

Heuke, Spencer

From: K. A. O'Brien <kaobrien@bellsouth.net>
Sent: Tuesday, July 01, 2014 8:21 AM
To: Brown, Christopher
Cc: Heuke, Spencer
Subject: APPEAL of DRC recommendation for 14DEVPLAN1044
Attachments: Exhibit A; 6-17-2014 Email.PDF; Exhibit B; blank Extension of Expiration Application Form.PDF; Exhibit C; CUP Area.PDF; Exhibit D; 5-9-2013 Development Plan.PDF; Exhibit E; PDS Comments on CUP.PDF; Exhibit F; Robbins Email.PDF

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Mr. Brown,

As trustee for a first tier adjacent property owner, I am emailing you this request, with supporting information, for **APPEAL** (to the full Planning Commission) of the Development Review Committee's (DRC) recommendation made on 6/18/2014 to approve the revised detailed district development plan in case number 14DEVPLAN1044. I believe the case requires further review, for the following reasons:

1. As I explained in the first email I sent to you, dated 6/17/2014 (*see Exhibit "A", attached*), it is my position that the Conditional Use Permit (CUP) issued on 5/9/2013 for 598 & 600 North English Station Road has expired. Supporting evidence that the CUP has expired can be found in the DRC staff report of 6/16/2014, which states, in part, that **"The expiration date for the conditional use permit is a one year time period under the 2004 Land Development Code in the City of Middletown in accordance with Chapter 11.5A.1.C."** Furthermore, the applicant evidently did not file an application for a one year extension of the expiration of the CUP (*see current blank application form in Exhibit "B", attached*). I submit that an expired CUP cannot be included as part of a revised detailed district development plan (*see Sections 11.5A.1.C, 11.4.7.F.2.f, and 11.6.4.B.3 of the 2004 Land Development Code*). Consequently, the Planning Commission must verify whether the CUP has expired, because there is also a statutory requirement (*KRS 100.237*) that any CUP that has not attained the status of a "permitted use" must be reviewed at least once per year (*I submitted an open records request on 6/24/2014 to the Metro Department of Codes & Regulations, and they responded that they have no report on file concerning any inspection of the CUP in question.*).

2. The applicant's attorney has claimed that the CUP is still valid and has not expired. (*I am assuming that the applicant's attorney made that claim because of the alleged relevance of existing binding element #10, and possibly the fact that site clearing work has begun under an MSD "erosion prevention and sediment control site disturbance permit".*) **I disagree, because:**

A. Binding element #10 does not specify an expiration time frame for the CUP, because the CUP is nowhere mentioned in binding element #10. The purpose of binding element #10 is to put a general time limit on the development plan for the applicant's property as a whole (*see Section 11.4.7.A of the 2004 LDC*). However, the CUP issued on 5/9/2013 did not apply to the entire property — rather, it covered just one relatively small area (*see Exhibit "C", attached, for approximate dimensions and location*) that was specifically labeled and delineated with a heavy black line on the detailed district development plan (*see Exhibit "D", attached*), as required by Section 11.5A.1.D of the 2004 Land Development Code (LDC), which states, in part, that **"The permit shall be valid only for the location and area shown on the approved district development plan..."**. Consequently, while it is true that binding element #10 **potentially** allowed the applicant a maximum of two years to obtain a building permit for the CUP, that did not relieve the applicant of the need to comply with the 2004 Land Development Code requirement to apply for a one year extension of the expiration of the CUP. Section 11.5A.1.C of the 2004 LDC states, in part, that **"...the Board may, for cause shown, renew such Conditional Use Permit for one period of up to one year."** Clearly, **"for cause shown"** in this case would have been the additional year allowed by binding element #10. Nevertheless, please note that it is too late for the Planning Commission, the City of Middletown, or other authority, to approve extension of the expiration date of the CUP that was issued on 5/9/2013 (*see Section 11.5A.1.C of the 2004 LDC*). Also, the proposed "phasing" of the development would not affect the expired status of the CUP.

