

**Planning Commission Minutes
June 20, 2013**

Public Hearing

CASE NO. 17756

NOTE: Commissioner Burns returned at 2:45 p.m. and was present to hear and vote on this case.

Project Name: Westport Apartments
8211 Westport Road

Owner/s: James Wallace Van Cleave Trust
Richard M. Van Cleave, Trustee
1504 English Station Road
Louisville, KY 40299

Applicant: Lee Hasken, Faulkner Real Estate
9625 Ormsby Station Road
Louisville, KY 40223

Representative: William B. Bardenwerper
Bardenwerper, Talbott & Roberts PLLC
1000 North Hurstbourne Parkway Suite 200
Louisville, KY 40223

Engineer/Designer: John Campbell
Gresham Smith & Partners
101 South Fifth Street Suite 1400
Louisville, KY 40202

Project Area/Size: 15.25 acres
Zoning District: R-4
Form District: Neighborhood
Jurisdiction: Louisville Metro
Council District: 7 – Ken Fleming

Staff Case Manager: **Julia Williams, 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. (Staff report is

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

Request:

A change in zoning from R-4 to R-6 is requested; also a Variance and a District Development Plan.

Agency Testimony:

02:27:47 Julia Williams presented the case and showed a Power Point presentation, which included maps and photos of the site and the surrounding area (see staff report for detailed presentation.)

02:33:54 Commissioner Hughes asked why it was necessary for two of the units to request a Variance to increase the building height from 35' to 40' and 50'. Ms. Williams said she would defer this to the applicant, but added that there are some topographical features on the site that can allow for a height split of those structures. Commissioner Blake said he recalled from LD&T that the lower levels of those buildings were like a "walk-out basement" type of design.

02:35:07 Ms. Williams mentioned that there are a couple of items in the staff report, as well as some additional items which she handed out to the Commissioners before the meeting, that were submitted by the Portland Christian School, the City of Plantation, and an e-mail from Mr. Priddy that should be addressed by the applicant. Some of these items came in to staff after the staff report had been completed.

02:36:14 Commissioner Scheer asked if there had been any comment received from the Islamic School. Ms. Williams said she had not received anything from them.

The following spoke in favor of this request:

William B. Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway Suite 200, Louisville, KY 40223

Jon Henney, Gresham Smith & Partners, 101 South Fifth Street Suite 1400, Louisville, KY 40202

Greg Oakley, P.O. Box 7368, Louisville, KY 40257

Jamie J. Jaxon, 1520 Prudential Drive, Jacksonville, FL 32207

Bryan Kiesewetter, 9625 Ormsby Station Road, Louisville, KY 40223

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Summary of testimony of those in favor:

02:36:19 Bill Bardenwerper, the applicant's representative, also showed a Power Point presentation (see applicant's booklet for detailed presentation, on file.) He said this is an area of Westport Road between the interchange and the Snyder Freeway which now carries significant volumes of traffic. He said he will present some traffic information later, but this proposal never rose to the level where the applicant was required to do more than a trip generation and distribution analysis.

02:39:31 Mr. Bardenwerper said the applicant had an additional meeting with representative of the City of Plantation, who had significant concerns about traffic along Westport Road. He said the applicant also had a meeting with Louisville Metro Transportation and State Highway Department District 5 representatives, who expressed no concerns about additional traffic.

02:42:48 Mr. Bardenwerper discussed a legal issue that had come up at LD&T about legal rights to access. He produced an e-mail from the County Attorney's office stating that the Faulkner property has access to the right-of-way of Old Westport Road and out to Westport Road.

02:44:56 Mr. Bardenwerper discussed the applicant's plans to restore the old farmhouse and preserve the springhouse. There is a binding element proposed that relates to this.

02:47:41 Jon Henney, with Gresham Smith & Partners, discussed two buildings that are proposed to be higher than the others. He said that, because of the topography, one side of the buildings would be three stories and the other side would be four. He showed a cross-section rendering of the structures and their relationship to the hillside. He discussed tree canopy preservation, the landscape buffer, the greenspace on the property, and the proposed four-board horse fence.

02:52:01 Mr. Bardenwerper displayed the trip generation information, and also a letter from MSD related to drainage.

02:53:22 Mr. Bardenwerper read three applicant-proposed binding elements into the record as follows:

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- 1) A four-board horse fence shall be installed along the perimeter of the property as shown on the diagrams presented at the June 20, 2013 public hearing.
- 2) The final landscape plan, notably the entryway from Old Westport Road, shall be consistent with the landscape concept plan presented at the June 20, 2013 public hearing.
- 3) The historic main house shall be restored as presented at the June 20, 2013 public hearing.

