roadway improvements. He noted that the southern access is largely intended for vehicles traveling south on Herr Lane. Internal connections are also provided to keep traffic off of Kentucky 22. The connection between Paul's Fruit Market and the new retail center will have a longitudinal island to discourage cut-through and speeding traffic. The vehicle connection to the church property is as far removed from the church as possible.

Mr. Price placed a copy of the U.S. Highway 42 Corridor Study (the "Study") into the record. This Study, he noted, was adopted in June, 1989 following approval by a task force. He stated that it is simply a "study." The Comprehensive Plan still serves as the basis on which zoning approvals can be granted. In a 1990 zoning application on the same site, there was a similar discussion. On page 42 of the transcript of testimony of Docket No. 9-48-90, Planning Commission Chairman Minx Auerbach stated that the Planning Commission bases its decisions on the Comprehensive Plan, not on a study by a task force. Mr. Price also noted that the task force's original recommendation was for single-family residential with the possibility of clustered homes. There is not one statement in the Corridor Study that justifies the Study's recommendation for a single-family development on the subject property. In addition, clustering of residential subdivisions at that time was available through the Innovative Subdivision Regulations. This, however, is no longer permitted. The Planning Commission has the discretion to decide whether recommended land uses are valid or not valid. The key question is whether the proposal complies with the Comprehensive Plan.

Mr. Price then reviewed additional proposed binding elements (Tab 1). Mr. Price noted that he and the engineer have had extensive contacts with the neighbors: Graymoore/Devondale, Crossgate, and Thomas Jefferson Unitarian Church. Our efforts have been to avoid adversely affecting our neighbors and to avoid the creation of a precedent. The creation of the CN/OR-3 district would

## **PLANNING COMMISSION MINUTES**

**MAY 8, 2000**

### **Public Hearing and Consideration of Cases**

#### **DOCKET NO. 9-8-00**

create a "stepping down" of land uses. In addition, there is a 30- to-70-foot landscape buffer between our development and the residential uses to the south along Her Lane..

One of the Commissioners asked where the C-1 commercial line would end. Mr. Reed responded that the end of the C-1 district is located opposite the tennis center. The proposed bank/office building would be two-stories in height. There are a number of two-story homes in this area. The clock tower will be a maximum of 35 feet tall. The height of the retail center will be  $\pm 25$  feet. A combination of stone, brick and Dry-vit will be used. Commissioner Dulworth commented that the percentage of brick could be decided at the detailed District Development Plan review, if this proposal is approved.

Mr. Price stated that the vehicular access through the Bittners property is not our fight. This was decided as part of the previous case (Docket No. 9-78-98) and we will honor the decision of the Planning Commission whether the Commission chooses to require that access or not to require it.

He noted that the original deed restriction placed on this property in 1984 was lifted by the Planning Commission on December 6, 1990, and released in its consideration of Docket No. 9-48-90.

George Chapman, a partner with Integra, Chapman & Bell, 3703 Taylorsville Road, Louisville, Kentucky 40220, indicated that he had been hired to prepare an unbiased market study. He stated that the Development Plan fulfills Commercial Guideline C-1 because the site is located in the center of the trade area to be served. There is sufficient population to support the proposed retail areas and still allow the competing businesses to flourish. The size of the trade area is approximately a three-mile radius. Referring to a map, Mr. Chapman noted that most of centers' competitors are located at the edge of the trade area. There are an estimated 25,000 households within the trade area having an average annual retail expenditure of \$8,000. Using a retail gravitational model, Mr. Chapman explained that he expected the new retail center to earn \$154 per square foot. The national average for a retail center of this size is \$101 to \$124 per square foot. Therefore, one can conclude that the new center will operate profitably. Approximately 4,400 households have been added to the trade area since 1990. Census tracked figures were used which is the data which

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

demographers typically review. Most retail centers have two to four outlets per 100,000 square feet of retail space. This center proposes 156,000 square feet of retail space. We have 2.6 outlets proposed and are, therefore, in the acceptable range. Mr. Chapman noted that current vacancies in this area average 2.5%, which is considerably less than the rest of the county. There is a 3% vacancy rate at Holiday Manor. Camelot Shopping Center currently has a 17% vacancy rate. However, that center is undergoing a "life cycle change." Existing retail stores may experience a reduction of 4% in sales. This, however, is quite normal.

Bixler Howland, 12204 Lucas Lane, 40223, testified that he is the father of a senior at Ballard High School. He spoke in support of this project because of the planned roadway improvements. The widening of Herr Lane and the signalization of the intersection will improve traffic patterns and the safety of children.

#### **SUMMARY OF TESTIMONY OF OPPONENTS: (See transcript for text in full.)**

Peggy W. Swain, Mayor, City of Crossgate, stated that she worked for Jefferson County government for 34 years primarily in land use related activities, and therefore said she feels qualified to comment on this issue. She expressed that what we have here is a large piece of property that has been in the ownership of the same family for many, many years. Numerous attempts have been made to develop this property. All requests were grossly overly intense and were repeatedly turned down. She said she believes that everyone has a right to place improvements on their property. But in this case the history of this owner reveals a continuous effort to over maximize the property's potential. This over zealousness of the owner is now presenting itself again. She stated that she legally represents only a small number of concerned residents, but that she is orchestrating the concerns of residents of the Cities of Crossgate, Thornhill, Bancroft, Graymoor/Devondale, Spring Valley, Barbourmeade, Old Brownsboro Place, Northfield, Glenview Manor, Falls Creek, Hills and Dales, and the neighborhoods of Brownsboro Meadows, Cliffwood and the Woods of St. Thomas along with parents of children in nearby daycare and preschools, and Dunn and Norton Elementary schools who feed into schools on Herr Lane, along



# PLANNING COMMISSION MINUTES

MAY 8, 2000

## Public Hearing and Consideration of Cases

### DOCKET NO. 9-8-00

with the 4 schools located along Herr Lane. She said that she hoped she included everyone who has expressed concern for this rezoning request. In the interest of keeping to the 60 minute time allotment, she said they have prepared a program of responses that should take about 30 to 35 minutes thus leaving time for others to express their thoughts. In closing she said she wished to reiterate that they recognize the importance of economic development, but what is equally important are the quality of life issues that make this a strong and viable residential neighborhood for current and future residents, and a safe and supportive education corridor for current and future students. She requested that the Commissioners not allow this development to occur. She further requested the Commission to defer action until the parties in opposition have an opportunity to review the binding elements submitted by the applicant tonight.

