

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
March 7, 2019**

A meeting of the Louisville Metro Planning Commission was held on March 7, 2019 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Vince Jarboe, Chair
Marilyn Lewis, Vice Chair
Jeff Brown
Rich Carlson
Lula Howard
Ruth Daniels
David Tomes – Arrived approximately 2:09

Commission members absent:

Robert Peterson
Emma Smith
Donald Robinson

Staff Members present:

Emily Liu, Director, Planning and Design Director
Joe Reverman, Planning and Design Assistant Director
Brian Davis, Planning and Design Manager
Steve Hendrix, Planning and Design Coordinator
Julia Williams, Planning and Design Supervisor
Joel Dock, Planner II
Lacey Gabbard, Planner I
Beth Stuber, Engineering Supervisor
John Carroll, Legal Counsel
Travis Fiechter, Legal Counsel
Paul Whitty, Legal Counsel
Pamela M. Brashear, Management Assistant

Others Present:

Tony Kelly, Metropolitan Sewer District

The following matters were considered:

**PLANNING COMMISSION MINUTES
March 7, 2019**

APPROVAL OF MINUTES

FEBRUARY 21, 2019 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Lewis, seconded by Commissioner Daniels, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on February 21, 2019.

The vote was as follows:

YES: Commissioners Brown, Daniels, Lewis and Jarboe

NOT PRESENT FOR THIS CASE: Commissioners Peterson, Robinson, Smith and Tomes

ABSTAINING: Commissioners Carlson and Howard

PLANNING COMMISSION MINUTES
March 7, 2019

CONSENT AGENDA
CASE NO. 18STREETS1030

Request: Alley Closure
Project Name: 2919 Bardstown Road Alley
Location: 2919 Bardstown Road
Owner: Louisville Metro Government
Applicant: Bardstown Post Parking, LLC
Representative: Lisa Raley, Assumption High School
Jurisdiction: Louisville Metro
Council District: 8 – Brandon Coan
Case Manager: Lacey Gabbard, AICP, Planner I

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Discussion

00:04:36 Ms. Gabbard showed the portion of the road to be closed.

00:05:18 Commissioner Howard stated Bardstown Post Parking is the owner of both sides of the alley.

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 Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the 10 foot alley closure on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

PLANNING COMMISSION MINUTES
March 7, 2019

CONSENT AGENDA
CASE NO. 18STREETS1018

Request:	Street Closure
Project Name:	Sentimental lane
Location:	Sentimental Lane
Owner:	Louisville Metro Right-of-Way
Applicant:	Ball Homes, LLC
Representative:	MIndel Scott
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Joel Dock, AICP, Planner II

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Discussion

00:06:55 Mr. Dock said a condition of approval was added (requested at LD&T) concerning additional street signage.

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 Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, adequate public facilities are available to serve existing and future needs of the community. The proposed closures do not result in an increase in demand on public facilities or services as utility agencies have coordinated with the applicant and/or applicant's representative and Planning and Design Services staff to ensure that facilities are maintained or relocated through agreement with the developer. No property adjacent or abutting the rights-of-way to be closed will be left absent of public facilities or services, or be dispossessed of public access to their property; and

WHEREAS, any cost associated with the rights-of-way to be closed will be the responsibility of the applicant or developer, including the cost of improvements to those rights-of-way and adjacent rights-of-way, or the relocation of utilities and any additional agreement reached between the utility provider and the developer; and

WHEREAS, the request to close multiple rights-of-way is in compliance the Goals, Objectives and Plan Elements of the Comprehensive Plan as Guideline 7, Policy 1 provides that those who propose new developments bear or reasonably share in the

PLANNING COMMISSION MINUTES
March 7, 2019

CONSENT AGENDA
CASE NO. 18STREETS1018

costs of the public facilities and services made necessary by development; Guideline 7, Policy 6 strives to ensure that transportation facilities of new developments are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands; Guideline 7, Policy 9 provides that the Planning Commission or legislative body may require the developer to dedicate rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development as set forth in the Land Development Code and/or an adopted urban mobility plan; Guideline 8, Policy 8 states that Adequate street stubs for future roadway connections that support access and contribute to appropriate development of adjacent lands should be provided by new development and redevelopment; and Guideline 14, Policy 7 provides that the design and location of utility easements provide access for maintenance and repair and to minimize negative visual impacts. Any cost associated with the rights-of-way to be closed will be the responsibility of the applicant or developer. Adequate public facilities are available to serve existing and future needs of the community. Any facility required to be placed in an easement or relocated will be done so by the developer. Transportation facilities have been provided to accommodate future access and to not dispossess property owners of public access. All adjacent residential lands maintain access to public infrastructure and utility services will continue to be provided to these lands; and

WHEREAS, there are no other relevant matters to be considered by the Planning Commission.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the partial street closure of Sentimental Lane on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

PLANNING COMMISSION MINUTES
March 7, 2019

CONSENT AGENDA
CASE NO. 18STREETS1022

Request: Street name change from Sentimental Lane to Parkside
Vista Lane and Cascade Falls Trail
Project Name: Sentimental lane
Location: Sentimental Lane
Owner: Louisville Metro Right-of-Way
Applicant: Ball Homes, LLC
Representative: MIndel Scott
Jurisdiction: Louisville Metro
Council District: 23 – James Peden
Case Manager: Joel Dock, AICP, Planner II

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Discussion

00:06:55 Mr. Dock said a condition of approval was added (requested at LD&T) concerning additional street signage.

