

**MINUTES OF THE MEETING  
OF THE  
DEVELOPMENT REVIEW COMMITTEE  
JUNE 18, 2014**

A meeting of the Development Review Committee was held on June 18, 2014, 1:00 p.m. in the Metro Development Center, 444 S. 5<sup>th</sup> Street, Conference Room, Louisville, Kentucky.

**Committee Members present were:**

David Tomes, Chairman  
Jeff Brown, Commissioner  
Robert Kirchdorfer, Commissioner  
Donnie Blake, Commissioner

**Committee Members absent were:**

Chip White, Vice-Chairman  
Robert Peterson, Commissioner

**Staff Members present were:**

Steve Hendrix, Planning Supervisor  
Joseph Reverman, Planning Supervisor  
Latondra Yates, Planner II  
David Wagner, Planner II  
Christopher Brown, Planner II  
Pamela M. Brashear, Management Assistant

**Others present:**

John Carroll, Legal Counsel

The following matters were considered:

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**APPROVAL OF MINUTES**

**JUNE 4, 2014 DRC MEETING MINUTES**

2:31 On a motion by Commissioner Blake, seconded by Commissioner Kirchdorfer, the following resolution was adopted.

**RESOLVED**, that the Development Review Committee does hereby **APPROVE** the minutes of its meeting conducted on June 4, 2014.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Kirchdorfer and Tomes**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Peterson and White**

**ABSTAINING: No one**

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**OLD BUSINESS:**

**CASE NO. 14DEVPLAN1044**

Request: Revised Detailed District Development Plan with landscape waiver and binding element amendments  
Project Name: King Louie's Place  
Location: 598 and 600 N. English Station Rd.  
Owner: Blind Squirrel, LLC  
Applicant: Blind Squirrel, LLC  
Representative: Deborah Bilitski, Wyatt & Combs, LLP  
Land Design & Development, Inc.  
Jurisdiction: Middletown  
Council District: 19 – Jerry Miller  
Case Manager: Christopher Brown, Planner II

**(Continued from June 4, 2014)**

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

16:06 Mr. Brown discussed the case summary, standard of review and staff analysis from the staff report.

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

Deborah Bilitski, 500 West Jefferson Street, Suite 2800, Louisville, Ky. 40202

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

21:16 Ms. Bilitski stated that the city of Middletown added binding elements dealing with sewers and road improvements on N. English Station Rd. Also, the phasing issues have been resolved.

**The following spoke in opposition to this request:**

Kirk O'Bryan, 805 North English Station Road, Louisville, Ky. 40223

**Summary of testimony of those in opposition:**

26:28 Mr. O'Bryan still believes the CUP has expired and doesn't seem legal.

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**The following spoke neither for nor against the request:**

No one

**Summary of testimony of those neither for nor against:**

None

**Deliberation**

41:05 Commissioner Blake said he doesn't feel there's a need to add a binding element number 34. The plan now reflects the changes from the last DRC meeting.

**An audio/visual recording of the Development Review 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.**

**LANDSCAPE WAIVER—To allow a portion of the proposed addition to encroach into the required 15' landscape buffer area along North English Station Road:**

43:13 On a motion by Commissioner Blake, seconded by Commissioner Kirchdorfer, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Development Review Committee (DRC) finds that based on the file of this case, the staff report, testimony and discussion that the applicant is requesting a landscape waiver from Chapter 10.2.10 of the Land Development Code to allow a portion of the proposed addition to encroach into the required 15' landscape buffer area along North English Station Road; and

**WHEREAS**, DRC finds that the requested landscape waiver will not adversely affect adjacent property owners since the proposed encroachment is adjacent to the roadway; and

**WHEREAS**, DRC finds that 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

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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 waiver will not violate specific guidelines of Cornerstone 2020 since the proposed encroachment is adjacent to the roadway and the required screening and planting materials will be provided to meet the intent of the buffering; and

**WHEREAS**, DRC finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the proposed encroachment is minimal and will allow the addition to follow the location of the existing structure while still providing the required screening and planting materials; and

**WHEREAS**, DRC finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the proposed encroachment is minimal and will allow the addition to follow the location of the existing structure;

**RESOLVED**, that the Development Review Committee does hereby **RECOMMEND** to the City of Middletown **APPROVAL** of the landscape waiver to allow a portion of the proposed addition to encroach into the required 15' landscape buffer area along North English Station Road.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Kirchdorfer and Tomes**

**NO: No one.**

**NOT PRESENT AND NOT VOTING: Commissioners Peterson and White**

**ABSTAINING: No one.**

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**REVISED DETAILED DISTRICT DEVELOPMENT PLAN AND BINDING ELEMENTS:**

43:49 On a motion by Commissioner Blake, seconded by Commissioner Kirchdorfer, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Development Review Committee (DRC) finds that the applicant is requesting approval of a Revised Detailed District Development Plan and Binding Elements; and

**WHEREAS**, DRC finds that there does not appear to be any environmental constraints or historic resources on the subject site because tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, DRC finds that the 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 because a contribution will be made to Metro Public Works toward the installation of a traffic signal at N. English Station Road and Aiken Road.; and

**WHEREAS**, DRC finds that there are no open space requirements with this development; and

**WHEREAS**, DRC finds that the Metropolitan Sewer District has approved the preliminary development plan, indicating the proposal will not have negative impacts to the floodplain, or have negative impacts to nearby properties; and because the Health Department approval will be required for the proposed lateral fields on the subject site which will be required until such time as sewers are made accessible to the property; and