John Singler, Attorney for Graymoor-Devondale, stated that the city opposes this plan because of the uses and intensity of development. He stated that this proposal does not comply with the land use recommendation of Cornerstone 2020, and that it is not compatible with the area. He stated that the OR-3 portion of the site does not mitigate their concerns about commercial use extending into residential areas. He voiced concerns about drainage and the detention basin, lighting, and screening of dumpsters. He also stated that pressure of the increased traffic makes the residential property along Herr Lane less desirable.

Mark Madison, engineer for the City of Graymoor-Devondale, stated that the traffic study failed to address impacts at the Herr/Westport and Westport/I-264 intersections. He said that trips would be shifted to other locations and questioned that the developer is just transporting one problem into another area. He wondered when the signal on Herr Lane at the shopping center entrance would be installed, will the construction be in phases and are there binding elements addressing timing in relation to development of the site. He had concerns about drainage and where the additional detention volume would go; doubling the storage volume may affect the site plan. He also discussed berming issues.

John Vezeau, a council member for Graymoor-Devondale, stated that the Commission has rejected other proposals for this site from residential to commercial and that nothing along Herr Lane has been altered to justify approval of this rezoning request. He stated he has attended several meetings with the developer about this proposal, and that they have scaled the development down, but only by a 1% reduction in total square feet. He expressed that the parking has been reduced from 955 spaces to 847 but yet most of the 20 acres would be covered with blacktop and buildings. He stated that this is far too much commercial intrusion into a predominantly residential

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

area. He also enclosed newsletters from the Graymoor-Devondale monthly newsletter and asked residents to respond with their ideas and concerns. He said that their main concern is the increased traffic burden on the two-lane Herr Lane. The residents also expressed concerns about drainage, that there is already too much unleased commercial development in the area; and that this proposal would ruin the residential character of the area. He stated that on March 28, 2000, the Graymoor-Devondale City Council voted overwhelmingly against this development, which he characterized as "an elephant in the dining room."

Tari Myers, Principal of Kammerer Middle School, said that 800 students attend the school who are either walkers or car riders and that she and others are concerned for the safety of these children. She said that it is dangerous for the students trying to cross Herr Lane in the morning and afternoon, and that she is most concerned for students who stay for after school activities because these students leave between 3:30 and 5:00 when crossing would be even worse. She also stated that even without the additional traffic the parents and teachers who turn in and out of Wesboro already have to wait 10 minutes. She expressed that the lights at Westport Lane and Brownsboro do not help stagger the cars enough to make these turns less lengthy. She said that Ballard, Kammerer, Wilder and St. Albert's schools would all be at risk with the added traffic. Ms. Myers expressed that additional turning lanes will not remove the danger for walking students, but would increase the risk, as they would have a wider road to cross. She requested that the Commission postpone this case until the Westport Road interchange is completed or until the Camelot Shopping Center is used to its capacity.

Pat Martin, President of the PTA at Kammerer Middle School stated that the developers did not speak with any of their school about how the development would impact them. She said that traffic cannot be gauged on a 1998 study because traffic is significantly greater since a stoplight was added at Washburn and Westport Road. This she said has caused many more people to travel US Highway 22 and Herr Lane to Westport Road. The parents believe that this development will be a disaster for Kammerer Middle School, stating that it will significantly increase traffic. She expressed that there are over 3000 students within a ½ mile radius that will be adversely affected. The students and schools were there first and she said that she hopes the Commission takes this fact very seriously. Ms. Martin stated that the Bible says that "money is the root of all evil" and this development is all about money and not what is best for the 3000 students. She said that after all is said and done, it isn't the money that we make or the houses we live in – but the legacy we leave our children. She requested that the Commission deny this proposal.

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

Gerry Hinton stated that he is the Commissioner of the City of Thornhill, and that he has been a resident of Thornhill for 32 years. He also said he is a retired general contractor and real estate developer and has 46 years of experience in this field. Mr. Hinton discussed surface drainage stating that surface water from the Stallings property, Ballard High School, Kammerer Middle School and portions of the City of Thornhill, along with smaller surrounding properties drain into the ditch that runs from Highway 22 through Thornhill. The building of the schools and the development of surrounding properties has increased the surface-water runoff to the point that the ditch overflows. He stated that this overflow impacts 18 houses in Thornhill and one resident outside of Thornhill. Mr. Hinton said that MSD installed a storm-water retention basin at Ballard High School and the first testing of this system indicated that on January 3, 2000, 4 ½ to 5 ½ inches of rain fell over a 30 hour period and that the ditch was almost full, approximately 10" from the shoulder of the ditch. On February 18, 2000, 4 ½ to 5 ½ inches of rain fell over a 28-hour period and the ditch was 100% full at 2326 Thornhill's rear yard. Mr. Hinton submitted a photo from the February 18<sup>th</sup> water height. Mr. Hinton suggested that the developer should design a system to hold up to 100% of the storm water runoff until the water level is low enough in the Ballard basin to receive additional water without causing flash flood conditions in the City of Thornhill. He said this would call for a much larger and deeper retention basin on the Stallings' property. He also suggested that a flotation device be located in the Ballard basin to activate pumps or gate valves located on the Stallings' property to discharge water at the proper time.

