

Board of Zoning Adjustment Staff Report

May 16, 2016



Case No:	15CUP1045
Project Name:	None
Location:	1521 Penile Road
Owners:	Robert Carter
Applicant:	Robert Carter
Representative(s):	Mark Madison
Project Area/Size:	13 acres
Existing Zoning District:	R-4, Residential
Existing Form District:	N, Neighborhood
Jurisdiction:	Louisville Metro
Council District:	13 – Vicki Welch
Case Manager:	Jon E. Crumby, Planning & Design Coordinator

REQUESTS

- Conditional Use Permit to allow an earth excavation/fill, minor operation in an R-4 zoning district
- Approve the alternative landscape plan

CASE SUMMARY/BACKGROUND

The applicant is proposing to construct an earthen berm along the rear of the site parallel with the Gene Snyder Freeway. The purpose of this berm is to create a visual barrier blocking the freeway as well as attempting to diminish sound. Currently there is no proposed development for this site.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	Residential	R-4	N
Proposed	Earth Excavation/fill, minor	R-4	N
<i>Surrounding Properties</i>			
North	Gene Snyder Freeway		
South	Residential	R-4	N
East	Residential	R-4	N
West	Residential	R-4	N

SITE CONTEXT

The site is irregular in shape and located on the north side of Penile Road and abutting the Gene Snyder Freeway. The site is surrounded by large tracts of land to the south and west. A mobile home park is located to the east.

PREVIOUS AND ASSOCIATED CASES ON SITE

There are no previous cases on the site.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMITS

1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposal is consistent with the applicable policies of the Comprehensive Plan. No lighting or signage will be added. The applicant is proposing landscaping along a portion of the east property line. Right-of-way dedication and sight line clearing required.

2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: The subject site is located in an area that has a number of large tracts of land. This proposal will be compatible with these uses with respect to drainage, odor and appearance.

3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: The proposal has been reviewed by Public Works and MSD and both have approved the plan. The Fairdale Fire Protection District did not comment on the proposal.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

4.2.23 Earth Excavations/Fill, Minor not constituting a quarry, borrow pit or commercial operation and/or filling of land with non-combustible inorganic materials are allowed in any district upon the granting of a Conditional Use Permit and compliance with the listed requirements. The applicant did not ask for relief from any of the listed requirements.

A. A plan for minor excavations and/or filling must receive approval from the Metropolitan Sewer District, and the director of the Planning Commission with review and comment by the Soil Conservation Service. **Staff did not receive any comments from the Soil Conservation Service.**

B. No excavation shall be below the normal water table, nor shall such operation have an adverse effect on the supply, quality, or purity of ground water or wells.

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

D. Excavation and fill materials shall be moved off and on the site in vehicles approved by the City of Louisville and Jefferson County.

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

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

G. No building or structure shall be erected in connection with the operation.

H. Fill material shall be limited to nonpolluting, inorganic, non-combustible materials and soil. Rubber tires, dead animals, and by-product wastes of a gaseous liquid, or semi- liquid nature such as tar, paints, solvents, sludge, rubber, and plastics and other flame or fume producers shall not be permitted as fill material.

I. Any of the requirements of Section 4.2.22 of this section which the Board finds to be appropriate or necessary may be applied to the operation.

J. Time limits and stabilization measures on completion shall be specified.

4.2.22 Earth Excavation, Filling, and Refuse Disposal Operations, Major Excavation, Filling, and Refuse Disposal Operations, Major may be allowed in R-R, R-1, M-2 and M-3 Districts upon the granting of a Conditional Use Permit and compliance with the listed requirements.

A. Defined - Any operation which involves a change in the existing ground surface, except (1) grading and shaping of land around a building or structure and except (2) minor earth excavations not constituting a quarry, borrow pit, or commercial operation and/or filling of land with non-combustible, inorganic materials (See Section 04-02-21) shall be subject to the following regulations. Such uses include but are not limited to the following: 1. Extraction and development of earth products, mineral and other natural resources, including sand, gravel pits, quarries, and borrow pits. 2. Landfills for non-combustible materials. 3. Incinerators, public/private. 4. Any other landfills (except for hazardous material). 5. Commercial composting.