B. The revised detailed district development plan (dated 6/16/2014) that was submitted by the applicant for approval at the 6/18/2014 DRC meeting does not delineate a specific area or location for the CUP that is alleged to be valid and unexpired by the applicant's attorney. This seems highly irregular, because delineation of CUP areas is required by Section 11.5A.1.D of the 2004 LDC adopted by the City of Middletown. Normally, Metro Planning and Design Services (PDS) requires a CUP area to be delineated on a development plan submitted for approval (see *Exhibit "E", attached*), but PDS allowed CUP area delineation to be omitted from the latest revised development plan (dated 6/16/2014), which I presume was because PDS had not been presented with evidence that the CUP was unexpired.

C. After reviewing the information that I received from zoning enforcement supervisor April Robbins, it is clear to me that the issuance of an MSD "erosion prevention and sediment control site disturbance permit" alone would not prevent the one year expiration of the conditional use permit (see *Exhibit "F", attached*).

3. The DRC staff report of 6/16/2014 states, in part, that ***"The requested addition of binding element #34 is contradictory to the expiration date period established in the 2004 Land Development Code in the City of Middletown."*** I agree with that assessment. In fact, the proposed binding element #34 specifies no actual time limit for the "exercise" of the CUP, because the date of contracting for construction of the improvements to North English Station Road is unknown (see *existing binding element #33*). Therefore, because the applicant's proposed binding element #34 specifies no actual "time limit" for the "exercise" of the CUP, KRS 100.237 (3) requires that the CUP must be exercised within one year of issuance. Since the CUP was issued more than one year ago, and the expiration date was not extended, proposed binding element #34 appears to be inapplicable, and should be deleted.

SUMMARY: If a determination is made by either the Planning Commission or the City of Middletown that the CUP has expired, then I believe the applicant would be limited to the following options:

A. Formally reapply immediately for a new CUP, per Section 11.5A.1.C of the 2004 LDC. The currently requested detailed district development plan revision would most likely be reviewed in conjunction with the new CUP request, per Section 11.5A.1.D of the 2004 LDC.

OR,

B. Abandon the CUP altogether, and remove all references to an Amphitheater, Sports Arena, Stadium, or "stage", from the revised detailed district development plan, and make no reference to any of those conditional uses in any proposed binding element. Existing binding elements would also be amended to remove any reference to any conditional use. Of course, the applicant could reapply for a CUP sometime in the future.

I respectfully request a prompt reply to this email, in order to verify that this request for APPEAL in case number 14DEVPLAN1044 has been timely received by PDS.

Sincerely,

Kirk A. O'Brien
805 N English Station Rd
Louisville, KY 40223
(502) 253-5721

K. A. O'Brien

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Exhibit A

From: "K. A. O'Brien" <kaobrien@bellsouth.net>
 To: "Christopher Brown" <christopher.brown@louisvilleky.gov>
 Sent: Tuesday, June 17, 2014 8:01 AM
 Subject: 14DEVPLAN1044
 Mr. Brown,

JUN 01 2014
 PLANNING &
 DESIGN SERVICES

Regarding case number 14DEVPLAN1044 — As trustee for a first tier adjacent property owner, I am submitting this email in order to explain my stated position that the Conditional Use Permit (CUP) for the proposed amphitheater has expired since it was originally issued on 5/9/2013. The applicant could have made timely application for a one year extension of the expiration of the CUP, as specified in Section 11.5A.1(C) of the 2004 Land Development Code (LDC) adopted by the City of Middletown, but apparently did not do so.