Forrest Flaniken, Mayor of Thornhill, stated that the area does not need a new strip shopping center. He said that in 1984 and in 1990 the previous Planning Commission Boards decided against changing the zoning classification from R-4 to C-1. He questioned what has changed since those years that they need more commercial development in the area and why the commissioners and residents have to keep deciding similar requests that have already been denied twice. Mr. Flaniken stated that there are 15 restaurants that are within walking distance of the Stallings Property, and 10 banks in the area. He cited Planning Commission minutes from the earlier public hearings and stated that a binding element was agreed upon by Mr. Stallings that the property would be limited to R-4 Single Family Residential, and that once again the property owners are trying to break their promise.

Mark Stiebling, Commissioner of the City of Crossgate stated that the scale and nature of this project make it a development that is out of place at this location. He said that if this proposal is approved that it will encourage more commercial development down Herr Lane turning this two-lane road into a major commercial thoroughfare. He stated it will compound the already difficult traffic and surface water drainage problems in the Brownsboro Road area; and create a hazard for students walking to and from nearby schools. He stated that this proposal will

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

be one of the 25 largest retail/office centers in Jefferson County, as ranked by *Business First* in its most recent listing of shopping center complexes. He said of the 25 shopping centers listed, all are located on 4 to 6 lane highways that are major city/county thoroughfares. He feels that additional traffic signals and turning lanes in front of the development do little to alleviate the increased traffic generated by the center.

Theresa Stanley, Chairman of BRAD (Brownsboro Road Area Defense), discussed requirements from KRS 100.213, entitled "Findings Necessary for Proposed Map Amendment". The first finding addresses the appropriateness of the existing zoning; the second finding specifies major changes of an economic, physical and/or social nature that were not anticipated by the comprehensive plan. Ms. Stanley stated that since 1984 various Planning Commissions held to the original findings of fact that Herr Lane is a sound residential area and that anything else would be intrusive. She said she felt some details on the current plan were confusing regarding a sidewalk in front of Ballard and that nothing is shown on the plan to protect the homeowners along Herr Lane from the increased traffic which will come closer to their property because of the road widening. She also said that the level of service for traffic will be reduced from a "C" to a "D" and said that this level is unacceptable on Herr Lane. She stated that guidelines R-3, T-1, T-9, C-1, C-2, C-3 and C-4 are all being violated for various reasons. She stated that neighborhoods along Herr Lane will not be protected from commercial intrusion and that nuisances will not be alleviated; that this proposal is not compatible with the residential area and does not meet the requirements of KRS; therefore, should not be approved.

Kasey Bruwelheide stated that she agrees with everything the previous speakers have said, but one of the most important concerns is how this development will negatively affect the community's quality of life. She stated that this is a decision that affects their families, their property values and their daily lives in general. She stated that she feels that residents will be prisoners in their own city. She said that Mr. Reed from the Presnell Group stated that this is the last piece of undeveloped land in the area, but she disagreed stating that the Hildebrand property is undeveloped and only a ½ a mile away. She said that if this is approved it will set a precedent for the rezoning of other properties such as the Hildebrand property. She questioned if this project is approved what will transpire with the US 42 Corridor. She also commented that Mr. Howland, who spoke in favor of this proposal, does not live in their neighborhood and that his property value will not be affected by this development. She stated that the neighbors are not trying to be acrimonious as the supporting attorney suggested, but that they are trying to protect their quality of life that they currently enjoy.

Mr. Norm Graham appeared on behalf of the Thomas Jefferson Unitarian Church. Mr. Graham stated that the church has a number of objections. In

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

particular, the church is opposed to the cut-through between the Stallings development and the church/Bittners shared entrance, which Mr. Graham stated is an extensive and unreasonable burden. He stated that the Bittners development is only 28,000 square feet, whereas the new development is 156,000 square feet, therefore the church/Bittners entrance becomes an access point for a 184,000 square foot development. The footprint of the Bittners building is only 14,000 square feet. Because of a land use limitation agreement entered into among the church, Bittners, and the City of Crossgate, the second floor of the Bittners building is restricted to furniture showroom or offices, a low traffic generator. In contrast, the proposed development includes 133,000 square feet of commercial, 23,000 square feet of office, plus a branch bank. Therefore, the development is well over 10 times the size of the Bittners development. Assuming equal usage, ten times as much traffic from the new development will use the church/Bittners as the other way around. This is unfair. Although the Planning Commission often requires cut-throughs between adjoining commercial developments, the uses are generally of similar size and land use characteristics. Of particular concern, the plan is specifically designed to include a large landscape island to discourage the entrance through Paul's Market and direct as much traffic to the church/Bittners entrance as possible. The proposed plan would cause a loss of six spaces on the Bittners site, which shares its parking with the church, thereby bringing it into noncompliance. Moreover, binding elements imposed on the Bittners/church tract, which were incorporated in a land use limitation agreement, provide certain restrictions such as a limitation on drive-thru uses and restrictions on the hours of operation from 8 a.m. to 8 p.m., Monday through Saturday and 12 p.m. to 6 p.m. on Sundays. By providing access to a development which does not include those restrictions, the proposal causes the Bittners development to violate the binding elements and the land use limitation agreement. Mr. Graham also indicated concerns about the traffic study. The traffic study provides no justification for the need for the cut-through to the Bittners/church property. The traffic study provides no information regarding the impact on traffic without the cut-through. The entrance onto Brownsboro Road at Bittners is congested, particularly the left turn out and the study contains no discussion of this problem. The traffic study uses the term "engineering judgment" to allocate 5% of the traffic to the church entrance and 15% to the Paul's entrance. This is the same amount as the south entrance. It is apparent that the intersections will fail without the use of the church entrance. Mr. Graham indicated that because of the extensive nature of the cut-through, it

# PLANNING COMMISSION MINUTES

MAY 8, 2000

## Public Hearing and Consideration of Cases

### DOCKET NO. 9-8-00

would virtually amount to a taking. Mr. Graham quoted *Lexington-Fayette Urban County Government v. Schneider*, which stated that a developer should not be made to contribute to the cost of public improvements in an amount that far exceeds the anticipated use necessitated by his or her development. Mr. Graham stated that because of the extraordinary nature of the burden imposed by the cut-through, it may well amount to a taking.

