

Planning Commission
Staff Report
September 1, 2022



Case No:	22-MSUB-0001/22-FFO-0002/22-WAIVER 0059/22-WAIVER-0103
Project Name:	8000 Broad Run Rd
Location:	8000 Broad Run Rd
Owner(s):	Walton Investments, LLC
Applicant:	Highgates Management
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
Case Manager:	Jay Lockett, AICP, Planner II

REQUEST(S)

- **Waiver** of Land Development Code section 7.3.30.E to allow greater than 15% overlap of required rear yards and drainage easements for lots 46-113, 143-242
- **Waiver** of Land Development Code section 7.3.30.F to remove trees over 4 inches in caliper within Tree Canopy Credit Areas to provide the required evergreen plantings per the MRDI standards
- **Floyds Fork Development Review Overlay**
- **Major Preliminary Subdivision (Mixed Residential Development Incentive)** with review of land disturbing activity on slopes greater than 20% and Conditions of Approval

CASE SUMMARY/BACKGROUND

The applicant is proposing to utilize the Mixed Residential Development Incentive to create a subdivision with 242 single family lots and 190 multifamily dwelling units. The development site is in the Neighborhood form district and contains approximately 85.53 acres of R-4 zoned land and 108.94 acres of R-R zoned land. Most of the development is occurring within the R-4 portion of the site, while the R-R section provides access via two proposed public streets connecting to Broad Run Rd. The subject site contains a mix of vacant agricultural land and forested areas. Big Run Creek, a perennial stream flows along the rear of the site. The site has some areas of steep slopes, as well as known karst features. The R-R area of the site lies within the Floyds Fork Development Review Overlay. The site was the location of a historic log fort known as Sentinel Station that was important to the early history of settlement in this area.

STAFF FINDING

The subdivision is compliant with the Land Development Code, except where the waivers are requested. The applicant has met all requirements of the Mixed Residential Development Incentive to allow reduced lot sizes and multifamily housing units in the R-4 zoning district. The proposed development minimizes disturbance of environmentally sensitive areas on the subject site and meets all tree canopy preservation requirements. The development within the Floyds Fork Development Review Overlay area is minimized and in keeping with the intent of the Overlay. The waiver requests are adequately justified and meet the standards of review.

TECHNICAL REVIEW

The proposed subdivision includes disturbance of slopes in excess of 20%. Land Development Code, section 4.7.5 provides that Land disturbing activities on slopes greater than 20% is permitted on lots created by major subdivision after the effective date of this regulation only if the activity is in keeping with the Comprehensive Plan and the proposed activity complies with the provided standards of this part. A staff analysis has been included in this report for the Planning Commission's consideration.

Mixed Residential Development Incentive Compliance per LDC 4.3.20:

Under the Mixed Residential Development Incentive (MRDI) Multi-Family & Two-Family Dwellings may be considered a Permitted Use with Special Standards in the R-4 & R-5 zoning districts in conformance with the standards found in LDC 4.3.20. The standards establish a point system relating to various parts of the development. All development proposals must obtain at least one point each from Category A: Multi-Family and Category B: Affordable Units. Other points are available and density bonuses may be applied if a development is awarded at least 8 points. The proposed development is using the MRDI standards to claim a 5% density bonus over the standard R-4 density of 4.84 DU/Ac, which would permit a maximum density of 5.20 DU/Ac. The net density of the proposed development within the R-4 zoning district is 5.05 DU/Ac.

Category A Multifamily Dwellings Total units: 433. MF Units 190 (43%) 2 Points
Category B Affordable units: Total units: 433. Affordable Units: 22 (5%) 1 Point

Other incentives: Common Open Space 20-29.9% (23%) 2 points
Property in Census tract with less than 15% living in poverty (3.15%) 2 points
Public park within ½ mile of site (Turkey Run Park .41 miles) 1 point
Development exceeds Chapter 10 tree requirement by at least 50% (60% provided total) 1 point

Total: 9 Points (8 Points needed to claim 5% density bonus)

Average lot size: 9,584 SF (Minimum 9,000 SF)
Net Density: 5.05 DU/Ac (5.20 Max Allowed including 5% density bonus)

INTERESTED PARTY COMMENTS

Several residents have submitted letters of concern regarding this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 7.3.30.E

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the rear yards overlap with easements that will only affect the property owners of the new lots.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as all lots will still have adequate private yard area, as well as access to shared amenities within the development.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the locating of sewer and drainage infrastructure is largely dictated by topography and grading considerations. The applicant has taken care to reduce disturbance of environmentally sensitive areas on site by utilizing a more compact development pattern.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) 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.

