

# Land Development & Transportation Staff Report

February 13, 2020



<b>Case No:</b>	19-MSUB-0016
<b>Project Name:</b>	Highland Preserve
<b>Location:</b>	2814, 2816, 2830 & 2898 Newburg Road
<b>Owner(s):</b>	Highland Preserve, LLC
<b>Applicant:</b>	Highland Preserve, LLC
<b>Representative(s):</b>	Sabak, Wilson, & Lingo, Inc.
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	10 – Pat Mulvihill
<b>Case Manager:</b>	Joel P. Dock, AICP, Planner II

## REQUESTS

- **Waiver** of Land Development Code (LDC), section 5.8.1.B to not provide sidewalks in the abutting right-of-way
- **Waiver** of LDC, section 7.3.30.B to allow detached homes to abut a private roadway
- **Major Preliminary Subdivision Plan** for 16 single-family residential lots

## CASE SUMMARY

The proposed subdivision will create 16 single-family residential lots along Newburg Road, an arterial roadway with access to Interstate-264. The subdivision is served by a gated private roadway and provides guest parking areas. The existing house will remain and be located on lot 1. Detention facilities and open space (buffer and setback) are located along the frontage of Newburg Road.

## STAFF FINDING

The requested sidewalk waiver does not appear to be adequately justified based on staff's analysis contained in the standard of review. Further, the applicant has declined pursuing alternative methods for sidewalk compliance, such as a payment of sidewalk fee-in-lieu or off-site construction within the council district. For these reasons, the major preliminary subdivision plan does not meet the minimum standards of the zoning and subdivision regulations contained within the Land Development Code.

The waiver to allow the use of a private roadway does appear to be adequately justified based on staff's analysis contained in the standard of review.

## TECHNICAL REVIEW

- 10-49-05: A major preliminary subdivision plan for 25 lots was proposed in 2005. This plan was deferred indefinitely at the LD&T meeting on February 9, 2006.
- Fire department comment related to the private roadway and gated entrance were received on 2/6/20. They suggested, "There should be a Knox Box or Knox gate switch to allow for fire department access." No further comments were provided.
- MSD preliminary approval is pending.

- In accordance with LDC, section 6.2.1.D, The Directors of DPW and PDS concurred that private roadways may be used to serve the development. A waiver is still required to address the requirement for public roadways contained in LDC 7.3.30.B.
- All private access or joint-use easements granted by minor plat must be released by minor plat in accordance with LDC 6.3.4. Utility easements alone do not require release through the processes described therein.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (SIDEWALK)**

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

STAFF: The waiver will adversely affect adjacent property owners and the larger community as relief from the requirements would deprive future users of safe access across the frontage of the development site.

- (b) Granting of the waiver will result in a development in compliance with the Comprehensive Plan and the overall intent of this Land Development Code; and

STAFF: Land Use & Development Goal 1, Policy 1.3 promotes sidewalks along the streets of all developments. Land Use & Development Goal 1, Policy 1 states that in order to promote healthy lifestyles and reduce congestion, new development and redevelopment should provide for the movement of pedestrians, bicyclists and transit users, where appropriate. Land Use & Development Goal 3, Policy 5 states that developments should be evaluated for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality. The granting of the waiver would violate these stated land use and development policies as the developer has multiple options to comply with the requirements and provide sidewalks either on-site, off-site, or through the payment of a fee-in-lieu. Each of these options furthers the mobility goals of Louisville Metro to promote healthy lifestyles and multi-modal transportation options, as well as safe pedestrian connectivity within the immediate vicinity or council district.

- (c) The applicant cannot reasonably comply with one of the listed methods of compliance (section 6.2.6.C); and

STAFF: The applicant can reasonably comply with the listed alternative methods of compliance in LDC, section 6.2.6.C as a fee-in-lieu for construction of sidewalks and locations for off-site construction within the council district have each been offered. The applicant has declined to pursue each of these methods.

- (d) Strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

STAFF: The strict application of the provision of the regulation does not deprive the applicant of the reasonable use of the land as alternatives for compliance to comply with the minimum standards set forth in LDC, section 6.2.6.C have been offered to the applicant and declined.

- (e) There are site constraints that make sidewalk construction impractical or sidewalks do not exist in the area and there is not a likelihood for sidewalks to be constructed in the future, except for areas where sidewalks are recommended within a Planning Commission or legislatively adopted plan recommending sidewalk construction.

STAFF: Sidewalks may be likely in the future as the development is located in a residential community along a route that connects institutions of learning, parks, services and amenities, and the Louisville Zoo. Transit service is also present along the roadway. Sidewalks are present to the south moving towards and connecting with Gardiner Lane. Sidewalks are present to the north of the site beginning at Trevilian Way. Sidewalks are also present within close proximity on Dundee Road beginning at Newburg Road and moving towards a school.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (PRIVATE ROAD)**

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

STAFF: the waiver will not adversely affect adjacent property owners as no connectivity is being provided through the development site and the roadway will be for the use and benefit of those owners within the subdivision only.

