

**Board of Zoning Adjustment
Staff Report
January 11, 2016**



Case No:	15APPEAL1008
Project Name:	Swift Noise Standards Appeal
Location:	151 & 201 Cabel Street
Owners:	Swift Pork Company Louisville Gas & Electric Company
Appellant:	Jon Salomon on behalf of the Butchertown Neighborhood Association and Andrew S. Cornelius
Jurisdiction:	Louisville Metro
Council District:	4—David Tandy
Case Manager:	Brian Mabry, AICP, Planning Coordinator

REQUEST

- Appeal of a written interpretation which states that operating hour restrictions in Land Development Code Section 4.1.6 only apply to portions of the subject property within 100 feet of a residential use or zoning district.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT & LAND USE/ZONING
DISTRICT/FORM DISTRICT TABLE**

Pursuant to KRS 100.257 and 100.261 the Board of Zoning Adjustment shall hear appeals of an official action, order, requirement, interpretation, grant, refusal or decision of an administrative official, zoning enforcement officer or code enforcement officer. Appeals must be taken within 30 days of the official action. Action in this case is deemed to be October 5, 2015, when the appellant became aware of the existence of this interpretation, which dates to March 4, 2014. Representatives for Swift submitted the Conditional Use Permit application, with which this appeal is associated, to Planning and Design Services (PDS) on February 3, 2015.

The appeal generally asserts that the Director's interpretation (Attachment 3 – page 7 of 44) contradicts the text of LDC Section 4.1.6, and that the operating hour restrictions of that Section apply to the entirety of Swift's Cabel Street property, rather than to the area of the site within 100 feet of a residential use or zoning district.

Section 4.1.6 reads in full:

4.1.6 Operating Hours

The following operating hour restrictions shall apply to all uses that are within 100 feet of any property that is zoned residential, any solely residential use or any mixed use development that contains residential uses as measured from the closest property line of the proposed use. The most current version of the Louisville Metro Noise Ordinance shall also apply to all activities listed below.

- A. Collection of Garbage and Recyclables - No garbage or recyclables collection services shall be conducted between the hours of 10:00 p.m. and 6:00 a.m.
- B. Loading Operations - No loading or unloading operations shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. This restriction shall also be applicable to the idling of any heavy or medium trucks on the site for the purpose of conducting loading or unloading operations regardless of whether said activities have already occurred or are scheduled to occur in the future.
- C. Exterior Construction Activity - No exterior construction activity shall be conducted between the hours of 9:00 p.m. and 7:00 a.m.

Please refer to the Staff Reports for case 14CUP1003 for additional information on the Cabel Street property in regard to Site Context and the Land Use/Zoning District/Form District Table. Refer to Attachment 4 (page 9 of 44) for a depiction of the 100-foot buffer area, as it applies to the subject property, as interpreted by the Director.

PREVIOUS CASES ON SITE

14CUP1003

This Conditional Use Permit case is currently under review by the Board of Zoning Adjustment. The request is to allow a potentially hazardous or nuisance use (proposed staging lot for trucks and trailers in an M-3 zoning district).

TECHNICAL REVIEW

The appellant submitted a Statement of Appeal detailing the grounds for the appeal. The following are Staff's responses to specific objections referenced in this statement.

Summary of Appellant's Objections	Staff's Response
<p>The appellant questions whether the subject written interpretation is valid or official because:</p> <p>(1) The PDS Director did not authorize a staff member to interpret the provision in question as it relates to the Swift CUP request.</p> <p>(2) The interpretation does not appear on official letterhead.</p> <p>(3) The interpretation was not made generally available to the public.</p>	<p>The interpretation is valid and official because:</p> <p>(1) Emily Liu did indeed direct Brian Mabry to apply the existing interpretation to 15CUP1000 and she will testify to that fact at the Appeal hearing.</p> <p>(2) The PDS staff frequently relies on hundreds of interpretations in the form of hard copy files and digital files that are in various formats, ranging from Word files, to PDFs, to emails. Some of these interpretations are with letterhead and some are without.</p> <p>(3) Kentucky Revised Statutes (KRS) 61.870 defines public records as "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency..." KRS 61.872 further states that, with a few exceptions, all public records are available for inspection by anyone. Counsel for Swift requested an interpretation on the matter and very quickly received it. An interpretation not generally distributed by the government agency to potential stakeholders should not invalidate it or make it unofficial.</p>

Summary of Appellant's Objections	Staff's Response
<p>The appellant claims that the language of 4.1.6 is clear and plain enough to not need a written interpretation.</p>	<p>For various reasons, applicants request, and Staff provides, interpretations for provisions across the spectrum from clear to murky. Staff judges the provisions at hand to be somewhere in the middle and worthy of a written interpretation.</p> <p>In fact, the provisions in 4.1.6 are complex enough to warrant some discussion in case 14DEVPLAN1000, at the Planning Commission hearing on March 6, 2014. The Commissioners questioned the Staff case manager on the methodology of the measurement and his reply, as shown of Attachment 5 (Page 12 of 44), aligns with written interpretation in question. The Planning Commission unanimously approved 14DEVPLAN1000 at the hearing. See pages 12, 14, 19, 25, 26, 32 and 38 of 44 of the attached minutes for relevant parts (highlighted in yellow).</p>
<p>The appellant claims that the restrictions in 4.1.6 apply to the entire site if any portion of the site is within 100 feet of a residential zoning district, residential use, or mixed use development containing a residential use.</p>	<p>The appellant's claim confuses "site" with "use." Over 10 definitions in chapter 1 of the LDC distinguish between the terms "site" (or "parcel" or "property" or variations thereof) and "use". For example, the definition of Blood/Plasma Center reads, in part, "The collection of blood/plasma as a principal <u>use</u> on a <u>property</u>..." The definition of Land Use reads, in part, "A description of how <u>land</u> is occupied or <u>utilized</u>..." While the terms are interrelated, nowhere does the LDC state that the terms "use" and "property/site/parcel" are synonymous.</p> <p>Therefore, where the preamble of Section 4.1.6 states, "The following operating hour restrictions shall apply to all uses that are in 100 feet..." Staff interprets term "use" to mean activities taking place on specific parts of the site, not the entire site itself.</p> <p>Section 4.1.6.B states, "This restriction shall also be applicable to the idling of any heavy or medium trucks on the site..." Staff maintains that the preamble sets the parameters for where the noise standards apply, 100' from residentially zoned or used property. "Site" means the specific parts of the site called out in the preamble where various uses are prohibited from taking place.</p> <p>Finally, if the operating hour requirements applied to the entire subject property, then there would be no need to mention the 100' applicability area in the regulations. The regulations would just say that the operating hour restrictions apply to sites adjacent to a residentially zoned or used property. See Section 4.5.6.B (Attachment 6 – Page 44 of 44) for provisions in the LDC that are written so that the subsequent restrictions apply to the entire subject property when adjacent to a residential use or zoning district.</p>

STAFF CONCLUSIONS

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, BOZA must affirm or reverse, in part or in whole, the subject written interpretation.

NOTIFICATION

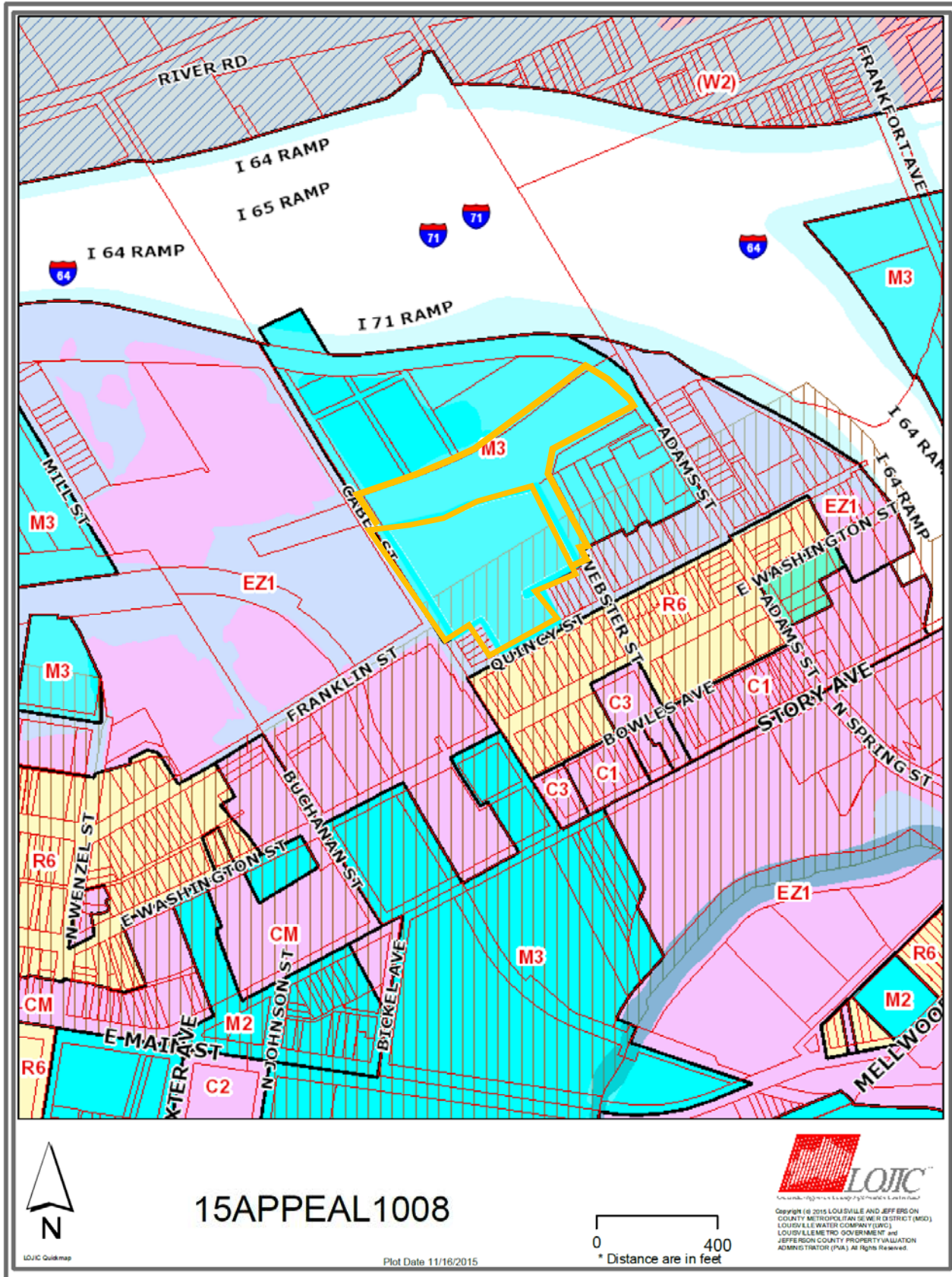
Date	Purpose of Notice	Recipients
11/20/15	Hearing before the Board of Zoning Adjustment	Legal advertisement in the Courier Journal
12/23/15	Hearing before the Board of Zoning Adjustment	1 st Tier Adjacent Property Owners