02:56:46 Commissioner Hughes asked if the four-story buildings would be much taller than the three story buildings, or if they would roughly equal out in height. Mr. Henney explained the topographical situation of the property. He said that, relative to the buildings surrounding it, it should be about the same height.

02:58:37 Commissioner Tomes asked if there was a topographical diagram available. Ms. Williams said the development plan has the topography on it. She showed the plan to the Commissioners.

02:59:07 Ms. Williams asked about a small discrepancy she had noticed on the development plan – the applicant had indicated a 10-foot walkway along the Old Westport Road entrance, but the development plan shows five feet. Using the aerial photo with the site plan superimposed, Mr. Henney pointed out a “circuitous” 12-foot walkway that was recommended as part of the Westport Corridor Study, and then indicated the 10-foot section of the walkway. Mr. Bardenwerper said the multi-use path would be wider than the sidewalk, which would be comparable with the rest of the sidewalks in the development. After some discussion, it was determined that the labeling on the development plan is correct. Commissioner Tomes concurred that the five-foot section would save trees.

The following spoke in opposition to this request:

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

Brainard Palmer-Ball, Jr., 8207 Old Westport Road, Louisville, KY 40222

Chris Palmer-Ball, 400 East Main Street #200, Louisville, KY 40202

Summary of testimony of those in opposition:

03:01:25 Stephen Porter said his principle client is the owner of an adjacent property (Mr. Fred Booker, a member of the Palmer-Ball family.) He said that, as

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the adjacent neighbor, Mr. Booker has no issue with the taller buildings since they are further away from his property, and the other buildings have been moved away from his property.

03:04:56 Mr. Porter discussed the controversy about the access to Old Westport Road. He said there is a portion along that access that is owned by the Palmer-Ball family that the developer is going to have to cross to get to Old Westport Road. He said his client disputes the County Attorney's findings, but added that this would have to be decided in a venue other than Planning Commission hearing.

03:05:40 Mr. Porter said there is great concern about stormwater, sewage and drainage. He said there are already problems in this area, especially up near Plantation, with insufficient sewage facilities. Using an aerial photo of the site, he pointed out an area known as "The 15", which is an undeveloped 15-acre tract of woods that has overflow/stormwater drainage problems.

03:07:18 He said the Palmer-Ball family is concerned about blasting and how that could affect springs in the area. Also, his client and the Portland Christian School are concerned about buffering and fencing. They are concerned that a four-board fence will not be sufficient to keep children from leaving the Portland Christian School property; also, the farm behind the property is an active farm with heavy equipment. Mr. Porter said his client is requesting a solid, "un-climbable" fence on the north and east sides, both for buffering and safety reasons.

03:11:11 Brainard Palmer-Ball Jr. used aerial photos of the site and the surrounding area to describe the history of the Westport Road Corridor area. He spoke at length about the importance of preserving undeveloped land.

03:21;10 Mr. Palmer-Ball discussed the Westport Road Corridor Plan and its recommendation that this piece of property had the potential to be developed as multi-family residential. He said that many of the people on the panel for this Plan were "surprised that this recommendation was there." He added that the Planned Development District "has not come to fruition."

03:25:18 Mr. Palmer-Ball discussed "cumulative impacts" of this project on the environment, and a related proposed project The Paddock at Sawyer Park) which could add to those impacts.

03:27:41 Chris Palmer-Ball reiterated what Mr. Porter had said about the sewer issues. He said the pump station at Goose Creek and Westport Road has

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not resolved stormwater overflow problems, and there have been overflow problems ever since the station was installed in the mid-1990's. He said he has met with MSD recently and was told by them that they are "rehabilitating the area that feeds into this pump station"; however, they also said that it may be two years before that rehabilitation is complete. He said he does not see how such a large development can be approved before this work is completed. He said there is an abandoned channel on his property "that is basically a sewage cesspool", and he is having a hard time getting anyone from MSD to address this situation.

03:29:22 Mr. Palmer-Ball said he is also concerned about runoff. He asked how this development could be approved without some type of retention basin or something to control the water. He said this will cause "major" erosion on his property. He said he has discussed this with MSD as well, but got no solution. He said Mr. Bardenwerper referred to the creek as a drainage ditch, which is incorrect. He said there is an artesian spring on his property which his family uses for irrigation and also bottles and sells. He said there is also a spring on the subject site that may be tied to their water supply, and he is very concerned about how blasting may disrupt the flow.

