LYNCH, COX, GILMAN & GOODMAN P.S.C.

500 WEST JEFFERSON STREET, SUITE 2100
LOUISVILLE, KENTUCKY 40202
(502) 589-4215
Fax (502) 589-4994
E-Mail doncox@lynchcox.com

DONALD L. COX

INDIANA OFFICE:
426 E. COURT AVENUE
JEFFERSONVILLE, INDIANA 47130
TELEPHONE
(812) 283-8282

September 30, 2022

Louisville Metro Government
Planning Commission Members
444 S. 5th Street
Suite 300
Louisville, Kentucky 40202

Jay Luckett, AICP, Planner II
Case Manager
444 S. Fifth Street, Ste., 300
Louisville, Kentucky 40202

Re: File Nos. 21-DDP-0116 and 22-DDP-0098

Members of the Louisville Metro Government Planning Commission and Mr. Luckett;

As the Planning Commission is aware, this office represents the Lake Forest Community Association, Inc. located at 511 Woodlake Drive, Louisville, Kentucky 40245, along with Debra Alberhasky, 13917 Aiken Road, Louisville, Kentucky 40245, Carol Ann Dennes, 13925 Aiken Road, Louisville, Kentucky 40245, Pleasant Grove Baptist Church, 13800 Aiken Road, Louisville, Kentucky 40245, Nicholas Berg, 13908 Aiken Road, Louisville, Kentucky 40245, Robin Northcutt, 13900 Aiken Road, Louisville, Kentucky 40245 and James Fischesser, 13923 Aiken Road, Louisville, Kentucky 40245 (**collectively,"Lake Forest**"). Lake Forest opposes both the revised plan in 22-DDP-0098 (**"Revised Plan"**) and the previously approved plan from 21-DDP-0116 (**"Approved Plan"**). Because the Revised and the Approved Plans violate the binding elements that attached to the property in 1983, reaffirmed in 2005 and 2015 and incorporated into the Approved Plan in 2022, the Revised Plan must be rejected, and the Approved Plan must be vacated. In support of this opposition, Lake Forest submits the following.

BACKGROUND

In September of 1982, an application was filed by the owner of approximately 160 acres of property off of Aiken Road for a zoning amendment. The owner at the time is the same owner today, the Otte Family Limited Partnership and or members of the Otte Family. The application sought to change the existing R-4 Residential zoning to M-3 Industrial. The intended use at the time was an expansion of an existing quarry located adjacent to the subject property on the other

side of the Gene Snyder Freeway. This application was Docket No.9-62-82 and a review of that file establishes that certain binding elements attached to the subject property which have been ignored in conjunction with the approved and revised plans.

The relevant aspects of the Docket No. 9-62-82 were the written agreements made by the applicant and owner which became binding elements on the property. In the written Justification for Zoning District Amendment, the applicant stated:

> The proposed use also achieves the intent of guideline I-1 "To ensure more economical construction and a more effective use of roads and utilities."... **Further, this specific proposal internalizes all traffic on the site by use of a tunnel connecting the existing operation west of the Jefferson Freeway right of way with this expansion east of the right of way.** By so doing, the proposed use will cause absolutely no traffic increase of its own on the public roadways.
>
> Another intent of guideline I-1 is "To promote effective screening, buffering and site planning." The proposed use is based on a well designed site plan that incorporates perimeter buffer zones, fencing, and where adjacent to the residential uses on Aiken Road, a landscaped buffer zone of rolling hills and trees. **The buffer zones and landscaping are integral elements of the site plan and are designed to meet the intent of guidelines related to buffering, particularly I-1, I-4, I-6, I-8, and R-1**.

(**Exhibit A, p. 2**) (emphasis added). The Justification continued:

> The intent of I-5 is "To protect residential areas from increased traffic, noise and air pollution" and "To make industrial development easily accessible for employees and truck traffic." While this proposal involves little employment expansion since the subject industry is not labor intensive (the existing operation employs only 18 people), it does involve truck traffic. **A significant feature of this plan is the use of a tunnel under the Jefferson Freeway so that truck traffic from the proposed expansion can reach necessary plant equipment without accessing public roadways. There will be no new access points on public roads from the subject property, all access being through the existing operation**.

(**Exhibit A, p 3**) (emphasis added). The approved District Development Plan contained the note "NOTE: Access to be through existing quarry". (**Exhibit B**). The Planning Commission Staff Report, dated January 20, 1983 states "[t]he applicant proposes to expand the operation of an existing quarry on an additional 159.131 acres. The site is occupied by a single family residence and a nursery that fronts along Aiken Road. **Access to the site will be provided by internal roads through the existing quarry leading to Avoca Road**." (**Exhibit C, p. 5**) (emphasis added). The Staff Report goes on to provide "[t]he site is located on the northwest side of Aiken

Road, however, **direct access will be provided a road [sic] through the existing quarry to Avoca Road.**" (**Exhibit C, p. 6**) (emphasis added). Finally, the Staff Report provides:

> Guideline T-9 suggests that street access to a development through areas of significantly lower intensity or density development be discouraged. **Since direct access to the site of expansion is from the road within the confines of the existing quarry. There should be no significant increase in traffic using Avoca and other roads in the vicinity.**"

(**Exhibit C, p. 6**) (emphasis added). During the hearing before the Planning Commission on January 20, 1983, Mr. Frank Haddad, Jr., the applicant's representative, gave certain assurances regarding the development plan:

> Probably should mention at this part that there are several other specific and very important details of the application.
>
> First, there will be no new access points to the public roads in the neighborhood from the new quarry. We will use a tunnel, and this has already been provided for, under the Freeway to transport, as Mr. Carroll is pointing out where the tunnel, we will use that tunnel under the Freeway to transport the rock from the new area to the processing plant of the existing quarry.

(**Exhibit D, p. 7**).

Mr. David Daugherty made further representations on behalf of the applicant "We are proposing, of course, to do this [leave a 50 foot buffer around the property]. We are not proposing to landscape this immense perimeter because we don't have homes in the immediate proximity. **We are, however, proposing to landscape a rather wide buffer behind these residences that face Aiken Road.**" (**Exhibit D, p. 11**) (emphasis added). Members of the Planning Commission obtained clarification regarding the buffer:

> MR. KARZEN: Mr. Chairman, while Mr. Daugherty is up there I have a couple of questions. I just want to be sure I understand this right.
> You are saying the level area behind the existing residences for approximately 100 feet will be mounded?
>
> MR. DAUGHERTY: ...**To recapitulate that, 100 feet will be undisturbed, another 160 feet will be a landscaped buffer, and then it will be another 100 feet to the edge of the quarry**.

(**Exhibit D, p. 15**) (emphasis added). Mr. Daugherty further explained the buffer "[y]es, we are going to take some of the earth overburden and construct these, if you will, islands of dirt, and we have staggered these, and the purpose there is to discourage the visibility of the quarry, and then on top of those mounds, we are proposing to put the plantings." (**Id.**). Finally, Mr.

Daugherty explained the buffer and its location "[w]e are not proposing to landscape this immense perimeter and primarily we are not proposing to do that, not because of its length but because we don't have homes in the proximity that we have here on Aiken Road about 370 feet away, and that's on the rear line, not the residence." (**Exhibit D, p. 16**).

Finally, Mr. Ted Cable, a Ph. D in Planning and Development, testified on behalf of the applicant and explained his task as relating the earlier testimony to the guidelines of the Comprehensive Plan in place at the time. Mr. Cable made the following representations:

> **The specific proposal, in addition, internalizes all traffic on the site, as has been mentioned in earlier testimony, by use of a tunnel connecting the existing operation west of the Jefferson Freeway right-of-way with this expansion, east of the right-of-way. By so doing, the proposed use will cause absolutely no traffic increase of its own on the public roadways.**
>
> ...
>
> The proposed use is based on a well-designed site plan that incorporates perimeter buffer zones, fencing, and where adjacent to the residential uses on Aiken Road, a landscaped buffer zone of rolling hills and trees. **The buffer zones and landscaping are integral elements of the site plan, and as has been mentioned earlier, the landscaping will be developed, not 25 years from now when it actually would be a pressing issue, but as soon as the, as Martin-Marietta [the applicant] starts moving into the property.**
>
> ...
>
> I-45 relates to an industrial development to the capacity of transportation facilities. The plan is in apparent conformance with that guideline, as I've mentioned, there will be no new access points, as I mentioned earlier, on public roads from the subject property, **all access being through the existing operation.**
>
> ...
>
> The proposal includes several elements which achieve the intent of I-6 and comply fully with the guidelines. **Special note is again taken of the perimeter buffering and landscaping, and the internalization of the truck traffic related to the site.**

(**Exhibit D, pp. 43-45**) (emphasis added).

The Planning Commission Minutes dated February 3, 1983, outlining the resolution to recommend the change in zoning to the Fiscal Court states, in relevant part: "WHEREAS, the Commission finds the proposal to be in conformance with Guidelines R-1, I-4, I-6, I-7, and I-8

because the developer will implement and maintain substantial landscaping, buffering, and berms, and because controlled operational procedures such as the internalization of traffic, ...". (**Exhibit E, p. 23**) (emphasis added). Zoning Ordinance No. 24, Series 1983 changing the zoning from R-4 to M-3 was adopted on December 13, 1983 and stated "... said property shall be subject to the binding elements set forth in the minutes of the Planning Commission in said Docket No. 9-62-82." (**Exhibit F, Section 1**). On January 17, 1984, the Louisville and Jefferson County Planning Commission sent a letter to surrounding property owners explaining that the zoning change was approved under the Plan Certain ordinance and further stated "[w]hile the Plan Certain ordinance does not imply that every detail mentioned in a presentation by a potential developer or that every line drawn on a development plan is permanently binding, **it does mean that key and critical elements of development proposals which are calculated to win the support of the Planning Commission, Fiscal Court, and the public at large can be stipulated as legally binding elements of the development which must be followed**." (**Exhibit G**) (emphasis added).

The Board of Zoning Adjustment Minutes dated March 19, 1984, relate to Martin Marietta's application for a Conditional Use Permit for a rock quarry. In approving the application, the Board stated, in part, "WHEREAS, the Board finds from the evidence and testimony submitted at the public hearing that the operation will be surrounded by a 50 foot buffer strip with a 370 foot wide buffer zone, including a 100 foot wide strip containing extensive screening and buffering, between the actual quarry site and the single family residences immediately adjoining the property to the southeast, ...truck traffic will not increase in the areas as no new access points to the site and no additional product lines are proposed,...". (**Exhibit H, p. 11**).

In 2005, the then existing operators of the site, along with the Otte Family Limited Partnership, sought to obtain a new Conditional Use Permit for an outdoor recycling facility and a Modified Conditional Use Permit for the quarry and nursery facilities. As part of the filings, the applicants provided a summary of a neighborhood meeting held on May 2, 2005 which stated **"[a]s to traffic, it was explained that all new traffic will be utilizing the existing Roger Group Quarry entrance off Old Henry Road inside the Snyder Freeway. From there traffic will enter the existing Quarry site and drive beneath the Snyder Freeway, through the underpass, to access the new Conditional Use Permit and Modified Conditional Use Permit locations**." (**Exhibit I**) (emphasis added). The Revised Statement of Compliance with the Applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan dated July 11, 2005 submitted on behalf of the applicant made the following assurances:

> The applicant is proposing to maintain the existing landscaping around the perimeter of the entire site, but not around the use itself.
>
> ...
>
> Access to the site will be through the existing entrance to the Rogers Group quarry on the west side of the Gene Snyder Freeway, through the tunnel

> under the Freeway and along the bottom of the quarry to the fill area. Parking will be as shown on the submitted CUP plan and will have no adverse affect on any adjoining property as it is located at the bottom of the quarry. With the recent construction of the entrance to the Rogers Group quarry almost directly adjacent to the Gene Snyder Freeway, the trucks that enter this property should have very little effect on any surrounding properties.
>
> ...
>
> The uses proposed also comply with the intent and policies of Guidelines 7 and 8 regarding Transportation because all of the uses will use a single access point directly adjacent to the Gene Snyder on Old Henry Road and will not require any additional road construction.

(**Exhibit J, pp. 6-9**). In addition to the foregoing, the LD&T Minutes from August 25, 2005 relating to the Revised Detailed District Development Plan being proposed by the applicant in conjunction with the Modified Conditional Use Permit included staff analysis which was to be considered in formulating an opinion stated **"[t]he entrance to the proposed wood processing facility and quarry reclamation site will connect to an existing private access easement off Old Henry Road via a tunnel under I-265, which will require and access and crossover agreement from adjacent property owners**." (**Exhibit K**) (emphasis added).

In 2015, the Otte Family Limited Partnership filed another application for a Modified Conditional Use Permit [15CUP1019] and Revised Detailed District Development Plan [15DEVPLAN1051] which included a Plan that clearly showed the existing access point to the site via the Gene Snyder tunnel and stated, "existing drive to remain". (**Exhibit L**).

Finally, the Otte Family Limited Partnership, along with the current developer, Sunshine Concrete, filed an application for a Revised Detailed District Development Plan with revisions to Binding Elements, Case No. 21-DDP-0116. The application came before the Development Review Committee for a hearing on March 2, 2022. The audio/visual recording of that hearing reflects that no one appeared to speak in opposition to the applications, a fact that was recognized on the record by the Commission, but which was apparently not questioned further. The approval of the application was conditioned on, among other things, "**All General Plan binding elements approved under 9-62-82 are applicable to the site in addition to the following:...**". (**Exhibit M**) (emphasis in the original). After receiving numerous objections to the approved plan, the Otte Family Limited Partnership and Sunshine Concrete filed the current Revised Detailed District Development Plan, Case No. 22-DDP-0098.