As you may remember from the Development Review Committee meeting on 6/4/2014, the applicant's attorney seemed to assert that because some unspecified site work had been started, the CUP had not expired. I was skeptical of that assertion, so I subsequently emailed an inquiry about the issue to April Robbins, zoning enforcement supervisor at Louisville Metro Codes and Regulations. In response to my question — *"Isn't it true that the issuance of an MSD "erosion prevention and sediment control site disturbance permit" alone will not prevent the one year expiration of a Conditional Use Permit?"*, Ms. Robbins emailed this reply: *"A site disturbance permit issued by MSD is not enough to meet any exercised dateline."* Thus, I submit that merely beginning site clearing work under an MSD site disturbance permit is irrelevant to the one year expiration date of a CUP. KRS 100.237 (3) supports this conclusion by requiring that the "improvement is under construction to a substantial degree" in order to validate the "exercise" of a CUP, thereby avoiding its expiration one year after the date of issuance. In this case, there could be no "construction to a substantial degree" (under binding contract or otherwise) of the proposed amphitheater structures in the originally designated CUP area, because obtaining MSD construction approval or a building permit for the improvement (amphitheater) is not allowed under the existing binding element number 33, since no contract has been let by transportation authorities for the reconstruction of North English Station Road. Nevertheless, if the Development Review Committee decides that it is necessary to obtain official verification of the current status of the CUP, then zoning enforcement personnel at the Metro Department of Codes and Regulations should provide that verification to the Committee on request, per KRS 100.237 (4).

Furthermore, an expired CUP nullifies the applicant's proposed binding elements numbers 8, 28, 33, and 34, because there would be no valid CUP for the Middletown City Commission to consider. In any case, proposed binding element number 34 is evidently not eligible for approval, because it does not conform to KRS 100.237 (3), which requires a "time limit" for the "exercise" of a CUP. In fact, the proposed binding element number 34 specifies no actual time limit for the exercise of the CUP, because the construction date of the improvements to North English Station Road is unknown.

The revised detailed district development plan that the applicant has submitted for approval shows no delineated CUP area, so the actual intent of the plan for the originally designated CUP area remains unclear. Therefore, the Development Review Committee should proceed with review of the revised detailed district development plan, but should not consider approval of that plan if it includes any references to an amphitheater proposed under an expired CUP, because an expired CUP obviously cannot be incorporated as an integral part of the requested detailed district development plan revision. For that reason, consideration of the status of the CUP (as it relates to a request for a detailed district development plan revision) is within the purview of the Development Review Committee or Planning Commission, per Sections 11.5A.1(D),(E), and 11.6.4(B)(3) of the 2004 LDC.

For a CUP that has expired, it appears that the applicant has two options under the 2004 LDC with respect to the revised detailed district development plan, as follows:

1. Remove all references to an Amphitheater, Sports Arena, Stadium, or "stage", from the revised detailed district development plan, and make no reference to any of those conditional uses in any proposed binding element. Existing binding elements would also be amended to remove any reference to any conditional use. Of course, the applicant could reapply for a CUP some time in the future.

6/18/2014

11/05/14 & 11/14/14

OR,

2. Formally reapply immediately for a new CUP, per Section 11.5A.1(C) of the 2004 LDC. The detailed district development plan revision would most likely be reviewed in conjunction with the new CUP request, per Section 11.5A.1(D) of the 2004 LDC.

I respectfully request a reply to this email, in order to verify that it will be placed in the 14DEVPLAN1044 case file prior to the Development Review Committee meeting on 6/18/2014. The members of the Committee should have an opportunity to read this email before the meeting.

Sincerely,

Kirk A. O'Brien
805 N English Station Rd, 40223

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6/18/2014



Extension of Expiration Application Louisville Metro Planning & Design Services

Case No.: _____ Intake Staff: _____

Date: _____ Fee: **\$ 240**

Checklist:

- Detailed letter explaining the reason for request (please include case number)
- \$240 application fee (cash, charge or check made payable to Louisville Metro Codes & Regulations)

Project Information:

Project Name: _____

Primary Project Address: _____

Additional Address(es): _____

Primary Parcel ID: _____

Additional Parcel ID(s): _____

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Has the property been the subject of a previous development proposal (e.g., rezoning, variance, appeal, conditional use permit, minor plat, etc.)? *This information can be found in the Land Development Report (Related Cases).* Yes No

If yes, please list the docket/case numbers:

Docket/Case #: _____ Docket/Case #: _____

Docket/Case #: _____ Docket/Case #: _____

Owner *Check if primary contact*

Applicant/Professional *Check if primary contact*

Name: _____

Name: _____

Company: _____

Company: _____

Address: _____

Address: _____

City: _____ State: _____ Zip: _____

City: _____ State: _____ Zip: _____

Primary Phone: _____

Primary Phone: _____

Alternate Phone: _____

Alternate Phone: _____

Email: _____

Email: _____

Owner Signature (required): _____

1100678 AM 11/14

"Eastgate Village, Sec. 2"
P.B. 43, Pg. 68

Lot 52 Lot 51 Lot 50
N18°25'43"W 594.00'

