

# Land Development and Transportation Committee Staff Report

July 9<sup>th</sup>, 2015



<b>Case No:</b>	<b>15DEVPLAN1072</b>
<b>Request:</b>	<b>Revised Detailed District Development Plan with Binding Element Amendments</b>
<b>Project Name:</b>	<b>Paddocks at Victory Knoll</b>
<b>Location:</b>	<b>11840 Ellingsworth Lane</b>
<b>Owner:</b>	<b>Ellingsworth Apartments LLC</b>
<b>Applicant:</b>	<b>Scott Hagan, Hagan Properties Inc</b>
<b>Representative:</b>	<b>Timothy W. Martin, Frost Brown Todd LLC</b>
<b>Jurisdiction:</b>	<b>Middletown</b>
<b>Council District:</b>	<b>20 – Stuart Benson</b>
<b>Case Manager:</b>	<b>Christopher Brown, Planner II</b>

## REQUEST

- Binding Element Amendments
- Revised Detailed District Development plan

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: R-6, Multi-Family Residential  
 Existing Form District: N, Neighborhood  
 Existing Use: Vacant  
 Proposed Use: Multi-Family Residential  
 Minimum Parking Spaces Required: 708  
 Maximum Parking Spaces Allowed: 1180  
 Parking Spaces Proposed: 891  
 Plan Certain Docket #: 9100

The proposal is for 468 units on the subject site in a mix of 2 and 3 story buildings. The proposal has two story buildings located along the eastern property perimeter adjacent to the existing Swan Point Development. All buildings will remain within the previously approved variance to allow a maximum building height of 39.5' for the three story buildings on the site. The proposal will contain buildings that have garages incorporated into each of the buildings. The new style of apartments and the increased density from the previously approved plans require amendments to the existing binding elements. A few additional binding elements have been proposed regarding construction and large equipment delivery hours as well as roadway improvements.

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b><i>Subject Property</i></b>			
<b>Existing</b>	Vacant	R-6	Neighborhood
<b>Proposed</b>	Apartments	R-6	Neighborhood
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Single and Multi-family residential	R-5 / R-5A	NFD
<b>South</b>	I-64	ROW	ROW
<b>East</b>	Multi-family residential	R-5A	NFD
<b>West</b>	Vacant/ Commercial	OTF / C-1	NFD

## PREVIOUS CASES ON SITE

- 9-18-04: A change in zoning request from R-4 to Or-3 and C-1 for a corporate campus was denied.
- 9100: On December 6, 2007, a change in zoning from R-4 to R-6 was approved by the City of Middletown for condominiums known as Victory Knoll.
- 17386: A revised detailed district development plan was approved to allow 398 apartment units on the site with amendments to the binding elements regarding density and design.
- 18373: The Board of Zoning Adjustment approved a variance to allow several of the structures on the site to exceed the 35' maximum height by 4.5'.
- 19046: A revised detailed district development plan was approved with binding element amendment for changes to the style of buildings on the site. It allowed the construction of carriage houses.
- 13DEVPLAN1127: A revised detailed district development plan to change the name of the entry street.
- 14DEVPLAN1072: A revised detailed district development plan was approved by the Development Review Committee to allow changes in the layout of the buildings.
- 14ZONE1026: A rezoning to C-1 with CUP, landscape waiver and variance was proposed to allow a restaurant with outdoor alcohol sales to be located in the center of the proposed multi-family residential complex. Planning Commission approved the rezoning. The city of Middletown denied the rezoning request.

## INTERESTED PARTY COMMENTS

Staff has received no interested party comments.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
2004 Land Development Code (Middletown)

## STANDARD OF REVIEW FOR DEVELOPMENT PLAN AND BINDING ELEMENT AMENDMENTS

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There does not appear to be any environmental constraints on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: The open space requirements are met with the current proposal.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

### TECHNICAL REVIEW

The proposal requires final approval by the City of Middletown.

### STAFF CONCLUSIONS

The proposal meets the applicable 2004 Land Development Code requirements. The Committee needs to make a recommendation to the City of Middletown. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Land Development and Transportation Committee must determine if the proposal meets the standards for a revised detailed district development plan as established in the Land Development Code.

