

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
August 7, 2014**

A meeting of the Louisville Metro Planning Commission was held on Thursday, August 7, 2014 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Commission members present:**

Donnie Blake, Chair  
Jeff Brown  
David Tomes  
Vince Jarboe  
Robert Kirchdorfer  
Robert Peterson  
Clifford Turner (arrived after vote on minutes)

**Commission members absent:**

David Proffitt, Vice Chair  
Chip White  
Carrie Butler

**Staff Members present:**

Emily Liu, Director, Planning & Design Services  
John G. Carroll, Legal Counsel  
Jonathan Baker, Legal Counsel  
Jessica Wethington, Planning Information Specialist  
David Wagner, Planner II  
Joseph Reverman, Planning Supervisor  
Matthew Doyle, Planner I  
Christopher Brown, Planner II  
Tammy Markert, Transportation Planning  
Sharonda Duerson, Management Assistant (sign-ins)  
Chris Cestaro, Management Assistant (minutes)

**Others:**

The following matters were considered:

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**Approval of Minutes**

**July 17, 2014 – 1:00 p.m. Planning Commission Regular Meeting**

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

**RESOLVED**, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on July 17, 2014.

**The vote was as follows:**

**YES: Commissioners Brown, Tomes, Jarboe, and Peterson.**

**NO: No one.**

**NOT PRESENT: Commissioners Turner, Proffitt, White, and Butler.**

**ABSTAINING: Commissioners Blake and Kirchdorfer.**

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**Public Hearing**

**Case No.14DEVPLAN1033**

**NOTE: This case was CONTINUED from the June 4, 2014 DRC Meeting**

**Project Name:** Park Community Federal Credit Union  
**Location:** 7710 Bardstown Road & 7509 Cedar Creek Road

**Owner:** Bardstown 4801 LLC  
Kenneth Sims, Representative  
4813 Bardstown Road  
Louisville, KY 40291

**Applicant:** Mike Christensen  
K4 Architecture  
555 Gest Street  
Cincinnati, OH 45203

**Representative:** Deborah Bilitski  
Wyatt, Tarrant & Combs, LLP  
500 West Jefferson Street Suite 2800  
Louisville, KY 40202

**Engineer/Architect:** Kevin Young  
Land Design & Development, Inc.  
503 Washburn Avenue  
Louisville, KY 40223

**Jurisdiction:** Louisville Metro  
**Council District:** 22 – Robin Engel

**Case Manager:** **David B. Wagner – Planner II**

**Request:**

Revised General and Detailed District Development Plans and Amendment to Binding Elements.

**Agency Testimony:**

00:04:21 David Wagner presented the case and showed a Power Point presentation.

00:11:20 Mr. Wagner discussed changes to binding elements regarding cross-access between Tracts 1 & 2. After consultation with the applicant and the

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adjoining property owners to the south, it was proposed to strike Binding Element #4E, and to revise the first sentence of Binding Element #8 to read as follows:

**The property owner shall provide a crossover access easement if the property to the north and south are ever developed for a non-residential use, and if cross-access is required to be provided on the adjacent property development plan.**

The second sentence of Binding Element #8 would remain the same.

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

Deborah Bilitski, Wyatt Tarrant & Combs, 500 West Jefferson Street Suite 2800, Louisville, KY 40202

Kevin Young, Land Design & Development, Inc., 503 Washburn Avenue , Louisville, KY 40223

Steve Loft, 4511 Corning Court, Louisville, KY 40299

Jeff Klump, 555 Gest Street, Cincinnati, OH 45203

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

00:14:19 Deborah Bilitski, the applicant's representative, gave a summary of the case and explained some developments that have occurred since the June, 2014 DRC meeting. She explained some difficulties that had occurred with obtaining a cross-access with an adjoining property owner.

00:18:24 Ms. Bilitski proposed that the applicant will provide a cross-access connection if required for the property to the south. She said that, if a connection is made, it will be up to the applicant/developer how it will be routed through the site. She also discussed connection/s to properties to the north.

00:21:42 Kevin Young discussed grading and some other landscape issues on the site that could also have bearing on cross-access.

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

Stephen Barry, Barry & Associates Architects, 2174 Baringer Avenue, Louisville, KY 40204

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

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00:22:58 Stephen Barry spoke on behalf of the opposition (Mr. Towery.) He explained elevation differences/grade changes on both pieces of property which could make installing a cross-access difficult and expensive for Mr. Towery.

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

No one spoke.

**Rebuttal:**

00:30:37 Ms. Bilitski discussed Mr. Barry's requests on behalf of Mr. Towery. She asked that the Planning Commission make a decision on the site plan today, with the understanding that the back portion of the development might change due to a later installation of cross-access.