LEGAL ISSUES

KRS 100.403 provides:

> (4) "Binding element" in a county containing a consolidated local government means a binding requirement, provision, restriction, or condition imposed by a planning commission or its designee, ***or a promise or agreement made by an applicant in writing in connection with the approval of a land use development plan or subdivision plan***.

(emphasis added). LDC 11.4.7 B provides "[t]he filing of an application for any Zoning or Form District Map amendment, ... shall constitute an agreement by the owner and applicant, their heirs, successors and assigns that if the Zoning or Form District Map amendment is enacted by the legislative body having zoning authority over the property in question, development and building permits for improvement of any such property shall be issued only when in conformance with the binding elements and a development plan conforming to those regulations adopted by the Planning Commission or legislative body for said property."

ANALYSIS

Applying the foregoing law to the facts and history surrounding the property in question, both Case No. 21-DDP-0116 and Case No. 22-DDP-0098 violate the binding elements that attached to the property in 1983 and which were reaffirmed in 2005, 2015 and finally in 2022. Those binding elements require that any proposed use of the property in question cannot utilize access to Aiken Road for traffic but must use the existing internal roadways. In addition, substantial landscaping and berms must exist on the site abutting residences along Aiken Road. Rather than comply with these binding elements, both development plans at issue propose to route traffic directly to Aiken Road. In addition, rather than provide the necessary buffer zones that were previously represented to be "integral aspects" of the development plan, the current developer ***has already removed*** what remained of the buffer zones previously installed in conjunction with the prior, approved development plans. Lake Forest Subdivision contains approximately 1800 homes and the subject property is located directly across Aiken Road from a portion of these homes. Also located on Aiken Road and within approximately two miles or less from the subject property is the Pleasant Grove Baptist Church, 13800 Aiken Road, whose congregation consists primarily of elderly parishioners, the Saint Mary's Center, 14207 Aiken Road, which is a day training center for adults with intellectual and developmental disabilities and Stopher Elementary School, 14417 Aiken Road. The increased risk to traffic and safety of the residents, parishioners, disabled individuals and elementary school children within the area cannot be trivialized if they are forced to share the two-lane Aiken Road with concrete trucks entering and leaving the proposed facility. This legitimate concern is already occurring with residents of Lake Forest Subdivision currently experiencing construction trucks, including cement trucks, cutting through the subdivision streets increasing traffic congestion and creating safety risks for the residents and children living in Lake Forest Subdivision. Moreover, construction crews and suppliers have, ***without permission***, been parking their vehicles in the Pleasant Grove Baptist Church located directly across Aiken Road from the subject property.

In addition to the foregoing issues, there is also a substantial question regarding due process in relation to the approval of Case No. 21-DDP-0116. When Lake Forest became aware

that the hearing had already occurred and that the developer was claiming that it had sent proper notice of the hearing to the First-Tier property owners entitled to receive notice, they contacted all the property owners not affiliated with the applicants. Out of the twenty-six names listed, five are affiliated with the applicants, one was the Case Manager, one from Land Design & Development, one was Metro Councilman, Anthony Piagentini and one was a vacant lot. Lake Forest was able to speak with 13 or the remaining eighteen property owners, all of whom denied having received notice of the hearing. (**Collectively, Exhibit N**).

To make matters worse, when Metro Councilman, Anthony Piagentini, who represents District 19 which includes Lake Forest Subdivision, contacted the Director of the Louisville Metro Planning and Design Services on March 30, 2022, and advised her of the lack of notice issue, he was incorrectly advised that the deadline to appeal the Committee's decision to the Planning Commission had been March 16, 2022. (**Exhibit O**). However, the Kentucky Courts have held that any time period for filing an appeal does not begin to run until notice is received. Taylor v. Duke, 896 S.W.2d 618 (Ky. App. 1995). It was not until March 23, 2022, at the earliest, that Lake Forest received actual notice of the Committee's decision to approve Case No. 21-DDP-0116. However, because of the representations of the Director of Planning and Design Services, Lake Forest was unaware of its existing appeal rights, relying instead upon the representation that the deadline to appeal had been march 16, 2022. (**Exhibit N**).

CONCLUSION

Accordingly, Lake Forest requests that the Planning Commission deny the current application Case No. 22-DDP-0098 due to the applicant's failure to comply with the applicable binding elements. Furthermore, Lake Forest requests that the Planning Commission vacate its prior approval of Case No. 21-DDP-0116 for the same reasons, along with the fact that the hearing held on March 2, 2022, violated Lake Forest's due process rights.

Very truly yours,
Lynch, Cox, Gilman & Goodman, PSC.

Donald L. Cox

DLC
cc: Board Members

EXHIBIT A

Docket No. 9-62-82

Martin Marietta Corporation.

RECEIVED
SEP 24 1982
LOUISVILLE AND JEFFERSON COUNTY
PLANNING COMMISSION

Justification for Zoning District Amendment.

The proposed development conforms with the letter and stated intent of the comprehensive plan, and is an exemplary proposal for the continued operation of an essential extractive industry in Jefferson County.

The developer submits the following comments on applicable guidelines of the comprehensive plan.

I-1 Locate, to the extent possible, industries in industrial subdivisions; otherwise locate industries adjacent to an existing industry to form industrial clusters. The following industries may locate away from industrial subdivisions and industrial areas, provided that they do not cause safety risks or nuisances to surrounding land uses:

a) extractive industries or
b) industries locating in areas of highly mixed land uses or
c) industries locating in existing structures and adapting them for productive re-use or
d) small-scale industries which are compatible with adjacent residential and other land uses or
e) very large industries that are compatible to industrial subdivisions.

Although guildline I-1 specifically identifies extractive industries as being able to locate away from industrial subdivisions and industrial areas, the proposed industrial use (for an extractive industry) meets the more stringent requirement of being adjacent to an industrial subdivision and an industrial area. The proposed use is an expansion of the existing industrial area generally located between Old Henry Road and Aiken Road in Eastern Jefferson County, as shown in Core Graphic 19. As an expansion of that industrial area, the proposed use further consolidates the formation of an industrial cluster, achieving the expressed intent of guildline I-1 "To promote clustering of industries and minimize conflicts with non-industrial land uses."

In addition, Core Graphic 19 identifies the generalized area to the south and north of the existing adjacent industrial uses as general areas suitable for new major industrial subdivision by either 1985 or 2000. The clear implication is that the entire corridor of the Jefferson Freeway expansion between LaGrange Road and Shelbyville Road is an area suitable for industrial expansion.

The proposed use also achieves the intent of guideline I-1 "To ensure more economical construction and a more effective use of roads and utilities." The economical development of extractive industries can best be achieved through appropriate expansion of existing operations into an adjacent area. By so doing, economies of scale are obtained. Further, this specific proposal internalizes all traffic on the site by use of a tunnel connecting the existing operation west of the Jefferson Freeway right of way with this expansion east of the right of way. By so doing, the proposed use will cause absoutely no traffic increase of its own on the public roadways.

Another intent of guildline I-1 is "To promote effective screening, buffering and site planning." The proposed use is based on a well designed site plan that incorporates perimeter buffer zones, fencing, and where adjacent to the residential uses on Aiken Road, a landscaped buffer zone of rolling hills and trees. The buffer zones and landscaping are integral elements of the site plan and are designed to meet the intent of guildlines related to buffering, particularly I-1, I-4, I-6, I-8, and R-1.

I-4 Design all industrial development to:

a) be compatible with adjacent development in terms of size, height, mass and scale and
b) provide, where appropriate, adequate lot sizes for buffering and screening adjacent development and
c) provide sufficient space for on-site parking and service areas and
d) use, where possible, the natural drainage patterns and
e) save, to the extent possible, the natural vegetation and
f) provide, where appropriate, trees, landscaping, benches, bus stops, bicycle storage facilities, and other site amenities and
g) prevent signs from being a visual nuisance or a safety hazard to vehicular traffic.

Where all applicable elements of guildlines I-4 are met or exceeded, of particular importance is the provision of buffering and screening. As noted above, the proposal includes perimeter buffering, fencing, and landscaping. Further, the natural drainage pattern for surface water is westwardly off the subject property to the existing industrial operation.

I-5 Relate industrial development to the capacity of transportation facilities by:

a) locating industrial uses with more than 100 employees on or very near an arterial street in close proximity to an expressway interchange and
b) locating industrial uses with less than 100 employees on or near an arterial street.

The intent of I-5 is "To protect residential areas from increased traffic, noise and air pollution" and "To make industrial development easily accessible for employees and truck traffic." While this proposal involves little employment expansion since the subject industry is not labor intensive (the existing operation employs only 18 people), it does involve truck traffic. A significant feature of the plan is the use of a tunnel under the Jefferson Freeway so that truck traffic from the proposed expansion can reach necessary plant equipment without accessing public roadways. There will be no new access points on public roads from the subject property, all access being through the existing operation.

I-6 Take all measures necessary to prevent industrial uses from causing nuisances to surrounding developments.

The proposal, as outlined above, includes several elements which achieve the intent of I-6 and comply fully with the guideline. Special note is again taken of the perimeter buffering and landscaping as integral elements of the site plan; and of the internalization of truck traffic related to the site. In addition, operating details specified by Martin Marietta such as controlled blasting and watering of roadways are designed to prevent nuisances to surrounding developments and roadways.

I-7 Locate industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries away from residential areas and population concentrations.

I-8 Prohibit industrial development within residential areas. Locate industries adjacent to residential areas or in mixed land use areas only if the industries can be made compatible with surrounding development. Expand existing industries which are adjacent to non-industrial development in a manner that meets the needs of the industry and protects surrounding development from nuisances.

Guidelines 1-7 and I-8 are met. There are only a few residences and no residential areas or population concentrations near the site. The few nearby residences are protected from any nuisance related to the proposed use through buffering, landscaping and controlled operational procedures.

Although other industrial guidelines have no, or very limited application to the proposal, it is important to note that the proposal has a significant impact on economic development in Jefferson County. Martin Marietta provides an essential material for economic development throughout this area - stone. It is well known that extractive industries, particularly aggregates, are critical to the future growth and expansion of this community.

EXHIBIT B

NOTICE

PERMITS SHALL BE ISSUED ONLY IN CONFORMANCE WITH THE BINDING ELEMENTS OF THIS DISTRICT DEVELOPMENT PLAN

APPROVED DISTRICT DEVELOPMENT PLAN

DOCKET NO. 9-62-82

APPROVAL DATE 2-6-83

EXPIRATION DATE N/A

PRELIMINARY APPROVAL SURFACE WATER CONTROL

Conditions of Approval

WATER MANAGEMENT ENGINEER
JEFFERSON COUNTY

PRELIMINARY REVIEW DEVELOPMENT PLAN

DATE

TRAFFIC ENGINEER

PRELIMINARY APPROVAL DEVELOPMENT PLAN

CONDITIONS

BY

DATE

JEFFERSON COUNTY
DEPT. OF PUBLIC WORKS

DAUGHERTY & TRAUTWEIN, INC.

RECEIVED
SEP 24 1982
LOUISVILLE AND JEFFERSON COUNTY
PLANNING COMMISSION

9-62-82

EXHIBIT C

PRELIMINARY STAFF REPORT Public Hearing Date: January 20, 1983

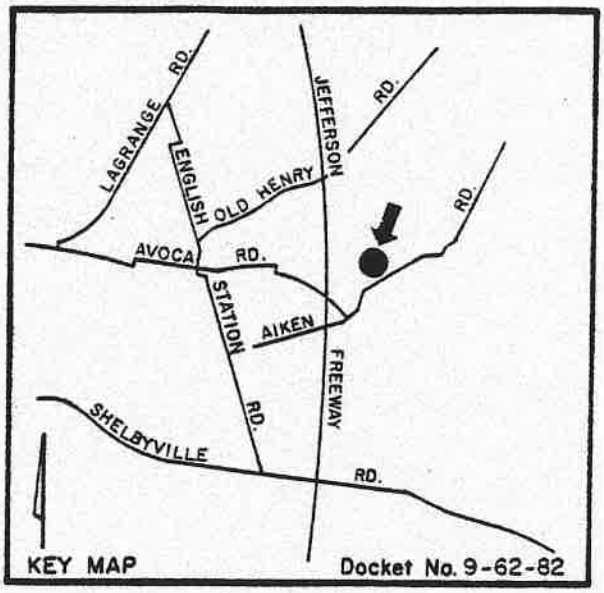
ZONING DOCKET NUMBER: 9-62-82

Owners: Frank Gardiner Otte, Margaret H. Otte, and Clarence Otte Nursery Gardens, Inc.

Developer: Martin Marietta Corporation

Related Subdivision: None

Zoning Change Request: R-4 Residential to M-3 Industrial on property located on the northwest side of Aiken Road 1320 feet more or less northeast of the Louisville and Nashville Railroad right-of-way and 5600 feet more or less southwest of Aiken Road at its intersection with Factory Lane, and being in the unincorporated area of Jefferson County.



Proposed Use: Quarry

Area: 159.131 acres

Previous Requests on Same Property:

None

Related Cases: (Refer to zoning map for exact location)
9-84-75: R-4 Residential to M-1 Industrial on the southeast side of Aiken Road, 385 feet more or less northeast of The Louisville and Nashville Railroad. Planning Commission recommended approval on condition. Fiscal Court approved on condition.

SUMMARY OF AGENCY COMMENTS

Jefferson County Department of Public Works and Transportation - August 27, 1982 "Preliminary Approval Development Plan".