Jon Henney stated that he is a landscape architect and certified planner with six years experience in retail development and over 11 years experience as a former member of Planning and Development Services staff. He stated that he has been a 30 year resident of the neighborhood and is also representing Thomas Jefferson Church where he serves as the Board of Trustees Vice President. He stated that the church respects the rights of their neighbors to utilize their property as they see fit, but they also recognize the need to exercise that right responsibly and with a sensitivity to the community as a whole. He stated that the church feels this proposal is not suitable for this location. He stated that the church has been offered 2.9 million dollars, twice, by developers wanting to combine their property with the Stallings tract, but the church turned it down because of scale and intensities of what was sought. He stated that the church sent out a Request for Proposals, and received seven responses from various developers. They selected the Bittners proposal because they were able to satisfy their economic needs while still being responsive to the concerns of the community. They believe that this approach can also work for this site, provided the property owner is willing to balance economic return with neighborhood compatibility.

Dan Huneke stated that he is an active commercial real estate developer and said that this was difficult for him to stand up and oppose this project because his father-in-law has worked with the developer of this project on other past developments. He stated that he admires some of the past work Mr. Thurman has done; but feels this development is wrong for the property. He said that the Planning Commission has rejected retail and commercial uses previously on this piece of land; that most large developments such as this are located at major interstate intersections, on major arterial roads or four lane highways. He expressed that the Stallings property is ideal for single and or multi-family uses. Other objections he has with this development deal with the roadway connection of the development with his current project (Bittner Building). He stated he feels the proposed connection does not function properly and also represents poor city planning. He said that the engineers, attorneys, developers, Planning Commission staff have not tried to contact him about coordinating the Stallings plan with his plan. He said that this connection cuts through a brick wall dumpster enclosure and cuts right across their loading/unloading dock. He stated that the basis on which the Commission and surrounding neighborhoods

## PLANNING COMMISSION MINUTES

MAY 8, 2000

### Public Hearing and Consideration of Cases

#### DOCKET NO. 9-8-00

supported the Bittners rezoning request was that their building would act as a "buffer" between the residents of the city of Crossgate and the more intense commercial uses of McDonald's, Paul's Fruit Market and Thornton Oil. The goal for his project was to reduce the impact of his development on Crossgate and to promote a quiet courtyard feel to the property. He said that with the proposed driveway connection their property becomes an active cut through for students going to Ballard, or people going to the new development or for anyone who would want to avoid two stop lights. He also stated that instead of a dead end quiet road after 6:30 p.m., traffic will flow through at all times of the day and night creating noise and a steady stream of headlights within feet of the Crossgate residences and the Church's nursery school. In conclusion, Mr. Huneke stated that retail shopping patterns in the area would be changed from a neighborhood draw to a regional retail draw on a site that has been repeatedly denied such zoning requests by previous planning commissions.

Martha Schaad said that she has lived in the area for 60 years and this is one of the worst changes that could possibly happen. She said that this area is unique because of the its limited access points such as River Road, Hubbards Lane etc. She said this area is a bottleneck and if this is approved, their quality of life will go down.

Gerard Russell stated he is not an expert in the field of planning but he opposes the project on the grounds that noise and light pollution will be increased significantly if the proposal is approved.

#### INTERESTED PERSONS:

Sandy Allen, Principal of Ballard High School, stated that her primary concern was the safety of the 1,750 people who enter the school property each day. She is also concerned that parents recently spent a considerable amount of money developing the hockey fields along Herr Lane. These may be impacted by the planned roadway improvements. The Developer has agreed to fund a traffic study of the campus circulation pattern and possible improvements. The Developer will also provide a berm with landscaping along the perimeter of the property to direct pedestrian traffic to the crosswalk on Herr Lane. Mrs. Allen noted that the best use of the Stallings' property would be for educational or recreational use. However, the next best use is a project which recognizes the safety of the student who travel to the three schools in the nearby area.

## **PLANNING COMMISSION MINUTES**

**MAY 8, 2000**

### **Public Hearing and Consideration of Cases**

#### **DOCKET NO. 9-8-00**

Mrs. Sam Waddell, a member of the PTA Committee at Ballard High School, submitted several letters from Ballard High School parents. Ideally, Ballard would like Jefferson County Public Schools (JCPS) to purchase the site or for it to remain as greenspace. Parents at Ballard would prefer a single-family development. The school is coping with large traffic numbers which were not anticipated in 1967 when the school was first built. There is a fear among parents that the school will be used as a cut-through to access the commercial property. Student safety is their primary concern. The school does not want to lose its new hockey field or wetlands because of additional right-of-way dedication. Mr. Stallings and David Reed have met with Ballard High School parents. They want to be assured that promises made will be promises kept and that the students will be safe. Their support of the rezoning is contingent upon the developer's commitment to upgrade traffic circulation on the Ballard campus.

