

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION MEETING  
March 5, 2020**

A meeting of the Louisville Metro Planning Commission was held on Thursday, March 5, 2020 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, KY 40202.

**Commissioners present:**

Vince Jarboe, Chair  
Robert Peterson  
Lula Howard  
Rich Carlson  
Ruth Daniels  
Jeff Brown  
Jim Mims

**Commissioners absent:**

Marilyn Lewis, Vice Chair  
David Tomes

**Staff members present:**

Emily Liu, Director, Planning & Design Services  
Joe Reverman, Assistant Director, Planning & Design Services  
Brian Davis, Planning & Design Manager  
Julia Williams, Planning Supervisor  
Dante St. Germain, Planner II  
Joel Dock, Planner II  
Lacey Gabbard, Planner I  
Jay Lockett, Planner I  
Beth Jones, Planner II  
John Carroll, Legal Counsel (left at 4:15 p.m.)  
Travis Fiechter, Legal Counsel (arrived at 4:15 p.m.)  
Beth Stuber, Transportation Planning  
Tony Kelly, MSD  
Chris Cestaro, Management Assistant

The following matters were considered:

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**APPROVAL OF MINUTES**

**Approval of the Minutes for the February 20, 2020 Planning Commission public hearing at 1:00 p.m.**

00:06:29 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution was adopted:

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the minutes of the hearing conducted on February 20, 2020.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

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**CONSENT AGENDA**

**CASE NO. 19-STRCLOSURE-0012**

Request: Street Closure for Old LaGrange Road between Collins Lane and Chamberlain Lane  
Project Name: Old LaGrange Street Closure  
Location: Old LaGrange Road between Collins Lane and Chamberlain Lane  
Owner: Louisville Metro Government  
Applicant: Ghasem Properties  
Representative: Milestone Design Group  
Jurisdiction: Louisville Metro  
Council District: 17 – Marcus Winkler

**Case Manager: Jay Lockett, AICP, Planner I**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

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

00:07:16 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted::

**RESOLVED**, the Louisville Metro Planning Commission does hereby APPROVE the Consent Agenda.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

**PLANNING COMMISSION MINUTES**  
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**PUBLIC HEARING**

**CASE NO. 19-ZONE-0044**

Request: Change in zoning from R-4 to PEC, with a Detailed District Development Plan and binding elements, and associated Landscape Waiver – **Requesting Continuance to 03/19/20.**

Project Name: Powerscreen Crushing and Screening  
Location: 13207 Rehl Road  
Owner: Thomas and Rebecca Garrity  
Applicant: Powerscreen Crushing and Screening  
Representative: Cliff Ashburner - Dinsmore & Shohl LLC  
Jurisdiction: Louisville Metro  
Council District: 20 – Stuart Benson

**Case Manager: Dante St. Germain, AICP, Planner II**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:08:00 Dante St. Germain explained that a Continuance has been requested to the March 19, 2020 Planning Commission public hearing to give the applicant more time to change their access point from Rehl Road to Plantside Drive. The applicant is in the process of doing that and will submit a new plan to the case manager. Staff recommended that the case be continued to the April 2, 2020 Planning Commission meeting to give adequate time for inter-departmental plan review.

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

Cliff Ashburner, Dinsmore & Shohl, 101 South Fifth Street, Suite 2500, Louisville, KY 40202

**Summary of testimony of those in support of the request:**

00:10:16 Cliff Ashburner, the applicant’s representative, stated that two weeks should be adequate time to review the new plan. He explained some of the changes being made on the plan (see recording.) He said he will not be able to attend the April 2, 2020 Planning Commission hearing. He said the new plan would be submitted today.

00:11:55 In response to a question from Commissioner Brown, Mr. Ashburner discussed whether any changes in this new plan that could impact the approved

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**CASE NO. 19-ZONE-0044**

General Plan for Blankenbaker Station II (see recording.) There will be modifications to the turning lane on Plantside Drive.

00:12:42 In response to a question from Commissioner Carlson, Mr. Ashburner said there was some neighborhood interest in this case from the Tucker Station Neighborhood Association. Commissioner Carlson wanted to make sure that interested neighbors be notified to attend. Mr. Ashburner said that he has been in direct discussions with both Steve Porter and David Kaelin, from the Tucker Station Neighborhood Association, as well as Hollenback-Oakley and the applicant, regarding the progress of this case and scheduled meetings/public hearings.

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

No one spoke.

00:15:44 Commissioners' 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.**

00:16:50 On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution was adopted:

**RESOLVED**, THE Louisville Metro Planning Commission does hereby **CONTINUE** this case to the **March 19, 2020 Planning Commission public hearing**.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

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**PUBLIC HEARING**

**CASE NO. 19-WAIVER-0097**

Request: **CONTINUED from the 02/20/20 Planning Commission**  
hearing – Waiver for changing image sign  
Project Name: Sign Waiver  
Location: 930 Ormsby Lane  
Owner: Assumption Greek Orthodox Church  
Applicant: Smart LED Signs & Lighting  
Representative:  
Jurisdiction: Louisville Metro  
Council District: 18 – Marilyn Parker

**Case Manager: Beth Jones, AICP, Planner II**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:17:25 Beth Jones presented the case and showed a Power Point presentation (see recording for detailed presentation.) She noted a change on page 2 of the staff report, under “Staff Findings” – the final sentence of the second paragraph should be deleted. That sentence is regarding the timing of the changing image. Ms. Jones said she now has a statement from the manufacturer, who is proposing a “factory setting” that will turn off the sign between the hours of 9:00 p.m. and 7:00 a.m. Also, the software inside the sign will not allow animations any shorter than 20 seconds or static messages with a change rate of more than 20 seconds. There will be required automatic dimming. The applicant has also been informed that the sign cabinet portion of the sign (the non-LED portion) must have an opaque background, to cut down on light trespass.

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

Steven B. Taylor, 9930 White Blossom Boulevard, Louisville, KY 40241

Karla Hill, Smart LED Signs & Lighting, 11441 Blankenbaker Access Drive, Louisville, KY 40299

**Summary of testimony of those in support:**

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00:25:09 Steve Taylor, the applicant's representative, presented the applicant's case. He said there are fewer residents within the buffer zone than are listed in the staff report. He said there are three apartment buildings within the buffer zone; also, the sign will not be facing the apartment complex. There is vegetation, etc. that would limit visibility of the sign from the three buildings. He noted that the property owners of the Devonshire Apartment complex were "in support of this project". He submitted a letter of support from the apartment complex owners into the record. See recording for detailed presentation.

00:36:05 In response to a question from John Carroll, legal counsel for the Planning Commission, Mr. Taylor discussed the operating software, designed by the manufacturer, that will put limits on the performance of the sign. Mr. Taylor also answered some questions regarding this from Commissioner Carlson and quoted a letter sent by the manufacturer regarding settings (see recording for detailed conversation.)

00:40:01 On response to a question from Commissioner Brown, Mr. Taylor confirmed that the lot consolidations will occur before any sign permits are issued.

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

No one spoke.

00:41:20 Commissioners' 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.**

00:45:38 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the staff report and evidence and testimony heard today, was adopted:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested waiver to permit a changing image sign to be located closer than 300 feet from a residentially zoned district (LDC 8.2.1.D.6), **ON CONDITION** that the sign shall only operate between the hours of 7:00 a.m. to 9:00 p.m.; and **ON CONDITION** that the lots are consolidated prior to the issuance of the permit for the sign.

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**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Mims, and Jarboe.**

**NO: Commissioner Carlson.**

**NOT PRESENT: Commissioners Tomes and Lewis.**



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**PUBLIC HEARING**

**CASE NO. 19-AMEND-0004**

Request: **CONTINUED from the 02/20/20 Planning Commission**  
Binding Element Amendment  
Project Name: Fern Creek Speedwash  
Location: 8102 Old Bardstown Road  
Owner: Chris Harrison, Fern Creek Speedwash  
Applicant: Chris Harrison, Fern Creek Speedwash  
Representative: Kathy Linares – Mindel Scott & Associates  
Jurisdiction: Louisville Metro  
Council District: 22 – Robin Engel

**Case Manager: Lacey Gabbard, AICP, Planner I**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:46:41 Lacey Gabbard presented the case and showed the site plan and two documents during her presentation - one was three signatures in opposition to the binding element amendment which she received from a neighborhood resident; the other was a letter received from the previous daycare owner.