ATTACHMENTS

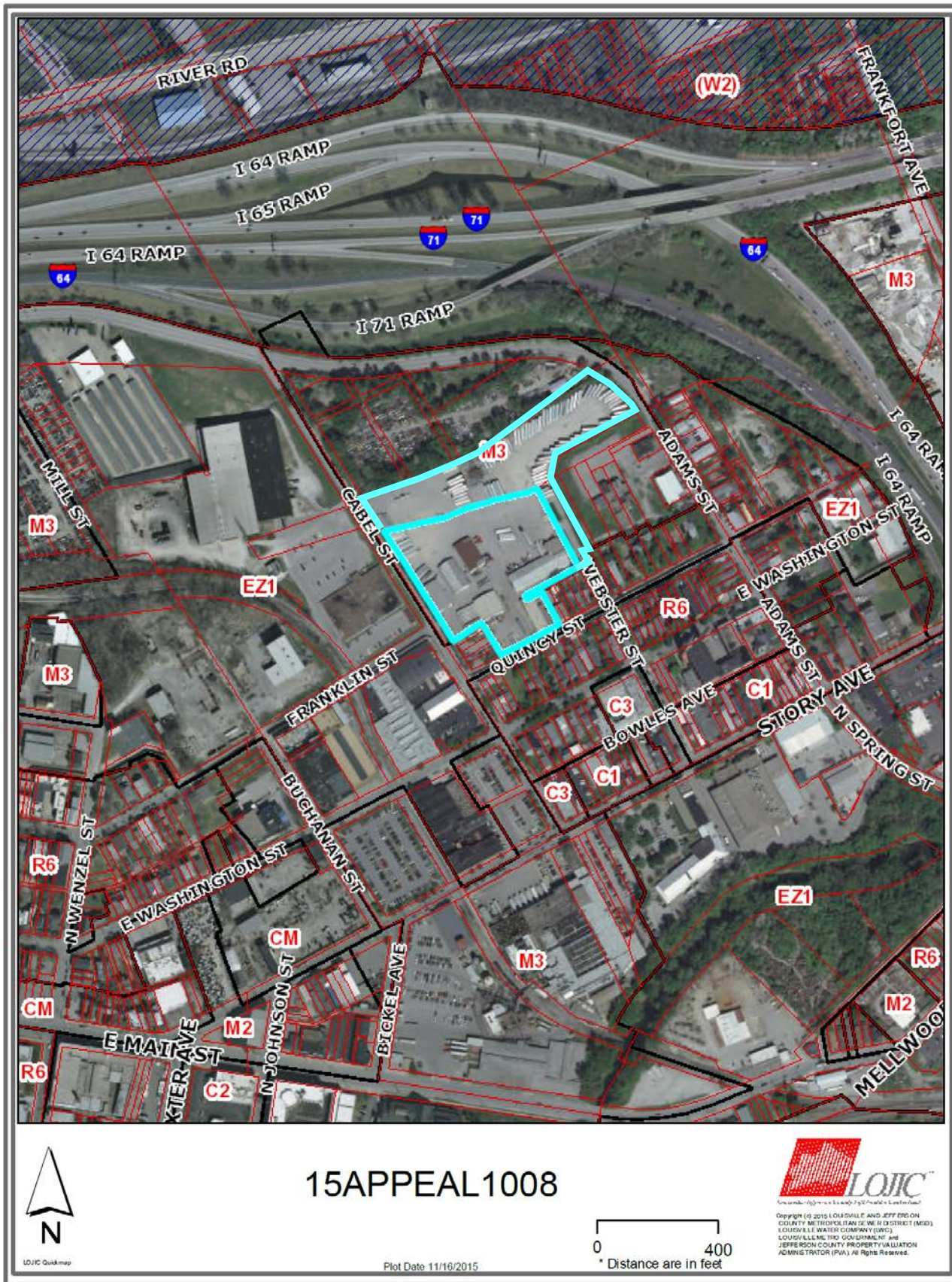
1. Zoning Map
2. Aerial Photo
3. Written Interpretation (From Emily Liu on March 4, 2014, and from Brian Mabry, as applied to 14CUP1003, on September 30, 2015)
4. 100' Buffer Map
5. Planning Commission Minutes for Case 14DEVPLAN1000 on March 6, 2014
6. Section 4.5.6 of the Land Development Code, Written so that Restrictions Apply to Entire Subject Site

ATTACHMENTS

1. Zoning Map



2. Aerial Photograph



3. Written Interpretation (From Emily Liu on March 4, 2014, and from Brian Mabry, as applied to 14CUP1003, on September 30, 2015)

From: [Liu, Emily](#)
To: [Baker, Jonathan](#)
Cc: [Brown, Christopher](#); [Hill, Michael](#)
Subject: Operating Hours
Date: Tuesday, March 04, 2014 6:34:07 PM

Jon, I reviewed this section with several of our staff members. We feel the code is intended to set the limits of operating hours only for the area of the subject property (say FedEx project) within 100 feet of their property line that adjoins residential use or zones.

4.1.6 Operating Hours

The following operating hour restrictions shall apply to all uses that are within 100 feet of any property that is zoned residential, any solely residential use or any mixed use development that contains residential uses on the ground floor as measured from the closest property line of the proposed use.

A. Collection of Garbage and Recyclables - No garbage or recyclables collection services shall be conducted between the hours of 10:00 p.m. and 7:00 a.m.

B. Loading Operations - No loading or unloading operations shall be conducted between the hours of 10:00 p.m. and 7:00 a.m. This restriction shall also be applicable to the idling of any heavy or medium trucks on the site for the purpose of conducting loading or unloading operations regardless of whether said activities have already occurred or are scheduled to occur in the future.

*Yu "Emily" Liu, AICP
Planning Director
Louisville Metro Planning & Design Services Division
Department of Codes and Regulations
444 South Fifth Street, Ste. 300
Louisville, KY 40202-4313
502-574-6678/502-574-8129 (F)*

From: Mabry, Brian K.
To: ["jswilson@fbtlaw.com"](mailto:jswilson@fbtlaw.com)
Subject: Interpretation LDC Sec. 4.1.6
Date: Wednesday, September 30, 2015 2:32:00 PM
Attachments: [Operating Hours.pdf](#)

Dear Mr. Wilson,

Attached is an email from Planning and Design Services Director Emily Liu from March 4, 2014.

It is an interpretation stating that Section 4.1.6 of the Land Development Code is intended to set the limits of operating hours only for the area of the subject property that is within 100 feet of the property line that adjoins residential uses or zones.

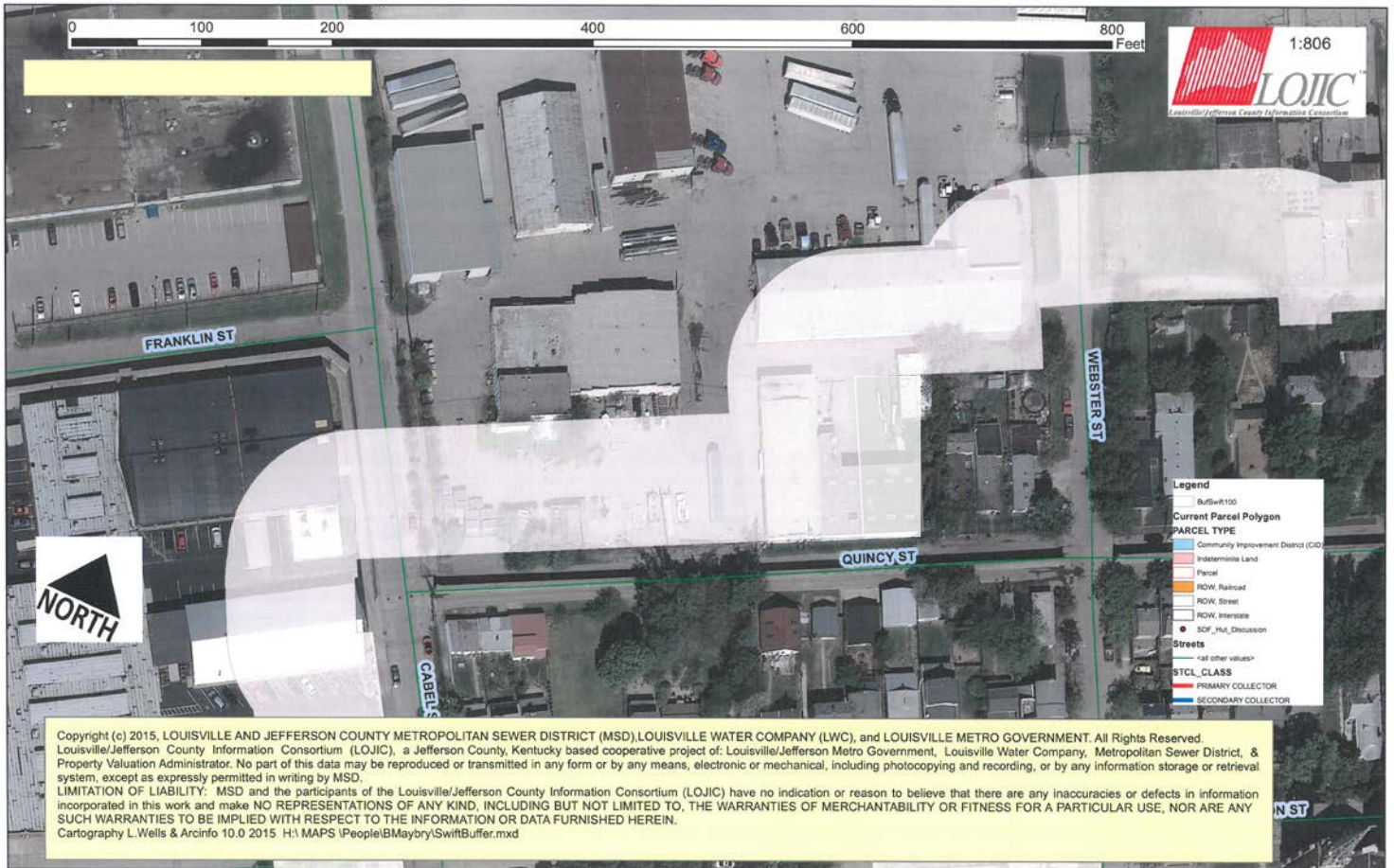
In addition to that, Subsection B deals with the loading, unloading, and idling of trucks. By extension, those activities are also limited only for the area of the subject property that is within 100 feet of the property line that adjoins residential uses or zones.