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 Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

RESOLVED that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the street name change from Sentimental Lane to Parkside Vista Lane, Sentimental Lane and Cascade Falls Trail be **APPROVED ON CONDITION:**

1. Directional signage indicating the location of the remaining section of Sentimental Lane be placed below the street sign for Parkside Vista Lane in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) requirements.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

Request: Change in zoning from R-6 to C-R with a variance
Project Name: 1805 Mellwood Avenue
Location: 1805 Mellwood Avenue
Owner: Ruth Sauter
Applicant: Ruth Sauter
Representative: Ruth Sauter
Jurisdiction: Louisville Metro
Council District: 9- Bill Hollander
Case Manager: Julia Williams, AICP, Planning Supervisor

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

Agency Testimony:

00:10:54 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

00:16:19 Commissioner Howard asked if binding element 4B is correct. Ms. Williams said it is a typo. Delete the 2nd sentence and it should state: A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Mellwood Ave. to provide a total of 30 ft. from center line. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.

Deliberation

00:18:30 Planning Commission 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.

Zoning Change from R-6 to C-R

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Cornerstone 2020 Staff Analysis was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal does not affect the existing street pattern. The proposal is for a retail commercial use located near other C-1 and C-2 uses. This proposal includes no new construction and is utilizing an existing building, therefore is not impacting any open space. It is located near Brownsboro Road and the Mellwood Arts Center. The proposal is for the reuse of an existing home that was built in 1900 and is similar in design to other historic structures in the Clifton area; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center but it involves the repurposing of an existing building. The Clifton/ Clifton Heights area is a historic urban neighborhood with sufficient population to support a small commercial use. The proposal is efficient and cost effective because it is utilizing an existing building. This proposal is not a center but is near a mix of commercial and residential uses and does provide a service which will serve the neighborhood. The applicant has not indicated that there will be a residential use on the second floor so it appears the use will be commercial only. CR zoning permits residential so residential could be added at any time. The proposal provides for its own access as much of the adjacent property is MSD owned. Utilities for the site are existing; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because it appears that no new construction is proposed and the existing building is compatible with surrounding development. This is historically a corner commercial building and has continued to operate as such so there is no expansion into a residential area. APCD has no issues with the proposal. The proposal will not have any impact on existing traffic. All lighting will comply with LDC standards. The proposal is for a low impact commercial use and is near Brownsboro Road, Frankfort Ave and the Mellwood Arts Center. The proposal includes parking within the property perimeter buffer required adjacent to residential although the proposed use is low impact and much of the adjacent property is unoccupied or owned by MSD. The proposed parking does not adhere to setback requirements but is still compatible because much of the adjacent property is unoccupied or owned by MSD. The proposed parking does not adhere to buffer requirements but is still compatible because much of the adjacent property is unoccupied or owned by MSD. Signs will be in compliance with LDC standards; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because the provision of open space for this proposal is not required by the LDC and is not appropriate for this site. Beargrass Creek runs to the

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

west of the property. The proposed parking does not encroach into the stream buffer; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because Beargrass Creek runs to the west of the property. The proposed parking does not encroach into the stream buffer. The proposal is for the adaptive reuse of an existing structure. Soils are not an issue for the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because this proposal is a commercial use and is located near other non-residential uses, as well as one block away from Brownsboro Road; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because ROW dedication is required but no other roadway improvements. Adequate parking is provided. Joint access is not proposed nor required; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because a stub street is not necessary because the site is within an existing developed neighborhood. Access to the development is through public rights of way. Roadways are existing and connections are adequate; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because MSD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because APCD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because Beargrass Creek runs to the west of the property. The proposed parking does not encroach into the stream buffer; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because existing utilities serve the site. Water is available to the site. The health department has no issues with the proposal.

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

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

Variance from Chapter 5.2.2.C to permit a driveway and parking to encroach into the side and rear setbacks

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations because the proposed parking addition is located to the rear and side of the existing house where MSD owns most of the land; and

WHEREAS, the requested variance does not arise from any special circumstances. The applicant is expanding into the required side yard with the proposed parking; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed parking allows for another use of the site where there is no on street parking available; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the existing location of the house, but they would like to expand into the side yard with parking.

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

Waiver from Chapter 10.2.4 to not provide the LBAs and planting requirements along the side and rear property lines

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners since the majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property; and

WHEREAS, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the majority of the adjacent land is owned by MSD and there are existing trees and plantings on their property.