00:33:10 The Commissioners, Mr. Young, Mr. Wagner, and Mr. Barry discussed the Cedar Creek connection and cross-connection. In response to a question from Commissioner Blake, Mr. Young noted that there are several ways for vehicular traffic to get through, even without this one particular cross-access to Mr. Towery's property. Mr. Wagner clarified that the development plan calls for connection on the north side of the Cedar Creek connector that is still open.

**Deliberation**

00:42:11 Commissioner's deliberation.

**An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

**Revised General and Detailed District Development Plans and Amendment to Binding Elements**

On a motion by Commissioner Peterson, seconded by Commissioner Turner, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that no natural features are to be found on the subject site. It is in an area of karst terrain and

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there are no evident existing karst features. The site is an existing church and parking lot and is fully developed; and

**WHEREAS**, the Commission further finds that the provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community. Transportation Review has approved the proposal's transportation facilities with a fee-in-lieu of the sidewalks along Cedar Creek Connector. Pedestrian connectivity will be provided by sidewalks throughout the site and along Bardstown Road. Cross-connectivity with adjoining non-residential lots to the north and south are provided and an internal drive will connect Bardstown Road to Cedar Creek Connector; and

**WHEREAS**, the Commission further finds that open space is not required for this proposal; and

**WHEREAS**, the Commission further finds that MSD has approved the drainage facilities for the site; and

**WHEREAS**, the Commission further finds that the proposal is compatible with the surrounding area as it will allow for vehicular and pedestrian cross-connectivity with future adjoining development to the north and south. Appropriate landscaping for the Parkway Buffer Area and Maximum Setback Alternative are provided along Bardstown Road; and

**WHEREAS**, the Commission further finds that the proposal conforms to the Comprehensive Plan and Land Development Code. The proposal is compatible with the surrounding area as it will allow for vehicular and pedestrian cross-connectivity with future adjoining development to the north and south. Neither the Comprehensive Plan nor the Land Development Code require the cross-access points to be located in a certain location for this proposal. Appropriate landscaping for the Parkway Buffer Area and Maximum Setback Alternative are provided along Bardstown Road; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact 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 Revised General and Detailed District Development Plans, **SUBJECT** to the following binding elements:

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**Binding Elements for Tracts 1 and 2 ONLY**

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. Prior to development (includes clearing and grading) of Tract 2, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. 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.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, 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 minor subdivision plat shall be recorded creating the lot lines and dedicating additional right-of-way as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - e. ~~A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created~~

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~~between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.~~

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 materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 4, 2014 Development Review Committee meeting.
8. **The property owner shall provide a crossover access easement if the property to the north and south are ever developed for a non-residential use, and if cross-access is required to be provided on the adjacent property development plan.** A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
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.

**The vote was as follows:**

**YES: Commissioners Blake, Kirchdorfer, Brown, Tomes, Jarboe, Peterson, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Proffitt, White, and Butler.**

**ABSTAINING: No one.**



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**Public Hearing**

**Case No. 14MOD1005**

**Project Name:** 8213 Shelbyville Road  
**Location:** 8213 Shelbyville Road

**Owner/Applicant:** Neal Campbell  
Hunt Real Estate Holdings  
502 Macon Avenue  
Louisville, KY 40207

**Representative:** N/A

**Jurisdiction:** City of Lyndon  
**Council District:** 18 – Marilyn Parker

**Case Manager:** **Matthew R. Doyle, Planner I**

**Request:**

Appeal of a Development Review Committee action that denied the applicant's request to delete a binding element.

**Agency Testimony:**

None

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

Neal Campbell, Hunt Real Estate Holdings, 502 Macon Avenue, Louisville, KY 40207

**Summary of testimony:**

00:50:07 Neal Campbell, the appellant, asked for a continuance of this case to allow him to seek legal representation.

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

No one spoke.

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

No one spoke.

**An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

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**Case No. 14MOD1005**

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

**RESOLVED**, the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the **September 4, 2014** regular meeting of the Louisville Metro Planning Commission.

**The vote was as follows:**

**YES: Commissioners Blake, Kirchdorfer, Brown, Tomes, Jarboe, Peterson, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Proffitt, White, and Butler.**

**ABSTAINING: No one.**

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**Public Hearing**

**Case No. 14DEVPLAN1044**

**Project Name:** King Louie's Place

**Location:** 598 & 600 North English Station Road

**Owner/Applicant:** Blind Squirrel, LLC  
15405 Crystal Springs Way  
Louisville, KY 40245

**Representative:** Deborah Bilitski  
Wyatt, Tarrant & Combs, LLP  
500 West Jefferson St Suite 2800  
Louisville, KY 40202

**Engineer/Designer:** Kevin Young  
Land Design & Development Inc.  
503 Washburn Ave Suite 101  
Louisville, KY 40222

**Jurisdiction:** City of Middletown

**Council District:** 19 – Jerry Miller

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

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

**Request:**

Appeal of a DRC action regarding Revised Detailed District Development Plan with landscape waiver and binding element amendments.