Water Management Engineer - August 25, 1982
"Preliminary Approval Surface Water Control".

Fire Safety Officer - August 27, 1982
"Preliminary Review Development Plan".

DOCKET NO. 9-62-82 (continued)

ZONING SITE INSPECTION COMMITTEE

October 27, 1982

Access to the site will be provided by road through existing quarry to Avoca Road. The pavement is in good condition. Screening will be needed to protect adjacent property owners. Blasting and dust may have an adverse impact on nearby residential property.

LAND DEVELOPMENT AND TRANSPORTATION COMMITTEE MINUTES

October 14, 1982

The applicant intends to expand an existing quarry.

The Committee was informed that the proposed binding elements are minimal because the operation will require a conditional use permit from the Board of Zoning Adjustment. The conditional use permit will deal with the requirements related to the quarry.

The Committee was informed that the Bureau of Highways has purchased a corridor through the property for right-of-way of the Jefferson Freeway. The Department of Transportation will provide an underpass to allow vehicles to pass from one side of the freeway to the other without using public streets.

The applicant's representative stated that the developer proposes a 20 to 25 year surface mining operation. Detailed plans on the incremental spread will be furnished to the Board of Zoning Adjustment. The developer proposes to use the present access. Upon questioning from Commissioner Birch, the applicant's representative stated that the proposed buffering will include a chain link fence and undulating mounds with landscaping.

Upon questioning from Commissioner Birch, the applicant's representative stated that the quarry conducts blasting operations every day at noon and that the blasting operations are periodically moved. He stated that all of the neighbors within about a half mile radius of the site have been contacted, and that only two or three object. Commissioner Birch pointed out that one quarry in the county which is contiguous to residential property is currently under litigation because projectiles have gone outside the subject site. The applicant's representative stated that careful records of blasting times and techniques will be maintained.

Upon questioning from Commissioner Birch, the applicant's representative stated that the proposed operation will have no impact on the ground water.

DOCKET NO. 9-62-82 (continued)

The Planning Commission staff informed the Commission that the wording of some of the proposed binding elements will need to be changed because certificates of occupancy are not required for quarry operations.

The Committee was informed that the proposal does not appear to violate any of the guidelines of the Comprehensive Plan.

More information is needed before a determination can be made regarding the development's compliance with the following guidelines:
R-1, I-4, I-6, I-7, and I-8.

Guidelines of the Comprehensive Plan which do not appear to be violated or which are not of a technical nature were not specifically discussed.

The following binding elements were agreed to:

The following proposed binding elements do not imply endorsement of the proposal by the Planning Commission staff nor the Planning Commission. They are merely intended to be elements considered appropriate in the event that the zoning case and development plan are approved.

1. A Conditional Use Permit must be obtained from the Board of Zoning Adjustment to allow the quarry operation.

2. The development plan must be reapproved by the Water Management, Transportation Engineering and Fire Safety Sections of the Jefferson County Department of Public Works and Transportation.

3. These binding elements may be amended as provided for in the Zoning District Regulations.

Set the public hearing for December 16, 1982.

David Daugherty, Engineer, John Carroll, Attorney, and Stuart Williams were present.

LAND USE

The site is adjacent to an existing quarry; and is occupied by a single family dwelling, a nursery and greenhouse range. Single family dwellings are located on both sides of Aiken Road. A church

and cemetery are located across Aiken Road from the southwest corner of the site. Large tracts of vacant land are located in the area. The Jefferson Freeway is located off the northwest corner of the site. See attached land use map for specific locations and uses.

ZONING ORDINANCE

The existing R-4 Residential District allows agricultural uses, churches, schools, libraries, parks and playgrounds, and single family dwellings up to a density of 4.84 units per acre.

The proposed M-3 Industrial District allows, among other uses, boiler manufacture, forge plants, metal casting, refrigerating plants, and wood and lumber processing. The following uses also are allowed by conditional use permit: distillation or refinement of coal, explosives and explosive storage, mining of minerals (including limestone) ore dumps and slag piles, stockyards and feed lots, and slaughter houses.

CHANGE CRITERIA
KENTUCKY REVISED STATUTE 100.213

"Findings necessary for map amendment. Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the community's comprehensive plan, or, in the absence of such a finding, that one or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission or the legislative body or fiscal court.

(1) That the original zoning classification given to the property was inappropriate or improper.

(2) That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the community's comprehensive plan and which have substantially altered the basic character of the area."

COMPREHENSIVE PLAN

The following guidelines of the Comprehensive Plan appear to be applicable to this request (See Staff Report Appendix for full text).

E-1 environmental limitations
E-6 drainage control
E-7 grading

DOCKET NO. 9-62-82 (continued)

E-8 erosion and sedimentation
E-15 dust control
T-1 adequate streets
T-5 adequate right-of-way
T-7 adequate access
T-8 internal circulation
T-11 off-street parking/loading
R-1 protect neighborhoods
I-1 industrial subdivision
I-4 design
I-5 transportation access
I-6 nuisances
I-7 hazardous and offensive uses
I-8 next to residential/mixed use, expansion
I-11 prime industrial sites
F-8 adequate fire protection
G-1 equitable cost sharing

PRELIMINARY STAFF ANALYSIS

The applicant proposes to expand the operation of an existing quarry on an additional 159.131 acres. The site is occupied by a single family residence and a nursery that fronts along Aiken Road. Access to the site will be provided by internal roads through the existing quarry leading to Avoca Road.

In addition to the change in zoning to the M-3 Industrial District, the proposal will require a conditional use permit from the Board of Zoning Adjustment to allow the quarry operation.

The requirements for the conditional use permit for a quarry are extensive, therefore, the suggested binding elements for this request are limited. These requirements necessitate extensive engineering studies and data. Standards of operation and bonding procedures are part of the conditional use permit process and provide ample controls for operation of the industry. Additionally, such operations are controlled by the Commonwealth, particularly with regard to use of explosives.

The environmental guidelines relate to limitations, drainage control, minimization of grading, erosion, sedimentation and dust control. The Water Management Section of the County Department of Public Works and Transportation has granted preliminary approval of surface water control for this site. The proposal is in compliance with Guidelines E-1, E-6 and E-7. When blasting activity begins on the site the developer should conform to all applicable rules and regulations established by the Air Pollution Control District relative to proper managment and control dust.

DOCKET NO. 9-62-82 (continued)

The transportation guidelines, Industrial Guideline I-5 and Government Guideline G-1 deal with provisions for adequate vehicular and pedestrian transportation facilities. The guidelines also seek assurances that those who propose new developments bear or reasonably share in the public facilities and services made necessary by the development. The site is located on the northwest side of Aiken Road, however, direct access will be provided a road through the existing quarry to Avoca Road. The Jefferson Freeway bisects the site of this request. The Bureau of Highways has purchased a corridor through the property for the right-of-way of the Jefferson Freeway. The Department of Transportation will provide an underpass to allow vehicles to pass from one side of the freeway to the other without using public streets. The proposal has received preliminary approval from the Transportation Engineering Section of the County Department of Public Works and Transportation. The proposal is in conformance with Guidelines T-1, T-5, T-7, T-8, T-11, I-5 and G-1.

Guideline T-9 suggests that street access to a development through areas of significantly lower intensity or density development be discouraged. Since direct access to the site of expansion is from the road within the confines of the existing quarry. There should be no significant increase in traffic using Avoca and other roads in the vicinity. The projected life of the quarry (20-23 years) indicates that there should not be an increase in traffic. The proposal appears to be in compliance with this guideline.

Residential Guideline R-1 encourages the protection of residential neighborhoods from adverse impacts of proposed development and land use changes. The southeast portion of the site is adjacent to single family residences fronting on Aiken Road. These residences are sound and well maintained. The Zoning Site Inspection Committee has indicated that blasting and dust could have an adverse impact on the adjoining residential area. The plan makes provisions for buffer strips ranging in size from 50 feet to 370 feet from adjoining properties. Chain link fencing and a landscaped buffer zone will be used to separate the quarry from the single family residences. The applicant should address this guideline to assure the Commission that the existing residences in the area will be protected.

The industrial guidelines deal with the location of industrial uses, design, nuisances, hazardous and offensive uses and considers locating industries adjacent to residential areas. The proposal is for an expansion of an existing extractive industry and according to Core Graphic 19 of the Comprehensive Plan the site is a prime industrial location.

The unique characteristics of extractive industries (mines for ores, minerals and earths) require that such operations be located where the proper quality materials are located. However, because the proposal needs an extensive buffer to avoid any nuisance to abutting residential properties and because a conditional use permit is required the applicant should discuss Guidelines I-1, I-4, I-6, I-7, and I-8.

Community Facility Guideline F-8 seeks provisions for adequate fire protection. The Jefferson County Fire Safety Officer has given a preliminary review to the development plan.

The applicant should address the methods to be used to make the proposal conform to Guidelines R-1, I-1, I-4, I-6, I-7 and I-8. It should be established that the proposed rezoning is in conformance with these guidelines.

The Planning Commission must determine if the original zoning was inappropriate or improper, if the proposal is in conformance with the Comprehensive Plan or if there have been any changes of a physical, social or economic nature which have altered the basic character of the area and which were not anticipated by the Comprehensive Plan.

SUGGESTED BINDING ELEMENTS

The following proposed binding elements do not imply endorsement of the proposal by the Planning Commission staff nor the Planning Commission. They are merely intended to be elements considered appropriate in the event that the zoning case and development plan are approved.

1. A Conditional Use Permit must be obtained from the Board of Zoning Adjustment to allow the quarry operation.

2. The development plan must be reapproved by the Water Management, Transportation Engineering and Fire Safety Sections of the Jefferson County Department of Public Works and Transportation.

3. These binding elements may be amended as provided for in the Zoning District Regulations.

EXHIBIT D

LOUISVILLE AND JEFFERSON COUNTY

PLANNING COMMISSION

JANUARY 20, 1983

1:00 P. M.

MEMBERS PRESENT:

CHAIRMAN JEROME HUTCHINSON

VICE CHAIRMAN CARROLL LURDING (left during hearing)

MR. RAYMOND DAUENHAUER

MR. JAMES BIRCH

MR. MICHAEL FRENCH

MR. RONALD KARZEN

MR. FRANK BECKMANN

MRS. MINX AUERBACH

DOCKET NO. 9-62-82

OWNERS: Frank Gardiner Otte, Margaret H. Otte, and Clarence Otte Nursery Gardens, Inc.

DEVELOPER: Martin-Marietta Corporation

LOCATION: Northwest side of Aiken Road

REPORTER: Betty Green

HOSPITALITY C. SERVICES
535 LEGAL ARTS BUILDING
LOUISVILLE, KENTUCKY 40202
PH 587-0933

And I submit that these 1964 findings are fully applicable to this case in 1983.

Probably should mention at this part that there are several other specific and very important details of the application.

First, there will be no new access points to the public roads in the neighborhood from the new quarry. We will use a tunnel, and this has already been provided for, under the Freeway to transport, as Mr. Carroll is pointing out where the tunnel will be, the approximate location of the tunnel, we will use that tunnel under the Freeway to transport the rock from the new area to the processing plant of the existing quarry.

The one and only present access point to this property is on Aiken Road, and it will remain the one and only access point.

Secondly, we will have no new signs on this property.

Third, the processing plant will not be relocated. In other words, it will be continued to be operated in the very same location that it has been operated on since 1964 or 5, and that will be keeping it well away from any homes adjoining the area of the new quarry.

That's all the slides that I believe we care

extension of the Jefferson Freeway, and the lavender area in is an existing quarry/operation.

We do have detailed construction plans on the proposed enlargement that is going to go before the Board of Zoning Adjustment, so if you have questions relative to this operation, we do have that detailed information, but generally what we are proposing to do is to push into this area in a pattern like this over a period of 20-25 years whereby the blasting is toward the two high walls and, of course, not towards the Freeway.

We are proposing to surround the property with a six foot chain link fence, which is, of course, is required for the Board of Zoning Adjustment regulations, and in respone to Commissioner Lurding's inquiry on the landscape buffer, regulations require that we leave a 50 foot buffer around the property.

We are proposing, of course, to do this. We are not proposing to landscape this immense perimeter because we don't have homes in the immediate proximity. We are, however, proposing to landscape a rather wide buffer behind these residences that face Aiken Road.

We are dropping back from the rear property approximately 100 feet, and if I may, let this rendering

any additional entrances nor is this likely to affect the number of trucks that services this existing quarry.

MR. KARZEN: Mr. Chairman, while Mr. Daugherty is up there I have a couple of questions. I just want to be sure I understand this right.

You are saying the level area behind the existing residences for approximately 100 feet will be mounded?

MR. DAUGHERTY: No, sir, this will be about 100 feet, which will stay in its existing state. We won't touch it; for the next 160 feet we will put in the landscaped buffer, and then it's approximately another 100 feet to the edge of the highway, so we are about 370 feet from the rear property line.

To recapitulate that, 100 feet will be undisturbed, another 160 feet will be a landscaped buffer, and then it will be another 100 feet to the edge of the quarry.

MR. KARZEN: And the landscape buffer, is that where these mounds are going to occur?

MR. DAUGHERTY: Yes, we are going to take some of the earth overburden and construct these, if you will, islands of dirt, and we have staggered these, and

the purpose there is to discourage the visibility of the quarry, and then on top of those mounds, we are proposing to put the plantings.