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

STAFF: The waiver will not violate specific guidelines of the comprehensive plan as no roadways requiring extension stub into the property and no roadway stubs from the property are required as the adjacent land surrounding the subject site are built-out.

- (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 Directors of Public Works and Planning and Design services have provided their consent to the use of private roadway in accordance with LDC 6.2.1.

- (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 as no roadways requiring extension stub into the property and no roadway stubs from the property are required as the adjacent land surrounding the subject site are built-out. Further, the Directors of Public Works and Planning and Design services have provided their consent to the use of private roadway in accordance with LDC 6.2.1.

### **REQUIRED ACTIONS**

- **APPROVE** or **Deny** the **Waiver** of Land Development Code, section 5.8.1.B to not provide sidewalks in the abutting right-of-way
- **APPROVE** or **Deny** the **Waiver** of Land Development Code, section 7.3.30.B to allow detached homes to abut a private roadway
- **APPROVE** or **Deny** the **Major Preliminary Subdivision Plan** for 16 single-family residential lots

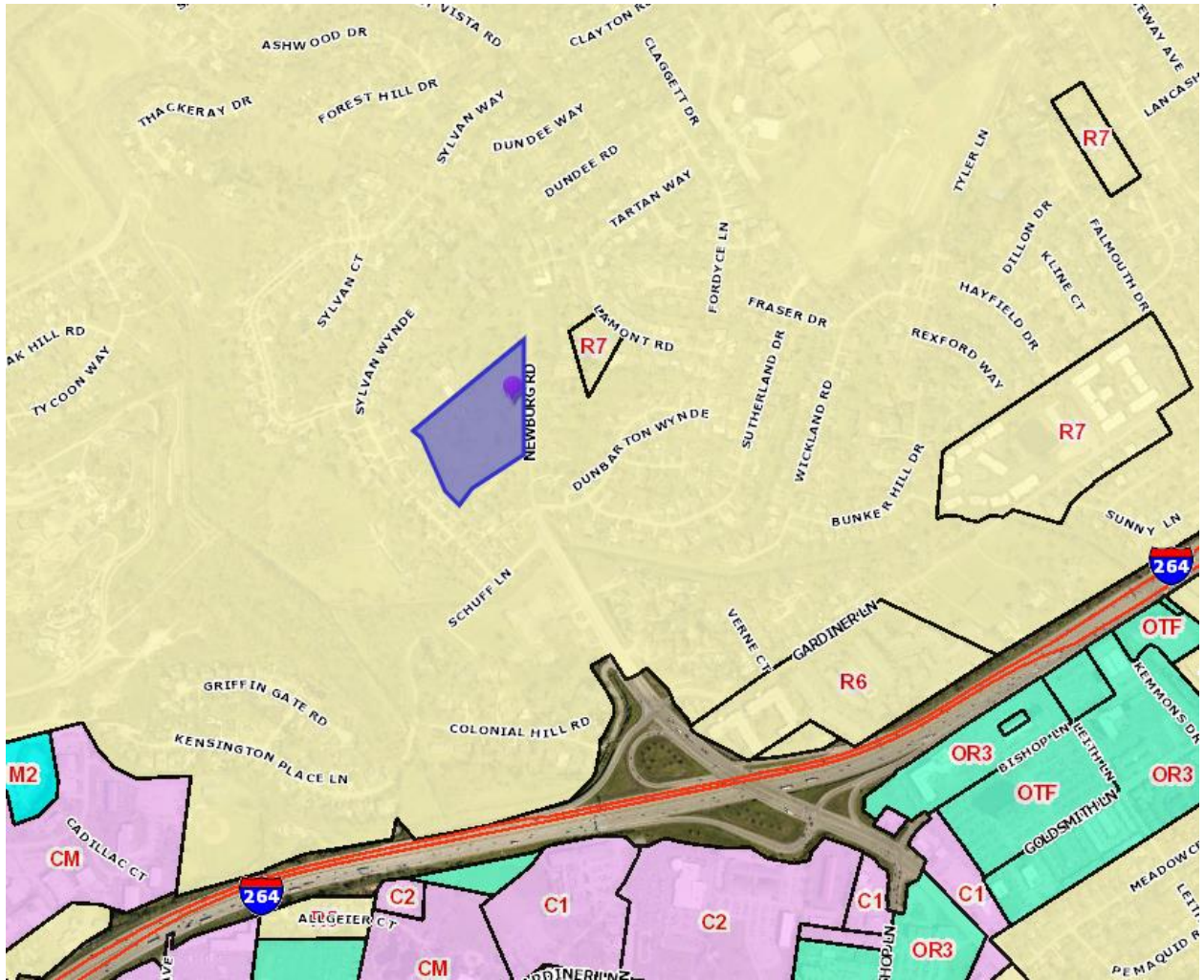
**NOTIFICATION**

Date	Purpose of Notice	Recipients
1/28/20	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Subscribers of Council District 10 Notification of Development Proposals