Brian Mabry, AICP
Planning Coordinator

Develop Louisville
Division of Planning & Design Services
444 S. 5th St., Suite 300
Louisville, KY 40202
Phone: (502) 574-5256

<http://louisvilleky.gov/government/planning-design>

4. 100' Buffer Map



5. Planning Commission Minutes for Case 14DEVPLAN1000 on March 6, 2014

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Public Hearing

CASE NO. 14DEVPLAN1000/14DEVPLAN1004

14DEVPLAN1000

Project Name: Fed Ex Distribution Center
Plantside Drive and Earl Jones Way

Owner: Hosts Development LLC

Applicant: Setzer Properties

Representative: Bill Bardenwerper
Jason Banks, Banks Engineering

Jurisdiction: Louisville

Council District: 20 – Stuart Benson

Staff Case Manager: **Christopher Brown, Planner II**

Notices of this public hearing 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.)

Request:

Detailed District Development Plan for a proposed Fed Ex Distribution Center with a Land Development Code waiver to eliminate the required pedestrian connection from Plantside Drive.

14DEVPLAN1004

Project Name: Blankenbaker Station II Distribution Center
13007 Rehl Road

Owner/ Applicant: Hosts Development LLC

Representative: Bill Bardenwerper
Kent Gootee

Jurisdiction: Louisville

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Public Hearing

CASE NO. 14DEVPLAN1000/14DEVPLAN1004

Council District: 20 – Stuart Benson

Staff Case Manager: Christopher Brown, Planner II

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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.)

Request:

Detailed District Development Plan for Distribution Center with Land Development Code Waiver to reduce the outdoor amenity space.

Agency Testimony:

Commissioner Blake began by explaining that both Case 14DEVPLAN1000 and 14DEVPLAN1004 would be heard together, but would be acted upon separately by the commission. He also explained that additional time has been requested for testimony. The applicant would have one hour, the opposition would have 75 minutes, and 15 minutes would be allowed for rebuttal.

Christopher Brown began by discussing 14DEVPLAN1000 and showed a PowerPoint presentation. He reviewed the case summary/background from the staff report. He showed zoning and aerial maps and discussed the zoning and land uses of the site and surrounding areas. Mr. Brown then showed a series of photos of the site and surrounding areas. He reviewed the applicant's development plan, applicable plans & policies, staff analysis and conclusions from the staff report. He also pointed out that a packet of interested party concerns was submitted to the commission and reviewed a list of concerns contained in the letters.

Mr. Brown then addressed 14DEVPLAN1004 and reviewed the requests and case summary/background from the staff report. He showed zoning and aerial maps and discussed the zoning and land uses of the site and surrounding areas. He then showed photos of the site and surrounding areas. Mr. Brown reviewed the applicant's development plan, applicable plans & policies, staff analysis and conclusion, and the proposed binding elements from the staff report.

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In response to Commissioner Kirchdorfer's question about the binding elements for Case 14DEVPLAN1004, Mr. Brown clarified that #7 was added to allow direct vehicular access to be prohibited to Rehl Road along the scenic corridor. The access to the site would always be maintained on Plantside Drive and Urton Court.

Commissioner Blake asked for clarification about the commission's charge regarding the Design of the Outdoor Amenity Area. Mr. Brown explained that the Land Development Code (LDC) states that when a development rises to a certain threshold with a mix of uses an outdoor amenity area is required under Chapter 5.12. The Planning Commission is charged with looking at the location and design of the outdoor amenity area. He said the commission would have to take action on the outdoor amenity area along with the development plan.

Commissioner Blake asked about lighting. Mr. Brown explained that the Comprehensive Plan discusses noise, visual, and light pollution. He said the applicant needs follow the guidelines of the Comprehensive Plan and pointed to the staff analysis in the staff report. He explained that the applicant will need to address the items that were not noted as needing additional information. He also pointed out General Plan Binding Element #3 that addresses lighting.

Steve Porter addressed the subject of operating hours and the staff report's comments about LDC Chapter 4.1.6 that addresses hours of operation to all uses within 100' of residentially zoned property. He asked Mr. Brown to point out the Kaelin property and Mr. Brown explained that the Kaelin property is zoned R-4. Mr. Porter asked how many feet are from the property line of the proposed use to the property line of the Kaelin property.

Mr. Brown read 4.1.6 from the LDC: "The following operating hour restrictions shall apply to all uses that are within 100 feet of any property that is zoned residential, any solely residential use or any mixed use development that contains residential uses on the ground floor as measured from the closest property line of the proposed use." He pointed out that the distance is measured from the residentially zoned property line to the use. He said the loading/unloading use is outside of the 100 ft area.

Mr. Porter asked how many feet from the property line to the Kaelin property. Mr. Brown stated the distance is zero feet. Mr. Brown pointed out that the loading/unloading operations are well over 100 ft from the property line existing between PEC and R-4.

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Mr. Porter asked if the same is applicable to the other residential properties adjacent to the subject site. Mr. Brown restated that from the property line to the south, there is over 350 feet until the area of the proposed use. He stated that this is how it is being interpreted by staff.

Commissioner Brown asked about the definition of loading/unloading activities. He asked if the drive aisle to the two parking spaces would be considered part of it. Mr. Brown explained that staff considered this movement and access on the site and the loading/unloading is not occurring in the drive lane. He further explained that there is a 50 ft buffer required per Chapter 5 and 10 of the LDC.

Commissioner Proffitt asked where the use begins, from the building or the trucks in the parked position. Mr. Brown explained that the use was interpreted as the edge of the building as well as the edge of the proposed loading/unloading bays along the north portion of the building, and the parking spaces for the trucks themselves.

The following signed up to speak in favor of this request:

Bill Bardenwerper, Bardenwerper Talbott & Roberts, 1000 N. Hurstbourne Pkwy, Louisville, KY 40203

Jason Banks, Banks Engineering, 2365 Harrodsburg Rd, Lexington, KY 40504

James Reesor, 420 West Brannon Rd, Nicholasville, KY 40356

Kent Gootee, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

Brian Meade, URS, 503 Langholm Place, Louisville, KY 40203

Richard Clausen, Redwing Ecological Services, 1139 S 4th St, Louisville, KY 40203

Mark Stites, Mindel Scott & Associates, 5151 Jefferson Blvd, Louisville, KY 40219

Patrick Super, Fed Ex, 11000 Toeppen Dr, Independence, KY 41051

Kristin Booker, 716 E Market St, Louisville, KY 40202

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John Hollenbach, PO Box 7368, Louisville, KY 40257

Greg Oakley, PO Box 7368, Louisville, KY 40257

Brett T. Setzer, 354 Waller Ave, Suite 200, Lexington, KY 40504

Rob Sangdah, 8759 Cedar Bend Rd, Sylvania OH 43560

David Skidmore, 1000 Fedex Drive, Moon Township, PA 15108

Jim Joseph, 535 Stoneview Dr, New Albany, IN 47150

Aaron Farbo, 327F Boston Post Rd, Sudbury, MA 01776

Joseph Pelle, 1340 Princeton PI, Wexford, PA 15090

Summary of testimony of those in favor:

Bill Bardenwerper, attorney representing the applicant, explained that a new booklet was submitted just prior to the meeting. He showed a PowerPoint presentation and addressed the minutes from the March 2006 Planning Commission regarding Blakenbaker Station II and pointed out that there was a lot of detail discussed with the rezoning case at the time. He said all of the issues that will be raised at this hearing were addressed at the rezoning hearing in 2006. Mr. Bardenwerper addressed the findings of fact used for the 2006 approval and discussed the purpose of the Comprehensive Plan and LDC. He showed exhibits that discussed the Blankenbaker Station economic impact with regard to infrastructure, employment, and revenue. He then showed and discussed the area that is zoned PEC and showed an aerial photo to review the uses in the area.

Mr. Bardenwerper addressed Mr. Brown's testimony about the requirement of a 6 ft berm along the western buffer of Lot 23 and Lot 24. He said that was not true. He said the western buffer is applied to Lot 8 because there is a residential property along the western edge that needs to be protected.