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

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Chris Harrison (applicant), 855 Lovers Lane Suite 112, Bowling Green, KY 42103

**Summary of testimony of those in support:**

00:51:31 Kent Gootee presented the case and showed a Power Point presentation (see recording for detailed presentation.) He noted that notice was sent to previous meeting attendees.

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00:57:13 Commissioner Peterson asked if there was vegetation growing over the top of/through the six-foot fence. Mr. Gootee showed a photo of it, and said the vegetation was on the daycare side of the fence.

00:57:45 Commissioner Mims and Mr. Gootee discussed binding elements related to the chain-link and wooden fence.

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

No one spoke.

00:58:33 Commissioners' discussion.

**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.**

01:00:39 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the removal of Binding Element #10 will not affect any natural resources found on the subject site. The site is already developed, and any living vegetation that was existing before development and could be conserved, has been; and

**WHEREAS**, the Commission further finds that there are no changes to existing vehicular or pedestrian circulation in and around the subject site associated with this request; and

**WHEREAS**, the Commission further finds that there are no open space requirements pertinent to the current proposal; and

**WHEREAS**, the Commission further finds that the Metropolitan Sewer District must approve any revised detailed district development plans that the developer will have to submit in the future to develop this site; and

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**WHEREAS**, the Commission further finds that the subject site will meet LDC screening and fence height requirements if Binding Element #10 is amended and the fence and plantings installed as described in the amended Binding Element. The 6 foot fence as indicated in the amended Binding Element is currently existing; and

**WHEREAS**, the Commission further finds that the requested modification of binding elements conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Amendment of Binding Element 10 to not provide the 8 foot fence, but instead keep the existing 6 foot wood privacy fence and provide an 8 foot evergreen buffer, **SUBJECT** to the following binding elements:

**Existing Binding Elements 17ZONE1042**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Construction fencing shall be erected with off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for

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screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

- d. A 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.
4. 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.
5. 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 the 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, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 1, 2018 Planning Commission meeting.
7. At such time that this property is redeveloped for a use other than a car wash, a unified access and circulation system shall be developed to eliminate preexisting curb cuts along Old Bardstown Road and provide for vehicular movement throughout abutting sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the abutting property to be developed.
8. The area identified for future right-of-way for the relocation of Old Bardstown Road, as shown, shall be dedicated to public use by minor plat or deed at the applicant's expense within 60 days of request by the Director of Louisville Metro Public Works.

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9. A 25 ft LBA shall be provided along the rear property line with an 8 ft high privacy fence and tall shrubs.
10. ~~A 15 ft LBA shall be provided along the south property line with an 8 ft high privacy fence and tall shrubs to where they day care ends and the office property begins.~~
11. The hours of operation for the carwash shall be from 8:00 a.m. to 9:00 p.m.

**Proposed Binding Elements 03/05/20**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Construction fencing shall be erected with off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Develop Louisville and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of

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Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

4. 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.
5. 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 the 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, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 1, 2018 Planning Commission meeting.
7. At such time that this property is redeveloped for a use other than a car wash, a unified access and circulation system shall be developed to eliminate preexisting curb cuts along Old Bardstown Road and provide for vehicular movement throughout abutting sites as determined appropriate by the Department of Public Works. A cross access agreement to run with the land and in a form acceptable to the Planning Commission legal counsel shall be recorded prior to the time of construction approval for the abutting property to be developed.
8. The area identified for future right-of-way for the relocation of Old Bardstown Road, as shown, shall be dedicated to public use by minor plat or deed at the applicant's expense within 60 days of request by the Director of Louisville Metro Public Works.
9. A 25 ft LBA shall be provided along the rear property line with an 8 ft high privacy fence and tall shrubs.
10. A 15 ft LBA shall be provided along the south property line shared with the

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daycare (TB 657 Lot 6, 8106 Old Bardstown Road) with an 8 ft high evergreen buffer.

11. The hours of operation for the carwash shall be from 8:00 a.m. to 9:00 p.m.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

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**CASE NO. 19-MSUB-0018**

Request: Major Subdivision Plan with a Waiver  
Project Name: Watterson Trail Subdivision  
Location: 6106 South Watterson Trail  
Owner: Clarence and Lucille Schmitt  
Applicant: Clarence and Lucille Schmitt  
Representative: Curtis Mucci – Mindel Scott & Associates  
Jurisdiction: Louisville Metro  
Council District: 23 – James Peden  
24 – Madonna Flood

**Case Manager: Lacey Gabbard, AICP, Planner I**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

01:01:06 Lacey Gabbard presented the case and showed a Power Point presentation (See recording for detailed presentation.)

01:05:34 Commissioner Brown asked if the frontage of the site along Hurstbourne Parkway would require a sidewalk. Ms. Gabbard said this is not shown on the plan and was not discussed with the applicant. Commissioner Brown also asked what other road improvements /frontage improvements are planned for Watterson Trail. Beth Stuber, representing Metro Transportation Planning, said it did not meet the turn lane warrant. It's got the potential to have about five different connections and stubs.

01:07:01 Commissioner Mims asked Ms. Stuber to clarify some aspects about the left-turn lane trigger/warrant.

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

Curtis Mucci and David Mindel, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219



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Diane Zimmerman, 12803 High Meadows Pike, Louisville, KY 40059

**Summary of testimony of those in support:**

01:07:34 David Mindel, the applicant's representative, introduced the applicant's case.

01:09:44 Curtis Mucci, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

01:11:57 Commissioner Howard asked Mr. Mucci if Mindel Scott had submitted an ECS report to the file for the Commission. Mr. Mucci said yes.

01:12:13 Commissioner Mims asked how the nearby Spring Villa traffic fits in to the proposed development's traffic pattern. Mr. Mucci discussed traffic patterns in the area and said this development would take traffic off of Hurstbourne Lane. Diane Zimmerman (applicant's traffic engineer) discussed how this proposed development's traffic patterns fit in with the surrounding area/s. She described how she developed the turn lane analysis. (See recording.) In response to a question from Commissioner Mims, Mr. Mucci and Ms. Zimmerman both confirmed that Spring Villa is being built right now (most of it has already been constructed.)

01:14:57 In response to a question from Commissioner Daniels, Mr. Mucci said there will be some tree removal during construction but the trees will be replaced per LDC requirements.

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

No one spoke.

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

John Torsky, representing Councilman James Peden, 601 West Jefferson Street, Louisville, KY 40202

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

01:15:40 John Torsky, legislative aide to Councilman James Peden, said the Councilman was concerned about traffic, particularly on South Watterson Trail. He discussed one particular stretch of road/road curves that the Councilman feels are dangerous.

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01:17:28 Commissioners' deliberation. Commissioner Brown noted that, while he supports the waiver request, but he is concerned about the proposed Plan because there is a Legislatively-adopted plan for South Watterson Trail to widen it to three lanes. Part of it is already done. However, the applicant is not proposing any widening or a right-turn lane, which this plan warrants. He said there are additional road improvements that could be required for this subdivision. (See recording for detailed discussion.)

01:22:03 The Commissioners agreed to come out of Business Session to allow the applicant to address the road issue. Mr. Mindel said that the Spring Villa development only had one access for 199 units. Their traffic study did require a left-turn lane at that location. If that study had not required a left-turn lane, then Mr. Mindel said that portion of Watterson Trail would not have had to be widened. He said that, according to Ms. Zimmerman's traffic study for this project, neither a left-turn nor a right-turn lane is warranted. He noted other plans along this road that have been approved without building another lane. Commissioner Brown and Mr. Mindel discussed the issue (see recording.)

01:24:25 In response to a question from Commissioner Mims, Commissioner Brown discussed some aspects of the South Watterson Trail study.

01:28:27 Commissioner Mims asked if the applicant had been made aware of the South Watterson Trail study and if they had time to look at the impact of that on this proposal. Ms. Gabbard and Ms. Stuber said neither of them know if the applicant was informed of the study.

**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.**

01:30:42 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the April 2, 2020 Planning Commission public hearing.