**WHEREAS**, DRC finds that the proposal integrates into the mixture of commercial, office and industrial uses along this portion of N. English Station Road because the overall site design and land uses are compatible with the existing and future development of the area; and because appropriate landscape buffering and screening are provided to screen adjacent properties and roadways; and because buildings and parking lots will meet all required setbacks with the exception of the requested relief along North English Station Road; and

**WHEREAS**, DRC further finds the proposal conforms to the Comprehensive Plan and Land Development Code because the proposal integrates into the mixture of commercial, office and industrial uses along this portion of N English Station Road; and because the proposal is located adjacent to existing industrially zoned and used

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properties to take advantage of special infrastructure needs; further, the site has access from N English Station Road with existing commercial, office and industrial uses, and the proposed transportation facilities are compatible with and support access to surrounding lands;

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **RECOMMEND** to the City of Middletown, **APPROVAL** of the Revised Detailed District Development Plan and binding elements for Case No. 16739 and Case No. 14DEVPLAN1044.

#### Existing Binding Elements Case No. 16739

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 LDC. Any changes/additions/alterations of any binding element(s), or development plan revisions and all landscape plans shall be submitted to the Planning Commission or the Planning Commission's designee, and to the City of Middletown for review and approval; any changes/additions/alterations not so referred and so approved shall not be valid.
2. No freestanding sign shall exceed 100 square feet in area per side and 10 feet in height. All illumination shall be internal. No sign shall have more than two sides. There shall be no new off-premises signs.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site, other than the existing outdoor advertising sign, and the proposed freestanding signage and attached signage permitted by the Middletown Sign Ordinance. The City of Middletown must approve the final signage package prior to construction, which signage package must show the placement, size, scale and type of materials of the signs.
4. Construction fencing shall be erected at the edge of the area of development in accordance with the tree preservation plan prior to any grading or construction to protect the existing tree stands and their 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works, Metropolitan Sewer District and City of Middletown.
  - b. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - c. The property owner/developer must obtain approval by the Planning Commission and the City of Middletown of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be consistent with the concept landscape plan shown at the May 9, 2013 Middletown City Commission meeting, shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the 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.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC and the City of Middletown shall be reviewed and approved before issuance of a building permit.
  - e. The drainage construction pan must also be approved by the City of Middletown.
  - f. The name, address and telephone number of the construction manager for the project must be disclosed to the City of Middletown.
  - g. The City of Middletown hereby designates the City Mayor as it approval authority for plans, permits, and other approvals required by these binding elements.
6. At such time as the adjoining property to the north or the south of the subject property is redeveloped and cross access is required as part of said redevelopment, a reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel and the City of Middletown granting access in the location shown on the approved development plan to the adjoining property being redeveloped shall be created and recorded; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services at the request of the Director of Planning and Design Services.



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7. The style and design of the addition to the existing building shall be as shown on the renderings presented at the March 7, 2013 Planning Commission public hearing.
8. The style and design of the indoor soccer facility building shall be as shown on the rendering presented at the May 9, 2013 Middletown City Commission meeting. No building permit for the indoor soccer facility or amphitheater may be issued until access to public sanitary sewers is available or the facility's connection to septic facilities is reviewed and approved by; (a) Louisville Metro Health Department, and (b) the City of Middletown.
9. All access drives and parking areas must be constructed to the standards of the Land Development Code and in accordance with the Access Drive Exhibit attached hereto as Exhibit A. All cars must be parked in marked spaces and the access drives shall be kept free from parked cars. Curbing shall be installed along the access drives leading to the rear portion of the site to prevent vehicles from parking in the grass, and "No Parking" signs shall be installed, the number and placement of which shall be approved by the City of Middletown as part of the final signage package (cf. binding element no. 3).
10. If a building permit is not issued within two years from the date of the City of Middletown's approval herein, the property shall not be used in any manner unless a revised district development plan is approved by the City of Middletown or an extension is granted by the Planning Commission and the City of Middletown.
11. A certificate of occupancy must be received from the appropriate code enforcement department and the City of Middletown 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 a certificate of occupancy unless specifically waived by the Planning Commission and the City of Middletown.
12. 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,

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contractors, subcontractors, and other parties engaged in development of the site shall be responsible for compliance with these binding elements.

13. If work is required within a utility easement causing removal or damage of required landscape materials, the property owner will be responsible for replacement of materials according to the approved landscape plan.
14. These binding elements may be amended as provided in the Zoning District Regulations and upon the additional approval of the City of Middletown.
15. A minimum of fifty percent (50%) of the parking lot lighting adjacent to the soccer field and indoor soccer building shall be turned off after 11:00 p.m.
16. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
17. The dumpsters shown on the approved plan is the only dumpsters allowed on the site and they shall be screened from view, kept secured and picked up.
18. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency and the City of Middletown, from an engineer or other qualified professional stating that the lighting of the proposed development is in compliance with the Land Development Code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted.
19. The approved construction plan for drainage and the drainage/detention structures must also be presented and approved by the City of Middletown, prior to and as a condition of any building permit application and/or for any Occupancy Permit and/or bond release. Additionally, the improvements shown on said construction plans must be fully complete prior to the application or Occupancy Permit and/or bond release. All occupancy permits must receive the prior approval of the City of Middletown. The Property Owner (s), and their heirs, successors and assigns, are liable to construct and keep maintained all the detention and drainage facilities on the development plan and construction plans, and keep them permanently maintained in a high state of functioning.
20. The Applicant, its successors and assigns, hereby consents and agrees that the City of Middletown has full right and authority to take any and all appropriate direct legal action against Applicant, its successors and assigns, to enforce these

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binding elements and inspect the premises to determine compliance with the binding elements.

