

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
March 17, 2016**

A meeting of the Louisville Metro Planning Commission was held on March 17, 2016 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Donnie Blake, Chairman
Vince Jarboe, Vice Chairman
Jeff Brown
Robert Kirchdorfer
*Clifford Turner
David Tomes
**Chip White
Robert Peterson

Commission members absent:

Marilyn Lewis

Staff Members present:

Mary Ellen Wiederwohl, Chief Louisville Forward
Dave Marchal, Deputy Director Develop Louisville
Emily Liu, Planning Director
Joe Reverman, Planning Assistant Director
Brian Davis, Planning Manager
Brian Haberman, Planning Manager
Brian Mabry, Planning Coordinator
Julia Williams, Planner II
Joel Dock, Planner I
Jay Lockett, Planning Technician
Tammy Markert, Transportation Planning
Tony Kelly, MSD
Mike Wilcher, Code Enforcement
Will Ford, Communication Specialist
John G. Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Pamela M. Brashear, Management Assistant

*Commissioner Turner left at approximately 2:00 p.m.

**Commissioner White left at approximately 6:15 p.m.

The following matters were considered:

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APPROVAL OF MINUTES

MARCH 3, 2016 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Jarboe, seconded by Commissioner Tomes, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on March 3, 2016.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Tomes, Turner and White

NOT PRESENT FOR THIS CASE: Commissioner Lewis

ABSTAINING: Commissioner Peterson

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CASE NO. 16AMEND1000

Request: Amend Chapters 1, 2, and 4 of the Land Development Code
Related to Methadone Clinics
Project Name: Methadone Clinics Text Amendment
Location: Multiple properties in Louisville Metro
Owner: Multiple Owners
Applicant: Louisville Metro
Representative: Louisville Metro
Jurisdiction: Louisville Metro
Council District: 26 – Brent Ackerson
Case Manager: Joseph Haberman, AICP, Planning Manager

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

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

Discussion

00:05:55 Mr. Haberman remarked, “This item is before the Planning Commission because Metro Council passed an ordinance late last year asking the Planning Commission to draft some recommended amendments to the Land Development Code in relation to how to regulate methadone and possibly other drug treatment clinics. Staff has been working with the attorney’s office to make sure we have put together a few alternatives, but the attorney’s office needs a little more time to digest those proposed changes and decide whether they’re legally sound.”

Mr. Baker requests continuing the case for at least a month.

An audio/visual recording of the Planning Commission hearing 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.

On a motion by Commissioner Tomes, seconded by Commissioner Peterson, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the April 21, 2016 Planning Commission meeting.

The vote was as follows:

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CASE NO. 16AMEND1000

**YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson, Tomes,
Turner and White**

NOT PRESENT AND NOT VOTING: Commissioner Lewis

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CASE NO. 16AMEND1003

Request: Amend Section 5.12.2 of the Land Development Code
Related to Outdoor Amenities / Focal Point(s)
Project Name: Outdoor Amenities / Focal Point(s) LDC Text Amendment
Location: Multiple properties in Louisville Metro
Owner: Multiple Owners
Applicant: Louisville Metro
Representative: Louisville Metro
Jurisdiction: Louisville Metro
Council District: Planning Commission Resolution
Case Manager: Brian Mabry, AICP, Planning Coordinator

Notice of this public hearing appeared in **The Courier Journal**.

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.)

Agency Testimony:

00:09:17 Mr. Mabry stated that the request is a change to the written rules of the Land Development Code and not a rezoning that would impact a specific property. The choices are Option A – 10% office dedication or Option B - 15 square feet per estimated employee. Potential changes to the fee-in-lieu option were also provided.

The following spoke neither for nor against the request:

Pat Dominik, Sabak, Wilson and Lingo, 608 South 3rd Street, Louisville, Ky.

Summary of testimony of those neither for nor against:

00:31:32 Mr. Dominik represents the Louisville Renaissance Zone Corporation (LRZC). A significant amount of waivers were for projects in the LRZC business park.

Mr. Dominik gave a power point presentation and said he supports pages 12 and 13 of the staff report but asks the commission to tailor (scale and use) the regulations and don't allow it to become a burden or scare off developers.

Deliberation

00:39:50 Planning Commission deliberation.

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CASE NO. 16AMEND1003

An audio/visual recording of the Planning Commission hearing 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.