Point of Beginning

Morpha H. Pope
D.B. 8041, Pg. 177

Lorenz Properties, LLP
D.B. 7481, Pg. 951

1304.19'

Bwm Properties, LLC
D.B. 8263, Pg. 780

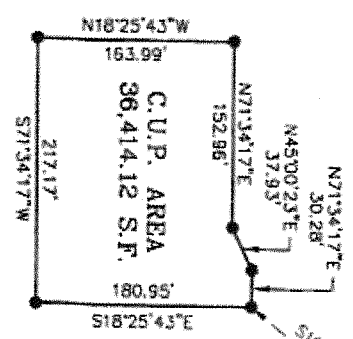
S71°30'00"W 426.80'

S08°54'33"W 224.09'

S71°03'18"W

750.32'

Arduous Properties, LLC
D.B. 9192, Pg. 236



S18°25'43"E 59.24'
S71°30'00"W 20.00'
S17°42'00"E 329.34'

ENGLISH STATION ROAD



LAND DESIGN & DEVELOPMENT, INC.

DESIGNING • LAND ACQUISITION • LANDSCAPE ARCHITECTURE
FOR OVERSEAS AND LOCAL CLIENTS
PHONE: 607.425.9121 FAX: 607.425.9120
100 SITE MANVILLE-ROCK

Eastgate Village Development Corp.
D.B. 6545, Pg. 959

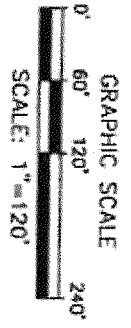


EXHIBIT PLAT
FOR
CONDITIONAL USE PERMIT
Property of:
BLIND SQUIRREL, LLC
15405 CRYSTAL SPRINGS WAY
LOUISVILLE, KENTUCKY 40245-5298
DEED BOOK 9695, PAGE 361

Property Address:
600 N. ENGLISH STATION ROAD

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Exhibit C

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Exhibit D

- GENERAL NOTES**
1. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
 2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
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 20. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

- MARKS EXPLANATION**
- SYMBOLS**
- 1. 1/4" = 1'-0" (SEE SCALE)
 - 2. 1/8" = 1'-0" (SEE SCALE)
 - 3. 1/16" = 1'-0" (SEE SCALE)
 - 4. 1/32" = 1'-0" (SEE SCALE)
 - 5. 1/64" = 1'-0" (SEE SCALE)
 - 6. 1/128" = 1'-0" (SEE SCALE)
 - 7. 1/256" = 1'-0" (SEE SCALE)
 - 8. 1/512" = 1'-0" (SEE SCALE)
 - 9. 1/1024" = 1'-0" (SEE SCALE)
 - 10. 1/2048" = 1'-0" (SEE SCALE)
 - 11. 1/4096" = 1'-0" (SEE SCALE)
 - 12. 1/8192" = 1'-0" (SEE SCALE)
 - 13. 1/16384" = 1'-0" (SEE SCALE)
 - 14. 1/32768" = 1'-0" (SEE SCALE)
 - 15. 1/65536" = 1'-0" (SEE SCALE)
 - 16. 1/131072" = 1'-0" (SEE SCALE)
 - 17. 1/262144" = 1'-0" (SEE SCALE)
 - 18. 1/524288" = 1'-0" (SEE SCALE)
 - 19. 1/1048576" = 1'-0" (SEE SCALE)
 - 20. 1/2097152" = 1'-0" (SEE SCALE)

PROJECT DATA

PROJECT NAME: [REDACTED]

PROJECT ADDRESS: [REDACTED]

PROJECT CITY: [REDACTED]

PROJECT STATE: [REDACTED]

PROJECT ZIP: [REDACTED]

PROJECT DATE: [REDACTED]

PROJECT SCALE: [REDACTED]

