

# Planning Commission Staff Report

November 21, 2019



<b>Case No:</b>	19-ZONE-0049
<b>Project Name:</b>	Burton Office
<b>Location:</b>	3700 Brownsboro Road
<b>Owner(s):</b>	Steven and Betty Burton
<b>Applicant:</b>	Steven and Betty Burton
<b>Representative(s):</b>	Bardenwerper, Talbott, & Roberts, PLLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	9 – Bill Hollander
<b>Case Manager:</b>	Joel P. Dock, AICP, Planner II

## REQUEST(S)

- **Change-in-Zoning** from R-5, single-family residential to OR-1, office-residential
- **Waiver** of Land Development Code, section 10.2.4 to permit existing encroachment in the 15' landscape buffer area
- **Detailed District Development Plan**

## CASE SUMMARY

A "right-zoning" for an existing dental office is being requested to bring the existing and potential future office uses into compliance with the zoning district regulations. The subject property is located roughly 400' west of Chenoweth Lane at the intersection of Brownsboro Road and Lotis Way. It adjoins office and commercial districts on 2 sides and residential on the remainder of its boundaries. No site construction is proposed.

## STAFF FINDING

The proposal complies with the Land Use and Development Policies of Plan 2040. The proposal results in an appropriately located "right-zoning" for an existing low-intensity use and district along an arterial level roadway. No site construction is proposed.

## STANDARD OF REVIEW FOR ZONING 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 Plan 2040; 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 Plan 2040 which have substantially altered the basic character of the area.

## **STAFF ANALYSIS FOR CHANGE IN ZONING**

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

### **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, incomes and abilities. 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, 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 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, bicycle and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to support physical activity for all users and 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 proposal results in the "right-zoning" of an office use within an existing building. The proposed low intensity district is located along an arterial level roadway adjacent existing non-residential districts. The intensity of the zoning classification is currently occurring on site and is not proposed to exceed this current intensity level. It does not encroach upon residential areas as it is an existing non-residential use. The proposed district is appropriately located for its intensity within the NFD. While the density will increase with the proposed office district; the density is appropriately located along a higher classification road and does not require travel through lower density areas.

No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

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

STAFF: The waiver will not adversely affect adjacent property owners as the encroachments with the buffer are present at this time.

- (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 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The character of residential areas are preserved as the exiting accessory structure is residential in character and is consistent with the character of accessory structures in the area.

- (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 structure is existing, does not affect the character of the area, and complies with Plan 2040.

- (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 create an unnecessary hardship on the applicant as the structure is existing, does not affect the character of the area, and complies with Plan 2040.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR DETAILED DISTRICT DEVELOPMENT PLAN**

- 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: 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 will be provided. No site construction is proposed which impacts existing features.

- 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 are provided as no site construction is proposed which affects the community network.

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

STAFF: Open space is not required of the proposed development and no site construction is proposed which may affect existing open areas on the lot.

- 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 development is compatible with existing land uses and the future growth of the area as no site construction is proposed that will alter the character of the area of the form.

- 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 proposed development plan conforms to the Comprehensive Plan. No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area. Further, the development is compatible with existing land uses and the future growth of the area as no site construction is proposed that will alter the character of the area of the form.

### **REQUIRED ACTIONS**

- **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-5, single-family residential to OR-1, office-residential on property described in the attached legal description be **APPROVED** or **DENIED**
- **APPROVE** or **DENY** the **Waiver** of Land Development Code, section 10.2.4 to permit exiting encroachment in the 15' landscape buffer area
- **APPROVE** or **DENY** the **Detailed District Development Plan**