03:32:10 Mr. Porter resumed the podium and emphasized that the apartment complex needs to be separated from the school, the farm, and the Booker Property, and that the horse fence was not adequate. He described an example of a farmer whose insurance was cancelled because the insurance company stated that there could not be a farm with cattle next to a subdivision.

The following spoke neither for nor against the request:
Becky Peak, P.O. Box 22698, Louisville, KY 40252

Lee Hasken, 6515 Forged Way, Georgetown, IN 47122

Jim Lowry, 1735 West Beckley Station, Louisville, KY 40245

Summary of testimony of those neither for nor against:

03:34:10 Becky Peak, Mayor of the City of Plantation, reviewed the official letter from the City of Plantation (letter is on file.) She said the City's primary concerns are accessibility and connectivity; the maximum height of the tallest buildings are taller than anything else in the area; the lack of on-site detention could cause downstream flooding; sanitary sewer capacity is apparently already exceeded; and traffic impacts. She strongly recommended that a future traffic study of the entire Corridor be required, so that, as the area continues to develop, there is realistic, usable data from which to require the developer to

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contribute over time. She said that the City council feels that the proposal being presented today is better than the proposal presented in October. She also said that the City of Plantation had contacted the Van Cleave family about two years ago regarding potential uses of their land.

03:39:34 Ms. Peak said she has contacted MSD and spoke with them about improvements to the pump station, and was told by MSD that there are plans to upgrade the pump station in 2024.

03:40:02 She spoke about proposed Planned Development District for the Plantation Center (on page four of the Westport Corridor Small Area Plan.)

03:41:55 Commissioner Tomes and Ms. Peak discussed sidewalk connectivity, particularly through the Portland Christian School property. Commissioner Tomes said that, on the plan, the applicant has shown a sidewalk that stubs up to the Portland Christian School property. He said he did not think that this developer has a "condemnation right" to build a walk through private property. Commissioner Scheer added that Portland Christian School has stated that they had some safety and security concerns and did not want connectivity.

03:44:06 Lee Hasken was called but declined to speak.

03:44:16 Jim Lowry said he is a board member of the Portland Christian School and was asked to speak today on behalf of the school. He said the school is very concerned about people coming from the apartment complex onto the school property. He reiterated that the school wants a solid fence along the property line; also, a locked gate at the sidewalk stub.

03:46:11 Commissioner Blake said Mr. Porter had mentioned a chain-link fence and asked Mr. Hasken if that was what he was requesting. He said a chain-link fence was acceptable, but had reservations about where it would be located. He and Commissioner Kirchdorfer discussed the sidewalk stub and the possible location of any fencing.

Rebuttal:

03:49:50 Mr. Bardenwerper discussed the Westport Road Corridor Small Area Plan and said the applicant is following the recommendation of the plan. He said the applicant does have access, and this has been determined by the County Attorney's Office. He said the applicant had their neighborhood meeting at Portland Christian School and there has been dialogue with them about the fence issue. Using the aerial photo of the site and the plan, he pointed out the

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“substantial” vegetative screening and buffering that will be along the property lines, and particularly along the driving lanes. He said the applicant has agreed to increase the size of the four-board fence to a five-foot tall, five-board horse fence. He said this, along with the increased landscaping, should better protect the Palmer-Ball family property in particular. Mr. Bardenwerper said the stub is not a sidewalk, but a 12-foot wide multi-use path which the applicant was requested to put there.

03:54:48 Mr. Bardenwerper discussed the preservation of the historic home. Regarding the height issue, he said the applicant was encouraged to go up and away from the adjacent properties, rather than not have an additional story and cover more ground. He said the site design is deliberately set back away from the creek to protect it. He maintained that, according to the trip generation estimates, there is not much traffic impact from this development; that is why the applicant was not asked to do a traffic study. He said the applicant set up their own meeting with representatives from KTC and Louisville Metro Public Works and they said they were satisfied with what they had seen and that the highway has the capacity. Mr. Bardenwerper said there is no detention basin on the site because that call is made by MSD. He said MSD asked the applicant to pay the regional facility fee rather than provide a detention basin. Regarding the sanitary sewer issue, he said the applicant has a reservation letter from MSD stating that there should be capacity for this project.

