

Development Review Committee Staff Report

April 1, 2015



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| Case No: | 15MOD1002 |
| Project Name: | Notting Hill Subdivision |
| Location: | Multiple properties in Notting Hills |
| Owners: | Notting Hill Development, LLC |
| Applicant: | Notting Hill Development, LLC |
| Representative: | Bardenwerper, Talbott & Roberts, PLLC |
| Project Area/Size: | 99.502 ac. |
| Existing Zoning District: | R-4, R-5, R-5A, Single and Multi-Family Residential |
| Existing Form District: | N, Neighborhood |
| Jurisdiction: | Louisville Metro |
| Council District: | 19 – Julie Denton |
| Case Manager: | Matthew R. Doyle, Planner I |

REQUEST

- Amendment to Binding Element

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject sites are plan certain under Docket 9-10-00/ 10-13-00 and located in the Notting Hill Subdivision in eastern Jefferson County.

The applicant requests to delete binding element. At the time the subdivision and change in zoning were approved, the Planning Commission required the developer to construct 10% of the total units at a price no greater than 2.75 times the low-moderate income level for a family of four persons as defined by the U.S. Department of Housing and Urban Development for Jefferson County – at the time of sale of the dwelling. Furthermore, the Commission required that the developer provide documentation that the initial purchaser of the affordable dwelling intends to reside there for at least three years and has income within the low-moderate level. It reads as follows:

26. Ten percent of all units shall be reserved for construction of dwellings to be sold to initial occupants at a price no greater than 2.75 times the low-moderate income level for a family of four persons as defined by U.S. Department of Housing and Urban Development for Jefferson County, at the time of sale of the dwelling. The developer/owner shall provide documentation acceptable to the Director of Housing that the initial purchaser of the affordable dwelling intends to reside in the dwelling for a period of at least three years and has income within the low-moderate level.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

| | Land Use | Zoning | Form District |
|-------------------------------|-------------------------------------|--------------|---------------|
| Subject Property | | | |
| Existing | Single and multi-family residential | R-4/R-5/R-5A | N |
| Proposed | Single and multi-family residential | R-4/R-5/R-5A | N |
| Surrounding Properties | | | |
| North | Single family residential | R-4 | N |
| South | Single family residential | R-4 | N |
| East | Shelby County | N/A | N/A |
| West | Single and multi-family residential | R-4/R/6 | N |

PREVIOUS CASES ON SITE

- 9-10-00 & 10-3-00: Approval of a change in zoning as well as the Major Preliminary Subdivision Plan & Detailed District Development Plan for the Notting Hills Subdivision.
- 16346: Land Development and Transportation Committee approved a Revised Preliminary Subdivision Plan & Revised Detailed District Development Plan in Case 16346 that removed the subject parcel from the subdivision boundary and removed all of the binding elements on the subject parcel.

INTERESTED PARTY COMMENTS

N/A

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR AN AMENDMENT TO BINDING ELEMENT

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will continue to be provided on the subject site.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will continue to be provided.

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

STAFF: Provisions of sufficient open space will continue to be provided.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District will continue to ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will continue to be provided to screen adjacent properties and roadways.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

TECHNICAL REVIEW

N/A

STAFF CONCLUSIONS

- The proposed amendment appears to be adequately justified based on staff analysis in the staff report.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must determine if the proposal meets the standards established in the LDC for approving the Amendment to Binding Element.

REQUIRED ACTION

- **APPROVE** or **DENY** the Amendment to Binding Element.

