Case No. 14DEVPLAN1036 – January 29, 2015 PC Draft minutes

NOTE: This case was continued from the December 18, 2014 Planning Commission public hearing.

Request:	Revised Detailed District Development Plan and Land Development Code Waivers for a proposed Wal-Mart Supercenter
Project Name:	Wal-Mart
Location:	Multiple addresses on the southwest corner of West Broadway and Dixie Highway
Owner:	Newbridge Development, LLC 2350 New Millenium Drive Louisville, KY 40216
Applicant:	Wal-Mart Real Estate Business Trust P.O. Box 8050 MS 0515 Bentonville, AR 72712
Representative:	Deborah Bilitski Wyatt, Tarrant and Combs, LLP 500 West Jefferson Street Suite 2800 Louisville, KY 40207
Engineer/Designer:	Pov Chin and Elizabeth Heiles Carlson Consulting Engineers, Inc. 7068 Ledgestone Commons Bartlett, TN 38133
Jurisdiction:	Louisville Metro
Council District:	**4 – David Tandy**
Case Manager:	**Joseph Reverman, AICP**

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

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

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Agency Testimony:
03:31:07 Joseph Reverman briefly re-introduced the case and showed a Power Point presentation (this case is CONTINUED from the December 18, 2014 Planning Commission public hearing.) He reviewed two binding elements that were agreed to by the applicant at the last hearing.

The following spoke in favor of the proposal:
John Gant, Louisville Metro Economic Development, 444 South 5th Street, Louisville, KY 40202

Deborah Bilitski, Wyatt, Tarrant and Combs, LLP, 500 West Jefferson Street Suite 2800, Louisville, KY 40207

Kevin Thompson, 1075 Broad Ripple Avenue #118, Indianapoils, IN 40220

Richard Wimsatt, Brown-Foreman Corp., 850 Dixie Highway, Louisville, KY 40210

DeVone Holt, 100 Fontaine Landing Court, Louisville, KY 40212

Milton C. Seymore, 2906 Aspendale Court, Louisville, KY 40241

Reverend Clay Calloway, 732 South 45th St., Louisville, KY 49211

Reverend Eric French Sr., 2807 Antone Parkway, Louisville, KY 40220

William M. Robinson, 620 South22nd Street, Louisville, KY 40211

Roy H. Streeter, 11315 Top Walnut Loop, Louisville, KY 40229

Kirk Bush, 14707 Forest Creek Way, Louisville, KY 40245

Eddie Davis, 1324 South 43rd St, Louisville, KY 40211

Reverend Kevin Cosby, 47316 West Broadway, Louisville, KY 40210

David Wilgus, 1408 NW K Street, Bentonville, Arkansas 72712

Toni Rodriguez, 321 Schoolside Drive, Brandenburg, KY 40108

Elizabeth Heiles, Carlson Consulting Engineers, 7068 Ledgestone Commons, Bartlett, TN 38133

James Green, 749 South 43rd St., Louisville, KY 40211

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Ron Thomas, 1139 South 4th St., Louisville, KY 40203

Summary of testimony of those in favor of the proposal:

03:36:54 John Gant, Director of Metro Economic Development, spoke in favor.

03:40:41 Deborah Bilitski, the applicant's representative, discussed the additions to the Waiver justification. She described in detail the three requested Waivers and described the changes/enhancements that have been made to the design.

03:58:06 Kevin Thompson, the Wal-Mart representative, discussed the plan.

03:59:35 Richard Wimsatt, representing the Brown Foreman Corporation, spoke in support.

04:02:25 DeVone Holt spoke in support.

04:06:47 Milton Seymore, representing the Justice Resource Center, spoke in support.

04:08:48 The Reverend Clay Calloway spoke in support.

04:11:13 The Reverend Eric French spoke in favor on behalf of Bates Memorial Church. He discussed the submitted petition and economic issues.

04:13:19 William Robinson was called but was not present.

04:13:33 Roy Streeter spoke in favor.

04:17:43 Kirk Bush spoke in favor.

04:18:39 Eddie Davis (Kentucky Alliance) spoke in favor.

04:20:14 The Reverend Kevin Cosby spoke in support.

04:23:43 In response to a question from Commissioner Proffitt, Mr. Gant discussed the importance of the Land Development Code and the EZ-1 zoning category.

04:28:40 Commissioner Proffitt and Ms. Bilitski discussed the site design changes.

04:40:09 Commissioner Proffitt and Mr. Holt discussed waivers.