He showed a plan for Lot 24, the proposed Fed Ex site, and reviewed general compatibility standards pertaining to LDC Chapter 4.1.6 (Operating Hours). He said that the standard does not say anything about driving aisles, or that a Fed Ex facility cannot be within 100 ft. He said this regulation says there are certain things that need to stay away from a residential property. Mr. Bardenwerper

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addressed the DRC minutes from September 22, 2010 regarding the binding elements addressing uses and location of the loading docks and truck maneuvering. He recognized that there was a strong feeling about not getting the PEC use too close to the residential neighbors, which is why the binding element was agreed upon. Mr. Bardenwerper also reviewed Binding Element #19 from the March 30, 2006 Planning Commission minutes.

He pointed out that there is nothing in the LDC pertaining to noise, which is why it was attempted to be addressed through setbacks, berms, and screening. Mr. Bardenwerper pointed out that there is a noise ordinance. He addressed concerns about truck beeping noises and said that OSHA sets the standard. He also said there is an exemption in the noise ordinance for noises originating from safety or warning signals. Mr. Bardenwerper and Jason Banks, Banks Engineering, then addressed an exhibit detailing the 100' setback between residential uses and loading/truck idling operations and garbage/recyclables collection (Sections 6, 5, 4, 3, 2, and 1).

Mr. Banks reviewed the exhibits detailing the sightline from the various sections.

Mr. Bardenwerper discussed truck drive lanes, overnight loading/unloading, tractor parking for in-town drivers, trailer parking while awaiting maintenance (done inside garage), fueling pumps, trailer parking area, 24-hour tractor trailer loading/unloading, and employee parking.

Mr. Bardenwerper and James Reesor, lighting expert, showed and discussed exhibits regarding lighting. Mr. Bardenwerper stated that the LDC requirements and binding elements will be in full compliance. Mr. Bardenwerper briefly addressed elevations and stated that it is regulated by the LDC.

Mr. Bardenwerper then showed the Lot 23 plan. Kent Gootee, Mindel Scott & Associates, explained that everything is per code. He discussed landscaping and pointed out the loading docks and screening. Mr. Gootee confirmed that the 100 ft setback is also being met with this plan.

Mr. Bardenwerper addressed the traffic impact study. Brian Meade, URS, reviewed information from the traffic study regarding chronology, proposed development, trip generations, and traffic analysis. Mr. Bardenwerper then reviewed a tractor trailer routing plan. Mr. Meade explained that Mapquest routes drivers to the interstates, not taking the surface streets. Mr. Bardenwerper explained that Fed Ex is going to make sure that the drivers take the appropriate route.

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Mr. Bardenwerper addressed the environment impacts summary, pointing out that the vast majority of streams are ephemeral. Richard Clausen, Redwing Ecological Services, reviewed the environmental impacts efforts and findings. He said it was found that no endangered species will be impacted, there are no archeological resources on site and the structures on the site older than 50 years are not qualified to be on the national register of historic places.

In response to Commissioner Proffitt's question about lighting levels on the property, Mr. Reesor resumed the podium and explained the photometrics.

Commissioner Proffitt addressed testimony about overnight truck parking and asked whether the doors will be left open during loading/unloading.

Patrick Super, Fed Ex, explained that the doors open and close automatically. He said the doors will be kept closed for security and safety.

Commissioner Proffitt asked about the landscape plan. Kristin Booker explained that there are a lot of trees that need to be planted on the property, which allows for additional buffering along the perimeter. She explained that Type A or Type B trees are proposed and explained what types of trees fall into those categories.

Commissioner Proffitt asked why extreme care in buffering was taken on the southern property line more so than what was taken on the western property line. Mr. Bardenwerper said when the original zoning plan was brought forward, there were actual houses along the south property line. He said the western property line is a farm and the home on that property is a good distance away. He asked Ms. Booker if the code is met or exceeded along the western line.

Ms. Booker explained that the code is exceeded.

Mr. Gootee addressed the western property line of Lot 23 and said it has the code minimum right now. He said given the size of the development and tree canopy, there will need to be an additional tree canopy plan. As a reaction to what we have gone through in the past in submitting landscape plans, they follow what is on the exhibit.

Mr. Bardenwerper said Mr. Gootee does not have the same space on the west line of Lot 23 to commit, until it is time to prepare the landscape plan to get to the level of the landscaping on the other lot.

Commissioner Proffitt stated that everything possible should be done to buffer along that line. Mr. Gootee said the berming would not be a good idea.

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Commissioner Proffitt asked how stormwater is being mitigated on the site since it is going from 100% pervious to 100% impervious on Lot 23 and then 70-80% range on Lot 24.

Mark Stites, Mindel Scott & Associates, pointed to the area in which all the water is draining from and where the water will go. He said a detention basin is identified that will serve this area of the park, which will be constructed following completion of the Jones Plastic site in conjunction with the infrastructure extended to these properties. Mr. Stites said both of the lots will be connected to a drainage system within Plantside Drive, which will discharge to the natural drainage that drains down to the basin. He said MSD has reviewed the design and they are comfortable with it.

Commissioner Kirchdorfer addressed General Plan Binding Element #13, regarding hours of lighting being dimmed. Mr. Bardenwerper said the issue is that the lights would be turned off or dimmed to the lowest level for adequate security.

Commissioner Proffitt addressed the sightlines issue by asking if the applicant considered going over to the individual residential homes to determine sightlines. Mr. Bardenwerper showed the sightline exhibits.

Mr. Reesor said he did not see how you would be able to see the light poles from the property, much less from the berm. The minimum height of the light poles would be 35'. He explained that Fed Ex looks for an average of one foot candle across their property and less at the property line.

Commissioner Blake addressed the General Plan Binding Element #13 and pointed out that the lights will not be dimmed at all. Mr. Bardenwerper said it is starting at an average of one foot candle. He said another binding element is not being proposed, but the general plan binding element will be complied with. He said the lowest level necessary is what the lights are set at. They are already at the lowest level for security purposes.

Commissioner Proffitt said he could see that there could be separate binding elements for these two lots that says the lighting will be equal to or less than what is required by code. Mr. Bardenwerper said that can be done.

Commissioner Blake asked about whether the pond was fully addressed. Mr. Clausen explained that as part of the Corps of Engineer permit, mitigation will be provided for ponds and streams impacts. He confirmed that this includes the

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existing pond on the site. He said the ponds were just man-made structures, which were dammed up.

The commission took a brief recess.

Mr. Porter addressed LDC 5.5.2.b.2 and testimony that no one from any of the surrounding residential uses or those on Rehl Road or Plantside Drive would be able to see the loading docks and garbage collection areas from either of the sites. He asked if it could be said that this would be the state upon development, not 20 years from now. Mr. Gootee responded that he could not.

Ms. Booker explained that loading docks are located opposite of the residential use, which is in the direction of the PEC zoned property. Mr. Bardenwerper showed an exhibit to point out where the trash collection will be located on the north side.

Mr. Porter asked if the north side would be visible along Plantside Drive. Ms. Booker said there would need to be screening along Plantside Drive.

Mr. Gootee said because of the buffer, the view driving down Plantside Drive will be of the trees.

Mr. Porter asked about the views of the west side, from the Kaelin property. Ms. Booker said the western property line is providing required screening and buffering per the LDC, and there will be a change in elevation of over 50'. She confirmed that the loading dock or trash collection will not be seen from any of the surrounding residential properties.

Mr. Bardenwerper pointed out that the applicant will have to comply with code requirements.

Mr. Porter showed MapQuest directions that he generated which directs drivers to Tucker Station Road to Plantside Drive. He addressed Tab 9 of the applicant's booklet regarding the AM and PM capacity analysis intersection delay ratings. He pointed out the increases in projected delays. He asked if after looking at the E and F ratings, that it can be said that there is no problem for the neighborhood caused by the proposed developments. Mr. Meade responded that the level of service goes down.

Mr. Porter addressed the tractor trailer route exhibit and asked about the number of 90 degree turns that are on the route from Plantside Drive along Tucker Station Road to Taylorsville Road. Mr. Meade said there are about three. He

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confirmed that it would be difficult for tractor trailers to take those turns without running into someone's property.

Mr. Porter asked what percentage of the employees of those working in the business park will come from I-64 and Blankenbaker and the percentage of those coming from Tucker Station Rd. to Taylorsville Rd. Mr. Meade said those numbers are not in the traffic report. Mr. Meade found that 263 and 282 are the trips that will be coming from the developments going straight ahead, not turning on Tucker Station. He also found that the trips turning left on Tucker Station Rd. will be 96 and 21.

Mr. Porter made the point that the applicant's argument is that all of the traffic is going to Blankenbaker, but the applicant's figures show that a large percentage will go down the scenic corridor.

Tammy Markert explained that during the peak hours for the major corridors, it is not uncommon to see an LOS (Level of Service) of F. She pointed out that there is a recommendation for a signal adjustment. She said the intersections are continued to be monitored.

Ms. Markert confirmed that she reviewed the reports.

Mr. Porter agreed there are a lot of intersections that are rated F in Louisville. He asked if it was ok to do something to make an intersection an F. Ms. Markert explained that it is not just lots 23 and 24, it is Blankenbaker Station. She said the binding elements say that the intersections would need to be continued and when they reach certain thresholds, then there are recommendations to address them, such as signalization.

Chris Kelly asked how much fuel will be stored on the site. Mr. Super stated he would have to find out.

Mr. Kelly asked if business operations change after 10:00 pm and clarification about whether the zoning would allow 24 hour operations.

Mr. Bardenwerper said there is no prohibition of a 24 hour operation within any place zoned PEC at Blankenbaker Station. He pointed out a LDC standard that has to do with the loading operations within the 100 ft zone. He explained that the standard does not apply since it will be outside of the 100 ft.

Mr. Kelly asked if a study was done that says once Urton Lane Corridor is opened that the levels will drop. Mr. Bardenwerper explained that when

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Blankenbaker IV was done, there was a two year study that was done, that addressed improvements. Mr. Meade said there was a study done by Louisville Metro that is on the website but he does not have it with him.

