

**PROPOSED FINDINGS OF FACT WITH RESPECT TO APPROVAL OF THE
SUBMITTED DDDP AND RELATED WAIVER IN CASE NO. 20-ZONE-0060 AND
COMPLIANCE OF SAME WITH THE LDC AND ALL APPLICABLE GOALS AND
POLICIES OF THE PLAN 2040 COMPREHENSIVE PLAN**

Applicant: Hagan Properties

Owners: Angela Nichole Stivers; Stacey M. Nunez and Joseph Kevin Wright;

Project Name/Location: Cedar Creek Road apts; 8000 Cedar Creek Road

Proposed Use: Multifamily Residential

Request: DDDP and Waiver

Engineers, Land Planners, Landscape Architects: Land Design & Development, Inc.

Traffic Engineer: Diane B. Zimmerman Traffic Engineering, LLC

WHEREAS, the Louisville Metro Planning Commission (“Commission”) previously reviewed the rezoning application and the regulatorily required detailed district development plan (“DDDP”) filed with that rezoning application in Case No. 20-ZONE-0060 and also received and reviewed written evidence and oral testimony regarding same in public hearing on April 12, 2021, and now having reviewed all of same again; and

WHEREAS, the Commission today incorporates the entire record of those proceedings into the record of today’s proceedings regarding the DDDP; and

WHEREAS, the Commission has received and reviewed Ordinance No. 067, Series 2021, wherein the Legislative Council of the Louisville/Jefferson County Metro Government (“Metro Council”), pursuant to its statutory authority, rejected the April 12, 2021 recommendation of this Commission, thereby (a) rezoning the subject property from R4 to R6, (b) adopting findings of fact that contradict all of those adopted by this Commission, and (c) returning the DDDP to this body for approval with the addition of a certain binding element; and

WHEREAS, the Commission respects the statutory authority of Metro Council and its related prerogative to review the very same application and, after weighing the same evidence, to draw different conclusions and reach different decisions as respects Comprehensive Plan compliance; and

WHEREAS, KRS Chapter 100 grants “planning units” (such as Louisville/Jefferson County’s) the authority to adopt “development plan” requirements, such that applicants for zone changes are regulatorily required to submit development plans as part and parcel thereof; and

WHEREAS, the locally adopted Land Development Code includes (and long has included) provisions known as the “Plan Certain” regulation whereby development plans are required from private land owners and developers in the context of their rezoning applications; and

WHEREAS, KRS Chapter 100 grants planning units (such as Louisville/Jefferson County's) the authority to adopt different forms of comprehensive plans so long as the adopted comprehensive plan, whatever its final form, complies with the essential requirements of state statute; and

WHEREAS, the locally adopted comprehensive plan, being "Plan 2040", is partly an "impact mitigation" form of comprehensive plan as respects private property owner rezoning and related development plan applications, and as such rezoning and development plan applications and related presentations and decisions must respectively present/mitigate and weigh the impacts of same considering applicable "Goals and Policies" set forth in Plan 2040; and

WHEREAS, among the many ways to mitigate impacts of a particular DDDP is through binding elements, such as the one set forth in Metro Council's adopted rezoning ordinance in this case; and

WHEREAS, in addition to its impact mitigation provisions, Plan 2040 also includes a variety of provisions whereby it urges government action separate and apart from what it requires of private property owners and developers in terms of what they must do in order to mitigate potentially negative impacts of their rezoning and development plan applications; and

WHEREAS, Metro Council members reviewed the record of this case, which includes both the rezoning and related DDDP, and discussed and openly debated that record in meetings of its Zoning Committee and full body, and in the end overwhelmingly adopted findings of fact contrary to those previously adopted by this Commission; and

WHEREAS, having considered Metro Council's actions and decision, specifically as set forth in its Ordinance regarding rezoning from R4 to R6 and the DDDP required of the property owner and developer applicants, without which a rezoning application could not have been accepted and processed for Commission and Metro Council reviews and decisions; and

WHEREAS, given KRS Chapter 100's authorization as respects development plans, given the local Plan Certain regulation adopted pursuant to that authority, given Louisville/Jefferson County's form of comprehensive plan, notably Plan 2040, given that rezoning and DDDP reviews conducted under Plan 2040 are exactly the same (considering that DDDPs can't even be heard by the Commission until they are demonstrated to be Land Development Code compliant), and given Metro Council's authority and actions in these matters, as described herein;

BE IT RESOLVED THAT the Commission hereby incorporates the entire record of prior proceedings in this case into the record of today's proceedings regarding the DDDP and related Waiver; and

BE IT FURTHER RESOLVED THAT the Commission hereby also adopts Metro Council's findings of fact as if now its own, thus approving the DDDP and Waiver as resubmitted for those same reasons; and

BE IT FURTHER RESOLVED THAT the Commission also hereby finds (for reasons found within the evidence of the record of this case) that the DDDP, as resubmitted with applicable Waiver, but without previously submitted variance, complies with all other Goals and Policies of

Plan 2040 as well as Land Development Code provisions and standards essential to approve waivers; and

BE IT FURTHER RESOLVED THAT, as measures of impact mitigation, the Commission adopts certain binding elements, including these three:

1. Developer shall contribute up to \$100,000 towards sidewalk design, right of way acquisition and construction of sidewalks from the development to Bardstown Road. Developer shall contribute up to \$50,000 of the \$100,000 toward sidewalk design and right of way acquisition within 60 days of written request from the applicable government agency provided such request occurs not earlier than the issuance of its first building permit and not later than 3 years following the issuance of its first building permit. Developer shall contribute up to the remaining \$50,000 of the \$100,000 within 60 days of written request from the applicable government agency and proof that the applicable government agency has entered into a construction contract which commencement shall be within 60 days of execution, provided such request occurs not earlier than one year following the issuance of its first building permit and not later than 5 years following the issuance of its first building permit.
2. Developer shall reserve the area shown on the approved detailed district development plan for future stub road connections to the north and south at the locations shown on the site plan and will dedicate (and Metro Public Works shall accept) this area as public right-of-way within 60 days of written request of the dedication by Metro Public Works. In addition, Developer shall contribute \$218,610.00 to Metro Public Works (within 45 days of the earlier to occur of the issuance of the final certificate of occupancy or commencement of construction of the road by Metro Public Works) for the eventual construction by Metro Public Works of the stub road, which construction shall complete the connection to the north or south as shown on the approved detailed district development plan. If the stub road construction has not commenced within 5 years of the date of the contribution under a contract requiring the completion of the stub road within 6 months after commencement of construction, Metro Public Works shall refund the contribution to Hagan Properties or its designees, successors or assigns.
3. Prior to the applicable government agency issuing the final certificate of occupancy, the developer or its successors and assigns shall design, pursuant to Metro Public Works standards, and complete the construction of a right turn lane on eastbound Cedar Creek Road at Bardstown Road. The required improvements shall be based on the TIS analysis dated February 16, 2021 prepared by Diane B. Zimmerman and submitted to Metro Public Works February 17, 2021. The improvements shall be limited to an eastbound right turn lane 200' in length of which 50' is a taper lane.