

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
September 12, 2016**

A meeting of the Louisville Metro Planning Commission was held on Monday, September 12, 2016 at 1:00 p.m. at the East Government Center, located at 200 Juneau Drive, Louisville, Louisville, Kentucky.

**Commission members present:**

Vince Jarboe, Chairman  
Jeff Brown  
Marilyn Lewis  
Lula Howard  
David Tomes  
Emma Smith  
Robert Kirchdorfer

**Commission members absent:**

Robert Peterson  
Clifford Turner

**Staff Members present:**

Emily Liu, Director, Planning and Design Services  
Joseph Reverman, Assistant Director, Planning and Design Services  
John G. Carroll, Legal Counsel  
Julia Williams, Planning Supervisor  
Tammy Markert, Transportation Planning  
Chris Cestaro, Management Assistant

The following matters were considered:

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**Public Hearing**

**Case No. 15ZONE1070**

**(NOTE: This case was continued from the May 24, 2016 Planning Commission night hearing)**

**Request:** Change in form district from Neighborhood to Regional Center; Change in zoning from R-4 to OR-3; Waivers; Variances; District Development Plan

**Project Name:** Cityscape Simcoe Lane

**Location:** 4113, 4190, 4200, & 4206 Simcoe Lane

**Owners:** Bette Kaelin  
4206 Simcoe Lane  
Louisville, KY 40241

Fred and Linda Caldwell  
4200 Simcoe Lane  
Louisville, KY 40241

Raymond Borchert  
4113 Simcoe Lane  
Louisville, KY 40241

**Applicant:** Cityscape Residential LLC  
Kelli Lawrence  
8335 Keystone Crossing Suite 105  
Indianapolis, IN 46240

**Representatives:** William Bardenwerper  
Bardenwerper Talbott & Roberts PLLC  
1000 N. Hurstbourne Parkway 2<sup>nd</sup> Floor  
Louisville, KY 40223

Kevin Young and Ann Richard  
Land Design & Development, Inc.  
503 Washburn Avenue Suite 101  
Louisville, KY 40223

**Jurisdiction:** Louisville Metro

**Council District:** 17 – Glen Stuckel

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**Case Manager:** **Julia Williams, RLA, AICP, Planning  
Supervisor**

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 Design Services offices, 444 S. 5th Street.)

**An audio/visual recording of the Land Development and Transportation Committee meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

**Agency Testimony:**

Julia Williams presented the case and showed a Power Point presentation (see staff report and video for detailed presentation.) She noted that the traffic study was updated in June of 2016, and Avish Gardens is no longer part of the traffic study/study area.

During her presentation, Ms. Williams showed the two additional proposed binding elements (#20 and #21, included in the staff report.) They are as follows:

20. The developer will engage a signal qualified consulting firm (on the KYTC's Qualification List for this type of work) to be responsible for completing a formal Traffic Signal Timing Report for 5 signalized intersections along KY Highway 22. Metro Public Works will be responsible for supplying 12 hour turning movement counts at each intersection. The developer's consultant will be responsible for performing travel time analysis based on the counts provided; providing 4 separate signal timing plans at each intersection (typical weekday representing AM, noon, PM and Evening periods); and a formal Traffic Signal Timing Report. Metro Public Works will be responsible for the implementation of the signal timing plans and any subsequent testing and in-service adjustment. Five signalized intersections will be included in the study, being:

- 1) KY 22 & N. Hursbourne Pkwy/Springdale Rd
- 2) KY 22 & Summit Plaza Dr
- 3) KY 22 & interstate I-265 SB on ramp
- 4) KY 22 & Norton Healthcare Blvd

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5) KY 22 & Chamberlain Ln

The Traffic Signal Timing Report shall be completed prior to the issuance of building permits.

21. Developer shall construct intersection improvements at KY 22 & Simcoe Ln to prohibit left turn traffic from Simcoe to KY 22. Construction plans, bond & permit for the intersections improvements shall be completed prior to the issuance of building permit. Intersection improvements shall be constructed prior to the issuance of certificate of occupancy.

**The following spoke in favor of the proposal:**

William Bardenwerper, Bardenwerper Talbott & Roberts PLLC, 1000 N. Hurstbourne Parkway 2<sup>nd</sup> Floor, Louisville, KY 40223

Kevin Young and Ann Richard, Land Design & Development, Inc., 503 Washburn Avenue Suite 101, Louisville, KY 40223

Diane Zimmerman, CDM Smith Traffic Engineers, 9420 Bunsen Parkway Suite 225, Louisville, KY 40220

Kevin Ford, 161 St. Matthews #14, Louisville, KY 40207

**Summary of testimony of those in favor of the proposal:**

William Bardenwerper, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for verbatim presentation.) He discussed the added binding elements (regarding road improvements) in detail.

