

**Glenn Price**  
Member  
502.779.8511 (t)  
502.581.1087 (f)  
gaprice@fbtlaw.com

February 4, 2015

Louisville Metro Division of Planning & Design Services  
444 South Fifth Street, 3rd Floor  
Louisville, Kentucky 40202

RECEIVED

FEB 04 2015

PLANNING &  
DESIGN SERVICES

Re: Proposal for Amendment of Binding Element No. 10;  
Planning Commission Docket No. 9-55-01;  
Letter of explanation of proposal

To Whom It May Concern:

This is a proposal to amend Binding Element No. 10 of Planning Commission Docket No. 9-55-01. Proposed new language is in bold face and is underlined. Language proposed to be deleted is in bold face and is crossed-through.

**A.** The materials and design of proposed structures shall be substantially the same as depicted in renderings presented at the time of detailed district development plan approval for each parcel. The building materials for the retail component and hotel shall be drivit, tile, brick, masonry and stone except nationally or regionally recognized chain operations may utilize wood exteriors where such exterior appearance is part of an established and generally used trade dress. The building materials for the office component shall be brick or stone or a combination of brick and stone. ~~**All structures adjacent to KY 22 shall have a consistent architectural style and exterior color scheme.**~~ An Architectural Review Committee shall be established by the Developer and reflected within the Deed Restrictions recorded prior to the submittal of the first detailed district development plan.

**B.** Notwithstanding anything to the contrary in A. above, the building materials of an approved office/retail building on General District Development Plan Lots C and D, combined, (where glass for windows and doors is not counted as a building material) may be 50% to 60% Alucobond® or similar metal panel provided that brick is the facing on more than 10% of the building.

I.

**July 16, 2014 DRC approval of building materials and design.** On July 16, 2014 in

Case No. 14 DEVPLAN1051 & 14MOD1006 the Development Review Committee of the Planning Commission approved a detailed district development plan for an office/retail building on combined Lots C and D of Old Brownsboro Crossings. *See* Development Review Committee minutes of July 16, 2014 at **Tab 1**. The July 16, 2014 approval was made subject to Binding Elements, among which was Binding Element No. 9, which states:

The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 16, 2014 DRC meeting.

The July 16, 2014 action of the Development Review Committee was not appealed.

In reliance on this approval the Alucobond® metal panels for this building were ordered *and the panels are now being delivered to the site.*


Therefore, the Applicant respectfully requests that the Planning Commission act on this Binding Element Amendment request as expeditiously as possible.

## II.

**Future request for Amendment of 2002 General District Development Plan Binding Elements.** As expressed at the Planning Commission's public hearing on January 29, 2014, the Binding Elements approved at the time of the 2002 General District Development Plan approval should be reviewed. Following this review – which is presently occurring – Applicant anticipates filing an additional request for Amendment of Binding Elements. *The Applicant agrees to request a meeting with representatives of the Wolf Pen Preservation Association to discuss this additional request, although this development is not located within the Wolf Pen neighborhood.*

Thank you for the courtesy of your consideration.

Sincerely,



Glenn Price

RECEIVED

FEB 04 2015  
PLANNING &  
DESIGN SERVICES

cc: Stephen T. Porter  
Jonathan Baker

0125310.0598674 4829-6878-5441v1

**DEVELOPMENT REVIEW COMMITTEE**

**July 16, 2014**

**NEW BUSINESS**

**CASE NO. 14DEVPLAN1051&14MOD1006**

Case No: 14DEVPLAN1051/14MOD1006  
Request: Revised Detailed District Development Plan with  
Landscape Waivers and Amendment to General  
Plan Binding Element  
Project Name: OBC Lots C and D  
Location: 9840 and 9850 Von Allmen Court  
Owner: McMahan Group Ventures  
Applicant: McMahan Group  
Representative: Glenn Price, Frost, Brown, Todd  
BTM Engineering  
Jurisdiction: Louisville Metro  
Council District: 16 – Kelly Downard  
Case Manager: **Christopher Brown, Planner II**

**RECEIVED**

FEB 04 2015

PLANNING &  
DESIGN SERVICES

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

**Agency Testimony:**

2:4:44 Mr. Brown discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

Glenn Price, Frost, Brown and Todd, 400 West Market Street, Louisville, Ky. 40202  
Ernie Dreer, Jeffersonville, In.

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

2:11:57 Mr. Price said the proposal is a Detailed District Development Plan for lots C and D of the general plan. Also, he doesn't know why the binding element was not updated as the development has been built out.