B. Other Standards - The proposed operation shall meet all requirements of the adopted Environmental Performance Standards.

C. Neighborhood Protection - The operation shall be conducted in such a manner as to offer protection to the neighborhood against possible detrimental effects, taking into consideration the physical relationship to surrounding properties and access to the site including any nearby local (residential) streets

D. Information to be Filed: 1. Drawings - A plan drawn at a scale of not less than 100 feet to the inch showing the following: a. Boundaries - The exact boundaries of the site and access to public ways. b. Use of Land - Present and proposed use of land, the arrangement, fully dimensioned, of all existing and proposed buildings, structures, roads, drives, parking areas, loading spaces, water, sewer, power, and other utility lines, sanitary

facilities, surface drainage, landscaping, fencing, and all other features and facilities to be installed or used in connection with the proposed operation. c. Contours - Show by contours of not less than 2 foot intervals (except on extremely steep slopes): i. The present surface of the site and the surrounding properties within 50 feet from its boundaries by the use of dashed contours. ii. The ultimate depth elevations of the area to be excavated or filled by the use of dot and dash contours. iii. The ultimate finished surface of the site after all excavation and filling operations are completed by the use of solid line contours. iv. If the ultimate finished surface elevation is exactly the same as the ultimate depth elevation, solid line contours alone may be used, but must be so labeled in the plan legend. d. Excavation Methods Cross sections at critical points to illustrate the methods to be employed in the process of excavation and fill. e. Sequence of Operations - Locations where excavation and filling operations will commence and the procedural sequence of operations. f. Surface Drainage - Methods to be employed for the management of quantity and quality of surface drainage during and after completion of operations. g. Volumes - The volumes of materials to be excavated and filled for each location on the site where operations are to take place. h. Off-Site Improvements - Improvements such as new roads and pavement to be installed off the site to enable the operation to be carried out. i. Adjoining Property Owners The plan shall show the names and addresses of the owners of the site and all adjoining properties, the name and address of the engineer who prepared the plan, scale, north point, the geographical relationship of the site to existing public ways and major or minor arterials as designated in the Comprehensive Plan for all of Jefferson County, Kentucky.

E. General Standards:

1. No excavation nor filling shall be made within 50 feet of any boundary of the site.
2. Side slopes of excavation and fills in earth, sand or gravel shall not exceed one foot vertical to two feet horizontal and shall be blended into undisturbed existing surfaces.
3. A continuous fence a minimum of 6 feet high shall be placed along the boundaries of excavated areas and provided with gates of the same construction as the fence which shall remain locked at all times when active operations are not taking place and shall be properly maintained until all operations are completed.
4. Additional landscaping is required in the buffer areas between excavation and fill areas and buildings and structures.
5. Provisions shall be made for the disposal of surface water falling on or crossing the site at all times during and after completion of the operations. The operations shall not obstruct the normal flow of any public drain, or abrogate the riparian rights of any other party to a stream or drain. No operation shall begin until construction approval has been approved from the agency responsible for surface water drainage.
6. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply, quality, or purity of ground water or wells. In no case shall an excavation be carried to a depth below an elevation of 410 feet above mean sea level.
7. A layer of clean earth at least two feet thick shall be deposited and thoroughly compacted over all fill to bring the surface to the finished surface grade as shown on the topographic plan filed with the application.
8. The finished surface of the site shall bear the proper relationship to that of adjoining properties.
9. The installation of roads, parking areas, buildings, structures, and operational facilities and equipment shall be located on the site so that adjoining properties will not be adversely affected.
10. Excavation and fill materials shall be moved off and onto the site in vehicles approved by the appropriate Director of Works.
11. All filling operations and final approval shall be in strict conformity with the regulations of the Louisville and Jefferson County Board of Health; Air Pollution Control District; Kentucky Department for Environmental Protection and the appropriate Director of Works. Letters or Certificates of Approval of the plans by the above agencies indicating prior review shall be filed prior to the issuance of any Conditional Use Permit. Uses shall not begin until final approval has been obtained and filed in the Board of Zoning Adjustment docket file.
12. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or other method that meets current state standards. No fires shall be permitted. Any smoldering flame or spontaneous combustion shall be immediately extinguished.