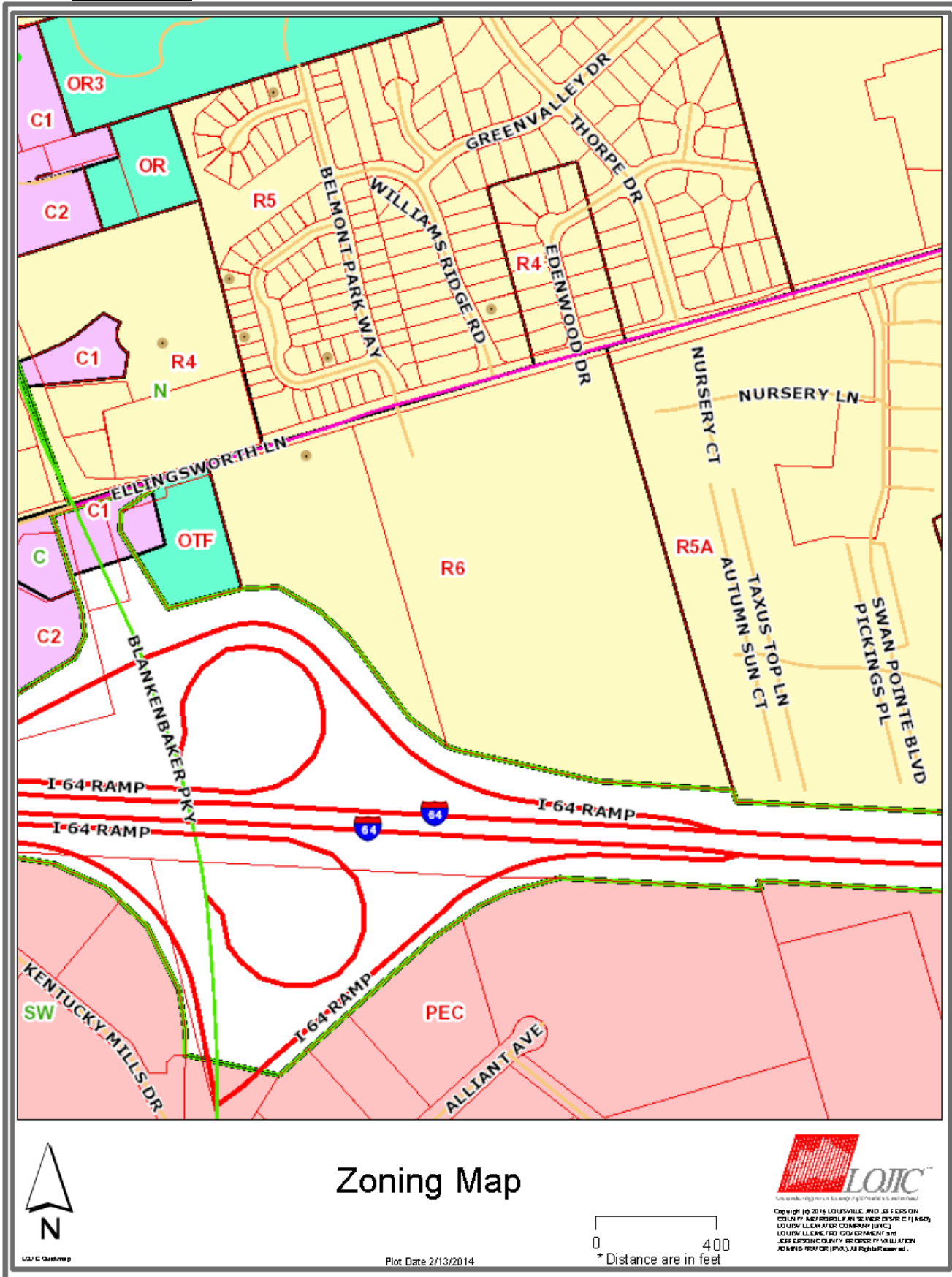
### NOTIFICATION

Date	Purpose of Notice	Recipients
6/17/15	Hearing before LD&T	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers to Council District 20 Notification of Development Proposals