45:31 On a motion by Commissioner Tomes, seconded by Commissioner White, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council and other legislative bodies, **APPROVAL** of Case No. 16AMEND1003, amendment to section 5.12.2 of the Land Development Code related to Outdoor Amenities/Focal Point(s), Option A and the fee-in-lieu (pages 3 and 4 of the staff report) as discussed today based on the staff report, evidence and testimony heard today.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson, Tomes, Turner and White

NOT PRESENT AND NOT VOTING: Commissioner Lewis

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Discussion

00:47:20 Ms. Wiederwohl is the Chief of Louisville Forward, the city's organization committed to economic and community development. Last week the Metro Council raised several questions regarding 'appointments' to the Planning Commission.

00:50:02 Kelly Watson is the General Counsel to the Mayor's office and liaison to the Metro Council. Recruiting for boards and commissions has been a very hot topic recently. There was a question as to the legal composition of the Planning Commission. The opinion of the County Attorney's office is that the Planning Commission is affirmatively legally constituted.

53:11 Commissioner Kirchdorfer asked Ms. Watson to discuss the legality of the number of terms a commissioner may serve. Ms. Watson said there's a policy, but no written rule to substantiate 3 terms as being the limit.

An audio/visual recording of the Planning Commission hearing 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.

In closing Ms. Wiederwohl stated, "We wanted, Mr. Chairman, to ensure that you would continue to serve and the other members of this commission would continue to serve as you do. I have respect for the time you put in, the slings and arrows you occasionally take in the course of this business and the way you judiciously and professionally hear from the community, balance the needs of the community and help us move forward as a community, both economically and from a neighborhood perspective. This is challenging work and we really appreciate what you do and will always be here to support you in that endeavor. If any of you ever have questions raised publicly, privately or just something in the back of your mind, please do not hesitate to let us know so we can be here to help you in this community service you provide."

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PUBLIC HEARING

CASE NO. 15DEVPLAN1195/15SUBDIV1023

Case No: 15DEVPLAN1195 & 15SUBDIV1023
Project Name: Notting Hills, Section 4
Location: 226 Notting Hill Boulevard

Owners: Notting Hill Development, LLC
301 Middletown Park Place, Suite A
Louisville, Ky. 40243

Applicant: Welch Developers, LLC
Scott Welch
301 Middletown Park Place, Suite A
Louisville, Ky. 40243

Representative(s): Bardenwerper, Talbott & Roberts, PLLC
William B. Bardenwerper
1000 North Hurstbourne Parkway, 2nd floor
Louisville, Ky. 40223

Project Area/Size: 16.38 Acres
Existing Zoning District: R-5, Single-Family Residential & R-5A, Multi-Family Residential
Existing Form District: N, Neighborhood
Jurisdiction: Louisville Metro
Council District: 19 – Julie Denton
Case Manager: Joel P. Dock, Planner I

Commissioner Turner left and did not vote on this case.

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

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

Agency Testimony:

00:58:44 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

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CASE NO. 15DEVPLAN1195/15SUBDIV1023

The following spoke in favor of this request:

Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299
Cathy Sticht, 107 Ladbroke Grove Road, Louisville, Ky. 40245
Cindy Hays, 115 Ladbroke Grove Road, Louisville, Ky. 40245
Sarah Shawhan, 18332 Standwick Drive, Louisville, Ky. 40245

Summary of testimony of those in favor:

01:12:43 Mr. Porter represents 77 out of 87 lot owners. The appeal is one issue only and that is the change in the amenities from pool and exercise room to a clubhouse. The plan and binding elements must be adhered to. Many people bought their homes because of the promise of providing a swimming pool.

01:26:47 Ms. Sticht said she wants the original amenities she's already paid for.

Ms. Sticht submitted a petition, of 75 signatures and 2 emails, for the record. Also, the pool is still being advertised on websites.

01:36:30 Ms. Hays provided a copy of (page 12) the covenant to the commissioners. It was part of her closing and was dated Dec. 2005.

01:39:40 Ms. Shawhan said she supports the original plan. "I think these amenities would create a stronger sense of community, protect my financial investments and appeal to future homeowners as well as retain the homeowners that currently live in the neighborhood."