03:58:25 Commissioner Tomes asked for further information about the overflowing manholes. Pat Barry, representing MSD, said MSD is aware of the issue of the overflowing manholes on the Palmer-Ball property. He said MSD has met with the family. He said there is a letter in the file from June 5, 2013 from MSD's attorney, Scott Porter, which was sent as a follow-up to a meeting with the family. He gave specific details about the sewer line and the areas it serves. He said this is an older sewer pipe that needs to be replaced. He said that, in the fall of 2013, MSD is going to rehabilitate that entire system, with the work being completed by the end of 2014. He said that fixing this system should reduce or eliminate a lot of the drainage issues, improve capacity, and reduce the amount of overflows on the Palmer-Ball property. He said work has been done on the Goose Creek pump station to increase the capacity.

04:00:55 Regarding drainage, Mr. Barry said it is MSD's call whether a site contains a detention basin or not. He described in detail the water flow patterns on the site and the surrounding areas.

04:02:22 Commissioner Scheer asked about blasting and how that could affect adjoining areas. Mr. Bardenwerper said blasting is regulated by the State,

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and include pre-blast surveys on properties within certain distances. Anyone who does blasting must also be insured. Greg Oakley, one of the applicants, said they are still setting finished floor elevations, which will determine the exact location of the blasting. He said mass rock excavation will be minimized due to the site design (they are designing around the sub-surface report.)

04:04:23 In response to a question from Commissioner Burns, Mr. Barry clarified some points about the planned sewer rehabilitation.

04:05:29 Commissioner Burns asked for further clarification about a binding element that mentions a \$10,000 contribution for improvements to an existing bridge on Old Westbrook Road. Mr. Oakley said they have had several discussions with Metro Public Works, which suggested possible guardrails and safety improvements on the bridge, but no road-widening. The funds would be used for deferred maintenance work.

04:07:03 Mr. Chris Palmer-Ball said he was part of the Westport Road Corridor Small Area Study committee. He said that, at the time, this site and the Portland School site were for sale. Mr. Van Cleave had stated that he was going to sell his property. He said the idea at the time was to tie these two properties and the frontage of the Louisville Indoor Racquet Club together and have a road come from Bayberry Place through those properties to connect to the existing centers in Plantation, to revitalize that area. He said the committee looked at this area as a whole, not as separate pieces of properties. That is how the committee evaluated it.

04:08:40 Regarding the neighborhood plan, Ms. Williams said this portion was supposed to be part of a whole planned development between the Racquetball Property and the Portland Christian School. This never came to fruition.

04:09:42 Commissioner White asked Mr. Barry if the work that MSD is planning is "guaranteed" to fix the runoff problem. Mr. Barry said there is no question that rehabilitating that sewer system will have a positive impact on the downstream overflow.

04:10:33 Commissioner Burns asked Mayor Peak for clarification about what the general feeling is about the project from the City of Plantation. Ms. Peak said the City Council knows that some sort of development will happen on this property and are not happy about it; however, since it is going to happen, they wanted to try to make the best of it. She said the Council wanted to make sure that their issues were brought to the attention of the Planning Commission.

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Discussion:

04:12:59 Commissioner Hughes said she still had some concerns about the sewer capacity and the overflow problems. She asked what would happen if MSD completed the work and there is still a problem. Mr. Barry explained that the pump station in Goose Creek is the issue. He said that, in 2024, that entire pump station will be upgraded to handle more flow. He said this project will be included in an evaluation to see what the effect of the flow is on the pumping station.

04:14:54 Commissioner Kirchdorfer said he liked the architecture and the site design, particularly the tree preservation and screening. He said he approved of MSD's goals and efforts. Regarding fencing issues, he said some of that is dependent on the adjoining property owners – if they have security concerns, they should consider fencing on their own properties in addition to what the applicant is proposing. The proposed 5-foot fence seems to meet requirements.

04:17:19 Commissioner Tomes said he did not have a problem with the land use, and this seems to be a location that has little opposition. However, he said he appreciated the Palmer-Ball family's concerns, and their work with land preservation. Regarding the proposed five-foot fence, he suggested "hog wire" on one side of the fence to close gaps between the boards and keep the fence from being climbable. He said traffic was not a concern to him, but speeders along Westport Road *are* a concern.

04:21:34 Commissioner Scheer said he also appreciated the Palmer-Ball family's efforts to preserve and farm their land. However, he said it is evident that this site will be developed at some time in the near future and this plan seems to be a good use of the land. He said at first the fence was a big issue for him, but he now feels that the five-foot split-rail fence is an adequate "deterrent". He said it is incumbent on the school to provide fencing and security for their own playground. He said that, if traffic does become a problem in the future, there are steps that can be taken to order a traffic study in order to get a traffic light, etc. He said he was satisfied with the traffic study and the building height variance request.

