**MINUTES OF THE MEETING**
**OF THE**
**LOUISVILLE METRO PLANNING COMMISSION**
**November 3, 2022**

A meeting of the Louisville Metro Planning Commission was held on November 3, 2022 at 6:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Commission members present:**
Lula Howard, Vice Chair
Jeff Brown
Rich Carlson
Patricia Clare
Glen Price
Suzanne Cheek
Jim Mims
Te'Andre Sistrunk

**Commission members absent:**
Marilyn Lewis, Chair
Michelle Pennix

**Staff Members present:**
Emily Liu, Director Planning & Design Services
Brian Davis, Assistant Director, Planning & Design Services
Julia Williams, Planning Supervisor
Jay Luckett, Planner II
Laura Ferguson, Assistant County Attorney
Beth Stuber, Metro Transportation Planning

The following matters were considered:

## APPROVAL OF MINUTES

## NOVEMBER 3, 2022 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Carlson, seconded by Commissioner Mims the following resolution was adopted.

**RESOLVED,** that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on November 3, 2022 at 1:00 p.m. with the following correction - Page 5, occupation needs to be changed to occupancy.

**The vote was as follows:**

**YES: Commissioners Brown, Carlson, Cheek, Clare, Mims, Price, Sistrunk and Howard**
**NOT PRESENT FOR THIS CASE: Commissioner Pennix and Lewis**

**PUBLIC HEARING**

**CASE NO. 22-DDP-0098**

| | |
|---|---|
| Request: | Revised Detailed District Development Plan |
| 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. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:10:52 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
Eric Senn, Land Design and Development, 503 Washburn Avenue, Louisville, Ky. 40222
William Harshaw, 2202 Longest Avenue, Louisville, Ky. 40204
Richard Lemker, 6432 Gracely Drive, Cincinnati, Oh. 45233
Damon Garrett, 2104 Club Vista, Louisville, Ky 40245

**Summary of testimony of those in favor:**

00:24:09 John Talbott gave a power point presentation discussing the proposal, the differences between a concrete and cement plant and the route to get to the property (see recording for detailed presentation).

00:43:43 Eric Senn gave some background information regarding drainage. He also discussed sidewalks and trees (see recording for detailed presentation).

00:45:33 John Talbott discussed Aiken Rd. improvements and M-3 uses (see recording for detailed presentation).

**PUBLIC HEARING**

**CASE NO. 22-DDP-0098**

00:51:04 William Harshaw, Engineer has been working in the field of air pollution for a number of years and was hired to perform the emissions calculations and prepare the permit applications for the Air Pollution Control Board. He also discussed the differences between a concrete batch plant and a cement plant (see recording for detailed presentation).

00:59:16 Richard Lemker, professional sound expert, discussed his work history and experience. He gave his summary/assessment for the proposal (see recording for detailed presentation).

01:06:28 John Talbott said the proposal is a necessity for the area and is very appropriate (see recording for detailed presentation).

01:15:15 Damon Garrett said trucks will start at ~5:30 or 6:00 am. and 1:00 p.m. There will probably not be any evening work (see recording for detailed presentation).

Damon Garrett answered questions from the commissioners (see recording for detailed presentation).

**The following spoke neither for nor against the request:**

Channelle Smith, 601 West Jefferson Street, Louisville, Ky. 40202
Stephanie Gilezan, 5964 Timber Ridge Drive, Prospect, Ky. 40059

**Summary of testimony of those neither for nor against:**

01:46:14 Channelle Smith, Legislative Assistant for Councilman Anthony Piagentini, read a letter on his behalf (see recording for detailed presentation).

01:50:47 John Talbott objected to the testimony from Channelle Smith on behalf of Councilman Piagentini (see recording for detailed presentation).

01:51:42 Stephanie Gilezan, Real Estate Broker, said the owner chose this location because it was already properly zoned and will be doing minimal (not maximum) of what is allowed (see recording for detailed presentation).