#### **REBUTTAL:**

Mr. Price stated that he has a draft of an agreement with Ballard High School which outlines all of its concerns. He is willing to meet with Ballard High School and the City of Crossgate to attempt to resolve any lingering concerns. This site, he said, is not located in a residential area. It is a mixed use area. The land use map clearly demonstrates that. The site is surrounded by commercial, Ballard High School, and a church. This property is at the crossroads of Kentucky 22 and Herr Lane.

There is a reason zoning is not decided by simple votes by the legislative body; that there is a reason why the Planning Commission has been made part of the land use decision-making process by law. The Planning Commission is an expert body who makes decisions utilizing the Comprehensive Plan. The Commission avails itself of its expert staff that enables the Commission to make a prudent decisions. There is less than a fractional vacancy (less than 5%) at Holiday Manor for retail uses. Some opponents are concerned that commercial uses may "creep" down Herr Lane. This proposal should do the opposite. It is scaled down at the southern end of the property and sinks the office buildings and creates a substantial buffer to protect the residential area along Herr Lane.



## **PLANNING COMMISSION MINUTES**

**MAY 8, 2000**

### **Public Hearing and Consideration of Cases**

#### **DOCKET NO. 9-8-00**

The proposed retail uses will not increase traffic in the AM or PM rush hours. Single-family, multi-family or office uses would add to the existing traffic nuisances in this area.

Drainage should not be a concern because we have doubled the capacity. This project is substantially above the normal requirements.

Mr. Price noted that one of the opponents stated that this center would fall within the top 25 retail centers in Jefferson County. He then pointed out that Mid City Mall is larger than this center and is a community-level retail center. Shelbyville Road Plaza also provides community-level shopping. This new center is well down the list in terms of size and is well suited to the area.

KRS 100.213 identifies three requirements for map amendments. We comply with the first listed requirement because we comply with the Comprehensive Plan (see revised Justified Statement, Tab 15.) The opponents have misread this statute.

Several people complained about lighting. There are binding elements that control the level of lighting that will be used on this property.

David Reed addressed traffic and drainage issues. Mr. Reed noted that the level of service at Kentucky 22 and Herr Lane would not change. The level of service at the Herr Lane/Ballard High School intersection would improve from a level of service D to LOS-B. The installation of a traffic light at the Herr Lane/Ballard High School entrance would improve left-turn lanes from LOS-F to LOS-C. The traffic problem in front of Wesboro Road is created by vehicles attempting to make a left turn onto Wesboro Road. For that reason, we are providing a separate left turn lane which will provide a safe haven for left turns to occur. This Plan produces a much safer environment through the creation of signalized crosswalks and sidewalks for all students and people in the area.

The reason the traffic study did not address the Watterson Expressway/Westport Road intersection is because it was not deemed by the Jefferson County Department of Public Works to be significant enough of a factor to include it. That ramp construction may not occur for the next five years. If the site were built as a single-family residential development, traffic from the site would peak

# PLANNING COMMISSION MINUTES

MAY 8, 2000

## Public Hearing and Consideration of Cases

### DOCKET NO. 9-8-00

simultaneously with other peak hour uses in the area. A mixed commercial development will effectively spread traffic out and have less impact.

**A transcript of the public hearing is on file in this docket.**

In a business session subsequent to the public hearing on this request, the Commission took the following action.

On a motion by Commissioner Thienemen, the following resolution was unanimously adopted:

**RESOLVED**, That the Louisville and Jefferson County Planning Commission does hereby DEFER Docket No. 9-8-00 to Business Session on June 15, 2000, to allow the Commissioners more time to consider additional evidence and testimony given, at the public hearing.

**The vote was as follows:**

**YES: Commissioners Dulworth, Adams, Herron, Thieneman, Crawford, Seraphine and Matheny.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.**

**ABSTAINING: No one.**

# PLANNING COMMISSION MINUTES

June 15, 2000

## **BUSINESS SESSION:** **DOCKET NO. 9-8-00**

Change in zoning from R-4 Single Family Residential to OR-3 Office Residential, CN Neighborhood Commercial and C-1 Commercial on property located at 4940 Brownsboro Road and 1932 Herr Lane, containing 3.2 acres to be rezoned to OR-3 Office Residential, 0.34 acres proposed to be rezoned to CN Neighborhood Commercial and 15.33 acres proposed to be rezoned C-1 Commercial, being in unincorporated Jefferson County.

Owner: Estate of Samuel J. Stallings, Edna B. Stallings  
Applicant: Thurman/Ballard LLC  
10000 Shelbyville Road Suite 210  
Louisville, Ky. 40223  
Existing Use: Undeveloped  
Proposed Use: Retail, restaurants, offices and a bank  
Staff Case Manager: Steve Lutz, AICP

### **DISCUSSION:**

Staff case manager Steve Lutz stated that many letters were received after the public hearing on May 8, 2000. Because these letters were not submitted at today's hearing, they were not distributed to the Planning Commission members but were entered into the file. Mr. Lutz also briefly reviewed the proposed binding elements.

Commissioner Dulworth noted that compatibility is a big question. There has been a tremendous amount of development in the past 10 years. Also, he also questioned what effect the changes have on the neighbors, is it consistent with the design policy, and is there a need? The effect is going to be a positive one particularly because of the road improvements.

Commissioner Adams asked Deborah Bilitski if this case needs to go back to LD&T regarding issues of access points. Ms. Bilitski suggested adding a binding element. Commissioner Dulworth asked Glen Price if he would agree for the Planning Commission or LD&T committee to revise the plan concerning access points. Mr. Price replied, if the Planning Commission removed the access over Bittner's, they would have to come back and revise it, therefore he sees no problem with it. This is contingent upon Bittner's requesting a binding element change for their property.

Commissioner Dulworth asked Commissioner French if she read the transcript for this case, and she replied yes. She also added, though not present at the public hearing, she did view the site several times and views it as an asset to the community.

