

# Planning Commission Staff Report

September 18th, 2014



<b>Case No:</b>	<b>14ZONE26</b>
<b>Request:</b>	<b>Rezoning from R-6 to C-1 with a Conditional Use Permit, Variance, Landscape Waiver and Revised Detailed District Development Plan</b>
<b>Project Name:</b>	<b>Ellingsworth Lane Apartments</b>
<b>Location:</b>	<b>11840 Ellingsworth Lane</b>
<b>Owner(s):</b>	<b>Ellingsworth Lane Apartments LLC</b>
<b>Applicant:</b>	<b>Lifestyle Communities</b>
<b>Representative(s):</b>	<b>Deborah Bilitski Sabak, Wilson &amp; Lingo</b>
<b>Jurisdiction:</b>	<b>Middletown</b>
<b>Council District:</b>	<b>20 – Stuart Benson</b>
<b>Case Manager:</b>	<b>Christopher Brown, Planner II</b>

## REQUEST

- Change in zoning from R-6 to C-1
- Conditional Use Permit for Outdoor Alcohol Sales and Consumption and Indoor Entertainment in C-1 with Relief from Listed Requirements
- Variance from Chapter 5.3.1.C.5 of the 2004 Land Development Code to allow a proposed building height of 45'
- Landscape Waiver from Chapter 10.2.4 of the 2004 Land Development Code to eliminate the required landscape buffer between the R-6 and C-1 zoning boundary
- Revised Detailed District Development plan

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

Existing Zoning District: R-6  
Proposed Zoning District: R-6 & C-1  
Existing Form District: Neighborhood  
Existing Use: Vacant  
Proposed Use: Multi-Family Residential and Restaurant  
Combined Minimum Parking Spaces Required: 635  
Combined Maximum Parking Spaces Required: 1,248  
Combined Parking Spaces Proposed: 824  
Plan Certain Docket #: 9100

The applicant is proposing a change in zoning from R-6 to C-1 on a portion of the property within the Ellingsworth Lane Apartments to allow a restaurant within the proposed apartment complex. The restaurant is proposed as an amenity and form of recreation area for the residents of the apartment complex. The proposal is located within the identified clubhouse and amenity area at the entry to the proposed multi-family residential complex on the south side of Ellingsworth Lane. The property is north of the I-64 expressway ROW surrounded by a mix of residential uses and zoning to the east and north. A vacant OTF zoned parcel is located to the west of the site. The proposed rezoning accounts for the access to the clubhouse and restaurant as well as its associated parking.

Under Docket #9-18-04, the property was proposed to be rezoned from R-4 to a mix of OR-3 and C-1 for a corporate campus of office and commercial uses. The rezoning was denied and found to be inappropriate for the area. Following that denial, a new proposal was reviewed for the site under Docket #9100 to allow a change in zoning from R-4 to R-6. The change in zoning was approved for condominiums on December 6, 2007 by the City of Middletown. The associated development plan was revised to allow 398 apartment units with a variance to allow the three story apartment buildings to exceed the 35' maximum height by 4.5'.

As part of the current proposal, the applicant is requesting a Conditional Use Permit to allow outdoor alcohol sales and consumption within the C-1 zoned portion of the subject site. The Conditional Use Permit is outlined around the proposed restaurant and clubhouse amenity area. The applicant has requested to waive two of the listed requirements for the Conditional Use Permit and revise a third. The applicant has requested to waive the 6' continuous screening requirement between the outdoor dining area and residentially zoned property from Chapter 4.2.42.D as well as the liquor license designation from Chapter 4.2.42.E. The applicant has requested to revise the hours of operation requirement from Chapter 4.2.42.F to allow outdoor alcohol sales and consumption to cease by 1 am on Sunday through Wednesday and by 2:30 am on Thursday through Saturday.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Vacant	R-6	N
<b>Proposed</b>	Apartments with Restaurant	R-6/C-1	N
<b>Surrounding Properties</b>			
<b>North</b>	Single and Multi-family residential	R-5 / R-5A	NFD
<b>South</b>	Commercial	C-2	NFD
<b>East</b>	Multi-family residential	R-5A	NFD
<b>West</b>	Office / Commercial	OTF / C-1	NFD

**PREVIOUS CASES ON SITE**

- 9-18-04: A change in zoning request from R-4 to Or-3 and C-1 for a corporate campus was denied.
- 9100: On December 6, 2007, a change in zoning from R-4 to R-6 was approved by the City of Middletown for condominiums known as Victory Knoll.
- 17386: A revised detailed district development plan was approved to allow 398 apartment units on the site with amendments to the binding elements regarding density and design.
- 18373: The Board of Zoning Adjustment approved a variance to allow several of the structures on the site to exceed the 35' maximum height by 4.5'.
- 19046: A revised detailed district development plan and binding element amendment were approved for the site to allow a new style of building referred to on the development plan as a carriage house. The design of the proposed structures was also amended.

