

# Planning Commission

## Staff Report

February 4<sup>th</sup>, 2016



<b>Case No:</b>	<b>15MOD1017</b>
<b>Request:</b>	<b>Appeal of General Plan Binding Element Amendment from November 12th, 2015 LD&amp;T Meeting</b>
<b>Project Name:</b>	<b>Old Brownsboro Crossing</b>
<b>Location:</b>	<b>9840 &amp; 9850 Von Allmen Court</b>
<b>Owner:</b>	<b>Lots C &amp; D Development LLC</b>
<b>Applicant:</b>	<b>Glenn Price</b>
<b>Representative:</b>	<b>Frost Brown Todd LLC</b>
<b>Jurisdiction:</b>	<b>Louisville</b>
<b>Council District:</b>	<b>16 – Kelly Downard</b>
<b>Case Manager:</b>	<b>Christopher Brown, Planner II</b>

### REQUEST

- General Plan Binding Element Amendment

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: OR-3, C-1, C-2, Office & Commercial  
 Existing Form District: RC, Regional Center  
 Existing Use: Office, Retail, Restaurant & Hospital  
 Plan Certain Docket #: 9-55-01 & 14ZONE1039

The applicant is requesting to amend general plan binding element #10 from Docket #9-55-01 to account for the existing and approved building materials that exist within the Old Brownsboro Crossing development. The language proposed by the applicant would eliminate the language regarding structures along KY 22 and amends the language to require approval by the Planning Commission or a committee thereof and maintain an Architectural Review Committee for the development. The proposed language is located in Attachment #4 of the staff report. This binding element language was approved by the Land Development and Transportation Committee on November 12<sup>th</sup>, 2105. A copy of the minutes from that hearing is attached to the end of the staff report. The applicant has applied for this amendment as a requirement from the previous approvals under Docket 14ZONE1039 that will not allow further approval of development plans until the general plan binding element issue has been dealt with for Old Brownsboro Crossing.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Commercial and Office	C-2	RC
<b>Proposed</b>	Commercial and Office	C-2	RC
<b>Surrounding Properties</b>			
<b>North</b>	Vacant	C-2	RC
<b>South</b>	Mixed Commercial	C-1	RC
<b>East</b>	Restaurant	C-1	RC
<b>West</b>	Bank & Restaurant	C-2	RC

## PREVIOUS CASES ON SITE

- 9-55-01: The Planning Commission approved a rezoning for Old Brownsboro Crossing from R-4 to OR-3, C-1 and C-2.
- 14DEVPLAN1051: Development Review Committee approved a detailed district development plan with landscape waivers to allow the proposed mixed commercial and office building on the subject site.
- 14MOD1006: Development Review Committee approved an update to the general plan binding element to account for the overall square footage of uses proposed within the Old Brownsboro Crossing development.
- 14ZONE1039: The Planning Commission approved a rezoning for the subject site known as Lot C & D originally from C-1 to C-2. The requirement to address general plan binding element #10 was part of this approval.

## INTERESTED PARTY COMMENTS

Several interested party comments were received by staff following the writing of the LD&T staff report and prior to the public meeting. The comments received pertained to the frustration with the process involved in several of the buildings and their subsequent materials. The comments received also raised the issue that the materials on the building at Lot C & D did not follow the original intent of the general plan binding element attached to the rezoning of Old Brownsboro Crossing and they are out of character with the KY 22/Brownsboro Road corridor.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

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

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan. The existing infrastructure can accommodate the proposed increase in commercial square footage.

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

STAFF: The open space requirements are met with the current proposal.

- 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. Buildings and parking lots will meet all required setbacks. The design and materials of the structures within the development have all been previously approved and are compatible with the surrounding areas.

- 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

- No outstanding technical review issues need to be addressed.

#### STAFF CONCLUSIONS

The standard of review has been met for the proposed amendment to the general plan binding element. The Commission needs to determine whether to accept the language proposed by the applicant that was approved by the LD&T Committee or address the issue regarding materials used within Old Brownsboro Crossing by making additional changes to the general plan binding element. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for amending the general plan binding element as established in the Land Development Code.