## PLANNING COMMISSION MINUTES

June 15, 2000

### BUSINESS SESSION: DOCKET NO. 9-8-00

On a motion by Commissioner Crawford, the following was adopted:

**WHEREAS**, The Planning Commission Finds That the proposal complies with all applicable Environmental Guidelines, including Environmental Guidelines E-1, E-6, E-7, E-8, and E-14, and all applicable Utilities Guidelines, including Utilities Guidelines U-1, U-2, and U-3 because the site has no inherent environmental limitations such as flood plains, slopes of 12% or higher, unstable or very eroded soils, soils with severe erosion potential, or wet soils – all as shown in Comprehensive Plan Core Graphics 1, 2, 3, 4, and 5; because the developed site will not be a significant source of water pollution, will not cause peak post-construction surface water run-off rates to exceed pre-development rates, and will not cause significant increases in flooding erosion since the Development Plan was reviewed and approved by the Metropolitan Sewer District ("MSD") on March 24, 2000 as shown on the Development Plan, since the proposed on-site detention facilities will detain 200% of MSD's minimum on-site storm water detention requirement; because detention facilities on-site will be linked with detention systems at Thomas Jefferson Unitarian Church (an abutting property) and with detention facilities at Ballard High School all as testified to by David Reed at Public Hearing, and as shown in the Drainage Exhibit submitted at Public Hearing – all of which will ensure that downstream waters, particularly in the City of Thornhill will not experience increased peak storm water discharges as a result of the proposed Development; and because earth moving, grading, cutting and filling will be minimized due to the generally level terrain of the site as shown on the Development Plan; because the Applicant will comply with applicable recommendations or requirements of MSD or the USDA Natural Resources Soil Conservation Service regarding soil erosion and sediment control ensuring against on-site and downstream impacts affecting water quality; because Tom Pinto, Technical Coordinator for the Air Pollution Control District of Jefferson County stated in a letter dated December 27, 1999 that the Development would not cause an exceedance of the National Ambient Air Quality Standards for carbon monoxide ("CO") emissions, and thus the proposal will not cause significant air quality degradation (which confirms the "Air Quality Analysis" prepared by Presnell Associates Inc., dated November, 1999 which also indicates no CO exceedances of the national standards); because the Applicant has proposed roadway widening and improvements along Herr Lane; and because the site is located in an area fully served by all utilities with available connections, sewer service to MSD facilities via lateral connection, and an adequate supply of potable water and water for firefighting purposes through the Louisville Water Company; and

**WHEREAS**, The Planning Commission Finds That the proposal complies with all applicable Transportation Guidelines, including Transportation Guidelines T-1, T-2, T-3, T-4, T-5, T-7, T-8, T-9, and T-11 because the roadway and transportation improvements

**PLANNING COMMISSION MINUTES**  
**June 15, 2000**

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

proposed by the Applicant will maintain acceptable levels of service on the adjacent street network and will not generate excessive volumes of traffic, as provided for in the "Traffic and Signal Warrant Analysis" prepared by Presnell Associates Inc., dated November, 1999 ("Presnell Traffic Analysis"), and as testified to by David Reed at Public Hearing; because proposed roadway and transportation improvements along Herr Lane include (i) a four-lane section from Ky. Route 22 to the Ballard High School entrance, (ii) a three-lane section from the Ballard entrance south past Westboro Road -- all of which can be adequately constructed from land dedicated from the Subject Site as testified to by David Reed at Public Hearing, and (iii) a traffic signal and signalized crosswalk is proposed to be installed at the expense of Applicant at the Ballard High School entrance; because the Jefferson County Department of Public Works reviewed and approved the Development Plan on March 24, 2000 which indicates that the Development provides adequate access and linkages to, from and throughout the Subject Site including connections to the surrounding street network, providing for the adequate functioning of streets, sidewalks, bicycle travel and transit movement while maintaining acceptable levels of service; and that appropriate, safe and efficient movement throughout the Development for all modes of transportation (including pedestrian and bicycle) will be provided as shown on the Development Plan; because Herr Lane, Ky. 22 and other adjacent streets in the vicinity, together with proposed improvements will have adequate capacity to handle the proposed traffic to be generated from the Development as well as existing traffic based upon the Presnell Traffic Analysis and the approval of the Jefferson County Department of Public Works; because the site location is very near Ky. 22, a minor arterial roadway as indicated by Comprehensive Plan Core Graphic 13 and the Subject Site has access to Ky. 22; because the Development Plan shows sufficient parking spaces per the Jefferson County Development Code ("Development Code"), and loading/unloading areas also comply with the loading/unloading requirements of the Development Code; because all levels of service for anticipated traffic volumes are acceptable; because a signalized crosswalk is proposed to allow safe pedestrian passage from Ballard High School to the Subject Site; because left-hand turns from Ballard High School onto southbound Herr Lane will be dramatically improved as indicated in the Presnell Traffic Analysis due to the installation of a new traffic signal paid for by the Applicant; because sidewalks are proposed along Herr Lane linking the residential areas on Herr Lane with the proposed Development; because sidewalks are proposed throughout the interior of the Development -- all sidewalks are proposed as shown in a Pedestrian Access Exhibit introduced by the Applicant at Public Hearing; because even though bicycle traffic to a shopping center is typically less frequent than motorized vehicle traffic, bicycle storage facilities will be provided on site to encourage bicycle use (as required by Binding Element); because access via adjacent streets is not located through areas of significantly lower intensity to the extent that nuisances are created because acceptable levels of service on the street network will be maintained; because transit service is available along Ky. 22 and Herr Lane as indicated in the transit ("TARC") maps;