STAFF: 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 the applicant to move the easement or extend the rear yards, either of which would reduce the usability of the property

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 7.3.30.F

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as adequate screening and buffering will be provided around the subject site.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: The waiver will not violate specific guidelines of Plan 2040 as adequate screening and buffering will be provided around the subject site.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the applicant will remove only the minimum number of trees within the buffer in order to install the required evergreen plantings.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) 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.

STAFF: 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 as two sections of Land Development Code are conflicting with one section requiring preservation of mature trees, while the other requires new plantings. The MRDI standards to plant evergreen trees cannot be waived, so the applicant has requested a waiver of this section.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR LAND DISTURBING ACTIVITIES ON SLOPES GREATER THAN 20%

- (a) The Commission finds that the design and configuration of the development results in the minimum disturbance of slopes greater than 20% necessary to accommodate the proposed use of the site; and,

STAFF: A geotechnical and slope stability review was completed for the site by ECS Southeast and no significant concerns with respect to slope instability or substantial erosion were observed on these scattered lots. There are several karst features identified on the preliminary plan, and the geotechnical report lays out detailed construction techniques with respect to karst features, shallow rock and steep slope areas. Overall, the design and layout appear to be the minimum necessary to accommodate the proposed use of the site.

- (b) Compatible on-site utilities (electric, phone, cable) are placed in a common trench; and,

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

- (c) The Planning Commission may approve the activity if the geotechnical report opines and demonstrates that:
a. The slope's ground surface and subsurface are not unstable;
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. If a geotechnical report is required, the applicant provides a plan, acceptable to the Commission, that specifies 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: In general, the geotechnical report opines that the on-site slopes in the observed areas were stable at the time of observation. 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.

- (d) The activity is in keeping with the Comprehensive Plan.

STAFF: The Comprehensive Plan calls for the integration of natural features into the pattern of development and that proposal 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, preliminary soil and slope evaluation 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. While some buildable lots are being placed in areas of concern, the majority of home construction will occur outside the areas of steeper slopes and karst features.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Floyds Fork Development Review Overlay review**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision** with land disturbing activity on slopes greater than 20% and Conditions of Approval