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a variance from chapter 5.2.2.C to permit a driveway and parking to encroach into the side and rear setbacks and a waiver from chapter 10.2.4 to not provide the landscape buffer areas and planting requirements along the side and rear property lines.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

District Development Plan and Binding Elements

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, 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, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public has approved the preliminary development plan; and

WHEREAS, there are no open space requirements pertinent to the current proposal; and

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

WHEREAS, the Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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, alteration permit or demolition permit is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor subdivision plat or legal instrument shall be recorded dedicating additional right-of-way to Mellwood Avenue to provide a total of 30 feet from the centerline). A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - 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.
5. 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1026

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 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 Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1066

Request: Change in zoning from R-7 to OR-3 with a waiver
Project Name: Keyes Architects and Associates
Location: 4717 Preston Highway
Owner: Boaz Hall Association
Applicant: Keyes Architects
Representative: Keyes Architects
Jurisdiction: Louisville Metro
Council District: 21- Nicole George
Case Manager: Julia Williams, AICP, Planning Supervisor

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

Agency Testimony:

00:22:27 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

00:27:02 Commissioner Howard asked if a building that encroaches can be a part of a waiver. Ms. Williams said yes.

The following spoke in favor of this request:

Charles Keyes, 3005 Taylor Boulevard, Louisville, Ky. 40208

Summary of testimony of those in favor:

00:29:24 Mr. Keyes said he's moving because he needs the extra space. The proposed site is a better location and the use is more appropriate.

Deliberation

00:30:54 Planning Commission 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.

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1066

Zoning Change from R-7 to OR-3

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Cornerstone 2020 Staff Analysis was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal is within a mixed intensity corridor that has been created Preston Hwy. The proposal is surrounded by mixed uses. The proposal is for high intensity office zoning but is located along a major arterial. It will have little impact on adjacent residential uses; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center but will be for new construction. OR-3 permits other high density residential and office uses. The proposal is compact and located in the vicinity to other similar and more intense uses making the proposal a cost effective investment. The proposal is part of a high intensity corridor that has been established along Preston Hwy. The zoning is complementary to other zoning in the area, which encourages a sense of place. The proposal allows for residential which could occur on the site in the future. The proposal does not share entrances with adjacent property as it is using an existing entrance. Sharing access is not required by the land development code. Utilities could be shared with the proposal. There is an existing sidewalk on Preston Highway that would provide safe access to the site for pedestrians and transit users; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because a small addition is proposed to the rear of the property. It will be compatible with the existing materials. The proposal is not a non-residential expansion into a residential area. There are other non-residential uses located nearby and OR-3 permits mixed use. APCD had no issues with the proposal. The proposal has little to no effect on traffic. Lighting will meet LDC requirements. The proposal is for a high density zoning district and is located along a transit corridor and near an activity corridor. The site is surrounded by non-residential uses. There is a very small addition proposed to the building, but all other site conditions will remain the same. Providing the entire buffer width does not change the compatibility of the proposal and the adjacent zoning. Setbacks and building heights are in compliance with the LDC. Parking will be screened from the roadway. Signs will meet LDC requirements; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because soils are not an issue for the proposal; and

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1066

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because roadway improvements are not warranted with this proposal. There is an existing sidewalk on Preston Highway that would provide safe access to the site for pedestrians and transit users. Cross access is not required with this proposal. Additional ROW is not required with this proposal. Adequate parking is provided. Cross access is not required with this proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because access to the site is from a major arterial road; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because there is an existing sidewalk on Preston Highway that would provide safe access to the site for pedestrians and transit users; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because MSD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because APCD has no issues with the proposal; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because there are no natural features evident on the site; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because proposed utilities will serve the site. An adequate water supply is available to the site. The Health Department has no issues with the proposal.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-7 to OR-3 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1066

Waiver from Chapter 10.2.4 to permit encroachments into the north and south LBAs

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners since the existing property owners and subject site have all been non-residentially used for some time with no buffers; and

WHEREAS, Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The existing conditions on the site will not be changed to any significance that would warrant the buffer areas. The site and surrounding area has been used non-residentially for some time and the condition of the site is not changing; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the site and surrounding area has been used non-residentially for some time and the condition of the site is not changing; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the site and

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1066

surrounding area has been used non-residentially for some time and the condition of the site is not changing.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the waiver from chapter 10.2.4 to permit encroachments into the north and south landscape buffer areas.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

District Development Plan and Binding Elements

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis was adopted.

WHEREAS, there do not appear to be any environmental constraints or historic resources on the subject site; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, there are no open space requirements pertinent to the current proposal; and

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

WHEREAS, the Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area; and

WHEREAS, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

PLANNING COMMISSION MINUTES

March 7, 2019

PUBLIC HEARING

CASE NO. 18ZONE1066

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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter. Landscaping shall be installed within 6 months or the next available planting season of the zoning approval.
5. 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.
6. 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

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 18ZONE1066

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 Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson, Smith and Tomes

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19CELL1000

Request: Cell Tower
Project Name: Cady Court Cell Tower
Location: 2401 Cady Court (rear of 2400 Lower Hunters Trace)
Owner: George Gagel
Applicant: Capital Telecom Holdings II, LLC and Cellco Partnership
d/b/a Verizon Wireless
Representative: David Pike, Pike Legal Group, PLLC
Jurisdiction: Louisville Metro
Council District: 12 – Rick Blackwell
Case Manager: **Steve Hendrix, Planning & Design Coordinator**

NOTE: Commissioner Tomes arrived at approximately 2:09.