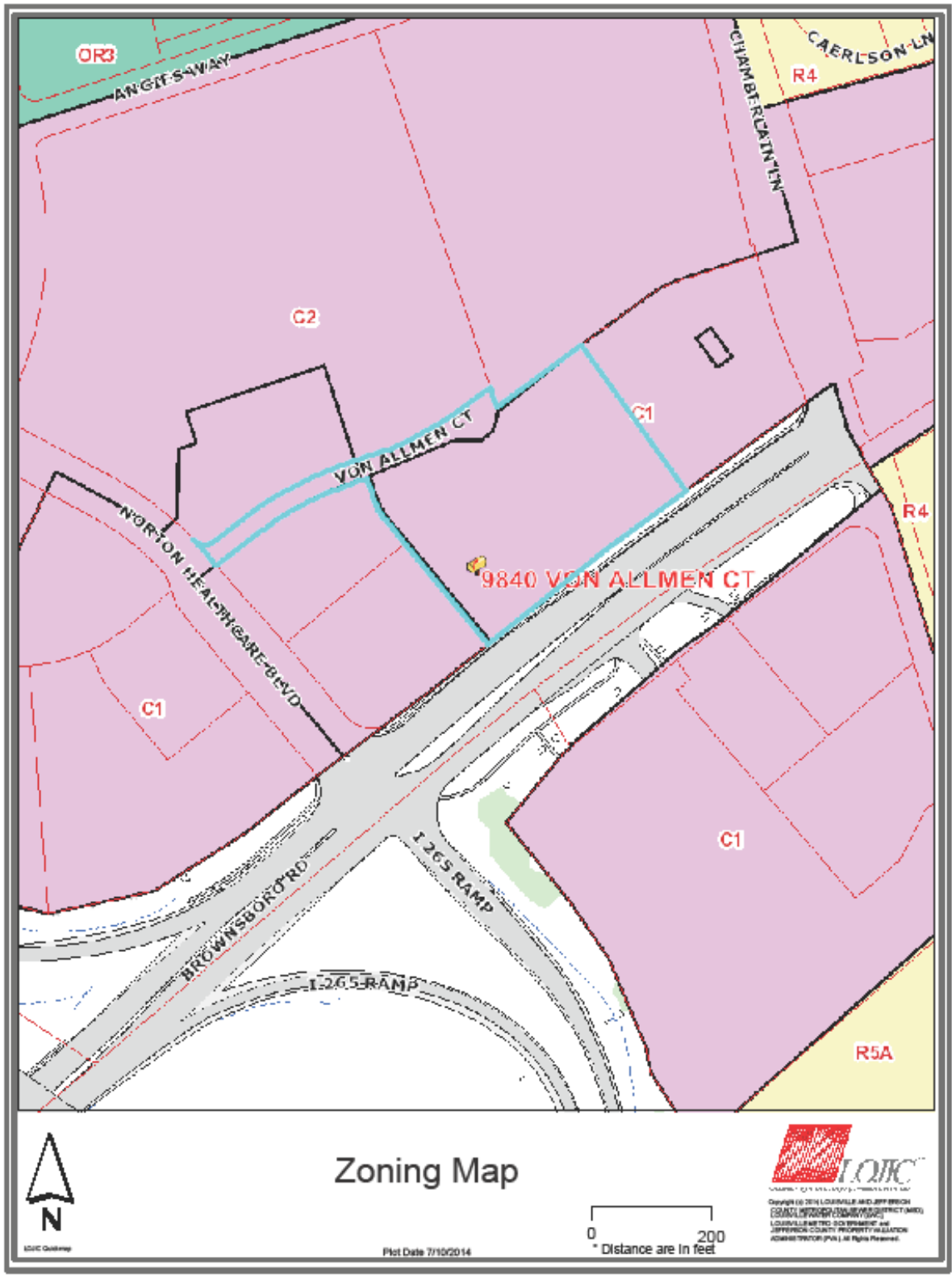
#### NOTIFICATION

Date	Purpose of Notice	Recipients
10/28/15	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 16 Notification of Development Proposals
1/21/15	Appeal Hearing before PC	1st and 2nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 16 Notification of Development Proposals