**PLANNING COMMISSION MINUTES**  
**June 15, 2000**

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

because peak traffic generation to this Development will not occur at AM rush hour or PM rush hour as David Reed testified at Public Hearing; because the proposed shopping center is 156,555 square feet, a community-level shopping center which is not a high intensity land use; and because traffic congestion will not be caused by the Development since adequate levels of service will continue to exist; and

**WHEREAS,** The Planning Commission Finds That the proposal complies with all applicable Residential Guidelines, including Residential Guidelines R-1 and R-3 because the Subject Site is located in a mixed land use area (as opposed to being in a solid or predominantly residential area) since the Subject Site is situated across Herr Lane from Ballard High School and the Louisville Tennis Center to the east, and is situated immediately south of a Thornton's Gas Station, Paul's Fruit Market and other commercial uses fronting on Ky. 22, and abuts Bittner's retail store and the Thomas Jefferson Unitarian Church to the west, and is near other retail and office uses between Ky. 22 and US 42 and east of Lime Kiln Lane, and is adjacent to residential uses to the south along Herr Lane and in the general area as indicated in the Land Use Exhibit introduced at Public Hearing by Applicant; because the commercial uses along Ky. 22 between the Subject Site and Ky. 22 should be considered together as a commercial corner; because the C-1 portion of the property will extend southwardly to a point opposite the Louisville Tennis Center, and the OR-3 portion of the property will extend to the south property line of the Subject Site (which will contain a small C N zoning district for a bank) – all of which constitutes a transition area of reduced zoning intensity of those portions of the project nearest residential areas south of the site along Herr Lane; because a green space buffer of 50 to 80-feet in width is proposed between the developed portions of the Subject Site and the Site's south property line and a similar green space buffer of 50 feet in width is proposed between the rear of the shopping center area and the west property line of Subject Site, and a 30-foot buffer (including detention areas) along the Herr Lane frontage – together with berms, trees and/or other new plantings; because the proposed buffering constitutes more than 50% more than the minimum buffer requirements of the Development Code (an overall 27% of the entire site is in buffer areas), all as shown on the Development Plan; because the finished grade of the site is lower in elevation than the nearest residence to the south which will cause the two-story office building to the south of the site to be less visible – as shown in the Section Exhibit introduced by Applicant at the Public Hearing; because of signage controls, lighting controls, controls on outdoor storage, delivery vehicles and dumpster pick up/drop off; because building materials must be brick, stone and/or stucco and Buildings Nos. 1 and 2 will be of "village-style" to provide neighborhood compatibility; because the US 42 Corridor Study dated June, 1989 fails to provide any rationale for its recommendation that the Subject Site should remain residential, and in addition there has been a major increase in households (4400 households) in the three-mile "market area" since 1990 as testified to by George Chapman, creating a need and support for a retail center in this market which would be three times the size of the

**PLANNING COMMISSION MINUTES**  
**June 15, 2000**

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

Applicant's proposal; because the site is an "infill" site; because the proposed buildings on site are adjoined by non-residential buildings on nearby properties of similar size and mass as testified to by David Reed; because loading and dumpster areas and rooftop utility units will be concealed from view as shown in the architectural renderings and the Development Plan submitted by Applicant at Public Hearing and as testified to by David Reed; and because the Development layout, buffering and the Development controls referred to above will foster compatibility with the surrounding area and will eliminate the possibility of nuisances which might otherwise be associated with commercial development; and

**WHEREAS**, The Planning Commission Finds That the proposal complies with all applicable Commercial Guidelines, including Commercial Guidelines C-1, C-2, C-3, C-5, C-6, and C-7, and all applicable Office Space Guidelines, including Office Space Guidelines O-1, O-3, and O-5 because the Market and Marketability Study ("Market Study") prepared by Integra, Chapman & Bell dated May 1, 2000 and the Public Hearing testimony of George M. Chapman, MAI, SRA, CRE indicate that the Development is centrally located in its intended service area and has a sufficient support population; because of the 4400 new households (since 1990) in the three-mile market area; because public transit serves Herr Lane and Ky. 22 as indicated in the Transit Authority of River City Route Maps; because the Development Plan creates an appropriate transition between the Development and residential uses by the placement of substantial perimeter buffering areas; because signage locations and controls will prevent visual nuisances or safety hazards to vehicles; because the Development is a "planned commercial center" as defined by the Comprehensive Plan (as opposed to "strip commercial") since the shopping center plan consists of a compact grouping of commercial and office uses with common ingress/egress, parking and unobstructed movement for pedestrians between stores; because the Development will not cause a linear extension of commercial uses since the proposed commercial uses extend no further southward along Herr Lane than do other non-residential uses (Ballard High School and Louisville Tennis Center) and will not create nuisances, hazards or disruptions in the residential areas of Herr Lane south of the site due to the proposed roadway and transportation improvements and the down-scaling the zoning classification nearest the Herr Lane residential areas as shown on the Development Plan; because the Development is near other shopping facilities, such as Holiday Manor Shopping Center and other retail development between Ky. 22 and US 42; because the Market Study and the testimony of George Chapman demonstrates that the proposal would leave sufficient annual sales potential for competing businesses to succeed in the marketplace; because the proposed office building is a transitional land use separating the C-1 area of the proposal from the R-4 residential areas at the southernmost point of the Subject Site; and because of the lowered elevation of the 2-story office building the height, mass and scale of the building will be minimized, and thus compatible with adjacent residences; and

**PLANNING COMMISSION MINUTES**  
**June 15, 2000**

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

**WHEREAS**, The Planning Commission Finds That the proposal complies with all applicable Community Facilities Guidelines, including Community Facilities Guideline F-8, and all applicable Government Guidelines, including Government Guideline G-1 because the Development will be served by the Lyndon Fire District; because the Applicant has agreed to provide and dedicate necessary rights-of-way to construct roadway and transportation improvements as shown on the Development Plan; and

**WHEREAS**, The Planning Commission Finds That the proposal complies with all other applicable Guidelines of the Comprehensive Plan, and therefore the proposal is in agreement with the Comprehensive Plan;

**RESOLVED**, that the Louisville and Jefferson County Planning Commission does hereby **RECOMMEND** to Jefferson County Fiscal Court that the change in zoning from **R-4 Single Family Residential, CN Neighborhood Commercial and C-1 Commercial** on the property described in the attached legal description be **APPROVED**.

