

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

A meeting of the Louisville Metro Planning Commission was held on November 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
Jeffery Brown
Richard Carlson
Lula Howard
Ruth Daniels
David Tomes

Commission members absent:

Jim Mims
Robert Peterson

Staff Members present:

Joe Reverman, Planning and Design Assistant Director
Brian Davis, Planning and Design Manager
Joel Dock, Planner II
Beth Stuber, Engineering Supervisor
John Carroll, Legal Counsel
Pamela M. Brashear, Management Assistant

Others Present:

Tony Kelly, MSD

The following matters were considered:

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APPROVAL OF MINUTES

OCTOBER 17, 2019 PLANNING COMMISSION MINUTES – CORRECTION TO CASE NO. 19-LDC-0001 (PG. 30)

On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the corrected minutes of Case No. 19-LDC-0001 ONLY conducted on October 17, 2019.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard and Jarboe
NOT PRESENT FOR THIS CASE: Commissioners Mims and Peterson
ABSTAINING: Commissioners Lewis and Tomes

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BUSINESS SESSION

2020 MEETING CALENDAR

Request: DRC and PC meetings scheduled for year 2020
Presented by: Brian Davis, AICP, Planning Manager

Discussion

00:05:08 Mr. Davis stated the 2020 meeting calendar needs to be adopted.

Moved to end of docket to provide handouts to the commissioners.

01:41:47 Mr. Davis has handouts for the commissioners now (with corrections). No meeting scheduled for Jan. 2nd. Also, no meeting scheduled for July 1st and 2nd because it's close to the holiday to be held on July 3rd. July 29th and 30th (regular meetings) can be added instead. Derby week was not put on the calendar. There are 3 Thursdays in October, but the last one is 'as needed'.

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 Howard, seconded by Commissioner Lewis, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Planning and Design 2020 Meeting Calendar dates as corrected.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Tomes and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Mims and Peterson

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PUBLIC HEARING

CASE NO. 19SUBDIV1007

Request: Major Preliminary Subdivision Plan (Development Potential Transfer) with steep slope and protected waterway review
Project Name: Caudill Farm
Location: 1901 Long Run Road
Owner: The Caudill Family PTR LTD.; Caudill, Sandford Dan & Andrea; S. Dan Caudill Family Trust
Applicant: The Caudill Family PTR LTD.; Caudill, Sandford Dan & Andrea; S. Dan Caudill Family Trust
Representative: Bardenwerper, Talbott, & Roberts, PLLC
Jurisdiction: Louisville Metro
Council District: 19 – Anthony Piagentini
Case Manager: Joel P. 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:

00:06:28 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

00:11:48 Commissioner Carlson asked how many lots will be affected by the steep slopes component. Mr. Dock said lots 121-133 and a couple more. There's an existing bridge that serves Old Stage Coach Rd. The bridge will be replaced and conditions of approval 18 and 19 assure that restoration occurs. Commissioner Carlson asked what the load capacity would be for the bridge. Commissioner Brown said it will have to meet the Fire Dept. Ordinance (~18 tons and typically 18-22 ft. wide).

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Kevin Young, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222

Summary of testimony of those in favor:

00:14:27 Mr. Pregliasco gave a power point presentation. The proposed subdivision is not a Comprehension Plan review. It's a Land Development Code section 4.7.7 request, a development transfer steep slopes regulation to offer an option to

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minimize disturbance on steep slopes. A contribution of \$47,000 was worked out with Public Works.

00:19:24 Mr. Young discussed some design decisions. The existing crossing is in the flood plan but the proposed new one will not be. The existing bridge to the cemetery will be taken out and replaced. There are 3 creeks and blue line streams. The existing trees are open space (51 acres) and the neighbors will back up to it. There's better connectivity with the additional secondary stub to the Shelby Co. portion. There will be a flood plain control/compensation area.

00:26:28 Mr. Pregliasco showed a chart calculating the density transfer out of steep slope areas. These type of projects are what helps get the road improvements.

00:29:46 Commissioner Carlson asked if Ms. Zimmerman is available for questions regarding the traffic study. Mr. Pregliasco said she's not here today.

00:29:56 Commissioner Carlson asked when the work will be completed for the Eastwood cut-off intersection at Shelbyville Rd. Mr. Pregliasco said it's not known at this time. Commissioner Brown explained.

00:34:38 Mr. Pregliasco said he doesn't dispute the fact that there would be worse traffic issues. Commissioner Carlson said until the construction gets funded and approved, about 100 people will have to wait 38.5 minutes every day (at the Eastwood cut-off and Shelbyville Rd.) in the afternoon and almost 17 minutes in the morning.