**The following spoke in opposition to this request:**

Don Cox, Attorney with Lynch, Cox, Gilman and Goodman, 500 West Jefferson Street, Suite 2100, Louisville, Ky. 40202
Sushil Gupta, 15211 Crystal Springs Way, Louisville, Ky. 40245

**PUBLIC HEARING**

**CASE NO. 22-DDP-0098**

Dr. Louis Humes, Pleasant Grove Baptist Church, 13800 Aiken Road, Louisville, Ky. 40245
Ross and Sara Kowzan, 1104 Hidden Hill Court, Louisville, Ky. 40245
Carla Dixon, 16719 Glen Lakes Drive, Louisville, Ky. 40245
Michael Rowland, 14916 Landmark Drive, Louisville, Ky. 40245
Mary Pat Dries, 15510 Champion Lakes Drive, Louisville, Ky. 40245
Kirk Duncan, 505 Oak Branch Road, Louisville, Ky. 40245
Steve Tomanchek, 1220 Winding Creek Place, Louisville, Ky. 40245
Rick Locke, 1402 Arnold Palmer Boulevard, Louisville, Ky. 40245
Charles Bertalan, 14709 Forest Creek Way, Louisville, Ky. 40245
Morgan Keith, 1101 Glenlake Way, Louisville, Ky. 40245
John Fuller, 2303 Claymore Circle, Louisville, Ky. 40245

**Summary of testimony of those in opposition:**

02:00:28 Don Cox gave a power point presentation discussing the legal issues relating to the applicant's request (see recording for detailed presentation).

02:25:02 Sushil Gupta stated industrial near a thriving residentially-zoned area is wrong. It's not compatible or complimentary (see recording for detailed presentation).

02:34:20 Dr. Louis Humes thanks the commission for allowing everyone to voice their opinions on this case. The church did not receive notification of the March hearing.

Dr. Humes discussed the curve and accidents on Aiken Rd. (see recording for detailed presentation).

02:44:23 Ross Kowzan stated he did not receive proper notice (see recording for detailed presentation).

02:44:59 Sara Kowzan said if she had received notification, she would have expressed her opposition at the first meeting. She asked Mr. Garrett if there would be pollution from the concrete plant and he said he didn't know (see recording for detailed presentation).

02:47:51 Ross Kowzan submitted pictures into the record. He is concerned about when/not if a truck or car will come through his fence (see recording for detailed presentation).

02:51:00 Carla Dixon spoke about the previous owner of the property and air quality (see recording for detailed presentation).

## PUBLIC HEARING

## CASE NO. 22-DDP-0098

02:57:44 Michael Rowland stated there are health issues this plan could pose for people with underlying issues (see recording for detailed presentation).

03:03:29 Mary Dries gave a power point presentation and said the proposal is not in compliance with Plan 2040 and the Chase Principles. She also discussed the Old Henry Rd. Subarea Plan (see recording for detailed presentation).

03:14:18 John Talbott stated he objects to the hearsay raised by multiple witnesses and asks that the commission restrains some of that testimony (see recording for detailed presentation).

03:15:44 Kirk Duncan discussed the pollutants that may have an adverse effect to residents over time (see recording for detailed presentation).

03:20:10 Steve Tomanchek said he has no problem with progress. Planning and process needs to be reviewed moving forward (see recording for detailed presentation).

03:22:50 Rick Locke said he opposes the project because of the high volume of traffic it will cause on Aiken Rd. (see recording for detailed presentation).

03:24:57 Charles Bertalan gave a power point presentation. Health and safety are key elements of the Planning Commissions' role.

03:33:00 Morgan Keith said this was never intended to be an industrial area. The Lake Forest Homeowners' Association was misguided on 2 separate occasions by Planning Commission representatives regarding appeal times and petitioning (see recording for detailed presentation).

03:36:51 John Fuller said if one in a million develops an illness from this proposal, it's too many. Everything said today needs to be addressed and taken very seriously (see recording for detailed presentation).

### Rebuttal

03:38:57 John Talbott said the dust issues are not true because the proposal hasn't gone to Air Pollution Control District, APCD yet. The road meets the legal minimum and road improvements don't happen until after development is in play (see recording for detailed presentation).

04:08:20 Jay Luckett said he did not review the Old Henry Subarea Plan because it's not required for detailed plans (see recording for detailed presentation).

**PUBLIC HEARING**

**CASE NO. 22-DDP-0098**

04:09:05 John Talbott read a portion of the Old Henry Subarea Plan (see recording for detailed presentation).