MR. KARZEN: And then as the quarry develops itself it will be a step down level, is that -

MR. DAUGHERTY: Yes, the quarry will be pushed into this area in a fashion like this, and ultimately many years away it will reach a point in proximity to the property line, and they will go down in a stair step fashion, three stair steps, and the top of the stair step will be 50 feet from the property line, and this area will be undisturbed. The only thing that will be done that we are proposing to do is just some cosmetics. We are not proposing to landscape this immense perimeter and primarily we are not proposing to do that, not because of its length but because we don't have homes in the proximity that we have here on Aiken Road about 370 feet away, and that's on the rear line, not the residence.

It looks to me as if probably the rear of the residences are 450 feet or so, a football field and a half away from the top of our quarry. Mr. Lurding?

MR. LURDING: From a long term standpoint what do you typically do with this property once you finish

adjacent industrial uses, it's general area suitable for new major industrial subdivisions by either 1985 or the year 2000.

The pure implication is that the entire corridor of the Jefferson Freeway expansion between LaGrange Road and Shelbyville Road is an area potentially suitable for industrial expansion.

The proposed use also achieves the intent of Guideline I-1 to insure more economical construction and a more effective use of roads and utilities.

The development of extractive industry can economically best be achieved through appropriate expansion of existing operations into an existing area. By so doing, the economies of scale are obtained, obviously an attractive feature.

The specific proposal, in addition, internalizes all traffic on the site, as has been mentioned in earlier testimony, by use of a tunnel connecting the existing operation west of the Jefferson Freeway right-of-way with this expansion, east of the right-of-way. By so doing, the proposed use will cause absolutely no traffic increase of its own on the public roadways.

Another intent of Guideline I-1 is to

promote effective screening and buffering and site planning. The proposed use is based on a well-designed site plan that incorporates perimeter buffer zones, fencing, and where adjacent to the residential uses on Aiken Road, a landscaped buffer zone of rolling hills and trees. The buffer zones and landscaping are integral elements of the site plan, and as has been mentioned earlier, the landscaping will be developed, not 25 years from now when it actually would be a pressing issue, but as soon as the, as Martin-Marietta starts moving into the property.

I-4 relates to designing all industrial development to be compatible with adjacent development in terms of size, height, mass and scale, and that particular one, in my opinion, is not particularly pertinent to an extractive industry as are some others.

It calls for providing sufficient space for on-site parking and service areas. That's obviously been done in the plan.

Use where possible the natural drainage patterns. That's been discussed earlier. The drainage patterns will all be entirely on site and out to the quarry on the other side of the Freeway.

The otherparts of I-4 relate to provide

where appropriate trees, landscaping and other amenities. The trees and landscaping and buffer zones are certainly provided for, and it mentions the prevention of signs from being a visual nuisance. There will be no addition of signs.

I-5 relates to an industrial development to the capacity of transportation facilities. The plan is in apparent conformance with that guideline, as I've mentioned, there will be no new access points, as I mentioned earlier, on public roads from the subject property, all access being through the existing operation.

Since it's a continuation of the operation, without any large scale expansion, we are not talking about a really expansion of operation, as continuation of operation, there is no anticipated increase in traffic to the site.

I-6, take all measures necessary to prevent industrial uses from causing nuisances to surrounding developments.

The proposal includes several elements which achieve the intent of I-6 and comply fully with the guidelines. Special note is again taken of the perimeter buffering and landscaping, and the internalization of the truck traffic related to the site.

In addition, earlier testimony has gone

EXHIBIT E

DOCKET NO. 9-62-82 (continued)

and that the quarry was in operation prior to construction of the homes in the area. Upon questioning from Legal Counsel, Commissioner French stated that a professor at the University of Louisville had indicated that $1000 should be sufficient to conduct the study.

On a motion by Commissioner French, seconded by Commissioner Birch, the following resolution was adopted:

WHEREAS, the Commission finds the proposal to be in conformance with Guidelines R-1, I-4, I-6, I-7, and I-8 because the developer will implement and maintain substantial landscaping, buffering, and berms, and because controlled operational procedures such as the internalization of traffic, controlled blasting, and the watering down of dust, will be incorporated into the operation, and because the applicant has entered into a binding element agreeing to pay up to $1000 for the cost of a study to determine if the rock near the boundaries of the subject property can be fractured or pre-split to afford additional protection or buffering to the homes and structures in the area, and because the quarry was located on the adjacent site prior to the construction of homes in the area, and

WHEREAS, the Commission finds the proposal to be in conformance with Guideline I-1 because the industry is extractive in nature, and because the location of the subject site next to the existing quarry will allow the utilization of the existing processing plant, therefore forming an industrial cluster, and

WHEREAS, the Commission further finds the proposal to be in conformance with Guideline I-4 because no additional signs are proposed, and because adequate on-site parking is provided, and because the drainage on the site is satisfactory, and

WHEREAS, the Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan,

NOW, THEREFORE, BE IT RESOLVED, that the Louisville and Jefferson County Planning Commission does hereby recommend to the Fiscal Court of Jefferson County, Kentucky that the proposed change in zoning from R-4 Residential to M-3 Industrial on the following described property be APPROVED.

The vote was as follows:

Yes: Commissioners Lurding, Auerbach, Beckmann, Birch, French and Karzen
No: None
Not Voting: Commissioner Hutchinson who abstained.

EXHIBIT F

ZONING ORDINANCE NO. 24, SERIES 1983

DOCKET NO. 9-62-82 - PLAN CERTAIN
AN ORDINANCE CHANGING THE ZONING FROM R-4 RESIDENTIAL TO M-3 INDUSTRIAL ON PROPERTY LOCATED ON THE NORTHWEST SIDE OF AIKEN ROAD 1320 FEET MORE OR LESS NORTHEAST OF THE LOUISVILLE AND NASHVILLE RAILROAD RIGHT-OF-WAY AND 5600 FEET MORE OR LESS SOUTHWEST OF AIKEN ROAD AT ITS INTERSECTION WITH FACTORY LANE, FRONTING ON THE NORTHWEST SIDE OF AIKEN ROAD 1948 FEET MORE OR LESS AND EXTENDING NORTHWESTWARDLY AT VARYING WIDTHS, THE GREATEST OF WHICH IS 2375 FEET MORE OR LESS, TO A MAXIMUM DEPTH OF 3500 FEET MORE OR LESS, CONTAINING 159 ACRES, MORE OR LESS AND BEING IN THE UNINCORPORATED AREA OF JEFFERSON COUNTY.

WHEREAS, the Fiscal Court has considered the evidence of the public hearing held by the Planning Commission and the recommendations of the Commission and its staff, as set out in the minutes and records of the Louisville and Jefferson County Planning Commission, and

WHEREAS, the Fiscal Court concurs in and adopts the reasons of the Planning Commission for said zoning change and approves and accepts the recommendations of the Planning Commission in this matter;

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF JEFFERSON COUNTY:

Section 1. That the herein described property referred to in Docket No. 9-62-82 is hereby changed from R-4 Residential to M-3 Industrial, provided however, said property shall be subject to the binding elements set forth in the minutes of the Planning Commission in said Docket No. 9-62-82. Said property is in the unincorporated area of Jefferson County and is described as follows:

BEGINNING at an iron pipe corner of the property conveyed to Robert Phillip Totten and Carole Jean Totten, His wife, by deed dated June 29, 1967, recorded in Deed Bk. 4131, Page 163 in the Office of the Clerk of the County Court of Jefferson County, said point being in the northward line of Aiken Road and North 62° 30' East, 75 feet (D) from an iron pipe at a corner post with Standard Materials Corporation, said point also being in the northward line of Aiken Road, thence with the Totten line North 18° 30' West, 210.0' (D) to an iron pipe corner, thence South 62° 30' West, 75.0' (D) with the Totten line to an iron pipe corner in the Standard Materials Corporation line, thence with said line North 18° 30' West, 2,215.83 feet (D) to a corner post in Pat Lydon's line said point also being a point in the Right-of-way of Jefferson Freeway and being 325' (R.D.O.T.) Right-of-Way station 1,208 + 13.31, thence with Jefferson Freeway Right-of-Way line North 75° 16'

58" East, 197.97 feet (K.D.O.T.) to a corner post, said post also being a southeasterly corner of the Emil and Lelah Berry tract, thence continuing with the Jefferson Freeway Right-of-Way line also being the Berry line North 15° 56' 24" West, 857.62 feet (K.D.O.T.) to a point of intersection with the Right-of-Way line of Old Henry Road ramp 3 on the Jefferson Freeway said Right-of-Way line having a radius of 646.20 feet and being 17.77 feet southeast of the southwest corner of a tract of land owned by Clarence Otte Nursery Gardens, Inc., said point also being located 202.88 feet Right of Jefferson Freeway centerline station 1216 + 80.81, thence with said radius an arc length of 23.11 feet (K.D.O.T.) to an intersection with the South line of the aforesaid Clarence Otte Nursery Gardens, Inc. tract, said point of intersection being North 74° 18' 18" East, 14.85 feet (K.D.O.T.) from the southwest corner of the Clarence Otte Nursery Gardens, Inc. tract, said point also being 70' Right of centerline station 318 + 02.38 on Ramp 3 of the Jefferson Freeway thence continuing with said 646.20 feet radius an arc length of 210.92 feet to a point in the Right-of-Way of aforesaid Ramp 3, said point being 70' Right of centerline station 320 + 36.15 Ramp 3 Jefferson Freeway, thence continuing with said Right-of-Way line North 39° 21' 11" East, 323.72 feet (K.D.O.T.) to a point 45 feet Right of centerline station 323 + 58.91 feet Ramp 3 Jefferson Freeway, thence with a radius 522.46 feet an arc length of 263.81 feet (K.D.O.T.) to a point 45 feet Right of centerline station 326 + 00.00 Ramp 3, Jefferson Freeway, thence continuing with said Right-of-Way line North 19° 26' 11" East, 91.04 feet (K.D.O.T.) to a point 60 feet Right of centerline station 326 + 81.01, thence North 5° 07' 50" East, 22.39 feet to a point 60 feet Right of centerline station 327 + 03.40 said point also being on the south line of a tract of land owned by Emmett L. and Geneva Gray, thence with said Gray line, leaving the Right-of-Way line of Ramp 3, North 74° 18' 18" East, 115.11 feet (K.D.O.T.) to the southeast corner of the Gray tract, said point being 259.51 feet Right of centerline station 156 + 95.69 on Old Henry Road (ultimate), Jefferson Freeway, thence with the easterly line of the Gray tract North 15° 33' 30" West, 141.37 feet (K.D.O.T.) to a point in the Right-of-Way line of Old Henry Road (ultimate), said point being 120 feet Right of centerline station 157 + 18.56 on Old Henry Road (ultimate), thence with the southerly Right-of-Way line of Old Henry Road (ultimate) North 65° 07' 50" East, 651.70 feet (K.D.O.T.) to a point, said point being 120 feet Right of Centerline station 163 + 70.26, said point also being a point in the West line of the William Bush tract, thence with said line South 15° 33' 30" East, 245.28 feet (K.D.O.T.) to an iron pipe in the southwest corner of the William Bush tract, thence with the southerly line of the same tract North 72° 18' 54" East, 1,101.50 feet (D) to a post corner, thence with another line of the Bush tract South 16° 45' 20" East, 1,443.94 (D) feet to a point in the northeast corner of the Roy K. & Mildred Newton tract thence with the northerly line of said tract South 71° 41' 25" West, 1,051.09 feet (D) to an iron pipe in the northwest corner of the aforementioned Newton tract, thence with the westerly line of said tract South 18° 45' 00" East, 1,818.96 feet (D) to a corner, thence South 59° 45' West, 870.21 feet (D) to a corner, thence South 18° 20' East 252.45 feet (D) to a point in the

centerline of Flat Rock and Floyd's Fork Turnpike Road (Aiken Road), thence South 57° 30' West, 528.00 feet (D) to a point, thence South 62° 30' West, 248.30 feet (D) to the point of beginning, containing 159.131 acres more or less.

Section 2. This ordinance shall take effect upon passage and approval.

COUNTY JUDGE/EXECUTIVE
MITCH McCONNELL

Date of Adoption December 13, 1983

ATTEST:

AUGUSTA C. SCOTT
FISCAL COURT CLERK

APPROVED AS TO FORM AND LEGALITY:

J. BRUCE MILLER, COUNTY ATTORNEY
By Asst Co Atty

EXHIBIT G

Louisville and Jefferson County
Planning Commission

900 Fiscal Court Building, Louisville, Kentucky 40202 502-581-6230

January 17, 1984

Dear Property Owner:

Fiscal Court of Jefferson County has approved the zoning change cited on the attached page. This change in zoning was approved under the Plan Certain ordinance and is therefore subject to certain binding elements. As the effective enforcement of binding elements requires the participation of those people who are most directly affected by the land use, a listing of applicable binding elements is being forwarded to you.

The Plan Certain regulation, which was adopted by Fiscal Court on August 12, 1975, provides a legal mechanism for binding a developer to provide those amenities and other improvements that he has agreed to and for binding him to those parts of a development plan that are necessary to protect the public health, safety and welfare. While the Plan Certain ordinance does not imply that every detail mentioned in a presentation by a potential developer or that every line drawn on a development plan is permanently binding, it does mean that key and critical elements of development proposals which are calculated to win the support of the Planning Commission, Fiscal Court, and the public at large can be stipulated as legally binding elements of the development which must be followed.

The binding elements, which are read into the record at the public hearing before the Planning Commission, run with the land and are therefore binding upon the owner(s) and other parties having an interest in the subject property, their heirs, successors, and assigns. They are enforceable in the same manner as any zoning regulation, that is, through administrative and court proceedings. If you observe any violation of the binding elements, please exercise your right as a citizen by filing a complaint with the Planning Commission (581-6230) or with the Code Enforcement Office (581-5950).