The following spoke in opposition to this request:

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Walt Zolla, 203 Chadwick Glen Place, Louisville, Ky. 40245
Janet Watkins, 110 Holland Park Place, Louisville, Ky. 40245
Scott Welch, 301 Middletown Park Place, Louisville, Ky.

Summary of testimony of those in opposition:

01:53:52 Mr. Bardenwerper gave a power point presentation. There have been a number of units lost in the course of the development.

02:14:20 Mr. Zolla is a villa owner and formed a small committee consisting of 2 villa members and 2 single family members from sections 1 and 2 (6 total). The group

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wants a compromise – the clubhouse needs to be larger, they want a park area (to include a commercial playground) and a gazebo. The group is no longer intact and no compromise has been made.

02:20:43 Ms. Watkins is the secretary/treasurer for the Villas of Chadwick Homeowners Association. “From a community standpoint, amenities are very appealing, but you also have to factor in the economics of having those amenities. Notting Hill, which is a very desirable community, is going to be small in nature. We will end up with about 250 homeowners and to have a larger clubhouse or pool is not going to be economically feasible for our community. What we’re going to end up doing is, in essence, decreasing our property values because the HOA dues are going to be so excessive.”

02:28:30 Mr. Welch stated, “When Notting Hill was purchased, the projection of the development completion was between 6 and 7 years, but during the recession, it has taken much longer. We’re at approximately 204 homeowners and at 11 years we’re looking at approximately another 5 to 6 years before the completion of the development.”

Mr. Welch remarked, “As far as the HOA we’ve had since 2005, we’ve been subsidizing the HOA to maintain the dues that are coming in from the homeowners. To date we are subsidizing approximately \$330,000 and last year we subsidized approximately \$33,000 to maintain the development.”

Rebuttal

02:35:03 Mr. Porter asks the commission to approve the appeal request, the plan as presented to DRC with an amendment and binding element or condition of approval. A smaller clubhouse will be acceptable if necessary.

Deliberation

02:44:17 The commissioners are in agreement to uphold DRC’s decision. Commissioner Tomes stated that the applicant should put conceptual, subject to change, proposed or something to that effect on the plan. Chairman Blake stated that the number of units has decreased over the years and it’s apparent that the applicant cannot afford to build and maintain a pool.

An audio/visual recording of the Planning Commission hearing 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.

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On a motion by Commissioner Jarboe, seconded by Commissioner Peterson, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **DENY** the appeal of the DRC Case No. 15DEVPLAN1195/15SUBDIV1023 and uphold the Revised Detailed District Development Plan, Revised Preliminary Subdivision Plan and amendment to the binding elements listed in the staff report based on the staff report, testimony heard today.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson, Tomes and White

NOT PRESENT AND NOT VOTING: Commissioners Lewis and Turner

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PUBLIC HEARING

CASE NO. 9-36-96 BE

Case No. 9-36-96 BE Citation
Property Address: 9201 National Turnpike
Case Manager: Jonathan Baker, Assistant County Attorney

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

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

Discussion

03:01:02 Mr. Baker stated this meeting is a continuation from the February 3, 2016 Planning Commission meeting to update the commissioners on the plan to remedy.

03:01:41 Mr. Curry provided an update, in writing, for the commissioners and read his notes from the inspection. A lot of salvage has been removed.

Mr. Curry said he thinks they will have all issues, except landscaping, resolved by June. Also, the semi-trailers are movable if the commission wants them removed, however in 2005, the inspectors said there was no binding element violation and could use them temporarily to move parts in and out.

03:12:41 Mr. Wilcher said there was an inspection and progress has been made but there's still a lot to be done. No landscaping plan has been submitted and the applicant plans to seek waivers.

An audio/visual recording of the Planning Commission hearing 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.

By general consensus, the commissioners scheduled this case to be heard at the April 7, 2016 Planning Commission meeting.

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PUBLIC HEARING

CASE NO. 9-58-89/15424

Case No. 9-58-89/15424 BE Citation
Property Address: 9201 Blue Lick Road
Case Manager: John Carroll, Assistant County Attorney

Binding Element Violation Citations dated October 28, 2015 and February 9, 2016 have been issued and the property owners have requested hearings on both citations.

Discussion

03:30:45 Mr. Carroll provided a handout for the commissioners and discussed the violations.