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.)

Agency Testimony:

00:36:11 Mr. Hendrix discussed the case summary, standard of review and staff analysis from the staff report.

00:41:43 Commissioner Lewis asked if the greenhouse is in use. Mr. Hendrix said the garden center is not in operation and vacant at this time.

00:42:00 Commissioner Brown asked Mr. Hendrix if he knows anything about the minor plat that created the lots in the easement. The Land Development Code section 6.2.1 requires the directors of Public Works and Planning and Design to approve to create residential lots on a private street. Mr. Hendrix said the applicant will need to explain.

The following spoke in favor of this request:

David A. Pike, Pike Legal Group, PLLC, P.O. Box 369, Shepherdsville, Ky. 40165-0369
Gordon Snyder, 2421 Holloway Drive, Louisville, Ky. 40299
Bill Grigsby, P.E., 1302 Main Street, Shelbyville, Ky.

Summary of testimony of those in favor:

00:44:10 Mr. Pike submitted binders into the record and provided a copy to the commissioners. The proposed area is underserved for wireless service. In order to fill that gap, the tower needs to be in the center and not too close to other towers (spacing

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19CELL1000

is critical). There is no possibility for co-locating at this time. Setback requirements are being met. This facility will have no effect on property values. Over 55% of all adults now live in households with only wireless phones. Also, over 70% of all emergency calls are placed from wireless phones.

01:04:04 Commissioner Carlson stated since the 5G network has come into play, if Verizon converted to it, would it have any effect on the coverage and requirements. Mr. Snyder answered, when the 5G networks are in place, the 4G will still be used (not going away). There will be different design standards.

01:10:02 Chair Jarboe asked, how close can you build a 175 ft. tower to a home? Mr. Pike said there is no requirement for the home but 50 ft. from the property line.

01:10:58 Chair Jarboe asked, how have you minimized the impact of the character on the general area? Mr. Pike said the applicant meets the standards, the design is monopole and there's no aviation lighting required.

01:16:55 Mr. Whitty said there's 1 or 2 homes in the fall zone of the tower. Mr. Grigsby said the tower will not fall over and is designed as a 0 radius fall zone. It may bend but not fall.

The following spoke neither for nor against the request:

Kenneth White, 6519 Cady Drive, Louisville, Ky.

Summary of testimony of those neither for nor against:

01:25:01 Mr. White said he is here for further information. There is a concern about the structure.

Deliberation

01:28:27 Commissioner Carlson said cell towers aren't attractive but there is a greater demand for them. Emergency vehicles use the computerized digital system as well and are a necessity.

01:30:36 Commissioner Howard said the proposal meets the requirements of the Land Development Code. The testimony from Mr. Pike and Mr. Snyder explained why they can't co-locate and also for the necessity of the location.

01:31:19 Commissioner Lewis stated cell towers are necessary for public safety.

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19CELL1000

01:31:44 Commissioner Brown stated the coverage area map clearly shows a need for a tower at this location. Enhanced landscaping would help meet the Comprehensive Plan Community Facilities Goal to mitigate impact on the character of the surrounding area.

01:33:32 Commissioner Daniels said she understands staff recommending another location, but the applicant has proven the proposed location is the best and only choice. The proposal meets the Land Development Code requirements.

01:34:27 Chair Jarboe said it would be nice to move the monopole further away from the closer home but the applicant has testified it's not feasible and the Planning Commission cannot require it. The proposal follows the Comprehensive Plan 2040.

01:36:14 Mr. Pike agrees to provide additional landscaping. The wording of the current request is 4.5 trees per 100 linear feet and an increase would be acceptable. Ms. Williams, Landscape Architect, said if it's decided to provide 8 trees, a mixture of A and B would be best to have medium and larger sizes. Also, 20% of those should be evergreens. Mr. Pike suggests the same standard with 2 rows staggered – gaps will be filled in but no crowding. Ms. Williams agreed.

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.

Application for a proposed 175-foot monopole tower with a five foot lightning arrester for a total structural height of 180 feet within an approximate 2,000 square foot compound area

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution based on the testimony heard today was adopted.