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**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

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**PUBLIC HEARING**

**CASE NO. 19-ZONE-0088**

Request: **CONTINUED from the 02/20/20 Planning Commission hearing** - Change in zoning from R-4 and C-1 to C-2 with a Waiver and a Revised Detailed District Development Plan

Project Name: 6517 Dixie Highway  
Location: 6517 Dixie Highway  
Owner: Ruby Real Estate Kentucky, LLC  
Applicant: Ruby Real Estate Kentucky, LLC  
Representative: Ruby Real Estate Kentucky, LLC  
Jurisdiction: Louisville Metro  
Council District: 12 – Rick Blackwell

**Case Manager: Joel P. Dock, AICP, Planner II**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

01:31:27 Joel Dock presented the case and showed a Power Point presentation (See recording for detailed presentation.) He noted that staff has requested the addition of one binding element – binding element #15, regarding landscape compliance, to read as follows:

15. Landscape compliance, including landscape buffers and planting material, shall be installed by December 1, 2020.

01:35:30 Commissioner Jarboe asked about the R-4 zoned spot at the back of the site. Using the aerial photo and the site plan, Mr. Dock said there is pavement back there right now. He said the applicant is providing the required landscape buffer from a C-2 to an R-4 site in both areas, and the pavement is not being expanded (although it will be resurfaced.)

01:36:42 Commissioner Mims asked if a cross-access will be maintained with Lowe's and adjoining property owners to the south. Mr. Dock said yes, that the connectivity to the south will not be affected.

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

Joel Jones, 3311 Gatecreek Drive, Louisville, KY 40272

**Summary of testimony of those in support:**

01:37:21 Joel Jones, representing the applicant, said he was available to answer questions.

01:37:44 In response to a question from Commissioner Carlson, Mr. Jones said the applicant is ready to start on the landscaping/buffering to meet the December 1, 2020 deadline (as per new binding element #15).

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

No one spoke.

01:38:08 Commissioners' deliberation. Commissioner Brown said he did not support the plan because of the access onto Dixie Highway on this lot. He said Dixie Highway has a special Access Management Plan, and removing the access from this lot onto Dixie Highway would improve pedestrian safety.

01:40:50 Commissioner Mims asked if the Dixie Highway Access Management Plan something that was reviewed and adopted by the Planning Commission. Commissioner Brown said no, and said that, to the best of his knowledge, there was never a formal plan adopted (see recording for detailed discussion.) The Dixie Highway Corridor Plan was briefly discussed.

01:41:44 The Commissioners agreed to come out of Business Session to discuss aspects of the accesses with Mr. Jones. Mr. Jones said Lowe's shares their main access; the other entrance (close to the light) is used by neighbors as well, since there is a rear access road.

01:43:45 In response to a question from Commissioner Howard, Mr. Dock said the applicant has indicated a lot consolidation on the plan, so cross access between the sites is not necessary.

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## PUBLIC HEARING

CASE NO. 19-ZONE-0088

**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

01:49:45 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Plan 2040 Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intents of Land Use & Development Goal 1: Community Form because the proposed district does not result in a non-residential expansion into a residential area as the majority of the subject site is currently zoned for commercial activities, portions of the site within the existing residential district are developed for commercial activities, and the SMC form encompasses the entirety of the subject site; the proposed higher intensity is near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned. The site is located along Dixie Highway between I-264 and I-265; Dixie Highway is a major arterial corridor intended to serve heavy volumes of traffic such as those that might accompany uses within the proposed district; and uses within the district do not pose a great deal of adverse impact associated with noise and most uses permitted are to be contained within structures; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Community Form because the proposal is located within an existing activity center. Design is to be consistent with the form district. Permitted density within the district is compatible with the available transportation and infrastructure network; a sufficient population exists for the current activity centers and a variety of uses permitted within the center, including those expanded activities allowed by the proposed district; The development is cost effective as it is a reuse of a site that is occupied by impervious surfaces; the proposed district encourages a greater mixture of uses that are supported by the form, and transportation and infrastructure network. The district has a limited impact on vitality and a sense of place along the corridor as a wide variety of densities and intensities are available; and the proposal allows for the redevelopment of a previously developed site; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Community Form because existing conditions indicate that natural or sensitive features are not present; the site is previously developed and the

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majority of the land is impervious; thus, wet or highly permeable soils, severe, steep or unstable slopes would not appear to be present; and no changes to existing conditions that might impact flood-prone areas are present; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 4: Community Form because there are no features of historic or architectural value apparent on site; and there are no cultural features present; and

**WHEREAS**, the Commission finds that the proposal meets the intents of Land Use & Development Goal 1: Mobility because the proposed higher intensity district is within or near existing marketplace corridors, existing and future activity centers, and employment centers. Dixie Highway is a major transit corridor connecting many parts of the community; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 3: Mobility because the proposed district is compatible with area and allows a mixture of uses that may reduce vehicle miles traveled and congestion. Dixie is a major transit corridor connecting many parts of the community. Sidewalks are present along the roadway; the proposed district is compatible with area and allows a mixture of uses that may promote public transit and pedestrian use. Dixie Highway is a major transit corridor connecting many parts of the community. Sidewalks are located along the frontage; the proposed district is located on a site of previous development adjacent to similar district. It has a limited impact on the walkability of the area. The transportation network is sufficient to handle large volumes of traffic and accommodating pedestrians as it has convenient access to the interstate and TARC service; Transportation Planning has no issues with the proposal. No roadway improvements are required and necessary right-of-way for Dixie Highway improvements has previously been acquired; and Transportation Planning has no issues with the proposal. No roadway improvements are required and necessary right-of-way for Dixie Highway improvements has previously been acquired; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 2: Community Facilities because existing utilities would appear to be available; the development has an adequate supply of potable water and water for fire-fighting purposes; and MSD will ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Economic Development because the proposed district is located on a major arterial roadway with access to I-264 and I- 265; and the proposed

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district is located locate with the appropriate transportation connectivity on a major arterial street with access I-264 and I- 265; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Land Use & Development Goal 1: Livability because existing conditions suggest that the site is less vulnerable to erosion or karst impacts or such conditions are not able to be evaluated given these conditions; and preliminary approval has been received by MSD. MSD has reviewed the proposal for its development impacts to the integrity of the regulatory floodplain; ; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from R-4 & C-1 to C-2 on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

**Waiver**

01:50:34 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the proposed width is consistent with adjacent property owners; and

**WHEREAS**, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The proposed development is scaling back existing conditions to provide a consistent landscape pattern with adjacent development along the frontage; and



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**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as it allows for a consistent landscape width along the corridor; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the proposed development is providing a consistent landscape buffer width the adjacent development; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver** of Land Development Code, section 10.2 to reduce the vehicle use area landscape buffer along Dixie Highway as shown on the development plan.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Daniels, Carlson, Mims, and Jarboe.**

**NO: Commissioner Brown.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

**Revised Detailed & Detailed District Development Plan**

01:51:20 On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be conserved as the site is previously developed with impervious surfaces and the aforementioned features do not appear to be present on site; and

**WHEREAS**, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided as public sidewalks are available; and

**WHEREAS**, the Commission further finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development will be

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provided. The proposal is not required to provide additional open space. A landscape buffer is provided along the frontage; and

**WHEREAS**, the commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure 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; and

**WHEREAS**, the Commission further finds that the proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the use and design is consistent with adjacent users; and

**WHEREAS**, the Commission further finds that the proposed development plan conforms to Plan 2040. The subject property is near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned. The site is located along Dixie Highway between I-264 and I-265. Dixie Highway is a major transit corridor connecting many parts of the community. Sidewalks are located along the frontage; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised Detailed & Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan and binding elements unless amended pursuant to the Land Development Code. Modifications to the binding element(s) shall be submitted to the Planning Commission or its designee for review and approval; any modifications not so referred shall not be valid.
2. Use of the subject site shall be limited to a car dealership and other uses permitted in the C-2 zoning district. There shall be no other use of the property unless prior approval is obtained from the Planning Commission or its designee. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The Planning Commission may require a public hearing on the request to amend this binding element.
3. The Floor Area Ratio of the development shall not exceed .08, including all

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development at 6633 Dixie Highway approved in development plan case 9247.

4. The development shall not exceed 17,960 square feet of gross floor area, including all development at 6633 Dixie Highway approved in development plan case 9247.
5. Signs shall be in accordance with Chapter 8 of the LDC.
6. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
7. 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.
8. Prior to issuance of a permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit):
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. The property owner/developer shall obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
9. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
10. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at

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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.

11. The materials and design of any proposed structures shall be substantially the same as depicted in the renderings as presented at the November 2, 2006 Planning Commission meeting in case 9247.
12. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
13. All street name signs, traffic control signs and pavement markings shall conform with the manual on uniform traffic control devices (MUCTCD) requirements and be installed prior to construction of the first residence or building on the street and shall be in place at the time of the bond release. (The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.)
14. The lights in the loading area shall be dimmed to security level "after closing time" (about 9:00 p.m. or 10:00 p.m.; exact time unknown.)
15. Landscape compliance, including landscape buffers and planting material, shall be installed by December 1, 2020.