### ATTACHMENTS

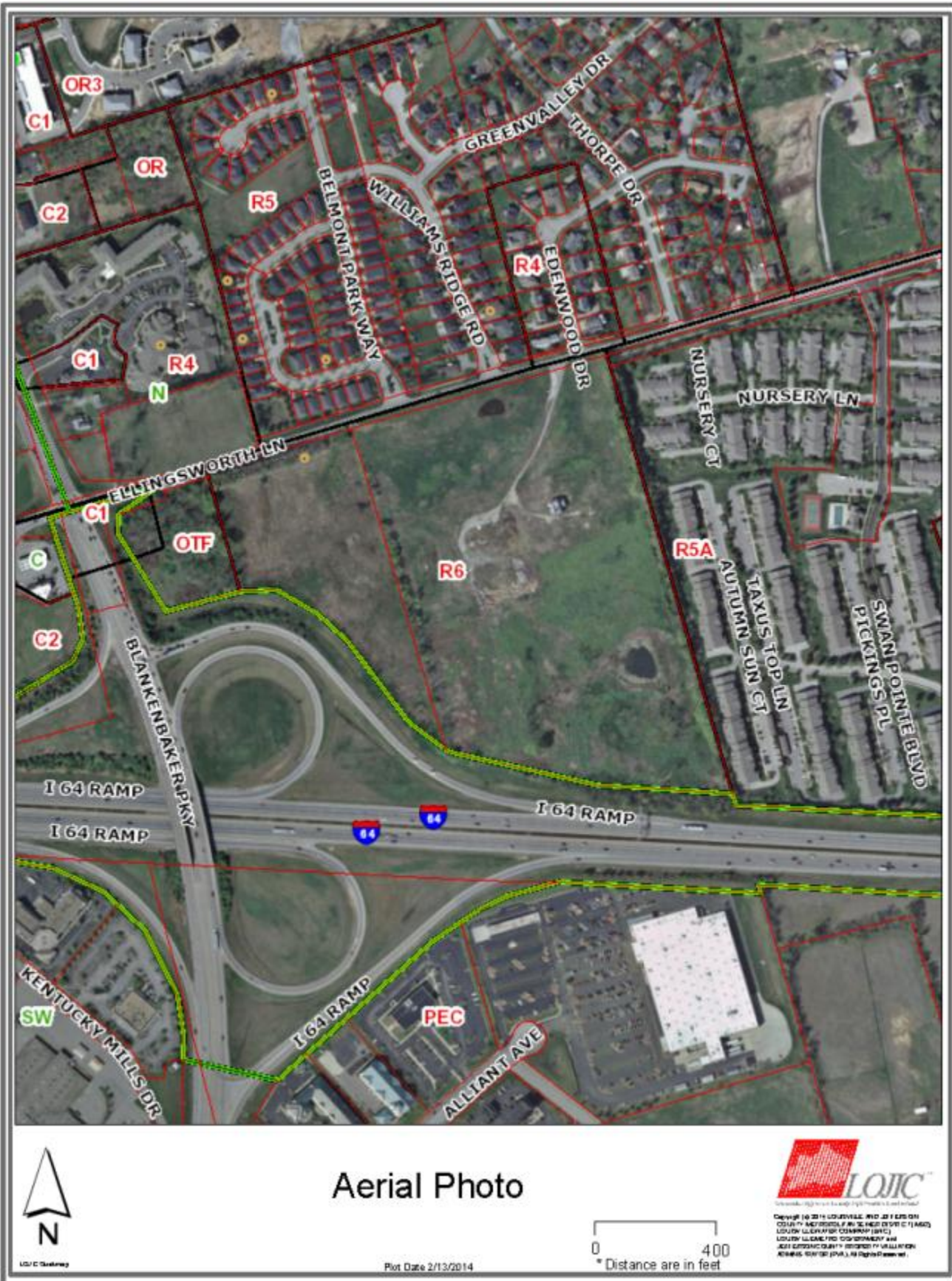
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. Zoning Map