03:38:05 Mr. Wilcher gave a power point presentation. The original plan expired so the applicant then had to file a revised plan which has not been approved. The applicant was cited with binding element violations and fined \$1,000.00 on the original plan and it has not been implemented. Also, the landscaping doesn't have to be done until the road widening has been completed.

03:47:00 Mr. Doug Engle said he hasn't done anything new on his property. There's never been anything manufactured on the site. The piping equipment belongs to Basham Construction for the road widening. The gravel will stay as a durable surface.

03:54:08 Councilperson Flood said her office has received complaint after complaint for this site. There's a lot of trash and junk on the property.

03:59:21 Mrs. Liu stated she has received complaints and has been to Blue Lick Rd. to see trailers with junk inside.

An audio/visual recording of the Planning Commission hearing 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.

4:22:43 On a motion by Commissioner Tomes, seconded by Commissioner White, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby find the occupant/owner in violation for Case No. 9-58-89/15424, and that beginning today, imposes a fine of \$500.00 a day which will be revisited if he takes care of, by April 7, 2016 a plan for the following: removal of trailers off the property; addressing the weed issue by spraying and not storing anything on that area; the owner will have Mike Wilcher visit the site to explain all other issues that need to be addressed to bring the

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property into zoning compliance and approve its appearance. Also the owner shall have a good idea of the state's schedule regarding the highway improvements to provide expectation of dates for furnishing additional landscaping and reinstalling the fence.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson, Tomes and White

NOT PRESENT AND NOT VOTING: Commissioners Lewis and Turner

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PUBLIC HEARING

CASE NO. 15ZONE1033

Case No: 15ZONE1033 and 15CUP1024
Request: Zoning map amendment from R-4 to M-2 for 2.5 acres of the site and CUP for a commercial composting facility
Project Name: Tree Care Inc.
Location: 13312 Aiken Road

Owner: Tree Care, Inc.
13319 Aiken Road
Louisville, Ky. 40223

Applicant: Tree Care, Inc.
13319 Aiken Road
Louisville, Ky. 40223

Representative: Bardenwerper, Talbott & Roberts, PLLC
Nick Pregliasco
1000 North Hurstbourne, 2nd floor
Louisville, Ky. 40223

Jurisdiction: City of Middletown
Council District: 19 – Julie Denton
Case Manager: Brian Davis, AICP, Planning Manager

NOTE: Commissioner Peterson recused himself from this case.

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

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

Agency Testimony:

04:27:45 Mr. Davis discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

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CASE NO. 15ZONE1033

Nick Pregliasco, Bardenwerper, Talbott & Roberts, PLLC, 1000 North Hurstbourne, Louisville, Ky. 40223
Ann Richard, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

Summary of testimony of those in favor:

04:35:39 Mr. Pregliasco stated that the request is for an existing business to remain (nothing new proposed). All the surrounding properties are currently zoned M-2 and M-3.

Mr. Pregliasco gave a power point presentation. There are 5 proposed additional binding elements to address the concerns from the City of Middletown. Also, there are 3 access points and the applicant has agreed to eliminate one.

04:44:08 Ms. Richard remarked, "We did agree that the third curb-cut closest to Chenoweth Run Creek that MSD is currently using is a temporary MSD service entrance and will be eliminated when MSD is finished working on Chenoweth."

Deliberation

04:45:00 Planning Commission deliberation.

An audio/visual recording of the Planning Commission hearing 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.

Zoning Change from R-4 to M-2

On a motion by Commissioner Brown, seconded by Commissioner Jarboe, the following resolution was adopted.

WHEREAS, A Suburban Workplace is a form characterized by predominately industrial and office uses where the buildings are set back from the street in a landscaped setting. Suburban workplaces often contain a single large-scale use or a cluster of uses within a master planned development. New larger proposed industrial uses are encouraged to apply for a planned development district; and

WHEREAS, the Louisville Metro Planning Commission finds, In order to provide adequate transportation access in suburban workplaces connected roads, public transportation and pedestrian facilities should be encouraged. Walkways to workplace-

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serving uses are encouraged for workplace employees. Development within suburban workplace form districts may need significant buffering from abutting uses; and