The following spoke in opposition to this request:

Pam Holbrook, 1220 Forest Trail Place, Louisville, Ky. 40245
Lori Paas, 1901 Whitewood Ridge Drive, Louisville, Ky. 40245
Joel Zipperle, 1900 Egmont Ridge Way, Louisville, Ky. 40245

Summary of testimony of those in opposition:

00:50:41 Ms. Holbrook stated flooding is a major issue and building in the flood plain just funnels the problem elsewhere. The open space is not buildable property but is necessary to protect the waterway buffers, tree canopy detention facilities, streams and slopes. Adding more development without the infrastructure will hinder growth or development because people don't want to move into high traffic areas with a lot of accidents.

00:54:28 Ms. Paas stated she lives adjacent to the development and is concerned about the traffic as she has witnessed several accidents. Also, there are other driving

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options but you will more than likely run into the same issues. Are the 52 acres of unbuildable property because of the slopes and flood plains? Mr. Young said yes, but some are buildable. The homes will back up to open the space.

Ms. Paas said she doesn't think the \$47,000 will solve the issue. Ms. Paas said her councilman has discussed restructuring the Service Development Fund. Can the development be postponed until developers can take on greater responsibilities as far as infrastructure?

00:59:15 Mr. Zipperle said his property has flooded 6 times in the past 3 years, 3 out of 5 acres. If they raise their property or dam a portion, it will negatively impact his property.

01:02:27 Mr. Kelly, MSD, said Mr. Zipperle is correct. The applicant will have to compensate 1.5 to 1 - every shovel they put in they have to take out 1.5. MSD will require, at every property line, them to do a no-rise to prove that the flood plain hasn't risen at all at the property lines and negatively affecting the flood plain elevations (off-site neighbors). Chair Jarboe asked if the build-up has anything to do with the detention basin. Mr. Kelly said the development will direct water to the detention basin. In this scenario, the detention basin volume required will be separate from the flood plain compensation volume.

01:05:08 Chair Jarboe explained the detention basin to the neighbors in opposition. Mr. Zipperle said what the developer does on his property will not help my situation. Mr. Kelly said Mr. Zipperle is correct. Once the developer gets to the construction phase and if it does negatively affect Mr. Zipperle, the developer may lose a couple of lots to allow additional water volume to get to the no-rise at the edge of the bridge.

The following spoke neither for nor against the request:

Bob Federico, 17007 Ash Hill Drive, Louisville, Ky. 40245

Summary of testimony of those neither for nor against:

00:36:29 Mr. Federico, Chairman of the Eastwood Village Council, gave a power point presentation. A study has been done on the Eastwood US 60 cut-off which shows the dangers and serious impacts. The traffic impact will be horrible and he showed pictures of past wrecks. There will also be a new school so where will that traffic go?

Mr. Federico read a letter from the Fisherville Area Neighborhood Association. They request a condition of approval requiring road improvements.

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00:48:11 Chair Jarboe asked if there are other options for traveling instead of sitting in a high traffic area or jam. Mr. Federico said the other options can be just as long as the waiting times, depending on where you're going.

Rebuttal

01:08:51 Mr. Pregliasco stated the existing crossing is a dam but we're proposing a 150 foot span raise through the 1.5 to 1 compensation. It will be designed to not cause a negative effect to the neighbors.

This is a ministerial subdivision case. If this property is not developed, there are still others out further that will be and they will not be paying property taxes to Louisville Metro but will still be using the roads. The proposed subdivision is a part of the solution to the existing traffic issues. The open space is permanently protected.

01:16:22 Mr. Pregliasco said the proposed condition of approval that the Eastwood cut-off intersection be approved before any building permits are issued is not practical. It's a huge project (and expensive) and out of the applicant's control. That would be the same as a denial.

Deliberation

01:27:17 Commissioner Tomes stated the regulations have been met as stated in the staff report. It's unfair for the new people having to contribute to paying toward the traffic issue, but the first groups of people (that created traffic issues) didn't contribute anything. The flood plain will be controlled by 1.5 to 1 compensation.

01:31:25 Commissioner Howard stated the plan meets the regulations and is appropriate. "It's a shame that paid tax dollars do not provide enough resources for road improvements and infrastructure needed for subdivision developments. I applaud the developers for agreeing to pay, to Metro government, dollars for the purpose of planning and/or design of the Eastwood cut-off intersection of Shelbyville Rd." This is a preliminary plan idea and the details will come later.

01:33:40 Commissioner Brown agrees.

01:33:46 Commissioner Lewis stated she lives in the proposed area and understands the traffic issues. There are some back ways to travel. The regulations require the approval of this subdivision plan. This is one of the highest percentages of mature trees being preserved in a long time.

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01:35:29 Commissioner Daniels stated the traffic issues have come up on several cases but haven't been addressed. It is a good plan.