2:16:51 Mr. Dreer, the architect, spoke about the materials; 2 colors of panels (gray and white), brick, glass, balconies, patios, screens for signs, etc.

**The following spoke in opposition to this request:**

Barbara Kelly, 6009 Mint Spring Branch Road, Prospect, Ky. 40059  
Bob McCullough, 10607 Sleepy Hollow Road, Prospect, Ky. 40059

**DEVELOPMENT REVIEW COMMITTEE**

July 16, 2014

**NEW BUSINESS**

**CASE NO. 14DEVPLAN1051&14MOD1006**

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

2:21:10 Ms. Kelly remarked, "I'd like to applaud the developer for agreeing to incorporate some low impact development measures (bio-swales)."

Ms. Kelly objects to the following: scale of the lots; it's out of character with the other businesses; there's very little green space; the appearance of the building; and the signs. She requests continuing this case to a later date.

2:29:44 Mr. McCullough is concerned about the size and mass of the project.

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

No one

**Summary of testimony of those neither for nor against:**

None

**Rebuttal:**

2:44:31 Mr. Price remarked, "I'm disappointed with Wolf Pen's opposition to this." Over the course of time things do change (such as population). The height is not out of character for the area.

**Deliberation**

3:7:22 Acting Chairman stated that the Architectural Review Committee, ARC, will look at the issues brought up by the opposition regarding size, scope, materials, etc.

**An audio/visual recording of the Development Review Committee meeting 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.**

3:12:22 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

**WHEREAS**, the Louisville Metro Development Review Committee finds the waiver will not adversely affect adjacent property owners since the required planting and screening materials will be provided within the required buffers; and

**RECEIVED**

FEB 04 2015  
PLANNING &  
DESIGN SERVICES

DEVELOPMENT REVIEW COMMITTEE  
July 16, 2014

RECEIVED

FEB 04 2015

PLANNING &  
DESIGN SERVICES

**NEW BUSINESS**

**CASE NO. 14DEVPLAN1051&14MOD1006**

**WHEREAS**, Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate 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 the 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. 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 air borne and water borne pollutants. The intent of the buffer will be met with the proposed planting and screening meeting the requirements of the Land Development Code; and

**WHEREAS**, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow the buffer to be provided with the required plantings while maintaining the location of the existing utility easements and providing needed parking; and

**WHEREAS**, 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 by requiring extension of the buffer into areas needed for parking for the proposed use.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Waivers 1 and 2 from chapter 10.2.4.B of the Land Development Code to allow utility easements to overlap required landscape buffers by more than 50% and chapter 10.2.10 of the Land Development Code to allow the proposed parking to encroach into a required 15 foot VUA LBA based on the staff report, evidence and testimony heard today.

**The vote was as follows:**

**YES: Commissioners Brown, Kirchdorfer, Peterson and White**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioner Tomes**

14ZONE1059

DEVELOPMENT REVIEW COMMITTEE  
July 16, 2014

RECEIVED

NEW BUSINESS

CASE NO. 14DEVPLAN1051&14MOD1006

FEB 04 2015  
PLANNING &  
DESIGN SERVICES

ABSTAINING: No one

3:13:07 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

**WHEREAS**, There does 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 Works and the Kentucky Transportation Cabinet have approved the preliminary development plan. The existing infrastructure can accommodate the proposed increase in commercial square footage; and

**WHEREAS**, The open space requirements are met with the current proposal; and

**WHEREAS**, The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions 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 Development Review Committee further finds the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the amendment to the General Plan binding element to revise the square footage as submitted by the applicant's attorney.

**General:**

2. The commercial and retail development shall not exceed ~~469,300~~ **501,567** square feet of gross floor area. The office development shall not exceed 420,000 square feet of gross floor area and 5,000 square feet of gross floor area for the preservation of the historic residence. ~~The hotel development shall not exceed a total of 44,000 square feet.~~ The ~~medical diagnostic clinic~~ **hospital and medical office buildings** shall not exceed a total of ~~80,000~~ **298,000** square feet. Outlet structures shall be generally oriented toward the internal roadways as shown on the General District Development Plan.