04:42:21 Commissioner Turner, Kevin Thompson and Elizabeth Heiles with Carlson Consulting Engineers discussed security issues and LED lighting in the parking lot.

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04:47:05 In response to a question from Commissioner Jarboe, Mr. Thompson discussed the LDC waivers.

04:50:43 Ms. Heiles discussed utilities and infrastructure.

04:51:34 Stephen Porter cross-examined some of those in favor.

The following spoke in opposition to the proposal:
Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Chanelle Helm, 2238 Farnsley Road, Louisville, KY 40216

Virginia Wilson, 1119 Windsor Drive, Jeffersonville, IN 47130

Cassia Herran, 335 East St. Catherine Street, Louisville, KY 40203

Cassandra Culin, 185 North Bellaire Avenue, Louisville, KY 40206 (signed in as "Other" but spoke against)

Jackie Green, 107 West Market Street, Louisville, KY 40202

Donovan Taylor, 1205 South 41st St., Louisville, KY 40211

Haven Harrington, 528 S. 10th St., Louisville, KY 40203

John Owen, 620 North 28th St., Louisville, KY

Summary of testimony of those in opposition to the proposal:
04:56:09 Stephen Porter, representative for the opposition, presented the opposition's case and showed a Power Point presentation.

05:25:46 Virginia Wilson spoke against Wal-Mart.

05:28:11 Cassia Herran discussed urban planning and economic development.

05:31:30 Cassandra Culin spoke against the waiver requests (signed in as "Other" but spoke against.)

05:33:44 Jackie Green spoke in opposition.

05:36:54 Donovan Taylor expressed concerns, but stated that he supports the compromise idea as stated by Mr. Porter (moving the proposed outlots up to Broadway, in front of the Wal-Mart.)

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05:42:45 Haven Harrington (sp) - President of the Russell Neighborhood Association.

05:46:46 John Owen - Portland Business Association.

Rebuttal:
06:09:28 Ms. Bilitski resumed the podium for rebuttal.

Deliberation:
06:13:37 Commissioners' 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.

Waiver #1 - Waiver of section 5.5.1.A.3.a to allow a parking lot to be located in front of the building along W Broadway and Dixie Hwy.

06:55:35 On a motion by Commissioner Turner, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested waiver of LDC Section 5.5.1.A.3.a. to allow the parking lot to be located in front of the proposed building on property bounded by W. Broadway on the north, Dr. J.W. Hodges Street (21st Street) on the west and Dixie Highway on the east will not adversely affect adjoining property owners because the subject property is zoned EZ-1 Enterprise Zone and is located in the Traditional Workplace Form District; and

WHEREAS, the Commission further finds that the subject property is surrounded by various commercial and industrial-zoned properties with varying setbacks and site designs. The former Philip Morris facility was designed with the building at the rear of the property and parking between the building and W. Broadway; the surrounding area consists of a variety of development patterns, including those with parking behind or beside buildings and those where parking is placed between the building and W. Broadway, with no predominant pattern; and the proposed redevelopment is consistent with the previous Philip Morris development pattern; and

WHEREAS, the Commission further finds the requested waiver will not violate the Comprehensive Plan because Traditional Workplaces allow a mixture of industrial, commercial and office uses. In order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces, the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area; the proposed development represents a significant investment in the redevelopment and rehabilitation of an older and declining

neighborhood in a manner that is consistent with the Traditional Workplace Form District; the proposed development is consistent with the historical development pattern on the subject property, and is compatible with development in the surrounding area, which does not follow a predominant pattern; the subject property is adequately served by public transportation, incorporates sidewalks and walkways throughout the proposed development, and bicycle parking will be provided in accordance with the Land Development Code requirements and, therefore, the proposed development accommodates all modes of transportation; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the site is designed such that approximately 40% of the parking spaces is located to the side (behind the front façade) of the proposed structure; the proposed development maximizes parking that can feasibly be placed behind the front facade of the building facing W. Broadway considering the shape of the subject property, the location of the roads that lead into it and the shape and size of the proposed building; and the applicant has incorporated other design measures to compensate for noncompliance, including enhanced interior and perimeter landscaping, bioswales, and rain gardens throughout the development; and

WHEREAS, the Commission further finds that the strict application of the regulations would deprive the applicant of the reasonable use of the land and create an unnecessary hardship. Requiring all parking areas to be located to the side and rear of the building does not allow for adequate tractor-trailer maneuvering and delivery, and would create conflicts between delivery vehicles and customers. If the building were shifted toward Dixie Highway, the throat length of the entrance drive would be shortened, causing vehicles exiting the site to stack in front of the building, increasing the potential of conflicts between vehicles and pedestrians; and further, if the requested waiver is not granted, the applicant would be unable to reasonably develop the property in a manner consistent with surrounding properties; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented today, the applicant's presentation and the applicant's findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of section 5.5.1.A.3.a to allow a parking lot to be located in front of the building along W Broadway and Dixie Hwy.