#### ATTACHMENTS

- Zoning Map
- Aerial Photograph
- Existing General Plan Binding Element
- Proposed General Plan Binding Element
- Minutes from November 12<sup>th</sup>, 2015 LD&T Hearing

1. Zoning Map



2. Aerial Photograph



**3. Existing General Plan Binding Element**

10. The materials and design of proposed structures shall be substantially the same as depicted in renderings presented at the time of detailed district development plan approval for each parcel. The building materials for the retail component and hotel shall be drivit, tile, brick, masonry and stone except nationally or regionally recognized chain operations may utilize wood exteriors where such exterior appearance is part of an established and generally used trade dress. The building materials for the office component shall be brick or stone or a combination of brick and stone. All structures adjacent to KY 22 shall have a consistent architectural style and exterior color scheme. An Architectural Review Committee shall be established by the Developer and reflected within the Deed Restrictions recorded prior to the submittal of the first detail district development plan.

**4. Proposed General Plan Binding Element**

10. **A.** The materials and design of proposed structures shall be substantially the same as depicted in renderings presented at the time of detailed district development plan approval for each parcel. The building materials for the retail component and hotel shall be drivit, tile, brick, masonry and stone except nationally or regionally recognized chain operations may utilize wood exteriors where such exterior appearance is part of an established and generally used trade dress. The building materials for the office component shall be brick or stone or a combination of brick and stone. All structures adjacent to KY 22 shall have a consistent architectural style and exterior color scheme. An Architectural Review Committee shall be established by the Developer and reflected within the Deed Restrictions recorded prior to the submittal of the first detail district development plan. **and design of proposed structures on each parcel shall be determined by the Planning Commission or a committee thereof at a public meeting following required notice.**
- B.** An Architectural Review Committee shall be established by the Developer and reflected within the Deed Restrictions recorded prior to the submittal of the first detail district development plan.

**5. Minutes from November 12<sup>th</sup>, 2015 LD&T Meeting**

**MINUTES OF THE MEETING OF THE LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE**

**November 12, 2015**

**New Cases**

**CASE NO. 15MOD1017**

<b>Request:</b>	General Plan Binding Element Amendment
<b>Project Name:</b>	Old Brownsboro Crossing
<b>Location:</b>	9840 & 9850 Von Allmen Court
<b>Owner:</b>	Lots C & D Development, LLC
<b>Applicant:</b>	Glenn Price
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<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	16 – Kelly Downard

**Case Manager: Christopher Brown, Planner II**



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

**Agency Testimony:**

00:20:38 Christopher Brown presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) In addition to summarizing the staff report, Mr. Brown handed out e-mails and interested party comments that had been recently received from the opposition.

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

Glenn Price, Frost Brown Todd, 400 West Market Street Suite 3200, Louisville, KY 40202

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

00:25:59 Glenn Price, the applicant's representative, discussed General District Development Plan binding element #10 and showed a Power Point presentation. He said he objected to Ms. Barbara Kelly's characterization of Old Brownsboro Crossings as "visually discordant" and described what is currently surrounding the subject site. He discussed the existing language of binding element #10, the language that he had proposed, and Main Street Realty's concerns about maintaining the integrity of the Architectural Review Committee's approval for proposed structures within Old Brownsboro Crossing. Using a Power Point presentation, Mr. Price detailed all of the buildings in the development which do and do not comply with the binding element regarding building materials.

00:42:23 In response to a question from Commissioner Brown, Mr. Price said the Architectural Review Committee approved the Old Brownsboro Crossing building designs shown by Mr. Price and have the authority over the building design shown today.

00:42:51 In response to a question from Commissioner Jarboe, Mr. Price showed the remaining developable/buildable area. He also explained that previously-constructed buildings could be removed/rebuilt or altered, if the existing businesses in them closed or left.