DEVELOPMENT REVIEW COMMITTEE  
July 16, 2014

RECEIVED

NEW BUSINESS

CASE NO. 14DEVPLAN1051&14MOD1006

FEB 04 2015  
PLANNING &  
DESIGN SERVICES

The vote was as follows:

**YES: Commissioners Brown, Kirchdorfer, Peterson and White**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioner Tomes**

**ABSTAINING: No one**

3:14:03 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan based on the staff report and the testimony heard today **SUBJECT** to the following Binding Elements:

**Detailed:**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 40, 724 square feet of gross floor area.
3. Signs shall be in accordance with the Old Brownsboro Crossing Master Sign Plan.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

**DEVELOPMENT REVIEW COMMITTEE**

**July 16, 2014**

**NEW BUSINESS**

**CASE NO. 14DEVPLAN1051&14MOD1006**

- a. The development plan must receive full construction approval from Construction Permits Review and Transportation Planning Review and the Metropolitan Sewer District.
  - b. 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.
7. 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.
  8. 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.
  9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the July 16, 2014 DRC meeting.
  10. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
  11. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

**The vote was as follows:**

**YES: Commissioners Brown, Kirchdorfer, Peterson and White**

**RECEIVED**

FEB 04 2015  
PLANNING &  
DESIGN SERVICES

14ZONE1039



**DEVELOPMENT REVIEW COMMITTEE**  
July 16, 2014

**NEW BUSINESS**

**CASE NO. 14DEVPLAN1051&14MOD1006**

**NO: No one**

**NOT PRESENT AND NOT VOTING: Commissioner Tomes**

**ABSTAINING: No one**

**RECEIVED**

FEB 04 2015

PLANNING &  
DESIGN SERVICES

FEB 04 2015

PLANNING &  
DESIGN SERVICES**Binding Element Amendment Justification**

- 1. Are there any natural resources on the property, including trees and other living vegetation, steep slopes water courses, flood plains, soils air quality, scenic views, and historic sites? And are these natural resources being preserved?**

There are existing trees and landscape plantings on site. The historic Von Allmen residence has been preserved and restored as Corbett's Restaurant. Existing trees and landscaping will be preserved to the extent possible.

- 2. Is safe and efficient vehicular and pedestrian transportation provided both within the development and the community?**

Existing streets, sidewalks and the multi-use path within Old Brownsboro Crossings provide for safe and efficient vehicular and pedestrian movement throughout the site and between buildings. Any proposed development will provide sidewalks along adjacent street frontage. The Louisville Department of Public Works or its predecessor agency has approved the layout for the General District Development Plan and all approved Detailed District Development Plans.

- 3. Is sufficient open space (scenic and recreational) to meet the needs of the proposed development being provided?**

Yes. Sufficient open space is being provided within Old Brownsboro Crossings pursuant to the Land Development Code.

- 4. Are provisions for adequate drainage facilities provided on the subject site in order to prevent drainage problems from occurring on the subject site or within the community?**

Yes. Adequate drainage facilities have been provided on site in order to prevent drainage problems from occurring either within Old Brownsboro Crossings or in the community.

- 5. Is the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses compatible with the existing and projected future development of the area?**

Yes. The overall high quality of site design or each building within Old Brownsboro Crossings is compatible with and complements existing development along KY 22, and existing development in the general vicinity. With regard to the office/retail building for "Lots C and D" the first floor elevation of the building is situated lower than the grade of KY 22. Because of this lower elevation and the berm and proposed landscaping along

the frontage of the building at KY 22, views of much of the building will be filtered by the proposed landscaping. Parking, loading and delivery facilities will also benefit from the difference in elevation, berm and landscaping.

**6. Is the proposal in conformance with the Comprehensive Plan and Land Development Code?**

Yes. The proposed Binding Element Amendment conforms with the Comprehensive Plan. Specific Guidelines and Policies of the Comprehensive Plan are addressed below.

**Community Form Guideline 1.** The proposal conforms to Compatibility Guideline 1 and all applicable Policies adopted thereunder, including Policy 1.B.6 because the proposed amendment will allow the building to remain human scale (as defined by the Comprehensive Plan) because the building design and materials will be inviting to the public with opportunities for pedestrian connections to nearby buildings.

**Compatibility Guideline 3.** The proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.2 and 3.9. The Alucobond® metal panels are an appropriate building material for an office/retail building fronting on KY 22 in conjunction with a brick element to the building.

**Land Development Code.** The proposal conforms to the Land Development Code. The proposed Amendment violates no provision of the Code.

0125310.0598674 4817-7203-7153v1

RECEIVED

FEB 04 2015

PLANNING &  
DESIGN SERVICES