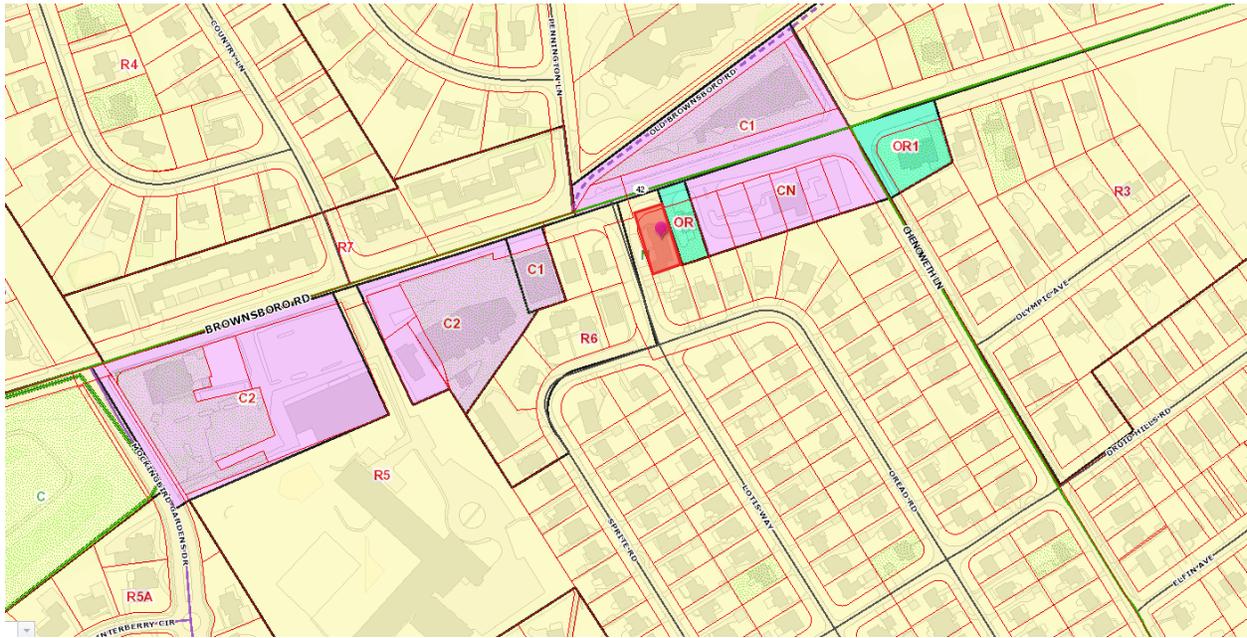
## **NOTIFICATION**

Date	Purpose of Notice	Recipients
10/10/19	Hearing before LD&T	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 9
11/7/19	Hearing before Planning Commission	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 9
11/1/19	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

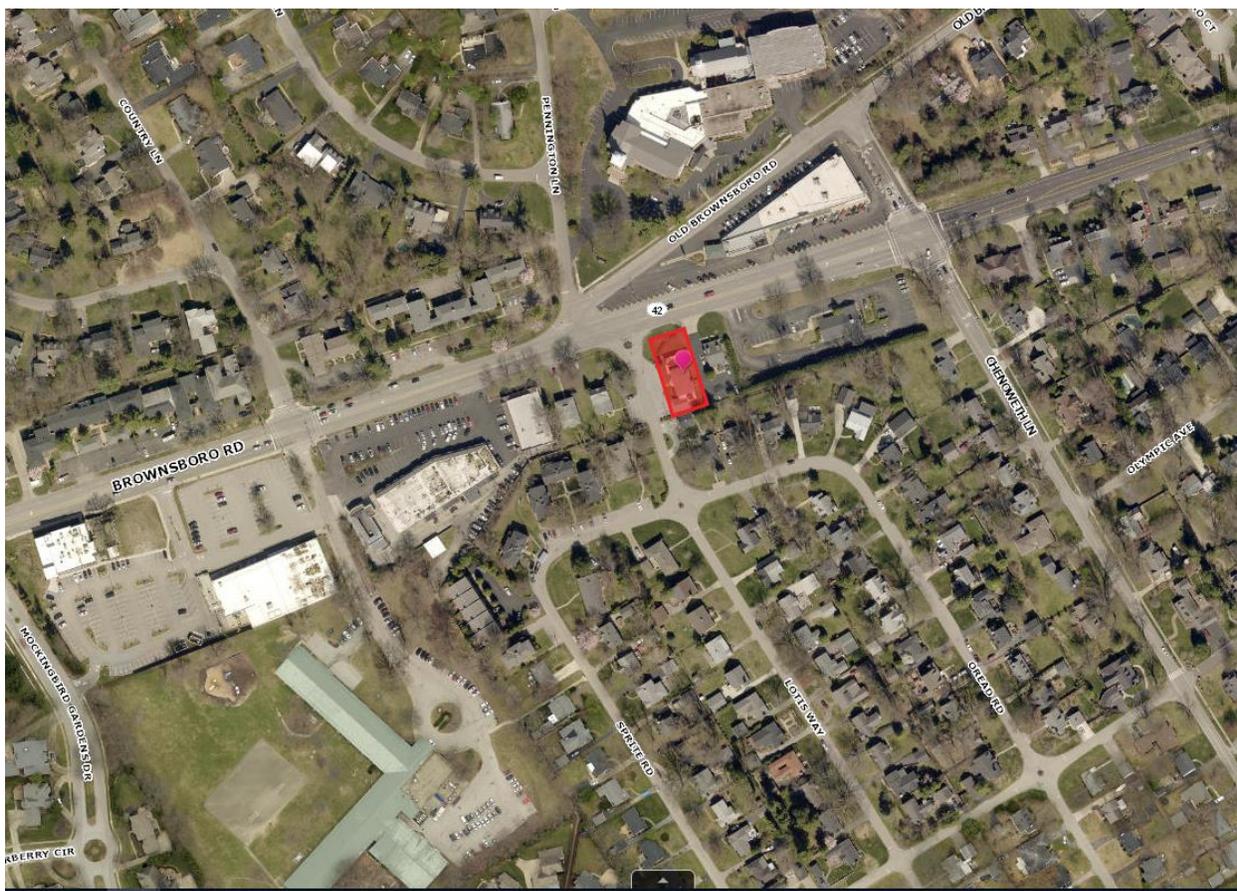
## **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Staff Analysis
4. Proposed Binding Elements