WHEREAS, the Louisville Metro Planning Commission further finds Staff analysis indicates that the proposed rezoning complies with most of the applicable guidelines of the Comprehensive Plan; however, in order to meet Guideline 3 of the Comprehensive Plan, the appropriate landscape buffer areas and screening shall be provided along the east property line. Also, more information is needed to determine whether the proposed rezoning complies with Guideline 7. See comments from Transportation Plan Review.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to the city of Middletown, **APPROVAL** of Case No. 15ZONE1033, the zoning map amendment from R-4 to M-2 for the 2.5 acre site located at 13312 Aiken Rd. based on the staff report and testimony heard today.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Tomes and White

NOT PRESENT AND NOT VOTING: Commissioners Lewis and Turner

ABSTAINING: Commissioner Peterson

On a motion by Commissioner Brown, seconded by Commissioner Jarboe, the following resolution was adopted.

Conditional Use Permit and Detailed District Development Plan (for entire site) and Binding Elements

WHEREAS, Staff analysis indicates that the proposed CUP complies with most of the applicable guidelines of the Comprehensive Plan; however, in order to meet Guideline 3 of the Comprehensive Plan, the appropriate landscape buffer areas and screening shall be provided along Aiken Road and the east property line. Also, more information is needed to determine whether the proposed rezoning complies with Guideline 7. See comments from Transportation Plan Review; and

WHEREAS, The proposal is compatible with surrounding land uses and the general character of the area as it is located in an industrial area with other existing industrial zoning districts and uses; and

WHEREAS, the Louisville Metro Planning Commission finds, adequate public facilities exist to serve the proposed use as it is located adjacent to existing industrially zoned and used properties to take advantage of special infrastructure needs; and

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WHEREAS, the Louisville Metro Planning Commission further finds the following conditions apply to all Solid Waste Management Facilities:

- A. All of the facilities referenced in this sub-section 4.2.50 are required to have a license to operate from the Jefferson County Waste Management District (SWR 20.0).
- B. A specific written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt or other debris onto any public roadway shall be reviewed and approved by the Director of Works before public hearing.
- C. A continuous fence a minimum of 6 feet high shall be placed along the boundaries of all work and storage areas and provided with gates of the same construction as the fence which shall remain locked at all times when active operations are not taking place and shall be properly maintained until all operations are completed.
- D. When adjoining any residential zoning district, the facility may not be operated on Sunday or earlier than 7:00 a.m. or later than 6:00 p.m. on any other day.

The following conditions specifically apply to a commercial composting facility: Water quality concerns for a composting facility currently need approval from the KY Division of Waste Management, KY Division of Water, and MSD.

1. Composting Facilities may be located in R-R, R-1, M-2, and M-3 Districts upon the granting of a Conditional Use Permit when developed in compliance with the following listed requirements:
 - a. All composting facilities must demonstrate compliance with the applicable state statutes dealing with said facilities (401 KAR Chapters 45 through 49).
 - b. No composting operation shall occur within 50 feet of any boundary of the site.
 - c. Additional landscaping is required in the buffer areas between composting activity areas and any adjacent non-industrial uses.
 - d. Provisions shall be made for the disposal of surface water falling on or crossing the site at all times during and after completion of the operations. No operation shall begin until approval has been obtained from the agencies responsible for surface water drainage and surface water quality.
 - e. The installation of roads, parking areas, buildings, structures, and operational facilities and equipment shall be located on the site so that adjoining properties will not be adversely affected.
 - f. Composting materials shall be moved off and onto the site in vehicles approved by the appropriate Director of Works.
 - g. All composting operations shall be in strict conformity with the regulations of the Louisville and Jefferson County Board of Health; Air Pollution Control District; Kentucky Department for Environmental Protection and

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the Director of Works. Letters or Certificates of Approval of the plans by the above agencies indicating prior review shall be filed prior to the issuance of any Conditional Use Permit. Uses shall not begin until final approval has been obtained and filed in the Board of Zoning Adjustment docket file.