Mr. Bardenwerper said the three developers of Fenley, Jaytee Springhurst and Cityscapes will pay for signal timing at the five signalized intersections. Whichever comes in first will pay for Brownsboro Road improvements.

Mr. Bardenwerper discussed a proposal to make an access right-out only onto KY 22.

He said Simcoe Lane is not a "local street" but a "dead-end" street which mostly serves other commercial developments, plus four residential properties. He discussed the barrier berm on the street and said that berm is no longer serving its purpose, but is rather blocking connectivity. He talked about density issues –

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although the site is a Neighborhood form district now, there are only four residences surrounded by commercial, high-density developments. He discussed mitigation of impacts on the Village of Hartwick from higher-density use/s and showed screening, buffering, and transition mitigation.

He refuted the claim that Avish Gardens might be open to litigation if a traffic cut-through / access easement were allowed.

The applicant agreed that there be no left turn at Simcoe Lane & KY 22 per KYTC.

Commissioner Tomes said he wanted Hurstbourne and Springhurst included in the traffic study. He said he was concerned that the study looked at existing conditions but not future conditions. He said other projects Mr. Bardenwerper talked about were part of land that has already been rezoned, unlike this parcel. They had their own traffic studies done. Mr. Bardenwerper said many problems in this area were caused by a lack of signal coordination, and that road improvements and signal coordination may help make traffic problems better.

In response to a statement by Commissioner Tomes, Mr. Bardenwerper suggested that tenants of Avish Gardens might welcome additional customer traffic from a cut-through.

Commissioner Jarboe asked about left-turn traffic back ups (left turn from KY 22 onto Simcoe) – did Mr. Bardenwerper know how much of a queue line that would be at that center left-turn? He was concerned about traffic backing up KY 22 coming in to The Paddock development and noted that there is a three-second differential between build and no build. Mr. Bardenwerper said there is enough queue there that the intersection would go from a “B” to a “C”. Commissioner Jarboe also discussed the insurance issue with a cross-access agreement with Avish Gardens.

Commissioner Howard said Simcoe Lane is not an arterial street or collector street, but a “dead-end” street **is** a local street. She added that the site is not an “Activity Center” but is near an activity center; generally, the Code does not support high intensity uses on a local street. Mr. Bardenwerper discussed what was meant by “Activity Center” and how that could affect development on this site. Commissioner Howard and Mr. Bardenwerper also discussed how changing the form district would affect the residential properties’ form district designation. Mr. Bardenwerper said the four lots could connect to the Regional Center.

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**The following spoke in opposition to the proposal:**

Jim Onnen, 4100 Abbeywood Village Drive, Louisville, KY 40241

Bruce Campbell, 3114 Albans Place, Louisville, KY 40241-4400

Joe Tucker, 9622 Moorfield Circle, Louisville, KY 40241

Brenda Harral, 3206 Wynbrooke Circle, Louisville, KY 40241

Rudy Rodriguez, 4205 Hartwick Village Place, Louisville, KY 40241

Greg Troutman, Springhurst Community Association, 4000 Abbeywood Village Drive, Louisville, KY 40241

**Summary of testimony of those in opposition to the proposal:**

Jim Onnen discussed traffic through the shopping center parking lot and submitted an exhibit book to the Commissioners (on file). He said there were three problems that were supposed to be solved by the developer since the May, 2016 meeting:

- Improve traffic flow through Avish Gardens

- Do not solve the problem by moving traffic from one intersection to another

- Secure an easement from the owner of Avish Gardens

He said none of these issues has been solved. He referred to Exhibit 1 in his handout and said this project would set a precedent to have its traffic flow routed through private property to get to the public streets.

Mr. Onnen and Mr. Bardenwerper discussed an applicant's slide showing KY 22 and Simcoe Lane.

Mr. Onnen referred to Exhibit 2 in his handout and discussed the accuracy of traffic figures and percentage of growth. He referred to Exhibit 6 and described in detail why he thought the current and projected traffic situation did not meet Code standards for Traffic Impact.