21. Until the property is connected to sanitary sewers, annual inspection reports by a licensed professional shall be submitted to the City of Middletown by the property owner evidencing the current condition of the septic system and a timeline, if applicable, to complete any needed remediation of unacceptable conditions.
22. The subject property shall connect to public sanitary sewers at such time as a sewer line is constructed within 2000 feet of the subject property and the easements needed for connection have been granted.
23. In conjunction with the minor plat creating the lot lines as shown on the development plan, easements shall be granting to provide each lot the right to access and use the septic system and lateral field. For so long as the subject property is using an septic system, the subject property shall not be further subdivided unless appropriate easements are granted allowing the newly created lots to access and utilize the septic system and lateral field.
24. Prior to requesting a building permit for any building or structure, the property owner shall obtain approval from the Louisville Metro Health Department for a septic/sewage disposal system to accommodate the building (s) for which the permit is requested.
25. The capacity of the amphitheater shall not exceed 800 people.
26. In order to avoid conflicts with peak hour traffic, no live music event, play, or other live entertainment at the amphitheater shall be scheduled to end between 5:00 p.m. and 7:00 p.m. on Monday through Friday.
27. Prior to the completion of the widening of N. English Station Road to three lanes and installation of the traffic signal at Aiken Road, the property owner agrees to utilize traffic control personnel for events in the indoor athletic facility upon receipt of a written request by the City of Middletown.
28. Prior to requesting a certificate of occupancy for the amphitheater, the applicant shall submit to the City of Middletown a statement by an acoustic consultant certifying that the maximum noise levels produced by the sound system for the amphitheater do not exceed the average and peak ambient noise levels set forth in the Ambient Noise Level Exhibit attached hereto as Exhibit B, at the locations designated therein. A certificate of occupancy shall not be issued for the

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amphitheater until such statement is submitted. The City of Middletown may request periodic monitoring of noise levels to ensure compliance with this binding element. If, at any time, noise levels produced by the sound system for the amphitheater exceed the average and peak ambient noise levels set forth in Exhibit B at the locations designated therein, no events with amplified sound shall be permitted in the amphitheater until additional noise abatement measures have been implemented/installed and a statement is submitted by an acoustic consultant certifying that maximum noise levels from the amphitheater do not exceed the noise levels set forth in Exhibit B. From time to time, the City of Middletown may amend Exhibit B to update the average and peak ambient noise levels at the designated locations.

29. No part of the proposed development, including the amphitheater, shall be exempt from the Louisville Metro Noise Ordinance.
30. The Owner/Developer will maintain the transit stop on an as-needed basis.
31. At the time the northern entrance, opposite Aiken Road, is completed, a traffic study shall be submitted to Metro Public Works or Transportation Plan Review and Planning and Design to determine if the southern entrance may remain. Such improvements shall begin within one year of submittal of the traffic study.
32. The developer shall contribute up to 12% of the cost of the signal installation at Aiken Road and N. English Station Road, not to exceed \$7,000. This shall be paid within 30 days of the request by the Director of Metro Public Works. The request shall be made to the developer when Metro Public Works obtains the balance of the cost of installation, no sooner than construction plan approval.
33. There shall be no occupancy permit and no use of the outdoor athletic fields or the amphitheater until the widening of N. English Station Road to three lanes is complete and open to traffic, and the traffic signal at Aiken Road is installed and operational. Construction approvals and building permits for the amphitheater may be issued at any time after the contract for widening of N. English Station Road is let. Occupancy and use of the restaurant/wind bar/café, ice rink and indoor soccer facility shall not be restricted, and said buildings may be constructed and occupied at any time prior to the commencement of said improvements to N. English Station Road or installation of the traffic signal.

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#### Proposed Binding Elements

8. The style and design of the indoor soccer facility building shall be as shown on the rendering presented at the May 9, 2013 Middletown City Commission meeting. No building permit for the indoor soccer facility may be issued until access to public sanitary sewers is available or the facility's connection to septic facilities is reviewed and approved by; (a) Louisville Metro Health Department, and (b) the City of Middletown. No building permit for the amphitheater ~~area~~ **stage or overhead** structures ~~and attendant buildings~~ may be issued until access to public sanitary sewers is available.
10. If a building permit **for any portion of the development** is not issued within two years from the date of the City of Middletown's approval herein, the property shall not be used in any manner unless a revised district development plan is approved by the City of Middletown or an extension is granted by the Planning Commission and the City of Middletown.
24. Prior to requesting a building permit for any building or structure, **if access to sanitary sewers is not available**, the property owner shall obtain approval from the Louisville Metro Health Department for a septic/sewage disposal system to accommodate the building(s) for which the permit is requested.
28. Prior to requesting a certificate of occupancy for the amphitheater **stage and overhead structures**, the applicant shall submit to the City of Middletown a statement by an acoustic consultant certifying that the maximum noise levels produced by the sound system for the amphitheater do not exceed the average and peak ambient noise levels set forth in the Ambient Noise Level Exhibit attached hereto as Exhibit B, at the locations designated therein. A certificate of occupancy shall not be issued for the amphitheater **stage and overhead structures** until such statement is submitted. The City of Middletown may request periodic monitoring of noise levels to ensure compliance with this binding element. If, at any time, noise levels produced by the sound system for the amphitheater exceed the average and peak ambient noise levels set forth in Exhibit B at the locations designated therein, no events with amplified sound shall be permitted in the amphitheater until additional noise abatement measures have been implemented/installed and a statement is submitted by an acoustic consultant certifying that maximum noise levels from the amphitheater do not exceed the noise levels set forth in Exhibit B. From time to time, the City of Middletown may amend Exhibit B to update the average and peak ambient noise levels at the designated locations. **This binding element shall not apply to the ice rink/volleyball courts and seating area around the ice rink/volleyball**

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courts, which may be constructed and used without submitting a statement by an acoustic consultant provided no sound system is installed.