04:23:40 Commissioner White said he liked the architecture and also approved of the five-foot fencing, preferably with hog wire and/or plantings to prevent climbing. Regarding the MSD issues, he said 2024 is a long time to wait

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for the pumping station to be rehabilitated. He said he is still concerned that this development will cause additional runoff that will tax the system.

04:24:59 Commissioner Blake said he felt both the land use and the location are appropriate. He said he felt the five-foot fencing is sufficient. He said he also felt that no one can “guarantee” no flooding, but MSD has clearly stated what work they are doing and that it should positively improve the situation. He said he felt the topographical features mitigated the additional height.

04:28:28 Commissioner Kirchdorfer asked if any Commissioners had any comments about the sidewalk/path stub from this site into the Portland Christian School property. With the fencing across it, it would become “the stub to nowhere”. Commissioner Scheer suggested an added binding element that would stop the stub 50-feet short of the fence, and that, in the event of future development or connectivity, it could be extended.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 20, 2013 public hearing proceedings.

Zoning

On a motion by Commissioner Tomes, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intent of Guideline 1 – Community Form. The subject property is located in the Suburban Neighborhood Form District which is characterized by predominately residential uses that vary from low to high density and that blend compatibility into existing landscape and neighborhood areas; high density uses are supposed to be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas; and this Suburban Neighborhood Form District is also supposed to contain diverse housing types in order to provide housing choice for differing ages and incomes; and

WHEREAS, the Commission further finds that the proposed apartment community for the subject property will be in the low end of the high density

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range, but that is appropriate, as stated, because of its location along a major arterial in close proximity to interstate highway interchanges and to areas of shopping, worship, schools and employment; other community facilities are also located in close proximity with easy access to and from this site; and therefore, this application fully complies with this Guideline of the Comprehensive Plan; and

WHEREAS, the Commission further finds that the Intents Guideline 2 - Centers are to promote efficient use of land and investment in existing infrastructure; to lower utility costs by reducing the need for extensions; to reduce commuting time and transportation-related air pollution; to provide an opportunity for a mixture residential development that includes housing types and building styles that accommodates people of different ages and incomes and that are compatible with existing neighborhoods; and to provide vitality and a sense of place in neighborhoods and the community; this application complies with these Intents of this Guideline, among other reasons set forth herein below, because infrastructure such as roads, sewers and the like, are already available; because of the recent Westport Road improvements and new interstate interchange near Lyndon Lane and Herr Lane, and with easy access to the Snyder Freeway at the Westport Road/Snyder Freeway interchange, this proposed apartment community helps with commuting distances and time and thus tends to improve the overall air quality by reducing commuting times and distances; this proposed apartment community provides for the mixture of residential housing types that the Comprehensive Plan commends, and by "filling in the in-fill", it helps create a better neighborhood; and this development is located between two places of worship and near several schools, it helps by locating people interested in rental housing locate near where people worship and educate their children and shopping is also located nearby; and

WHEREAS, the Commission further finds that the Policies 4 and 5 of this Guideline appear to apply to this application in that they encourage compact, mixed or compatible development and uses; this is a vacant site located between two places of worship, across Westport Road from a large residential neighborhood and just down Westport Road, east and west of shopping, schools, other community facilities and places of employment, like Eastpoint Business Park, Hurstbourne Green, Shelbyhurst and the Ford Truck Plant and therefore, it fills in the in-fill, so to speak and adds to the mixture of compatible uses; and

WHEREAS, the Commission further finds that Policy 12 encourages developments, larger but perhaps also of this size, to include a focal point; and the focal points in this proposed apartment community will be the old historic home that will be lovingly restored plus the spring house that will be treated in much the same manner; the PowerPoint presentation shown at the public

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hearing demonstrates the areas where these features will be retained and how they will be preserved as focal points for this proposed apartment community and the larger area; and

WHEREAS, the Commission further finds that Policy 16 encourages alternative transportation modes; this proposed apartment community is located along a major arterial, which includes a bus route, and because bicycle facilities and sidewalks are also located in the area and along the frontage of this community, this application also complies with this Policy of this Guideline; and