#### The vote was as follows:

**YES: Commissioners Howard, Peterson, Daniels, Carlson, Mims, and Jarboe.**

**NO: Commissioner Brown.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

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**PUBLIC HEARING**

**CASE NO. 19-ZONE-0060**

Request: **CONTINUED from the 02/20/20 Planning Commission hearing** – Change in zoning from R-5B to R-8A with a Detailed District Development Plan and associated Landscape Waiver

Project Name: Hepburn Avenue Rezoning

Location: 1400 Hepburn Avenue

Owner: Wilson Property Rentals, LLC

Applicant: Wilson Property Rentals, LLC

Representative: John Talbott - Bardenwerper Talbott & Roberts PLLC

Jurisdiction: Louisville Metro

Council District: 8 – Brandon Coan

**Case Manager: Dante St. Germain, AICP, Planner II**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

01:52:21 Dante St. Germain presented the case and showed a Power Point presentation (see recording for detailed presentation.)

01:58:32 She noted that there is a proposed binding element in the staff report, which reads as follows:

*All multi-family units on the property, in perpetuity, shall be rented for amounts at or below the affordable rent standards established by [Program] or successor program.*

She said the applicant has their preferred language for this, and requested that the chosen program be Louisville CARES. She discussed what “affordable” rent could mean and noted that “affordable housing” is not defined in the Land Development Code, although there are provisions noted in the Comprehensive Plan.

02:03:14 In response to a question from Commissioner Mims, Ms. St. Germain said the Original Highland Neighborhood Plan was done in 2006 and the areawide rezoning

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was done in 2013. He and Ms. St. Germain discussed “affordable housing” and Louisville Cares. See recording for detailed presentation.

02:05:55 Commissioner Mims asked if the owner has demonstrated that the units are safe. Ms. St. Germain said all the units have been inspected; the applicant has a plan to bring all units into compliance.

02:07:16 Commissioner Carlson asked if all units met the definition of “dwelling unit”. Ms. St. Germain said yes, that she had discussed this with the applicant (see recording for detailed discussion.) The applicant can discuss this in more detail if needed.

02:09:05 In response to a question from Commissioner Jarboe, Ms. St. Germain gave the minimum square footage per unit that meets Building Code standards.

02:11:14 In response to a question from Commissioner Carlson, Ms. St. Germain said it is staff’s position that the Planning Commission should choose which of the three programs is considered “affordable” for the purposes of this rezoning case. She reiterated that the applicant has requested Louisville CARES.

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

John Talbott, Bardenwerper Talbott & Roberts, 1000 North Hurstbourne Parkway,  
Louisville, KY 40223

Alex Wilson, 2113 Arnold Palmer Boulevard, Louisville, KY 40245

**Summary of testimony of those in support:**

02:12:26 John Talbott, the applicant’s representative, presented the applicant’s case and showed a Power Point presentation (see recording for detailed presentation.)

02:16:03 Mr. Talbott presented a brief summary of structural Code compliance that the applicant has met, and other work that has been done since the December 2019 LD&T Committee meeting. He discussed how proposed rents relate to the Comprehensive Plan’s support of affordable housing. .

02:22:16 Alex Wilson, the applicant, described what changes had been made to the design/proposal since the last meeting (see recording for detailed presentation.) Building and Fire Inspectors have inspected the property.

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02:24:48 Mr. Talbott read the proposed binding elements into the record, to read as follows:

- The property shall obtain a certificate of occupancy from Metro Codes and Regulations within ninety days of final approval of the rezoning by Metro Council.
- Rental rates for the units must be “affordable” as defined by Metro Louisville CARES program (“Creating Affordable Residences for Economic Success”). Subsequent rent increases shall be limited to the annual percentage increase of the Louisville CARES program.

02:25:55 In response to a question from Commissioner Carlson, Mr. Wilson said that, because the third floor’s apartment had its bedroom on the second floor, a sprinkler system was not required. There is a shared laundry facility on the first floor.

02:28:38 In response to a question from Commissioner Mims, Mr. Wilson discussed the garages and parking. He said there is no parking waiver being requested.

02:29:13 In response to a question from Commissioner Mims, Mr. Wilson said the Fire Marshal re-inspection was February 20, 2020. He said no more improvements needed to be made on the building; the only thing they are waiting on is approval to convert the third floor apartment.

02:30:38 In response to a question from Commissioner Mims, Joe Reverman, Assistant Director of Planning & Design Services, said binding elements address define how to determine what is charged for the apartments. Mr. Wilson discussed affordable housing and noted that, since he purchased the building, he has lowered rents on one of the units and have not raised rents on any of the other units.

02:31:47 In response to a question from Commissioner Jarboe, Mr. Wilson said the square footage of unit five is 212 square feet. All six units have been inspected and found to meet Code.

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

No one spoke.

02:32:33 Commissioners’ deliberation.

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02:37:41 Commissioner Howard noted that, before the 2013 areawide rezoning, this property was zoned R-6. The areawide rezoning changed it to R-5B (a downzoning). She questioned increasing the density allowance for only one structure. Commissioner Jarboe said he saw this case as an exception, and explained why.

02:39:18 Commissioner Carlson expressed concern about raising the zoning category on one piece of property to allow much higher density.

02:40:23 The Commission came out of business session to hear Mr. Talbott's response to some of their questions (see recording.) He noted that the size of the lot limits any structure there, present or future, to six units. He expressed great concern about current residents possibly losing their apartments.

02:42:11 Ms. St. Germain said that, regarding density, the lot is "fairly small". Even though an R-8A zoning classification would allow 58 units per acre, because of the size of this lot, no structure here would allow a seventh unit. There is also a proposed binding element (in the staff report) stating that, if there are any changes made to the building, the applicant must come back before the Planning Commission for approval. No one could demolish/replace/change the building without Planning Commission approval.

02:44:13 In response to a question from Commissioner Peterson, Ms. St. Germain said it was not clear to staff exactly when units were added to the structure. She described how staff's research into number of units was done. Mr. Wilson gave some history of the building, the number of units, and some of the tenants who live there. He said this has been six units for "a very long time".

02:46:03 Commissioner Carlson asked how many electrical meters are on the side of the building. Mr. Wilson said there are five – four of them are separate, and the two smallest units are on the "house" unit (he pays for their electric.) Mr. Talbott said that, at a December 2019 public meeting, the applicant agreed to limit the number of tenants and put that in the binding elements (see recording for detailed presentation.)

02:50:47 In response to a question from Commissioner Mims, Mr. Talbott said that all of the improvements/rezoning/etc have been voluntary. The applicant is not here because of a notice of violation.

**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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**CASE NO. 19-ZONE-0060**

**Zoning**

02:54:01 On a motion by Commissioner Mims, seconded by Commissioner Peterson, a resolution was proposed to recommend this case to the Louisville Metro Council for approval. The motion failed.

**The vote was as follows:**

**YES: Commissioners Peterson, Mims, and Jarboe.**  
**NO: Commissioners Howard, Brown, Daniels, and Carlson,**  
**NOT PRESENT: Commissioners Tomes and Lewis.**

**Zoning**

02:55:45 On a motion by Commissioner Carlson, seconded by Commissioner Daniels, the following resolution, based on the Plan 2040 Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Council finds that the proposal does not meet the intents of Community Form: Goal 1 because, although the subject site is ½ block from a transit route on Winter Avenue, and 1 block from another transit route on Barret Avenue, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and the applicant requests a waiver to encroach into the required Landscape Buffer Area, due to the existing structures already encroaching. Appropriate transitions therefore cannot be provided; and

**WHEREAS**, the Commission further finds that the proposal does not meet the intents of Mobility: Goal 1 because the proposed zoning district would permit higher density and intensity uses. The site is located near an existing marketplace corridor at Bardstown Road. A second activity corridor exists at Barret Avenue. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this Location; and

**WHEREAS**, the Commission further finds that the proposal does not meet Mobility: Goal 2 because access to the site is through a neighborhood of mostly single-family and two-family uses; and

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**WHEREAS**, the Commission further finds that the proposal does not meet Mobility: Goal 3 because the density allowed by R-8A is not necessarily compatible with the surrounding land uses. R-8A allows a much higher density than the single- and two-family residential permitted by the surrounding R-5B zoning; and

**WHEREAS**, the Commission further finds that the proposal does not meet Housing: Goal 1 because the proposed zoning district would permit a variety of housing types. The reuse of the existing structure reflects the form district pattern. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and the proposed zoning district would permit housing options that support aging in place, by providing additional housing. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and

**WHEREAS**, the Commission further finds that the proposal does not meet the intents of Housing: Goal 2 because the existing zoning district would permit inter-generational mixed- income development, and the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and

**WHEREAS**, the Commission further finds that the proposal does not meet the intents of Housing: Goal 3 because the proposed zoning district would increase the variety of ownership options and unit costs throughout Louisville Metro. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; and the proposed zoning district would permit the use of innovative housing methods. However, the Original Highlands Neighborhood Plan recommends lower-density residential uses in this location; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed change in zoning from change in zoning from R-5B Two-Family Residential to R-8A Multi-Family Residential on property described in the attached legal description be **DENIED**.