WHEREAS, the proposed 175' self-support tower with 5' lighting arrester (total height 180') and related equipment (including room for collocation of three other service providers in addition to the applicant) would be located within a 140' by 163' easement area and occupying a site of 0.52 acres. The tower will be located near the center of the parent tract and adjacent to Shacklette Elementary School site. The proposed tower will not require lighting since it will be under the required height set by FAA. The 40' x 50' ground compound would be enclosed within an 8' tall wooden fence surrounded by a 35' wide landscape buffer area and planted with 6' high evergreen trees at 10' feet off center, which plantings exceed the applicable requirement for 4.5 trees planted per 100 linear feet. The trees used will be in accordance with the Louisville Metro Land Development Code Appendix 10A; and

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19CELL1000

WHEREAS, per section 4.4.2 C of the Land Development Code for Jefferson County it states the following design requirements for cellular communication facilities:

1. All structures, except fences, shall be located at least 50 feet from the property line of any residentially zoned property and shall, in all other circumstances, observe the yard requirements of the district in which they are located.
2. The site shall be landscaped in accordance with the requirements of Chapter 10 Part 2 for utility substations.
3. Any monopole, guyed, lattice, or similar type cellular antenna tower and any alternative cellular antenna tower structure similar to these towers, such as light poles, shall be maintained in either galvanized steel finish or be painted light gray or light blue in color.
4. A cellular antenna tower or alternative cellular antenna tower structure may be constructed to a maximum height of 200 feet regardless of the maximum allowed height for the district in which it is located.
5. This section refers to regulations regarding tower structures may be lighted and FAA requirements.
6. The site shall be unstaffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs.
7. Site shall be enclosed by an eight (8) foot high security fence, and the fence may be located in any required yard at any height, but not in the sight triangle described in Section 5.1.7.H.
8. Any site to be purchased or leased for the installation of a cellular antenna tower or alternative cellular antenna tower structure and ancillary facilities shall comply with the minimum lot size requirements of the district in which the site is located.
9. The facility shall comply with the FCC's regulations concerning radio frequency emissions.
10. This section deals with the process to be used when a cell tower structure is discontinued.
11. This section deals with signs that are required to be displayed on site.

The proposed WCF will have a structure height of 175' plus lighting arrester of 5' for a total height of 180'. The proposed WCF was designed and located in such a manner, including placement in the center of the site parcel to minimize impact on the surrounding area.

WHEREAS, a review of the location of the communication facility, including setbacks from all property lines and other required design criteria, finds that it conforms to all requirements of the Zoning Ordinance, including those as specified at Section 4.4.2 and for the R-4 zoning district; and

WHEREAS, the site conforms with the newly adopted Jefferson County Comprehensive Plan on January 1, 2019, called Plan 2040 as it provides for necessary infrastructure, facilities and utilities including wireless communication facilities for the purpose of

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19CELL1000

maintaining a vibrant community and improving the public health and safety of the residents of this area of Jefferson County. Under Chapter 4.3; and

WHEREAS, the Community Facilities Plan contains three overarching goals, supportive by a series of objectives and action-oriented policies. These Goals are as follows: “Goal 1: Ensure community facilities are accessible; Goal 2: Plan for community facilities to improve quality of life and meet anticipated growth; and, Goal 3: Design community facilities to be resilient and compatible with the surrounding neighborhood.” Under Goal 3, Policies Number 19 it states: “Antenna Towers for Cellular Telecommunications Services or Personal Communications Services should...[b]e designed to minimize impact on the character of the general area concerned.”; and

WHEREAS, Goal 3, Policies Number 19.3 provides that WCFs should “minimize the likely effects of the installation on nearby land uses and values.” The site has been designed with sufficient landscaping around the site to buffer the facility from adjacent uses, meeting all the requirements of the Zoning Ordinance and Comprehensive Plan; and

WHEREAS, Goal 3, Policies Number 19.4 provides that WCFs should “be designed to address compatibility issues such as co-location, mass, scale, siting, abandonment and removal of antenna tower structure.” It was determined that no other facilities, including FCC registered towers, were available or could be used to close the service gap for this area. The closest tower is over 0.5 miles outside the search area. Applicants have identified that the proposed tower will be removed when no longer needed in accordance with the Zoning Ordinance and Comprehensive Plan; and

WHEREAS, Goal 3, Policies Number 19.5 provides that WCFs “[a]void environmentally sensitive lands, historic landmarks, and scenic byways, unless the applicant proves that no other reasonable site is available and the tower is designed to minimize impact.” Based on information identified in the Comprehensive Plan, none of the above described issues have been identified for the site in question; and

WHEREAS, it is consistent with the requirements of the Zoning Ordinance and Comprehensive Plan, as well as the applicable requirements of KRS Chapter 100. The proposed public utility infrastructure location results from a good faith search for an available and feasible site location which meets local requirements and is, on the evidence of record, the least intrusive location and most reasonably available means to accomplish the objectives of the Zoning Ordinance and Comprehensive Plan; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposed site is the most suitable location to provide necessary public utility infrastructure to the area. The proposed public utility infrastructure is necessary to bring state of the art personal wireless services to the area. The applicant has offered expert Radio Frequency

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19CELL1000

Engineer Reports on these issues which show it is experiencing a significant gap in wireless service coverage which would be substantially resolved by the new facility. Conjecture by lay persons as to level and quality of service coverage cannot override this expert evidence to allow denial of the Uniform Application; and