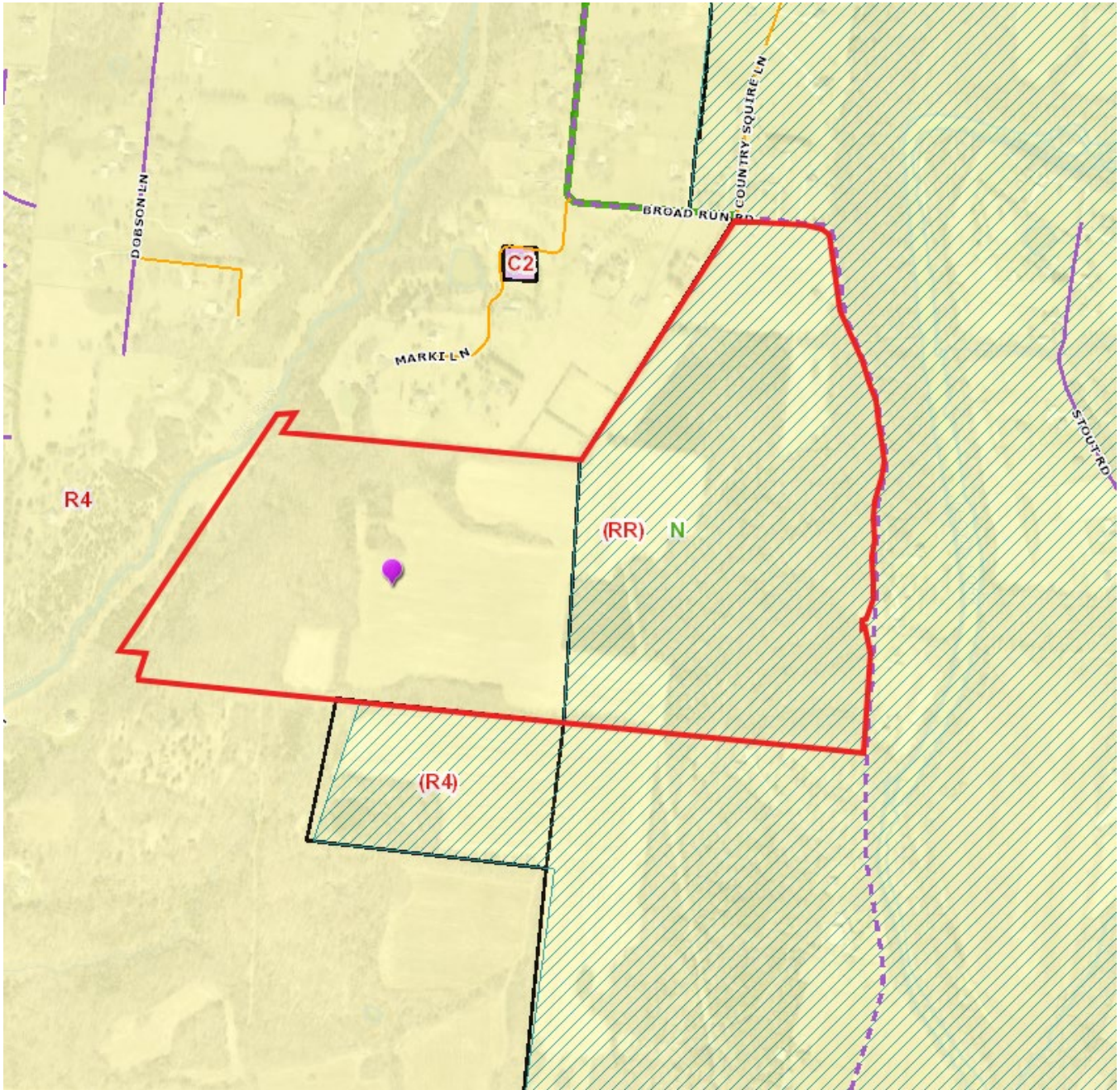
NOTIFICATION

Date	Purpose of Notice	Recipients
8-17-22	Hearing before PC	1 st tier adjoining property owners and residents Other attendees to neighborhood meeting Registered Neighborhood Groups in Council District 22

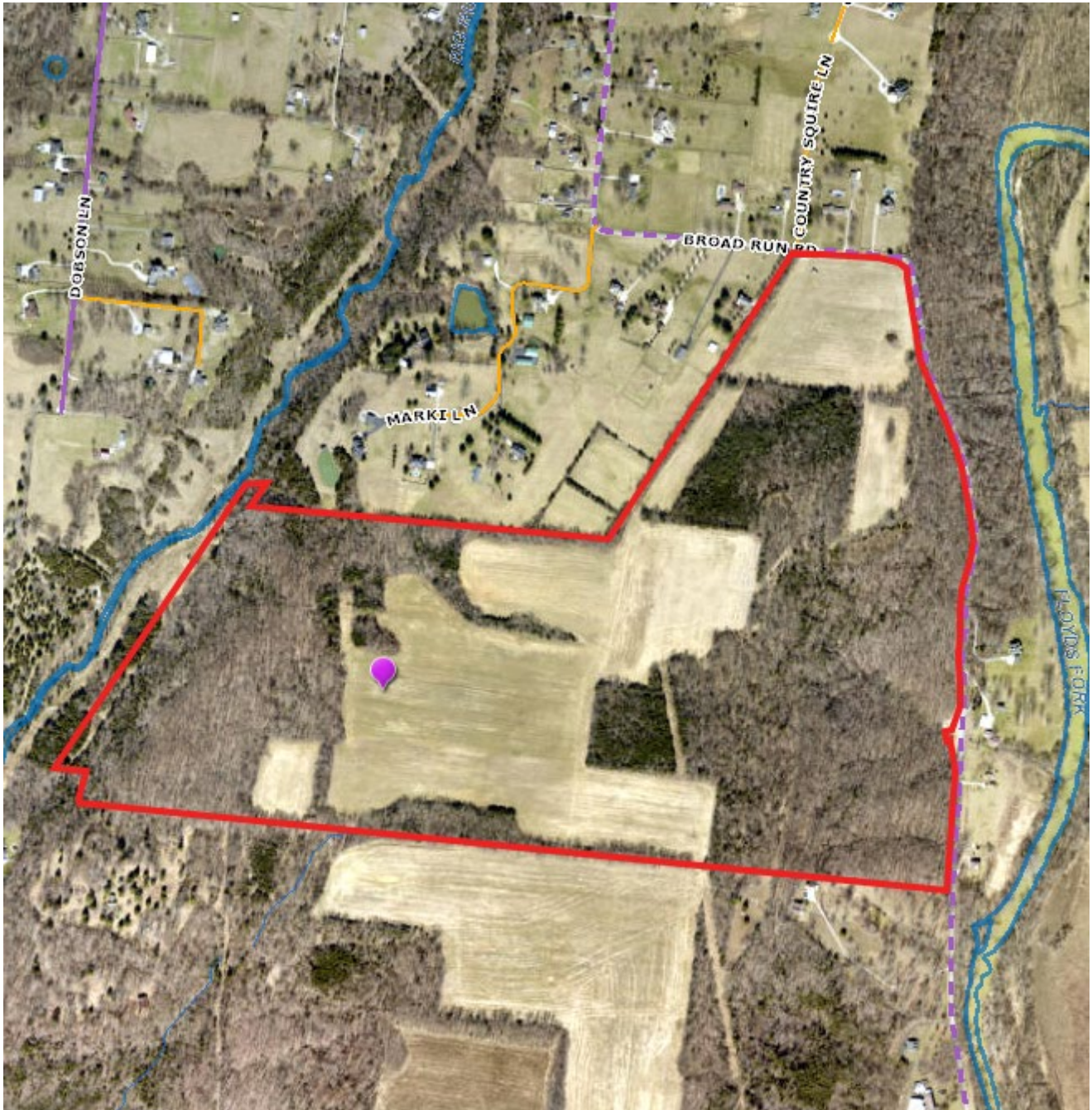
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. Zoning Map



