

# Planning Commission

## Staff Report

August 7<sup>th</sup>, 2014



<b>Case No:</b>	<b>14DEVPLAN1044</b>
<b>Request:</b>	<b>Revised Detailed District Development Plan with landscape waiver</b>
<b>Project Name:</b>	<b>King Louie's Place</b>
<b>Location:</b>	<b>598 &amp; 600 N. English Station Rd</b>
<b>Owner:</b>	<b>Blind Squirrel, LLC</b>
<b>Applicant:</b>	<b>Blind Squirrel, LLC</b>
<b>Representative:</b>	<b>Deborah Bilitski, Wyatt &amp; Combs, LLP Land Design &amp; Development, Inc.</b>
<b>Jurisdiction:</b>	<b>Middletown</b>
<b>Council District:</b>	<b>19 – Jerry Miller</b>
<b>Case Manager:</b>	<b>Christopher Brown, Planner II</b>

*Appealed from the June 18<sup>th</sup>, 2014 Development Review Committee meeting to the full Planning Commission*

### REQUEST

- 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 along North English Station Road
- Binding Element Amendment
- Revised Detailed District Development Plan

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: EZ-1/C-M

Existing Form District: Suburban Workplace/Neighborhood

Existing Use: Vacant

Proposed Use: Indoor Soccer Facility, Amphitheater/Volleyball Courts, Restaurant, Retail and Deck

Minimum Parking Spaces Required: 282

Maximum Parking Spaces Allowed: 525

Parking Spaces Proposed: 452

Plan Certain Docket #: 16739

The proposal is to construct a 1,500 SF addition along the front façade of the proposed and existing structures along North English Station Road for the proposed retail and restaurant uses. The addition will encroach into a minor portion of the required 15' landscape buffer adjacent to the roadway. All required planting and screening materials will be provided.

The applicant will be phasing the project to await the installation of the intersection improvements along relocated portions of Aiken Road. The construction date of these intersection improvements is unknown.

The applicant has requested amendments to several binding elements to allow the use of the amphitheater area as a volleyball courts and ice rink prior to the widening of North English Station Road and the improvements to the Aiken Road intersection as well as not requiring an acoustic consultant study prior to

these being used as long as a sound system is not installed. The amendments to binding elements also clarify the expiration dates and time period to obtain building permits for the site. The requested addition of binding element #34 is contradictory to the expiration date period established in the 2004 Land Development Code in the City of Middletown.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Vacant	EZ-1/C-M	SW & N
<b>Proposed</b>	Amphitheater Restaurant, Café Athletic facility	EZ-1/C-M	SW & N
<b>Surrounding Properties</b>			
<b>North</b>	Office/Warehouse Residential, large tract	M-2 & M-3 R-4	N & SW N
<b>South</b>	Office/Warehouse	R-4 & M-2	SW
<b>East</b>	Office/Warehouse	M-2	SW
<b>West</b>	Residential	R-4	N

**PREVIOUS CASES ON SITE**

- 9-28-65: Change in zoning from R-4 and M-2 to M-3. This case is pre-plan certain, and therefore has no binding elements.
- 16739: Planning Commission and Middletown approved rezoning for the subject property from mixed industrial and residential to EZ-1 and C-M. A conditional use permit was granted for the proposed outdoor amphitheater on 5/9/2013. The expiration date for the conditional use permit is a one year time period under the 2004 Land Development Code in the City of Middletown in accordance with Chapter 11.5A.1.C.
- 17349: The Board of Zoning Adjustment denied the appeal of the staff interpretation that an amphitheater is most similar to the use listing of sports arena.

**INTERESTED PARTY COMMENTS**

No interested party comments have been received by staff.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
2004 Land Development Code (Middletown)

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since the proposed encroachment is adjacent to the roadway.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate.

Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The 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.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: 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.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: 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.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR DETAILED DISTRICT DEVELOPMENT PLAN**

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

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

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Transportation Planning has approved the preliminary development plan. A contribution will be made to Metro Public Works toward the installation of a traffic signal at N English Station Rd and Aiken Rd.

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

STAFF: There are no open space requirements with this development.

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

STAFF: The Metropolitan Sewer District has approved the preliminary development plan, indicating the proposal will not have negative impacts to the floodplain, or have negative impacts to nearby properties. Health Department approval will be required for proposed lateral fields on the subject site, which will be required until such time as sewers are made accessible to the property.

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

STAFF: The proposal integrates into the mixture of commercial, office and industrial uses along this portion of N English Station Rd. The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening are provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks with the exception of the requested relief along North English Station Road.