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

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

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

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

F. Standards for Specific Operations:

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

a. Land-fills for non-combustible material:

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

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

b. Incinerators, public and private:

i. No incinerator building or structure shall be located closer than 200 feet from any site boundary line, and no other building or structure used in connection with the operation shall be located closer than 30 feet from any site boundary line.

ii. The entire site shall be enclosed with fencing and gates as required by this Section.

iii. All materials delivered to the site which are organic or of organic origin or other combustible materials such as paper, cardboard, rubber, plastic, wood fiber, sawdust, floor sweepings, plaster board, framing, lumber, laths, tree stumps, trunks, branches, foliage, furniture, rags, garbage, and industrial wastes and including metal and glass containers shall be burned in the incinerator.

iv. All residue resulting from the burning operations and other fill materials which are inorganic or substances which are not subject to decomposition, combustion, or the production of odors shall be disposed of properly.

v. All materials which are to be burned shall be placed on or in a concrete slab or hopper enclosed by a building, masonry walls, or chain link type fencing at least 6 feet high provided with doors or gates which shall be securely locked when the incinerator is not in operation. The materials shall be transferred from the slab or hopper into the incinerator and shall be burned as soon as practicable. The slab or hopper shall be kept clear of all materials when not in active use.

vi. There shall be no separation or picking of materials or storage for salvage thereof on the site (scavenging).

vii. All deliveries of materials to the site, shall be done between the hours of 7:00 A.M. and 6:00 P.M. on weekdays only, except otherwise necessitated by extraordinary circumstances.

viii. A watchman shall be stationed at the site at all times for whom a suitable shelter or living quarters shall be provided.

ix. Sanitary toilet facilities shall be provided on the site in accordance with the requirements of the Department of Health.

c. Any other landfills (except hazardous materials):

i. No building or structure, except fencing, used in connection with the operation shall be located closer than 30 feet to any site boundary line.

ii. All plans shall show all pipelines used for gas collection, migration, etc. as well as the location of vents, flares, etc.

iii. The entire site shall be enclosed with fencing and gates as required by this Section.

iv. All materials delivered to the site which are organic in origin and all paper, cardboard, plastic, metal and glass containers, wood fiber, sawdust, floor sweepings, plaster board, framing lumber, laths, tree stumps, trunks, branches, foliage, furniture, rags, garbage, and industrial wastes shall be deposited and thoroughly compacted in layers not to exceed two feet in depth. Rubber tires, dead animals, and by-product wastes of a gaseous, liquid, or semi-liquid nature such as tar, paints, solvents, sludge, rubber, and plastics and other flame or fume producers may be permitted as fill material after the Kentucky Natural Resources and Environmental Protection Cabinet issues permission, unless specifically prohibited by the Board of Zoning Adjustment. Each day's deposit, after compaction, shall be covered with a layer of earth at least 6 inches in thickness after compaction. The face of the fill as well as the horizontal surface shall be covered with a layer of earth to

prevent any movement of fill by wind or water erosion. Alternative methods may be allowed if approved by the Kentucky Natural Resources and Environmental Protection Cabinet and the Board.

v. There shall be no separation or picking of materials or storage for the salvage thereof (scavenging) on the site. All unacceptable fill materials as noted above shall be removed from the premises immediately after delivery.

vi. Water lines shall be installed, connected to a public water supply, or to some other source, which by use of pumps will provide water in sufficient quantity to combat fires or settle dust. vii. Sanitary toilet facilities shall be installed in accordance with the requirements of the Department of Health.

viii. No fires shall be permitted. Any smoldering flame or spontaneous combustion in the fill shall be immediately extinguished.

ix. A watchman shall be stationed at the site at all times for whom a suitable shelter or living quarters and sanitary facilities shall be provided on the site.

x. The premises shall be kept neat and clean at all times, no loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or some other method that meets current state standards.

xi. All deliveries of materials to the site, filling, spreading, compacting, and grading shall be done between the hours of 7:00 A.M. and 6:00 P.M. on weekdays only.

xii. Filling operations shall begin immediately upon the issuance of a permit. All areas shall be refilled to finish grades as shown on the topographic map filed with the application within a period of five years after commencement of operations. The Board may extend such time limit after a public hearing, but in any event all excavations on the site shall be refilled to finish grade within 10 years after commencement of operations.