- h. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No debris shall be stored on the site except on areas where active composting operations are taking place. No fires shall be permitted. Any smoldering flame or spontaneous combustion shall be immediately extinguished.
- i. Grinding or other heavy machinery associated with composting operations located within one-half mile of residentially used or zoned property shall provide information on sound levels resulting from operation of said equipment, and hours of operation. The Board may establish conditions necessary to protect nearby residents.
- j. Except for protective fences, no building or structure erected in connection with the operation shall be located in any required yard or closer than 30 feet from any property line.
- k. All composting facilities shall also meet the Jefferson County Waste Management District regulations covered in SWR 62.0.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to the City of Middletown, **APPROVAL** of the Detailed District Development Plan and **APPROVE** Case No. 15ZONE1033 and 15CUP1024, the Conditional Use Permit to allow the composting facility **ON CONDITION** that the applicant add a note to the face of the plan to read as follows: Right-of-way dedication by deed or minor plat required prior to plan transmittal as well as depicting the area to be dedicated to public right-of-way; a second note as follows: Construction plans, bond and permit for work along the Aiken Rd. frontage to provide shoulder, ditch and culvert pipes shall be required prior to plan transmittal. Work within the right-of-way shall include removal of the third entrance to the far east end of the site based on the staff report and testimony heard today **SUBJECT** to the following Binding Elements:

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

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for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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. No composting operation shall occur within 50 feet of any boundary of the site.
7. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No debris shall be stored on the site except on areas where active composting operations are taking place. No fires shall be permitted. Any smoldering flame or spontaneous combustion shall be immediately extinguished.
8. Hours of grinding operation are 7:00 a.m. to 5:00 p.m., Monday through Friday.

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9. The applicant shall add a note to the face of the plan to read as follows: Right-of-way dedication by deed or minor plat required prior to plan transmittal as well as depicting the area to be dedicated to public right-of-way; a second note as follows: Construction plans, bond and permit for work along the Aiken Rd. frontage to provide shoulder, ditch and culvert pipes shall be required prior to plan transmittal. Work within the right-of-way shall include removal of the third entrance to the far east end of the site.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Tomes and White

NOT PRESENT AND NOT VOTING: Commissioners Lewis and Turner

ABSTAINING: Commissioner Peterson

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PUBLIC HEARING

CASE NO. 15ZONE1068

Case No: 15zone1068
Request: Change in zoning from R-6, OR-3, C-1 and C-2 to CR and C-2 with waivers and variances
Project Name: Baxter/Broadway Apartments
Location: 626-656 Baxter Avenue, 1203-1249 East Broadway and 1014-1026 Rogers Street

Owner: Baxter Avenue Realty, LLC, Roppel Industries, Riche Properties, LLC and Triangle Realty, LLC

Applicant: Edwards Companies
Jonathan S. Wood, Vice President
495 South High Street, Suite 150
Columbus, Oh. 43215

Representative: Gresham Smith and Partners
Jon Henney
101 South 5th Street, Suite 1400
Louisville, Ky. 40202

Bardenwerper Talbott and Roberts, PLLC
Bill Bardenwerper
1000 North Hurstbourne Parkway, 2nd floor
Louisville, Ky. 40223

Jurisdiction: Louisville Metro
Council District: 4-David Tandy
Case Manager: Julia Williams, RLA, AICP, Planner II

NOTE: Commissioner White left and did not vote on this case.

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

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

Agency Testimony:

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04:52:52 Mrs. Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Summary of testimony of those in favor:

05:04:34 Mr. Bardenwerper gave a power point presentation. There have been 7 to 10 meetings with the neighborhood organizations and neighbors. The houses are in very poor condition, but 5 will be saved. The buildings will be 3, 4 and 5 stories. "Even with lousy rundown buildings like these, everyone in the urban area thinks the property is worth a fortune so you end up paying a fortune. It costs more for land and infrastructure in the urban core and to do that we need to get some height. In the end I think intensity and density are good things because they create more vibrancy for businesses in the area."

The following spoke in opposition to this request:

Mike Lyon, 1317 Christy Avenue, Louisville, Ky. 40204

Summary of testimony of those in opposition:

05:17:10 Mr. Lyon state this is a unique and distinct residential neighborhood and needs to be preserved as such. "We are famous nationally and internationally." A high rise next to single family shot gun houses is not appropriate.

Rebuttal

05:24:28 Mr. Bardenwerper said there will be 281 apartment rental units but started with more. Some ground space was lost to saving the 5 shotgun houses. Also, there was a lot of discussion with a lot of different groups on this case, including Historic Preservation.

Deliberation

05:26:20 The commissioners are in agreement that this project is very well thought out and will be an asset to the community.

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An audio/visual recording of the Planning Commission hearing 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.