The vote was as follows:

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YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Turner, White, Tomes, and Peterson.
NO: Commissioner Proffitt.
NOT PRESENT: Commissioner Butler.
ABSTAINING: No one.

Waiver #2 - Waiver of section 5.5.1.A.1.b to waive the requirement to have a building entrance facing W Broadway and Dixie Hwy.

06:58:16 On a motion by Commissioner Turner, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested waiver of Section 5.5.1.A.1.b. to not provide a customer entrance facing Dixie Highway or a corner entrance will not adversely affect adjoining property owners because the subject property is located in a mixed commercial and industrial area along W. Broadway. The surrounding uses consist of a mixture of building types and sizes with varied setbacks and no consistent pattern of development. The building design will include two main entrances along the Broadway façade that will be glazed; a brick wall and ornamental metal fence will surround the garden center area, and raised planter boxes will also be incorporated into the front façade. The pharmacy drive-thru and loading dock are located along the Dixie Highway facing façade, therefore it is not feasible to incorporate an entrance along that façade; and the proposed entrances along the front of the building will provide for convenient access for customers and will have no negative impacts on surrounding properties; and

WHEREAS, the Commission further finds the requested waiver will not violate the Comprehensive Plan because Traditional Workplaces allow a mixture of industrial, commercial and office uses. In order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces, the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area; the proposed development represents a significant investment in the redevelopment and rehabilitation of an older and declining neighborhood in a manner that is consistent with the Traditional Workplace Form District; the proposed development is consistent with the historical development pattern on the subject property, and is compatible with development in the surrounding area, which does not follow a predominant pattern; the subject property is adequately served by public transportation, incorporates sidewalks and walkways throughout the proposed development, and bicycle parking will be provided in accordance with the Land Development Code requirements and, therefore, the proposed development accommodates all modes of transportation; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; and

WHEREAS, the Commission further finds the requested waiver is the minimum necessary to afford relief to the applicant because the proposed development will significantly improve the overall aesthetics of the site, as well as pedestrian and vehicular access; Walmart has coordinated with Metro Transportation Planning to provide safe and efficient pedestrian access from all of the adjacent roadways to the building entrances, and transit stops and amenities will be incorporated in coordination with TARC; the strict application of the current zoning regulations would deprive the applicant of the reasonable use of the land and create an unnecessary hardship because providing an entrance along the Dixie Highway fa<;ade is not feasible due to the pharmacy drive-thru; and the proposed building entrances are located adjacent to the primary parking field to maximize customer safety, security, and accessibility; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented today, the applicant's presentation and the applicant's findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of section 5.5.1.A.1.b to waive the requirement to have a building entrance facing W Broadway and Dixie Hwy.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Turner, White, Tomes, and Peterson.
NO: Commissioner Proffitt.
NOT PRESENT: Commissioner Butler.
ABSTAINING: No one.

Waiver #3 - Waiver of section 5.6.1.C.1 to waive the requirement to have 50% of the wall surfaces at street-level consisting of clear windows and doors along W Broadway and Dixie Hwy.

06:59:19 On a motion by Commissioner White, seconded by Commissioner Tomes, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested waiver of Section 5.6.1.C.1. of the Land Development Code to not provide 50% windows and doors at street level along the West Broadway and Dixie Highway facades will not adversely affect adjacent property owners because it will allow for the construction of a Walmart Supercenter to serve West Louisville with a high-quality building design that is compatible with buildings in the surrounding area. The building facades include a significant amount of red-blended Quik- Brik to complement buildings in the

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surrounding area, as well as additional variation in color and materials to create visual interest. The building design will include two main entrances along the Broadway façade that will be glazed; a brick wall and ornamental metal fence will surround the garden center area, and raised planter boxes will be incorporated into the Broadway-facing façade; extensive landscaping will be provided along the Broadway and Dixie Highway frontages in front of and to the east of the building, providing additional visual interest to the site; a significant amount of trees and landscape plantings will be provided along the Broadway frontage, as well as a row of end cap landscape islands along the northern end of the parking area. The pharmacy drive-thru and loading dock are located along the Dixie Highway-facing façade and a screen wall adjacent to the loading dock and enhanced landscaping will be provided along Dixie Highway to further break up the façade and buffer the view from that roadway; and