Greg Troutman, VP of the Springhurst Community Association, said the Association is still against the proposal because the applicant has not resolved the issue of how traffic is supposed to exit the development or make a left turn. He said he agrees with Mr. Onnen's presentation. He said the plan operates on

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the assumption that traffic will not go through the shopping center, which he said will absolutely happen. Regarding the proposed binding elements, he said he agreed with Commissioner Tomes that the traffic study should include the intersection of Springhurst Boulevard at Hurstbourne Lane, as well as the intersection of KY 22 and Chamberlain Lane. Mr. Troutman said the developer is asking for this plan to be approved before any plans from the traffic study are implemented; he asked that road improvements/changes be made before any construction takes place.

Regarding the berm at the end of Simcoe Lane, Mr. Troutman said the Village of Hartwick was not the only entity involved; the Village of Abbeywood, which adjoins and abuts Hartwick, also owns part of that property, and part of the property that would be involved in a right-of-way if Simcoe Lane were extended. He said the Village of Abbeywood was never consulted or asked about this development. He asked if the Simcoe Lane residents were offered a chance to sell to developers, while the surroundings properties were being developed.

Brenda Harral was called but said her concerns had been addressed.

Rudy Rodriguez said there is no indication about what traffic is going to be like with the new East End Bridge. He said Dan Huneke's letter [on file] states that he **cannot** grant access easement rights to this development (Mr. Huneke's point #5.)

In response to a question from Commissioner Kirchdorfer, Mr. Troutman clarified that he is on the Board of the City of Abbeywood.

**The following spoke neither for nor against the proposal ("Other"):**

Michael Trager-Kusman, 900 E. Market Street, Louisville, KY 40206

Bill Dugal, 4211 Hartwick, Louisville, KY 40241

Jack Kelly, 4109 Hartwick Village, Louisville, KY 40241

Joe Tucker, 9622 Northfield Circle, Louisville, KY

**Summary of testimony of those neither for nor against the proposal ("Other"):**

Jack Kelly, VP of Village of Hartwick Homeowner's Association, asked about binding element #8B (last sentence) – he said it should read "6x6" treated posts, not "4x4". This will be corrected in the staff report. In binding element #20, he

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asked if Springhurst and Hurstbourne intersection will be added as #6 in binding element #20. Mr. Bardenwerper said that can be added. Commissioner Brown said that, what Public Works would like to do is implement the changes on the main corridor before the signalization is coordinated. He said that, once the corridor changes are made on KY 22 that should alleviate some of the congestion on Hurstbourne. Mr. Kelly also requested that another sentence be added to binding element #20 stating, "The timing report shall be completed **and implemented** as recommended by the report prior to the certificate of occupancy."

Bill Duval was called but declined to speak.

Michael Trager-Kusman, representing Jaytee Properties and Republic Bank Properties, said they had their own traffic studies done. He asked for crosswalks, and measures taken to prevent cars from gridlocking the Simcoe Lane exit. He emphasized the importance of connectivity.

Bruce Campbell asked if seasonal/holiday traffic had been taken into account – Christmas traffic is particularly bad. Commissioner Brown said that, per Metro Public Works, the signal traffic plan is designed to be adjusted specifically to address holiday traffic.

Joe Tucker said this location is not designed for additional high-density traffic. He asked that current traffic problems be brought under control before new development occurs. He said that he is opposing the development as it is being presented at this time.

In response to a question from Commissioner Lewis, Kevin Young said a narrow curb cut behind BB&T is not planned to be changed; the width of Simcoe Lane from KY 22 will not be changed. He added that the applicant is adding a curb and improving drainage.

Kevin Ford, an attorney representing the four residents on Simcoe Lane, stated that those residents were never offered any buyouts for their properties. He said those residents support the plan.

**Rebuttal:**

Mr. Bardenwerper said there were two traffic engineers, as well as Metro Public Works and Transportation Planning, that looked at the studies and traffic numbers and found that they met requirements. He said Mr. Onnen said there were three problems to solve; Mr. Bardenwerper maintained that there were



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three issues to address Comprehensive Plans and Policies. He said the Comprehensive Plan is a guide; some of the issues cannot be resolved by the applicant alone. He said decisions about signal improvements and adjustments are governmental responsibilities. He maintained that there are no “peak-hour failing” conditions. He said the applicant has a right-turn out onto KY-22, and that a left-turn at an unsignalized intersection is unsafe.

Regarding Mr. Troutman’s testimony, Mr. Bardenwerper said he and other residents have very likely cut through that shopping center. He said the Cityscape residents would have the ability to walk to stores. He said the math does work, and there are no “failing” grades.