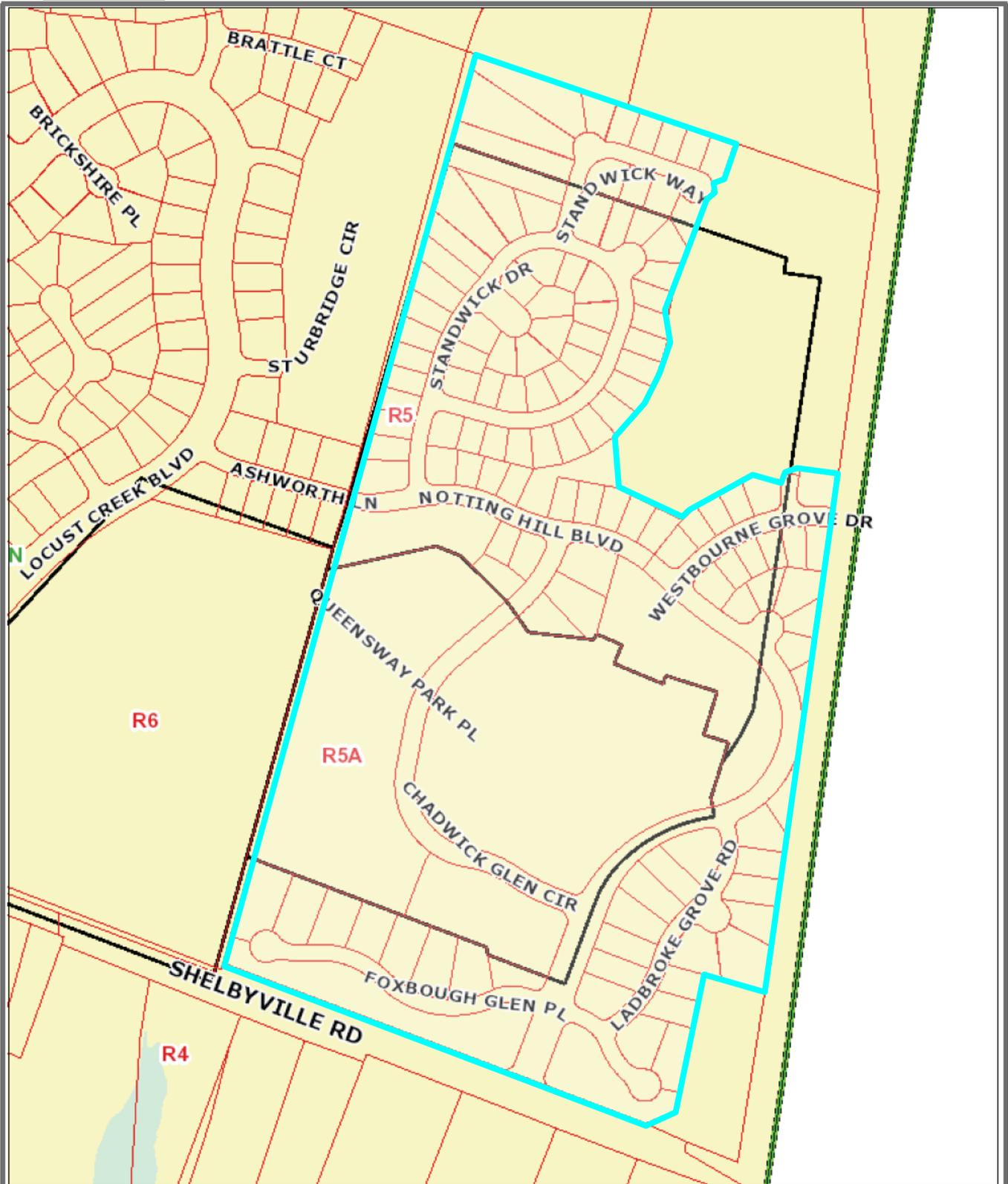
NOTIFICATION

| Date | Purpose of Notice | Recipients |
|---------|--------------------|--|
| 3/18/15 | Hearing before DRC | 1 st tier adjoining property owners Registered neighborhood groups |