WHEREAS, the Louisville Metro Planning Commission further finds Public utility infrastructure is critical for the economic development of a community. This is especially true for communication services. The proposed communication facility will bring much needed public utility infrastructure to the area. State of the art public utility infrastructure adds value to the area on the facts evident in the record. Wireless facilities cannot reasonably be presumed to reduce property values considering the rapid growth and the expanding demand for such services evident in the Uniform Application and record.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the 175 foot monopole tower with a five foot lightning arrestor for a total structural height of 180 feet within an approximate 2,000 square foot compound area, **SUBJECT** to the following Condition of Approval:

1. Enhanced landscaping is provided within the landscape buffer area at a rate double the minimum requirement of the Land Development Code.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson and Smith
ABSTAINING: Commissioner Tomes

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

Request: Continued from February 7, 2019 Public Hearing
Floyds Fork Development Review Overlay and major
preliminary subdivision plan with review of land disturbing
activity on steep slopes and stream crossing

Project Name: Echo Trail

Location: 1651 and 2605 Echo Trail – Generally located between 1801
and 2704 Echo Trail and extending to Eastwood Fisherville
Road

Owner: Long Run Creek Properties, LLC

Applicant: Long Run Creek Properties, LLC

Representative: Bardenwerper, Talbott and Roberts, PLLC

Jurisdiction: Louisville Metro

Council District: 19 – Anthony Piagentini
20 – Stuart Benson

Case Manager: Joel Dock, AICP, Planner II

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

01:43:17 Mr. Dock discussed the revisions as follows: Some lots were removed and changed binding element no. 16; net loss of 7 lots; open space increased 1%; and density slightly decreased.

The following spoke in favor of this request:

Bill Bardenwerper, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Summary of testimony of those in favor:

01:45:11 Mr. Bardenwerper gave a power point presentation. The issues were the wetlands and some modifications were made to improve it. Almost all of the lots are next to open spaces. Another issues was the traffic study. A fee was paid into the Road System Development Fee and the roads are 18 feet as required. The intersections are failing today. There will be an additional condition of approval to read as follows: Given the current or impending levels of service of two intersections identified in the Traffic Impact Study (TIS) dated October 22, 2018 prepared by Diane Zimmerman, PE, this subdivision developer, its successor or assign shall be responsible for making a financial contribution to the planning/design of the intersection

PLANNING COMMISSION MINUTES

March 7, 2019

PUBLIC HEARING

CASE NO. 19SUBDIV1023

that is already at a failing level of service and responsible for performing the actual design and construction of the intersection it eventually causes to fail as follows. (A) At the time of its first sale (other than to a nongovernmental charitable organization), it shall pay to Louisville Metro Government \$250,000 for the express purpose of planning and/or design of the Eastwood Cutoff intersection at Shelbyville Road. (B) Prior to issuance of the 200th house building permit in this subdivision, it shall have designed and constructed at its sole cost and expense (in accordance with plans approved by Louisville Metro Public Works and the Kentucky Transportation Cabinet) an eastbound Taylorsville Road left-hand turn lane onto northbound S. English Station Road, the cost of which legally shall be eligible at the time the cost is incurred for full "credit" under the System Development Charges for Roadway Ordinance (found at Louisville Metro Code of Ordinances Chapter 164) or else this subsection (B) obligation is null and void.

The following spoke in opposition to this request:

Bob Federico, 17007 Ash Hill Drive, Louisville, Ky. 40245
Jarrell Hurst, 16200 Taylorsville Road, Fisherville, Ky. 40023
Jeff Frank, 16509 Bradbe Road, Fisherville, Ky. 40023
Mike Farmer, 15100 Old Taylorsville Road, Fisherville, Ky. 40023
Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299
Bill Johnstone, P.O. Box 19, Eastwood, Ky. 40018

Summary of testimony of those in opposition:

02:06:45 Mr. Federico provided pictures for the commissioners. A petition is being submitted by neighbors regarding safety of the traffic and intersections. Also, a traffic study was performed by neighbors.

Mr. Federico also read a letter from the Ky. General Assembly dated March 4th.

02:14:27 Mr. Hurst, Chair of the Fisherville Area Neighborhood Association, stated that the commission needs to consider the total impact of proposed developments.

02:20:59 Mr. Frank stated he is here on behalf of Friends of Floyds Fork and gave a power point presentation.

Mr. Frank discussed traffic and the 3 intersections.

02:29:15 Mr. Farmer stated traffic on the back roads are a safety issue. Traffic in general is increasing on a daily basis.

02:31:53 Mr. Porter, representing the Fisherville Area Neighborhood Association, stated that traffic is problematic. They are state roads and in the future they may be

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

improved. The Planning Commission has the power to require exactions and/or require phasing of the development. Postponing approval of this development is not a denial.

02:38:53 Mr. Johnstone stated there's a lot of R-4 land in the county that's restricted to 5 acre lots because the infrastructure of the sewers were not available. This would make it a safer environment. The same thing applies now.

02:43:19 Commissioner Carlson asked Mr. Porter if he had a number in mind for phasing. Mr. Porter deferred to Commissioner Brown.