He said Mr. Hunneke would not be violating his leases and mortgages if he signed a cross-access agreement, if all of the leased tenants and mortgage holders sign as well. However, he said Mr. Hunneke’s letter seemed positive towards this development.

Commissioner Tomes asked Mr. Bardenwerper if the applicant would consider adding one more intersection if Metro Public Works requests that. Mr. Bardenwerper said yes.

**Deliberation:**

Commissioner Tomes expressed concern that this might set a new precedent of suggesting that a private development go across private property for their access. He said that Metro Public Works seems positive that the new signalization efforts will work. He asked that any approval of this project be approved on condition that it be delayed until some improvements have been made before building begins.

Commissioner Kirchdorfer said he feels the zoning change is appropriate. He said that traffic issues exist; however, the Planning Commission cannot restrict people from cutting across properties.

Commissioner Smith said her concerns were similar to Commissioner Tomes’. She said she would also like to see some attempts made to correct some of the traffic issues prior to start of building.

Commissioner Brown said he had no issues. He said the applicant is providing appropriate signal uses to mitigate traffic issues.

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Commissioner Lewis said she feels that the developer has addressed the issue of left turns from Simcoe, which she felt was a safety issue. She said this and developemnts like it should encourage walkability. She said the letter from the owner of Avish Gardens should be given weight, since they are the closest and most impacted neighbor.

Commissioner Howard said she appreciated the efforts to mitigate traffic, and was glad that Avish Gardens was being removed from the traffic study. She said she feels that the existing zoning is inappropriate; she is ok with the form district being changed.

Commissioner Jarboe asked how to test and measure the effectiveness of road improvements. Commissioner Brown explained signal timing tests, which are done by Metro Public Works.

Before voting, the Commissioners discussed changes proposed to the binding elements at today's hearing, as follows:

Binding element #8B on page 19 of the staff report shall read as follows:

- b. The 8' fence will be a solid double sided privacy fence on 6x6 treated posts with 4 2x4 stringers per section. The 6' fence will be a solid double sided solid privacy fence on 4x4 ~~6 x 6~~ treated posts with 3 2x4 stringers per section.

Binding element #20 on page 20 of the staff report shall have another intersection added to it (as item #6), to read as follows:

20. The developer will engage a signal qualified consulting firm (on the KYTC's Qualification List for this type of work) to be responsible for completing a formal Traffic Signal Timing Report for 5 signalized intersections along KY Highway 22. Metro Public Works will be responsible for supplying 12 hour turning movement counts at each intersection. The developer's consultant will be responsible for performing travel time analysis based on the counts provided; providing 4 separate signal timing plans at each intersection (typical weekday representing AM, noon, PM and Evening periods); and a formal Traffic Signal Timing Report. Metro Public Works will be responsible for the implementation of the signal timing plans and any subsequent testing and in-service adjustment. ~~Five~~ **Six** signalized intersections will be included in the study, being:

- 1) KY 22 & N. Hurstbourne Pkwy/Springdale Rd
- 2) KY 22 & Summit Plaza Dr
- 3) KY 22 & interstate I-265 SB on ramp
- 4) KY 22 & Norton Healthcare Blvd
- 5) KY 22 & Chamberlain Ln
- 6) Hurstbourne and Springhurst Boulevard**

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**Zoning and form district**

On a motion by Commissioner Brown, seconded by Commissioner Lewis, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Guideline 1 – Community Form**. The property is located right next to (and proposed for sidewalk connection with) a still developing, relatively new, active Regional Center Form District, which includes a variety of large scale retail, office and hotel uses; the use, size and scale of the proposed form and zoning district changes are thus in conformance with the Regional Center Form and all applicable Guidelines and Policies of the Comprehensive Plan relating to same; yet, the proposed plan and use also comply with the current Suburban Neighborhood Form District in that this is a proposed residential use across Simcoe Lane from another one; and yet the Regional Center Form designation seems more appropriate to this applicant, its land planner and attorney, given the strong tie and symbiotic relationship of this apartment community to all the nearby various uses in that Center; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 2 – Centers**. The Intents of this Guideline seek to assure that activities are confined to areas where their impacts will be muted because activities are congregated together with symbiotic uses, rather than located haphazardly where they do not support or relate to one another; the proposed apartment community comports with the above described nearby land uses both at an interstate interchange and at the multiple corporate office buildings and two large shopping centers (notably containing multiple restaurants, a grocery and diverse retail opportunities) nearby, all of which relate well, especially with the new sidewalk connections, one with the other, which this use will serve especially well; and