33. There shall be ~~no occupancy permit and~~ no use of the outdoor athletic fields or the amphitheater stage, overhead structures, or sound system, and no music or entertainment events in the amphitheater until the widening of N. English Station Road to three lanes is complete and open to traffic, and the traffic signal at Aiken Road is installed and operational. Construction approvals and building permits for the amphitheater stage, overhead structures, and sound system may be issued at any time after the contract for widening of N. English Station Road is let. Occupancy and use of the restaurant/wine bar/cafe, ~~and~~ indoor soccer facility, ice rink/volleyball courts, and seating area surrounding the ice rink/volleyball courts shall not be restricted, and said buildings may be constructed and occupied at any time prior to the commencement of said improvements to N. English Station Road or installation of the traffic signal.
34. **For purposes of KRS 100.237, the conditional use permit for the amphitheater shall be exercised within two years after the completion of the widening of N. English Station Road to three lanes.**

The vote was as follows:

**YES: Commissioners Blake, Brown, Kirchdorfer and Tomes**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Peterson and White**

**ABSTAINING: No one**

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**NEW BUSINESS**

**CASE NO. 14DEVPLAN1057**

<b>Request:</b>	Revised Detailed District Development Plan and Binding Element Amendments to allow a nursing home
<b>Project Name:</b>	Clarity Pointe
<b>Location:</b>	13700 English Villa Dr., 101 English Station Way
<b>Owner:</b>	BCBD – BrightPointe, LLC.
<b>Applicant:</b>	Same
<b>Representative:</b>	Bill Bardenwerper, Bardenwerper, Talbott & Roberts
<b>Jurisdiction:</b>	Louisville Metro and Middletown
<b>Council District:</b>	19 – Jerry Miller and 20 – Stuart Benson
<b>Case Manager:</b>	Latondra Yates, Planner II

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

3:50 Mrs. Yates discussed the case summary, standard of review and staff analysis from the staff report.

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

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Ann Richard, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40223

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

6:10 Mr. Pregliasco stated that the CUP was approved at the BOZA hearing for a 1-story facility (60 rooms). They are also providing more buffering than required.

10:55 Ms. Richard said the landscape waiver was also approved at the BOZA hearing.

**The following spoke neither for nor against the request:**

No one.

**Summary of testimony of those who spoke neither for nor against:**

No one.

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**The following spoke in opposition to this request:**

No one

**Summary of testimony of those in opposition:**

No one spoke in opposition.

**The following spoke neither for nor against the request:**

No one

**Summary of testimony of those neither for nor against:**

None

**Deliberation:**

Development Review Committee deliberation.

**An audio/visual recording of the Development Review 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.**

**Revised Detailed District Development Plan and Binding Elements:**

On a motion by Commissioner Blake, seconded by Commissioner Kirchdorfer, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Development Review Committee (DRC) finds that based on the file of this case, the staff report and discussion that the applicant is requesting approval of a Revised Detailed District Development Plan and binding elements; and

**WHEREAS**, DRC finds that the proposal complies with conservation of natural resources on the proposed development including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views and historic sites because the required landscaping and tree canopy are proposed; also because MSD has given preliminary approval; and

**WHEREAS**, DRC finds that the proposal complies with provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community



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because the plan has been reviewed by KDOT and the Transportation Planning Review team giving preliminary approval; and

**WHEREAS**, DRC finds that the proposal for sufficient open space (scenic and recreational) to meet the needs of the proposed development because no open space requirement for this development; and

**WHEREAS**, DRC finds that the proposal complies with 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 because the plan has preliminary approval from MSD; and

**WHEREAS**, DRC finds that the proposed use is compatible with the surrounding mix of uses in scale and design; and because the required landscaping and tree canopy are proposed; and

**WHEREAS**, DRC finds that the plan meets the applicable guidelines of the Comprehensive Plan;

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **RECOMMEND** to the City of Middletown, that the Revised Detailed District Development Plan and Binding Element amendments be **APPROVED** based on the following Binding Elements:

#### **Existing General/Detailed District Plan Binding Elements – Docket No. 9-65-05**

All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:

1. The development shall be in accordance with approved general and detailed district development plans, 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 retail and restaurant detailed district development plan portions of the site shall not exceed 45,909 overall square feet and shall be limited to no more than 9,107.4 square feet of C-2, and the multi-family R-5A detailed district development plan portions of the site shall not exceed 6.5 dwelling units per acre (98 units on approximately 15.32 acres after right-of-way deductions).
3. Prior to development (including clearing and grading) of each commercial and office lot, the applicant, developer, or property owner shall obtain approval of the specific building

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design for conformance with the general design scheme and standards presented at the public hearing of January 5, 2006. Each plan shall be in adequate detail and may be subject to additional binding elements.