PROJECT DRAWN BY: [REDACTED]

PROJECT CHECKED BY: [REDACTED]

PROJECT APPROVED BY: [REDACTED]

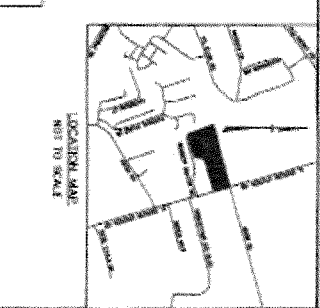
PROJECT DATE: [REDACTED]

PROJECT SCALE: [REDACTED]

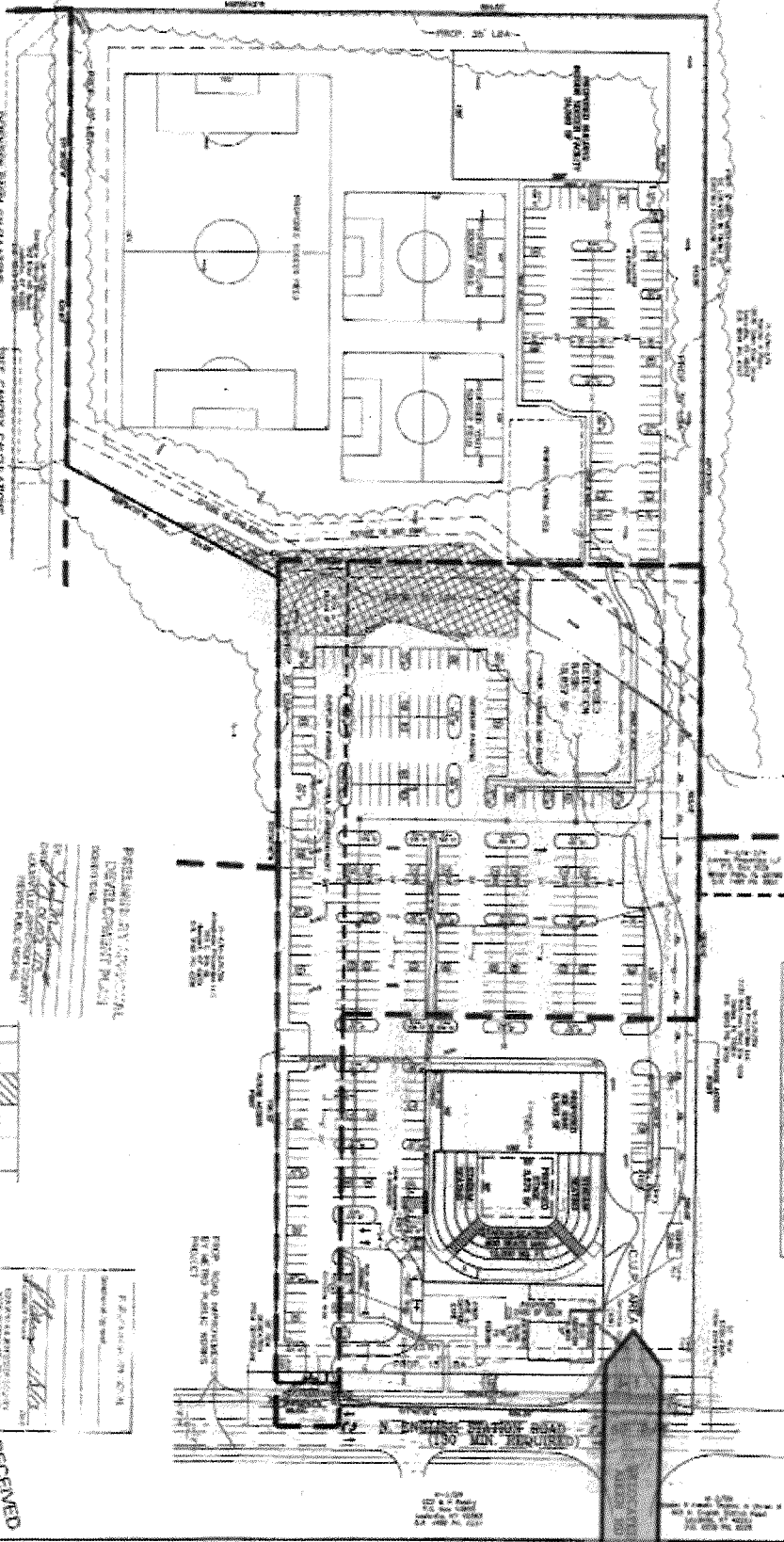
PROJECT DRAWN BY: [REDACTED]