xiii. No filling activities shall occur within 200 feet of a residential structure existing at the time of issuance of the Conditional Use Permit.

d. Borrow pits and Earth Excavations:

i. No building or structure, except fencing, used in connection with the operation shall be located closer than 30 feet from any site boundary line.

ii. Areas where excavations have been made and are taking place shall be enclosed with fencing as required above.

iii. Sanitary toilet facilities shall be installed in accordance with the requirements of the Department of Health.

iv. A watchman shall be stationed at the site at all times when active operations are taking place for whom a suitable shelter or living quarters and sanitary facilities shall be provided on the site.

v. No excavation, screening, stockpiling, filling or hauling shall be done except between the hours of 7:00 A.M. and 6:00 P.M. on weekdays.

vi. Re-filling operations as required shall begin immediately on areas when excavations have been made to the ultimate depth and such areas shall be refilled to finish grade as shown on the topographic map filed with the application within a period of five years after commencement of excavation operations. The Board may extend such time limit after a hearing, but in any event all excavations on the site shall be refilled to finish grade within 10 years after commencement of operations.

G Guarantee: To insure the strict compliance with all of the above conditions and requirements, the applicant shall deposit with the Board a bond through an instrument satisfactory to the Board. The amount of the instrument shall be 150% of the estimate for remediation obtained from a qualified engineer licensed in the Commonwealth of Kentucky.

TECHNICAL REVIEW

Transportation Planning will require right-of-way dedication and sight line clearing prior to final plan transmittal.

STAFF CONCLUSIONS

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the Land Development Code for approving a Conditional Use Permit.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the Conditional Use Permit