01:36:45 Commissioner Carlson stated the traffic impact, a 38 minute delay, is his main concern. It is not a solution to tell drivers to find alternate routes. The Comprehensive Land Use Plan wants the reduction of vehicle miles traveled each day. It might help to phase the project but the applicant is not willing.

01:38:19 Chair Jarboe said the plan follows the Comprehensive Plan 2040. "We have to make a decision on what's in front of us."

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.

Major Preliminary Subdivision Plan (Development Potential Transfer) with review of land disturbing activity on slopes greater than 20% and bridge crossing over protected waterway

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

WHEREAS, the design and configuration of the development appears to result in the minimum disturbance of steep slopes as the relocation of these lots to another location within the development or the shifting of these lots to the south may result in disturbance of waterways on site. The site is constrained by two protected waterways and an intermittent stream. Each of these water features has been appropriately protected; and

WHEREAS, compatible on-site utilities will be provided in coordination with respective agencies. The developer shall work to place all utilities, where possible, in common trenches; and

WHEREAS, the Louisville Metro Planning Commission finds, the geotechnical report indicated that there was no evidence of slope instability, for example "scarp, leaning trees consistent with a slide, tension cracks, etc." The report did indicate that the presence of manmade improvements might have resulted in erosion where "water runs down the slope as concentrated flow." The report provides for mitigation measures and construction practices necessary to assure the stability of buildings and foundations to be constructed on the site; and

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WHEREAS, the Louisville Metro Planning Commission further finds Plan 2040 calls for the integration of natural features into the pattern of development. It 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.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a Major Preliminary Subdivision Plan (Development Potential Transfer) with review of land disturbing activity on slopes greater than 20% and bridge crossing over protected waterway, **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.
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

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preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.

6. Open space 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 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

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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. Building envelopes/limits on lots 121-135 & 82-85 shall be substantially similar to those shown on the preliminary plan and must be shown and recorded on the record subdivision plat.
16. Limits of disturbance as shown on the preliminary plan shall be shown and recorded with the record subdivision plat.
17. The developer and/or property owner shall be responsible for restoration of the streambank within the protected waterway as follows:
 - a. 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.
 - b. 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 determines such vegetation would be inadequate to re-stabilize the bank. In instances where the County determines that planting of riparian

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vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the County shall be utilized.

c. 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.

18. Tree and Vegetation Removal within the protected waterway shall be subject to the following:
 - a. Existing, healthy trees and vegetation within the Buffer Area shall be preserved, except for those areas designated by the Limits of Disturbance on the approved district development plan. Trees and vegetation shall be restored in accordance with Binding Element #5 for all areas within the buffer that lie between impervious surfaces and the Limits of Disturbance.
 - b. This provision shall not prohibit any of the following: Removal of dead or diseased trees/vegetation (provided a live root system stays intact); removal of noxious weeds; Removal of non-native trees/vegetation that threaten native species growth or reintroduction; removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or removal of any other tree/vegetation that is a threat to the public health or safety; Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project

19. Within 60 days of recording the record subdivision plat, the developer; its successors or assigns, shall pay to the Louisville Metro Government \$47,000 for the express purpose of planning and/or design of the Eastwood Cut-off intersection at Shelbyville Road.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Mims and Peterson

PRESENT: Commissioner Carlson

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- 1:46:00 Commissioner Carlson requests a resolution instructing Planning and Design staff to research traffic, levels of service and whether other communities place limitations on developments based on the level of service. This research might lead to a land development text amendment recommendation that would run the course of the Planning Committee, Planning Commission to Metro Council hearings. Input would be welcome from all interested parties.
- 01:48:15 Chair Jarboe stated Commissioner Carlson has submitted a handout, but all the commissioners need a chance to read it. Chair Jarboe asked Planning and Design staff if this research is feasible.
- 01:48:40 Mr. Reverman said yes. It will need to be brought back at the next Planning Commission meeting. It will then progress to the Planning Committee meeting for discussion.
- 01:50:03 Commissioner Howard stated she tried this in the past but got nowhere because of the developers.
- 01:51:40 Commissioner Lewis said it will be up to the consumer to decide what she/he will put up with and if no one wishes to live in that area, then the product will not sell.
- 01:51:56 Commissioner Tomes said this is a very complicated matter. Nobody wants to connect to other arterial roads (cut-through) and this is a big part of the problem.
- 01:56:26 Commissioner Brown stated, it is not money alone that will solve this issue or even build your way out. There are other things to consider such as: staggered work hours; alternative modes; mass transit; and telecommunication.
- 01:56:54 Mr. Reverman stated, there are a lot of ongoing conversations in the community regarding traffic, road connectivity, taxation, etc., but before initiating the resolution, we need to come back and discuss those issues and then begin the formal process.

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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 3:01 p.m.

Chair

Planning Director