

PLANNING COMMISSION MINUTES
June 2, 2022

PUBLIC HEARING

CASE NO. 21-ZONE-0059

Request:	Change in zoning from R-R to R-4, with Detailed District Development Plan/Major Preliminary Subdivision with development potential transfer and Binding Elements, and Waivers
Project Name:	Oak Grove Road Subdivision
Location:	10212 & 10302 Oak Grove Road
Owner:	Estate of Doris Ann Parker, The Parker Living Trust
Applicant:	JS Acquisitions LLC
Representative:	Bardenwerper Talbott & Roberts
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel, 23 – James Peden
Case Manager:	Dante St. Germain, AICP, Planner II

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

04:13:28 Dante St. Germain discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Nick Pregliasco, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

David Mindel, Mindel, Scott and Associates, 5151 Jefferson Boulevard, Louisville, Ky. 40219

Ron Thomas, 2307 Green Way, Louisville, Ky. 40220

Summary of testimony of those in favor:

Nick Pregliasco gave a power point presentation. There are 80 fewer lots with significant changes to tree canopy, open space and roadway improvements. There is a deed restriction and a binding element against future subdivision and it can't be amended without Louisville Metro approval (see recording for detailed presentation).

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David Mindel explained the road improvements (see recording for detailed presentation).

The following spoke in opposition to this request:

Gina Enneking, 8920 Independence School Road, Louisville, Ky. 40228
Steve Porter, 2406 Tucker Station Road, Louisville, Ky. 40299
Bryan Gillis, 10404 Oak Grove Road, Louisville, Ky. 40291
John E. Smith, 10309 Oak Grove Road, Fern Creek, Ky. 40291
Patrick Estes, 10311 Oak Grove Road, Fern Creek, Ky. 40291
J. David Chrisman, 9004 Independence School Road, Louisville, Ky. 40228
Tammy Bowes, 8910 Thomas Grove Road, Louisville, Ky. 40291

Summary of testimony of those in opposition:

Gina Enneking gave a power point presentation and said this case is not ready to move forward. The area is rural and needs to stay that way. There was no traffic study done from Oak Grove Rd. to Independence School Rd. to Thixton and Bardstown Rd. The Cedar Creek basin is supposed to be preserved but the proposal runs through it. The due process of this zoning request was not followed properly based on the fact that it was remanded back to LDT (see recording for detailed presentation).

Steve Porter stated the Fern Creek Small Area Plan is very important concerning this case. The property is in quadrant 3, which was down-zoned because of that plan (see recording for detailed presentation).

Bryan Gillis stated his main concern is traffic. The applicant's traffic study only encompassed two blocks (see recording for detailed presentation).

John Smith said he lives approximately 500-feet east of the proposed entrance. The area has always been a rural relaxed setting (see recording for detailed presentation).

Patrick Estes said the construction traffic is going to make the traffic worse than it is today (see recording for detailed presentation).

J. David Chrisman said his home is one of the few remaining green zones according to the Ky. Air Quality and the AQI Index. The main concern is the impact to the air quality (see recording for detailed presentation).

Tammy Bowes stated, there will be a 100-foot buffer on the north side, but what about the 3 houses on Thomas Grove Rd.?

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Rebuttal

Nick Pregliasco said providing a 20-foot roadway width and 6-foot shoulder was not discussed or requested, even with the 263 lots proposal. The proposal was reduced by 83 lots and this issue has been addressed by standard road improvements.

Nick Pregliasco explained the intent of the Fern Creek Small Area Plan (see recording for detailed presentation).

Ron Thomas stated, regarding the wetlands and streams, the applicant has done everything correctly as far as minimization and avoidance (see recording for detailed presentation).

Nick Pregliasco said regarding the traffic study, Ms. Zimmerman performed the study on the exact area and parameters given by Transportation and Public Works (see recording for detailed presentation).