WHEREAS, the Commission further finds that the requested waiver will not violate the Comprehensive Plan because Traditional Workplaces allow a mixture of industrial, commercial and office uses. In order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces, the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area. The proposed development represents a significant investment in the redevelopment and rehabilitation of an older and declining neighborhood in a manner that is consistent with the Traditional Workplace Form District. The proposed development is consistent with the historical development pattern on the subject property, and is compatible with development in the surrounding area, which does not follow a predominant pattern. The subject property is adequately served by public transportation, incorporates sidewalks and walkways throughout the proposed development, and bicycle parking will be provided in accordance with the Land Development Code requirements, and therefore, the proposed development accommodates all modes of transportation; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; and

WHEREAS, the Commission further finds that the requested waiver is the minimum necessary to afford relief to the applicant because compliance with this building design requirement is not possible due to ancillary tenants *(e.g.* food service) located inside the building along the front wall and internal merchandise layout; the exterior walls of the building are load bearing and cannot accommodate 50% windows and doors; the proposed building will contain two glass entry vestibule areas comprising approximately 10% of the front façade; and Walmart has designed the building to include glazing where appropriate and to include color variation to add visual interest to the façade; and

WHEREAS, the Commission further finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for noncompliance with the requirement to be waived (net beneficial effect) because the

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proposed site design, building design, and landscape buffering will be a significant improvement over the existing site conditions. The building facades include a significant amount of red-blended Quik-Brik to complement buildings in the surrounding area, as well as additional variation in color and materials to create visual interest. A screen wall has been added at the loading dock and Quik-Brik has been extended to the face of the dock wall; a brick wall and ornamental fence will be provided around the lawn and garden center which wraps the northwest corner of the building. Currently there are no trees on the site and the proposed development will include planting approximately 165 new trees. The proposed development will result in a net reduction of approximately 71,514 square feet of impervious area; a new water-quality pond, a rain garden along Dixie Highway, and a bio-swale along the southern property line will help to manage and treat storm water runoff from the site; and the front building façade will include raised planter boxes, and enhanced landscaping will be provided along both the Broadway and, Dixie Highway frontages; and

WHEREAS, the Commission further finds that strict application of the requirement of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant because it would prevent the applicant from using all of its interior space for merchandise, ancillary tenants, and other satellite functions (pharmacy, vision center, etc.), making the proposed building less efficient and raising the costs of the overall development; and

WHEREAS, the Commission further finds that, based on the evidence and testimony presented today, the applicant's presentation and the applicant's findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of section 5.6.1.C.1 to waive the requirement to have 50% of the wall surfaces at street-level consisting of clear windows and doors along W Broadway and Dixie Hwy.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Turner, White, Tomes, and Peterson.
NO: Commissioner Proffitt.
NOT PRESENT: Commissioner Butler.
ABSTAINING: No one.

Revised Detailed District Development Plan and Amendment to Binding Elements

07:04:37 On a motion by Commissioner Turner, seconded by Commissioner White, the following resolution was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the revised detailed district development plan to construct a new 157,162 square foot retail building on property bounded by W. Broadway on the north, Dr. J.W. Hodges Street (21st Street) on the west and Dixie Highway on the east complies with the criteria for approval set forth in Section 11.4.7.E. of the Land Development Code because the subject property is not located within a floodplain, there are no slopes, streams, unstable soils, karst features, or historical or cultural resources on the property; an erosion prevention and sediment control plan will be implemented prior to construction utilizing best management practices as required by the Metropolitan Sewer District; the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development; the proposed development will include planting approximately 165 new trees; and the proposed development will result in a net reduction of approximately 71,514 square feet of impervious area; and

WHEREAS, the Commission further finds that the development plan complies with all applicable Mobility requirements of the Land Development Code because the subject property is located at the intersection of two major arterial roadways, W. Broadway and Dr. W.J. Hodges Street, and a minor arterial, Dixie Highway and, therefore, the existing roadway infrastructure has adequate carrying capacity to handle traffic going to and from the development; the subject property is located on an existing major transit route; Walmart has coordinated with Metro Transportation Planning to provide safe and efficient pedestrian access from all of the adjacent roadways to the building entrances, including a
10-foot-wide uninterrupted walkway from W. Broadway to the front of the store; transit stops and amenities will be incorporated in coordination with TARC; and adequate parking spaces are provided on the subject property as required by the Land Development Code, including handicap accessible spaces as required by the ADA; accordingly, the proposal accommodates all modes of transportation, provides bicycle and pedestrian connections to surrounding properties, and is appropriately located for the proposed density and intensity; and