**INTERESTED PARTY COMMENTS**

None received.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020

## STANDARD OF REVIEW FOR REZONING AND FORM DISTRICT CHANGES

Criteria for granting the proposed form district change/rezoning: *KRS Chapter 100.213*

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Cornerstone 2020; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Cornerstone 2020 which have substantially altered the basic character of the area.

## STAFF ANALYSIS FOR REZONING AND FORM DISTRICT CHANGES

Following is staff's analysis of the proposed rezoning against the Guidelines and Policies of Cornerstone 2020.

The site is located in the Neighborhood Form District

The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas.

The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages and incomes. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to large lot single family developments with cul-de-sacs, neo-traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero lot line neighborhoods with open space, and high density multi-family condominium-style or rental housing.

The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets.

The subject site is located in the clubhouse with restaurant area of a multi-family residential development that was previously rezoned. The owner is requesting this change in zoning to permit the restaurant with outdoor alcohol sales and consumption and entertainment in the clubhouse and restaurant.

The proposal complies with **Guideline 1, Community Form**, and **Guideline 2, Centers**. The proposal to rezone the subject site from R-6, multi-family residential, to C-1, commercial would create a unique circumstance, since the site is not located within or near an existing activity center with other non-residential uses. The Neighborhood form district typically encourages non-residential and commercial uses within activity centers at intersections of collector or arterial level roadways with other non-residential uses. However, **Guideline 2, Centers**, does foresee a situation where a non-residential use could be found appropriate within

a residential development. **Guideline 2, Policy 2** provides an exception to limiting non-residential uses to activity centers. It states that non-residential uses may be located within new planned or proposed developments where the commercial use mainly serves residents of the development and is similar in character and intensity to the residential development. This proposal is located in a proposed development where the commercial use will mainly serve residents of the development and the proposal is similar in character to the proposed residential development. Therefore the proposed rezoning is at a scale that is appropriate for nearby neighborhoods. The proposed rezoning will also have limited impact on nearby residential uses. The proposed commercial use will also be compatible with the proposed residential uses and will help reduce trips and support multiple modes of transportation.

The proposal complies with **Guideline 3, Compatibility**. Building materials will be compatible with proposed residential properties in the development. The proposal constitutes a non-residential expansion into an existing residential area. However, impacts from traffic, parking, signs, lighting, noise, odor and stormwater are appropriately mitigated since the proposal is similar in character to the proposed residential development. The proposal is similar in character to the proposed residential development and provides appropriate transitions to the proposed residential uses within the same development.

The proposal complies with the natural areas guidelines of the Comprehensive Plan under **Guideline 5, Natural Areas and Scenic and Historic Resources** by providing all required tree canopy for the site and respecting the natural features and buffers along the I-64 corridor and adjacent single family residential.

The proposal provides for appropriate multi-modal transportation facilities following the Comprehensive Plan under **Guidelines 7 and 8, Circulation and Transportation Facility Design** with full pedestrian connectivity, appropriate access and parking around the development as well as bicycle parking provided to support the proposed uses.

All other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Cornerstone 2020.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the City of Middletown regarding the appropriateness of this zoning map amendment. The City of Middletown has zoning authority over the property in question.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT**

### 1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposal is consistent with the applicable policies of the Comprehensive Plan. The proposal complies with **Guideline 1, Community Form**, and **Guideline 2, Centers**. The proposal to rezone the subject site from R-6, multi-family residential, to C-1, commercial would create a unique circumstance, since the site is not located within or near an existing activity center with other non-residential uses. The Neighborhood form district typically encourages non-residential and commercial uses within activity centers at intersections of collector or arterial level roadways with other non-residential uses. However, **Guideline 2, Centers**, does foresee a situation where a non-residential use could be found appropriate within a residential development. **Guideline 2, Policy 2** provides an exception to limiting non-residential uses to activity centers. It states that non-residential uses may be located within new planned or proposed developments where the commercial use mainly serves residents of the development and is similar in character and intensity to the residential development. This proposal is located in a proposed development where the commercial use will mainly serve residents of the development and the proposal is similar in character to the proposed residential development. Therefore the proposed rezoning is at a scale that is appropriate for nearby neighborhoods. The proposed rezoning will also have limited impact on nearby residential uses. The proposed commercial use will also be compatible with the proposed residential uses and will help

reduce trips and support multiple modes of transportation. The proposal complies with **Guideline 3, Compatibility**. Building materials will be compatible with proposed residential properties in the development. The proposal constitutes a non-residential expansion into an existing residential area. However, impacts from traffic, parking, signs, lighting, noise, odor and stormwater are appropriately mitigated since the proposal is similar in character to the proposed residential development.