4. The materials and design of proposed residential condominium and office building structures shall be substantially the same as depicted in the renderings as presented at the January 5, 2006 Planning Commission meeting. In addition, the materials and design of the proposed banking facilities on Tracts 1 and 2, as well as the materials and design of the proposed retail structure on Tract 3 shall be substantially the same as depicted in the renderings as presented at the March 14, 2007 DRC Committee Meeting.
5. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval.
6. A focal point in conformance with design materials presented at the January 5, 2006 public hearing shall be constructed in conjunction with residential patio home construction on the lot on which it exists.
7. Signs shall be in accordance with Chapter 8 of the Land Development Code or Middletown Sign Ordinance, as the case may be.
8. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
9. The sign package shall also be presented to LD&T for its approval, and signs located in Middletown shall require Middletown approval.
10. C-2 commercial uses shall be limited to C-1 uses, except as necessary to accommodate outdoor seating and sale of alcoholic beverages associated with restaurant uses.
11. Residential uses shall be limited to residential condominiums constructed under a horizontal property regime.
12. Landscaping, screening and buffering shall minimally be as shown on the colored site plan presented at the January 5, 2006 public hearing. All landscaped areas shall be irrigated.
13. 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.
14. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:

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- a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. 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.
15. If a clearing and grading permit is not issued within one year or a building permit within 2 years 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.
  16. 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.
  17. Dumpster and trash compactor pickups/emptying shall be limited to the hours of 7:00 a.m. to 7:00 p.m.
  18. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer or other qualified professional, stating that the lighting of the proposed development is in compliance with Chapter 4, Part 1, Section 3, of the Land Development Code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted and lighting shall be maintained at all times in accordance therewith.
  19. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
  20. 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.
  21. Construction plans shall include shared points of access between all adjoining retail and office lots.

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22. Construction plans shall delineate cross walks in logical locations in such manner and with such materials and/or striping as to make them clearly visible.
23. At the same time as construction plans are prepared for lots 6 and 7, construction plans shall also be prepared for the "east-west connector road" curved connection to South English Station Way, as generally shown on the approved district development plan, such plans to also include grade and drain conditions for the road and the referenced lots. The curved road connection does not need to be constructed by these applicants/developers, but construction plans for lots 6 and 7 shall not be approved until these road connection, grade and drain plans are also submitted and reviewed for approval.
24. A CORSIM analysis of the various U.S.60 intersections shall be completed and submitted to the Kentucky Transportation Cabinet District 5 Office prior to construction plan approval of any of the approved development.
25. A temporary fence to try to help control debris and dust from the Ray Barry property shall be installed during construction of the adjoining residential patio homes.

#### **Binding Elements added by Metro Council**

26. Prior to a certificate of occupancy on lot 13, a signature entrance wall shall be constructed at the intersection of U.S. 60 and South English Station Road, matching the entrance wall in the southeast quadrant of this intersection.
27. Changes to retail or restaurant uses, including the addition of drive-thrus not shown on the development plan for Villages of English Station II, shall require Metro Council approval.
28. The temporary intersection of English Station Way and existing English Station Way shall be a continuous roadway rather than a stop condition until such time as the "east-west connector road" curved to South English Station Way described in Binding Element no. 23 is constructed.
29. All binding elements, including the binding elements added by Metro Council in this ordinance, shall be applicable to the entire site covered by Docket No. 9-65-05.

#### **The vote was as follows:**

**YES: Commissioners Blake, Brown, Kirchdorfer and Tomes**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Peterson and White**

**ABSTAINING: No one**

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**NEW BUSINESS:**

**CASE NO. 14DEVPLAN1064**

Project Name: Revised Detailed District Development Plan and Binding Element amendments to allow a nursing home.  
Location: 9107, 9109 and 9113 Taylorsville Road  
Applicant: Turtle Creek Management, LLC  
Representative: Nick Pregliasco, Esq.  
Jurisdiction: Forest Hills  
Council District: 18—Marilyn Parker  
**Case Manager: Latondra Yates, Planner II**

The staff report prepared for this case was incorporated into the record. The Committee Members received this report in advance of the hearing, and was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices, 444 South 5<sup>th</sup> Street, Louisville, Kentucky).

**An audio/visual recording of the Development Review Committee related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this meeting will be found on the cd of the, 2014 proceedings.**

**Agency Testimony:**

Staff case manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report.

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

Nick Pregliasco, Attorney, Bardenwerper Talbott & Roberts, 1000 N. Hurstbourne Parkway, Ste. 200, Louisville, Kentucky 40223.

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

Nick Pregliasco, the applicant's attorney, discussed the changes requested from what was previously approved.

**The following spoke neither for nor against the request:**

No one.

**Summary of testimony of those who spoke neither for nor against:**

No one.

**The following spoke in opposition to this request:**

No one.

**Summary of testimony of those in opposition:**

No one.

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**NEW BUSINESS:**

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**Deliberation:**

Chair Tomes said he would abstain since he knows Mr. Jackson.

**Revised Detailed District Development Plan (RDDDP) and Binding Element Amendments for a proposed nursing home:**

On a motion by Commissioner Blake, seconded by Commissioner Kirchdorfer, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Development Review Committee (DRC) finds that based on the file of this case, the plan and discussion that the application is requesting a RDDDP and Binding Element Amendments for a proposed nursing home; and

**WHEREAS**, DRC finds that the proposal that 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 because the waiver of the required landscaping is proposed; and because a significant encroachment of the structure, parking and maneuvering are proposed, particularly along the west side; and because MSD has given preliminary approval; and

**WHEREAS**, DRC finds that the provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community because the plan has been reviewed by KDOT and the Transportation Planning Review team and has preliminary approval; and

**WHEREAS**, DRC finds that no open space requirements are needed for this development; and

**WHEREAS**, DRC finds that 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 because the plan has been preliminarily approved by MSD; and

**WHEREAS**, DRC finds that the proposed use appears to be compatible with the surrounding mix of uses; however, significant encroachment of the structure, parking and maneuvering is proposed, particularly along the west side into the required landscape buffer area;

**RESOLVED**, that the Development Review Committee does hereby **APPROVE** the RDDDP and Binding Elements Amendments for a proposed nursing home.

