

# Planning Commission Staff Report

March 17, 2016



<b>Case No:</b>	15DEVPLAN1195 & 15SUBDIV1023
<b>Project Name:</b>	Notting Hills, Section 4
<b>Location:</b>	226 Notting Hill Boulevard
<b>Owners:</b>	Notting Hill Development, LLC
<b>Applicant:</b>	Welch Developers, LLC – Scott Welch
<b>Representative(s):</b>	Bardenwerper, Talbott & Roberts, PLLC – William B. Bardenwerper
<b>Project Area/Size:</b>	16.38 Acres
<b>Existing Zoning District:</b>	R-5, Single-Family Residential & R-5A, Multi-Family Residential
<b>Existing Form District:</b>	N, Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	19 – Julie Denton
<b>Case Manager:</b>	Joel P. Dock, Planner I

## REQUEST

- **Revised Detailed District Development Plan** proposal for 48 Duplex Villa/multi-family units, clubhouse with parking, and 2 cul-de-sacs.
- **Revised Major Preliminary Subdivision Plan** for the creation of 2 public rights-of-way (cul-de-sac) serving the residential development from Chadwick Glen Circle.
- **Amendment to Binding Elements** to eliminate binding element #23 and revisions to #17 & #35 from Plan Certain docket 9-10-00/10-03-00 and associated Revised Detailed District Development Plan of case 13985.

## CASE SUMMARY

The actions taken by the Development Review Committee (DRC) on February 3, 2016 to approve the above mentioned requests are being appealed to the Planning Commission pursuant to Land Development Code (LDC), section 11.7.2.A. In a letter dated February 15, 2016 the appellant(s) stated, "My client believes that the decision was unjustified and showed no respect for the original development plan relied upon by purchasers of lots in the subdivision. The latest decision by the committee virtually eliminated a proposed amenity that was important to the purchasers of lots in the subdivision."

The applicant proposes to create 48 Duplex Villa/multi-family units within the Notting Hills Subdivision along Shelbyville Road in Eastern Jefferson County at the boundary with Shelby County. The development will be served by 2 cul-de-sacs with sidewalks on each side of the roadway beginning from Chadwick Glen Circle, a public right-of-way. The previous revised detailed development plan for the R-5A development site was approved for 120 condominium or manor home style units with an internal network of interconnecting parking and drive lanes. The number of units proposed has been reduced by 72. A typical elevation provided by the applicant shows predominately brick attached unit duplexes with stone accents and front-facing 2 car garages. Also being proposed is a clubhouse on the R-5 lot with 20 parking spaces for property owners, residents, and guests of the Notting Hills Subdivision. The renderings for the clubhouse show a 1-story predominately stone front façade with brick accents. The side and rear facades will be brick.

An Amendment to Binding Element request was made and approved by the Development Review Committee (DRC) on April 1, 2015 under case 15MOD1002 to eliminate binding element #26 of docket 9-10-00/10-03-00 which required; in summary, 10% of units to be sold at a price no greater than 2.75 times the low-moderate income level for a family of four persons. The language that was eliminated per DRC action was the original language placed upon the Plan Certain docket of 9-10-00/10-03-00 by the Planning Commission and not the

language that was updated and revised by the Land Development & Transportation committee on July 8, 2004 to reflect the Land Development Code (LDC) in effect as of March 1, 2003. Along with revising the language of the binding element now known as #23, additional criteria were placed upon the binding element requiring reports to be submitted at 6-month intervals from the time of recording the first section of the subdivision. This binding element as amended by LD&T July 8, 2004 was carried forward to the District Development Plan approved October 1, 2005 and incorporated into the Revised District Development Plans of cases 11632 and 13985. The request being made to eliminate binding element #23 is in effort to have the binding element removed across the board from any and all existing and future General or Detailed District Development Plans within the Notting Hills Subdivision. It reads as follows:

*23. At least 10% of the dwelling units in the development shall be reserved for units in the Diversity Housing Level 4 category under Chapter 4, Part 5 of the Land Development Code. The developer/owner shall be responsible for submitting an update report at 6-month intervals from the date of the recording of the record plat until the number of units required to comply with this binding element have been sold. The update report shall identify the name of the recorded subdivision, plat book and page number of the record plat, the lot number or unit number sold as a Diversity Housing Level 4 unit, the name of the buyer, the type of unit (detached/patio home), the number of bedrooms, and the sale price of the unit.*

Amendments are also being proposed to Binding Element #17 and #35 of the same cases and subject case.

