

Land Development & Transportation Committee

Staff Report

June 13, 2019



Case No:	19DEVPLAN1059 & 19SUBDIV11005
Project Name:	McDeane Road Apartments
Location:	5618 McDeane Road
Owner(s):	Mike Hynes, McDeane Properties LLC
Applicant:	Gabe Fritz, McDeane Road LLC by Winterwood Development LLC
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUESTS:

1. **Waiver** of chapter 10.2.4 and 10.2.7 to waive the 50% overlap of existing 50 foot LG&E easement and 25 foot LBA adjacent to the railroad tracks.
2. **Revised Detailed District Development Plan** and **Binding Element Amendments** and **Revised Major Preliminary Subdivision**

CASE SUMMARY/BACKGROUND

The subject site is in the Neighborhood form district and is zoned primarily R-5A Residential Multi-Family with a small R-5 Residential Single Family zoned portion between the entrances on McDeane Road and Bruns Drive at the north end of the property. It is located on the east side of the Illinois Central Railroad, at the terminus of Brick Kiln Lane. The site is currently undeveloped.

The applicant is proposing to construct 198 apartments and 5 single-family lots on approximately 31 acres in the R-5A zoning district and the Neighborhood form district. The subject property was rezoned under docket 9-23-04. The currently proposed plan matches the previously approved plan in density, with both proposing 198 units. The currently proposed plan reduces the overall impervious surface area and proposes less development on sloped terrain. Additionally, the currently proposed plan proposes outdoor amenity areas such as a playgrounds, dog parks, a grill/gazebo area, and walking trails. The current plan creates a connection between Bruns Drive and McDeane Road in the form of a public street.

There is an associated variance, 19VARIANCE1045, to allow a drive lane and a portion of Building 5 to encroach into the 25 foot wetland buffer. The Land Development and Transportation Committee does not act upon this case. BOZA will hear this variance request on 6/17/19.

Previous cases:

- 9-23-04: Change in zoning from R-4 Single Family Residential and R-7 Multi-family Residential to R-5 Single Family Residential and R-5A Multi-family Residential. The request was to develop two tracts as a condominium development with 106 one-story units, and a small single-family subdivision having a total of seven lots. This included a request for a waiver to allow proposed driving lanes on Tract 1 to encroach into the required 25 foot landscape buffer along the railroad

track. The related major subdivision preliminary plan (10-13-04) proposed to create three tracts proposed for public roads extension (Bruns Drive and McDeane Road) and to create seven single-family lots.

- 8752: Revised Detailed District Development Plan. The proposal was to change the building and road layout for Tract 1. The same number of units (106) was proposed, but no variances or waivers were requested and the proposed layout eliminated the need for a landscape buffer along the railroad easement.
- 16306: Revised Detailed District Development Plan. The proposal was for 198 multi-family residential units on 29.1 acres and 5 single family residential lots on 1.7 acres. No variances or waivers were requested.

STAFF FINDINGS

The waiver, Revised Detailed District Development Plan, and Revised Major Preliminary Subdivision Plan are justified and meet the standard of review.

The waiver request is justified because the railroad already exists in an easement and LG&E will not allow trees or shrubs to be planted within said easement.

In the original rezoning case, the Planning Commission found the rezoning to R-5A to be appropriate because it complied with the intent and policies of the Comprehensive Plan. The original plan proposed a planned community with a mixture of residential condominiums and single family lots. The central location provides easy access to Gagel Avenue, and from there Dixie Highway and the interstates. The proposed single-family residential lots provided a transition between multi-family residential land uses and single-family residential land uses. The original rezoning plan featured an existing focal point in the two lakes on the site, which the current plan also provides with the preservation of one lake and the addition of amenity areas surrounding it. The original plan also provided for infill in the Neighborhood form district near activity centers.

The current plan proposes less of an environmental impact than previously approved plans. The density is the same as the most recently approved plan, however the layout has been changed to allow for reduced development on steep slopes. Additionally, the current plan proposes outdoor amenities such as a dog park, walking trail, playgrounds and a picnic/gazebo area.

A geotechnical report was submitted with the rezoning case 9-23-04. Staff recommends that the Land Development and Transportation Committee discuss whether there is a need for an updated, revised geotechnical report.

TECHNICAL REVIEW

Public Works and MSD have provided their preliminary approval.

Public Works staff determined that the traffic study conducted for the 2004 re-zoning case was sufficient and that a new traffic study was not necessary. It was also determined that off-site roadway improvements were not justified given the impact of the proposed development. Additionally, the threshold for a traffic study is 200 units and the applicant is proposing 198 units.