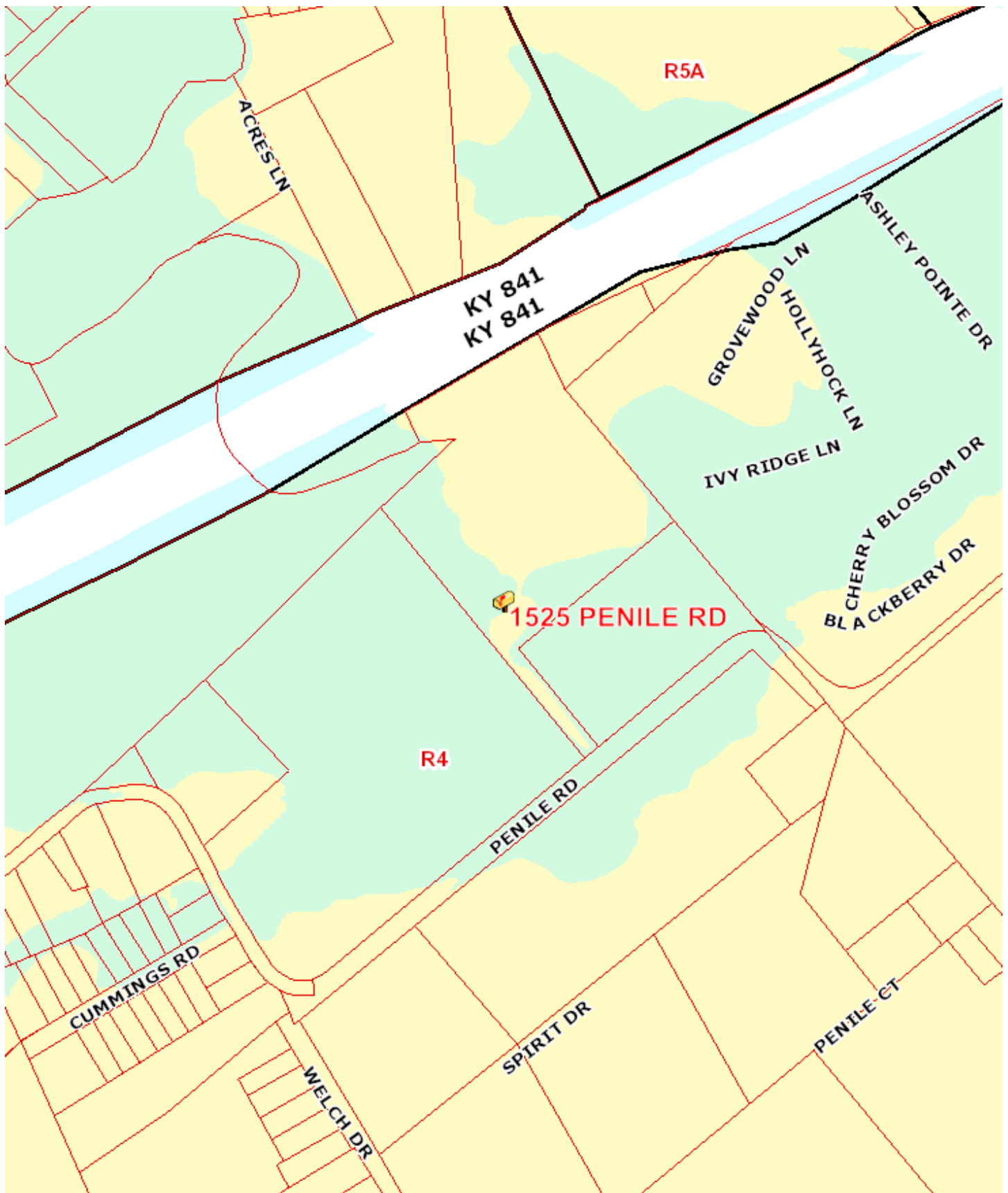
NOTIFICATION

Date	Purpose of Notice	Recipients
4/29/16	Notices	Adjoining Properties
4/29/16	Post the Sign	Site

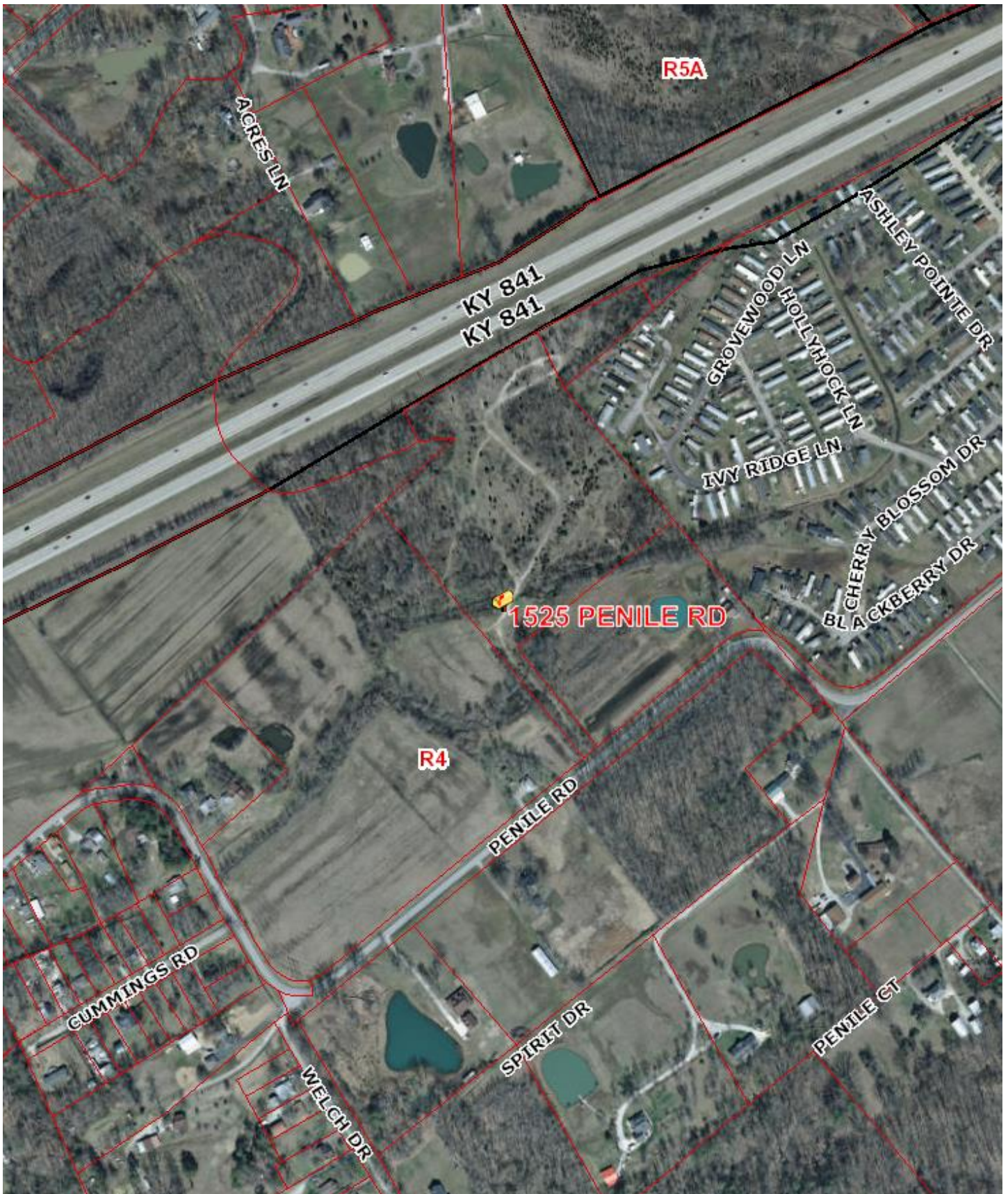
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Justification Statement
4. Neighborhood Meeting
5. Site Plan
6. Conditions of Approval

