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REVISED STATEMENT OF COMPLIANCE/LETTER OF EXPLANATION FOR FLOYDS FORK OVERLAY DISTRICT GUIDELINES

Applicant: Highgates Development

Owner: Jean Rueff

Project Name/Location: 1614 Johnson Road
Attached single family and multi-family residential
subdivision

Proposed Use:

Request: MRDI Subdivision

Engineers, Land Planners, Landscape
Architects: Mindel Scott & Associates, Inc.

INTRODUCTION

This “Mixed Residential Development Incentive” (“MRDI”) community was originally filed on March 7, 2022, consisting at the time of 125 proposed residential subdivision lots and 112 multi-family units in four buildings. Through the course of the development process, the project and accompanying MRDI preliminary subdivision plan (the “Preliminary Subdivision Plan”) has undergone multiple revisions in order to better address environmental and other considerations.

In order to protect the Floyds Fork area, the Applicant hired RES (formerly Redwing) to conduct a Water/Wetland Delineation Report to confirm the location of sensitive areas on the site. The report noted intermittent streams and wetland areas that were not previously mapped. Without this report filed by the Applicant, the intermittent streams would not have been known. In response to this Water/Wetland Delineation Report, the Applicant reduced the lots on the Preliminary Subdivision Plan to account for this new information and to protect the sensitive areas referenced in the report.

The Hearing was originally scheduled for March 16, 2023 but has been continued multiple times. Recently, the Applicant voluntarily requested that its hearing be continued in order to wait for new hydraulic modeling which was being conducted but not then completed and reviewed by MSD. MSD hired Stantec to produce the new hydraulic modeling with revised grading and cross-sections for the portion of Floyds Fork Creek north of US-60. Stantec is an international design and consulting company, specializing in engineering, surveying, environmental services, infrastructure, amongst other areas. The Planning Commission Public Hearing was scheduled for August 17, 2023, but the Applicant again requested this hearing be continued after receiving the Stantec modeling details so that Stantec’s new modeling could be considered by the Planning Commission and for the Applicant to make changes to the Preliminary Subdivision Plan in consideration of the new Stantec modeling.

On the basis of the new Stantec hydraulic modeling information, the Applicant again amended the proposed Preliminary Subdivision Plan to limit the encroachments into the floodplain, thereby reducing the number of single-family subdivision lots to 97 and reducing the number of multi-family units to 96. Since the initial filing, the total residential units has been reduced by 44, from 237 units to 193 units. The Applicant has voluntarily made these reductions in light of the most authoritative information available, from its own environmental study and the Stantec modeling, but is reluctant to reduce it further due to the fact that it comes at the expense of the purpose of the MRDI regulation and goal of providing affordable and accessible housing in areas that are not traditionally served in our community.

The Applicant is a company that in recent years has become increasingly active in the Louisville market building communities dedicated to the accessible entry-level and middle-income markets, where demand appears to outpace supply for both new for-sale and new rental product. As mentioned, this project is also designed to bring affordable housing to areas not previously served with affordable housing, which has been a major goal of Plan 2040, as well as a goal of Louisville Metro Council. Over the last few recent years, housing prices have been accelerating at record levels, exacerbating the problem of affordable and accessible housing. This area is one of Louisville's prime growth areas for development of this exact kind because of these other factors: (a) the availability of significant sized tracts of land available for development that are served by sanitary sewers which MSD spent major taxpayer money to accommodate environmentally positive growth; and (b) the presence of readily accessible significant and growing retail activity.

COMPLIANCE WITH THE FLOYDS FORK OVERLAY GUIDELINES

The Floyds Fork Development Review Overlay (FFDRO) is an overlay area shown on Louisville Metro's zoning district maps, which "constitutes a second level of development standards in addition to those specified by the underlying zoning district", the "purpose" of which "is to protect the quality of the natural environment . . . by promoting compatible development of land and structures" from "blighting influences" . . . , "unsafe buildings" . . . , "significant damage or destruction of prominent hillsides or valleys caused by improper development" . . . , "significant damage to the economic value of existing properties and/or new developments" . . . , "soil erosion and stream siltation" . . . , "destruction of mature and/or valuable trees and other vegetation and wildlife habitat" . . . , and "loss of high quality visual character." LCD 3.1.A.1.

The FFRDO Regulations attempt to accomplish these purposes by reviewing development applications against certain "guidelines" which contain such word choices as "desirable", "preferred", "recommended", "discouraged", "encouraged", "intended", "where possible", "may" and "would". Indeed, there are 62 different times the word "should" is used in the FFDRO Guidelines, with only a single use of the word "shall". This is why the FFDRO review is conducted against mere "guidelines", not detailed, objective "standards", like the rest of the LDC. As a result, the current FFDRO Regulations do not contain sufficient objective standards to be a legal and valid regulation.

