

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION  
August 12, 2019**

A meeting of the Louisville Metro Planning Commission was held on August 12, 2019 at 6:30 p.m. at KCD Theater, 4100 Springdale Road, Louisville, Kentucky.

**Commission members present:**

Marilyn Lewis, Vice Chair  
Rich Carlson  
Jeff Brown  
Lula Howard  
David Tomes  
Ruth Daniels  
Emma Smith

**Commission members absent:**

Vince Jarboe, Chair  
Robert Peterson

**Staff Members present:**

Emily Liu, Director, Planning and Design Director  
Joe Reverman, Planning and Design Assistant Director  
Brian Davis, Planning and Design Manager  
Joel Dock, Planner II  
Travis Feichter, Legal Counsel  
Olivia Troehler

**Others Present:**

Joey Ashby, Metropolitan Sewer District  
Kay Ball, Louisville Water Company

The following matters were considered:

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**PUBLIC HEARING**

**CASE NO. 19SUBDIV1001**

Request:	Major preliminary subdivision plan
Project Name:	The Breakers at Prospect
Location:	7800 Sutherland Farm Road
Owner:	Marjorie M. McCall
Applicant:	The Breakers at Prospect, LLC
Representative:	Sabak, Wilson & Lingo, Inc.
Jurisdiction:	City of Prospect
Council District:	16 – Scott Reed
<b>Case Manager:</b>	<b>Joel P. Dock, AICP, Planner II</b>

Notice of this public hearing was 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.)

**Agency Testimony:**

00:22:48 Mr. Dock discussed the case summary and staff report.

Commissioner Carlson asked when the applicant is required to prepare a stormwater management plan, would those plans be available for public review. Mr. Ashby, MSD, stated yes, it would be available through an open records request through MSD.

Commissioner Brown asked what level of detention is required for this development. Mr. Ashby stated, the applicant is retaining nearly three times the required amount for that area.

**The following spoke in favor of this request:**

Cliff Ashburner, Dinsmore and Shohl, 101 South 5<sup>th</sup> Street, Suite 2500, Louisville, Ky. 40202

Patrick Dominik, Sabak, Wilson and Lingo, 608 South 3<sup>rd</sup> Street, Louisville, Ky. 40202

Colleen E. Walker, 11741 Paramount Way, Prospect, Ky. 40059

Dan McMillan, 1600 Riverside Drive, Prospect, Ky. 40059

Ken McMillan, 1118 Riverside Drive, Prospect, Ky. 40059

Sam Griffin, 12804 Crestview Cove, Prospect, Ky. 40059

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

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**1<sup>st</sup> TAPE**

00:31:42 Mr. Ashburner spoke on behalf of the applicant. This case is different from a zoning change case, it's a subdivision request. Subdivision request require the Planning Commission and others to speak about technical requirements and if those requirements are met, the Planning Commission is required to approve it.

Mr. Ashburner provided an overview of the proposed subdivision. The property is zoned R-4, which permits 4.84 units per acre and this development is proposing a density less than half that. According to the environmental study, over 90% of the jurisdictional wetlands on the site are being preserved.

00:43:12 Mr. Dominik stated that the stormwater runoff is the primary concern with the design and layout of this subdivision. Mr. Dominik explained the different alternatives which were explored during the design process and the conditions and challenges associated with each. Ultimately, the layout with the retention lake on site reduced the number of lots by 10, but allowed the developer to provide 8.90 acre/feet of retention, which is 270% of the amount required by MSD. The runoff can be reduced so that the downstream capacities do not need to be improved and eliminates effects on the James Taylor subdivision.

00:54:39 Mr. Ashburner provided photos of typical houses being proposed for the subdivision. He also included a proposed condition of approval that states, "There shall be no signage (other than required street signage) for The Breakers at Prospect at the Innisbrook/Sutherland Farm Road entrance at US Highway 42 or along any portion of Sutherland Farm Rd., except within the limits of the approved subdivision. Signage on Sutherland Farm Rd. shall be restricted to two stone pillars (one on each side of the drive) and shall not exceed 10 feet in height." Commissioner Brown asked about the existing access easement. Mr. Ashburner said it will be abandoned. Commissioner Tomes asked for clarification about the location of the easement that is being created to connect the existing stormwater system. Commissioner Carlson asked the applicant to again show the location of the route the stormwater will take to the river.