**RESOLVED**, that the Louisville and Jefferson County Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan **SUBJECT** to the following binding elements:

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. Prior to development of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
  - a. screening, buffering, landscaping, tree preservation
  - b. density, floor area, size and height of buildings
  - c. points of access and site layout with respect to on-site circulation
  - d. land uses
  - e. signage
  - f. loading berths
  - g. parking



**PLANNING COMMISSION MINUTES**  
**June 15, 2000**

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

- h. sidewalks
  - i. Site design elements relating to alternative transportation modes
  - j. outdoor lighting
  - k. minor subdivision plat approval
  - l. air pollution
  - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service and adequate fire protection
  - n. dumpsters
3. The development shall not exceed 156,555 square feet of gross floor area.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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 system 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.
6. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
- a. The development plan must receive full construction approval from the Jefferson County Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
7. 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.

PLANNING COMMISSION MINUTES  
June 15, 2000

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

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 assigns, contractors, subcontractors and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
10. **Surface Water Detention.** On-site surface water detention facilities shall be sized to contain 200% of the volume of surface water required by the Metropolitan Sewer District ("MSD").
11. **Signage.** (a) One free standing shopping center identification sign shall be permitted. This sign shall be located where shown on the approved Development Plan and shall not exceed 12-feet in height and 81-square feet in area.  
  
(b) One free standing bank or bank office building identification sign (total of only one (1) free standing sign) shall be permitted on the bank/office building site. This sign shall be permitted following approval of the applicable subdivision plat. The sign location is subject to prior approval by Division of Planning and Development ("DPDS") Staff. This sign shall not exceed 6-feet in height and 60-square feet in area.  
  
(c) Free-standing signs for each of the two restaurant sites shall be permitted. The sign locations are subject to prior approval by DPDS Staff. Each sign shall not exceed 6-feet in height and 60-square feet in area.

**PLANNING COMMISSION MINUTES**  
**June 15, 2000**

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

12. **Lighting.** Outdoor lighting shall utilize 16-foot tall poles at the fronts of buildings and 24-foot tall poles in the parking lots. 90-degree cutoff fixtures shall be located between the rears of Proposed Buildings #1 and #2 and the western property line.
  
13. **Land Uses Not Permitted.** The following land uses shall not be permitted on subject site: apartment hotels, automobile service stations, beer depots, boarding and lodging houses, bowling alleys, car washes, communications towers, dry-cleaning facilities greater than 3,000 square feet in size, hotels and motels, massage parlors and other adult entertainment facilities, medical laboratories, multiple family dwellings, two-family dwellings, ice storage plants, arcades, and restaurants typically referred to as "fast food" ("fast food" means restaurants with drive through facilities in which more than 50% of food and beverages sold are taken off-site).
  
14. **Outdoor Storage; Delivery Vehicle Idling; Dumpster Hours.** (a) There shall be no outdoor storage on site.  
(b) In the area between the retail buildings and the west property line, there shall be no overnight parking of idling vehicles between 11 PM and 7 AM daily, and between 10 AM and 12 noon on Sundays.  
  
(c) Dumpster unloading, movement, replacement or servicing shall not occur between the hours of 11 PM and 7AM daily, and between 10 AM and 12 noon on Sundays.
  
15. **Bicycle Storage Facilities.** One or more bicycle storage facilities shall be located on-site at a location or locations convenient for use by customers.
  
16. **Parking for the Bank.** All parking facilities for bank customers and employees shall be located in the C-1 or CN zones, or by conditional use permit in the OR-3 zone following approval by the Jefferson County Board of Zoning Adjustment.
  
17. **Soil Erosion and Sediment Control.** Applicant/Developer shall comply with applicable recommendations or requirements by MSD or USDA Natural Resources Soil Conservation Service regarding soil erosion and sediment control.
  
18. **Building Materials; Design of Structures.** Building materials shall consist of brick, stone or stucco or a combination of brick, stone or stucco. The design of the proposed structures in Building Nos. 1 and 2 shall be substantially the same as depicted in the rendering presented at the May 8, 2000 public hearing. The design of the structures in the outlots and the

**PLANNING COMMISSION MINUTES**  
**June 15, 2000**

**BUSINESS SESSION**  
**DOCKET NO. 9-8-00**

bank/office building shall be subject to the approval of the Planning Commission.

19. **Two-year expiration.** If a building permit is not issued within two years of the date of approval of the plan or re-zoning, 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.
20. **Cross-Over Easement.** (a) A crossover easement agreement (for vehicular access) as required by Binding Element No. 26 of Planning Commission Docket No. 9-78-98C ("Thomas Jefferson Binding Element No. 26") shall be prepared in a form acceptable to Planning Commission legal counsel, shall be secured from the adjoining property owner to the west (F.D.H., LLC or its successor in title), and shall be recorded.
- (b) The Planning Commission acknowledges that F.D.H., LLC or its successor in title is required by Thomas Jefferson Binding Element No. 26 to execute the cross-over easement at the location shown on the Development Plan for Thurman/Ballard, LLC, at the time site work on the subject site begins.
- (c) A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

**The vote was as follows:**

**YES: Commissioners Crawford, Dulworth, French, Matheny, Seraphine, and Thieneman**

**NO: No one**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Commissioner Cash**

**ABSTAINING: Commissioners Adams and Herron**