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

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Single family residential	R-5/R-5A	N
<b>Proposed</b>	Single family residential	R-5/R-5A	N
<b>Surrounding Properties</b>			
<b>North</b>	Single family residential	R-5	N
<b>South</b>	Multi-family residential	R-5A	N
<b>East</b>	Single family residential	R-4	N
<b>West</b>	Multi-family residential	R-5A	N

**RELATED CASES**

9-10-00/10-03-00: Change-in-zoning from R-4 to R-5 & R-5A and Major Preliminary Subdivision Plan (approved 5/21/01).  
 - RGDDP/Revised Major Preliminary Subdivision (denied 12/18/2003).  
 - RDDDP/Revised Major Preliminary Subdivision with updated binding elements (approved 7/8/04).  
 - RGDDP/Revised Major Preliminary Subdivision (approved 10/7/05).

PB 54, PG 45: Section 1B including dedication of Chadwick Glen Circle & R-5A lot that is subject to current RDDDP/Revised Major Preliminary Subdivision Plan.

11632: Revised Detailed District Development Plan for 120 condominium or manor home style units with an internal network of interconnecting parking and drive lanes (approved 9/24/08).

13985: Revised Detailed District Development Plan for 64 patio home units in 16 buildings (approved 5/6/2010).

15MOD1002: Amendment to Binding Elements to eliminate binding element #26 (current #23) of docket 9-10-00/10-03-00 (approved 4/1/15).

## INTERESTED PARTY COMMENTS

Staff received several inquiries from residents of the Notting Hill Subdivision; including, Cathy Stich, Pamela lee, Will Horner, and Linda Atkinson. Concerns were expressed about the removal of a structure shown previously as being converted into the clubhouse which was demolished in advance of the submittal and approval of a revised development plan. A settlement agreement was also mentioned several times in these discussions, with specific attention to the clubhouse. An agreement was provided by the applicant and has been incorporated into the case file. Planning and Design Services legal counsel has been provided a copy and has been in contact with interested parties. Additional comments were made regarding the status of providing a pool with the clubhouse and the funding of this project, as well as a neighborhood meeting to discuss the future of the pool, clubhouse, and previously existing structure on the lot.

An individual mentioned above noted that she did not receive early notice and had concerns about notification for the public hearing. Notification requirements for the public hearing were discussed with interested parties, staff, and the applicant. The consensus was to notify all land owners within the subdivision.

In a letter provided by Julie and Drew Napier they stated that they purchased their home with the understanding that a pool and clubhouse were proposed and now they fear properties values will decrease if the clubhouse is built as proposed and no pool is provided. They also have concerns with the trees being removed adjacent to the clubhouse and encircling the pond.

Chris Schindler expressed similar concerns of parties previously mentioned in opposition to the proposal to not provide the pool.

Staff received a letter in support of the Planning Commission upholding the decision made by DRC. In this letter Vivian Kermon and Steve Forrester state, "...there is no single spokesperson for Notting Hill. Individual expressions of opinion do not represent the whole.....amenities need to be kept to minimum in order to ensure future marketability of our homes with the lowest possible association dues and that it is imperative the builder/developer continue to build in the manner/style that he has proposed, also in order to ensure the future marketability of our property."

Deb Delor of the Eastwood Village Council provided a list of concerns outlining the stance of the Council. The opinions presented appeared to be neutral, neither in favor, nor in opposition, to the proposal. The list includes preservation of rural and green spaces and historic structures, design of homes and materials used to be consistent with previous approvals within the area, pedestrian access, discouraging front facing garages, and that promises made by developers are followed even if they are not included in binding elements.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code (revised December 2015)

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO BINDING ELEMENTS

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

STAFF: Four sinkholes have been located and their approximate location has been designated on the development plan. Their locations do not appear to have a substantial impact on the proposed development. There do not appear to be any historic resources on site. Tree Canopy Protection Areas for this project have been provided elsewhere within the subdivision as noted and shown on the landscape plans for sections 2 & 3 under cases L-239-05 & 15LSCAPE1042.

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. Sidewalks are proposed on each side of the proposed cul-de-sacs connecting to the existing network within the subdivision.

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

STAFF: Open space areas are not specifically designated or required on this plan. There are large amounts of non-designated open space on Lots 116 and 127 of the plan, however. Additionally, there are designated open spaces shown throughout the subdivision on General/Subdivision Plans for Notting Hills.

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

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

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

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways.