Thank you for your attention and your cooperation.

EXHIBIT H

Docket No. B-15-84 (continued)

WHEREAS, the Board finds that a watchman is currently stationed on the site of the existing quarry to the west and access to the site of the proposal will be through the existing quarry as no new access points are proposed for the extension, and

WHEREAS, the Board finds that the proposed excavation less than 50 feet from the property line along the southwest side property line adjacent to the existing quarry near the tunnel passway under the Jefferson Freeway and at the northwest corner of the site will not adversely affect the surrounding area, and

WHEREAS, the Board finds that the finished grade of the quarry will not have an adverse effect on the surrounding area as a 50 foot buffer strip of undisturbed land will surround the quarry along the boundaries of the Conditional Use Permit site, the topsoil will be contoured to meet the top of the rock ledge around the quarry, and the rock ledge itself will be a stair-stepped configuration of 15 foot risers and runners to the floor of the quarry, and

WHEREAS, the Board finds that the 5 and 10 year limitations of the operation under item d., (1), (d), vii. are excessively restrictive for an operation extracting continually needed materials if the quarry is conducted in a safe and reasonable manner consistent with the listed requirements and conditions of the Permit, and

WHEREAS, the Board finds from the evidence and testimony submitted at the public hearing that the applicant shall employ best management practices in order to minimize erosion and sedimentation during and after site preparation, therefore, the proposal will not violate Environment Guideline E-8 which is concerned with the control of erosion and sedimentation, and

WHEREAS, the Board finds from the evidence and testimony submitted at the public hearing that blasting, when properly conducted, produces very little dust, the measures proposed by the applicant for the control of dust on the site will adequately protect the surrounding area, and the applicant shall at all times comply with all requirements of the Air Pollution Control District for the control of dust, therefore, the proposal will not violate Environment Guideline E-15 which is concerned with dust control, and

WHEREAS, the Board finds from the evidence and testimony submitted at the public hearing that the operation will be surrounded by a 50 foot buffer strip with a 370 foot wide buffer zone, including a 100 foot wide strip containing extensive screening and buffering, between the actual quarry site and the single family residences immediately adjoining the property to the southeast, any blasting on

Docket No. B-15-84 (continued)

the site shall be conducted in compliance with the binding elements attached to the change in zoning on the subject property under Docket No. 9-62-82 and shall be limited to Monday through Friday and the applicant shall make every possible effort to conduct any blasting on the site at the time of approximately 11:00 A. M. so as to minimize disturbances to surrounding residential uses, the quarry operation will be conducted predominately below ground level of adjoining properties and any noise, vibration or visual nuisance from the quarry operation will not have an adverse effect on the surrounding residential uses as sound dissipates upwards and as the proposed buffer strips will virtually eliminate any view of the site from surrounding residences, truck traffic will not increase in the area as no new access points to the site and no additional product lines are proposed, therefore, the proposal will not violate Residential Guideline R-1 and Industrial Guidelines I-4, I-6, I-7, and I-8 which are concerned with the protection of neighborhoods, with the design of industrial development, with taking all measures necessary to prevent industrial uses from causing nuisances to surrounding developments, with locating industries which are potentially offensive away from residential areas, and with expanding industries which are adjacent to non-industrial development in a manner that meets the needs of the industry and protects surrounding development from nuisances, and

WHEREAS, the Board finds that a rock quarry operation is not an appropriate use for an industrial subdivision, therefore, the proposal will not violate Industrial Guideline I-1 which is concerned with locating, to the extent possible, industries in industrial subdivisions, and

WHEREAS, the Board finds that the proposal is in conformance with the Comprehensive Plan because it complies with all other applicable guidelines, principles and objectives of the Comprehensive Plan, and

WHEREAS, the Board finds that the conditions attached to the permit will ensure compatibility with the surrounding neighborhood, and

WHEREAS, the Board finds that the proposal will not adversely affect the public health, safety and the general welfare, as it has received preliminary development plan approval from the Jefferson County Public Works Cabinet, Transportation Engineering and Water Management Engineering Sections, and preliminary development plan review from the Jefferson County Fire Safety Officer, the proposal will be an expansion of an existing rock quarry, the proposed expansion is due to the exhaustion of rock reserves at the existing quarry and not to increased production or additional product lines,

EXHIBIT I

Summary of Neighborhood Meeting

The applicant and his representatives met with neighbors on May 2, 2005 at 6:30 p.m. at the Lakewood Baptist Church, at 13803 Shelbyville Road to discuss the development proposal for property located at 13905 & 14105 Aiken Road.

Most of the questions pertained to potential negative impacts, such as traffic, noise, and odors. As to traffic, it was explained that all new traffic will be utilizing the existing Rogers Group Quarry entrance off Old Henry Road inside the Snyder Freeway. From there traffic will enter the existing Quarry site and drive beneath the Snyder Freeway, through the underpass, to access the new Conditional Use Permit and Modified Conditional Use Permit locations. Calculations on additional traffic suggest that it should not be increased more than 10% to 20%, and yet this will be at an intersection and at an entrance road that has plenty of additional traffic carrying capacity.

As to noise and odors, it was pointed out that the organic processing will take place at the bottom of an old abandoned quarry site, not above ground, and that this same activity is currently happening mostly on locations around Metro Louisville and beyond where impacts are more immediately and obviously felt. Noise and odor analyses and resulting evidence will be presented at the BOZA public hearing.

Questions also were asked about drainage and any resulting pollution problems from runoff. It was explained that drainage from this site will enter existing quarry basins which will filter any materials that might eventually, long distances away enter stream systems.

Questions were also asked about the nature of the operation, for example, why the organic and inorganic materials processing were even required. It was explained that organic materials currently end up in land fills or spread all over the County on land where trees are cleared. It was explained that this new organic processing facility will save land fills and utilize the organic material mostly as a fuel source, which results in a much better utilization and disposal of organic waste materials. As to the inorganic materials, the old quarry site outside the Snyder Freeway is being slowly reclaimed right now anyway, so this will simply speed up the operation of same, if successful from perhaps a 30 year reclamation time table to maybe half that.

E:\WBB-NOV2002\Ray, Mattingly, Otte\Old Henry Road Property\CUP-MOD CUP-RDDDP Aps Jun 05\NEIGH MTG SUMM.doc
KBH 6/17/2005 3:55 PM

RECEIVED
JUN 20 2005
PLANNING & DESIGN SERVICES

EXHIBIT J

RECEIVED
JUL 13 2005
PLANNING & DESIGN SERVICES

BARDENWERPER, TALBOTT & ROBERTS PLLC
ATTORNEYS AT LAW
8311 SHELBYVILLE ROAD • LOUISVILLE, KENTUCKY 40222 • (502) 426-6688 • FAX (502) 425-0561 • WWW.BARDLAW.NET

REVISED (July 11, 2005)

STATEMENT OF COMPLIANCE WITH THE APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

Owners:	Otte Family Limited Partnership
Applicants:	Wood Environmental Products, LLC c/o Marshall T. Ray, Frank Otte, and Charles & Lee Mattingly
Location:	13905 & 13909 Aiken Road (5 lots)
Proposed Use:	Organic processing/recycling yard, earth fill operation, quarry and nursery/garden facility
Engineers, Land Planners and Landscape Architects:	Dunaway Engineering, Inc.
Requests:	New Conditional Use Permit(s) to allow earth filling and outdoor recycling facility; and related Modified Conditional Use Permit regarding quarry and nursery/garden facilities

HISTORY

The subject property was approved as a quarry some 20 or more years ago in Docket # B-15-84. The Conditional Use Permit granted at that time to Martin Marietta allowed quarry operations subject to a phasing plan. Rights to quarry the subject property have been assigned several times, most recently to the Rogers Group. Phasing plans have been approved for the quarry over several years, but now the surface quarry operation has ceased and the entire quarry operation is underground. As part of the continuing approvals for the quarry, a reclamation plan was approved, which allowed for the reclamation of the property over several years. Currently, the reclamation is going so slowly that it may be decades before the property is reclaimed. In light of this, the applicant is proposing to place some productive uses in the bottom of the quarry, one that will remove a long standing mulching and grinding use from the City of Lyndon (the Bob Ray Tree Company) and one which will accept broken concrete and other non-organic fill materials to help accelerate the reclamation of the quarry property.

LAND DEVELOPMENT CODE REQUIREMENTS

B-115-05
(B-15-84)

The Land Development Code sets forth specific requirements for recycling operations, including mulching and grinding of wood and the acceptance of certain kinds of materials for earth filling.

With regard to Earth Filling, which includes landfills for non-combustible materials, the LDC allows for such operations in accordance with the following regulations:

General Standards:

1. Neither excavation nor filling shall be made within 50 feet of any boundary of the site.

2. Side slopes of excavation and fills in earth, sand or gravel shall not exceed one foot vertical to two feet horizontal and shall be blended into undisturbed existing surfaces.

3. A continuous fence a minimum of 6 feet high shall be placed along the boundaries of excavated areas and provided with gates of the same construction as the fence which shall remain locked at all times when active operations are not taking place and shall be properly maintained until all operations are completed.

4. Additional landscaping is required in the buffer areas between excavation and fill areas and buildings and structures.

5. Provisions shall be made for the disposal of surface water falling on or crossing the site at all times during and after completion of the operations. The operations shall not obstruct the normal flow of any public drain, or abrogate the riparian rights of any other party to a stream or drain. No operation shall begin until construction approval has been approved from the agency responsible for surface water drainage.

6. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply, quality, or purity of ground water or wells. In no case shall an excavation be carried to a depth below an elevation of 410 feet above man sea level.

RECEIVED
JUL 13 2005
PLANNING & DESIGN SERVICES
B-1150-5

7. A layer of clean earth at least two feet thick shall be deposited and thoroughly compacted over all fill to bring the surface to the finished surface grade as shown on the topographic plan filed with the application.

8. The finished surface of the site shall bear the proper relationship to that of adjoining properties.

9. The installation of roads, parking areas, buildings, structures, and operational facilities and equipment shall be located on the site so that adjoining properties will not be adversely affected.

10. Excavation and fill materials shall be moved off and onto the site in vehicles approved by the appropriate Director of Works.

11. All filling operations and final approval shall be in strict conformity with the regulations of the Louisville and Jefferson County Board of Health; Air Pollution Control District; Kentucky Department for Environmental Protection and the appropriate Director of Works. Letters or Certificates of Approval of the plans by the above agencies indicating prior review shall be filed prior to the issuance of any Conditional Use Permit. Uses shall not begin until final approval has been obtained and filed in the Board of Zoning Adjustment docket file.

12. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or other method that meets current state standards. No fires shall be permitted. Any smoldering flame or spontaneous combustion shall be immediately extinguished.

13. In no event will the premises be used for salvage operations of any kind. No separation or picking of waste materials will be permitted. All unacceptable fill materials as noted elsewhere in this section shall be removed from the premises immediately after delivery.

RECEIVED
JUN 13 2005
PLANNING & DESIGN SERVICES

B-115-05

14. Except for protective fences, no building or structure erected in connection with the operation shall be located in any required yard or closer than 30 feet from any property line.

15. A specific written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt or other debris onto any public roadway shall be reviewed and approved by the appropriate Director of Works before public hearing.

16. No materials defined as hazardous by these regulations, by the Kentucky Cabinet for Natural Resources and Environmental Protection or Federal Environmental Protection Agency will be allowed as fill.

RECEIVED
JUL 13 2005
PLANNING & DESIGN SERVICES

Standards for Specific Operations:

1. In addition to the general standards listed above, the following additional standards shall apply to:

   a. Land-fills for non-combustible material:

      ii. Fill material shall be limited to inorganic materials and other substances not subject to decomposition, combustion, or the production of odors.

      ii. Materials shall be spread and thoroughly compacted as they are deposited.

Solid Waste Management Facilities

Solid Waste Management Facilities, including composting facilities, construction / demolition debris facilities, indoor recycling facilities, outdoor recycling facilities, and solid waste transfer stations may be permitted subject to the conditions and in the zoning districts listed in the following sub-sections. In addition, the following conditions apply to all of these types of facilities:

A. All of the facilities referenced in sub-section 4.2.46 of the Land Development Code are required to have a license to operate from the Jefferson County Waste Management District (SWR 20.0).

B. A specific written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt or other debris onto any public roadway shall be reviewed and approved by the Director or Works before public hearing.

B-115-05
B-15-54

C. A continuous fence a minimum of 6 feet high shall be placed along the boundaries of all work and storage areas and provided with gates of the same construction as the fence which shall remain locked at all times when active operations are not taking place and shall be properly maintained until all operations are completed.

D. When adjoining any residential zoning district, the facility may not be operated on Sunday or earlier than 7:00 a.m. or later than 6:00 p.m. on any other day.

E. In addition to these conditions, the following conditions apply to the respective category.

1. Outdoor Recycling Facilities (not constituting Scrap Metal Processing Facilities or Junkyards as defined; in the Jefferson County Code or Ordinances) may be allowed in the M-3 Districts upon the granting of a Conditional Use Permit when developed in compliance with the following requirements:

   a. Outdoor recycling facilities located within one-half mile of residentially used or zoned property shall provide information on sound levels and hours of operation. The Board may establish conditions necessary to protect nearby residents.
   b. All outdoor recycling work and storage areas shall be at least 100 feet from the exterior property lines. If there are any abutting residentially zoned or used parcels then all work and storage areas shall be at least 200 feet from the exterior property line.

   c. Landscaping shall be placed between the exterior property lines and all outdoor recycling work and storage areas as described in Chapter 10 of the Land Development Code.

   d. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No loose paper or debris shall be allowed on the site. Any smoldering flame or spontaneous combustion shall be immediately extinguished.