On a motion by Commissioner Jarboe, seconded by Commissioner Tomes, the following resolution was adopted.

Zoning Change from R-6, OR-3, C-1 and C-2 to CR and C-2

WHEREAS, The site is located in the Traditional Neighborhood Form District. The Traditional Neighborhood Form District is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings.

Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are fifty to one hundred twenty years old, it is hoped that the Traditional Neighborhood Form will be revitalized under the new Comprehensive Plan. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) the preservation of the existing grid pattern of streets and alleys, (c) preservation of public open spaces; and

WHEREAS, The site is located in the Traditional Marketplace Corridor Form District. The Traditional Marketplace Corridor is a form found along a major roadway where the pattern of development is distinguished by a mixture of low to medium intensity uses such as neighborhood-serving shops, small specialty shops, restaurants, and services. These uses frequently have apartments or offices on the second story. Buildings generally have little or no setback, roughly uniform heights and a compatible building style. Buildings are oriented toward the street. Buildings typically have 2-4 stories. New development and redevelopment should respect the predominant rhythm, massing and spacing of existing buildings; and

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WHEREAS, There should be a connected street and alley system. New development should maintain the grid pattern and typical block size. Parking is provided either on-street or in lots at the rear of buildings. New development should respect this pattern. Flexible and shared parking arrangements are encouraged. A street capable of permitting on-street parking is usually necessary. Wide sidewalks, street furniture and shade trees should make a pedestrian friendly environment that invites shoppers to make multiple shopping stops without moving their vehicle. The area should also be easily accessible by pedestrians, transit and bicycle users; and

WHEREAS, the Louisville Metro Planning Commission finds, attention to discreet signs can also help make this a very desirable form. A premium should be placed on compatibility of the scale and architectural style and building materials of any proposed new development with nearby existing development within the corridor; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposal is to close two unnamed alleys. Closing off part of the alley connected to Rubel eliminates rear access to two existing buildings and lots but an access easement will be granted so those lots will have legal alley access. The proposal is for C-2 located at the intersection of 2 major arterials. The density and proposed uses for the site fit within the less intense CR zoning. C-2 is proposed along the Baxter frontage with the less intense CR to the rear as a transition between the C-2 and adjacent R-6 and OR-3. Public open spaces will not change with the proposal. Some existing facades will be preserved and incorporated into the new building. There are also several lots with single family residences that are proposed to be preserved. The building design is consistent with traditional form. The proposal is for mixed use within a high intensity C-2 zoning district and the less intense CR both zoning districts allow for high density residential and neighborhood serving uses with CR being more neighborhood focused. The proposal is oriented toward the street with little to no setback. The proposed building is setback from the corner due to its unusual angle. While 4-5 stories is not predominate in the 2-3 story area, the massing, is similar because the nonresidential structures fill the roadway frontage and typically fill the entire lot. On street parking is restricted to certain hours so it is not considered in the parking calculations. Parking is located within a garage interior to the site. Sidewalks are existing. The Phoenix Hill Neighborhood Plan recommends street trees. The architectural style and building materials are similar to the styles of the existing structures in the area.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND**, to Metro Council, **APPROVAL** of Case No. 15ZONE1068, the change in zoning from R-6, OR-3, C-1 and C02 to CR and C-2 based on the staff report, pages 2, 3 and a portion of 4, testimony heard today, the applicant's justifications and finding of facts (tab 13).

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The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson and Tomes
NOT PRESENT AND NOT VOTING: Commissioners Lewis, Turner and White

VARIANCE from section 5.5.1.A.2. to allow the building to be setback more than 5' from the corner of Baxter Avenue and Broadway

WHEREAS, The requested variance will not adversely affect the public health, safety or welfare since safe pedestrian access is provided from the public rights-of-way to the building entrance. The building is generally located at the ROW of both Baxter and Broadway. The intersection is not a 90 degree angle and the building setback creates an outdoor open space at the corner; and

WHEREAS, The requested variance will not alter the essential character of the general vicinity since the site is located in both the Traditional Neighborhood and Traditional Marketplace form districts that requires non-residential structures to be constructed close to the street with parking to the side and rear. The previous development on the corner and throughout the site was a series of parking lots. The current proposal is generally located at the corner where a small open space is proposed. The building follows the form along both Baxter and Broadway rights of way; and