2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: Building materials will be compatible with proposed residential properties in the development. The proposal constitutes a non-residential expansion into an existing residential area. However, impacts from traffic, parking, signs, lighting, noise, odor and stormwater are appropriately mitigated since the proposal is similar in character to the proposed residential development. The proposal will incorporate into the proposed larger, multi-family residential development. Setbacks, lot dimensions and building heights appear to be compatible with form district standards.

3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: All necessary public facilities are provided to serve the proposed use.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

- A. All outdoor areas for the sale and consumption of alcohol must have designated boundaries.

STAFF: All outdoor areas for the sale and consumption of alcohol shall take places within the boundaries delineated on the development plan.

- B. Outdoor dining areas within the public right-of-way must receive approval from the agency responsible for transportation engineering and shall be designed in accordance with agency standards.

STAFF: No dining areas are proposed within public rights-of-way.

- C. Outdoor dining areas adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public right-of-way.

STAFF: Boundaries should be clearly delineated on the plan.

- D. Outdoor dining areas that include the sale and consumption of alcohol within 50 feet of a residentially zoned or used property shall provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property. The continuous screen shall be in conformance with the Chapter 10, Part 4 (Implementation Standards).

STAFF: The applicant has requested relief from this listed requirement since it will be incorporated into the larger, multi-family development.

- E. This conditional use permit shall be limited to restaurant uses in the C-1 that hold the following types of ABC licenses:  
1. Restaurant liquor and wine license by the drink for 100 plus seats

2. Restaurant wine license by the drink for restaurants with seating for 100 and receives at least 70 percent gross receipts from food sales

STAFF: The applicant has requested relief from this listed requirement since these designations are outdated compared to the current ABC licensing process.

- F. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1 A.M.

STAFF: Outdoor sales and consumption of alcohol shall cease by 1 A.M but the applicant has requested an amendment to this listed requirement to allow a 2:30 A.M. time Thursday through Saturday.

- G. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).

STAFF: The site is subject to requirements of the Metro Noise Ordinance (LMCO Chapter 99).

- H. The Board may require additional and more restrictive requirements than those listed above based on the conditions of the specific location and the characteristics of the specific restaurant.

STAFF: The Planning Commission should determine if additional requirements are necessary to impose on this site.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES (Building Height)**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare since it is interior to the site and will be compatible with the additional height permitted for the surrounding multi-family residential structures.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since it follows established pattern of additional building height on the subject site.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since it is interior to the site and will be compatible with the additional height permitted for the surrounding multi-family residential structures.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations since it follows established pattern of additional building height on the subject site.

#### ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since additional height had previously been granted for other multi-family structures on the subject site.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or 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 create an unnecessary hardship on the applicant by not allowing the mixed uses of the proposed structures on the site.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the height pattern of the site had been previously established by prior ownership with the approved variances.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS (Landscape Buffer)**

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

STAFF: The waiver will not adversely affect adjacent property owners since the landscaping is interior to the development and along a parking area for the property.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, policy 9 of Cornerstone 2020 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. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. 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 landscape buffer is along an interior zoning boundary and would not prevent appropriate buffering from occur along the property perimeters where it is intended to be placed.

- (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 to allow adequate parking and pedestrian connections to be provided surrounding the clubhouse and amenities areas.

- (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 since the landscape buffer would reduce the parking to be provided on the tract associated with the clubhouse and its surrounding pedestrian connections.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP and BINDING ELEMENTS**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: 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.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: 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.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Open space requirements for the proposed development will be provided per the Land Development Code.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: 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.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: 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.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code with the exception of the requested waiver and variance which follow the guidelines of Cornerstone 2020.

## TECHNICAL REVIEW

There are no outstanding technical review issues that need to be addressed.

## STAFF CONCLUSIONS

The proposal meets the intent of the guidelines of the Comprehensive Plan and the requirements of the LDC with the exception of the requested variance and waiver. The variance will follow the established pattern of additional building height on the site and the standard of review has been met as proposed. The landscape waiver will eliminate the required buffer along the zoning boundary and allow for adequate parking to be provided while accommodating pedestrian connectivity. The Conditional Use Permit has met the standard of review with the exception of the requested relief as listed within the staff report. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal is in conformance with the Comprehensive Plan; OR the existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR if there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Cornerstone 2020 which have substantially altered the basic character of the area. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must also determine if the proposal meets the standards for granting a Conditional Use Permit and Revised Detailed District Development Plan with Variance and Landscape Waiver as established in the 2006 Land Development Code applicable in the City of Middletown. All actions should be made as recommendations to the City of Middletown.