1. Zoning Map



2. Aerial Photograph



3. Justification Statement



Conditional Use Permit Request Letter of Explanation

RE: 1525 Penile Road

The owner/applicant is proposing to construct an earthen berm along the rear of his property and parallel more or less with the Gene Snyder Freeway. The purpose of this earthen berm is to create a visual barrier blocking the freeway as well as attempting to diminish sound.

He has already constructed a smaller berm and planted a number of evergreens along the freeway.

The proposed berm will be "U" shaped more or less. He is also planning to plant additional trees along the side that adjoins a trailer park as shown on the attached Development Plan. Both of these actions are to aid in blocking visual and noise concerns.

The purpose for this request for a Conditional Use Permit is not to construct the berm. It is however, because of the amount of dirt being brought to the site which constitutes a minor earth fill per the LDC.

The owner/applicant has not made a final decision as to the future use of the property, and has it for sale.

Obviously and land use will have to be in compliance with the zoning district and the LDC. He feels that given the current opportunities for available dirt this will enhance the property.

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Neighborhood Meeting Notification Letter

February 10, 2016

To the Adjoining Property Owners, Neighborhood Group Representatives expressing interest in this area and the Metro Councilperson for the 13th District.

Mr. Robert Carter, Jr. owns the property located at **1525 Penile Road**. He plans to submit a development proposal to request a Conditional Use Permit for a "Minor Earth Fill".

The request is a minor earth fill, however, in layman's terms; Mr. Carter wants to construct an earthen berm on his property to reduce the noise from the Gene Snyder Freeway to his property.

In accordance with the procedures of Louisville Metro Planning and Design Services, we have been directed to invite you to discuss this proposal before an application can be filed. This will be an informal meeting to give you the opportunity to review the proposed plan and discuss the proposal with the developer and or his representative. This meeting will be held in addition to the established public meeting procedures of the Planning Commission and or the Board of Zoning Adjustments.

The meeting to discuss this proposal will be held on **February 17, 2016 at 6:00 pm.**

The meeting will be held at ***Blessed Teresa Catholic Church, 903 Fairdale Road***, Fairdale Kentucky 40118. This is next to Fairdale High School.

At this meeting, the developer and or representative will explain the proposal and then discuss any concerns you have. We encourage you to attend this meeting and to share your thoughts.

15 CUP 1045



**RE: 1525 Penile Road Conditional Use Permit
Case # 15CUP1045**

***Summary of comments made by guests at the neighborhood meeting held
February 17, 2016.***

Mark Madison (representative for the applicants) presented the plan and briefly explained what the applicant is proposing and then took questions and comments.