**ATTACHMENTS**

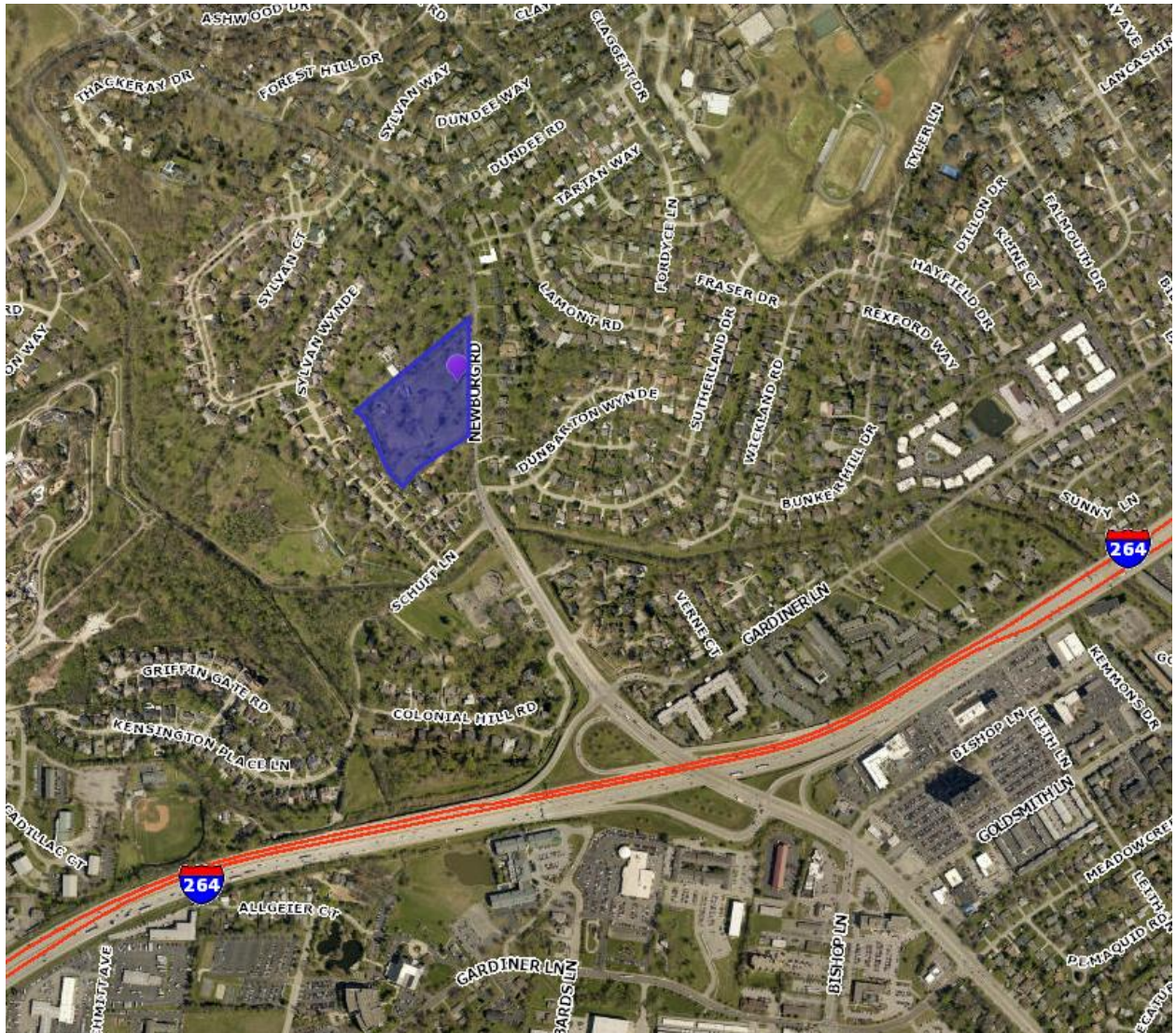
1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

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. 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."
3. 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.
4. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for A and B Streets, as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
5. Open space shall not be further subdivided or developed for any other use and shall remain as open space, unless approved by the Planning Commission. A note to this effect shall be placed on the record plat.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
13. 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."
14. Covenants, Conditions, and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that mandate inclusion in the CCRs, as well as the inclusion of the following requirements: (a) all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities shall be installed by the developer prior to turn-over of maintenance responsibilities to the Home Owners Association ("HOA"); (b) any shared water meters and property service connections for sanitary sewers shall be the sole responsibility of the HOA; (c) any water, sewer and drainage facilities that cross lot lines shall be included in blanket easements for purposes of both lot owner and HOA access and maintenance; and (d) where attached residences are proposed, easements shall be provided to provide for incidental encroachments, property maintenance and repair