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

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

### **TECHNICAL REVIEW**

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

The language that was eliminated per DRC action was the original language placed upon the Plan Certain docket of 9-10-00/10-03-00 by the Planning Commission and not the language that was updated and revised by the Land Development & Transportation committee on July 8, 2004 to reflect the Land Development Code (LDC) in effect as of March 1, 2003. Along with revising the language of the binding element now known as #23, additional criteria were placed upon the binding element requiring reports to be submitted at 6-month intervals from the time of recording the first section of the subdivision. This binding element as amended by LD&T July 8, 2004 was carried forward to the General District Development Plan approved October 1, 2005 and incorporated into the Revised District Development Plans of cases 11632 and 13985.

There are no outstanding Technical Review items needing to be addressed by the applicant.

**STAFF CONCLUSIONS**

The Revised Detailed District Development Plan, Revised Major Preliminary Subdivision Plan, and Amendment to Binding Elements appear to be adequately justified and meet the standard of review based on staff analysis in the staff report.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Planning Commission must determine if the proposal meets the standards established in the LDC for approving the Revised Detailed District Development Plan, Revised Major Preliminary Subdivision Plan, and Amendment to Binding Elements.

**REQUIRED ACTIONS**

- **APPROVE** or **DENY** Revised Detailed District Development Plan and Revised Major Preliminary Subdivision Plan, as well as an Amendment to Binding Elements of docket 9-10-00/10-03-00 and cases 11632 and 13985.