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

STAFF: The proposal conforms to the Comprehensive Plan and Land Development Code. The proposal integrates into the mixture of commercial, office and industrial uses along this portion of N English Station Rd. The proposal is located adjacent to existing industrially zoned and used properties to take advantage of special infrastructure needs. The site has access from N English Station Rd with existing commercial, office and industrial uses, and the proposed transportation facilities are compatible with and support access to surrounding lands.

## **TECHNICAL REVIEW**

The site is located in the City of Middletown, which will take final action on the requests. The City of Middletown has adopted the July 2004 version of the Land Development Code, with revisions.

The proposed development plan has received preliminary approvals from Transportation Planning and the Metropolitan Sewer District.

The plan received approval from the Board of Zoning Adjustment for the requested variance.

## **STAFF CONCLUSIONS**

The standard of review has been met for the requested landscape waiver and accompanying revised detailed district development plan. The screening and planting materials will be provided adjacent to the roadway. The project will be phased as road improvements are completed. The binding elements allow the uses on the site to be phased with the road improvements as well. The requested addition of binding element #34 is contradictory to the expiration date period established in the 2004 Land Development Code in the City of Middletown. All actions need to be made as recommendations to the City of Middletown. This is an appeal of the actions taken by the Development Review Committee in their recommendation of approval to the City of Middletown. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting a

Landscape Waiver and Revised Detailed District Development Plan as established in the 2004 Land Development Code.