2. Aerial Photograph



3. Proposed 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. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
3. 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.
4. 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."
5. All street signs shall be installed by the Developer, and shall conform with 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.
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 larvicide approved by the Louisville Metro Health Department. Larvicides 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.
 1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
 2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
 3. Bylaws of the Homeowners' Association in a form approved by 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. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat. Signature entrances located along designated scenic corridors shall not exceed six feet in height or 50 feet in total length (25 feet each side).
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. The development shall be constructed in accordance with the techniques outlined in the Geotechnical Report dated June 6, 2022 and the Karst Survey dated January 13, 2022, both prepared by ECS Southeast.
16. All buildings constructed shall be of an architectural style which will harmonize with other buildings in the same neighborhood. Diversity Housing units shall be constructed with exterior materials and architectural designs that are consistent with the materials and designs of the market rate units in the project.
17. No more than 50% of one type of housing (single family/multi-family) may be developed until at least 50% of the other type of housing has been developed. Also, 50% of the designated affordable units must be constructed by the time 50% of the total units in the development have been constructed. These calculations shall be based on the number of building permits issued.
18. The developer/owner shall be responsible for submitting an annual report to Planning & Design Services staff at 12-month intervals from the date of the recording of the record plat, until all affordable owner-occupied units have been issued building permits. The annual report shall identify the name of the subdivision/development, the plat book and page number of the record plat if applicable, the lot/unit numbers, the lot/unit addresses, and the sale price and/or rental rates of the designated affordable units. The annual report shall indicate separately the number of building permits issued for single-family and multi-family dwellings. New lots may not be

recorded and building permits shall not be issued for any unit on the subject site if the required annual reporting is not up-to-date.

19. For a period of 15 years after the last affordable rental unit building permit has been issued, the developer/owner or assigns shall submit annual reporting as described in Condition of Approval 18 and Land Development Code section 4.3.20.E.7. Failure to update the annual report shall be subject to enforcement per Land Development Code section 11.10.
20. Prior to recording the record plat, the applicant will construct the improvements to the Broad Run Rd/Seatonville Rd/Brentlinger Ln intersection as shown on the Road Improvements Exhibit dated May 23, 2022.
21. Prior to site disturbance, any chimney, foundations, cellars, ruined structures etc. shall be mapped and catalogued, with photographs and other documentation to be provided to Louisville Metro Landmarks Commission staff.
22. Prior to requesting a building permit for the 200th dwelling unit on site, the second street accessing Broad Run Road shall be constructed.
23. All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast surveys shall be done in a manner consistent with Kentucky Blasting Regulations.