A Report of Geotechnical Exploration was prepared by Mactec Engineering and Consulting, Inc. and submitted with the 2004 re-zoning case. According to the staff report for 9-23-04, Mactec Inc. believed that "the site is suitable for proposed residential development." Proposed binding element #11 refers to the Geotechnical Report of Mactec dated July 26, 2004 and provides details for the content and

execution of the report. Additionally, General Note #9 on the current plan states that a geotechnical report will be required and that the geotechnical report will address roadway sections.

INTERESTED PARTY COMMENTS

Staff has received emails from opposition, as well as a letter from Councilman Blackwell regarding this development. These are included in the case file.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4 AND 10.2.7 TO WAIVE THE 50% OVERLAP OF EXISTING 50 FOOT LG&E EASEMENT AND 25 FOOT LBA ADJACENT TO THE RAILROAD TRACKS

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

STAFF: The waiver will not adversely affect adjacent property owners since the railroad tracks and LG&E easement are already in place, and the applicant is proposing to install an 8 foot solid privacy fence.

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

STAFF: Land Use & Development Goal 1, Policy 1 encourages a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster and co-housing. Land Use & Development Goal 1, Policies 5, 9, and 10 allows a mixture of densities as long as their designs are compatible. When incompatible developments unavoidably occur adjacent to one another impacts are to be mitigated. Appropriate transitions are to be provided between uses that are substantially different in scale and intensity or density of development.

The area of the site where the waiver is requested is zoned R-5A Residential Multi-Family with a proposed density of 6.7 dwellings per acre, and is adjacent to a neighborhood zoned R-4 Residential Single Family with a maximum density of 4.84 dwellings per acre allowed per Land Development Code. The difference in density is not substantial in this case, and the applicant proposes a privacy fence that will provide a sufficient buffer.

- (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 since the railroad tracks and LG&E easement are already in place, and a letter from LG&E included with this case file indicates that LG&E will allow a fence to be constructed in the easement but will not allow trees or shrubs to be planted within said easement.

- (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 LG&E will not allow trees or shrubs to be planted within the easement.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO 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: A geotechnical report has been submitted for this site and found it suitable for proposed residential development. The current plan proposes less development on sloped terrain than previously approved plans, and will follow Land Development Code requirements for development on steep slopes. With the exception of the area of encroachment being requested by 19VARIANCE1045, the applicant proposes to preserve wetland buffer areas. 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. Public Works has provided their preliminary approval.

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

STAFF: The proposed plan meets open space requirements. Tract 1 (the multi-family residential tract) includes 831,996 square feet of open space. The required open space is 181,547 square feet. This open space square footage includes the amenity areas as well as areas that are environmentally constrained such as steep slopes.

- (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 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.

- (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 Plan 2040 and to requirements of the Land Development Code. The rezoning was justified to meet the Comprehensive Plan. The current plan complies with the same justifications in terms of providing a mixture of residential land uses, good connectivity to activity centers and transit corridors, appropriate transitions between residential areas of different densities, infill, and utilization of existing environmental features such as the lakes. The currently proposed plan improves upon the original rezoning plan by providing additional outdoor amenities and open spaces, and by reducing development on environmentally sensitive features such as steep slopes.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waiver**
- **APPROVE** or **DENY** the **Revised Development Plan** and **Binding Element Amendments** and **Revised Major Preliminary Subdivision**