00:44:42 In response to a question from Commissioner Brown, Mr. Price explained that the binding element being discussed for amendment today only refers to buildings along KY-22 and explained why.

00:46:53 John Carroll, legal counsel for the Planning Commission, asked if Mr. Price's proposed amendment to the binding element was to the effect that the Planning Commission could overrule the decision of the Architectural Review Committee. Mr. Price said that could be a possibility; however, he said that has rarely happened. He further explained the purpose of the amended language. He said the ARC must first approve the building, and then the Planning Commission has to approve it.

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

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Alice Gunnison, 7849 Wolf Pen Branch Road, Louisville, KY 40059

Arnold J. Zegart, 7800 Wolf Pen Branch Road, Louisville, KY 40059

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

00:49:56 Stephen Porter, representing the Wolf Pen Preservation Association, gave a history of the binding element restricting building materials and presented the opposition's case. He said the opposition has presented Mr. Price with an alternative suggestion to this binding element that would expand the list of materials to be used.

01:00:23 Arnold J. Zegart, past president of the Wolf Pen Preservation Association, said the opposition has compromised on the building materials where the developers have not. He expressed frustration that the binding element agreement has repeatedly been violated. He said the opposition is willing to compromise but not give up everything.

01:02:23 Alice Gunnison, president of the Wolf Pen Preservation Association, gave further background on the case. She said it is the developers' responsibility to follow the rules, and that it was not the neighborhood's fault that the developer bought and had delivered unapproved building materials.

01:04:12 Mr. Porter made his closing statements and said it is not the duty of the Wolf Pen Preservation Association to enforce binding elements.

01:06:25 In response to a question from Commissioner Jarboe, Mr. Porter explained the new language the opposition has proposed for the binding element. He objected to the language proposed by Mr. Price.

01:08:02 Mr. Price addressed Mr. Porter's statements and explained why the compromise proposed by the opposition was not acceptable. He said he agreed that an applicant is responsible for adhering to the binding elements; however, this binding element was poorly drafted and should be fixed.

01:14:07 Commissioner Jarboe and Mr. Price discussed the Planning Commission's role in determining building materials for developments. Mr. Porter elaborated on the Wolf Pen offer of a compromise.

01:18:16 Mr. Price responded to Mr. Porter's statements about building materials.

01:21:26 Chris Brown discussed the condition put on this binding element by the Planning Commission in 2010. The condition is that, if this binding element is proposed for amendment, the developer and the neighborhood association need to work together to amend binding element #10 (see binding elements and recording for verbatim reading of the condition.)

01:22:20 In response to a question from Commissioner Brown, Mr. Porter discussed metal vs. tile. Mr. Price discussed the original intent of binding element #10 regarding tile.

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

No one spoke.



## Deliberation

01:25:18 Commissioners' deliberation (see recording)

01:41:06 On a motion by Commissioner Brown, seconded by Commissioner Lewis, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Land Development and Transportation Committee finds that there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, the Committee further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan. The existing infrastructure can accommodate the proposed increase in commercial square footage; and

**WHEREAS**, the Committee further finds that the open space requirements are met with the current proposal; and

**WHEREAS**, the Committee further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

**WHEREAS**, the Committee further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks. The design and materials of the structures within the development have all been previously approved and are compatible with the surrounding areas; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the staff report, and applicant's testimony that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the proposed amendment to binding element #10, which shall read as follows:

10. A. The materials and design of proposed structures shall be substantially the same as depicted in renderings presented at the time of Detailed District Development Plan approval for each parcel. The building materials and design of proposed structures on each parcel shall be determined by the Planning Commission or a Committee thereof at a public meeting following required notice.
- B. An Architectural Review Committee shall be established by the Developer and shall be reflected within the Deed Restrictions recorded prior to the submittal of the first Detailed District Development Plan.

**The vote was as follows:**

**YES: Commissioners Brown, Lewis, and Jarboe.**

**NO: No one.**

**NOT PRESENT: Commissioners Blake and Turner.**

**ABSTAINING: No one.**