2. Aerial Photograph



### **3. Existing Binding Elements**

1. The development shall be in accordance with the approved District Development Plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee and the city of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The density of the development shall not exceed 12 dwelling units per net acre (398 units on 34.25 acres).
3. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, and demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by the City of Middletown and the Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
  1. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
  2. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
  3. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  4. Location of construction fencing for each tree/tree mass designated to be preserved.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District. Any changes made by IPL, MSD or any other agency, must be submitted to and approved by the City of Middletown prior to issuance of a binding permit.
  - b. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved by the City of Middletown prior to obtaining approval for site disturbance.
  - c. A minor plat or legal instrument shall be recorded creating the boundary of the proposed development. A copy of the recorded instrument shall be submitted to the Division of Planning & Design Services.
  - d. The property owner/developer must obtain City of Middletown approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. The must be at a minimum consistent with the preliminary landscape plan presented to the City of Middletown Commission at its meeting on July 12<sup>th</sup>, 2012. The developer shall show in its plan irrigation of the main common areas. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the existing landscaping or required landscaping without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact.
5. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the drip line of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
7. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer or the City of Middletown upon request.
8. All plans setting out Tree Canopy Protection Areas (TCPAs) must contain the following notes:
  - a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 10f of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.
  - b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent minimum distances. The final boundary for each TCPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
  - c. Tree protection fencing shall be erected around all TCPAs prior to site disturbance to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed, the fence shall be relocated to protect all remaining trees within that TCPA.
  - d. No parking, material storage, or construction activities are permitted within the TCPAs beyond that allowed for preliminary site investigation work.
  - e. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed twelve (12) feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at breast height (DBH) shall be removed without prior approval by DPDS.
  - f. No living and healthy tree as shown on the Approved Landscape Plan shall be removed without approval of the City of Middletown.
9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
10. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

11. The signature entrance plan (if approved) shall be submitted to Planning Commission staff and the city of Middletown for review and approval prior to recording the record plat.
12. Trees will be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Detailed Development/Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff and the City of Middletown for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
13. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the August 21<sup>st</sup>, 2013 Development Review Committee and City of Middletown Commission meeting. Final elevations of any and all structures must be approved by the City of Middletown prior to issuance of a building permit. Developer will provide City of Middletown with information about its proposed interior finishes and amenities. The final construction plans (which shall be provided to City of Middletown prior to issuance of any building permit) must be consistent with the interior finishes and amenities shown at the City of Middletown Commission meeting.
14. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission and the City of Middletown.
15. 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 and the City of Middletown.
16. As part of the developer's initial work on the property, the developer will begin construction and prior to requesting certificates of occupancy for any residential units, the developer shall complete construction of the following roadway improvements, which are shown on the approved detailed district development plan:
  - (1) Dual left turn lanes on Ellingsworth Lane onto southbound Blankenbaker Parkway;
  - (2) A right turn lane on northbound Blankenbaker Parkway onto Ellingsworth Lane; and
  - (3) A third lane along Ellingsworth Lane from its intersection with Blankenbaker Parkway and extending along the frontage of the subject property.
17. The above binding elements may be amended as provided for in the Zoning District Regulations, upon approval of the City of Middletown.
18. The applicant, its successors and assigns, shall maintain the apartments and site in a high state of repair, including but not limited to:
  - a. Maintenance of exterior finishes, no peeling paint, broken or non-functioning light fixtures, holes in exterior, windows and stairways in good condition
  - b. Maintenance of grounds, including regular mowing, landscape upkeep and replacement of any plant material which might die, sidewalks repaired, exterior lighting kept functioning, common areas picked up and kept clean
  - c. Retention ponds must be clean, attractive and safe
  - d. Maintenance of parking, no significant degradation allowed, no abandoned cars allowed to remain in parking area, keep any signage painted and well kept
  - e. Applicant, its successors and assigns, acknowledges and agrees that the City of Middletown has additional authority (along with Louisville Metro) to enforce these binding elements, including the duty to maintain property.



19. The applicant, its successors and assigns, shall develop a set of rules and regulations for the residents of the apartments to help insure that the structures and grounds remain in high state of repair. Such rules shall be sent to the City of Middletown for review and approval, prior to the issuance of a Certificate of Occupancy on any building shown on the Revised Detailed Development Plan.
20. The applicant, its successors and assigns, agrees that during the construction phase, the site shall be kept mowed and picked up, to the greatest reasonable extent possible, given the necessities of the construction operations.
21. The applicant, its successors and assigns, agrees to install the landscaping plan elements along Ellingsworth Lane and Swan Pointe as quickly as is reasonably possible, given the necessities of the construction operations.