PROJECT CHECKED BY: [REDACTED]

PROJECT APPROVED BY: [REDACTED]



A CONDITIONAL USE PERMIT FOR AN AMPHITHEATER IS REQUESTED BY SECTION 4.2.47 OF THE JULY 2004 EDITION OF THE LOUISVILLE METRO LAND DEVELOPMENT CODE



- LEGEND**
- 1. 1/4" = 1'-0" (SEE SCALE)
 - 2. 1/8" = 1'-0" (SEE SCALE)
 - 3. 1/16" = 1'-0" (SEE SCALE)
 - 4. 1/32" = 1'-0" (SEE SCALE)
 - 5. 1/64" = 1'-0" (SEE SCALE)
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 - 17. 1/262144" = 1'-0" (SEE SCALE)
 - 18. 1/524288" = 1'-0" (SEE SCALE)
 - 19. 1/1048576" = 1'-0" (SEE SCALE)
 - 20. 1/2097152" = 1'-0" (SEE SCALE)

PROPOSED DISTRICT DEVELOPMENT PLAN

15400 CRYSTAL BRIDGE BOULEVARD
LOUISVILLE, KY 40245-5206

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11059

RECEIVED

11059

11059

DETAILED DISTRICT DEVELOPMENT PLAN
NO. 11059

886 and 800
NORTH ENGLISH STATION ROAD

DEVELOPER:
BLIND BIRCH LLC
15400 CRYSTAL BRIDGE BOULEVARD
LOUISVILLE, KY 40245-5206

LD&D
LAND DESIGN & DEVELOPMENT, INC.
DESIGNER - LAND SURVEYOR - LANDSCAPE ARCHITECT
15400 CRYSTAL BRIDGE BOULEVARD
LOUISVILLE, KY 40245-5206

PROJECT DATE: [REDACTED]

DATE PREPARED: [REDACTED]

DATE CHECKED: [REDACTED]

DATE APPROVED: [REDACTED]

ENGINEER'S SEAL

SURVEYOR'S SEAL

NO.	DATE	DESCRIPTION	BY
1	08-10-10	ISSUED FOR PERMITTING	[REDACTED]
2	08-10-10	A REVISED PROPOSED BOUNDARY	[REDACTED]
3	08-10-10	ISSUED FOR PERMITTING	[REDACTED]

10/10/10 10/10/10

Exhibit E

LouisvilleKy.GEARC comments: Suggests moving the TARC stop @ Aiken to a farside stop. This would require a 3 ft. bench pad behind the sidewalk / boarding area 50 ft. past your proposed entrance. The bench pad would be easy to add when the sidewalk is constructed and it will allow for a bench / trash receptacle to be installed at a later date. Proposed binding element: Binding Element: The Owner / Developer shall construct a 3 ft. x 12 ft. concrete bench pad and 5 ft. boarding area as shown on the site development plan. The Owner / Developer shall also empty the trash receptacle on a weekly basis and clean the Transit stop on a daily or as needed basis.