02:44:00 Mr. Porter said this is the first time he has seen this proposed condition of approval and it's the opposite of what was discussed at the meeting on Monday. At that meeting the offer was to pay \$250,000 towards the English Station and Taylorsville Rd. intersection and the applicant wants full credit.

Rebuttal

02:46:18 Mr. Bardenwerper stated there are traffic problems everywhere. A good solution would be to raise the gas taxes. The mayor wants the growth and there is a demand for subdivisions – don't want to send them to neighboring counties.

Mr. Bardenwerper read a portion of the Lexington Fayette vs Snyder case: Local governments may not put unreasonable burdens on developers as a condition precedent to approve a subdivision. It is one thing to require land dedication and street construction, but another thing to require construction of an expensive improvement of any type. Also, the commission can't approve the subdivision and say, you can't build on it. Commissioner Brown asked if there will be a condition of approval for timing of the infrastructure that would limit the first record plat 2-3 years. Mr. Bardenwerper said no, the sewers have to be built first which will be around \$2 million. No one will borrow that much not knowing if they have full development potential. Mr. Bardenwerper spoke with his associates and now agrees to "at the time of sale but no later than 60 days from record plat".

03:16:00 Chair Jarboe asked Mr. Bardenwerper if he thinks the commissioners should consider safety for opposing a "ministerial review". Mr. Bardenwerper said public safety is what it's all about and why the regulations were written.

03:28:24 Commissioner Brown discussed the meeting from Monday.

03:35:21 Ms. Liu stated the commission doesn't have the ability to deny this proposal because of an F in the traffic study, but you do have the ability to ask for improvements off site.

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

3:35:37 Commissioner Brown stated the applicant wouldn't be required to make a \$250,000 contribution and limit the number of lots to 1.5 acres.

03:35:53 Mr. Carroll, legal counsel, stated that a phased development can be done if it eliminates some of the enormous adverse impacts to the existing streets and neighborhoods.

Deliberation

03:37:00 Commissioner Tomes stated he doesn't agree with making some pay more than a fair share and some not contributing at all.

03:44:35 Commissioner Daniels said she is concerned with the public welfare and safety. The roads are dangerous now.

03:45:45 Commissioner Brown said he doesn't like the wording for the 2nd part of the proposed condition of approval. Mr. Bardenwerper discussed why the binding element is worded the way it is.

03:57:48 Commissioner Lewis refrained from comment.

03:58:15 Commissioner Howard stated phasing of the development is practical with a record plat. If approved, it will not be developed within the near future (minimum 2-3 yrs.) because the infrastructure will need to be in place, the site location and the evaluation.

04:00:02 Commissioner Carlson said he agrees with the concept but there needs to be a control -to not be fully developed before the road improvements are completed.

04:02:30 Chair Jarboe stated this case is ministerial. The state needs to be involved with looking at the area and need for improvements.

04 04:47 Commissioner Tomes added, this is an important case but don't put a control on a developer for something he/she can't control.

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.

Floyds Fork Development Review Overlay (FFRO)

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution based on the staff report and a combination of testimony heard today and from the February 7, 2019 Planning Commission meeting was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Floyds Fork Development Review Overlay (FFRO).

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Tomes and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson and Smith
ABSTAINING: Commissioner Lewis

Major Preliminary Subdivision Plan (Development Potential Transfer) with review of land disturbing activity on slopes greater than 20% and stream and buffer area crossings

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution based on the Standard of Review and Staff Analysis and a combination of testimony heard today and the February 7, 2019 Planning Commission meeting was adopted.

WHEREAS, multiple lots scattered throughout the subdivision could potentially be eliminated without a significant loss of density to remove disturbances of slopes greater than 20% as a result of home foundations and impervious surfaces. A geotechnical report was provided and no significant concerns with respect to slope instability or substantial erosion were observed on these scattered lots. A road crossing is necessary to connect lots 54-168 to the western majority of the subdivision and all points of crossing into the area of these lots would appear to disturb steep slopes. While lots 54-82 are being created and include steep slopes, the disturbance is mainly the result of a sanitary sewer and drainage easement. The geotechnical report noted concerns on lots 54 and 68, but otherwise found that there were no significant concerns with respect to slope instability or substantial erosion. Erosion on Lot 54 is the result of a prior access road and past slope instability was observed on lot 68. Overall, the design and layout appears to be the minimum necessary to accommodate the proposed use of the site; and

WHEREAS, the final location of all utilities will be determined prior to the recording of the record subdivision plat. The preliminary location drainage features has received approval from the Metropolitan sewer District; and

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

WHEREAS, the Louisville Metro Planning Commission finds, in general, the provided geotechnical report opines that the on-site slopes (excluding small, localized erosion features along swales and streams) in the observed areas were stable at the time of observation. It notes specific concerns with past instability on lot 68 and that the presence of dense vegetation in areas from lot 68 to 82 prevented a more detailed investigation. In these areas, the report suggests that further evaluation should be conducted upon the clearance of dense vegetation. It further suggests that excavation or significant re-grading should be avoided on the steep slopes along the western portions of lots 68-82. It provides that disturbance of slopes should not exceed the limits of evaluation in the report. Construction measures to maintain stability have been provided and should be incorporated into the construction of all new homes and the life of those homes; and