1. **Zoning Map**



2. Aerial Photograph



### 3. Plan 2040 Staff Analysis

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

#### Neighborhood: Non-Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 1	<b>6.</b> Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The proposal does not encroach upon residential areas as it is an existing non-residential use and fronts an arterial roadway.
Community Form: Goal 1	<b>7.</b> Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The proposed low intensity district is located along an arterial level roadway adjacent existing non-residential districts. The intensity of the zoning classification is currently occurring on site and is not proposed to exceed this current intensity level.
Community Form: Goal 1	<b>17.</b> Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	No adverse impacts of traffic are expected as the intensity is not increasing from current non-conforming use.
Community Form: Goal 1	<b>18.</b> Mitigate adverse impacts of noise from proposed development on existing communities.	✓	No adverse impacts of noise are expected as the intensity is not increasing from current non-conforming use.
Community Form: Goal 2	<b>1.</b> Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The proposed district is appropriately located for its intensity within the NFD. While the density will increase with the proposed office district; the density is appropriately located along a higher classification road and does not require travel through lower density areas.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 2	<b>4.</b> Allow non-residential development within the Neighborhood, Traditional Neighborhood and Village Form Districts to occur only at locations with appropriate access and connectivity.	✓	The proposed district is within the NFD at an appropriate location with access that does not conflict with lower density or intensity areas.
Community Form: Goal 2	<b>6.</b> Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposal is for a “right-zoning” of existing uses; thus, resulting in an efficient land use and cost-effective infrastructure investment
Community Form: Goal 2	<b>7.</b> Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposal allows for a mixture of compatible uses within proximity and adjacent to other non-residential uses.
Community Form: Goal 2	<b>8.</b> Encourage residential land uses in designated centers. Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.	✓	The proposal will allow by-right office uses in combination with residential.
Community Form: Goal 2	<b>9.</b> Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal results in the “right-zoning” of an office use within an existing building.
Community Form: Goal 3	<b>9.</b> Encourage development that 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.	✓	No natural features are impacted by the proposed district.
Community Form: Goal 3	<b>10.</b> Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	No wet or highly permeable soils, severe, steep or unstable slopes are impacted by the proposed district.
Community Form: Goal 3	<b>12.</b> When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	✓	No changes to flood-prone areas and other features vulnerable to natural disasters are impacted by the proposed district.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 4	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	✓	No site construction is proposed; thus, buildings, sites, districts and landscapes that are recognized as having historic or architectural value are not impacted by the proposed district.
Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	No site construction is proposed; thus, cultural features are not impacted by the proposed district.
Mobility: Goal 1	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The proposed density is appropriately located along a higher classification road and does not require travel through lower density areas. TARC service is available. No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements.
Mobility: Goal 2	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	The proposed district does not require travel through lower density areas.
Mobility: Goal 3	1. Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.	✓	The proposed district allows for the continuation of complementary neighborhood serving businesses and services.
Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Mobility: Goal 3	<p>3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.</p>	✓	<p>No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area.</p>
Mobility: Goal 3	<p>4. Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following:</p> <p>4.1. nodal connections identified by Move Louisville;</p> <p>4.2. impact on freight routes;</p> <p>4.3. time of operation of facilities;</p> <p>4.4. safety;</p> <p>4.5. appropriate linkages between neighborhoods and employment; and</p> <p>4.6. the potential for reducing travel times and vehicle miles traveled.</p>	✓	<p>No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area.</p>
Mobility: Goal 3	<p>5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.</p>	✓	<p>The proposed "right-zoning" has no significant impact on the transportation network due to the lack of site construction related to existing uses.</p>
Mobility: Goal 3	<p>6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.</p>	✓	<p>No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area.</p>

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Mobility: Goal 3	<p><b>9.</b> When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.</p>	✓	<p>No improvements are being made to the subject site that proportionally necessitates public infrastructure improvements. Any change of use that requires a higher intensity zoning district may necessitate sidewalks and other pedestrian/multi-modal facilities. Further, the zoning district request does not detract from existing public/pedestrian infrastructure that may be lacking in the area.</p>
Mobility: Goal 3	<p><b>10.</b> Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.</p>	✓	<p>Improvements will occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.</p>
Community Facilities: Goal 2	<p><b>1.</b> Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.</p>	✓	<p>The development is located in an area served by existing utilities or capable of being served by public or private utility extensions.</p>
Community Facilities: Goal 2	<p><b>2.</b> Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.</p>	✓	<p>An adequate supply of potable water and water for fire-fighting purposes will be made available, if it is not present at this time.</p>
Community Facilities: Goal 2	<p><b>3.</b> Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).</p>	✓	<p>The development has adequate means of sewage treatment and disposal to protect public health and to protect water quality</p>
Housing: Goal 3	<p><b>2.</b> As neighborhoods evolve, discourage displacement of existing residents from their community.</p>	✓	<p>The proposed district does not result in the displacement of residents from their communities.</p>

**4. Proposed 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. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
3. 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.
4. 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.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.