RECEIVED
JUL 13 2005
PLANNING & DESIGN SERVICES

B-115-05
B-15-84

PROPOSED USES

The proposed land uses, the earth filling operation and outdoor recycling facility will both be operated by Wood Environmental Products, the applicant in this case. As trucks enter the site, they will be sorted depending on the kind of fill they carry. Inorganic fill will be directed to a certain area of the site to accelerate the reclamation of the quarry. Organic material will be sorted and recycled appropriately. Because both of these uses will be operated by the same company, they will operate in many respects as a single use. The filling operation was authorized as part of the original quarry Conditional Use Permit some 20 years ago.

THE EARTH FILLING OPERATION

The current reclamation plan for the quarry will not likely fill the quarry in our lifetimes. Although approved as part of the original quarry operation, the filling operation was never specifically described in enough detail to determine its operational boundaries. The applicant proposes to accept fill material from off site as part of its operation of Wood Environmental Products.

The filling operation will meet all of the many requirements set forth in Section 4.2.21 of the LDC. None of the fill will be combustible material. The entire operation will meet the Environmental Performance Standards as set forth in the LDC. Adjoining properties will be protected by the fact the filling operation will occur between 50' and 70' below the grade of the surrounding properties and will observe at least a 50' buffer along those property lines shared with residential properties. In fact, the area of the site to be filled will be at least 120' from any property zoned residential.

Section 4.2.21 contains several general standards regarding any filling operation. There will be no filling within 50' of any property line. When the filling is conducted the proper slopes will be observed. A continuous fence will be provided around the entire site, including the area to be filled, but will not be provided around that area's borders with the proposed nearby organic recycling operation.

The applicant is proposing to maintain the existing landscaping around the perimeter of the entire site, but not around the use itself. Again, the filling operation will be at the bottom of a quarry at least 50' below the surrounding grade, which should prevent anyone from even seeing the use at all until it nears completion.

With regard to surface water drainage, water from the filling operation will, along with water from the recycling operation will be directed to the settling ponds on the Rogers Group Property directly across the Gene Snyder Freeway from the site. Those settling ponds will work to filter particulates out of the water prior to in entering the sewer system. In addition to the treatment of water from the site, the materials to be stored will not adversely affect the groundwater or wells in the area.

RECEIVED
JUN 13 2005
PLANNING & DESIGN SERVICES
B-115-05

The applicant will comply with all requirements related to filling the top of the quarry site, including the 2' soil requirement over the fill. The finished grade will bear a reasonable relationship to the surrounding property once filling is complete.

Access to the site will be through the existing entrance to the Rogers Group quarry on the west side of the Gene Snyder Freeway, through the tunnel under the Freeway and along the bottom of the quarry to the fill area. Parking will be as shown on the submitted CUP plan and will have no adverse affect on any adjoining property as it is located at the bottom of the quarry. With the recent construction of the entrance to the Rogers Group quarry almost directly adjacent to the Gene Snyder Freeway, the trucks that enter this property should have very little effect on any surrounding properties. The applicant agrees that all vehicles for the delivery of fill material will have to be properly licensed. However, the applicant is not proposing to send out a fleet of its own trucks, but will rather accept trucks from other contractors.

The filling operation will comply with all requirements of the Air Pollution Control District, Louisville Metro Health Department and any other local or state agency that has jurisdiction over the property and will not allow any sorting, burning, salvaging or other such activities at the site. The applicant will not accept any hazardous materials and will make sure all of the inorganic fill (which will be all the material) will be compacted properly as it is delivered.

Trucks will be washed in the existing wash facility in the tunnel under I-65. When the lake being constructed in the quarry bottom is complete, another wash facility will be constructed to handle washing out the trucks.

THE OUTDOOR RECYCLING FACILITY

The applicant is proposing to move its mulching operation from the intersection of Lyndon Lane and the CSX Railroad track in Lyndon to the bottom of the quarry as shown on the development plan. Currently, the applicant takes trees it removes from property and uses it to create mulch. Now, the applicant will grind the trees for both mulch and fuel. The applicant anticipates about 30 to 40 round trip truck trips will be generated by this use, which truck trips will certainly be better handled through the access to the Rogers Group property directly off the Gene Snyder than continued access through Lyndon Lane and the surrounding streets. The applicant will meet all the requirements listed above regarding fencing and buffers that are common to both the filling proposal and the outdoor recycling facility. In addition, the outdoor recycling facility will be more than 200' from any property line, as the attached development plan indicates. The applicant will provide information regarding sound prior to the public hearing. The applicant will also propose hours of operation prior to the public hearing.

THE JOHN DEERE GARDEN FACILITY

Staff comments to the original CUP granted on this site stated that nursery operations would only take place on unexcavated ground. While these comments were

B-115-05
B-15-84

not written as conditions of approval, the staff has interpreted them to mean that there can be no nursery operation whatsoever on any area of the property that was previously quarried. The applicant feels that since the quarry operation has now moved entirely underground, having a nursery operation on excavated property makes sense. Previously, the two operations could not safely co-exist. Now that they can, leaving parts of this M-3 zoned property unused would be wasteful.

COMPLIANCE WITH CORNERSTONE 2020 COMPREHENSIVE PLAN

Both the proposed new use (outdoor recycling) and the existing uses (nursery and filling) comply with the Cornerstone 2020 Comprehensive Plan. The subject property is located in the Suburban Workplace Form Area, an area "characterized by predominantly industrial and office uses." While there will be no offices, other than an office trailer, the site is certainly set well back and away from surrounding land uses.

To the extent that this mix of uses can be called a center, they comply with the intent and policies of Guideline 2 regarding Centers. The mixture of compatible uses in the quarry, including filling, outdoor recycling, nursery and the existing underground quarry operation make for a center of sorts, each using a common entrance adjacent to the Gene Snyder Freeway and each using a common truck-wash facility (currently in the tunnel under the Gene Snyder Freeway. All utilities are present on the site.

The uses proposed in this application will be compatible with the surrounding land uses in compliance with the intent and policies of Guideline 3 regarding Compatibility. The location of the most intense uses in the bottom of the quarry will greatly buffer all of the surrounding land uses from the filling and outdoor recycling operation. In addition to their placement at the bottom of the quarry, the overall site also includes significant buffers along the property lines of the quarry which should provide for another layer of buffering to protect surrounding land uses from any odor, visual or noise impacts. The proposed uses are appropriately located as well. Currently, 90% of the material that could come to the outdoor recycling site travels across the Ohio River to Indiana. If this operation is approved, the material will stay in Jefferson County and be distributed from here, minimizing the impact on the community as a whole due to the lowered amount of truck miles put on the community's roads.

The uses proposed will do much for preservation of open space on and off the property in compliance with Guidelines 4 and 5 regarding open space and natural resources. First, the site is very large and open with significant buffers all around the exterior property lines. Second, the operations that are proposed (filling, nursery and outdoor recycling) are all a part of the maintenance and creation of open space. Every landscaped open space requires mulch that will be made here. Every landscaped open space requires plants which are grown and sold on the site and the equipment to maintain them. Third, the filling use will likely create more useable open space faster than if the use did not exist at all by allowing for the quarry to be reclaimed at a faster rate. Once the quarry is reclaimed, whatever land uses are placed on the reclaimed property will

B-115-05
12-15-05

likely have to provide some open space. The site is currently an open pit in the ground that must be reclaimed under the original permit to quarry the site. The uses that are proposed for the site will speed up the reclamation, accelerating the return of the natural landscape to the site.

The uses proposed all comply with the intent and policies of Guideline 6 regarding Marketplace because the site is located directly adjacent to the Rogers Group operation and will use its access and truck wash facilities, meaning that there will not be additional entrances on Old Henry Road. In addition to the efficiency of using the site for these uses, the outdoor recycling operation will be moving from the intersection of Old Lagrange Road and Lyndon Lane to this more appropriate location, which should benefit the community at large and consolidate that industrial operation with the others surrounding it.

The uses proposed also comply with the intent and policies of Guidelines 7 and 8 regarding Transportation because all of the uses will use a single access point directly adjacent to the Gene Snyder on Old Henry Road and will not require any additional road construction. Also, because of the limited use of Old Henry Road by the Otte Nursery and John Deere facility, no improvements were requested by Metro Public Works.

The uses proposed comply with the intent and policies of Guidelines 10 & 11 for the reasons mentioned above concerning the lake system and water settling system that the entire site will utilize. In addition to those measures, the uses and site will not affect the water quality and drainage measures currently incorporated in the quarrying operation, meaning that this site will meet the requirements already placed on the site in previous approvals.

The uses proposed comply with the intent and policies of Guideline 12 concerning Air Quality because the Air Pollution Control District has agreed that, once measures are taken to account for fugitive emissions (dust), which measures are required by local ordinance and will be incorporated, the uses on the site will not degrade air quality in any way. Approximately 30 trucks will be visiting the quarry bottom uses on any given day, with a spike in such uses to as many as 60 after a significant storm event. At this time, most of the material that would be delivered to the site is being processed by facilities in Indiana, meaning the trucks that handle this material are on the road longer traveling more miles than necessary. In comparison, truck trips to the Rogers Group number in the several hundreds of trips per day, meaning that this use would not significantly increase truck traffic as compared to the current condition.

The application complies with all other relevant and applicable guidelines of the Cornerstone 2020 Comprehensive Plan.

CONCLUSION

RECEIVED
JUL 13 2005
PLANNING & DESIGN SERVICES

B-115-05

Because the uses already associated with the quarry, inorganic filling and nursery use, are both proposed to basically remain the same, and the only change in use will be the inclusion of some organic recycling at the bottom of the quarry, the applicant feels that its proposal complies completely with the Cornerstone 2020 Comprehensive Plan. Approval of the applicant's request will result in the quarry being reclaimed more quickly, trucks carrying materials that will be used in the operations having to travel fewer miles on the community's roads, and a greater opportunity for an environmentally sensitive use such as wood recycling to flourish in this industrial area.

Respectfully submitted,

William B. Bardenwerper
Clifford H. Ashburner
BARDENWERPER & TALBOTT, PLLC
8311 Shelbyville Road
Louisville, Kentucky 40222
(502) 426-6688
Counsel for Applicant/Property Owners

E:\WBB-NOV2002\Ray, Mattingly, Otte\Old Henry Road Property\COMP Stmt REVISED 071105.doc
JTR Rev. 7/11/2005 2:48 PM

RECEIVED
JUL 13 2005
PLANNING & DESIGN SERVICES

B-115-05
B-1554

EXHIBIT K

DOCKET NO. 9-62-82 (Louisville Metro)

adopted policies and regulations of the jurisdiction. Materials submitted by the applicant or their representative prior to the deadline for filing information related to cases docketed for this hearing were reviewed and specifically applied in the staff review of this request. The board is advised to consider this staff report as well as new information introduced at the hearing in formulating their decision.