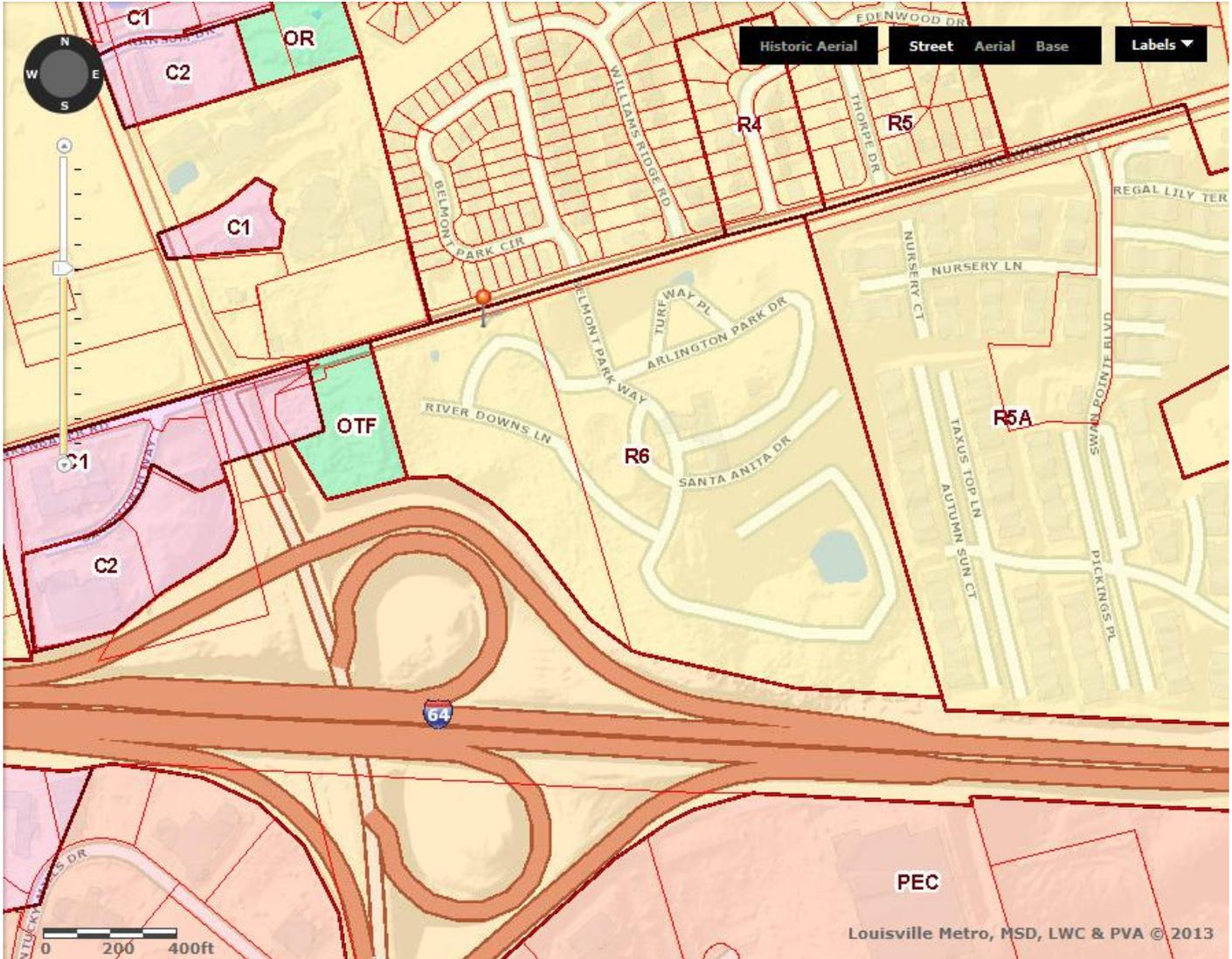
## NOTIFICATION

Date	Purpose of Notice	Recipients
8/12/14	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 20 Notification of Development Proposals
9/4/14	Hearing before PC	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 20 Notification of Development Proposals
9/3/14	Hearing before PC	Sign Posting on property
9/11/14	Hearing before PC	Legal Advertisement in the Courier-Journal