**WHEREAS**, the Commission further finds that applicable Policy 1 of this Guideline says that activity centers should be located, for example, within a Regional Center Form District; as set forth above, this site is at the edge of the existing Regional Form District and probably should be added to it because it otherwise remains as an island of low density residential use in a sea of intense interstate highway interchange businesses near a busy arterial, KY 22; and further new residents proposed for this infill site will use those shopping centers and corporate office buildings, often walking to them; and

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**WHEREAS**, the Commission further finds that applicable Policies 3, 4 and 5 of this Guideline refer to much the same things, notably locating facilities of these kinds exactly where this one is located, in the midst of an existing activity center, making sure that the activity is as compact as possible, which the current land patterns and new and existing sidewalks in this area assure because everything else, but this site, is nearly already fully built out with uses that rely on one another; and

**WHEREAS**, the Commission further finds that applicable Policy 6 of this Guideline says that residential development should be located in designated activity centers in order for residents to have immediate access to a variety of close by activities, including jobs, dining and shopping; and located as this infill site is, next door to corporate offices and shopping, and near even more of the same, this proposed apartment community is perfectly situated; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 3 – Compatibility**. The Intents of this Guideline seek to ensure that land uses and transportation facilities are located, designed and constructed to be compatible with nearby land uses and to minimize impacts to residential areas, schools and other sensitive areas in the community; compatibility was determined years ago when this larger area was designated under the Cornerstone 2020 Comprehensive Plan as a Regional Center Form District; this site was left out of that form district only because it remained as the last four single-family lots along a street accessing a tall office building, and further, at the time the forms were mapped, the next door tennis center was nonexistent, no sidewalks connected these properties to the nearby shopping centers, and there probably was the thought that Simcoe Lane might ultimately be connected to Springhurst Blvd and the Springhurst residential neighborhood next to it; that connection is impossible to make because of a “spite strip” that permanently disconnects these lots, thus suitable for apartment development, from the suburban neighborhood and because of the over- arching Comprehensive Plan desire to locate an intense residential use next to or in the vicinity of an existing activity center; and

**WHEREAS**, the Commission further finds that applicable Policies 1, 2, 3, 5, 6, 7, 8, 9, 19, 1, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 28 and 29 of this Guideline are all part and parcel of the overall intent of this Guideline, which is to assure use and design compatibility; these Policies specify that that can be accomplished by placement of uses, such as buildings and parking, the selection of building materials, the types of screening and buffering, the extent of existing and proposed new vegetation, the control of traffic, the control of noise, the control of lighting, contributions to visual/aesthetic impacts, and the kinds of transitions and

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buffers to assure that nearby uses are not adversely impacted; the only use of this site that would have less negative impact on the area, considering the sea of commercial and interstate and arterial activities surrounding it, would be no change in use at all, which makes no sense considering the island of single-family that this site otherwise constitutes; that is because this is a proposed use of similar height, located near or next to offices, shopping, restaurants and an interstate highway system off a major arterial highway; lighting will, of course, be directed down and away from adjoining properties as required by the Land Development Code (LDC); noises will be confined to the interior of the site; odors are not involved in a residential use like this; the look of the property is as shown on the architectural images shown at the public hearing; these images demonstrate a high level of attractive design detail; and parking is totally screened by the apartment building which surrounds the proposed parking garage; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 6 – Economic Growth and Sustainability**. The Intents of this Guideline are to provide a positive culture for attracting and sustaining businesses within Metro Louisville; and this application surely complies with this Guideline because it gives people opportunities to reside proximate to offices, dining and shopping in one of Metro Louisville’s newest and most successful activity centers at an interstate interchange location; and

**WHEREAS**, the Commission further finds that applicable Policies 1, 4, 5 and 6 of this Guideline pertain to preserving workplaces and locating business in and around activity centers; Cityscape proposes to take a presently way-underutilized in-fill site, rezone it, and convert this site to a productive, positive, symbiotic use which makes all the existing office and commercial uses nearby even better/more successful because workers and shoppers can live close by; there is a large Regional Center Form District surrounding the site; therefore, and for all the reasons set forth above, especially given the symbiotic uses nearby, this use fits well at this location; access works, in part because of the occasional use of the Avish Gardens Center traffic signal, and also because the KY 22/Snyder Freeway interchange already handles large volumes of traffic, to which this use will contribute additional traffic volumes only to the extent residents don’t avoid the interchange, by walking and driving very short distances to offices, shopping and dining close by; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guidelines 7 and 8 – Circulation and Transportation Facility Design**. The Intents of these Guidelines seek to ensure the safe and proper functioning of street networks, to ensure that new developments do not exceed the carrying