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#### Existing and Amended 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 residential density of the condominium development shall not exceed 12 dwelling units per acre (35 units on 2.9 acres).
3. Office square footage in two buildings shall be limited to 16,128 sf.
4. Signs shall be in accordance with Chapter 8.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance permit is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. 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.
  - d. A minor plat or legal instrument shall be recorded dividing the residential condominium property from the office property and dedicating any required additional right of way. A copy of the recorded instrument shall be

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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.

- e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
8. 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.
9. 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.
10. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system (audible beyond the property line).
11. 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.
12. Multi-family development of the property shall be limited to development under a horizontal property regime.
13. The site shall be developed in accordance with the Tree Canopy Protection Areas (TCPAs) delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.
  - 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



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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 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 to include canopy area of all trees at or within the dimension line.
  - c. Tree protection fencing shall be erected adjacent to all TCPAs prior to Site Disturbance Approval to protect the existing tree stands and their root systems. The fencing shall be located at least three (3) feet from the outside edge of the tree canopy and shall remain in place until all construction is completed.
  - d. No parking, material storage or construction activities are permitted within the TCPAs.
  - e. During all construction activity (includes clearing, grading, building construction and VUA construction) a copy of the approved tree preservation plan shall be on site.
14. The construction materials of all buildings shall be primarily of brick or stone, with accent areas of "hardy plank" or dryvit/stucco and other maintenance free materials. No vinyl siding shall be used. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 10, 2007 DRC meeting.
15. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
16. All exterior pole lighting will be directed down and away from properties, or shall be the typical LG&E residential style (acorn or coach lamp) low-wattage lighting. Attached building lights shall be low-wattage, coach lamp style or otherwise directed down and away from off-site properties. Spotlights shall not be permitted.
- ~~17. All parking areas shall be screened from Taylorsville Road.~~
18. Contemporaneous with the Developer's required submittal of the landscape plan to Planning Commission staff, the Developer shall at the same time also submit such plan to the City of Forest Hills for comment.
19. Contemporaneous with the Developer's required submittal to the Planning Commission staff (and/or MSD) of any proposed improvements to the stream

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located at the rear of the subject property; the Developer shall at the same time also submit such plans and /or other description of the improvements to the City of Forest Hills for comment.

20. The landscaping shall be irrigated.

**The vote was as follows:**

**YES: Commissioners Blake, Brow and Kirchdorfer.**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Peterson and White**

**ABSTAINING: Commissioner Tomes.**

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### NEW BUSINESS:

#### CASE NO. 14DEVPLAN1058

**Request:** Revised Detailed District Development Plan and Binding Elements  
**Project Name:** Bridgeman Foods  
**Location:** 3309 Collins Lane  
**Owner:** JR Real Estate, LLC  
**Applicant:** JR Real Estate, LLC  
**Representative** Blomquist Design Group, LLC  
**Jurisdiction:** Louisville Metro  
**Council District:** 17—Glen Stuckel  
**Case Manager:** **David Wagner, Planner II**

The staff report prepared for this case was incorporated into the record. The Committee Members received this report in advance of the hearing, and was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices, 444 South 5<sup>th</sup> Street, Louisville, Kentucky).

**An audio/visual recording of the Development Review Committee related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this meeting will be found on the cd of the, 2014 proceedings.**

#### **Agency Testimony:**

Staff case manager, David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

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

Marv Blomquist, 10529 Timberwood Circle, Suite D, Louisville, KY.

#### **Summary of testimony of those in favor:**

Marv Blomquist, the applicant's representative, said the proposal is for a 14,000 SF expansion to the existing office building which will be used as a warehouse.

#### **The following spoke neither for nor against the request:**

David Ryan—No address given.

#### **Summary of testimony of those who spoke neither for nor against:**

David Ryan said he is concerned about additional traffic on Collins Lane.

#### **The following spoke in opposition to this request:**

No one.

#### **Summary of testimony of those in opposition:**

No one.

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#### Rebuttal:

Mr. Blomquist said there will only be 1 delivery truck every couple of days—not daily.

#### Deliberation:

Deliberation of DRC

#### Revised Detailed District Development Plan (RDDDP) and Binding Elements:

On a motion by Commissioner Kirchdorfer, seconded by Commissioner Blake, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Development Review Committee (DRC) finds that based on the file of this case, including the staff report and plan, that the applicant is requesting a RDDDP and Binding Elements to allow a 14,000 SF expansion to the existing office building which will be used as a warehouse; and

**WHEREAS**, DRC finds that 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 because the proposal maintains most of the landscaping that currently exists on the site; and because the applicant will have to obtain approval of a revised landscape plan as well; and

**WHEREAS**, DRC finds that the provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community because the applicant is providing additional sidewalks along Chamberlain Lane and pedestrian sidewalk connections from the public right-of-ways to the office building entrance; and because an access drive to Chamberlain Crossing Drive will be provided as well for the warehouse addition; and

**WHEREAS**, DRC finds that open space is not required for this proposal; and

**WHEREAS**, DRC finds that 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 because MSD has approved the drainage facilities for the site; and

**WHEREAS**, DRC finds that the proposal is compatible with the surrounding area as the warehouse addition faces existing industrial development or planned industrial development; and because it re-uses existing buildings, parking, and infrastructure while providing additional pedestrian and vehicular access improvements; and

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**WHEREAS**, DRC finds that the proposal conforms to the Comprehensive Plan and Land Development Code;

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** the Revised Detailed District Development Plan and all Binding Elements listed below for Case No. 14DEVPLAN1058.