#### **4. Proposed Binding Elements**

2. The density of the development shall not exceed ~~42~~**13.67** dwelling units per net acre (~~398~~**468** units on 34.25 acres).
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:
  - a. The development plan must receive full construction approval from ~~Louisville Metro Department of Inspections, Permits and Licenses~~ **Construction Permit Review, Transportation Planning Review** and the Metropolitan Sewer District. Any changes made by IPL, MSD or any other agency, must be submitted to and approved by the City of Middletown prior to issuance of a binding permit.
  - b. **The main construction entrance shall be located at the West side of the site. No delivery of large equipment to the site before 7:00 a.m. Monday-Friday and 9:00 a.m. Saturday-Sunday. Exterior construction hours are limited to the hours of 7:00 a.m. and 7:00 p.m.**
  - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved by the City of Middletown prior to obtaining approval for site disturbance.
  - d. A minor plat or legal instrument shall be recorded creating the boundary of the proposed development. A copy of the recorded instrument shall be submitted to the Division of Planning & Design Services.
  - e. The property owner/developer must obtain City of Middletown approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. The plan must be at a minimum consistent with the preliminary landscape plan presented to the City of Middletown Commission at its meeting on ~~July 12<sup>th</sup>, 2012~~ \_\_\_\_\_. The developer shall show in its plan irrigation of the ~~main common~~ **clubhouse and pool** areas. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the existing landscaping or required landscaping without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact.
8. All plans setting out Tree Canopy Protection Areas (TCPAs) must contain the following notes:
  - a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1 of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas (**except along the east property line where the berm is being constructed**) must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.

b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent minimum distances. The final boundary for each TCPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

c. Tree protection fencing shall be erected around all TCPAs prior to site disturbance to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy (**except along the east property line where the berm is being constructed**) and shall remain in place until all construction is completed. When trees must be removed, the fence shall be relocated to protect all remaining trees within that TCPA.

d. No parking, material storage, or construction activities are permitted within the TCPAs beyond that allowed for preliminary site investigation work.

e. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed twelve (12) feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at breast height (DBH) shall be removed without prior approval by DPDS.

f. No living and healthy tree as shown on the Approved Landscape Plan shall be removed without approval of the City of Middletown.

13. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the ~~August 24<sup>st</sup>, 2013~~ **July 9<sup>th</sup>, 2015 Land Development and Transportation Committee and the City of Middletown Commission** meeting. Final elevations of any and all structures must be approved by the City of Middletown prior to issuance of a building permit. Developer will provide City of Middletown with information about its proposed interior finishes and amenities. The final construction plans (which shall be provided to City of Middletown prior to issuance of any building permit) must be consistent with the interior finishes and amenities shown at the City of Middletown Commission meeting.
17. **The City of Middletown, within 3 months of developer commencing construction of the improvements referred to in Paragraph 16 hereinabove, shall collect from Mapco or its successors or assigns the \$70,000 Mapco agreed to contribute toward said improvements in connection with zoning case #\_\_\_\_\_.**
18. The applicant, its successors and assigns, shall maintain the apartments and site in a high state of repair, including but not limited to:
- f. Maintenance of exterior finishes, no peeling paint, broken or non-functioning light fixtures, holes in exterior, windows and stairways in good condition
  - g. Maintenance of grounds, including regular mowing, landscape upkeep and replacement of any plant material which might die, sidewalks repaired, exterior lighting kept functioning, common areas picked up and kept clean
  - h. Retention ponds must be clean **and** attractive ~~and safe~~
  - i. Maintenance of parking, no significant degradation allowed, no abandoned cars allowed to remain in parking area, keep any signage painted and well kept
  - j. Applicant, its successors and assigns, acknowledges and agrees that the City of Middletown has additional authority (along with Louisville Metro) to enforce these binding elements, including the duty to maintain property.