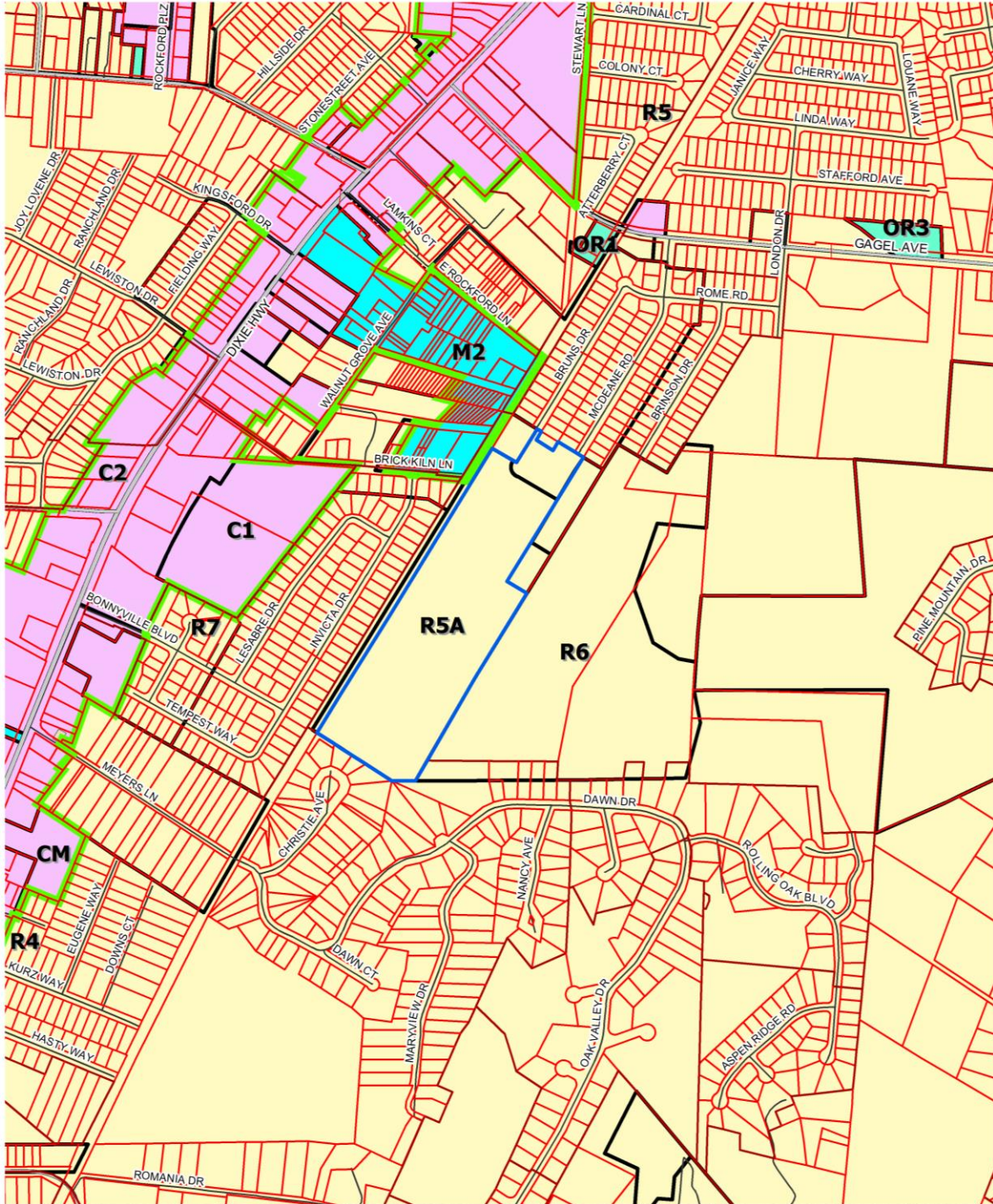
NOTIFICATION

Date	Purpose of Notice	Recipients
6-13-19	Hearing before DRC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 12

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. **Zoning Map**



5618 McDEANE ROAD

feet



800

Map Created: 6/6/2019



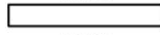
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2. Aerial Photograph



5618 McDEANE ROAD

feet



800

Map Created: 6/6/2019



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3. 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. 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. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
- ~~3. The density of the development shall not exceed 6.8 dwelling units per acre (198 units on 29.1 acres) on Tract 1, and 5.6 (net) dwelling units per acre (5 lots on 1.7 acres) on Tract 2.~~
4. 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.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. 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.
7. 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.
8. The applicant shall provide deeds of restriction ensuring that Tree Canopy Preservation Areas (TCPAs) will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel.

Deed Restrictions must be recorded prior to tree preservation approval (except for single family subdivisions). All plans setting out TCPAs must contain the following notes:

- a. TCPAs identified on this plan represent portions of the site on which all trees greater than 2" in caliper shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated TCPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat. As trees are lost through natural causes new trees shall be planted in order to maintain minimum tree canopy as specified in Chapter 10, Part 1 of the LDC and as shown on the approved Tree Canopy/Landscape Plan.
- b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent the minimum boundary of the designated TCPAs. 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.

9. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.

- a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
- b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of TCPAs, TPAs and other issues required by these binding elements / conditions of approval.
- c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.

10. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$1,000 cash in the association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirements.