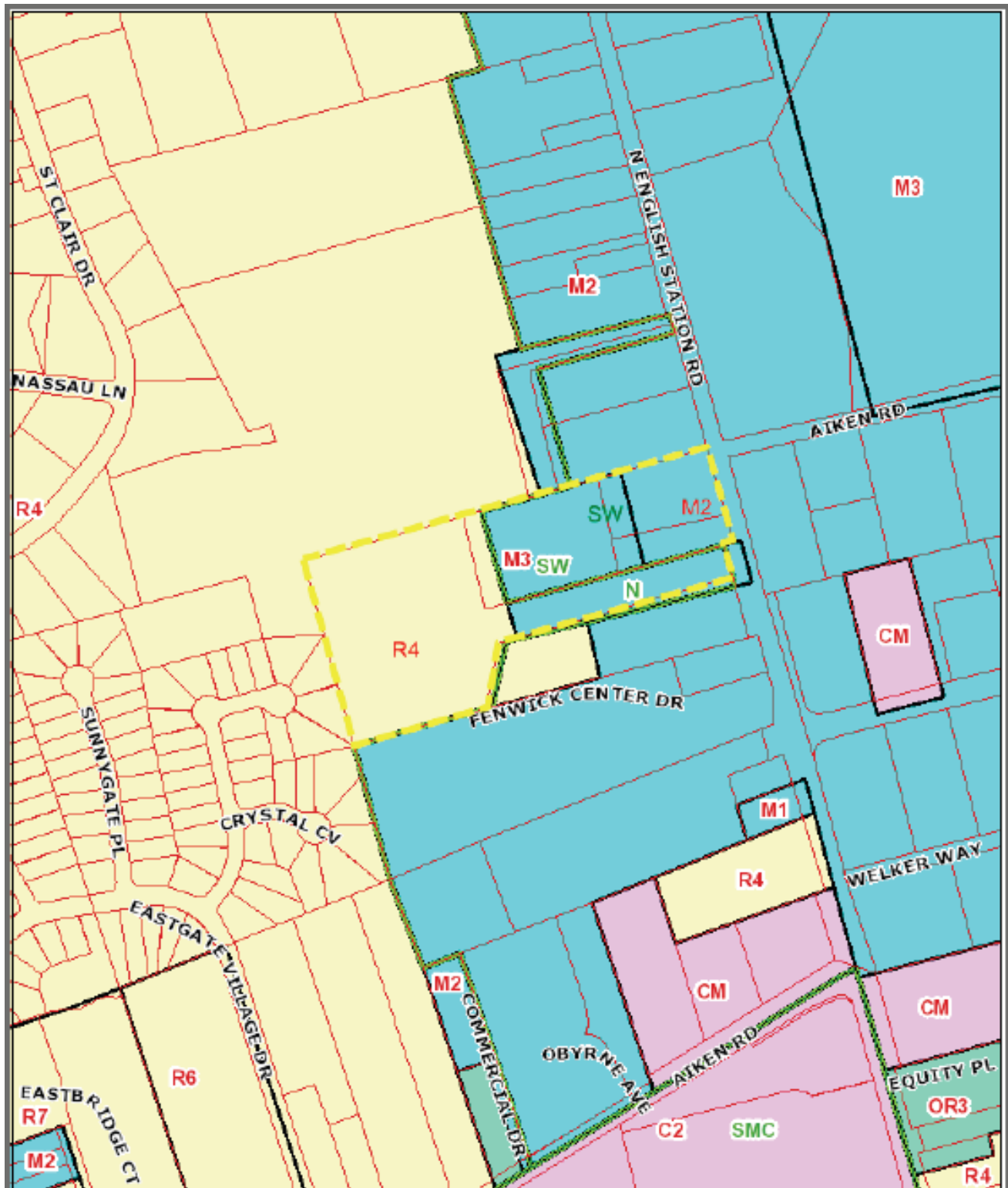
### NOTIFICATION

Date	Purpose of Notice	Recipients
5/21/14	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 19 Notification of Development Proposals
7/22/14	Appeal hearing before PC	1st tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 19 Notification of Development Proposals

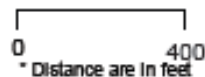
### ATTACHMENTS

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

1. **Zoning Map**



## 598-600 N English Station Rd



Plot Date 11/14/2011





3. **Existing Binding Elements**

CITY OF MIDDLETOWN

ORDINANCE NO. 13-03

AN ORDINANCE RELATING TO THE CHANGE IN FORM DISTRICT FROM N, NEIGHBORHOOD, TO SW, SUBURBAN WORKPLACE; A CHANGE IN ZONING FROM M-2 & M-3, INDUSTRIAL, TO EZ-1, ENTERPRISE ZONE; AND R-4 SINGLE FAMILY RESIDENTIAL, TO C-M, COMMERCIAL MANUFACTURING; AND A CONDITIONAL USE PERMIT (CUP) FOR A SPORTS ARENA (AMPHITHEATER) TO PERMIT AN AMPHITHEATER, RESTAURANT, WINE & COFFEE CAFÉ, AND ATHLETIC FACILITY (INDOOR AND OUTDOOR SOCCER) ON PROPERTY LOCATED AT 598-600 NORTH ENGLISH STATION RD. (TAX BLOCK 0023, LOTS 0142, 0273 & 0660) CONTAINING 13.6 ACRES AND BEING IN THE CITY OF MIDDLETOWN. A VARIANCE AND LANDSCAPE WAIVER ARE ALSO BEING REQUESTED. (CASE NUMBER 16739).

WHEREAS, the City Commission of the City of Middletown has received and reviewed the findings and recommendations of the Louisville Metro Planning Commission, as contained in Minutes dated March 7<sup>th</sup>, 2013, Case No. 16739, as provided in KRS 100.211, and

WHEREAS, the Louisville Metro Planning Commission has recommended to the City Commission of the City of Middletown that the proposed amendment to the Zoning District Map of Jefferson County, Kentucky, with certain binding elements, on the following described property, be approved, and

WHEREAS, the owners of the property herein described have agreed to certain Binding Elements, now, therefore,

**BE IT ORDAINED BY THE CITY OF MIDDLETOWN:**

Section 1. That subject to full compliance with the restrictions contained in all of the Binding Elements contained in Section 2 herein, the proposed Form District change from Neighborhood to Suburban Workplace on property more particularly described in the legal description contained in Case Number 16739; BE AND HEREBY IS APPROVED. That subject to full compliance with the restrictions contained in all of the Binding Elements contained in Section 2 herein, the proposed change in zoning from M-2 & M-3 to EZ-1; and R-4 to C-M on property more particularly described in the legal description contained in Case Number 16739; BE AND HEREBY IS APPROVED. Further, the City of Middletown Commission does hereby specifically adopt in full (incorporated as if set out in full herein) the Proposed Findings of Fact set out in Case 16739, supporting the Applications.

Section 2. The following Binding Elements shall apply with respect to the property more particularly described in the legal description in the Planning Commission record, Case 16739:

**Case 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:
  - 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 plan 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 its 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.
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 drive 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, 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 for 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 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 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/wine 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.

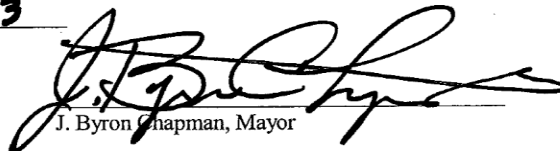
All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).

Section 3. This Ordinance shall take effect upon its passage, approval and publication as required by law.

FIRST READING: 4.11.13

SECOND READING: 5.9.13

PASSED AND APPROVED 5-9-13

  
J. Byron Chapman, Mayor

ATTEST:

  
Betty Daigrepont, City Clerk

#### 4. 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 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.**