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capacity of streets, to address congestion and air quality issues and to provide an efficient, safe and attractive system of roadways, transit routes, sidewalks and so forth; and

**WHEREAS**, the Commission further finds that the proposed addition of an apartment community to the interstate interchange accomplishes all of these things, because the proposed site plan does not really involve any change in access, traffic patterns, circulation or parking; any new traffic to the existing KY 22 street system and referenced interstate interchange will be modest compared to what already exists here, which admittedly constitutes a lot of traffic; this is a use that can utilize existing office, shopping and dining facilities via walking, biking and short drives, which should be encouraged wherever possible; this apartment community here has better nearby walking, biking and short driving access to offices and shopping than perhaps any other apartment community outside the urban core; and it also has easy access through Avish Gardens Shopping Center to a KY 22 traffic signal and crosswalk to the Paddock Shoppes; and

**WHEREAS**, the Commission further finds that applicable Policies 1, 2, 6, 9, 10, 11, 13 and 14 of Guideline 7 all provide further detail of the requirements for traffic impact mitigation; the circulation within this site, access to it, parking lot design and appropriate turning radiuses are all shown on the detailed district development plan (DDDP) submitted with this application; this application received a thorough review by Metro Transportation Planning and Public Works Department, and the DDDP accompanying this application received preliminary approval from those agencies which are satisfied that the plan has met standard requirements for traffic and transportation impacts on overall interior and exterior site design, with inputs from KTC; good connectivity, circulation and access, as shown on the DDDP, are key components of the design of this apartment community which contains a large internal parking structure; and a traffic study undertaken by CDM Smith has been scrutinized and approved by Metro Transportation Planning & Public Works; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 9 – Bicycle, Pedestrian and Transit**. The Intents of this Guideline seek to assure that transit and non-motorized methods of travel are accommodated; applicable Policies 1, 2, 3, 4 and 5 require, where possible, the provision of sidewalk connections, bicycle facilities and transit accommodations; this site is located near existing transit routes, and sidewalks will be added along Simcoe Lane to connect with what is largely already provided elsewhere within the existing Regional Center; and bike storage will be included within the apartment community's design; and

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**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guidelines 10 and 12 – Stormwater Management and Air Quality**. The Intents of these environmental Guidelines seek to protect areas from the adverse consequences of stormwater runoff and air quality degradation; and

**WHEREAS**, the Commission further finds that applicable Policies 1, 3, 6, 7, 10, 11 and 12 of Guideline 10 all pertain to stormwater management; drainage patterns are depicted by arrows on the accompanying development plan for conceptual stormwater runoff purposes, and detention will be provided, assuring that post-development rates of peak runoff do not exceed pre-development conditions; the development plan received the preliminary stamp of approval from MSD in this regard prior to Planning Commission review; the developer's land planning and engineering firm agreed to work with nearby "patio homes" neighbors who claim existing drainage problems exist, and it shared that information with MSD in an attempt to address those issues; and

**WHEREAS**, the Commission further finds that applicable Policies 1, 2, 3, 4, 6, 7, 8 and 9 and Guideline 12 all further identify measures necessary to protect air quality; the best way to do that is to assure minimal added impacts of vehicles to the local roadway system; reducing vehicle miles traveled is one of the major objectives of the Comprehensive Plan; and by allowing a new apartment community to be located in a busy shopping and office area, these Policies are addressed by reducing the need for driving; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 13 – Landscape Character**. The Intents of this Guideline are to protect and enhance landscape character, specifically applicable Policies 1, 2, 4, 5 and 6 thereof; and new landscaping, screening and buffering will be added through agreement with the Village of Hartwick Association along Simcoe Lane; landscaping will be enhanced elsewhere waivers have been applied for; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification, and the staff report that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that the requested change in form district from Neighborhood to Regional Center, and the requested change in zoning from R-4 to OR-3, on property located in the attached legal description, be **APPROVED**.