**The vote was as follows:**

**YES: Commissioners Howard, Brown, Daniels, and Carlson.**

**NO: Commissioners Peterson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

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**PUBLIC HEARING**

**19-ZONE-0094**

Request: Change in zoning from R-5B to C-1 with a Detailed District Development Plan and binding elements, and associated Landscape Waiver  
Project Name: Westport Road Retail  
Location: 917 & 919 Fountain Avenue; 4700 Westport Road  
Owner: Estate of Evelyn Kaelin  
Applicant: 4700 Westport LLC  
Representative: Dinsmore & Shohl, LLC  
Jurisdiction: Louisville Metro  
Council District: 7 – Paula McCraney

**Case Manager: Dante St. Germain, AICP, Planner II**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

02:56:48 Dante St. Germain presented the case and showed a Power Point presentation (see recording for detailed presentation.)

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

Cliff Ashburner, Dinsmore & Shohl LLP, 101 S 5th St #2500, Louisville, KY 40202

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

Polly Kaelin Mackie, 13221 Eastgate Village Drive, Louisville, KY 40223

Ellen Kaelin Venhoff, 802 Huttersfield Court, Louisville, KY 40222

**Summary of testimony of those in support:**

03:03:11 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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03:10:49 Polly Kaelin Mackie and Ellen Kaelin Venhoff, children of the former owners, provided testimony about the history of the property and why this is an appropriate location for Commercial use (see recording for detailed presentation.) Ms. Mackie and Ms. Venhoff both stated that this site has been used for commercial uses for generations.

03:17:06 Mr. Ashburner resumed the presentation (see recording for details.)

03:19:25 Kent Gootee discussed the proposed screening for the adjacent property (see recording.) The applicant is proposing an 8-foot fence, six deciduous trees (only five are required), and four additional evergreen trees. Also, evergreen shrubs will be provided between the sidewalk and the end of the fence.

03:21:21 Mr. Ashburner resumed the presentation and provided examples of co-existing commercial and residential in the Metro community.

03:22:48 Mr. Ashburner discussed the differences between C-N and C-1 zoning, and why the applicant thought C-1 was a more appropriate category for this proposal.

03:26:19 Mr. Ashburner read an applicant's proposed binding element into the record, as follows:

The following permitted C-1 uses will not be allowed on the subject property without approval from the Planning Commission or one of its Committees, after a public meeting of the Committee or Commission. All those that received notice of the March 5, 2020 Planning Commission public hearing shall be provided written notice of the meeting, by mail, postmarked at least 14 days in advance of the date of the meeting. The Committee or Commission shall base any decision on whether to allow such uses on the criteria applicable to the modification of a binding element:

- Automobile rental agencies (with no more than 25 rental passenger vehicles stored on-site; no more than two service bays for cleaning or maintenance, and having no repair or storage dispensing of fuel)
- Automobile parking areas, public and private
- Automobile service stations with service bays for repair of no more than two vehicles (see definition of "Automobile Service Station" for types of repairs permitted)
- Bowling alleys

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- Car washes having prior approval by the agencies responsible for transportation planning
- Catering kitchens
- Bakery preparing food and meals for sale or consumption elsewhere
- Dwelling (multiple family)
- Hotels and motels including ancillary restaurants and lounges enclosed in the structure, in which dancing and other entertainment not including other adult entertainment activities as defined in Section 4.4.1 may be provided.
- Ice storage houses of not more than five-ton capacity
- Laundries or laundrettes (self-service)
- Medical laboratories
- Pawn shops

03:29:57 In response to a question from Commissioner Brown, Mr. Ashburner said it was too soon to estimate any hours of operation since there is not yet a tenant for the property. He said he did not anticipate any business that would be open past 10:00 p.m.

03:30:32 Commissioner Mims asked if the property had ever been zoned Commercial. Mr. Ashburner said no, it is non-conforming, and there is no formal "Non-Conforming Use" certificate for it. Commissioner Mims asked if the State bought right-of-way based on commercial or residential use? Mr. Ashburner said the State purchased the ROW based on Commercial value.

03:32:40 Commissioner Mims asked Ms. St. Germain if the staff recommendation would change if this was a C-N zoning request. Ms. St. Germain said yes, because C-1 is a more intensive use than C-N. Commissioner Mims also asked if there was a Westport Road Corridor study available. Commissioner Brown said that study is still in draft form.

03:33:52 Commissioner Carlson asked if the applicant had a tenant, or specific type of tenant, in mind for this site. Mr. Ashburner said there were no specific tenants, but the types of anticipated uses could be small retailers. In response to a question from Commissioner Carlson, Mr. Ashburner explained why the applicant had chosen to request C-1 instead of C-N (see recording.) Commissioner Carlson expressed concern that a future tenant could build something that looks very different from the proposed structures being presented today. Mr. Ashburner said that would require the applicant to come back before the Planning Commission (or Committee) for review. He said that, if this project goes forward with C-1 zoning, the applicant intends to build the building as it is presented today, and will expect any tenant to operate with no changes.

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**19-ZONE-0094**

03:37:20 Commissioner Brown asked about restaurants, outdoor dining, etc. that is permitted in C-1, and how that could affect parking. Kent Gootee explained his parking calculations (see recording). He noted that this project would also get a 10% parking reduction from TARC. Mr. Ashburner added that, if a portion of the building were occupied by an office use, that parking ratio would decrease.

03:38:28 Travis Fiechter, legal counsel for the Planning Commission, asked if there was any consideration about closing the undeveloped alley. Mr. Ashburner said there were objections from the State, and the residents who live across the alley.

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

Ernest Bevin, 913 Fountain Avenue, Louisville, KY

Barbara Beck, 2924 Nepperhan Road, Louisville, KY 40218

Michael Hines, 927 Fenley Avenue, Louisville, KY 40222

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

03:39:03 Ernest Bivin, the adjoining property owner, said he bought his house in 1956 and lived there when the site was used for a market & liquor store. He said the store/s were right up to Westport Road, and the access was from Westport Road, thus minimizing impact on neighbors. He said this proposal shows all traffic using Fountain Avenue for access. No traffic can come off of Westport Road; the alley is still there, but it can't be used. He noted that this area already has a great amount of retail – why add more? He said the Kaelins have used this property for single-family residential rental for years. He said that this is not a neighborhood-serving use, and it is right up against a neighborhood.

03:45:34 Barbara Beck said Westport Road is four lanes now. It is extremely difficult, if not impossible, to turn left onto Westport Road from Fountain Avenue; also, there are no sidewalks on Fountain Avenue. She asked who is going to maintain the proposed privacy fence. She is concerned about noise, trash, traffic, exhaust fumes, people outside until 10:00 at night, and alcohol consumption from people sitting outside.

03:49:41 Michael Hines said he also spoke for many others in the neighborhood who are opposed to the rezoning. He said no outreach was made to any other neighbors except those directly adjoining the affected sites. He said a 6600 square foot building is not appropriate for a single-family residential neighborhood. He said he has not seen a “business plan” for this development. He asked how long will it be between construction of the building, and occupancy? Also, what do the developers

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consider to be “full occupancy”? He asked how long the developers plan to retain ownership of this property. He said that Westport Village, about ½ mile away, has vacant storefronts; despite this, there are a wide variety of retailers there. He also noted that making a left turn from Fountain Avenue onto Westport Road is almost impossible; customers will try to use Fountain Avenue to find an alternate route onto Westport, probably through Washburn Avenue..

03:56:56 Ms. Beck added that changing the zoning here would alter the character of the neighborhood and cause safety issues.