04:18:03 Bill Mackety, 11211 Oakhurst Road, Louisville, Ky. 40245, made a suggestion for the proposed binding elements regarding "loaded and not loaded trucks" (see recording for detailed presentation).

04:30:30 Amanda Kugan, 1506 Arnold Palmer Boulevard, Louisville, Ky. 40245, asked for clarification of the proposed binding elements (see recording for detailed presentation).

04:35:54 Ross Kowzan requested a change to binding element 1 (see recording for detailed presentation). John Talbott does not agree to the change (see recording for detailed presentation).

04:37:41 Sushil Gupta requested a change to proposed binding element 13 (see recording for detailed presentation). John Talbott agreed (see recording for detailed presentation).

04:42:44 Grant Berry, 11102 Oak Ridge Drive, Louisville, Ky. 40245, requested a change to binding element 14 (see recording for detailed presentation). John Talbott did not agree (see recording for detailed presentation).

**Deliberation**

04:44:42 Planning Commission deliberation.

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

**Revised Detailed District Development Plan with Binding Elements**

On a motion by Commissioner Brown, seconded by Commissioner Sistrunk, the following resolution based on the Standard of Review and Staff Analysis, testimony heard today and the Applicant's Justification 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

**PUBLIC HEARING**

**CASE NO. 22-DDP-0098**

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

**WHEREAS**, the Louisville Metro Planning Commission 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. The applicant has proposed screening and buffering in excess of the minimums of the Land Development Code; and

**WHEREAS**, the Louisville Metro Planning Commission 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 Planning Commission 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.

**PUBLIC HEARING**

**CASE NO. 22-DDP-0098**

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.
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.

**PUBLIC HEARING**

**CASE NO. 22-DDP-0098**

7. The applicant shall construct minimum 6-foot high berms along the front of the property as indicated on the approved development plan. The applicant will provide a row of Type A trees at a minimum of 1 tree per 30 linear feet along the length of the berm, of which at least 50% shall be evergreen trees. Final location and type of plantings and details of the berm construction shall be shown on the approved landscape plan in accordance with Land Development Code section 10.4.6.

8. The applicant will pave the entrance drive and truck maneuvering areas of the site with a hard and durable surface to reduce potential dust associated with truck traffic in and out of the site.

9. Outdoor lighting shall be shielded and aimed towards the ground in accordance with the requirements of Section 4.1.3 of the Land Development Code.

10. The concrete plant shall be limited to:
    A. Maximum capacity of 150 cubic yards of concrete production per hour;
    B. One conveyor;
    C. Two cement silos; and
    D. Structures no closer than 400 feet from Aiken Road.

11. The concrete plant mixer will be enclosed in a building.

12. Excepting only in a case of emergency or a local customer order, concrete trucks going to and leaving the subject site shall not be routed to use Aiken Road east of the subject site. In no event, applicant or operator owned concrete trucks going to and leaving the subject site shall not be routed to use Aiken Road east of the subject site when Stopher Elementary has a traffic guard out for student drop off and pickup.

13. Concrete trucks going to and leaving the subject site shall not be routed to use roads in Lake Forest for through traffic, excepting only for a local customer order.

14. Applicant shall direct traffic through the quarry if and when access becomes available through the quarry.

15. Applicant shall maintain the Aiken Road frontage and added turn lane, as such improvements are approved, in the future.

**The vote was as follows:**

**YES: Commissioners Brown, Cheek, Clare, Mims, Price, Sistrunk and Howard**
**NO: Commissioner Carlson**

PUBLIC HEARING

CASE NO. 22-DDP-0098

NOT PRESENT AND NOT VOTING: Commissioners Pennix and Lewis

## STANDING COMMITTEE REPORTS

**Land Development and Transportation Committee**
No report given.

**Site Inspection Committee**
No report given.

**Planning Committee**
No report given.

**Development Review Committee**
No report given.

**Policy and Procedures Committee**
No report given.

## CHAIRPERSON/DIRECTOR'S REPORT

No report given.

## ADJOURNMENT

The meeting adjourned at approximately 11:04 p.m.

Marilyn W Lewis
**Chair**

**Planning Director**