WHEREAS, the Louisville Metro Planning Commission further finds Guideline 4, Policy 5 of Cornerstone 2020 calls for the integration of natural features into the pattern of development. Guideline 5, Policy 1 provides that proposals should respect the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems. In general, the geotechnical report demonstrates that the proposal is in conformance with the aforementioned policies of the Comprehensive Plan as construction methods have been provided to minimize property damage and environmental degradation related to disturbance of steep slopes. The report further suggests follow-up investigations to ensure that the evidence provided in the report can be more thoroughly observed after dense vegetation has been removed and prior to home construction. While buildable lots are being placed in areas of concern, the majority of home construction will occur outside the areas of steeper slopes.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Major Preliminary Subdivision Plan (Development Potential Transfer) with review of land disturbing activity on slopes greater than 20% and stream and buffer area crossings, **SUBJECT** to the following Conditions of Approval:

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

3. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
4. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
5. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights of way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
6. Open space/conservation lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
7. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
8. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
9. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall

PLANNING COMMISSION MINUTES

March 7, 2019

PUBLIC HEARING

CASE NO. 19SUBDIV1023

- be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
10. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
 11. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
 12. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
 13. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
 14. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
 15. Prior to the recordation of lots 68-82, a geotechnical evaluation shall be conducted and the findings of this evaluation shall be provided to Planning and Design Services staff for review and incorporation into the record. The geotechnical evaluation must demonstrate that:
 - a. The slope's ground surface and subsurface are not unstable;

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

b. Development of the slope and associated mitigation measures will not increase the degree of risk of slope instability both on- site and on adjacent lands; and,

c. The plan must specify how the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical report will be implemented.

Staff may request that the findings of this report be evaluated by the Planning Commission or designee.

16. Building envelopes/limits on lots 28, 29, 54-82, 221-223, 239, 240, 306-311, 341, 452, & 453 shall be substantially similar to those shown on the preliminary plan and must be shown and recorded on the record subdivision plat.
17. Limits of disturbance as shown on the preliminary plan shall be shown and recorded with the record subdivision plat.
18. The Applicant shall restore any disturbance of the Buffer Area and protected waterway by re-grading and revegetation. Provisions for restoration of the disturbed area shall be included in construction plans and within final record subdivision plat agreements. At the time of development, the following restoration standards shall be met.
 1. Restoration Required to Stabilize Banks. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.
 2. Restoration of Eroded Banks Required. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless the County (Planning and Design Services, MSD, or Public Works) determines such vegetation would be inadequate to re-stabilize the bank. In instances where the County determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the County shall be utilized.
 3. Other Restoration Allowed. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.
19. Given the current or impending levels of service of two intersections identified in the Traffic Impact Study (TIS) dated October 22, 2018 prepared by Diane Zimmerman, PE, this subdivision developer, its successor or assign shall be

PLANNING COMMISSION MINUTES
March 7, 2019

PUBLIC HEARING
CASE NO. 19SUBDIV1023

responsible for making a financial contribution to the planning/design of the intersection that is already at a failing level of service and responsible for performing the actual design and construction of the intersection it eventually causes to fail as follows. (A) Within 60 days of recording the record plat, it shall pay to Louisville Metro Government \$250,000 for the express purpose of planning and/or design of the Eastwood Cutoff intersection at Shelbyville Road. (B) Prior to issuance of the 200th house building permit in this subdivision, it shall have designed and constructed at its sole cost and expense (in accordance with plans approved by Louisville Metro Public Works and the Kentucky Transportation Cabinet) an eastbound Taylorsville Road left-hand turn lane onto northbound S. English Station Road, the cost of which legally shall be eligible at the time the cost is incurred for full "credit" under the System Development Charges for Roadway Ordinance (found at Louisville Metro Code of Ordinances Chapter 164) or else this subsection (B) obligation is null and void.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Tomes and Jarboe
NOT PRESENT AND NOT VOTING: Commissioners Peterson, Robinson and Smith

ABSTAINING: Commissioner Lewis

PLANNING COMMISSION MINUTES
March 7, 2019

STANDING COMMITTEE REPORTS

Land Development and Transportation Committee
No report given.

Site Inspection Committee
No report given.

Planning Committee
No report given.

Development Review Committee
No report given.

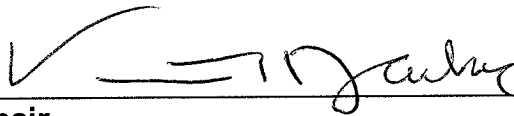
Policy and Procedures Committee
No report given.

CHAIRPERSON/DIRECTOR'S REPORT

No report given.

ADJOURNMENT

The meeting adjourned at approximately 5:23 p.m.



Chair



Planning Director