WHEREAS, The requested variance will not cause a hazard or nuisance to the public since safe pedestrian access is provided from the public rights-of-way to the building entrance and since safe vehicular maneuvering has been provided; and

WHEREAS, The requested variance will not allow an unreasonable circumvention of the zoning regulation since the proposed development is generally built to the corner and creates a usable public oriented space at that corner; and

WHEREAS, The requested variance does arise from special circumstances that do not generally apply to land in the general vicinity or the same zone. The ROW at both Baxter and Broadway come together at an acute angle which is not the common circumstance at intersections; and

WHEREAS, the Louisville Metro Planning Commission finds the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the area is at an acute angle and street level of the building is commercial an outdoor area for the commercial and the creation of a public space at the corner provides more openness and street activity opportunity than having the building fit directly to all property lines at the corner; and

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WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The roadway angle has been in the current format for some time where the existing parking lot was already non-conforming to the form district.

VARIANCE from 5.7.1.B.1 to permit the building height to be 60' instead of the required 45'

WHEREAS, The requested variance will not adversely affect public health safety or welfare since the public is not generally involved with building heights; and

WHEREAS, The requested variance will not alter the essential character of the general vicinity since there is a mix of building heights in the area with most buildings having a height of 2-3 stories; and

WHEREAS, The requested variance will not cause a hazard or nuisance to the public since building heights are generally not a noticeable to the ground level pedestrian or to vehicles; and

WHEREAS, The requested variance will not allow an unreasonable circumvention of the zoning regulations since the structure is located along two major arterials, transit ways, and in an existing urban area with mixed density; and

WHEREAS, The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the proposal is located in an area where there has been parking lots and a few buildings. To achieve the density permitted for the site, the applicant is requesting to build 15' higher than permitted; and

WHEREAS, the Louisville Metro Planning Commission finds the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the variance requested is only 15' higher than permitted and the height is to accommodate density in an existing urban area and corridor; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

WAIVER of section 10.2.4

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WHEREAS, The waiver will not adversely affect adjacent property owners since the two zoning district boundaries involve the subject site where both the boundary is accommodating the same/similar uses; and

WHEREAS, 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. Since the subject site is accommodating the same/similar uses, the buffer is not necessary; and

WHEREAS, the Louisville Metro Planning Commission finds the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the buffer would essentially separate two compatible uses unnecessarily; and

WHEREAS, the Louisville Metro Planning Commission further finds the interior courtyards are provided for the residential component of the proposal where the commercial uses are along the street frontages.

Development Plan and Binding Elements

WHEREAS, There does not appear to be any environmental constraints. Two of the historic resources on the subject site will have their facades preserved and incorporated into the development. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

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

WHEREAS, The outdoor amenity requirements are being provided for with interior courtyards to serve the residential portion of the development; and

WHEREAS, 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 Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings generally meet all required setbacks; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the following for Case No. 15ZONE1068: a variance from 5.5.1.A.2, to permit the building to be located more than 5 feet away from the right-of-way lines at each corner; a variance from 5.7.1.B.1, to permit the building height to be 60 feet instead of the required 45 feet (15 foot variance); a waiver from 10.2.4, to eliminate the buffer and plantings between C-2 and CR; and the District Development Plan and binding elements based on the staff report, pages 4, 5, 6 and 7, testimony heard today, the applicant's finding of facts and justification **SUBJECT** to the following Binding Elements:

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 231,000 square feet of gross floor area.

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3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. 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.
5. 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to the unnamed alley as indicated on the development plan as well a shared access/parking agreement. 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.
 - e. 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.
 - f. 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.
 - i. Alley closure approvals for unnamed alleys as shown on the development plan shall be approved prior to requesting a building permit.
 - j. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. 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

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implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 17, 2016 Planning Commission meeting.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Peterson and Tomes
NOT PRESENT AND NOT VOTING: Commissioners Lewis, Turner and White

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STANDING COMMITTEE REPORTS

Land Development and Transportation Committee

No report given.

Site Inspection Committee

No report given.

Planning Committee

No report given.

Development Review Committee

No report given.

Policy and Procedures Committee

No report given.

CHAIRPERSON/DIRECTOR'S REPORT

No report given.

ADJOURNMENT

The meeting adjourned at approximately 7:04 p.m.

Chair

Planning Director