Mr. Kelly said he assumed there would be shifts associated with the employees working at Fed Ex. He raised concerns about a long line of employees coming and going at night. He asked what the shifts would be. Mr. Super responded that it could fluctuate from station to station, but there will be a pre-load operation starting around 4 or 5 AM and finishing by 7 or 7:30 AM. Evening operations will start around 6 PM to about 10 PM. Mr. Super said an overnight shift would be around midnight to 2 AM.

Robert Sangdah explained that the underground storage tank system has not yet been designed, but typically it would be consistent with two 20,000 gallon underground tanks. He said it would comply with local codes and EPA mandates for continuous leak detection.

John Hayes addressed the testimony about the vehicles driving inside the building to unload and asked if the vehicles will stay inside or park outside the building. Mr. Super explained that when the vans come inside the building, they stay indoors overnight. He said the drivers may refuel in the evening when they come in for the day or morning before they leave.

The following spoke in opposition to this request:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Barbara Rodgers, 3026 Crystal Waters Way, Louisville, KY 40299

Mary Beth Dennis, 13511 Pointview Ct, Louisville, KY 40299

Thomas Read, 12903 Rehl Rd, Louisville, KY 40299

John Hayes, 12905 Rehl Rd, Louisville, KY 40299

Chris Kelly, 3108 Shady Springs Drive, Louisville, KY 40299

David Kaelin, 2421 Tucker Station Rd, Louisville, KY 40299

Gregg A. Rogers, 13003 Rehl Rd, Louisville, KY 40299

Teena Halbig, 6505 Echo Trail, Louisville, KY 40299

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Gina Yunker, 10609 Easum Rd, Louisville, KY 40299

Michael Farmer, 15100 Old Taylorsville Rd, Fisherville, KY 40023

Wallace W. Backman, 12901 Rehl Rd, Louisville, KY 40299

Tom Garrity, 13207 Rehl Rd, Louisville, KY 40299

Summary of testimony of those in favor:

Steve Porter pointed out that none of the people who spoke in support live in the neighborhood. He said that Barbara Rodgers had to leave and wanted to raise concerns about large trucks traveling along Tucker Station Road currently. Mary Beth Dennis also had to leave and wished to express concerns about the value of the home she is building in the area.

Mr. Porter addressed a six-page letter that he sent to staff, as well as a one-page addendum. This letter detailed his concerns about the proposed developments. He spoke about the Rev-a-Shelf and pointed out that this site is not right next door to his clients. He reviewed the information included in his addendum dated March 5, 2014. He spoke about the roads not opening up very soon. He said there is the possibility of an interchange at Gene Snyder Freeway with Rehl Road, but it is in the 20 year Kentucky Dept. of Transportation (KDOT) plan. Mr. Porter stated that the projects are not ready yet from a traffic standpoint. He raised concerns about traffic levels of service to decline.

Mr. Porter discussed the neighbors he represents and the location of their properties as related to the subject sites. He spoke about the impacts that these neighbors will face should the proposed development get approved. He raised concerns about the fact that it was not anticipated to have 24-hour operations on the site, thus the agreement to dim the lights for security. Mr. Porter addressed the binding element addressing noise and said it was added by Metro Council.

Mr. Porter addressed LDC 2.6.3 regarding the intent of PEC (Planned Employment Center District) and said this case is one of a discretionary decision, not ministerial. He also addressed LDC 5.12.1 regarding compliance with Cornerstone 2020 because of the magnitude of the proposed projects.

Thomas Read explained that his family will be impacted by the proposals. He read from the LDC 2.6.3 regarding the intent of PEC. He spoke about the family-oriented community and neighbors adjacent to the proposed Fed Ex site. He

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showed photos to demonstrate how close his home is to the subject property. He pointed out that Lots 23 and 24 envelopes five family residences. Mr. Read spoke about the reasons why he moved to the area. He spoke about a previous approval of 125 high-end homes proposed to be built behind his property in 1999. He explained that the plan went bankrupt and years later he was alerted of a proposed business park on the site. He said the PEC zoning was not fought, but the neighbors have to be able to live there. Mr. Read said he repeatedly asked about UPS facilities and said he could not live next to that. He raised concerns about noise and light pollution and questioned whether a 24-hour operation could be buffered. He addressed the sightline exhibits that were presented by the applicant and showed the sightline from his back porch. He pointed out that there will be no buffering the views from the second floor of his home. He sounded an air horn to demonstrate the amount of noise he would hear from his home. He spoke about requirements for trucks to beep when they are backing up and sounding the horn when moving forward. He expressed his concerns about hearing this in the middle of the night. Mr. Read expressed concerns about the fuel pumps being so close to his home. He also spoke about concerns regarding who would buy the homes in the area. Mr. Read stated that the Lot 23 proposal is a ruse.

John Hayes said the business operations such as Fed Ex are very noisy with horns, beeping, doors moving up and down, and trucks running all night. He also raised concerns about the natural character of the area and historic qualities being destroyed. He spoke about his experiences of driving for UPS and being innovative in using back roads to avoid congested areas. He said the Fed Ex drivers will do the same thing. Mr. Hayes said tax payers will be the ones paying for road improvements, and these things should be thought out well ahead of time. He raised concerns about the proposed development costing the neighbors financially. He suggested that the use would be more appropriate in Riverport.

Chris Kelly spoke about the amenities in the area that attracted him and his wife to the area to build their house. He asked the commission to deny the proposal and explained that peoples' homes are everything.

David Kaelin showed a PowerPoint presentation and reviewed his booklet submitted at the hearing. He raised concerns about traffic flow at the Tucker Station Road and Rehl Road intersection. He showed photos of the two 90 degree turns that make it difficult for trucks to drive without getting out of their lane. He also showed photos of Plantside Drive being restricted to one lane due to tractor trailer parking. He spoke about flooding conditions at Bluegrass Parkway and Tucker Station Road. He raised concerns about water quality and

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contractors clearing land without silt fences. Mr. Kaelin raised concerns about blasting and the damage that it causes. He spoke about the nearby Trane building being dark at night, but that the neighbors cannot depend on the proposed berming, etc. to block the noise. He then discussed the concern for preserving wildlife in the area.

David Kaelin said past planners had told him that previous subdivision plans that had come in on that property have always been asked to retain the pond, because it was "perfectly situated" to drain a large area. He said wildlife corridors need to exist for the Blackacre Nature Preserve and the Floyds Fork watershed. Mr. Kaelin showed a presentation which included photos of wildlife and preserved areas, and also the view from his back yard. He said the six-foot berm does not block the view of the building from his property, and does not protect him from the lights and noise of a 24-hour operation. He said he has heard from other residents in the area that the "noise is a huge problem." He submitted a hard copy of his Power Point presentation and a letter into the record.

Greg Rogers said he grew up on Rehl Road. He said developers have "destroyed" Rehl Road and are ignoring the history of the area. He said his property is surrounded by this entire project but for some reason was not included/shown in the applicant's exhibits. He said he was upset because the applicants were not proposing even a berm to protect his property. He said he has offered his property for sale to the applicants, but was told by them that they "do not buy homes". He said he was told that the development surrounding his property would be office buildings and not what is being proposed today. He said he had had several conversations with Mr. Bardenwerper about buying his property and has been told that his property would be greatly devalued, solely due to this project. He said the promises made to him have all been changed.

Tom Garrity was called but declined to speak.

Wallace Bachmann was called but declined to speak.

Michael Farmer was called but declined to speak.

Gina Younker (sp) was called but had left the meeting.

Teena Halbig, speaking on behalf of the Floyds Fork Environmental Association, said the two distribution centers being proposed are in the Floyds Fork Watershed, not far from the Blackacre Preserve. She said that, in addition to streams in the area, 23 forested acres and wetlands would be destroyed by the

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project. She said there is a great need to retain trees and vegetation that can absorb water and reduce runoff. She expressed concern about water and air quality issues. She asked if MSD is requiring first- and second-flush basins, and if so, where the basins would be located. She requested that, if Fed Ex cannot build with the topography or maintain the environmental features, they should build in another location, preferably closer to the airport or the Blue Lick Road area. She said another Hollenbach-Oakley development took two acres of endangered bat habitat and said more diligent research should be done to determine the presence of the animal in the area. She said wetlands in the area should be preserved, since they lessen flooding and are an important part of the ecosystem. She said the tree removal is substantial and the tree replacement is inadequate. She said the proposed structures are too intrusive in the neighborhood and are incompatible with the adjacent farmland and housing, and specifically discussed the impacts on the Kaelin and Reed properties. She requested that a geotechnical survey be done, mostly out of concern for large sinkholes. She said there should be a contingency plan, in the event of the failure of this business, to bring the buildings down to the concrete foundations.

In response to a request from Stephen Porter, the Commission granted both sides an additional 10-minute presentation time extension.

Mr. Porter distributed a handout which he said summarized legal reasons to deny the applicant's request (on file.) He said the proposal violated sections of Cornerstone 2020 and the Land Development Code, including:

- 1) Section G on Traditional and Suburban Workplace Form Districts requires a development to ensure that workplaces have appropriate levels of access for employees. He said these projects are located on a cul-de-sac with "F" ratings on intersections around it. Drivers will access the sites through smaller back roads; this has been noted on the applicant's traffic analysis.
- 2) Objective G.2.2 regarding perimeter compatibility is not being met.
- 3) Objective G.2.3 regarding Access and Circulation – "Should accommodate a high level of access". He said there is no public transportation here and reiterated that the project is located on a cul-de-sac.
- 4) Objective G.3.2 - allow heavy industrial uses only if there is sufficient buffering for adjacent properties (against noise, air quality issues, etc.) and if it does not create truck routes in residential areas.
- 5) Objective G.4.1 – scale and intensity is not compatible with the district.
- 6) Guideline 1 – existing development surrounding this project is single-family residential. This use is not compatible with scale and function of surrounding residential areas.