#### **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. 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 **32,805** square feet of gross floor area.
3. Signs shall be in accordance with Chapter 8 or as presented at the public hearing (**70** sq. ft. in area and **15** ft. tall).
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 ***Louisville Metro Department of Inspections, Permits and Licenses, 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.
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.
6. The property shall not be used for a use included in the PEC zoning district solely through its inclusion as a permitted use in the M-2 zoning district until such change in use has been reviewed and approved by the Planning Commission or authorized committee thereof in a public meeting noticed in accordance with the Planning Commission's policies in effect at the time of the proposed change in use. Any such

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review shall be to determine compliance with the standards for Revised Detailed District Development Plans in effect at the time of the review.

#### Proposed 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. 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.
3. 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 Louisville Metro Department of Inspections, Permits and Licenses, 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 reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
4. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
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

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elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

6. The property shall not be used for a use included in the PEC zoning district solely through its inclusion as a permitted use in the M-2 zoning district until such change in use has been reviewed and approved by the Planning Commission or authorized committee thereof in a public meeting noticed in accordance with the Planning Commission's policies in effect at the time of the proposed change in use. Any such review shall be to determine compliance with the standards for Revised Detailed District Development Plans in effect at the time of the review.
7. 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.

#### The vote was as follows:

**YES: Commissioners Blake, Brown, Kirchdorfer and Tomes**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Peterson and White**

**ABSTAINING: No one**

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### NEW BUSINESS:

#### CASE NO. 14DEVPLAN1059

**Request:** Revised District Development Plan, Binding Elements and Revised Preliminary Subdivision Plan  
**Project Name:** Hamilton Springs Subdivision  
**Location:** 2801 Hamilton Springs Drive  
**Owner:** Terra Development II, LLC  
**Applicant:** Judah Real Estate Group  
**Representative:** Sabak, Wilson and Lingo, Inc.  
**Jurisdiction:** Louisville Metro  
**Council District:** 19—Jerry Miller  
**Case Manager:** David Wagner, Planner II

The staff report prepared for this case was incorporated into the record. The Committee members received this report in advance of the hearing, and was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street, Louisville, Kentucky).

#### **Agency Testimony:**

Staff case manager, David Wagner discussed the summary, standard of review and staff analysis from the staff report.

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

Nick Pregliasco, Attorney, Bardenwerper, Talbott & Roberts, 1000 N. Hurstbourne Parkway, Ste. 200, Louisville, Kentucky 40223.

Matt Wolff, Sabak Wilson & Lingo, 608 S. 3<sup>rd</sup> Street, Louisville, Kentucky 40202.

Area resident

#### **Summary of testimony of those in favor:**

Mr. Pregliasco said he was present to answer any questions the Committee may have.

Matt Wolf, the applicant's representative, explained the plan.

An area resident, who didn't sign in, said she was glad they are going to complete the project.

#### **The following spoke neither for nor against the request:**

Dr. James Kennedy (didn't sign in).



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#### **Summary of testimony of those who spoke neither for nor against:**

Dr. James Kennedy expressed concern about additional traffic and other possible nuisances.

#### **The following spoke in opposition to this request:**

No one.

#### **Summary of testimony of those in opposition:**

No one.

#### **Deliberation:**

DRC Deliberation

**An audio visual recording of the Development Review Committee hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 18, 2014 public hearing proceedings.**

#### **Revised Detailed District Development Plan; Revised Preliminary Subdivision Plan and Binding Elements:**

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

**WHEREAS**, the Louisville Metro Development Review Committee (DRC) finds that based on the file of this case including the staff report and plan, the applicant is requesting a Revised Detailed District Development Plan; a Revised Preliminary Subdivision Plan and Binding Elements; and

**WHEREAS**, DRC finds that 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 because there are several large clusters of existing trees and multiple man-made lakes being maintained on the site which help to conserve natural resources; and

**WHEREAS**, DRC finds that the provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community because the applicant is providing sidewalks along all street frontages and throughout the development along the private streets; and because there are two access points from

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public rights-of-way into the subdivision and because of these improvements, safe and efficient vehicular and pedestrian transportation will be provided; and

**WHEREAS**, DRC finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development, because sufficient open space is provided for the development; and because 3.8 acres of open space is required, the applicant will be providing 9.6 acres; and

**WHEREAS**, DRC finds that 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 because MSD has given preliminary approval of the drainage facilities for the site; and

**WHEREAS**, DRC finds that the compatibility of the overall site design (location of buildings, parking lots, screening and landscaping) and land use or uses with the existing and projected future development because the overall design is compatible with the surrounding residential subdivisions in the area; and because the revised plan is reducing the number of buildable lots from 139 to 104; therefore, the development is compatible with surrounding development; and

**WHEREAS**, DRC finds that the proposal conforms to the Comprehensive Plan and the development complies with all regulations within the Land Development Code or has received appropriate relief through waivers and variances;

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** the Revised Detailed District Development Plan; the Revised Preliminary Subdivision Plan and Binding Elements.