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**The vote was as follows:**

**YES: Commissioners Howard, Lewis, Jarboe, Brown, Smith, and Kirchdorfer.**

**NO: No one.**

**NOT PRESENT: Commissioners Turner and Peterson.**

**ABSTAINING: Commissioner Tomes.**

- **Variance #1** - Variances from Chapter 5 part 3 to permit encroachments into the 15' rear yard setback and 50' side yard setback.
- **Variance #2** - Variance from 5.7.1.B.1 to allow the proposed building to be 60' instead of the required 45' maximum building height
- **Waiver** from Chapter 10 to permit encroachments into the required 20' LBA along the east property line.
- **District Development plan**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution was adopted:

**(Variance #1) WHEREAS**, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare since the drive lane is mainly pervious, to be used as a fire lane, and is located adjacent to a parking lot and tennis center; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the drive lane is mainly pervious, to be used as a fire lane, and is located adjacent to a parking lot and tennis center; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the drive lane is mainly pervious, to be used as a fire lane, and is located adjacent to a parking lot and tennis center; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the drive lane is mainly pervious, to be used as a fire lane, and is located adjacent to a parking lot and tennis center; and



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**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the drive lane is for fire department access and the proposed building is located adjacent to a residentially zoned nonresidential use (tennis center); and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the encroachment is a drive lane is for fire department access and the proposed building is located adjacent to a residentially zoned nonresidential use (tennis center); and

**WHEREAS**, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

**(Variance #2) WHEREAS**, the Commission further finds that the requested variance will not adversely affect public health safety or welfare since the tallest portion of the building is located to the rear of the site and away from the closest residential development; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since there are other taller structures located in the vicinity and along the Gene Snyder corridor; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the tallest portion of the building is located to the rear of the site and away from the closest residential development; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the tallest portion of the building is located to the rear of the site and away from the closest residential development and there are other taller structures located in the vicinity; and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since this proposal is located in the NRD transition zone. The tallest portion of the building is located to the rear of the site and away from the closest residential development; and

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**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since there are other taller structures located in the vicinity and along the Gene Snyder corridor; and

**WHEREAS**, the Commission further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; and

**(Waiver) WHEREAS**, the Commission further finds that the waiver will not adversely affect adjacent property owners since the adjacent property owner is a non-residential use whose building is located adjacent to the property line where the waiver is being requested; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The adjacent use is compatible because it is non-residential and the adjacent building is located adjacent to the property line where the waiver is being requested not creating a nuisance; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the

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existing non-residential building is located adjacent to the property line where the waiver is being requested; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the existing non-residential building is located adjacent to the property line where the waiver is being requested; and

**(DDDP) WHEREAS**, the Commission further finds that there does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

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

**WHEREAS**, the Commission further finds that open space requirements for the site are being met; and

**WHEREAS**, the Commission further finds that 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; and

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

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification, and the staff report that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variances from Chapter 5 part 3 to permit encroachments into the 15' rear yard setback and 50' side yard setback; a Variance from 5.7.1.B.1 to allow the proposed building to be 60' instead of the required 45' maximum building height; a Waiver from Chapter 10 to permit encroachments into the

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required 20' LBA along the east property line; and a District Development plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 315,000 square feet of gross floor area.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

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6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 24, 2016 Planning Commission meeting.
8. Fence for privacy and noise abatement:
  - a. Developer will replace the current 6' cedar plank fence with a new solid double sided cedar plank fence. An 8' fence will run from the corner starting behind 4211 Hartwick Village Pl and continue for approximately 240 feet running south behind 4201 Hartwick Village Pl. At this location (starting at north edge of 4123 Hartwick Village Pl the fence will transition over an 8' span to 6' in height and continue running south for approximately 550 feet to the current corner in front of the tennis center parking lot. The entire length of the fence including that portion in front of the tennis center is included to ensure consistent appearance for all homes backing up to Simcoe Ln. Fence construction will be completed within 30 days of start of initial site clearing and preparation for construction.
  - b. The 8' fence will be a solid double sided privacy fence on 6x6 treated posts with 4 2x4 stringers per section. The 6' fence will be a solid double sided solid privacy fence on 4x4 6 x 6 treated posts with 3 2x4 stringers per section.
9. Landscaping for privacy and additional noise abatement and beautification:
  - a. The area behind the Hartwick Village fence and in the Simcoe Ln Right of Way starting at east edge of Simcoe Ln. and extending for approximately 12' to the utilities easement will be planted with 2 rows 7-8' Arborvitae or other Evergreens. These plantings will run continually to a point on the opposite side of Simcoe Ln that marks the end of subject development property. Each row will have trees on 10' centers with the 2<sup>nd</sup> row staggered and 5' behind the first row.