Nevertheless, in each case a FFDRO review is conducted by the Planning Commission to determine a proposed development's "impact on environmental characteristics." To aid the Planning Commission in doing so, the FFDRO Regulations state that the applicant must "provide

adequate information to allow the Commission to determine impacts of the proposal and compliance with the [established] guidelines.” LDC 3.1.B.3. If the Planning Commission determines there to be negative impacts, the next question for the Planning Commission is to determine if those impacts” can be overcome” and “mitigated to a substantial degree” through “incorporation of any necessary mitigation measure” — defined by the FFDRO as Conditions of Approval (COA). In such case, “approval of the development . . . will be given”, contingent of course upon compliance with other LDC regulations. LDC 3.1.B.8.

The RES report delineates the streams, wetlands, etc. Based on the delineation, jurisdictional water/wetland features present on site include:

- one perennial stream measuring 2,106 linear feet (0.363 acre)
- four intermittent streams totaling 2,241 linear feet (0.183 acre)
- eight ephemeral streams totaling 892 linear feet (0.050 acre)
- four wetlands totaling 0.440 acre
- one open water pond measuring 0.221 acre

The blue line stream bisecting site is wholly within protected and undisturbed open space retaining the existing vegetation.

The following are the FFDRO “Guidelines” and how this development application does not cause negative impacts or mitigates any impact through a Condition of Approval.

1. Stream Corridors: Floyds Fork runs along the west and south edges of the undeveloped portion of the proposed MRDI subdivision as shown on the Preliminary Subdivision Plan. A 200-foot building limit setback is provided, being double the 100-foot buffer from Floyds Fork mentioned in Guideline 1. Further, the first 50 feet from Floyds Fork will remain undisturbed with all trees retained therein. In the area between 50 and 100 feet from Floyds Fork top of bank, Floodplain Compensation are proposed to be constructed in accordance with MSD regulations, with no trees to be removed in this area other than infrastructure intrusions therein. The Applicant is proposing a condition of approval to this effect as to the tree preservation within 100 feet of Floyds Fork top of bank. No tributaries exist on the subject site. Existing riparian and other native vegetation, including root systems, in these setback areas will be maintained, and new vegetation will be added, as suitable, to stabilize stream banks and protect water quality. After information from the Stantec modeling was received, the Plan was revised to significantly reduce the impact to the area of the subject site within the floodplain. The remaining lots currently located in the regulatory floodplain will be elevated with fill to bring them out of the floodplain such that those portions of the property will no longer be within the floodplain, as has been the case in other prior FFDRO cases. The floodplain compensation in these areas has been increased from the prior requirement of 1 to 1 to a 1.5 to 1, resulting in an additional 50% floodplain compensation. Run off from the lots will be handled by two large floodplain compensation, detention and water quality basins adjacent to Floyds Fork as shown

on the Preliminary Subdivision Plan. Otherwise, development in floodplains and along slopes adjacent to the referenced streams will be avoided. Corps of Engineers established regulatory requirements will be addressed to that agency.

In addition, the Applicant is proposing an additional condition of approval which states: *“The Applicant shall treat the first 1.2 inches of stormwater run-off to meet the MS-4 Water Quality standards in the areas shown at the September 7th Planning Commission Public Hearing.”*

2. Trees and Vegetation: Existing “wooded areas” (meaning something well more than just individual trees and small tree stands) have been avoided to the extent practicable, taking into account that certain trees, notably non-native species and smaller sized ones, will have to be removed throughout the site in order to allow development to occur. As previously stated, a condition of approval for the protection of the existing trees within 100 feet of the top of bank of Floyds Fork is being proposed.

Development activities within the drip lines of retained trees will be avoided, and limits of disturbance will be shown on development-related plans. The development will provide 40% tree canopy in compliance with the LDC by preserving 21% of the existing canopy and planting an additional 489,361 square feet (19%) of new plantings. Significant areas along the stream banks, particularly the one identified by the Applicant’s RES environmental report which would not have otherwise been known, have been deliberately preserved. Other than the areas designated as tree-preservation, the determination of which trees over 18” in diameter that can be saved can only be determined when the level of proposed grading is determined in construction plan review. The Applicant will propose a condition of approval as to the marking of the 18” diameter trees during construction review and to meet with the case manager at that time to review same for potential changes.