Deliberation

Planning Commission deliberation.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning Change from R-R Rural Residential to R-4 Single Family Residential

On a motion by Commissioner Carlson, seconded by Commissioner Sistrunk, the following resolution based on the opposition's testimony and the Plan 2040 Staff Analysis was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-R, Rural Residential to R-4, Single Family Residential on property described in the attached legal description be **DENIED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Price, Sistrunk and Lewis

NO: Commissioners Cheek and Mims

NOT PRESENT AND NOT VOTING: Commissioner Clare

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***NOTE: Commissioner Price left the meeting at approximately 5:00 p.m. and did not vote on this case.**

Request: Change in zoning from R-R to R-4, with Detailed District Development Plan/Major Preliminary Subdivision with development potential transfer and Binding Elements, and Waivers

Project Name: Oak Grove Road Subdivision

Location: 10212 & 10302 Oak Grove Road

Owner: Estate of Doris Ann Parker, The Parker Living Trust

Applicant: JS Acquisitions LLC

Representative: Bardenwerper Talbott & Roberts

Jurisdiction: Louisville Metro

Council District: 22 - Robin Engel, 23 - James Peden

Case Manager: Dante St. Germain, AICP, Planner II

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

03:02:40 Dante St. Germain presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

03:12:10 In response to a question from Commissioner Lewis, Ms. St. Germain confirmed that the tree removal was being done in accordance with the Land Development Code, for the purposes of geotechnical work/testing. She said she requested the applicant to stop, which they did.

03:13:16 In response to a question from Commissioner Mims, Ms. St. Germain said the Fern Creek Area Study was approved in either 2002 or 2003.

The following spoke in support of the request:

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Nick Pregliasco, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

David Mindel, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

Diane Zimmerman, 12803 High Meadows Pike, Prospect, KY 40059

Ron Thomas (was present but did not speak)

Summary of testimony of those in support:

03:14:08 Nick Pregliasco, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

03:18:21 David Mindel, an applicant's representative, discussed the proposed Cooper Chapel Road extension that is coming.

03:20:48 Mr. Pregliasco resumed the presentation.

03:25:08 Mr. Mindel discussed the development plan.

03:26:57 Mr. Pregliasco resumed the presentation.

03:33:15 Mr. Pregliasco showed a slide listing three proposed binding elements (see recording.)

03:37:46 Commissioner Mims, Mr. Mindel and Mr. Pregliasco discussed the pavement width on Oak Grove Road, and the stub going across Cedar Creek (see recording for detailed discussion.) In response to another question from Commissioner Mims, Mr. Pregliasco said the applicant is proposing to dedicate the ROW for the bridge crossing but there is no proposal to fund it.

03:42:46 In response to another question from Commissioner Mims, Diane Zimmerman, traffic engineer, reviewed the crash history on Independence School Road and Oak Grove Road (see recording.) This information was sent to Transportation Planning and Public Works following the LD&T hearing on this case.

03:45:18 In response to a question from Commissioner Carlson, Mr. Mindel and Commissioner Brown discussed the timeline for the completion of the Cooper Chapel Road extension and also the MSD/sewer work related to it.

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03:48:13 In response to questions from Commissioner Carlson, Mr. Pregliasco discussed stub streets and how to facilitate the connection to Thomas Grove Road. He said the applicant would commit to notifying home buyers, through the Covenants, Conditions and Restrictions, that the stub streets could potentially become connections.

03:51:54 In response to questions from Commissioner Carlson, Mr. Mindel discussed blasting for sanitary sewers and water lines. A pre-blast survey will be offered to any homeowners who want it. Mr. Pregliasco said the applicant agrees to this.

03:54:56 Laura Ferguson, Assistant County Attorney, read the blasting binding element into the record, as follows:

All property owners within 500 feet of a proposed blasting location shall be notified 30 days before any blasting operations occur and be offered pre-blast surveys. Any homeowners who opt to have a pre-blast survey conducted shall be provided copies of all materials resulting from that survey, including any photos and/or videos. Any blast survey shall be done in a manner consistent with Kentucky Blasting regulations.