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- b. All plantings will be maintained and if a tree dies it will be replaced by the owner of Simcoe Apartments no later than next growing season.
  - c. The owner of Simcoe Ln Apartments will also mow and maintain the grassy area between the fence and edge of Simcoe Ln for the length of the subject development property.
  - d. The trees will be planted within 60 days after the completion of the curb and gutter upgrade on the west side of Simcoe Ln. or the next growing season.
10. Lighting:
- a. All outdoor lighting will be positioned in such a matter that no lights will shine directly onto the residential property of Hartwick Village.
  - b. Where needed to prevent lights from shining in the direction of Hartwick Village, shades and/or deflectors will be installed around the light fixture to prevent direct beams of light shining toward Hartwick Village.
  - c. Exterior lighting to be low level landscaping type lighting or architectural highlighting shining only on building.
11. Water run-off and storm sewer control: Developer will install curb and gutter on both sides of Simcoe Lane the length of the subject development property.
12. Building Design and layout: Developer agrees to limit the height of the front wing of the building facing Simcoe Ln to 48' with no more than three stories above grade. The final plans for this will be filed and approved prior to the start of any construction or clearing of property.
13. No outdoor advertising or free standing signs will be allowed except for those specifically approved and in compliance with LDC. No pennants, balloons or banners shall be permitted on the site except for a 60 day period immediately following first day of opening or apartment showings.
14. Construction hours will be limited to the hours from 7am to 7pm Mon-Sat.
15. No construction staging or construction parking will take place on Simcoe Ln. All trucks will use an entrance to the construction site that has been prepared (graded and with adequate rock base) for construction trucks and equipment.
16. If construction requires the use of explosives or pile drivers, the homeowners of Hartwick Village and Abbeywood will be notified at least 24 hours in advance with notices provided to designated Home Owner Association Representatives. The use of explosives will be limited to 2 scheduled times a

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day between the hours of 9am – 4pm Mon-Sat. Pile driving will be limited to the hours between 9am-4pm Mon-Sat.

17. If explosives or pile-driving is used in the construction of Simcoe Apartments, Developer agrees that any sub-contractors or contractors performing such work will be fully qualified, licensed and fully insured and capable of paying full repair cost to the property owners in Hartwick Village and Abbeywood for any damages to the property that may be caused by those activities.
18. Developer agrees to control dust during construction periods and to take appropriate actions to mitigate dust as necessary.
19. These binding elements will be a permanent record of case 15ZONE1070 and included as part of the case approval and survivable to any owners, current or future, of the property known as Simcoe Ln Apartments as stated in case 15ZONE1070.
20. The developer will engage a signal qualified consulting firm (on the KYTC's Qualification List for this type of work) to be responsible for completing a formal Traffic Signal Timing Report for 5 signalized intersections along KY Highway 22. Metro Public Works will be responsible for supplying 12 hour turning movement counts at each intersection. The developer's consultant will be responsible for performing travel time analysis based on the counts provided; providing 4 separate signal timing plans at each intersection (typical weekday representing AM, noon, PM and Evening periods); and a formal Traffic Signal Timing Report. Metro Public Works will be responsible for the implementation of the signal timing plans and any subsequent testing and in-service adjustment. Five signalized intersections will be included in the study, being:
  - 1) KY 22 & N. Hursbourne Pkwy/Springdale Rd
  - 2) KY 22 & Summit Plaza Dr
  - 3) KY 22 & interstate I-265 SB on ramp
  - 4) KY 22 & Norton Healthcare Blvd
  - 5) KY 22 & Chamberlain Ln
  - 6) Hurstbourne and Springhurst Boulevard**

The Traffic Signal Timing Report shall be completed prior to the issuance of building permits.

21. Developer shall construct intersection improvements at KY 22 & Simcoe Ln to prohibit left turn traffic from Simcoe to KY 22. Construction plans, bond & permit for the intersections improvements shall be completed prior to the

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issuance of building permit. Intersection improvements shall be constructed prior to the issuance of certificate of occupancy.

**The vote was as follows:**

**YES: Commissioners Howard, Lewis, Jarboe, Brown, Smith, and Kirchdorfer.**

**NO: No one.**

**NOT PRESENT: Commissioners Turner and Peterson.**

**ABSTAINING: Commissioner Tomes.**



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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Legal Review Committee**

No report given.

**Planning Committee**

No report given.

**Policy and Procedures Committee**

No report given

**Site Inspection Committee**

No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 8:40 p.m.

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**Chairman**

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**Division Director**