The following questions and comments were made by the guests:

- Is there a cemetery on the property and how are we dealing with it?
- What type of material is the berm going to be built with?
- This sounds like a business operation?
- The road is filthy? What are you going to do about it?
- How do we know you won't put a trailer park here?
- It looks like you are hauling out dirt?
- What are you going to do about the trash and debris?

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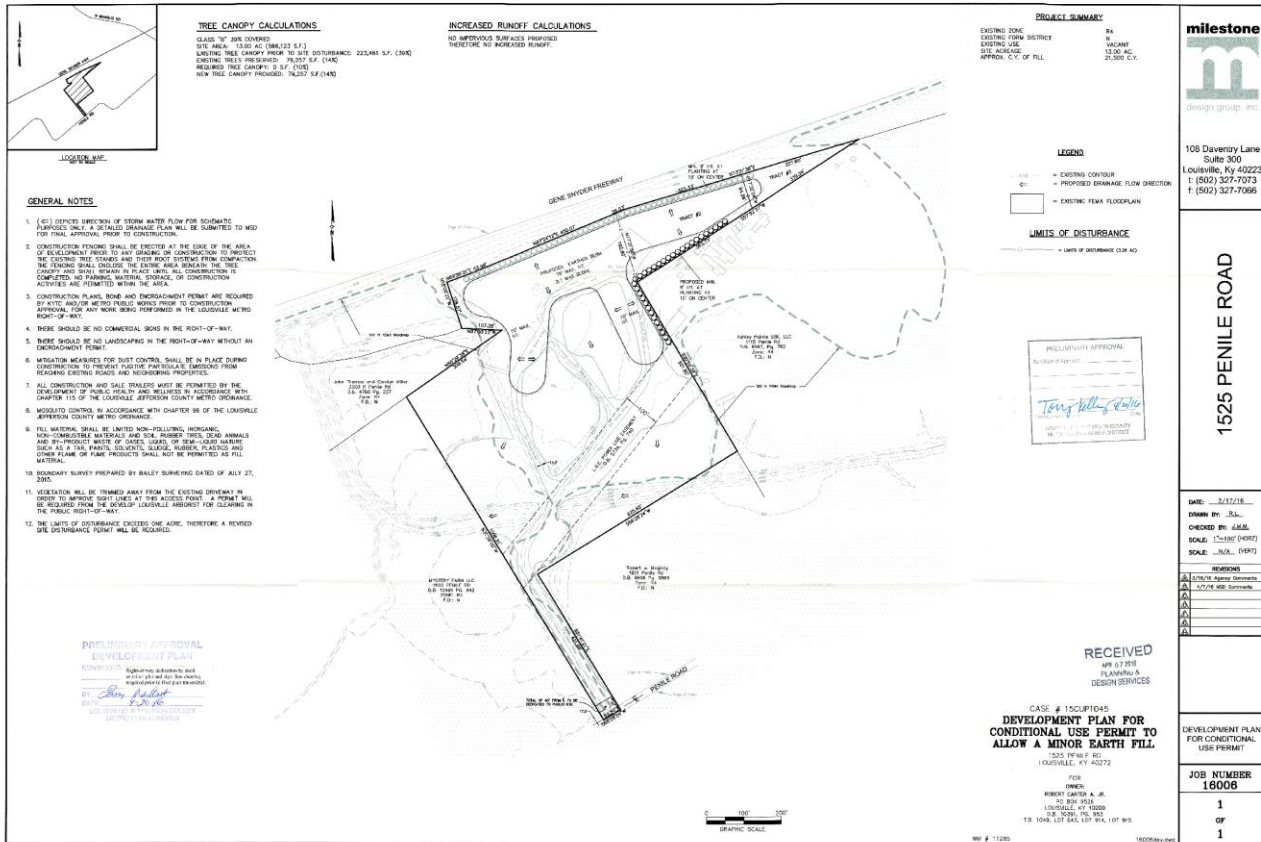
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Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for an earth excavation/minor fill operation without further review and approval by the Board.
3. Neighborhood Protection - The operation shall be conducted in such a manner as to offer protection to the neighborhood against possible detrimental effects, taking into consideration the physical relationship to surrounding properties and access to the site including any nearby local (residential) streets.
4. All deliveries of materials to the site shall be done between the hours of 7:00 A.M. and 6:00 P.M. on weekdays only.