WHEREAS, the Commission further finds that the Intents of Guideline 3 – Compatibility are to allow a mixture of land uses and densities near each other as long as they are designed to be compatible with each other; to prohibit the location of sensitive land uses in areas where accepted standards for noise, lighting, odors and similar nuisances could be violated or visual quality could be diminished; and to preserve the character of existing neighborhoods; this application complies with the Intents of this Guideline, among other reasons as set forth below, because it does indeed add a higher density residential use to a mostly lower density residential area; as noted hereinabove, high density residential uses are encouraged along major arterials like the recently widened and improved Westport Road; and as shown in the PowerPoint presentation which was shown at public hearing, the lay-out of this proposed apartment community saves green spaces and especially saves the old historic structures noted above to assure that it is compatible with nearby neighborhoods; unlike commercial uses, an apartment community does not produce noise, lighting, odors or similar nuisances; after all, apartment community residents would be more impacted than neighbors by these kinds of impacts, so the developer has to be sure that they are fully mitigated for its own residents; and as a consequence of this and all else set forth herein below, the character of the existing neighborhood is preserved; and

WHEREAS, the Commission further finds that Policies 1, 2 and 3 of this Guideline pertain to compatibility of different land and building design, use of building materials, densities, buffers and so on; the PowerPoint presentation shown at the public hearing, demonstrates compatibility in a number of ways including lots of open space, and that becomes easier when three-story, as opposed to just two-story, buildings are used, as they are here; that allows more land to accomplish other important objectives, such as saving the old historic home and springhouse as noted above; building materials will be high quality masonry products with some modest use of other maintenance free materials; the designs of these buildings as shown at the public hearing and this narrative

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explain residential compatibility; and nearby buildings are probably not built to the quality of that which has been proposed here; and

WHEREAS, the Commission further finds that Policies 5, 6, 7, 8 and 9 of this Guideline pertain to impacts such as odors, traffic, noise, lighting and visual impacts; this residential community would not ordinarily produce, and is not expected to produce odors, noise, lighting and other visual impacts; and traffic, as shown on the trip generation numbers, is also minimal, especially relative to the size and capacity of the new Westport Road; and

WHEREAS, the Commission further finds that Policies 10, 11, 12, 13, 14, 15 and 16 of this Guideline all pertain to housing types, including density in appropriate areas, and the importance of appropriate/inclusive housing; this proposed apartment community, while intended to be upscale, is also expected to be affordable enough so that it doesn't just market itself to the very highest income type renters; that is not to say that it is going to be a subsidized type rental housing community, but rather that, because there is a large range of rental needs within this community, this particular proposed apartment community is expected to include upper range rents, just not at the very upper end, rather somewhere short of that, while not sacrificing quality; indeed because of the location of this proposed apartment community near large acreage preserved in perpetuity for agriculture/conservation purposes and because of some of the extraordinary features of this site which will be preserved, such as the historic home and spring house, it could be that, in the end, this apartment community attracts only the highest demographic group of renters; in the end, the market will determine the rental profile and rental rates; and naturally this community will welcome the elderly and handicapped; and

WHEREAS, the Commission further finds that Policies 21, 22, 23 and 24 of this Guideline are intended to deal with transitions, buffers, setbacks and minimizing the impacts of parking; as can be seen from the development plan, especially the colored site plans that were part of the PowerPoint presentation shown at the public hearing, parking is distributed throughout the apartment community and not located in just one central place which helps to distribute the impacts of parking; and transitions, buffers and required setbacks as set forth in the Land Development Code are met; and

WHEREAS, the Commission further finds that the Intent of Guideline 4 – Open Space and Policies 1, 2, 3, 5, 6 and 7 of this Guideline all pertain to open space, natural resources and the design and maintenance of same; this proposed apartment community, as explained above, will include significant open space, especially the two historic elements that are two important focal points as clearly

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evidenced in the PowerPoint shown at the public hearing; the look of those historic features today and how they will be rehabilitated and maintained by the apartment owner, is partly shown in that PowerPoint presentation; and sidewalks and access between those open spaces should also be plainly visible; and

WHEREAS, the Commission further finds that the Intent of Guideline 5 – Natural Areas, Scenic and Historic Resources and Policies 1, 2, 3 and 4 of this Guideline pertain, in a way similar to Guideline 4, to natural features, historic resources and the like; as shown in the images contained in the PowerPoint presentation presented at the public hearing, the important natural features/historic resources, notably the historic home and spring house, will be maintained and rehabilitated so that they are preserved for posterity, and how they look today and how at least the main residential structure is anticipated to look in the future are contained in those PowerPoint images as were discussed in detail at the public hearing; and