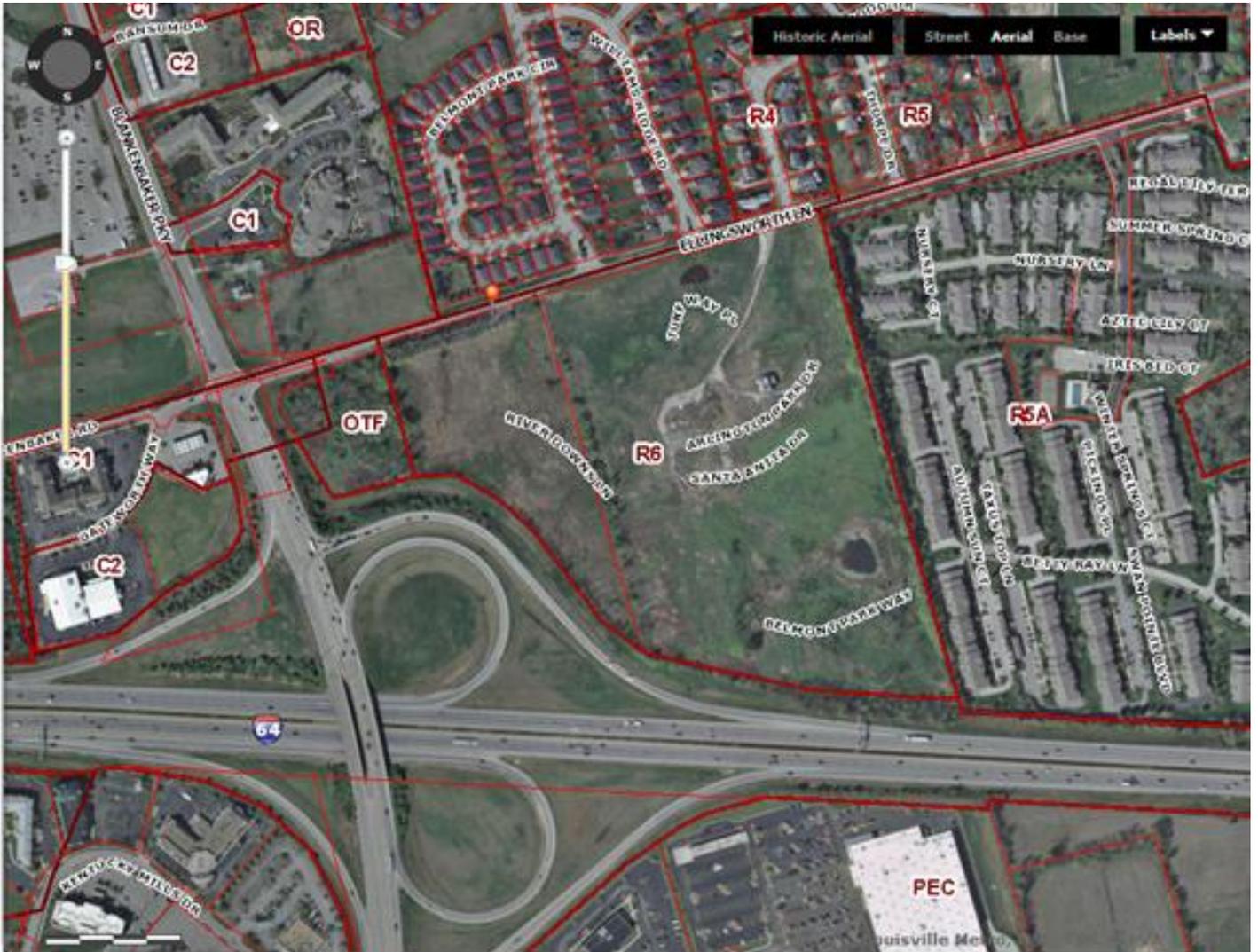
## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020 Checklist
4. Existing Binding Elements
5. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph



### 3. Cornerstone 2020 Staff Checklist

- + Meets Guideline
- √ Meets Guideline
- +/- More Information Needed
- NA Not Applicable

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Final Finding	Final Comments
1	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 1: Community Form	B.3: The proposal is a neighborhood center with a mixture of uses such as offices, retail shops, restaurants and services at a scale that is appropriate for nearby neighborhoods.	√	The proposal is for a commercial use located within the center of a residential use creating a mixture of uses along Ellingsworth Lane.
2	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 1: Community Form	B.3: If the proposal is high intensity, it is located on a major or minor arterial or an area with limited impact on low to moderate intensity residential uses.	√	The proposal is located in a proposed development where the commercial use will mainly serve residents of the development and the proposal is similar in character to the proposed residential development. Therefore the proposed rezoning will have limited impact on nearby residential uses.
3	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.1/7: The proposal, which will create a new center, is located in the Neighborhood Form District, and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.	√	The proposal will not create a new center. New construction which is located in the Neighborhood Form District will occur for the proposed commercial use and associated proposed residential.
4	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.3: The proposed retail commercial development is located in an area that has a sufficient population to support it.	NA	The proposal is not for retail commercial.
5	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.4: The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	√	The development could be considered compact because they are utilizing the area intended as clubhouse and recreation space only within the larger residential complex with complete pedestrian and vehicular connectivity.
6	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.5: The proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place.	√	Guideline 2, Policy 2 states that non-residential and mixed uses should be developed in designated activity centers, except for new planned or proposed developments where the commercial use mainly serves residents of the development and is similar in character and intensity to the residential development. The proposed commercial use will be compatible with the proposed residential uses and will help reduce trips and support multiple modes of transportation.
7	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.6: The proposal incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	√	The proposal incorporates residential into the larger proposed complex.