WHEREAS; the Commission further finds that, although there is no open space requirement for developments in the Traditional Workplace Form District, a large area in excess of one acre will be preserved as green space along the western side of the site, and will serve as a stormwater detention basin; and

WHEREAS, the Commission further finds that the proposed development is located on a site that will enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties; a new water quality pond, a rain garden along Dixie Highway, and a bio-swale along the southern property line will help to manage and treat storm water runoff from the site; the first 0.6" of rainfall will be captured and treated on-site through the use of these Green Management Practices; MSD has given preliminary approval of the proposed drainage facilities for the development; the final stormwater detention design is required to receive approval from MSD prior to construction of the proposed development, and will comply with MS4 water quality regulations and MSD's "Green Infrastructure Design Manual"; an Erosion

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Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; therefore, the proposed development ensures 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 Commission further finds that the proposed development is compatible in terms of the overall site design with the development in the surrounding area; the building facades include a significant amount of red-blended Quik-Brik to complement buildings in the surrounding *area,* as well as additional variation in color and materials to create visual interest; the building design will include two main entrances along the Broadway façade that will be glazed; a brick wall and ornamental metal fence will surround the garden center *area,* and raised planter boxes will be incorporated into the Broadway-facing façade; there will be extensive landscaping along the Broadway and Dixie Highway frontages in front and to the east of the building, providing additional visual interest to the site; a significant amount of trees and landscape plantings will be provided along the Broadway frontage, as well as a row of end cap landscape islands along the northern end of the parking area; the pharmacy drive-thru and loading dock are located along the Dixie Highway facing façade; and a screen wall adjacent to the loading dock an enhanced landscaping along Dixie Highway will further break up the façade and buffer view from that roadway; and

WHEREAS, the Planning Commission further finds that the revised development plan complies with the Cornerstone 2020 Comprehensive Plan because Traditional Workplacesallow a mixture of industrial, commercial and office uses. In order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces, the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area; the proposed development represents a significant investment in the redevelopment and rehabilitation of an older and declining neighborhood in a manner that is consistent with the Traditional Workplace Form District; the proposed development is consistent with the historical development pattern on the subject property, and is compatible with development in the surrounding *area,* which does not follow a predominant pattern; the subject property is adequately served by public transportation, incorporates sidewalks and walkways throughout the proposed development, and bicycle parking will be provided in accordance with the Land Development Code requirements *and,* therefore, the proposed development accommodates all modes of transportation; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; and

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Revised Detailed District Development Plan and Amendments to Binding Elements**, SUBJECT** to the following binding elements:

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Binding Elements

The following binding elements shall replace the existing binding elements of docket numbers 9-10-76 and 9-79-84 for the portions of the site proposed with this development. The existing binding elements of docket numbers 9-10-76 and 9-79-84 shall still be applicable to the portions of those sites that are not part of this development.

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) is requested:
   a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
   b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
   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. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
   e. A street and/or alley closure approval for case 14STREETS1004 shall be approved by the Louisville Metro Council prior to requesting a building permit.

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5. A certificate of occupancy must be received from the appropriate 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 materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 18, 2014 Planning Commission meeting.

7. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

8. After the commencement of construction of the development, the applicant shall be required to contribute a proportionate share, not to exceed $50,000 of the cost (excluding labor) of a traffic signal at the main entrance (also known as Anderson Street right-of-way) and Dixie Highway. The signal contribution shall be made within 30 days of request by the Director of Louisville Metro Public Works, which request shall not be made before construction commences on the subject property.

9. The applicant shall work with the staff of TARC and Planning and Design Services to finalize the locations of the TARC stops along the roadway frontages adjacent to the development site. No changes to the approved development plan shall be required to be made by the applicant as a result of the final TARC stop locations.

The vote was as follows:

YES: Commissioners Blake, Brown, Jarboe, Kirchdorfer, Turner, White, Tomes, and Peterson.
NO: Commissioner Proffitt.
NOT PRESENT: Commissioner Butler.
ABSTAINING: No one.

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