WHEREAS, the Commission further finds that the Intents of Guideline 6 – Economic Growth and Sustainability are, among other things, to ensure the availability of necessary usable land to facilitate residential development and to reduce public and private cost of land development; this proposed apartment community complies with this Guideline, as it does with all the others, in this instance because it is, as stated above, a new apartment community in an area where new apartment communities have not recently been developed and that will help address the significant rental demand that exists here, as it does elsewhere in Metro Louisville; and because infrastructure is located at this site, most notably the recently rebuild Westport Road and nearby Westport Road/I-264 interchange, developing at this in-fill location helps reduce the public and private costs for land development; and

WHEREAS, the Commission further finds that the Intents of Guidelines 7 and 8 – Circulation and Transportation Facility Design, are to provide for safe and proper functioning of street networks; to ensure that new developments do not exceed the carrying capacity of streets; to ensure good internal and external circulation; to address congestion and air quality; to provide for safe and convenient accommodations with special mobility requirements of elderly and handicapped; and to provide an efficient, safe and attractive system of roadways, transit roads, sidewalks and pathways; this proposed apartment community addresses all of these Intents of this Guideline, among other reasons because the new Westport Road can easily accommodate the added relatively small amount of additional traffic from this proposed development; Westport Road was improved in part because of carrying capacity problems that previously existed, but also to ensure better means of access across the community; locating an apartment community

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at this subject property, near the referenced interstate interchanges, helps move traffic to and from this site around the larger community in a relatively easy manner; Westport Road surely is not at capacity, given that it is brand new; the engineering firm (GS&P) that has worked on this plan has also made certain that internal and external circulation and access are well designed within the parameters of Metro Works' transportation design manual; public transportation, to the extent it exists now or in the future along Westport Road, will have access to residents in this proposed apartment community; by locating this apartment community at an in-fill site with easy access to an arterial road and interstate interchanges, helps address transportation-related air quality issues in this community; this plan has been designed to address any requirements of the elderly and physically challenged; and the setback along Westport Road, the provision of sidewalks and pathways and the protection of significant resources, such as the historic buildings, and preservation of open space around them help protect and enhance the public enjoyment of attractive corridors; and

WHEREAS, the Commission further finds that Policies 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Guideline 7 all pertain to specific design requirements to ensure transportation impact mitigation, appropriateness of the local transportation network, adequacy of parking and specific site design in accordance with Metro Works' Transportation design manual; the development plan, through the expert testimony of consulting engineering firm of GS&P, demonstrates compliance with all of these Guidelines; and this development plan received the preliminary stamp of approval from Transportation Planning, thus demonstrating compliance with all of these Policies of this Guideline; and

WHEREAS, the Commission further finds that Policies 4, 5, 7, 8, 9, 10 and 11 of Guideline 8 raise many of these same issues; the answer to the question of compliance is that the detailed development plan evidences compliance of all the Metro Works' transportation design manual requirements; and this development plan received the preliminary stamp of approval from Metro Works; and

WHEREAS, the Commission further finds that the Intents and Policies of Guideline 9 – Bicycle / Pedestrian Transit are to assure bicycle access, pedestrian safety and the accommodation of mass transit; and the development plan accompanying this application addresses all of those requirements; and

WHEREAS, the Intents and Policies of Guideline 10 – Flooding and Stormwater are to assure that flooding and storm water are addressed; to the extent that the creek along Westport Road ever floods, it is because of storm water management issues; at time of filing, MSD had not required the applicant and its engineers to include detention on the development plan and that is because

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sometimes it makes more sense for storm water to immediately enter an existing storm water system, such as the creek along this property's frontage; and as with Metro Works, MSD gave its preliminary stamp of approval to this development; and

WHEREAS, the Commission further finds that the Intent and Policies of Guideline 11 – Water Quality are to assure that water quality is not degraded due to water pollution and erosion; the normal way that this Guideline is addressed is through construction plan and actual construction compliance with the soil erosion and sedimentation requirements of MSD which this applicant will fully comply; and

WHEREAS, the Commission further finds that the Intents and Policies of Guideline 12 – Air Quality are to support an efficient land use pattern that reduces trip distances between work, shopping and home and to encourage development with densities that encourage mass transit; because this application is for an apartment community in the lower end of the high density range along a major arterial with easy access to interstate interchanges, this application addresses all of these Intents and Policies of this Guideline in exactly the way that it is supposed to; and by promoting higher density at an in-fill location, such as this, near shopping, near schools, near places of worship, near places of work and along an arterial with easy access to the interstate, commuting times are reduced, and air quality benefits; and

WHEREAS, the Commission further finds that the Intents and Policies of Guideline 13 – Landscape Character are to protect and enhance landscape character; and this application complies with the Intents and Policies of this Guideline because it will fully comply with the Land Development Code and provide landscaping in addition where required or needed to mitigate adverse impacts on adjoining properties; and

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

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro that the change in zoning from R-4 to R-6 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

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YES: Commissioners Blake, Hughes, Burns, Tomes, Kirchdorfer, and Scheer.