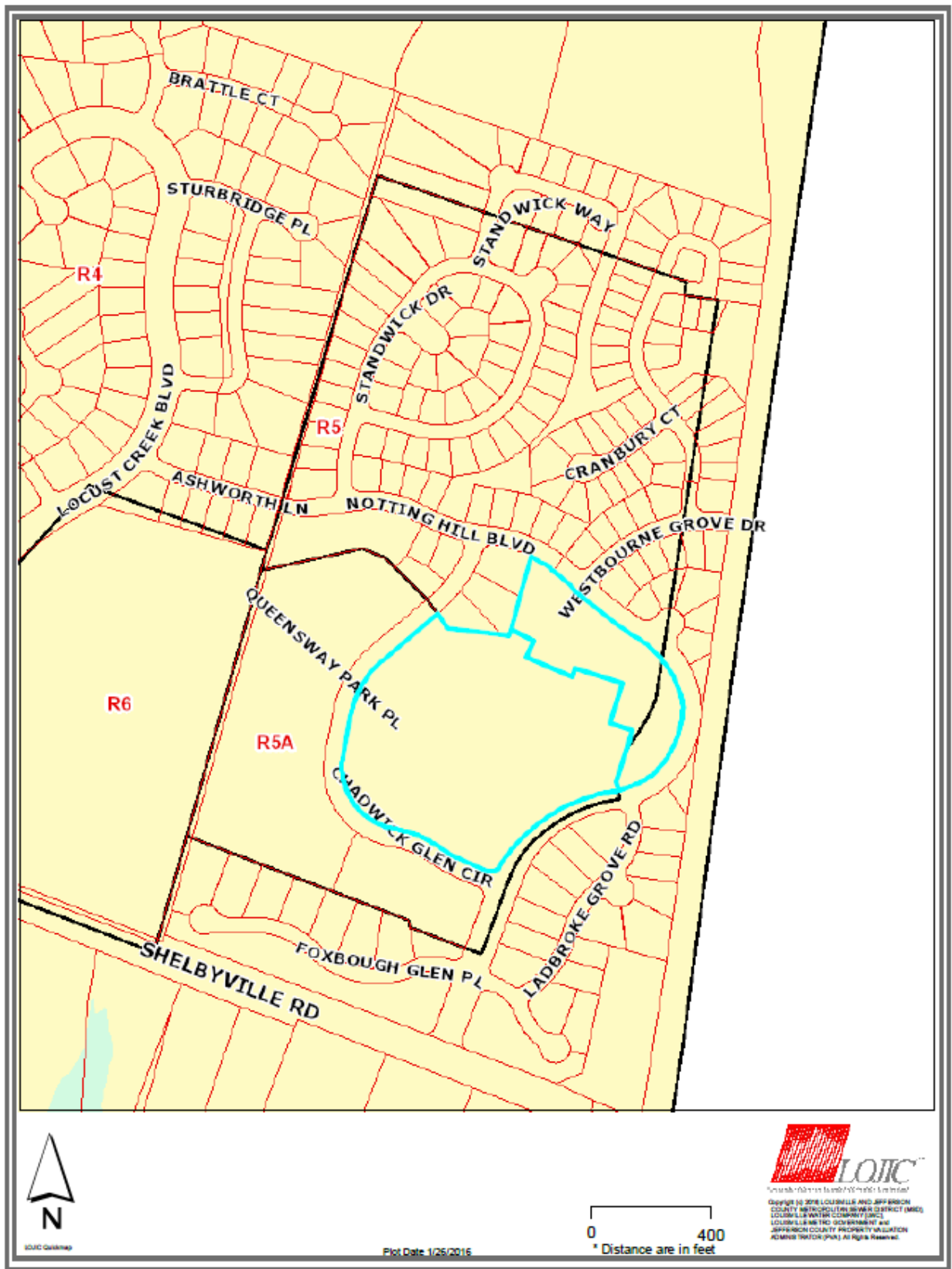
**NOTIFICATION**

Date	Purpose of Notice	Recipients
1/19/16	DRC	All landowners within the subdivision, representative, case manager, and neighborhood groups
3/2/16	Planning Commission (Appeal)	All landowners within the subdivision, representative, case manager, and neighborhood groups