03:58:10 Mr. Bivin added that the distance from his property line to the parking area should be 25 feet. He said the applicant is asking that the distance be changed to 20 feet. He objects to any diminishing of this distance.

**Rebuttal:**

04:00:13 Mr. Ashburner said traffic has been evaluated for this proposal; the applicant is anticipating at least some customers would be people who live nearby. (See recording for detailed rebuttal.)

04:04:06 Commissioner Mims asked if the Transportation Cabinet tore down the commercial buildings when they bought the ROW. Mr. Ashburner said he believed so, and that the property owner/s were compensated.

04:04:42 Mr. Fiechter corrected the applicant’s waiver justification – it reads “35 feet” required, but should read “25 feet” required. Mr. Ashburner confirmed that 25 feet is correct.

04:04:57 Commissioner Jarboe said that, due to the higher zoning category being requested and the fact that a neighborhood is right next to the property, the Planning Commission would need some idea about hours of operation for any business here. Mr. Ashburner suggested, 8:00 a.m. to 10:00 p.m.

04:06:01 Commissioners’ deliberation.

04:14:34 The Commissioners came out of Business Session. Ms. St. Germain said the applicant would like to request a continuance for two weeks. Mr. Ashburner said the applicant would like to consider modifying their application and possibly come back with a C-N request. Commissioner Howard said that her reason for not really wanting C-1 here is because the list of prohibited uses, submitted by Mr. Ashburner, was too long.

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She said she was not comfortable with the idea of prohibiting uses that are permitted for any zoning category, and is concerned that future applicants could come back and request an amendment to this binding element.

**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.**

04:16:22 On a motion by Commissioner Carlson, seconded by Commissioner Peterson, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the March 19, 2020 Planning Commission public hearing.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**



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**19-MSUB-0007**

Request: Conservation Subdivision of 88 lots on approximately 40.85 acres with associated Waiver  
Project Name: Cedar Creek Springs Subdivision  
Location: 7910 Cedar Creek Road & Heights Drive (parcels 064702220000 & 064702210000)  
Owner: Robert and Judy Allen  
Applicant: Cedar Heights Mobile Home Park LLC  
Representative: Mindel Scott & Associates  
Jurisdiction: Louisville Metro  
Council District: 22 – Robin Engel

**Case Manager: Dante St. Germain, AICP, Planner II**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

04:17:54 Dante St. Germain presented the case and showed a Power Point presentation (See recording for detailed presentation.)

04:25:00 In response to a question from Commissioner Mims, Ms. St. Germain used an aerial photo to point out a nearby small area (mobile home park) that was rezoned recently to a PRD.

04:25:23 Commissioner Carlson asked if one of the features of a conservation subdivision is having open land for recreational use. Ms. St. Germain said there is nothing in the conservation subdivision regulations requiring conserved land to be open to the public and/or residents of the subdivision to use. It is intended to preserve land; the use of the land is not specified.

04:26:35 In response to a question from Joe Reverman, Assistant Director of Planning & Design Services, Ms. St. Germain discussed the primary concerns of citizens who had expressed opposition to this proposal. She said those in opposition view this as an expansion of the mobile home park and they do not want the mobile

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home park expanded. She noted that this is not a mobile home park per the Land Development Code. There will be factory-built housing there, not mobile homes. The width of the lots will be generally about 40 feet. The applicant may be able to address questions about parking.

04:28:10 In response to a question from Commissioner Daniels, Ms. St. Germain said the applicant may be able to answer questions about the average square footage of the proposed homes.

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

John Talbott, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

David Mindel and Curtis Mucci, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

**Summary of testimony of those in support:**

04:29:00 John Talbott, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

04:36:55 David Mindel, an applicant's representative, showed a Power Point presentation reviewing more details about the site plan (see recording for detailed presentation.)

04:40:54 Mr. Talbott resumed and concluded the presentation (see recording for detailed presentation.) In response to an earlier question from Commissioner Carlson, Mr. Talbott noted that there will be building lot access to the open space and the open space will be accessible to everyone in the development. The open space can be owned either publicly, or to the development community. He said the applicant wants this to be owned by the development community, rather than open to the public. There will be more trees added than will be taken out.

04:47:46 He added that the area which has the waiver request is for sewers and drainage.

04:48:30 Mr. Reverman and Mr. Talbott discussed some details about the open space area (see recording.)

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04:49:17 Commissioner Mims asked how this product will be marketed and sold. Will it be sold as a rental lot with a home on it? Mr. Talbott said the idea is that Mr. Allen will own all the land, put the manufactured housing on it, and rent the housing. This could be changed if there is a tenant who has their own manufactured housing now, and wants to bring it to the land, but the land would remain under Mr. Allen's ownership. There was more discussion about what constitutes a mobile home, manufactured housing, etc. under KRS. Mr. Reverman said there are LDC standards, also.

04:53:06 Commissioner Brown asked if any Kentucky Glade Cress had been found during the site resource analysis. Mr. Mindel said Redwing has not performed any studies here yet; however, the buffers will be provided along Cedar Creek, and there are no other intermittent or ephemeral streams on the site. Curtis Mucci, an applicant's representative, said a resources and analysis plan has been put together, which mapped all the resources on-site. Mr. Mindel added that a karst survey was required and performed.

04:54:17 In response to some questions from Commissioner Carlson, Mr. Talbott said part of the property does abut Cedar Creek Road. Mr. Mindel said there will be sidewalks installed.

04:54:49 Commissioner Carlson requested a binding element regarding a certificate of occupancy, as follows:

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.

This was a binding element placed on a rezoning for Case No. 19-ZONE-0026, heard at the January 9, 2020 Planning Commission public hearing. Mr. Talbott agreed to that.

04:56:34 Ms. St. Germain said this is a subdivision plan, not a rezoning, so the Conditions of Approval suggested by staff in the staff report are the standard Conditions for subdivisions.

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

Benita Wilson, 9904 Cedar Garden Drive, Louisville, KY 40291

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Phyllis and Todd Craig, 8003 Cedar Creek Road, Louisville, KY 40291

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

04:59:06 Benita Wilson said her main concerns are that her home value could decrease, and crime could increase. She said “there are a lot of police” in the mobile home park and there is crime back there. Some of the Cedar Gardens residents have had their cars and homes broken into. She said neighbors would have much less opposition to the project if the applicant would build bigger, nicer homes here. She said “there is a lot of shooting” (hunting) at the quarry; that is private property. She is concerned about nearby apartment complexes and greatly increasing density in the area. There are already sever drainage problems off Cedar Creek Road.

05:05:13 Phyllis Craig said current neighbors feel “overwhelmed” by proposed projects on Cedar Creek Road and listed the projects. She said she did her own traffic study on February 26, 2020, and said that there were 576 vehicles travelling on Cedar Creek Road from 2:30 p.m. to 5:30 p.m. Between 3:30 p.m. to 5:30 p.m., 168 of these vehicles coming and going from the mobile home park. Of the vehicles leaving the park, all but three took a left to go towards Bardstown Road. She said Cedar Creek Road is a narrow country road with a narrow bridge. She discussed crime that has happened within the last five months. She said the development is not compatible with the surrounding area. She also asked what kind of lighting is being proposed.

05:11:03 Todd Craig was called but declined to speak.

05:11:09 Ms. Craig added that two neighbors who spoke in opposition had crimes happen to them. One man had expensive items stolen; a woman said she was videotaped and received a harassment letter. This may be why neighbors are afraid to attend or speak at these meetings.

**Rebuttal**

05:12:02 Mr. Talbott said there is no evidence that crime is coming from the mobile home park. He said no one is suggesting that residents trespass on the quarry owners’ property. He said all drainage will go to Cedar Creek – MSD must review and approve all of that before anything goes to construction planning. Regarding the concerns about declining property values, he said this property does not abut the Cedar Creek Gardens.

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00:15:50 In response to a question from Commissioner Mims, Mr. Talbott used the site plan to point out the two accesses to the site. He said one of the accesses got to Smith Lane.

05:16:42 In response to questions from Commissioner Carlson, Mr. Talbot said any requirements regarding manufactured housing will be complied with (see recording for detailed discussion.)

05:19:56 Travis Fiechter, legal counsel for the Planning Commission, discussed the proposed binding element in detail (see recording.) He noted that, because this is a conservation subdivision, it would have to be added as a Condition of Approval, not a binding element.