~~11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 26, 2011 Development Review Committee meeting.~~

12. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

13. Land disturbing activity on steep slopes greater than 20% and unstable soils is permitted only in accordance with the Comprehensive Plan and in keeping with the Geotechnical Report of MACTEC dated July 26, 2004, as submitted at the August 5, 2004 public hearing and in accordance with the following:

- a. The Planning Commission determines the proposed construction cannot be accommodated on a portion of the site that does not contain steep slopes and unstable soils; and
- b. The application for the land disturbing activity shall include a geotechnical survey report, prepared in accordance with best practices. Such survey will ordinarily include information obtained by drilling, locating of bedrock and testing of soils for shear strength. The report shall be prepared by a licensed and Kentucky-registered professional engineer practicing in

accordance with KRS 322 and whose area of expertise includes geotechnical engineering. In order for the proposed construction to be approved, the report must:

- i. conclude the proposed disturbance and/or construction can be carried out in a manner that will not adversely impact the slope or foundation stability on the subject property and surrounding properties; and,
 - ii. conclude that stable foundations can be constructed on the site and identify the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site; and,
 - iii. include erosion and sediment control measures necessary to assure compliance with the Jefferson County Erosion and Sediment Control Ordinance; and,
- c. The applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices including construction supervision, necessary to ensure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical report will be implemented.
- d. ~~Prior to requesting a full building permit for condominium buildings 1-4, in keeping with the geotech report presented at the August 5, 2004 public hearing, the applicant shall provide certification from a professional engineer having the qualifications described in paragraph 2, above, that site preparation and foundation construction were carried out in accordance with the approved mitigation measures and construction practices.~~
- e. ~~Prior to requesting a certificate of occupancy for condominium buildings 1-4, in keeping with the geotech report presented at the August 5, 2004 public hearing, the applicant shall provide certification from a geotechnical soils engineer certifying that land disturbance and construction were carried out in accordance with the mitigation measures and construction practices, including inspections, set forth in the geotechnical report.~~
- f. Prior to site disturbance, the applicant shall submit a bond of sufficient amount to cover the cost of site stabilization.

~~14. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan. All plans setting out tree preservation areas must contain the following notes:~~

- a. ~~Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Trees in these areas may be removed during construction of homes or buildings on individual lots.~~
- b. ~~Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA 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 TPAs prior to site disturbance (except as provided in these notes) 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 in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.~~
- d. ~~No parking, material storage, or construction activities are permitted within the TPAs 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 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.~~

15. Developer shall consult with the company that owns the pipeline running through the subject property and satisfy any reasonable requirements of the pipeline company.

~~16. Prior to requesting a Certificate of Occupancy, a walking trail shall be installed on the subject property approximately around the east side of the lake and tie into the sidewalks on the west side of the lake.~~

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. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.

3. 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.

4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition) is requested:

- a. The development plan must receive full construction approval from Louisville Metro Public Works and the Metropolitan Sewer District.
- b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
- c. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
- e. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved renderings shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

5. 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.

6. 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.

7. The applicant shall provide deeds of restriction ensuring that Tree Canopy Preservation Areas (TCPAs) will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval (except for single family subdivisions). All plans setting out TCPAs must contain the following notes:

- a. TCPAs identified on this plan represent portions of the site on which all trees greater than 2" in caliper shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated TCPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat. As trees are lost through natural causes new trees shall be planted in order to maintain minimum tree canopy as specified in Chapter 10, Part 1 of the LDC and as shown on the approved Tree Canopy/Landscape Plan.
- b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent the minimum boundary of the designated TCPAs. 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.

8. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.

- a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
- b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of TCPAs, TPAs and other issues required by these binding elements / conditions of approval.
- c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.

9. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$1,000 cash in the association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirements.

10. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

11. Land disturbing activity on steep slopes greater than 20% and unstable soils is permitted only in accordance with the Comprehensive Plan and in keeping with the Geotechnical Report of MACTEC dated July 26, 2004, as submitted at the August 5, 2004 public hearing and in accordance with the following:

- g. The Planning Commission determines the proposed construction cannot be accommodated on a portion of the site that does not contain steep slopes and unstable soils; and
- h. The application for the land disturbing activity shall include a geotechnical survey report, prepared in accordance with best practices. Such survey will ordinarily include information obtained by drilling, locating of bedrock and testing of soils for shear strength. The report shall be prepared by a licensed and Kentucky-registered professional engineer practicing in accordance with KRS 322 and whose area of expertise includes geotechnical engineering. In order for the proposed construction to be approved, the report must:
 - iv. conclude the proposed disturbance and/or construction can be carried out in a manner that will not adversely impact the slope or foundation stability on the subject property and surrounding properties; and,
 - v. conclude that stable foundations can be constructed on the site and identify the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site; and,
 - vi. include erosion and sediment control measures necessary to assure compliance with the Jefferson County Erosion and Sediment Control Ordinance; and,
- i. The applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices including construction supervision, necessary to ensure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical reported will be implemented.
- j. Prior to site disturbance, the applicant shall submit a bond of sufficient amount to cover the cost of site stabilization.

12. Developer shall consult with the company that owns the pipeline running through the subject property and satisfy any reasonable requirements of the pipeline company.