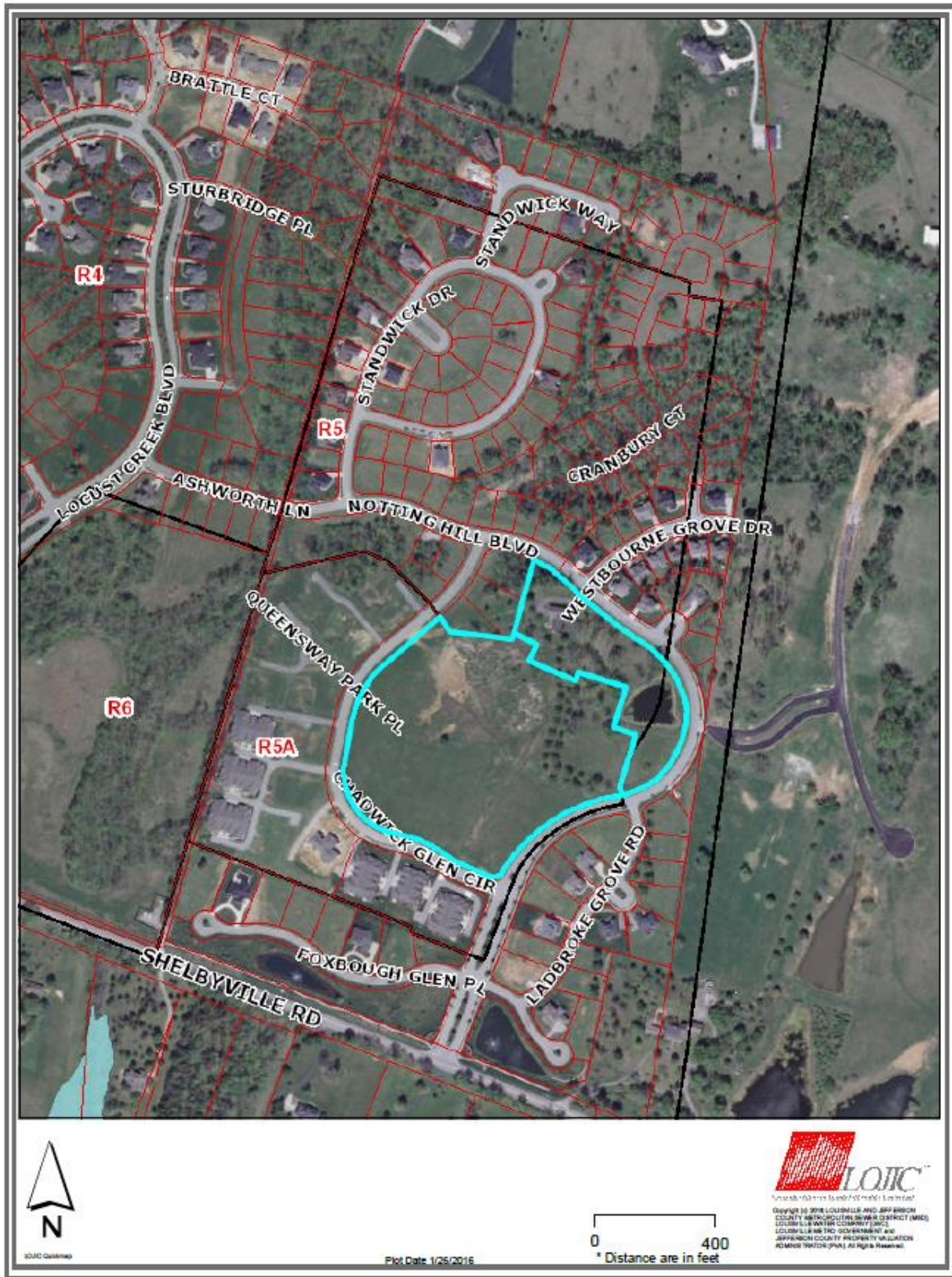
**ATTACHMENTS**

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

1. **Zoning Map**



2. Aerial Photograph



**3. Existing Binding Elements of Docket 9-10-00/10-03-00 and Cases 11632 and 13985**

1. The development shall be in accordance with the approved Preliminary Subdivision Plan, detailed 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. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
2. The density for the entire development shall not exceed 3.57 dwelling units per gross acre (358 units on 100.4 acres). The density of the R-5 single family development shall not exceed 2.69 dwelling units per gross acre (121 units on 44.9 acres). The density of the R-5A multi-family manor homes development (Lot 168) shall not exceed 10.3 dwelling units per gross acre (128 units on 12.4 acres). The density of the R-5A multi-family patio homes development (Lot 167) shall not exceed 5.12 dwelling units per gross acre (64 units on 12.5 acres). The density of the R-4 single family development shall not exceed 1.59 dwelling units per gross acre (45 units on 28.3 acres).
3. There shall be no direct vehicular access from any single family or multi-family lot to US 60 (Shelbyville Road).
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3 feet 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. The applicant shall identify and submit for approval by designated PDS staff, a plan showing the location of the Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e. clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by PDS.
6. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A 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.
7. If a building permit is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
8. 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.

9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
10. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to commencement of any clearing, grading, or construction activities.
11. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
12. The site shall be developed in accordance with the Tree Canopy Protection Areas (TCPAs) delineated on the site plan and related notes. Any modification of the Tree Canopy Protection Areas requires notification of adjoining property owners and LD&T action.
13. The applicant shall provide deeds of restriction ensuring that TCPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of such restrictions shall be approved by the Planning Commission counsel.
14. All plans setting out TCPAs must contain the following note:
  - a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent portions of the site that shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction, or other land disturbing activity shall take place within designated TCPAs beyond pruning to improve the general health of the tree, to remove dead or declining trees that may pose a public health and safety threat, or as required by an agency to install utilities.
15. Prior to the recording of the plat, copies of recorded documents listed below shall be filed with the Planning Commission.
  - a. Articles of Incorporation filed with the Secretary of State and Certificate of Incorporation of the Homeowners Association.
  - 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 and other issues required by these binding elements.
  - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
16. 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.
17. The materials and design of the proposed manor style and patio home condominium buildings shall be substantially the same as depicted in the rendering as presented at the February 26 and May 21, 2001 Planning Commission meetings. The manor style condominium buildings shall include 80% brick. All

other homes shall have a minimum of 60% exterior brick material, except the 10% “affordable” housing set aside, referenced herein below, which shall have, at a minimum, brick fronts, except as provided in Binding Element 28, which provides for 80% brick or stone exterior material on the 9 frontage lots adjacent to Shelbyville Road.