#### **Existing Binding Elements to Remain:**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes, additions or alterations not so referred shall not be valid.
2. To facilitate custom residential buildings and design flexibility for lot 3, building permits for up to 10 units per building shall be issued subject to review and approval from the Architectural Review Board (as outlined in the approved Design Guidelines Booklet) and the Building Department. Site development and infrastructure improvements will require the approval of the Architectural Review Board, MSD and Public Works and shall be in substantial compliance with the site plan and phasing schedule contained in the Design

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Guidelines Booklet. A member of DPDS staff shall be a voting member of the ARC. The total number of units for this lot shall be 139, as was previously approved under the General District Development Plan. Landscape plans and signature entrance plans shall require review and approval from the Planning Staff. *This paragraph was added only in relation to Lot 3 of Old Henry Crossing (proposed Hamilton Springs' development) at the 4/28/2005 LD&T meeting.*

Prior to development of all other phases of this project, the applicant, developer, or property owner shall obtain approval of a detailed district I development plan from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:

- a. screening, buffering, landscaping, tree preservation
  - b. density, floor area, size and height of buildings
  - c. points of access and site layout with respect to on-site circulation
  - d. land uses
  - e. signage
  - f. loading berths
  - g. parking
  - h. sidewalks
  - i. site design elements relating to alternative transportation modes
  - j. outdoor lighting
  - k. minor subdivision plat approval
  - l. air pollution
  - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
  - n. dumpsters
3. The development shall not exceed 977,360 office. 157,725 commercial square feet of gross floor area (including 97,500 neighborhood retail), 184 Hotel rooms, and 139 Condominiums.
  4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
  5. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible offsite.
  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.

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7. Before any permit (including-but not limited to building, parking lot, change of use or alteration permit) is requested:
  - a. The development plan for each site or phase of this project must receive full construction approval from the Jefferson county Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
  - b. Encroachment permits for each site or phase of this project must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 and in conformance with the Parkway Policy prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A minor subdivision plat creating the lots within a phase in accordance with the approved district development plan shall be recorded prior to issuance of building permits unless public roadways will be created within the phase to be platted, then a major plat shall be required to create the roadway.
8. 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.
9. 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.
10. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assigns, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
11. The photographs submitted at the January 8, 2001 Planning Commission meeting are representative of the quality of architecture that will be maintained in Old Henry Crossings and may be used by LD&T to review detailed development plans that will be submitted at a later date for quality design. Development on lots 4, 5, 6, 7, 8 9, 10, 14 and 15 shall conform to the same high standard of design and construction as depicted at the hearing for the offices and technical center. Such determination shall be made by the Planning Commission or appropriate committee thereof. In many cases, this will

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require deviation from the "industry standard design" for such facilities as, but not limited to, fuel stations and eating establishments.

12. To facilitate the extension of the four lanes of Old Henry Road to Crestwood, the Developer shall dedicate the right-of-way and any construction easements needed to construct the Old Henry Road improvement currently being designed by the Kentucky Transportation Cabinet. This design requires an equal amount of right-of-way on the east side of Old Henry Road across from lot 3 as it takes from the west side for the length of the frontage with the exception of the curve at Bush Farm Road (which may require more due to a possible shifting of the Old Henry Road center line; if it shifts, that additional right-of-way should be traded for right-of-way on the opposite side of Old Henry Road).
13. Loading docks shall be prohibited on Lot 11.
14. Two trees shall be planted in each parking lot island.
15. For each tree of Cinch caliper or larger that is removed along Old Henry Trail during the required road widening, a new two-inch caliper tree shall be planted a safe distance from the roadway as near as reasonable to the removed tree's location or as requested by the Planning Commission staff landscape architect.
16. The applicant agrees to withdraw the C-I zoning request for Lot 2 (Garden Center) and not to resubmit this request for a five year period from the date of approval of this zoning change.

**In addition to the binding elements listed above, the following additional binding elements now also apply to the Hamilton Springs development under Case No. 13856, which is Lot 3 on the Old Henry Crossing development plan under Docket #9-99-98.**

17. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
18. 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 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:
  - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
  - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).

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- c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  - d. Location of construction fencing for each tree/tree mass designated to be preserved.
19. 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 upon request.
  20. 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 dripline 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."
  21. All street signs shall be installed by the Developer, and shall conform with 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.
  22. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
  23. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
  24. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
  25. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. 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.

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26. 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 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.
27. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - i. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
  - ii. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
  - iii. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
28. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
29. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
30. 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.
31. 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.
32. Covenants, Conditions and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that

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mandate inclusion in the CCRs, as well as the inclusion of the following requirements: (a) all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities shall be installed by the developer prior to turn-over of maintenance responsibilities to the Home Owners Association ("HOA"); (b) any shared water meters and property service connections for sanitary sewers shall be the sole responsibility of the HOA; (c) any water, sewer and drainage facilities that cross lot lines shall be included in blanket easements for purposes of both lot owner and HOA access and maintenance; and (d) where attached residences are proposed, easements shall be provided to provide for incidental encroachments, property maintenance and repair.

**The vote was as follows:**

**YES: Commissioners Blake, Brown, Kirchdorfer and Tomes**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Peterson and White.**

**ABSTAINING: No one**



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**ADJOURNMENT**

The meeting adjourned at approximately 2:30 p.m.

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**Chair**

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**Planning Director**