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- 7) Guideline 3 – Ensure that land uses and transportation facilities are compatible with surrounding uses and to minimize impacts to residential areas. Guideline 3A of Cornerstone 2020 has a list of compatibility items; notably, a proposal should minimize the impacts of parking, loading and delivery. Mr. Porter said a small berm and a few trees will not minimize the impact on the neighbors to any significant degree.
- 8) Guideline 7 - Mr. Porter said this new development exceeds the carrying capacity of surrounding streets. He said the developer should be required to complete a connection to Taylorsville Road before building this project.
- 9) Guideline 8 – This project does not develop or preserve the scenic corridor, particularly the plan to put loading docks on Rehl Road.
- 10) Mr. Porter touched on the impact to watersheds and other environmental issues which were previously discussed by Ms. Halbig.

Mr. Porter discussed the proposed operating hours, which he said also violates the Land Development Code.

Commissioner Jarboe and Mr. Porter discussed the 100-foot distance requirement from the property line. Commissioner Jarboe said staff stated it is 100 feet away from where the use is. Mr. Porter said that was written to prevent 24-hour loading and unloading from being next door to residences from 10:00 p.m. to 7:00 a.m., as measured from the closest property line of the proposed use. He said the applicant is measuring from the loading docks, not the property line.

In response to a question from Commissioner Jarboe, Mr. Porter clarified that building the roadway first might help the traffic situation. It still would not help the noise, light, odors, and other negative impacts that he had listed.

Commissioner Proffitt asked for some clarification from Mr. Porter – are his primary objections to the use or to the building? Mr. Porter said the activity occurs on the entire site; for example, a delivery truck cannot get to the building without going through the neighborhoods and then traversing the site. He said the entire 45-acre site is zoned PEC for an M-2 industrial use. The whole property is a "use". Commissioner Proffitt said he thought the "use" is more about the area of the primary activity. Mr. Porter said the use is measured from the property line, not the portion of the site where the primary use is taking place.

Commissioner Tones said he was having the same problem with the same issue. He also discussed compatibility and ways to make competing uses compatible.

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Councilman Stuart Benson said he supports business and jobs; however, he said each person has a right to protection. He said he had hoped that the residents and the applicant could come together to work out their differences. He said the Land Development Code states that loading and unloading activities cannot take place between 10:00 p.m. to 7:00 a.m. next to a residential property. He said the intent is to protect residents in the area.

Rebuttal:

Mr. Bardenwerper said he did not intend to demean any of the opposition, but much of this case was heard during the four zoning cases for Blankenbaker Station. He said those cases were held to determine what this area would be over time. Metro Government decided that this would all be Suburban Workplace. He described some of the other Suburban Workplace areas in Louisville Metro, and said that many of these types of businesses have been going across the river to Indiana or to Bullitt County where they can operate. He said the Kentucky State budget keeps getting cut every year because the economy here is "not robust" and businesses are not growing here like they are in other states. He discussed the importance of increasing tax revenue. He said three major potential employers in this business park went elsewhere because of a lawsuit filed to stop the businesses. He said there are a whole series of regulations that govern the development in a Suburban Workplace form district. He discussed the rezoning of the property to PEC, and said that is significant because the Planning Commission chose that over a different zoning category that would not have permitted this type of proposed use.

He discussed the "significant" setback along the property lines adjacent to the residential properties. He also discussed the investment that Hollenbach-Oakley has made in this site, including land purchase, infrastructure, and a sewer that serves the community.

Regarding Chapter 4.1.6, Mr. Bardenwerper said that there are many 24-hour operations within 100 feet of residential properties in the Metro area. He said the uses should be kept 100 feet away from the residential properties, which he said the applicant has done.

Mr. Bardenwerper said the applicant has never been told by APCD that there was an air quality issue.

He discussed a claim about Building 23 and explained why there is not a name on the Hollenbach-Oakley facility. He said the applicants have gone through a rezoning process on a nearby property (south of Rehl Road) and conducted a

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two-year traffic study solely for the purpose of getting the Urton Lane Corridor ROW dedicated. He said when this corridor is built that is how most of this traffic will get to Taylorsville Road and the Snyder freeway. He said the ROW has now been dedicated from Rehl Road to Taylorsville Road. He said Councilman Benson has worked to get the funding for the bridge underneath the railroad track for the Urton Lane Corridor.

In addition to the building of the Urton Lane Corridor, Mr. Bardenwerper said another solution to some traffic issues is that the applicants have agreed by binding element to install an additional northbound lane on Tucker Station Road that will be a right turn lane. He said that, prior to the issue of a certificate of occupancy on Lots 23 or 24, the applicant will build that northbound lane on Tucker Station Road with a right turn lane. He said this lane will not only handle additional traffic from this development, but should help the failing intersection at Bluegrass Parkway and Tucker Station Road.

He said the applicant is proposing the project on Lot 23 in order to have a site plan and infrastructure in place and ready to go when a business is ready to move in to the property.

Mr. Bardenwerper said there were a couple of binding elements that the applicant is willing to offer. He read them into the record as follows:

- A northbound right-turn lane on Tucker Station Road at the Bluegrass Parkway intersection shall be constructed prior to the certificates of occupancy on either Lot 23 or Lot 24 being issued.
- Use of Lot 24 shall not cause sound to exceed the existing average decibel level as measured over a 24-hour period LEQ at the south property line of Lot 24.

He said the applicant would agree to a binding element regarding use of truck/air horns, because Fed Ex does not allow the use of air horns anyway. He said that, as a matter of policy, Fed Ex does not allow truck idling.

Mr. Bardenwerper said there is one area that has particularly higher lighting than any other portion of the site. He showed the area on a Power point slide (the main access/security point.) He said Fed Ex has been responsive to lighting concerns, and has taken their lighting down to the lowest level possible while still maintaining safety.

In summary, Mr. Bardenwerper said that the findings of fact that applied to the original rezoning apply to this case as well.

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In response to a question from Commissioner Jarboe, a Fed Ex representative said that approximately 75 tractor trailers would be coming to this site per day. He said he based that number on a currently-operating facility in Jeffersonville. Commissioner Jarboe asked if drivers would use back roads to access the site, since the Tucker Station/Bluegrass Parkway intersection is failing. Mr. Bardenwerper said the "F" rating on an intersection measures the delay factor there as a consequence of an intersection having too much traffic volume. The Fed Ex representative added that, from a safety standpoint, drivers know to take the main routes.

Commissioner Jarboe also asked about the sound readings that the applicant was proposing to take at the south property line of proposed Lot 24. He said that, right now, there is nothing there now but homes and some auto traffic. He asked how the applicant could achieve that low decibel level. Aaron Farbo, a sound engineer and applicant's representative, said there are sound monitors on the site now measuring the existing background sound. He explained how these sound averages are determined. Mr. Bardenwerper added that, if the facility exceeds those current sound levels, the applicant will have to build sound-mitigation measures into their development model (building a sound wall, buffering, taller fence, etc.) Mr. Farbo said the existing noise is mostly traffic from the highways and surface streets.

In response to a question from Commissioner Peterson, Mr. Farbo said the report from his engineering firm would include what measures would need to be taken to reduce noise levels in order to meet the existing sound levels. In response to a question from Commissioner Tomes, Mr. Bardenwerper explained some possible noise control options. Mr. Farbo said that, typically for these types of projects, barrier walls work best if they are close to the source. Using a Power Point slide, he pointed out the possible location of a barrier wall. Mr. Bardenwerper handed out the applicant's proposed binding elements to the Commissioners.

Commissioner Kirchdorfer asked the Fed Ex representative about the time and traffic patterns for the estimated 75 trucks per day that could be visiting the site. The Fed Ex representative said the tractor trailer traffic is spread out throughout the hours of operation. He discussed how the traffic could increase throughout the first phase after development. He explained that this can change during the holidays (particularly during December.)

Commissioner Blake asked Mr. Bardenwerper why a portion of the site had been changed to PRO at a 2010 DRC meeting. Mr. Bardenwerper said the lotting

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patterns had changed; Greg Oakley, one of the applicants, said the routing of Plantside Drive (the western boundary of Lot 23) had been moved 800 feet to the east at the request of Metro Public Works. The General Plan thus had to be reconfigured. Mr. Bardenwerper added that the intent of the General Plan (and the site) had not changed.

In response to a question from Commissioner Blake, Mr. Oakley used a Power Point slide to point out what had changed on Lot 24. Mr. Bardenwerper said the lot had been defined differently; Mr. Oakley added that the acreage is the same.

Commissioner Blake, Mr. Oakley, and Mr. Bardenwerper discussed binding element #15 (page 9 of the staff report.) concerning the restrictions to PRO zoning uses on certain portions of the lots.

Commissioner Tones asked Mr. Farbo if the results of his study would have to wait until the building was completed. Mr. Farbo said no, and explained what will be included in the report. He said the plans for noise control will be built along with the facility. Commissioner Peterson asked if operational methods could be used to control sound (closing doors, etc.) Mr. Farbo said those are helpful. In response to a question from Commissioner Tones, Mr. Farbo said that report should be available by the end of this month (March.)

In response to a question from Commissioner Kirchdorfer, Mr. Farbo stated that his company had done noise testing at "dozens" of Fed Ex facilities across the country. Commissioner Blake asked if this sound monitoring would be an ongoing type of program. Mr. Farbo said there would be no reason for ongoing monitoring; measuring and verifying could be done in response to a complaint.

In response to a question from Commissioner Proffitt, Mr. Farbo said there could not be any guarantees that neighbors would hear no noise, even with sound mitigation measures. Commissioner Proffitt asked if the applicant could not consider more stringent measures in the design to mitigate sound. Mr. Bardenwerper and Commissioner Proffitt discussed sound mitigation standards and design. Commissioner Brown said that, right now, there is no vegetation screening to take into account; also, there might be more noise generated by the business during December/January. Mr. Farbo said his company's model never takes vegetation into account. He also pointed out that Louisville Metro has no "hard limits" on decibel levels in the Code. Mr. Bardenwerper said the applicant is willing to go for a lower decibel standard than is usually permitted in comparable cities. There was a lengthy discussion between Commissioner Proffitt and Mr. Bardenwerper about the nature of the sound mitigation the Commission was asking the applicant to agree to use on the site.