3. Drainage and Water Quality: Septic tanks and other on-site sanitary disposal systems will NOT be utilized; rather sanitary flows will be collected within MSD approved sewer lines and related infrastructure and sent to the MSD Cedar Creek Regional Wastewater Treatment Plant located west of Bardstown Road. The Preliminary Subdivision Plan has been revised to show the four wetlands totaling 0.440 of an acre identified in the RES report being located in open space rather than on subdivision lots. An MSD compliant soil erosion and sediment control plan will be prepared prior to construction plan approval. Storm water will be addressed in manners approved by MSD, currently anticipated to be via cross-lot sheet flows to internal street-located catch basins and drain lines which will direct and carry flows to creek-located side-saddle basins. Other water quality measures will also be undertaken pursuant to MSD regulations governing same.

4. Hillsides: To comply with FFDRO Guideline 4(a) and 4(b), the Applicant has designed this subdivision in such a way as to maximize development in the areas that do not have 20% or greater slopes, as shown by the “Existing Steep Slopes Exhibit” presented at the Planning Commission public hearing. That exhibit will show the existing slopes of 20% or greater, with the majority of those regions being undisturbed by the proposed development. As the Preliminary Subdivision Plan has evolved, the portions of the steep slopes that are remaining undisturbed has only increased.

Additionally, to further comply with FFDRO Guideline 4(a)-(d) and maximize safety during and along after construction on the site, the Applicant had studies performed by ECS Southeast, LLP. The results of the first study, titled “Preliminary Slope Evaluation & Karst Survey”, and dated May 20, 2022, and the second study, titled “Johnson Road Residential – Slope Exploration”, and dated November 10, 2022, have been submitted to the ACCELA system. In those studies, the geologists and engineers at ECS Southeast, LLP conducted extensive geotechnical studies of the site, including site reconnaissance, soil surveys, and borings, and have concluded that though there are steep slopes on the site, construction can proceed on the site pursuant to a set of recommendations that will help “maintain the stability of the existing and planned slopes during the design and construction of the new subdivision, and over the life of the new homes.” The recommendations are as follows:

- ECS should be contacted to review and evaluate specific foundation and design plans immediately prior to and during construction.
- All foundations located in areas with slopes greater than 20% should bear entirely on competent rock (sound and continuous).
- Plan to install foundation and sub-floor drainage systems for structures bearing entirely on rock or near the soil/rock interface.
- Plan grading to minimize changes to existing topography along slopes.
- Minimize disturbance to slopes and vegetation outside new construction areas.
- Avoid significant transverse cuts along face or at the toe of existing slopes.
- Avoid significant embankments on the face, or along or at the crest of existing slopes.
- Avoid placing new construction at or within 10 feet of the crest of existing slopes.
- Maintain the following limits for new cuts in soil without additional geotechnical exploration and analysis:
 - 3:1 (horizontal: vertical) or flatter slopes.
 - Properly strip all vegetation, topsoil, etc. where fill will be placed.
 - Construct embankments with controlled fill compacted to at least 98 percent of the Standard Proctor maximum dry density and within 2 percent of the optimum moisture content.
 - Maximum fill embankment height: 5 feet.
 - Horizontally bench new fill into existing slopes in maximum one-foot vertical steps.
- Established drainage features displaying evidence of active or ephemeral springs should be preserved by constructing a spring box drainage blanket and/or finger drain, as appropriate, to provide an outlet for accumulated discharge flow.
- Provide adequate erosion control/protection of soil (silt fencing, geotextile fabric, erosion mats, etc.) surface water drainage control (drainage ditch, gravity drains, blanket drains, etc.) during construction and over the life of the subdivision.
- Establish permanent vegetative cover and protect cut grades (placement of structural fill, well graded stone, vegetative cover, or equivalent) as soon as practical to reduce exposure to potential adverse conditions.

These recommendations are in keeping with the intent, purpose, and design of FFDRO Guideline 4.

5. Clustering of Residential Use: Residential development in the FFDRO area as shown on the Preliminary Subdivision Plan has been clustered with revisions made to eliminate the crossing of the perennial stream and to tighten the lot configuration. The reduction of total units and other revisions only increase the clustering provided.


6. Historic Elements: There are no structures, including no historic homes, walls, fences, or cemeteries, located on the site.

7. Vistas and Appearance: Johnson Road is a mapped "Scenic Corridor", and as such will have to be treated in the manner mandated by the LDC in order to preserve the scenic, landscaped character of such roads. A 60-foot buffer is provided and the entrance to the site off Johnson Road is offset to avoid direct access which will assist in maintaining the rural character of the Scenic Corridor. Further, Applicant is proposing a condition of approval to provide enhanced landscaping along Johnson Road as depicted on the exhibit to be presented at the public hearing. The Applicant is also proposing to retain the existing trees along Floyds Fork as shown on the Preliminary Subdivision Plan and per the proposed condition of approval as to same.

* * *

For all of the above-stated reasons, those shown on the detailed district development plan and those explained at the public hearing, this application complies with the Floyds Fork Overlay Guidelines.

Respectfully submitted,



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