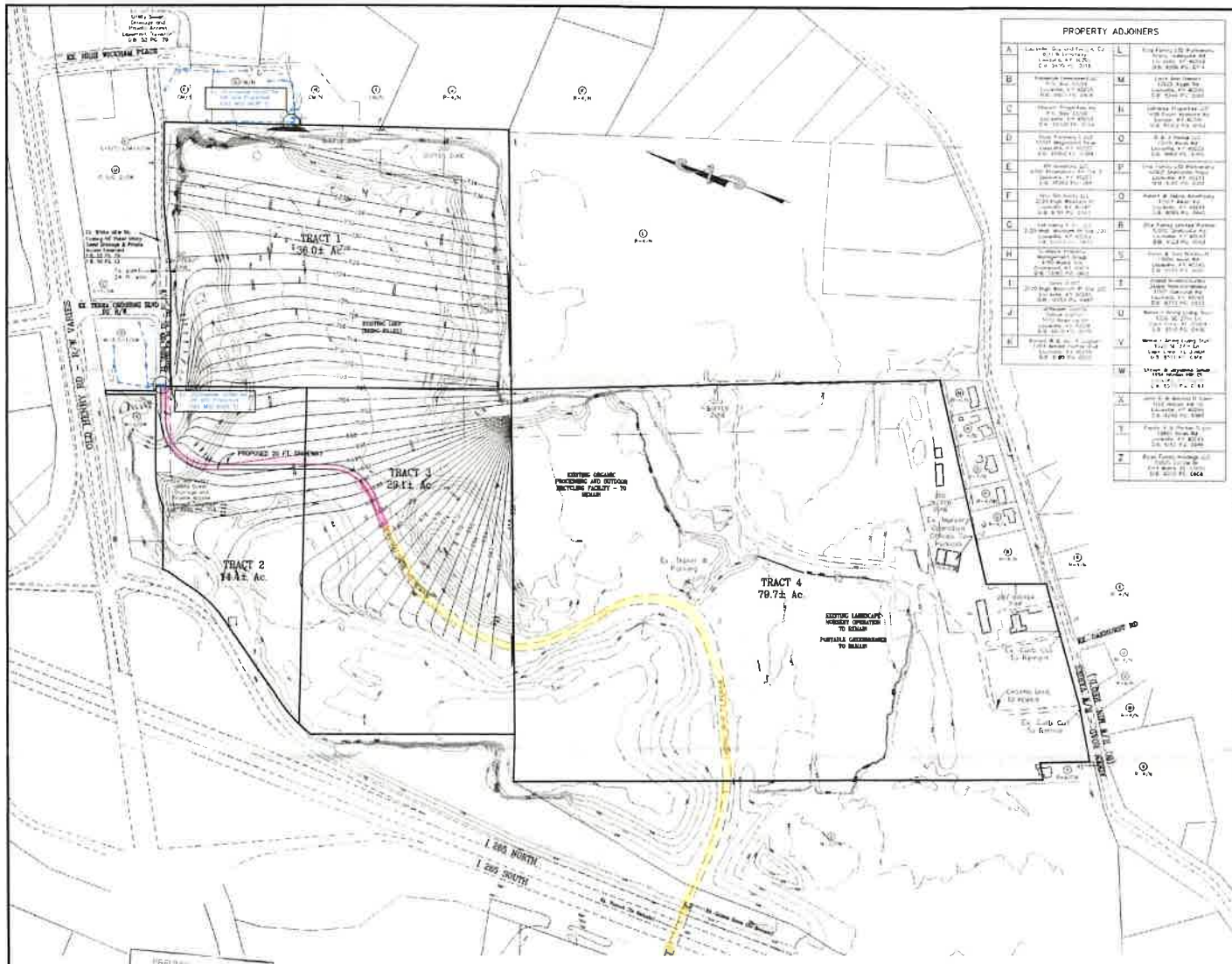
Summary

The applicant proposes to construct an environmental wood processing facility to be located in a 10-acre area near the center of the quarry. The facility will receive trees, brush, and other vegetative debris from third parties to be sorted, sold, or processed into wood fuel chips and mulch that will either be sold in bulk quantities or removed from the site. In addition, earth fill operations are proposed over the entire site to reclaim areas used for quarrying operations in the past, and the existing nursery operations are to remain unchanged. The wood processing facility site will consist of a 720 square foot trailer, portable scale, excavator, contained fuel tank, wheel loader, and horizontal grinder. Parking, maneuvering, and operational areas will require relocation within the site as fill operations expand. The entrance to the proposed wood processing facility and quarry reclamation site will connect to an existing private access easement off Old Henry Road via a tunnel under I-265, which will require an access and crossover agreement from adjacent property owners. An additional 40 feet of right-of-way is to be dedicated along Aiken Road adjacent to the entrance for the existing nursery operation. A Conditional Use Permit to allow an outdoor recycling facility and a Modified Conditional Use Permit to allow a revision in the reclamation operation for the quarry site was approved on July 18, 2005.

Background

A Conditional Use Permit was granted in 1984 (B-15-84) to permit the subject site to be used for quarry operations, subject to a phasing plan; however, the surface quarry operation has concluded and the entire quarry operation is now underground. A reclamation plan was approved for the quarry that will require numerous years to complete, so the applicant has submitted a proposal to provide alternative productive uses for the quarry site. All fill materials to be used for the reclamation of the quarry site will consist of concrete, asphalt, and other inorganic construction debris. **Since the proposed operations on site will consist of less than a 20% increase in area, landscaping and tree canopy requirements are not required until the site is redeveloped after all infill operations are complete. The applicant proposes to provide containment of the wood processing operations on site with a gravel barrier to prevent overflow of materials from the site. The existing binding elements will be replaced with the proposed binding elements.**

EXHIBIT L



PROPERTY ADJOINERS

A	[illegible]	L	[illegible]
B	[illegible]	M	[illegible]
C	[illegible]	N	[illegible]
D	[illegible]	O	[illegible]
E	[illegible]	P	[illegible]
F	[illegible]	Q	[illegible]
G	[illegible]	R	[illegible]
H	[illegible]	S	[illegible]
I	[illegible]	T	[illegible]
J	[illegible]	U	[illegible]
K	[illegible]	V	[illegible]
		W	[illegible]
		X	[illegible]
		Y	[illegible]
		Z	[illegible]

LOCATION MAP
NOT TO SCALE

PROJECT DATA

TOTAL SITE AREA = 150.3± Ac
EXISTING ZONING = M-3 (CUP)
FIRM DISTRICT = [illegible]
AREA OF TRS = 79.5 Ac (TRACTS 1,2 & 3)
EXISTING USES TO REMAIN = LANDSCAPE NURSERY, ORGANIC PROCESSING & OUTDOOR RECYCLING FACILITY

PARKING
REQUIRED: ORGANIC PROCESSING & OUTDOOR RECYCLING FACILITY
[illegible] MIN. MAX.
[illegible] = 8 SP [illegible]
PROVIDED: = 7 SP (INCLUDES 1 HC SP)
REQUIRED: LANDSCAPE NURSERY
[illegible] MIN. MAX.
[illegible] = [illegible] SP [illegible]
PROVIDED: = 11 SP (INCLUDES 1 HC SP)

GENERAL NOTES:

1. Parking areas and drive lanes to be a bank and durable surface.
2. No increase in drainage run off to state roadways (Aiken Road).
3. There shall be no commercial signs in the flight of way.
4. There shall be no landscaping in the flight of way without an encroachment permit.
5. Site lighting shall not shine in the eyes of drivers. If it does it shall be re-aimed, shielded, or turned off.
6. Construction fencing shall be erected prior to any construction in grading activities preventing compaction of root systems of trees to be preserved. The fencing shall encloses the area beneath the drains of the tree canopy and shall remain in place. No parking, material storage, or construction activities shall be permitted within the fenced area.
7. Mitigation measures for dust control shall be in place during construction to prevent fugitive particulate emissions from reaching existing roads and neighboring properties.
8. Boundary from LOJIC mapping and does not constitute a survey.
9. The Nursery operation and the Organic Waste Processing & Recycling Facility will move around the site on the fill operation occurs.
10. A damage bond is required by Transportation Planning for roadway repairs on all surroundings across roads to the site due to damages caused by activity from this site.

MSD NOTES:

1. No portion of the site is within the 100 year hand plain per FIRM Map No. 21111 C 0033 E & 21111 C 0034 E dated December 5 2008.
2. Drainage [illegible] reported by drawer (Lead) is for conceptual purposes. Final configuration and size of drainage plans and channels shall be determined during the construction plan design process. Drainage facilities shall conform to MSD requirements.
3. Prior to any construction activities on the site a Erosion & Soil Control Plan shall be provided to MSD for approval.
4. Roadway drainage [illegible] be handled by roadway swales and no curb and gutter shall be provided.
5. Existing detention for some offsite properties is being provided in the site. Detention basins will be provided on the subject site to accommodate the offsite detention volume prior to the date being completely filled. The exact location and size of the detention basins will be determined prior to construction plan approval for development of the subject site.

RECEIVED

SITE INFORMATION:
NOTE: ALL PARCELS ARE OF RECORD IN D.B. 8206 PG. 71
14105 AIKEN ROAD - T.B. 24 LOT 52 (Tr. 1 on this plan)
15402 SHELBYVILLE ROAD - T.B. 24 LOT 98 (Tr. 2 on this plan)
ADDRESS UNASSIGNED - T.B. 24 LOT 96 (Tr. 3 on this plan)
13905 AIKEN ROAD - T.B. 24 LOT 1 (Tr. 4 on this plan)

#9

Current case: 15DEVPLAN1051 (Modified CUP & RDDDP)
RELATED CASES B-115-05 (MODIFIED CUP)
D-15-84 (MODIFIED CUP)
9-62-82 (REVISED DETAILED DISTRICT DEVELOPMENT PLAN)

15CUP1019

COUNCIL DISTRICT - 19
FIRE PROTECTION DISTRICT - MIDDLETOWN

MSD WM #9020

GRAPHIC SCALE
(IN FEET)
1 inch = 200 ft

15CUP1019

REVISIONS

NO.	DATE	DESCRIPTION	BY
1	6-8-15	PER AGENCY COMMENTS	ACT

SURVEYOR'S SEAL

ENGINEER'S SEAL

PROJECT DATA

DATE: 4-3-2015
DRAWN BY: JH/JRS
CHECKED BY: AR

LD&D
LAND DESIGN & DEVELOPMENT, INC.
[illegible]

MODIFIED CONDITIONAL USE PERMIT AND REVISED DETAILED DISTRICT DEVELOPMENT PLAN

14105 AIKEN ROAD

OWNER/DEVELOPER
OTTE FAMILY LTD PARTNERSHIP
12902 SHELBYVILLE ROAD
LOUISVILLE, KY 40243

JOB NO. 14108

SHEET 1 OF 1

G:\Current Projects\14108\dwg\PLANNING\14108-RDDDP.dwg, 6/8/2015 11:08:42 AM, 1:0.994282

EXHIBIT M

DEVELOPMENT REVIEW COMMITTEE
March 2, 2022

NEW BUSINESS
CASE NO. 21-DDP-0116

Request:	Revised Detailed District Development Plan with revisions to Binding Elements
Project Name:	Sunshine Concrete
Location:	13905 Aiken Rd
Owner:	Otte Family Limited Partnership
Applicant:	Damon Garrett – Sunshine Builders
Representative:	Bardenwarper, Talbott and Roberts
Jurisdiction:	Louisville Metro
Council District:	19 – Anthony Piagentini
Case Manager:	Jay Luckett, AICP, Planner II

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

Agency Testimony:

02:40:46 Jay Luckett discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223
Derek Triplett, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222
Damon Garrett, Sunshine Industries, 901 Lily Creek, Louisville, Ky. 40243

Summary of testimony of those in favor:

John Talbott gave a power point presentation. It's a highly industrialized area. There is a request for road improvements (see recording for detailed presentation).

Derek Triplett discussed the plan and the use. There is a detention basin and a sediment forebay (decrease sediment) (see recording for detailed presentation).

John Talbott said the traffic analysis determined there were not enough left turn warrants to justify any road improvements, however Public Works is requesting a left turn lane. The applicant, Damon Garrett, has agreed to provide it.

Derek Triplett discussed the turn lane and road improvements (see recording for detailed presentation).

NEW BUSINESS
CASE NO. 21-DDP-0116

Commissioner Brown asked if there's any screening being provided. Derek Triplett said the landscaping shown on the development plan are trees to meet the tree canopy requirement (Land Development Code). The property is surrounded by like-zones so there are no screening requirements (see recording for detailed presentation).

Damon Garrett stated, per the EPA and other guidelines to be adhered to, there are truck washing stations as well as a water facility on site to control the dust. Also, trees can be added to the right of the entrance (same as on left) if this committee requests it (see recording for detailed presentation).

Deliberation

Development Review Committee deliberation.

An audio/visual recording of the Development Review Committee meeting 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.

Revised Detailed District Development Plan and Binding Elements

On a motion by Commissioner Brown, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, there do not appear to be any environmental constraints or historic resources on the subject site. Portions of the parent tract is a former quarry that is in the process of being filled. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

WHEREAS, there are no open space requirements pertinent to the current proposal; and

WHEREAS, 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; and

DEVELOPMENT REVIEW COMMITTEE
March 2, 2022

NEW BUSINESS
CASE NO. 21-DDP-0116

WHEREAS, the Louisville Metro Development Review Committee finds 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; and

WHEREAS, the Louisville Metro Development Review Committee further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

RESOLVED, that the Louisville Metro Development Review Committee does hereby **APPROVE** the Revised Detailed District Development Plan **SUBJECT** to the following Binding Elements:

The Conditions of Approval per 15CUP1019 remain in effect for the quarry and filling operations on the residual site.

All General Plan binding elements approved under 9-62-82 are applicable to the site in addition to the following:

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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

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 permit) is requested:
a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
b. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.

NEW BUSINESS
CASE NO. 21-DDP-0116

c. 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.
d. An access easement agreement in a form acceptable to the Planning Commission legal counsel shall be created to allow access to the site as shown. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.

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 will provide a row of Type A trees at a minimum of 1 tree per 30 linear feet along the proposed property line adjacent to the existing drive.

The vote was as follows:

YES: Commissioners Brown, Seitz, Clare and Carlson
NOT PRESENT AND NOT VOTING: Commissioner Price

EXHIBIT N

AFFIDAVIT OF KIM BRICE

*** *** ***

Comes the Affiant, KIM BRICE, having first been duly sworn, who states as follows:

1. My name is Kim Brice. I am over the age of 18 and qualified to give this Affidavit.

2. I am the General Manager for the Lake Forest Community Association, Inc. (**"Lake Forest"**).

3. On or about March 23, 2022, Lake Forest became aware of the decision of the Louisville Metro Development Review Committee approving a development plan, Case No. 21-DDP-0116, calling for the development of a concrete plant with direct access to Aiken Road on the property located at 13905 Aiken Road, Louisville, Kentucky 40245.

4. Lake Forest was advised that this approval had been obtained during a hearing on March 2, 2022.

5. I obtained a copy of the mailing labels for the First-Tier Property Owners and those who spoke at the previous hearings who were entitled to receive notice of the March 2, 2022 hearing from the official files of Planning and Design Services.

6. I personally called those First-Tier property owners that are highlighted on the attached copy of the mailing labels to inquire whether they had received written notice of the March 2, 2022 hearing.

7. None of the property owners highlighted advised that they had received notice of the March 2, 2022 hearing.

8. I also personally mailed a postcard with envelope to the people who spoke at the previous hearings, with the exception of Frank Otte, the land owner, as I was told by the Case Manager that none of the notices had been returned as undeliverable even

though some names and addresses were from 40 years ago. Within two weeks, eight of the seventeen postcards cards I mailed were returned to our office as undeliverable and noted on the highlighted list attached.

9. Finally, in my capacity as General Manager of Lake Forest, I received a copy of an email exchange between Metro Councilman, Anthony Piagentini and the Director of Louisville Metro Planning and Design Service, Yu "Emily" Liu advising Lake Forest that the deadline to appeal the Development Review Committee's decision on March 2, 2022 was March 16, 2022. Based on this email, I assumed that Lake Forest had no ability to challenge the March 2, 2022 decision by Louisville Metro Planning and Design Service.