**Agency Testimony:**

00:53:46 Christopher Brown presented the case and showed a Power Point presentation.

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00:59:56 In response to questions from Commissioners, Mr. Brown said the date of the original application was April 7, 2014. He explained that the City of Middletown is using the 2004 version of the Land Development Code, and the differences between that and the most current version of the LDC. The City of Middletown can revise a binding element or choose not to adopt it, but cannot revise the CUP. He clarified the revisions being requested, and explained that, if a CUP expires, it has to be applied for again.

01:07:16 Deborah Bilitski, an applicant's representative, submitted to the Planning Commission that the only issue being decided today should be that which is being appealed, which is the CUP expiration.

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

Kirk O'Brien, 805 North English Station Road, Louisville, KY 40223

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

01:08:33 Kirk O'Brien, the appellant, handed out an information sheet regarding the reasons for his appeal (handed out by staff member Joe Reverman.) **The Commission took a 5-minute recess to read Mr. O'Brien's handout.**

01:13:33 Mr. O'Brien presented his appeal [on file]. Mr. Reverman said that Mr. O'Brien's exhibits were included in the Commissioners' packets that were mailed to them prior to today's hearing. Mr. O'Brien said that the CUP has expired because it has not been exercised.

01:17:31 Mr. O'Brien explained why he thought that a CUP expiration date cannot be extended through a binding element. He also said that the CUP only applied to a small area, not the entire site.

01:26:48 Mr. O'Brien discussed proposed binding element #34, and said it contradicts State Statute requiring a definite time limit for a CUP. He said binding element #33 requires that the CUP cannot be exercised until the reconstruction of North English Station Road is under contract. No one knows when that will be under contract.

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

Deborah Bilitski, Wyatt, Tarrant & Combs, LLP, 500 West Jefferson St Suite 2800, Louisville, KY 40202

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Kevin Young, Land Design & Development Inc., 503 Washburn Ave Suite 101,  
Louisville, KY 40222

Matt Rumpke, 15405 Crystal Springs Way, Louisville, KY 40245

**Summary of testimony of those in opposition to the appeal:**

01:29:40 Deborah Bilitski, the applicant's representative, presented the applicant's case and showed a Power Point presentation. She added that, besides the CUP expiration date, no other issues have been raised in this appeal. She reviewed the exact language of the statute and the regulation at issue.

01:35:41 Ms. Bilitski said the City of Middletown has established a time-frame for the CUP, which has not expired; that the CUP has been exercised within the timeframe permitted; and that the application for a Revised Plan was filed within one year of the overall zoning change was approved by the City of Middletown. She added that, in January 2014, there was a large construction contract for construction of site work, which includes the amphitheater area. She discussed various aspects of the binding elements related to the appeal, particularly binding elements #33 and #34.

01:47:23 In response to a question from John Carroll, legal counsel for the Planning Commission, Ms. Bilitski said that the CUP does cover only the amphitheater and the area immediately surrounding it. It does not apply to the athletic fields. She pointed out this area on the site plan.

01:48:19 Matt Rumpke answered question from Commissioner Brown.

01:48:47 Commissioners Tomes and Brown discussed who is responsible for building the road. Commissioner Brown said this is going to be a State road. Ms. Bilitski answered additional questions about permits for the site work required.

01:51:16 Kevin Young, an applicant's representative, showed photos of the site which he said showed "significant" work that has already been done for the amphitheater. In response to a question from Commissioner Tomes, Mr. Young discussed the permitting process that the applicant has already gone through with the City of Middletown.

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

No one spoke.

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**Rebuttal:**

01:52:56 Mr. O'Brien said this CUP issue is a legal issue, and reiterated his arguments that binding element #10 applies only to the development plan itself. He said the applicant had to file for an extension of the CUP, but did not. He asked that proposed binding element #34 be deleted. Commissioner Tomes and Mr. O'Brien discussed building permits, and Commissioner Tomes said that all required permits were issued.

**Deliberation**

02:04:49 Commissioners' Deliberation

**An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

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

**RESOLVED**, the Louisville Metro Planning Commission does hereby uphold the decision of the Development Review Committee based on the evidence and testimony presented today and does hereby **DENY** the appeal.

**The vote was as follows:**

**YES: Commissioners Blake, Kirchdorfer, Brown, Tomes, Jarboe, Peterson, and Turner.**

**NO: No one.**

**NOT PRESENT: Commissioners Proffitt, White, and Butler.**

**ABSTAINING: No one.**

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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Legal Review Committee**

No report given.

**Planning Committee**

No report given.

**Policy and Procedures Committee**

No report given

**Site Inspection Committee**

No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 3:30 p.m.

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**Chairman**

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**Division Director**