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Final Finding	Final Comments
8	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.12: If the proposal is a large development in a center, it is designed to be compact and multi-purpose, and is oriented around a central feature such as a public square or plaza or landscape element.	NA	The proposal is not part of large development in a center. It is a mixed use residential property with a small portion intended for the commercial use.
9	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.13/15: The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic, transit, pedestrian, environmental and aesthetic concerns.	√	The proposal shares both entrances and parking facilities with the larger residential complex. Parking and pedestrian connections are located to create complete connectivity throughout the site with connections proposed to the vacant site along the western property perimeter.
10	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.14: The proposal is designed to share utility hookups and service entrances with adjacent developments, and utility lines are placed underground in common easements.	√	The proposal is designed to share utility hookups and service entrances with the residential complex.
11	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 2: Centers	A.16: The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	√	The site can easily be accessed from all adjacent street frontages. Complete pedestrian connections are provided. Bicycle parking will be provided on the site to promote bicycle access.
12	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility.	√	Building materials will be compatible with proposed residential properties in the development.
13	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.4/5/6/7: The proposal does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated.	√	The proposal constitutes a non-residential expansion into an existing residential area. Impacts from traffic, parking, signs, lighting, noise, odor and stormwater are appropriately mitigated since the proposal is similar in character to the proposed residential development.
14	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.	√	APCD approved the proposal.
15	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	√	The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.
16	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	√	Lighting will comply with the LDC.

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Final Finding	Final Comments
17	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.11: If the proposal is a higher density or intensity use, it is located along a transit corridor AND in or near an activity center.	√	The proposal is not located along a transit corridor but there are several activity centers to the south at the Blankenbaker Parkway and I-64 intersection.
18	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.21: The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	√	No significant changes are proposed to the existing approved development plan. The proposal is similar in character to the proposed residential development and provides appropriate transitions to the proposed residential uses within the same development.
19	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.22: The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.	√	No significant changes are proposed to the existing approved development plan. The proposal is similar in character to the proposed residential development and provides appropriate transitions to the proposed residential uses within the same development.
20	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	√	Setbacks, lot dimensions and building heights appear to be compatible with form district standards. The additional building height is similar to the previously approved heights within the larger residential development surrounding the mixed use buildings.
21	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.	√	No significant changes are proposed to the existing approved development plan. The proposal is similar in character to the proposed residential development and provides appropriate transitions to the proposed residential uses within the same development.
22	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.24: The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	√	No significant changes are proposed to the existing approved development plan. The proposal is similar in character to the proposed residential development and provides appropriate transitions to the proposed residential uses within the same development.
23	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1.-4.7	Community Form/Land Use Guideline 3: Compatibility	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	NA	A parking garage is not proposed.

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Final Finding	Final Comments
24	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	√	Signage will comply with the LDC.
25	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 4: Open Space	A.2/3/7: The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.	√	Open space requirements for the site are met and serve the larger residential complex.
26	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 4: Open Space	A.4: Open space design is consistent with the pattern of development in the Neighborhood Form District.	√	Open space design is consistent with the pattern of development in the Neighborhood Form District.
27	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 4: Open Space	A.5: The proposal integrates natural features into the pattern of development.	√	The proposal incorporates the required tree canopy areas into the development.
28	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.1: The proposal respects 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.	√	The proposal incorporates the required tree canopy areas into the development.
29	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.2/4: The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	NA	This site does not have any known historical or cultural value.
30	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	NA	A portion of the larger residential complex is located in an area of steep slopes but it is outside the area proposed for the change in zoning.
31	People, Jobs and Housing Goal K4, Objective K4.1	Marketplace Guideline 6: Economic Growth and Sustainability	A.3: Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.	NA	The proposal is not located in a downtown.
32	Marketplace Strategy Goal A1, Objectives A1.3, A1.4, A1.5	Marketplace Guideline 6: Economic Growth and Sustainability	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	NA	The proposal is not for industrial development.