10. In reliance upon Ms. Liu's representation, Lake Forest did not pursue an appeal of the March 2, 2022 decision.

FURTHER, Affiant sayeth naught.

Kim Brice

Kim Brice

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

Subscribed and sworn to before me this 29 day of September 2022 by Kim Brice.

My commission expires: 09-17-2026.

Maggie May Warnersmith

NOTARY PUBLIC, STATE AT LARGE
KENTUCKY

MAGGIE MAY WARNERSMITH NOTARY PUBLIC Comm # KYNP58308 COMMISSION EXPIRES 9/17/2026 COMMONWEALTH OF KENTUCKY

8 Addresses

Kim contacted people/addresses highlighted in yellow. They had not received the Notice about 3/2/22 hearing

Damon Garrett/13905 Aiken Rd.
Sunshine Ready Mix
As of 11/12/21

Block 24, Lot 1, (112, 3, 52)
Otte Family Ltd Partnership
12902 Shelbyville Road
Louisville, KY 40243

First Tier Property Owners:

Block 23, Lot 696
Reiss Family Holdings, LLC
15825 Candle Drive
Fort Myers, FL 33908-1795

Block 24, Lot 116
Pepito & Rachel Tugon
5011 Carpenter Dr.
Crestwood, KY 40014

Block 24, Lot 116
Current Resident
13801 Aiken Road
Louisville, KY 40245

Block 24, Lot 171 Pastor Louis Humes
Pleasant Grove Baptist Church
13800 Aiken Rd.
Louisville, KY 40245

Block 2791, Lot 1246 John "Denny"
John & Melissa Conn
1102 Hidden Hill Ct.
Louisville, KY 40245

Block 2791, Lot 1245
Ross & Sara Kowzan
1104 Hidden Hill Ct.
Louisville, KY 40245

Block 2791, Lot 1243
Winnie I Arling Living Trust
1320 SE 37th Ln
Cape Coral, FL 33904-7119

Block 2791, Lot 1243 Linda Bayes
Current Resident
11100 Oakhurst Rd.
Louisville, KY 40245

Block 2791, Lot 1242
Anand Krishnamurthy & Deepa Venkataramana
172 Laurie Vallee
Louisville, KY 40223

Block 2791, Lot 1242
Current Resident
11101 Oakhurst Rd
Louisville, KY 40245

Block 24, Lot 268 Rob
Robin & Toni Northcutt
13900 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 103
Robert & Debra Alberhasky
13917 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 113
Otte Gordon Landscapes, LLC
PO Box 436027
Louisville, KY 40253

Block 24, Lot 113
Current Resident
13919 Aiken Road
Louisville, KY 40245

Block 24, Lot 107
D & J Rental, LLC
13115 Aiken Road
Louisville, KY 40223

Block 24, Lot 107
Current Resident
13921 Aiken Road
Louisville, KY 40223

Block 24, Lot 13
James Fischesser
13923 Aiken Road
Louisville, KY 40245

Block 24, Lot 108
Carol Ann Dennes
13925 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 114
Nicholas Berg
13908 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 2003
Kenwood Holding, LLC
700 Colonel Anderson Pkwy
Louisville, KY 40222

Others:

John C. Talbott
Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy., 2nd Floor
Louisville, KY 40223

Derek Triplett
Land Design & Development, Inc.
503 Washburn Ave.
Louisville, KY 40222

Hon. Anthony Piagentini Chanelle Smith
Councilman, District 19
601 W. Jefferson Street
Louisville, KY 40202

Jay Luckett, Case Manager
Planning and Design Services
444 S. 5th Street
Louisville, KY 40202

Damon Garrett
Sunshine Builders, Inc.
901 Lilly Creek Road, Ste. 101
Louisville, KY 40243

Received November 15, 2021 Planning & Design

21-DDP-0116

8/3/2022: mailed postcard in envelope to these addresses (except Otte)

That that spoke at previous hearings:

Steven R. Winzer
Martin Marietta Laboratories
1450 S. Rolling Road
Baltimore, Maryland 21227

Ruby Willhite
12710 Old Henry Road
Louisville, KY 40223

John Carroll — Returned 8/11/22
235 South Fifth Street * Return to sender. Insufficient address. Unable to forward
Louisville, KY 40202

Howard L. Pugh, Safety Engineer
Martin Marietta Corp. Returned 8/11/22
6340 Castleplace Drive * Attempted - not known - Unable to forward
Indianapolis, IN 46250

Stephen Windsor, Staff Scientist
Martin Marietta Corp.
1450 South Rolling Road
Baltimore, Maryland 21227

E. M. Allen Returned 8/17/22
The Murray Co. * Insufficient address
PO Box 2340
Anchorage, Kentucky 40223

Frank Haddad, Jr., Esq. Returned 8/11/22 Not deliverable
529 Kentucky Home Life Bldg.
Louisville, KY 40202

Michael Pitt, Esq. Returned 8/17/22
2200 Meidinger Tower Not at this address
462 S. 4th Street
Louisville, KY 40202

Glenn Rowlett
810 North English Station Road
Louisville, KY 40223

David Daugherty
3717 Taylorsville Road
Louisville, KY 40220

Douglas Gale, Area Product Manager
Martin Marietta Corp. Returned 8/11/22
10172 Linn Station Road Insufficient address
Louisville, KY 40223

Charles Theodore Koebel, PH. D.
2069 Douglass Blvd.
Louisville, KY 40205

Donald J. Hagerty, PH.D.
903 Broadfields Drive
Louisville, KY 40207

G. Richard Smith & Terri Smith
14213 Aiken Road
Louisville, KY 40245

James Zaring
11919 Garr Avenue
Louisville, KY 40223

Leo C. Oak, Geologist Returned 8/11/22
Martin Marietta Corp. * Not known Unable to forward
6340 Castleplace Drive
Indianapolis, IN 46250

William H. Powell, Director of
Engineering of Aggregate Division
Martin Marietta Corp. Returned 8/13/22
2710 Wycliffe Road * Vacant - Unable to forward
Raleigh, NC 27607

Frank Otte Land owner
12001 Shelbyville Rd.
Louisville, KY 40243

AFFIDAVIT OF LISA MCKINLEY

*** *** ***

Comes the Affiant, LISA MCKINLEY, having first been duly sworn, who states as follows:

1. My name is Lisa McKinley. I am over the age of 18 and qualified to give this Affidavit.

2. I am the Accountant/Financial Manager for the Lake Forest Community Association, Inc. (**"Lake Forest"**).

3. On or about March 23, 2022, Lake Forest became aware of the decision of the Louisville Metro Development Review Committee approving a development plan, Case No. 21-DDP-0116, calling for the development of a concrete plant with direct access to Aiken Road on the property located at 13905 Aiken Road, Louisville, Kentucky 40245.

4. Lake Forest had been advised that this approval had been obtained during a hearing on March 2, 2022.

5. I was provided a copy of the mailing labels for all the First-Tier Property Owners entitled to received notice of the March 2, 2022 hearing from the official files of Planning and Design Services.

6. I personally called those property owners that are highlighted on the attached copy of the mailing labels to inquire whether they had received written notice of the March 2, 2022 hearing.

7. None of the property owners highlighted advised that they had received notice of the March 2, 2022 hearing.

FURTHER, Affiant sayeth naught.

Lisa McKinley

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

Subscribed and sworn to before me this 29 day of September 2022 by Lisa McKinley.

My commission expires: 09-17-2026.

NOTARY PUBLIC, STATE AT LARGE
KENTUCKY

MAGGIE MAY WARNERSMITH
NOTARY PUBLIC
Comm. # KYNP58308
COMMISSION EXPIRES 9/17/2026
COMMONWEALTH OF KENTUCKY

7 addresses

Lisa contacted people highlighted in yellow. They had not received the notice about 3/2/22 hearing.

Damon Garrett/13905 Aiken Rd.
Sunshine Ready Mix
As of 11/12/21

Block 24, Lot 1, (112, 3, 52)
Otte Family Ltd Partnership
12902 Shelbyville Road
Louisville, KY 40243

First Tier Property Owners:

Block 23, Lot 696
Reiss Family Holdings, LLC
15825 Candle Drive
Fort Myers, FL 33908-1795

Block 24, Lot 116
Pepito & Rachel Tugon
5011 Carpenter Dr.
Crestwood, KY 40014

Block 24, Lot 116
Current Resident
13801 Aiken Road
Louisville, KY 40245

Block 24, Lot 171
Pleasant Grove Baptist Church
13800 Aiken Rd.
Louisville, KY 40245

Block 2791, Lot 1246
John & Melissa Conn
1102 Hidden Hill Ct.
Louisville, KY 40245

Block 2791, Lot 1245
Ross & Sara Kowzan
1104 Hidden Hill Ct
Louisville, KY 40245

Block 2791, Lot 1243
Winnie I Arling Living Trust
1320 SE 37th Ln.
Cape Coral, FL 33904-7119

Block 2791, Lot 1243
Current Resident
11100 Oakhurst Rd.
Louisville, KY 40245

Block 2791, Lot 1242
Anand Krishnamurthy & Deepa Venkataramana
172 Laurie Vallee
Louisville, KY 40223

Block 2791, Lot 1242
Current Resident
11101 Oakhurst Rd.
Louisville, KY 40245
Mandella Seek

Block 24, Lot 268
Robin & Toni Northcutt
13900 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 103
Robert & Debra Alberhasky
13917 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 113
Otte Gordon Landscapes, LLC
PO Box 436027
Louisville, KY 40253

Block 24, Lot 113
Current Resident
13919 Aiken Road
Louisville, KY 40245

Block 24, Lot 107
D & J Rental, LLC
13115 Aiken Road
Louisville, KY 40223
Joe Abbott

Block 24, Lot 107
Current Resident
13921 Aiken Road
Louisville, KY 40223

Block 24, Lot 13
James Fischesser
13923 Aiken Road
Louisville, KY 40245

Block 24, Lot 108
Carol Ann Dennes
13925 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 114
Nicholas Berg
13908 Aiken Rd.
Louisville, KY 40245

Block 24, Lot 2003
Kenwood Holding, LLC
700 Colonel Anderson Pkwy
Louisville, KY 40222

Others:

John C. Talbott
Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy., 2nd Floor
Louisville, KY 40223

Derek Triplett
Land Design & Development, Inc.
503 Washburn Ave.
Louisville, KY 40222

Hon. Anthony Piagentini
Councilman, District 19
601 W. Jefferson Street
Louisville, KY 40202

_____, Case Manager
Planning and Design Services
444 S. 5th Street
Louisville, KY 40202

Damon Garrett
Sunshine Builders, Inc.
901 Lilly Creek Road, Ste. 101
Louisville, KY 40243

Received November 15, 2021 Planning & Design

21-DDP-0116

EXHIBIT O

- **From:** Liu, Emily <emily.liu@louisvilleky.gov>
  Sent: Wednesday, March 30, 2022 5:36 PM
  To: Piagentini, Anthony B. <Anthony.Piagentini@louisvilleky.gov>
  Cc: Brown, Jeffrey E <Jeffrey.Brown@louisvilleky.gov>; OBrien, Jeff <Jeff.OBrien@louisvilleky.gov>; Smith, Chanelle Emily <Chanelle.Smith@louisvilleky.gov>; Luckett, Jay P <Jay.Luckett@louisvilleky.gov>
  Subject: RE: 21-DDP-0116 at 13905 Aiken Rd concrete plant

Councilman Piagentini, I went back and checked on this case. The list of mailing notices includes all required tier one property owners and those who spoke at the initial rezoning case. The affidavit of notification is included in the file and we have not received any returned mails. Our office has also sent notification via GovDelivery to interested parties registered for email notification.

The case was heard and approved by the Development Review Committee (DRC) on March 2nd, 2022. The deadline for appeal to the Planning Commission was March 16th, 2022. I don't think this case can be restarted based on the information we have in the file.

Thanks

Emily

Yu "Emily" Liu

Director

Louisville Metro Planning and Design Services

Develop Louisville, Louisville Forward

444 S. 5th Street, 3rd Floor

Louisville, KY 40202

502.574.6678

https://louisvilleky.gov/government/planning-design

Sign up for development notifications in your area at:

https://public.govdelivery.com/accounts/KYLOUISVILLE/subscriber/new

From: Piagentini, Anthony B. <Anthony.Piagentini@louisvilleky.gov>
Sent: Wednesday, March 30, 2022 1:02 PM
To: Liu, Emily <emily.liu@louisvilleky.gov>
Cc: Brown, Jeffrey E <Jeffrey.Brown@louisvilleky.gov>; OBrien, Jeff <Jeff.OBrien@louisvilleky.gov>; Smith, Chanelle Emily <Chanelle.Smith@louisvilleky.gov>
Subject: 21-DDP-0116 at 13905 Aiken Rd concrete plant

Director Liu,

There is evidence being collected that would indicate the residents most directly impacted by this proposed concrete plant did not receive the proper notification via mail so they could have their voices heard at the appropriate public meeting. In most cases, the residents were not aware until after the appeal period.

I would like to request we reopen this case and allow for that public meeting to be redone before construction begins so the most affected residents will have the opportunity to speak and their concerns considered on the final decision. Emails from the affected residents are being collected now. Can you let me know the process or what else we need to do to get this restarted before it is too late?

Thank you!

AP

Anthony Piagentini *| Metro Councilman*

Louisville Metro Council District 19
601 W. Jefferson Street | Louisville, KY 40202
p: *(502) 574-1119* ***f:*** *(502) 574-4501*

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.