18. The signature entrance shall be submitted the Planning Commission staff for review prior to recording the record plat.
19. The multi-family (R-5A) portion of the development shall be limited to units in condominium ownership.
20. Prior to application for any land disturbing activity on the site, a geotechnical report, including a study of areas with slopes greater than 20%, shall be performed for review by MSD, Metro Public Works, and Planning & Design prior to approval of any construction plans.
21. The developer shall be responsible for constructing the road connection of Road A to the stub road in the Locust Creek development.
22. Open space lots shall not be further subdivided or developed for any other use, and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
23. At least 10% of the dwelling units in the development shall be reserved for units in the Diversity Housing Level 4 category under Chapter 4, Part 5 of the Land Development Code. The developer/owner shall be responsible for submitting an update report at 6-month intervals from the date of the recording of the record plat until the number of units required to comply with this binding element have been sold. The update report shall identify the name of the recorded subdivision, plat book and page number of the record plat, the lot number or unit number sold as a Diversity Housing Level 4 unit, the name of the buyer, the type of unit (detached/patio home), the number of bedrooms, and the sale price of the unit.
24. Within the 200-foot parkway buffer, landscaping shall be installed of evergreen and deciduous shade and flowering trees as shown on the concept landscape plan discussed at the May 21 public hearing and as otherwise required by the Planning Commission, and there shall also be installed a four-board horse fence erected along the right-of-way of US 60 for the entire length of the frontage of the site.
25. The R-5A residential condominium buildings shall be no closer to the new Shelbyville Road right-of-way line than as follows, proceeding in an east-west direction: the easternmost patio building no closer than 370 feet; the westernmost patio building no closer than 345 feet; the easternmost manor home building no closer than 370 feet; and the westernmost manor home building no closer than 365 feet.
26. Seven R-4 zoned frontage lots shall be created as shown on the development plan presented at the July 8, 2004 LD&T meeting for R-4 housing. The (7) frontage lot houses west of Road “A” shall front Shelbyville Road with access from the Court “A” frontage road. The (2) frontage lot houses east of Road “A” shall also face Shelbyville Road but have access from Court “B”.
27. All 9 frontage lots shall run to the new Shelbyville Road right-of-way line; however, a landscape easement in favor of the New Estates Farm Community Association shall extend for a depth of 160 feet from the new Shelbyville Road frontage right-of-way line.
28. Homes constructed on the (9) frontage lots shall have exterior materials consisting of a minimum of 80% brick and/or stone. These (9) frontage lots shall have a front building setback line of not less than 200 feet from and parallel with the proposed new northern right-of-way line of US Highway 60, also known as Shelbyville Road.
29. Prior to development that may occur immediately behind the frontage lots, the developer shall install the infrastructure for, subdivide, plat, and record and market for sale such frontage lots along

Shelbyville Road. The frontage lot houses need not be actually constructed before construction commences on the condominiums behind them, and the frontage lots and other portions of the subdivision may be platted together.

30. The 160 feet of setback described in Binding Element 27 above plus (2) open space lots along Shelbyville Road shall be maintained by the New Estates Farm Community Association.
31. Binding Elements 24-30 above shall be included in the deed of restrictions for New Estates Farm as shall a provision requiring minimum square footages for the (7) frontage lot homes of 3,000 square feet of livable area for two-story and/or story and one-half and 2,750 square foot of livable area or ranch style homes. Livable area shall be defined as heated and cooled above ground level area, measured from outside wall to outside wall, specifically excluding below ground finished living area. Such deed of restrictions shall be reviewed by the Planning Commission's legal counsel prior to recording for compliance with these binding elements. Such deed of restrictions shall include a provision permitting enforcement of the provisions of binding elements 24-31 by the owners and successors in title of the following properties: 18700 US 60, 18702 US 60, 18704 US 60 and 18706 US 60 in Jefferson County and 10400 US 60 and 10260 US 60 in Shelby County.
32. Prior to requesting certificates of occupancy, the developer shall post street signs and address numbers.
33. The developer shall pay \$7500 of the cost of a new traffic signal at US 60 and Flat Rock Road.
34. Trees shall be preserved and/or provided on site 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 for approval 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.
35. The use of the clubhouse shall be restricted to property owners/residents of New Estates Farm Subdivision and their guests.
36. Final surface pavement to be completed by developer prior to turnover to homeowner's association **(case 13985, only)**

**5. Proposed Amendments to Binding Elements for Docket 9-10-00/10-03-00 and Cases 15DEVPLAN1195/15SUBDIV1023 and 13985.**

17. The materials and design of the proposed manor style and patio home condominium buildings shall be substantially the same as depicted in the rendering as presented at the February 26 and May 21, 2001 Planning Commission meetings. The manor style condominium buildings shall include 80% brick. All other homes shall have a minimum of 60% exterior brick material, ~~except the 10% "affordable" housing set aside, referenced herein below, which shall have, at a minimum, brick fronts,~~ except as provided in Binding Element 28, which provides for 80% brick or stone exterior material on the 9 frontage lots adjacent to Shelbyville Road.
23. ~~At least 10% of the dwelling units in the development shall be reserved for units in the Diversity Housing Level 4 category under Chapter 4, Part 5 of the Land Development Code. The developer/owner shall be responsible for submitting an update report at 6-month intervals from the date of the recording of the record plat until the number of units required to comply with this binding element have been sold. The update report shall identify the name of the recorded subdivision, plat book and page number of the record plat, the lot number or unit number sold as a Diversity Housing Level 4 unit,~~

~~the name of the buyer, the type of unit (detached/patio home), the number of bedrooms, and the sale price of the unit.~~

35. The use of the clubhouse shall be restricted to property owners/residents of ~~New Estates Farm~~ **Notting Hills** Subdivision and their guests.