05:21:11 Commissioner Brown asked for a temporary turnaround on stub street "A" until it is extended. Mr. Talbott agreed to that.

05:21:32 Brian Davis, Planning & Design Manager, discussed some Land Development Code definitions and regulations related to manufactured housing. Mr. Talbott said the applicant will comply with State law.

05:22:45 In response to a question from Commissioner Howard, Mr. Fiechter discussed the proposed binding element.

05:23:56 Commissioners' 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.**

**Waiver**

05:30:30 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the Standard of Review and Staff Analysis, the applicant's justification, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the rear yard overlap with a drainage easement will only affect the property owners of the new lots; and

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**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address drainage easements, and addresses yard requirements only as buffers between incompatible uses. The adjacent uses are not incompatible with the proposed use; and

**WHEREAS**, the Commission further finds the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the overlap is made necessary by a drainage easement to the rear of the new lots, which is the appropriate place for a drainage easement; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant by requiring the applicant to move the easement or extend the rear yards, either of which would reduce the usability of the property; and

**WHEREAS**, the Commission further finds that the waiver will not adversely affect adjacent property owners because it is a typical occurrence for sewer and drainage easements to be located in the rear yard, since this does not reduce the depth of the yard and since the easement is needed to provide a ditch within it that will keep any increase in runoff from this development negatively impacting the adjacent properties; and

**WHEREAS**, the Commission further finds that the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Plan 2040 Comprehensive Plan filed with the original rezoning application and since adequate drainage facilities will be provided to serve the development, since this will not affect the applicants ability to preserve existing vegetation nor affect any other aspect of this developments compliance with either the Plan 2040 or the requirements of the Land Development Code; and

**WHEREAS**, the Commission further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because in order to allow for the best design of the individual lots. It has been generally accepted that drainage easements be located in the rear yard either along the rear property line or offset from this typically to preserved existing vegetation. Without the waiver the applicant would be required to locate the drainage way a minimum of 25' from the rear property line and therefore in close proximity to the home. It would reduce the usable area close to the

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home that would otherwise be used by the homeowner as their private yard, and area typically reserved for outdoor dining, entertainment, relaxation and/or recreation; and

**WHEREAS**, the Commission further finds that strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because locating the drainage easement in the rear yard has been the preferred and acceptable practice and now requiring it to be a minimum of 25 feet off the rear property line create an unnecessary hardship for the homeowner in reducing the usable area of the private yard with a ditch separating the area adjacent to the home from the rear yard; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Waiver** from 7.3.30.E to allow a required rear yard of a buildable lot to overlap more than 15% with a drainage easement.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

**Conservation Subdivision**

05:31:08 On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution, based on the staff report and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the landscaping being provided along the Cedar Creek Road frontage to shield the rear yards is adequate; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conservation Subdivision, **SUBJECT** to the following conditions of approval:

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater

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number of lots than originally approved will occur without approval of the Planning Commission.

2. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
  - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
  - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
  - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  - d. Location of construction fencing for each tree/tree mass designated to be preserved.
3. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
4. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
5. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
6. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for "Street A", as



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shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.

7. Open space/conservation lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
8. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
9. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
10. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
11. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
12. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.

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- b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these conditions of approval.
  - c. A deed restriction in a form approved by Counsel to the Planning Commission shall permanently prohibit further subdivision or development of conservations areas.
  - d. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
  - e. The applicant shall submit a Conservation Area Management Plan detailing the entities responsible for maintaining various elements of the property, and describing management objectives and techniques for each part of the property.
13. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
14. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
15. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
16. In the event the party responsible for maintenance of the Conservation Areas fails to maintain all or any portion in reasonable order and condition according to the Management Plan, Louisville Metro Government may assume responsibility for its maintenance and may enter the premises and take corrective action, including provision of extended maintenance. The cost of maintenance may be charged to the Management Entity, or the individual property owners according to the pro-rata share based on the Management Plan. Costs may include administrative costs in taking such actions as well as penalties as provided under these regulations. Such costs shall become a lien on all subdivision properties.

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**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

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**19ZONE1029**

Request: Change in zoning from R-4 to R-6 with a Detailed District Development Plan and binding elements, and associated Waivers

Project Name: Hurstbourne Multi-Family

Location: 7000 Ridge Creek Road; 6601 Sunny Hill Road; 7191 South Hurstbourne Parkway

Owner: Hurstbourne Corporate Group; Bruce M. Plymale Revocable Trust

Applicant: Hurstbourne Corporate Group

Representative: Mindel Scott & Associates

Jurisdiction: Louisville Metro

Council District: 2 – Barbara Shanklin  
24 – Madonna Flood

**Case Manager: Dante St. Germain, AICP, Planner II**

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. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

05:31:52 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) Using the site plan, she discussed the proposed connections for Quail Ridge and Ridge Creek Road.

05:42:53 Travis Fiechter, legal counsel for the Planning Commission, and Ms. St. Germain discussed binding element #6, which she said she wrote specifically for this development to address concerns.

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

Clay Barkley, Strobo Barkley, 239 S 5th St Suite 917, Louisville, KY 40202 (applicant's representative)

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Kent Gootee and David Mindel, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Adam Kirk, 137 McClelland Springs Drive, Georgetown, Kentucky 40324

Tia Brown, 7216 Chestnut Tree Lane, Louisville, KY 40291

Susanne Cheek (sp), Duncan Commercial Real Estate, 150 Thierman Lane, Louisville, KY 40207

**Summary of testimony of those in support:**

05:43:45 Clay Barkley, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

05:49:47 David Mindel, an applicant's representative, described some of the technical issues involved with designing the site (see recording for detailed presentation.) His discussion centered on topography and grade.

05:51:31 Mr. Barkley resumed the presentation and explained the Alternative Connectivity Plan.

05:52:04 Kent Gootee, an applicant's representative, further discussed pedestrian connectivity.

05:53:09 Mr. Barkley resumed his presentation, showing transportation in the area.

05:56:16 Adam Kirk, an applicant's representative, presented the traffic analysis.

06:01:57 Mr. Barkley concluded his presentation.

06:02:56 Tia Brown, who lives in the subdivision behind this site, spoke in support. She wants to make sure the development will increase the property values for the surrounding areas. She also favors more connectivity, because right now her community only has one access onto Watterson Trail. She said this is dangerous, especially during the winter. There are no sidewalks once she leaves her community, either on Watterson Trail or Hurstbourne. She said she had hoped for a more mixed-use development, with both commercial and residential.

06:05:44 In response to some questions from Commissioner Carlson, Mr. Mindel and Mr. Gootee discussed different subdivisions and proposed subdivisions along

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**19ZONE1029**

South Watterson Trail and in this area (see recording for detailed conversation.) Commissioner Carlson asked Mr. Kirk if these new/proposed projects would change his traffic analysis as presented today. Mr. Kirk said he understood that most of the residential units are to the south and most have a direct connection to Hurstbourne, Watterson Trail, and Stone Bluff. He said traffic on the north side would not be affected as much (see recording.)

**The following spoke neither for nor against this request (“Other”):**

James R. Owens, 6611 Sunny Hill Road, Louisville, KY 40228

Wanda Owens, 6611 Sunny Hill Road, Louisville, KY 40228

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

06:11:45 James Owens asked if there is any plan to have traffic go down Sunny Hill Road. He said Sunny Hill Road is a one-lane, dead end road but it does have access to the south side. Ms. St. Germain said Sunny Hill is well south of the proposed development.

06:15:33 Wanda Owens was called but declined to speak.

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

Joseph N. Wahlen, 7107 Ridge Creek Road, Louisville, KY 40291

Lori Nagel, 7124 Quail Ridge Road, Louisville, KY 40291

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

05:15:41 Joseph Whelen said his primary concern is that he and his neighbors do not want traffic from the planned apartments coming in to the Quail Run subdivision. He said the proposed widening of Watterson Trail “never happened”.

06:19:24 Lori Nagel discussed traffic issues; also, she said South Watterson Trail “desperately” needs to be repaved and repaired. She said she has no problem not being connected, and does not want to be connected. She said she and her husband deliberately chose a dead-end with no connection to Quail Ridge or Ridge Creek.

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06:22:50 Commissioner Brown asked the applicant for more detail about the proposed nature trail. Mr. Gootee said it must be ADA-compliant and will be a hard durable surface.

**Rebuttal**

06:23:53 Mr. Barkley presented the applicant's rebuttal (see recording.)

06:25:16 In response to some questions from Commissioner Mims, Mr. Gootee discussed the proposed underground parking.