She and Mr. Pregliasco discussed questions regarding new/added binding elements.

***NOTE: Commissioner Price left the meeting at approximately 5:00 p.m. and did not hear or vote on the rest of this case.**

The following spoke in opposition to the request:

Gina Enneking, 8920 Independence School Road, Louisville, KY 40228

John Smith, 10309 Oak Grove Road, Louisville, KY 40291

David Chrisman, 9004 Independence School Road, Louisville, KY 40228

Bryan Gillis, 10414 Oak Grove Road, Louisville, KY 40291

Patrick Estes, 10311 Oak Grove Road, Louisville, KY 40291

Yvonne Riggs, 8920 Independence School Road, Louisville, KY 40228

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Summary of testimony of those in opposition:

03:59:54 Gina Enneking, an adjoining property owner, showed photos of the property, the tree removal, the large intermittent creek and the Cedar Creek watershed, and wildlife in the area. She explained how this project does not follow the conclusions of the Fern Creek Small Area Plan to maintain rural and agricultural land (see recording for detailed presentation.)

04:07:56 John Smith, who lives across the street from the site, also expressed concern that this development does not follow the Fern Creek Small Area Plan to keep this area rural and agricultural; karst; sinkholes; traffic; and inadequate construction of the widened part of Oak Grove Road.

04:11:54 David Chrisman lives directly behind the subject site. He said he and his family specifically chose this site due to his significant health issues. He said the hundreds of extra vehicles and loss of trees will impact his health. He said the applicant widened the road by putting down loose gravel with blacktop over it; he said pieces of that newly-paved road are already starting to break off. He stated that the stream is not intermittent.

04:15:40 Bryan Gillis discussed vehicle incidents and accidents. He said this road cannot support approximately 500 additional cars. He said Thixton and Oak Grove is already a bad intersection; also, the entrance to the site is located on a blind rise. He said the stub street discussed earlier today is a private road belonging to the four homeowners; it will never be a public road.

04:18:37 Patrick Estes spoke in opposition.

04:20:41 Yvonne Riggs spoke in opposition.

Rebuttal:

04:22:09 Mr Pregliasco and Mr. Mindel delivered rebuttal (see recording.)

04:26:52 In response to questions from Commissioner Mims, Mr. Mindel discussed the riparian areas, the road crossing/s, the preservation of the stream and trees; and the repaving issue.

04:30:47 In response to questions from Commissioner Carlson, Ms. Zimmerman said the Code standards in Louisville Metro was 18 feet.

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04:33:54 Ms. Enneking asked who was going to pay when she had to move her horses due to blasting; also, have any wildlife surveys been done on the endangered species that live on that property, including bald eagles. Mr. Pregliasco said the applicant has agreed to the additional blasting binding element that was read into the record. He said Redwing Environmental has been to the site and done a survey of the species; no endangered flora or fauna species were found.

04:35:13 Commissioner Mims, Mr. Pregliasco and Mr. Mindel discussed whether a Corps permit would be required.

Deliberations:

04:37:45 Commissioners' deliberation.

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Zoning

04:48:26 On a motion by Commissioner Brown, seconded by Commissioner Daniels, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposed zoning change does not meet the guidelines of the Comprehensive Plan. The site is located in a less-developed area of Louisville Metro, and the Fern Creek Small Area Plan recommends retaining agricultural, rural development. The scale of the proposed development is out of proportion to the infrastructure available. The site plan meets the requirements of the Land Development Code but does not generally meet the guidelines of the Comprehensive Plan; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-R Rural Residential to R-4 Single Family Residential on property described in the attached legal description be **DENIED**.

The vote was as follows:

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YES: Commissioners Daniels, Brown, Carlson, Sistrunk, and Lewis.

NO: Commissioners Mims and Seitz.

ABSTAIN: Commissioners Howard.

ABSENT: Commissioners Clare and Price.