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33	Land Use and Transportation Connection Goal E1, Objectives E1.1 and E1.3	Marketplace Guideline 6: Economic Growth and Sustainability	A.6: Locate retail commercial development in activity centers. Locate uses generating large amounts of traffic on a major arterial, at the intersection of two minor arterials or at locations with good access to a major arterial and where the proposed use will not adversely affect adjacent areas.	√	Guideline 2, Policy 2 states that non-residential and mixed uses should be developed in designated activity centers, except for new planned or proposed developments where the commercial use mainly serves residents of the development and is similar in character and intensity to the residential development. The proposed commercial use will be compatible with the proposed residential uses and will not adversely affect adjacent residential uses within the same development.
34	Land Use and Transportation Connection Goal E1, Objectives E1.1 and E1.3	Marketplace Guideline 6: Economic Growth and Sustainability	A.8: Require industrial development with more than 100 employees to locate on or near an arterial street, preferably in close proximity to an expressway interchange. Require industrial development with less than 100 employees to locate on or near an arterial street.	NA	The proposal is not for industrial development.
35	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	√	Metro Transportation Planning and the Metropolitan Sewer District have approved the preliminary development plan. The proposal provides appropriate contributions or improvements to the public right-of-way.
36	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	√	The proposal provides for all applicable forms of multi-modal transportation with a complete sidewalk network and bicycle parking provided on the subject site.
37	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.6: The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development, adequate street stubs, and relies on cul-de-sacs only as short side streets or where natural features limit development of "through" roads.	√	The proposal includes complete connectivity to the larger residential complex and a stub street to the west that will create additional connectivity.
38	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	NA	No dedication of right-of-way has been requested or is being provided as part of the proposal.
39	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.	√	The proposal includes adequate parking surrounding the clubhouse and restaurant.

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40	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	√	The proposal provides cross access throughout the development.
41	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 8: Transportation Facility Design	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	√	A street stub is provided along the western property perimeter.
42	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 8: Transportation Facility Design	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	√	Access to the site will be provided through the entry point from Ellingsworth Lane to the clubhouse and restaurant portion of the overall site avoiding access through residentially or lower intensity uses.
43	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 8: Transportation Facility Design	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.	NA	No new streets are proposed as part of the development.
44	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit	A.1/2: The proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity.	√	Sidewalks are proposed throughout the development to support pedestrian use with bicycle parking to support cyclist access to the site.
45	Livability, Goals B1, B2, B3, B4, Objectives B1.1-1.8, B2.1-2.7, B3.1-3.4, B4.1-4.3	Livability/Environment Guideline 10: Flooding and Stormwater	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	√	MSD has given preliminary approval.
46	Livability Goals C1, C2, C3, C4, all related Objectives	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	√	APCD approved the proposal.
47	Livability, Goals F1 and F2, all related objectives	Livability/Environment Guideline 13: Landscape Character	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	√	Tree canopy and extensive buffering will be incorporated into the larger development.

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Final Finding	Final Comments
48	Quality of Life Goal J1, Objectives J1.1-1.2	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	√	The proposal will be served by existing and planned utilities.
49	Quality of Life Goal J1, Objectives J1.1-1.2	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	√	The proposal has access to adequate supply of potable water and water for fire-fighting purposes.
50	Livability Goal B1, Objective B1.3	Community Facilities Guideline 14: Infrastructure	A.4: The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	√	MSD has given preliminary approval.

#### 4. Existing Binding Elements

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. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee and the city of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The density of the development shall not exceed 12 dwelling units per net acre (398 units on 34.25 acres).
3. 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, and demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by the City of Middletown and the 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:
  1. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
  2. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
  3. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  4. Location of construction fencing for each tree/tree mass designated to be preserved.

4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District. Any changes made by IPL, MSD or any other agency, must be submitted to and approved by the City of Middletown prior to issuance of a binding permit.
  - b. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved by the City of Middletown prior to obtaining approval for site disturbance.
  - c. A minor plat or legal instrument shall be recorded creating the boundary of the proposed development. A copy of the recorded instrument shall be submitted to the Division of Planning & Design Services.
  - d. The property owner/developer must obtain City of Middletown approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. The must be at a minimum consistent with the preliminary landscape plan presented to the City of Middletown Commission at its meeting on July 12<sup>th</sup>, 2012. The developer shall show in its plan irrigation of the main common areas. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the existing landscaping or required landscaping without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact.
5. 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 drip line 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."
6. 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.
7. 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 or the City of Middletown upon request.
8. All plans setting out Tree Canopy Protection Areas (TCPAs) must contain the following notes:
  - a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1 of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.
  - b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent minimum distances. The final boundary for each TCPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
  - c. Tree protection fencing shall be erected around all TCPAs prior to site disturbance to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond

the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed, the fence shall be relocated to protect all remaining trees within that TCPA.

d. No parking, material storage, or construction activities are permitted within the TCPAs beyond that allowed for preliminary site investigation work.

e. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed twelve (12) feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at breast height (DBH) shall be removed without prior approval by DPDS.

f. No living and healthy tree as shown on the Approved Landscape Plan shall be removed without approval of the City of Middletown.