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Commissioner Blake said he still had some questions about not *initially* screening the loading docks. Kent Gootee described in detail the landscaping that would screen the loading docks. There will also be a six-foot berm, which is higher than the Code requires.

In response to questions from Commissioner Tomes, Mr. Farbo stated that most of the noise being detected on the site right now is freeway noise. The applicant would have "a big responsibility" trying to mitigate noise that they were not causing. Commissioner Tomes and Mr. Farbo also discussed sound requirements along Kentucky State highways. Mr. Bardenwerper said that there is a 65-decibel limit along the Snyder Freeway next to residential uses, according to the Land Development Code.

Mr. Porter discussed testimony regarding the parking for 75 tractor trailers and 75 vans. He mentioned "the south property line" which was protected in a binding element submitted by the applicant. He asked that the west and other adjacent residential property lines be given the same protections, since those also back up to residential areas. He asked if the loading docks could be "flipped" so that they are not facing Rehl Road, but facing back into the property instead.

Mr. Porter asked for sound protections for all three boundaries, not just one. Mr. Bardenwerper said the Planning Commission had decided that the south property line was different because that is where individual homes are located. The west property line has 50 acres between the site and the home on the property. Commissioner Brown asked about protections for the west property line on Lot 23. When Commissioner Blake asked if there was a use for Lot 23, Mr. Oakley said there was a letter of intent from a company.

Mr. Oakley also discussed the reason for having the loading docks facing Rehl Road. Commissioner Proffitt and Mr. Oakley discussed Mr. Porter's suggestion of having the loading docks facing away from Rehl Road. Commissioner Blake asked if the plans being shown today are what will be built. Mr. Oakley said these plans fit the proposed operational program (loading area, parking, etc.) John Hollenbach, an applicant, explained in more detail about what the tenant required, particularly regarding the loading dock area. He also discussed trying to design for possible future tenants.

Mr. Porter corrected a statement made by Mr. Bardenwerper regarding Mr. Kaelin's house, which (using a map) he showed is closer to this building and the

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loading docks than any of the other houses. This is why he had asked for sound mitigation protection for all three property lines.

Mr. Oakley said the applicant would agree to a six-foot fence, but stated that a berm could cause a drainage issue. He pointed out the locations of a fence on the site plan. He gave some more details about the proposed operations of the businesses.

Commissioner Blake asked if the applicant would agree to the same type of sound study for the other lots as that being conducted for the Fed Ex site. Mr. Oakley said typical sound mitigation is not measured from a property line but from a structure. He said he would like to see some kind of "standard" applied to this and other projects. Mr. Hollenbach said the applicant is sincerely trying to work with both the tenants and the nearby residents. He said there are more LEED-certified buildings in this development than anywhere else in Kentucky and discussed the high standards applied to this development. He explained that these higher standards have made this a very expensive project to develop, and that it seems like every time something new is asked, it means more money from the applicant.

Using the site plan, Christopher Brown clarified some issues about the property lines and also the form-district-specific compatibility standards in the Land Development Code. These require industrial uses located within 200 feet of and having a common property line with a residentially-zoned property must include a 50-foot landscape buffer and a six-foot berm. There is also tree canopy that is required. The applicant would have to request a waiver to not provide the berm. He added that, if the applicant chooses not to do the berms, the case would need to be continued and re-noticed. Mr. Oakley said the applicants would agree to do the six-foot berms with some re-engineering.

Mr. Bardenwerper discussed applying the same binding element regarding noise mitigation for the south property perimeter to the west side of the Fed Ex property.

Commissioner Proffitt asked Mr. Farbo if any sound mitigation measures would be taken at the property line. Mr. Farbo said not necessarily; that some measures were better taken closer to the sound source. He said that, if he designs a sound barrier along the south, it will be as close to the parking lot as possible.

Commissioner Tomes discussed possible mitigation design aspects with Mr. Farbo, mostly concerning protecting the Kaelin and Rogers homes.

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Deliberation

Before beginning the deliberation, Commissioner Blake said that both Case No. 14DEVPLAN1000 and Case No. 14DEVPLAN1004 will be discussed separately.

14DEVPLAN1000

Commissioner Kirchdorfer said that traffic, noise and lighting seemed to be the most urgent issues discussed tonight. He said the binding elements that have been put in place on this development all appear to be trying to address all of the items that were raised at today's hearing. He said that, based on the plans and testimony presented today, he feels that the applicant is trying to address the main issues and concerns. He said the staff report and the traffic studies have presented reliable evidence. He said he appreciated the clarification about where the 100-foot impact takes place; also, that the sound study is being done and can be used as a baseline reading for enforcement. He said the binding elements address the relevant issues. He said he felt the waivers being requested today are "fairly minor".

Commissioner Brown said he was "not comfortable predicting any type of use" on a PEC-zoned property, but he said he does see issues with a 24-hour operation next to residences. He said the binding elements are "a step in the right direction."

Commissioner Tomes discussed the PEC zoning of this property. He said he appreciated the fact that many who were here in opposition today had supported the PEC zoning when it was done. He said that he understands the concerns from the residents, but also praised the developers for the work they have done. He appreciated the input from Mr. Farbo and other applicant's representatives to address citizens' concerns.

Commissioner Peterson said his primary concern about the project was about the noise; he said he believes the applicant has addressed that to the best of their ability. He agreed with banning the use of air horns. He said the right turn lane on Tucker Station Road will be helpful in controlling traffic. He said this development may increase the push to complete the Urton Lane Corridor.

Commissioner Jarboe said he understood the positions of both the applicants and those in opposition. He said he understood the urgency to get this project done. He stated that his main concern was meeting Objective G.2.2 regarding compatibility and said he had issues with the noise created by a 24-hour operation in a residential area. However, he said this type of development has

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been approved to go into a PEC-zoned site and the noise mitigation measures will make a difference.

Commissioner Proffitt said he still had issues with the components of Cornerstone 2020 that cover "use". He questioned whether the Guidelines regarding compatibility had been met. He mentioned UPS operations that he had witnessed and discussed how much noise those produced. He talked about the proposed elimination of a pedestrian connection onto Plantside Drive (addressed in staff analysis.)

Commissioner Blake discussed the original zoning case. He said he was especially empathetic to Mr. Reed and other nearby residents; however, the Planning Commission did decide to rezone this site to PEC. He said many of the arguments presented at the 2006 rezoning hearing were the same as those presented today. He said he is very concerned about the sound issue. He said he did not think he would be able to support this case, until he heard the sound engineer's testimony today. He said he thought the proposed sound mitigation measures and screening will be beneficial. He said he still has some concerns about the lighting and does not want it to go outside the property line.

Commissioner Proffitt said no one has discussed the "back-up beeping" that will occur when semis back up, although he said he is in favor of banning the truck horns.

Commissioner Blake asked about the binding element stating that the applicant shall build a right-turn lane prior to construction of anything on Lots 23 and 24.

Mr. Meade was asked to speak about the traffic at the turn lanes at Tucker Station Road and Bluegrass Parkway.

Commissioner Brown spoke about a binding element requiring that the improvements be completed prior to issuance of the certificate of occupancy.

There was some discussion about enforcement of the binding elements being considered. Commissioner Tomes suggested that the baseline study be added to the file as part of the binding element and it is the reference point.

There was some discussion about the possibility of a binding element to address the lighting. Commissioner Kirchdorfer explained that agreeing to the one foot candle alleviated his concerns. Commissioner Blake asked if there was a lighting level that should be entered into a binding element. It was decided that the existing General Plan binding element would be sufficient.

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Mr. Brown pointed out that in the staff report (14DEVPLAN1000), the square footage of the building referenced in proposed binding element #2 should read 310, 949 square feet.

The commission took a break to allow the attorneys to draft the binding elements discussed before a motion is made.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 6, 2014 public hearing proceedings.

Commissioner Blake explained that the binding elements were sorted out during the break should the commission decide to approve.

14DEVPLAN1000

Waiver – Chapter 5.9.2.A.1.b.i of the Land development Code to not provide the direct pedestrian connection from Plantside Drive.

On a motion by Commissioner Tomes, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the evidence, testimony, and justification in the staff report, that the waiver will not adversely affect adjacent property owners since a pedestrian connection has been provided in a safe and reasonable manner to the building entrance from the sidewalk connection along Urton Court; and

WHEREAS, the Louisville Metro Planning Commission further finds that Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users. The appropriate connection for pedestrians into the site due to grading issues is from the Urton Court sidewalk; therefore, the waiver will not violate specific guidelines of Cornerstone 2020.; and

WHEREAS, the Louisville Metro Planning Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to

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the applicant due to the topography of the site and the inability to create an ADA compliant connection along Plantside Drive; and

WHEREAS, the Louisville Metro Planning Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant by requiring a pedestrian connection from Plantside Drive that would necessitate the use of stairs and not meet ADA requirements; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver from Chapter 5.9.2.A.1.b.i of the LDC to not provide the direct pedestrian connection from Plantside Drive for Case 14DEVPLAN1000.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Peterson, Brown, Kirchdorfer, Jarboe, and Tomes

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Turner, White, and Hughes

ABSTAINING: No one.