- 16739 Delineate the CUP boundary on the plan. Include a separate sheet showing bearing and distances, if different from original proposed boundary. RESOLVED 07/11/2012 JREVERMAN
- 16739 A sidewalk along the north entrance drive, leading to the rear property with the soccer facilities is recommended. RESOLVED 07/11/2012 JREVERMAN
- 16739 A variance will need to be requested for the proposed building encroaching into the front yard. RESOLVED 07/11/2012 JREVERMAN
- 16739 A landscape waiver will need to be requested for the proposed soccer building and proposed parking to encroach into the 35 ft LBA along the south property line adjacent to the R-4 property. RESOLVED 07/11/2012 JREVERMAN
- 16739 The 10 parking spaces to the north of the proposed amphitheater appear to create some awkward vehicular conflicts. Discuss with staff and with Public Works. RESOLVED 07/11/2012 JREVERMAN
- 16739 Discuss future parking and restaurant with staff. May need to be shown as proposed, or not shown at all. RESOLVED 07/11/2012 JREVERMAN
- 16739 If necessary, submit new legal descriptions and bearing and distance sheets for rezoning and form district change. RESOLVED 07/11/2012 JREVERMAN
- 16739 The seating area for the amphitheater is shown as 1,150 sf. It appears that this area is closer to 12,000 sf. Please correct with accurate number. RESOLVED 12/27/2012 JREVERMAN
- 16739 Please calculate maximum capacity for the amphitheater based on Table 1004.1.1 of the 2006 International Building Code for "Assembly without fixed seats." There are 3 different calculations that can be used under this classification. Please use the most appropriate calculation. I will send you the table in an email attachment.
- 16739 The CUP area on the plan includes the ice rink. Please verify that this is intentional. If not, please redraw the CUP boundary and submit a new legal description.
- 16739 The waiver request on the development plan request encroachment into an LBA by a building and parking lot. This proposed building has since been removed. Please modify the waiver request to only request encroachment by the parking lot.
- 16739 The waiver request on the development plan request encroachment into an LBA by a building and parking lot. This proposed building has since been removed. Please modify the waiver request to only request encroachment of the parking lot.
- 16739 Please update parking calculations based on previous comments.

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K. A. O'Brien

Exhibit F

From: "Robbins, April" <April.Robbins@louisvilleky.gov>
To: "K. A. O'Brien" <kaobrien@bellsouth.net>
Sent: Friday, June 06, 2014 12:04 PM
Attach: image001.png
Subject: RE: Conditional Use Permit questions

According to KRS 11.237 (3) "exercised" as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement have been let; or in the absence of contracts, the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment under contract, in development, are completed. When construction is not part of the use, "exercised" shall mean that the use is in operation and in compliance with the conditions as set forth in the permit.

If the CUP is pertaining to a use, rather than a building or construction, then exercised shall mean there is a need to follow all conditions of the permit, including those that may have been applied by BOZA or the Commission.

A site disturbance permit issued by MSD is not enough to meet any exercised dateline.

April Robbins
Zoning Enforcement Supervisor



Louisville Metro Codes and Regulations
444 South 5th Street / Suite 200
Louisville KY 40202
502-574-1300

april.robbins@louisvilleky.gov

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From: K. A. O'Brien [mailto:kaobrien@bellsouth.net]
Sent: Friday, June 06, 2014 7:34 AM
To: Robbins, April
Subject: Conditional Use Permit questions

Ms. Robbins,

I have some questions concerning Section 11.5A.1C of the 2004 Land Development Code. It states that

6/30/2014

a Conditional Use Permit "must be exercised within one year of the date of issuance, or other time frame as may be specified by the Board." My questions are: What does the code mean by the word "exercised"? Does it mean that the land must have actually been utilized for the permitted conditional use, in order to avoid the one year expiration of the Conditional Use Permit? Or does it mean that, at a minimum, either a building permit or occupancy permit must be issued within one year of the date of issuance of the Conditional Use Permit in order to prevent its expiration? Isn't it true that the issuance of an MSD "erosion prevention and sediment control site disturbance permit" alone will not prevent the one year expiration of a Conditional Use Permit? (Please note that my questions are for a situation where no timely request for a one year extension is made.)

Thank you,

Kirk A. O'Brien

----- Original Message -----

From: Robbins, April

To: kaobrien@bellsouth.net

Sent: Thursday, June 05, 2014 4:10 PM

Subject: April Robbins, Zoning Supervisor

Please see below for my email and office number

April Robbins

Zoning Enforcement Supervisor

Louisville Metro Codes and Regulations

444 South 5th Street / Suite 200

Louisville KY 40202

502-574-1300

april.robbs@louisvilleky.gov