NO: No one.

NOT PRESENT: Commissioners Proffitt, Turner, and Jarboe.

ABSTAINING: Commissioner White.

Variance

On a motion by Commissioner Tomes, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the Variance was requested because the applicant listened to people who attended the neighborhood meeting and their professional representatives that they would prefer taller fewer buildings and less ground coverage than more shorter buildings and greater ground coverage; and

WHEREAS, the Commission further finds that the requested variance will not adversely affect the public health, safety or welfare because taller buildings allow the applicant to increase open space, save more trees and protect more environmental resources; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity because the taller buildings are setback significant distances from adjoining properties, and in any event on one side is the 5-lane Westport Road, on another side is an Islamic worship center and school and another side is the former Our Mother of Good Counsel Catholic Church and School/now Portland Christian School, on the other side is mostly large open fields; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or a nuisance to the public for all the reasons set forth above, notably the facts that there are no real close low rise single family homes that will be affected; and

WHEREAS, the Commission further finds that the requested variances will not allow an unreasonable circumvention of the requirements of the zoning regulations because the overall objective is not to cram in more units but rather to utilize the property at a density that also works with lower rise buildings but in this instance instead saves land for open space, tree and cultural protection; and

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WHEREAS, the Commission further finds that the variance arises from special circumstances, which do not generally apply to land in the general vicinity given that, as noted above, this site is not surrounded by low rise single family homes, and it also includes trees and environmental/cultural features worthy of protection; and

WHEREAS, the Commission further finds that 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 because the applicant would otherwise have to utilize more ground to accommodate the same amount of density yield which is essential to the economics of this proposed project; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought but rather are the result of trying to address preferences expressed by neighbors and their professional representatives and to preserve the environmental and cultural amenities; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification, 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 requested Variance from Variance from 5.3.1.c.2 Table 5.3.1 to increase the building height from 35' to 40' and 50' as noted on the plan (5' and 15' Variance).

The vote was as follows:

YES: Commissioners Blake, Hughes, Burns, Tomes, Kirchdorfer, Scheer, and White.

NO: No one.

NOT PRESENT: Commissioners Proffitt, Turner, and Jarboe.

ABSTAINING: No one.

Development Plan

On a motion by Commissioner Tomes, the following resolution was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal indicates preservation of trees, steep slopes, scenic views, and a historic site; and

WHEREAS, the Commission further finds that there are two vehicle entrances to the site and sidewalks are provided throughout. A multi-use path is also proposed for greater neighborhood connectivity; and

WHEREAS, the Commission further finds that scenic open space is provided along Westport Road while interior recreational open space is also provided for the apartment community; and

WHEREAS, the Commission further finds that drainage issues with the proposal and the adjacent properties have been resolved; and

WHEREAS, the Commission further finds that the site design is compatible with the existing development in the area as the buffers are being provided per LDC requirements. A larger buffer area with existing trees is provided along the frontage on Westport Road to screen the apartments and provide continuity of character along Westport Road; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification, 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 requested Detailed 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 not exceed 357,000 square feet of gross floor area.

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3. No outdoor advertising signs, pennants, balloons, or banners shall be permitted on the site.
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
7. 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

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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.

8. The property owner shall provide a cross over access easement if the property to the north is ever developed. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 20, 2013 Planning Commission meeting.

10.A \$10,000 contribution for improvements will be required for the existing bridge on Old Westport Road. No construction traffic or other heavy vehicles will be permitted to use this bridge.

Binding Elements added at the June 20, 2013 Planning Commission public hearing:

- 11.A five –board, five-foot-tall horse fence shall be installed along the perimeter of the property as shown on the diagrams presented at the June 20, 2013 public hearing.
- 12.The final landscape plan, notably the entryway from Old Westport Road, shall be consistent with the landscape concept plan presented at the June 20, 2013 public hearing.
- 13.The historic main house shall be restored as presented at the June 20, 2013 public hearing.

The vote was as follows:

YES: Commissioners Blake, Hughes, Burns, Tomes, Kirchdorfer, Scheer, and White.

NO: No one.

NOT PRESENT: Commissioners Proffitt, Turner, and Jarboe.

ABSTAINING: No one.