Detailed District Development Plan / Design of Outdoor Amenity Area

On a motion by Commissioner Tomes, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the evidence, testimony, and justification in the staff report, that the tree canopy requirements of the Land Development Code will be provided on the subject site. The applicant will address the environmental constraints with the mitigation methods discussed during the hearing; and

WHEREAS, the Louisville Metro Planning Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan. A traffic impact study has been completed and incorporated into the development plan elements. Multi-modal transportation will be provided through the complete sidewalk network and bike lanes that connect

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to the Urton Court location from Plantside Drive. A full pedestrian connection will be provided from the Urton Court curb cut to the main entrance of the building; and

WHEREAS, the Louisville Metro Planning Commission further finds that there are no open space requirements with the current proposal. The applicant will be providing 350' of open space between the proposed use and adjacent residentially zoned properties to the south; and

WHEREAS, the Louisville Metro Planning Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will 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; and

WHEREAS, the Louisville Metro Planning Commission further finds that 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 from the activities of the proposed use. Buildings and parking lots will meet all required setbacks; and

WHEREAS, the Louisville Metro Planning Commission further finds that the development plan conforms to requirements of the Land Development Code with the exception of the requested land development code waiver to eliminate one of the two required pedestrian connections on the site. The requested waiver meets the standard of review. The applicant has demonstrated compliance with Guideline 5, Plan Element 1 and Guideline 4, Plan Element 5 to integrate natural features into the pattern of development with their testimony; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and the Design of Outdoor Amenity Area for Case 14DEVPLAN1000 **SUBJECT** to the following Binding Elements.

14DEVPLAN1000 - Binding Elements

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

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Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. The development shall not exceed 310,949 square feet of gross floor area.
3. 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.
4. There shall be no outdoor music (live, piped, radio or amplified) or outdoor PA system audible beyond the property line.
5. 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.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 6th, 2014 Planning Commission meeting.
7. Use of Lot 24 shall not cause sound levels to exceed the existing average decibel level (A-weighted) as measured over a 24-hour period (24-hour Leq) at the south and west property lines of Lot 24. A base line study shall be submitted within 30 days of the March 6, 2014 Planning Commission public hearing. A study to demonstrate compliance shall be submitted within 60 days of opening of the facility.
8. A right turn lane from north-bound Tucker Station Rd to east-bound Bluegrass/Tucker Station Rd shall be constructed prior to the issuance of a certification of occupancy for Lot 23 or Lot 24.
9. The intersection of Plantside Dr. and Blankenbaker Pkwy shall be remarked and signalized for split-phase operation and a dedicated right turn lane, as

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recommended in the traffic study prepared by URS dated 02/25/2014, prior to the issuance of a certification of occupancy for Lot 23 or Lot 24.

10. Truck horns shall not be allowed to be used on the site at any time, with exception of emergency situations.

The vote was as follows:

YES: Commissioners Blake, Peterson, Brown, Kirchdorfer, Jarboe, and Tomes

NO: Commissioner Proffitt

NOT PRESENT FOR THIS CASE: Commissioners Turner, White, and Hughes

ABSTAINING: No one.

14DEVPLAN1004

Deliberation:

Commissioner Jarboe said the waiver is fine and he does not see any problems. He said there has been enough mitigation from the applicant.

Commissioner Peterson expressed his support for the proposal. He recognized the berm and plantings proposed at the west property line. He recognized the noise abatement study.

Commissioner Tomes said he was satisfied with the testimony and various amendments made to the plan. He recognized the discussion about the wall, fence, and added landscaping. He said the waiver is justified.

Commissioner Brown said it is nice to know that there is a berm requirement between the higher intensity use next to the residential. He said he disagreed with extending Plantside Drive as close as they are to Rehl Road.

Commissioner Proffitt said this site does not present the issues that the previous plan did. He recognized the efforts to mitigate the sounds to the left. He said he thought there was some warranted consideration of flipping the building and putting parking on Rehl Road. He said he is not asking this to be done, just asking it to be considered.

Commissioner Blake said sometimes when two cases are heard together, some things are overlooked. He read item "e" from the standard of review and staff

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analysis for a DDDP as listed in the staff report. He asked Mr. Brown for some clarification about staff's review.

Mr. Brown explained that he wanted to make sure the scenic corridor and its screening were fully addressed in the public hearing. The applicant addressed the issue with their testimony and presentation.

Commissioner Proffitt said that is why he suggested that the building is flipped.

Commissioner Tones said the applicant did answer the specific question.

Commissioner Blake pointed out that the applicant did address the environmental issues as well.

Mr. Brown explained the landscape plan process.

Waiver – Chapter 5.12.2.A.1 of the Land Development Code to reduce the required outdoor amenity area to 10% of the 10,000 SF office space.

On a motion by Commissioner Tones, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the evidence, testimony, and justification in the staff report, that the waiver will not adversely affect adjacent property owners since the amenity area will only serve the privately owned subject site; and

WHEREAS, the Louisville Metro Planning Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020 since amenity areas will be provided on the site to accommodate the office use portions of the property; and

WHEREAS, the Louisville Metro Planning Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the site does not have sufficient spacing to provide outdoor amenity areas equaling ten percent of the entire structure and mix of uses; and

WHEREAS, the Louisville Metro Planning Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant by requiring additional amenity area beyond the amount requested that would necessitate use of an excessive amount of area on the lot; now, therefore be it

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Waiver from Chapter 5.12.2.A.1 of the Land Development Code to reduce the required outdoor amenity area to 10% of the 10,000 SF office space for Case 14DEVPLAN1004.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Peterson, Brown, Kirchdorfer, Jarboe, and Tones

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Turner, White, and Hughes

ABSTAINING: No one.

Detailed District Development Plan / Design of Outdoor Amenity Area

On a motion by Commissioner Tones, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the evidence, testimony, and justification in the staff report, that the tree canopy requirements of the Land Development Code will be provided on the subject site. The applicant will address the environmental constraints and scenic corridor issue with mitigation methods discussed in the public hearing testimony; and

WHEREAS, the Louisville Metro Planning Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan. A traffic impact study has been completed and incorporated into the development plan elements. Multi-modal transportation will be provided through the complete sidewalk network and bike lanes that connect to the Urton Court location from Plantside Drive. Full pedestrian connections will be provided along both Plantside Drive and Urton Court; and

WHEREAS, the Louisville Metro Planning Commission further finds that there are no open space requirements with the current proposal; and

WHEREAS, the Louisville Metro Planning Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and

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will 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; and

WHEREAS, the Louisville Metro Planning Commission further finds that the overall land uses are compatible with the existing and future development of the area. Buildings and parking lots will meet all required setbacks. The applicant will use landscaping to screen the location of the loading dock area along the Rehl Road scenic corridor; and

WHEREAS, the Louisville Metro Planning Commission further finds that the development plan conforms to requirements of the Land Development Code with the exception of the requested land development code waiver to reduce the amount of outdoor amenity area. The requested waiver meets the standard of review. The applicant has demonstrated compliance with Guideline 5, Natural Areas, Plan Element 1 and Guideline 3, Compatibility, Plan Element 24 to screen and buffer the circulation areas adjacent to the street especially the scenic corridor along Rehl Road with their testimony in the public hearing; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan and the Design of Outdoor Amenity Area for Case 14DEVPLAN1004 **SUBJECT** to the following Binding Elements.

14DEVPLAN1004 - Binding Elements

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. The development shall not exceed 315,000 square feet of gross floor area.
3. 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.

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4. There shall be no outdoor music (live, piped, radio or amplified) or outdoor PA system audible beyond the property line.
5. 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.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the March 6th, 2014 Planning Commission meeting.
7. There shall be no direct vehicular access to Rehl Road.
8. A right turn lane from north-bound Tucker Station Rd to east-bound Bluegrass/Tucker Station Rd shall be constructed prior to the issuance of a certification of occupancy for Lot 23 or Lot 24.
9. The intersection of Plantside Dr. and Blankenbaker Pkwy shall be remarked and signalized for split-phase operation and a dedicated right turn lane, as recommended in the traffic study prepared by URS dated 02/25/2014, prior to the issuance of a certification of occupancy for Lot 23 or Lot 24.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Peterson, Brown, Kirchdorfer, Jarboe, and Tomes

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Turner, White, and Hughes

ABSTAINING: No one.

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STANDING COMMITTEE REPORTS

Land Development and Transportation Committee

No report given.

Legal Review Committee

No report given.

Planning Committee

No report given.

Policy and Procedures Committee


No report given

Site Inspection Committee

No report given.

ADJOURNMENT

The meeting adjourned at approximately 10:10 p.m.


Chairman
Division Director

6. Section 4.5.6 of the Land Development Code, Written so that Restrictions Apply to Entire Subject Site

4.5.6 Compatibility with Adjacent Residential Development

Reduced size lots authorized by this section shall be designed and located so that impacts on adjacent previously approved residential development are minimized. To achieve this purpose, proposed subdivisions with reduced size lots shall meet each of the following design standards applicable to a given site.

- A. Proposed subdivisions with reduced size lots that are directly across a public right-of-way or private access easement from a recorded subdivision or single family residential structures having an average front or street side yard with a variation in depth of not more than 10 feet shall meet the following standard: Building limit lines shall be recorded for those parcels across the street/access easement from existing development that equal the average dimensions of established front and street side yards of the existing development.
- B. Perimeter parcels of the proposed development that are adjacent to property zoned for residential use shall comply with one of the following:
 - 1. The perimeter parcels shall be developed with detached single family homes meeting the minimum lot size and dimensional requirements of the underlying zoning/form district; or
 - 2. The applicant submits a written consent on an approved form supplied by Planning and Design Services signed by each adjacent property owner agreeing to an alternative standard, said form shall be signed after the neighborhood meeting required by Section 7.2.10 is held; or
 - 3. The adjacent property is developed with an intensity greater than or equal to the perimeter parcels; or
 - 4. A buffer area shall be provided on the perimeter parcel consisting of one of the following:
 - a. A 75 foot wide open space lot; or
 - b. A 40 foot wide open space lot planted with 2 staggered rows of trees, a mixture of 2/3 canopy trees and 1/3 evergreen trees, with trees in each row placed no more than 20 feet apart, or other planting plan using the same quantity and type of trees and approved by DPDS staff; or
 - c. A 50 foot wide area containing an existing woodland or tree stand, designated as a Woodland Protection Area.In conjunction with b. and c. above, a minimum 20 foot building limit setback shall be provided on the adjacent buildable residential lots.