06:26:37 Commissioner Mims also asked about the compatibility of the design on the west side of Hurstbourne. Mr. Gootee discussed the waivers and why they were being requested (see recording for detailed discussion.) Susanne Cheek, with Duncan Commercial Real Estate, said this will be a separate development.

06:29:06 Commissioners' deliberation.

06:33:41 Commissioners Howard and Brown discussed how the topography might affect connectivity (see recording.)

06:38:23 In response to a question from Commissioner Howard, Commissioner Brown discussed the 16-foot depth which will require some filling and grading (see recording.)

**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.**

**Alternative Plan for Connectivity**

06:44:03 On a motion by Commissioner Howard, seconded by Commissioner Daniels, the following resolution, based on the evidence and testimony heard today, was adopted:

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the Alternative Plan for Connectivity be **APPROVED**.

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The vote was as follows:

**YES: Commissioners Howard, Peterson, Daniels, Mims, and Jarboe.**

**NO: Commissioners Brown and Carlson.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

**Zoning**

06:45:54 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Staff Plan 2040 Checklist, staff's Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intents of **Community Form: Goal 1** because the proposed zoning district would permit higher density and intensity uses. The site is located adjacent to an existing activity center and would expand the center; and the required LBAs and plantings will be provided; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Community Form: Goal 2** because the proposed zoning district change will permit residential uses; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Community Form: Goal 3** because proposed construction is not on wet or highly permeable soils, or severe, steep or unstable slopes; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Community Form: Goal 4** because the applicant proposes to preserve approximately 22% of the existing tree canopy on the Neighborhood portion of the site; and no historic assets are apparent on the site; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Mobility: Goal 1** because the proposed zoning district would permit higher density and intensity uses. The site is located near an existing activity center and will provide a transition between that activity center and the residential uses to the east; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Mobility: Goal 2** because Access to the site is from S Hurstbourne Parkway; and



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**WHEREAS**, the Commission further finds that the proposal meets the intents of **Mobility: Goal 3** because the proposed zoning district would permit multi-family housing in an activity center, increasing the variety of compatible land uses in the vicinity. The proposal would permit housing to be constructed near an employment center; most traffic to and from the site will be on S Hurstbourne Parkway, which is a major arterial and equipped to handle the additional traffic; and no direct residential access to high-speed roadways is proposed; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Community Facilities: Goal 2** because the relevant utilities have approved the proposal; Louisville Water Company has provisionally approved the proposal; and MSD has approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Livability: Goal 1** because approximately 22% tree canopy is being preserved on the Neighborhood portion of the lot. The protected waterway buffer around Fern Creek and the floodplain are both being preserved; the site is located on karst topography and karst features are being mostly avoided by development. Development that takes place on top of karst features must mitigate hazards; and MSD has approved the proposal; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Housing: Goal 1** because the proposed zoning district would permit multi-family housing, increasing the variety of housing in the vicinity; and the proposal would promote aging in place by increasing the variety of housing options in the neighborhood; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Housing: Goal 2** because the proposed zoning district would permit inter-generational, mixed-income development. There is commercial zoning in the vicinity; and the subject site is not located along a transit corridor, but it is located immediately adjacent to an existing activity center; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Housing: Goal 3** because the proposal would increase the variety of ownership options throughout Louisville Metro, and expand opportunities for people to live in quality, variable priced housing in locations of their choice; no existing residents live on the subject site to be displaced; and the proposal would allow the use of innovative methods of housing; and

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**WHEREAS**, the Commission further finds that the proposal meets the intents of **Community Form: Goal 1** because the proposed zoning district would permit higher density and intensity uses. The site is located adjacent to an existing activity center and would expand the center; and the required LBAs and plantings will be provided. The portion of the site that is located in the Suburban Workplace form district must comply with transition zone limitations; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Community Form: Goal 3** because development will avoid wet or highly permeable soils, and severe, steep or unstable slopes; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Community Form: Goal 4** because the applicant proposes to preserve approximately 58% of the existing tree canopy on the Suburban Workplace portion of the site; and no historic assets are apparent on the site; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Economic Development: Goal 1** because a small portion of the site is located in the Suburban Workplace form district, and will serve the workplace district employees by providing housing; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-4 Single Family Residential to R-6 Multi-Family Residential on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

**Waivers**

**Waiver #1 - Waiver** from Table 10.3.1 to permit a building to encroach into the required 75' parkway setback (19-WAIVER-0078)

**Waiver #2 - Waiver** from Table 10.3.1 to permit parking and a dumpster to encroach into the required 50' parkway buffer area (19-WAIVER-0081)

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06:46:47 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

**(WAIVER#1) WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the setback to be encroached is the one along S Hurstbourne Parkway; and

**WHEREAS**, the Commission further finds that the waiver not will violate specific guidelines of Plan 2040 as Plan 2040 plan element Livability Goal 1, Objective B states that existing waterways are conserved, protected or improved to enhance water quality. The encroachment into the parkway setback is needed to avoid encroachment into the buffer around an existing intermittent stream; and

**WHEREAS**, the Commission further finds the extent of the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as moving the building out of the parkway setback would move the development and impervious surface closer to the intermittent waterway; and

**WHEREAS**, the Commission further finds that the applicant has not incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived, and the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship as the property lines as shown on the development plan do not exist yet and the site could be designed in a different fashion to avoid both the waterway and the parkway setback; and

**(WAIVER#2) WHEREAS**, the Commission further finds that the waiver will not adversely affect adjacent property owners as the buffer to be encroached is the one along S Hurstbourne Parkway; and

**WHEREAS**, the Commission further finds that the waiver not will violate specific guidelines of Plan 2040 as Plan 2040 plan element Livability Goal 1, Objective B states that existing waterways are conserved, protected or improved to enhance water quality. The encroachment into the parkway buffer is needed to avoid encroachment into the buffer around an existing intermittent stream; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as moving the building out of

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the parkway setback would move the development and impervious surface closer to the intermittent waterway; and

**WHEREAS**, the Commission further finds that the applicant has not incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived, and the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship as the property lines as shown on the development plan do not exist yet and the site could be designed in a different fashion to avoid both the waterway and the parkway setback; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver #1 - Waiver from Table 10.3.1 to permit a building to encroach into the required 75' parkway setback (19-WAIVER-0078); **AND** the requested Waiver #2 - Waiver from Table 10.3.1 to permit parking and a dumpster to encroach into the required 50' parkway buffer area (19-WAIVER-0081).

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NOT PRESENT: Commissioners Tomes and Lewis.**

**Detailed District Development Plan with Binding elements.**

06:47:56 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the significant tree canopy is proposed to be preserved. The required buffers around Fern Creek are proposed to be preserved. Development is proposed outside of the flood plain; and

**WHEREAS**, the Commission further finds that the provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are in question. Metro Public Works has not provided approval of the plan, as

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a connection should be made to Quail Ridge Road; and

**WHEREAS**, the Commission further finds the extent of the required open space and recreational open space are being provided to meet the needs of the proposed development; and

**WHEREAS**, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure 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; and

**WHEREAS**, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The site is relatively large and adequate buffering is being provided between the development and Fern Creek. A public road connection is being made between Ridge Creek Road and S Hurstbourne Parkway. The proposed use provides an appropriate transition between the lower-intensity uses to the east and the higher-intensity uses to the west; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code, with the exception of the requested waivers; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
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

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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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
  - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - f. 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.
  - g. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
6. Tracts 1 and 2 shall be developed as separate communities with different branding. No facilities shall be shared between the communities. Signage shall reflect two different names for the two communities. The communities shall not be directionally distinguished (for example, "North" and "South", or "East" and "West") with otherwise identical names.
7. 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.
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

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binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

**The vote was as follows:**

**YES: Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.**

**NO: Commissioner Brown and Carlson**

**NOT PRESENT: Commissioners Tomes and Lewis**

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**Closed Session**

**Request:** The Planning Commission will enter closed session as permitted under KRS 61.810(1)(c) to discuss pending litigation.

**Case Manager:** Travis Fiechter, Legal Counsel, County Attorney's Office

**The vote was as follows:**

**YES:** Commissioners Howard, Peterson, Brown, Daniels, Carlson, Mims, and Jarboe.

**NOT PRESENT:** Commissioners Tomes and Lewis.



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**ADJOURNMENT**

The meeting adjourned at approximately 8:26 p.m.

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Chairman

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Division Director