9. 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.
10. 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.
11. The signature entrance plan (if approved) shall be submitted to Planning Commission staff and the city of Middletown for review and approval prior to recording the record plat.
12. Trees will be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Detailed Development/Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff and the City of Middletown for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. 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.
13. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the August 21<sup>st</sup>, 2013 Development Review Committee and City of Middletown Commission meeting. Final elevations of any and all structures must be approved by the City of Middletown prior to issuance of a building permit. Developer will provide City of Middletown with information about its proposed interior finishes and amenities. The final construction plans (which shall be provided to City of Middletown prior to issuance of any building permit) must be consistent with the interior finishes and amenities shown at the City of Middletown Commission meeting.
14. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission and the City of Middletown.
15. 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 and the City of Middletown.

16. As part of the developer's initial work on the property, the developer will begin construction and prior to requesting certificates of occupancy for any residential units, the developer shall complete construction of the following roadway improvements, which are shown on the approved detailed district development plan:
  - (1) Dual left turn lanes on Ellingsworth Lane onto southbound Blankenbaker Parkway;
  - (2) A right turn lane on northbound Blankenbaker Parkway onto Ellingsworth Lane; and
  - (3) A third lane along Ellingsworth Lane from its intersection with Blankenbaker Parkway and extending along the frontage of the subject property.
17. The above binding elements may be amended as provided for in the Zoning District Regulations, upon approval of the City of Middletown.
18. The applicant, its successors and assigns, shall maintain the apartments and site in a high state of repair, including but not limited to:
  - a. Maintenance of exterior finishes, no peeling paint, broken or non-functioning light fixtures, holes in exterior, windows and stairways in good condition
  - b. Maintenance of grounds, including regular mowing, landscape upkeep and replacement of any plant material which might die, sidewalks repaired, exterior lighting kept functioning, common areas picked up and kept clean
  - c. Retention ponds must be clean, attractive and safe
  - d. Maintenance of parking, no significant degradation allowed, no abandoned cars allowed to remain in parking area, keep any signage painted and well kept
  - e. Applicant, its successors and assigns, acknowledges and agrees that the City of Middletown has additional authority (along with Louisville Metro) to enforce these binding elements, including the duty to maintain property.
19. The applicant, its successors and assigns, shall develop a set of rules and regulations for the residents of the apartments to help insure that the structures and grounds remain in high state of repair. Such rules shall be sent to the City of Middletown for review and approval, prior to the issuance of a Certificate of Occupancy on any building shown on the Revised Detailed Development Plan.
20. The applicant, its successors and assigns, agrees that during the construction phase, the site shall be kept mowed and picked up, to the greatest reasonable extent possible, given the necessities of the construction operations.
21. The applicant, its successors and assigns, agrees to install the landscaping plan elements along Ellingsworth Lane and Swan Pointe as quickly as is reasonably possible, given the necessities of the construction operations.

## 5. Proposed Binding Elements

13. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the ~~August 21st, 2013 Development Review Committee~~ **September 18, 2014 Planning Commission meeting** and City of Middletown Commission meeting. Final elevations of any and all structures must be approved by the City of Middletown prior to issuance of a building permit. Developer will provide City of Middletown with information about its proposed interior finishes and amenities. The final construction plans (which shall be provided to City of Middletown prior to issuance of any building permit) must be consistent with the interior finishes and amenities shown at the City of Middletown Commission meeting.

16. As part of the developer's initial work on the property, the developer will begin construction and prior to requesting certificates of occupancy for any residential units, the developer shall complete construction of the following roadway improvements, which are shown on the approved detailed district development plan shown in the "Plans of Proposed Project Ellingsworth Lane and Blankenbaker Parkway Improvements" prepared by Gresham Smith & Partners, a copy of which is attached hereto:

- (1) ~~Dual left turn lanes on Ellingsworth Lane onto southbound Blankenbaker Parkway;~~
- (2) ~~A right turn lane on northbound Blankenbaker Parkway onto Ellingsworth Lane; and~~
- (3) ~~A third lane along Ellingsworth Lane from its intersection with Blankenbaker Parkway and extending along the frontage of the subject property.~~

22. **The use of the C-1 portion of the subject property shall be limited to one restaurant with indoor/outdoor alcohol sales and consumption and indoor entertainment, multi-family residential use, leasing office, clubhouse and associated amenities, including an athletic facility, salon, spa, swimming pool or pools and other indoor and outdoor recreation areas which are associated with the proposed multi-family residential development, and parking spaces and drive aisles. All other uses shall be approved by the City of Middletown, after a public hearing and recommendation by the Planning Commission. Notice of the Planning Commission public hearing shall be given at least fourteen (14) days in advance of the hearing to first and second tier adjoining property owners.**