ATTACHMENTS

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

1. Zoning Map

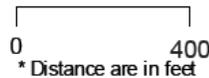


Zoning Map

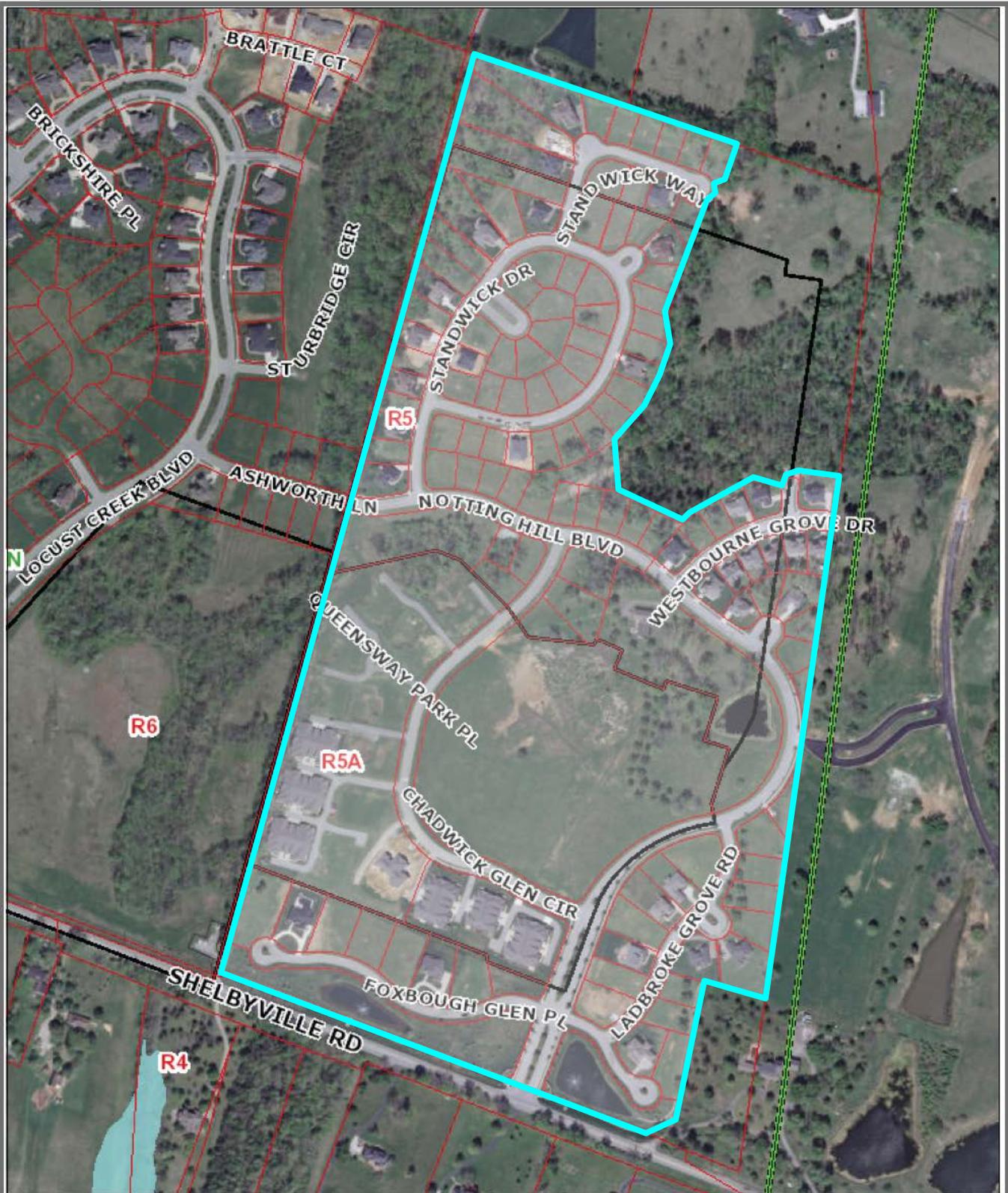


LOJIC Quickmap

Plot Date 3/24/2015



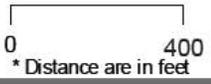
2. Aerial



Aerial Photo



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Plot Date 3/24/2015

3. Existing Binding Elements

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan for Lot 1 (Manor Homes), Lot 153 (Patio Homes and Clubhouse) from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - a. screening, buffering, landscaping, tree preservation
 - b. density, floor area, size and height of buildings
 - c. points of access and site layout with respect to on-site circulation
 - d. land uses
 - e. signage
 - f. loading berths
 - g. parking
 - h. sidewalks
 - i. site design elements relating to alternative transportation modes
 - j. outdoor lighting
 - k. minor subdivision plat approval
 - l. air pollution
 - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
 - n. dumpsters
3. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
4. The density for the entire development shall not exceed 3.60 dwelling units per gross acre (372 units on 103.245 acres). The density of the R-5 Single Family development (Lots 2-5, 17-152) shall not exceed 2.92 dwelling units per gross acre (131 units on 44.861 acres). The density of the R-5A Multi-Family Manor Homes development (Lot 1) shall not exceed 9.55 dwelling units per gross acre (128 units on 13.41 acres). The density of the R-5A Multi-Family Patio Homes development (Lot 153) shall not exceed 4.62 dwelling units per gross acre (64 units on 13.852 acres). The density of the R-4 Single Family development (Lots 154-204) shall not exceed 1.81 dwelling units per gross acre (48 units on 26.536 acres). [Note: an estate lot, lot 205, is 4.586 acres. Also, lots 6-16 do not exist on the plan.]
5. There shall be no direct vehicular access from any single family or multi-family lot to U.S. 60 (Shelbyville Road).
6. 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.
7. The applicant shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to

delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.

8. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from the Jefferson county Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
 - 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 Article 12 and in conformance with the Parkway Policy prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
9. If a building permit is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
10. 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.
11. 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.
12. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to commencement of any clearing, grading, or construction activities.
13. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
14. The site shall be developed in accordance with the woodland protection areas delineated on the site plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and LD&T action.
15. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of such restrictions shall be approved by Planning Commission counsel.
16. All plans setting out woodland protection areas must contain the following notes: Woodland Protection Areas (WPAs) identified on this plan represent portions of the site that shall be permanently preserved. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the

time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat.

17. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space and other issues required by these binding elements.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
18. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
19. The materials and design of proposed manor style and patio home condominium buildings shall be substantially the same as depicted in the rendering as presented at the February 26 and May 21, 2001 Planning Commission meetings. The manor style condominium buildings shall include 80 percent brick. All other homes shall have a minimum of 60 percent exterior brick material, except the 10 percent affordable housing set aside, which shall have, at a minimum, brick fronts, and except as provided in binding element 31, which provides for 80% brick or stone exterior material on the 7 frontage lots adjacent to Shelbyville Road.
20. The signature entrance shall be submitted to the Planning Commission staff for review prior to recording the record plat.
21. The multi-family (R-5A) portion of the development shall be limited to units in condominium ownership.
22. A geotechnical study shall be performed for review and approval by MSD prior to filling on site, as noted on plan.
23. The use of the clubhouse shall be restricted to property owners/residents of New Estates Farm Subdivision and their guests.
24. The developer shall be responsible for constructing the road connection of Road C to the stub road in the Locust Creek development.
25. Open space lots shall not be further subdivided or developed for any other use, and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
26. Ten percent of all units shall be reserved for construction of dwellings to be sold to initial occupants at a price no greater than 2.75 times the low-moderate income level for a family of four persons as defined by US Department of Housing and Urban Development for Jefferson County, at the time of sale of the dwelling. The developer/owner shall provide documentation acceptable to the Director of Housing that the initial purchaser of the affordable dwelling intends to reside in the dwelling for a period of at least three years and has income within the low-moderate level.
27. Within the 200-foot parkway buffer, landscaping shall be installed of evergreen and deciduous shade and flowering trees as shown on the concept landscape plan discussed at the May 21 public hearing

and as otherwise required by the Planning Commission, and there shall also be installed a four-board horse fence erected along the right-of-way of U.S. 60 for the entire length of the frontage of the site.

28. The R-5A residential condominium buildings shall be no closer to the new Shelbyville Road right-of-way line than as follows, proceeding in an east-west direction: the easternmost patio building no closer than 370 feet; the westernmost patio building no closer than 345 feet; the easternmost manor home building no closer than 370 feet; and the westernmost manor home building no closer than 365 feet.
29. Seven R-4 zoned frontage lots shall be created as shown on the development plan presented at the May 21, 2001 public hearing for R-4 housing. The 6 frontage lot houses west of Road "B" shall front Shelbyville Road with access from the rear. The one frontage lot house east of Road "B" shall also face Shelbyville Road but have access from Place "8".
30. All 7 frontage lots shall run to the new Shelbyville Road right-of-way line; however, a landscape easement in favor of the New Estates Farm Community Association shall extend for a depth of 160 feet from the new Shelbyville Road right-of-way line.
31. Homes constructed on the 7 frontage lots shall have exterior materials consisting of a minimum of 80 percent brick and/or stone. These 7 frontage lots shall have a front building set-back line of not less than 200 feet from and parallel with the proposed new northern right-of-way line of U.S. Highway 60, also known as Shelbyville Road.
32. Prior to development that may occur immediately behind the frontage lots, the developer shall install the infrastructure for, subdivide, plat, record and market for sale such frontage lots along Shelbyville Road. The frontage lot houses need not be actually constructed before construction commences on the condominiums behind them, and the frontage lots and other portions of the subdivision may be platted together.
33. The 160 feet of setback described in binding element 30 above plus the two open space lots along Shelbyville Road shall be maintained by the New Estates Farm Community Association.
34. Binding elements 27-33 above shall be included in the deed of restrictions for New Estates Farm as shall a provision requiring minimum square footages for the 7 frontage lot homes of 3,000 square feet of livable area for two-story and/or story and one-half and 2,750 square feet of livable area for ranch style homes. Livable area shall be defined as heated and cooled above ground level area, measured from outside wall to outside wall, specifically excluding below ground finished living area. Such deed of restrictions shall be reviewed by the Planning Commission's legal counsel prior to recording for compliance with these binding elements. Such deed of restrictions shall include a provision permitting enforcement of the provisions of binding elements 27-34 by the owners and successors in title of the following properties: 18700 U.S. 60, 18702 U.S. 60, 18704 U.S. 60 and 18706 U.S. 60 in Jefferson County and 10400 U.S. 60 and 10260 U.S. 60 in Shelby County.

4. Proposed Change to Binding Elements

- ~~26. Ten percent of all units shall be reserved for construction of dwellings to be sold to initial occupants at a price no greater than 2.75 times the low-moderate income level for a family of four persons as defined by US Department of Housing and Urban Development for Jefferson County, at the time of sale of the dwelling. The developer/owner shall provide documentation acceptable to the Director of Housing that the initial purchaser of the affordable dwelling intends to reside in the dwelling for a period of at least three years and has income within the low-moderate level.~~