**2<sup>nd</sup> TAPE**

00:06:37 Ms. Walker stated the development is in keeping with the character of other single family developments in the area. It should be celebrated.

00:09:29 Mr. Dan McMillan stated the applicant has gone above and beyond to provide a quality development.

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00:10:56 Mr. Ken McMillan stated he believes the homes proposed for the development are great and match the surrounding subdivisions.

00:12:10 Mr. Griffin stated he believes the applicant has done a nice job of communicating with the public throughout the process and believes this will be a great addition to Prospect.

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

Jamie Cox, 2303 River Road, Suite 301, Louisville, Ky. 40206  
Scott Reed, 4618 Deerwood Circle, Louisville, Ky. 40241  
Mike Evans, 6625 Colonial Avenue, Evansville, In. 47725  
Ann B. Haggerty, 7000 Penfield Place, Prospect, Ky. 40059

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

00:13:13 Ms. Cox, represents the Innisbrook Homeowners Association, and while they would prefer the property not develop, they have met with the applicant several times and appreciate the design measures being taken to address stormwater runoff, traffic, etc. They also hired an engineer to review the proposed stormwater runoff plan and the findings of that engineer was in keeping with the report provided by the applicant.

00:15:44 Mr. Reed, Metro Council representative for District 16, would like reassurance that the stormwater runoff plan will not affect the subdivisions downstream from the development.

00:17:28 Mr. Evans was hired by Innisbrook Homeowners Association to review the stormwater plan. The plan is beyond what any other developer would do.

00:18:21 Ms. Haggerty lives in Sutherland and her biggest concern is the excess traffic that will be generated.

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

Randy Strobo, 239 South 5<sup>th</sup> Street, Suite 917, Louisville, Ky. 40202  
Scott Simonton, 1091 Haines Branch Road, Charleston, WV, 25320  
Scott Straight, 6824 Windham Parkway, Prospect, Ky. 40059  
Meme Sweets-Runyan, 1201 Story Avenue, Louisville, Ky. 40204  
Patricia Huggins, 6501 Shirley Avenue, Prospect, Ky. 40059  
Stephen Stowers, 7001 Windham Parkway, Prospect, Ky. 40059  
Kurt Reibling, 7216 Edmonson Place, Prospect, Ky. 40059

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Wendell Morgan, 6510 Shirley Avenue, Prospect, Ky. 40059  
Mike Lindsay, 6928 Windham Parkway, Prospect, Ky. 40059  
Clay Long, 7420 Wycliffe Drive, Prospect, Ky. 40059  
Matthew David, 6925 Windham Parkway, Prospect, Ky. 40059  
Lisa Hunter, 7600 Endecott Place, Prospect, Ky. 40059  
Mark Jackson, 7700 River Road, Prospect, Ky. 40059  
Heather Wathen, 6309 Walnut Ridge Trail, Prospect, Ky. 40059  
Steve Hayden, 7214 Edmonson Place, Independence, Ky. 40059  
Tim Haas, 7012 Beechland Beach Road, Prospect, Ky. 40059  
Nan Frankowski, 6908 Windham Parkway, Prospect, Ky. 40059  
Kelley Welch, 6409 Walnut Ridge, Prospect, Ky. 40059  
John Clark, 6823 Windham Parkway, Prospect, Ky. 40059

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

00:21:01 Mr. Strobo, legal counsel for Sutherland Community Association, Inc., stated it's critical that the public be allowed to review the proposed plans and that engineer will testify tonight. The information/plans provided to the Planning Commission doesn't give enough information to determine whether Sutherland and the Taylor communities will be impacted by this development. The Planning Commission does not have an obligation to approve a standard subdivision.

00:32:03 Mr. Simonton, engineer for the opposition, expressed concern about the lack of data provided by the applicant regarding stormwater drainage. He is unable to make an engineering decision based on the data and does not see how the applicant or MSD can say it's acceptable. The potential for harm is very great.

00:37:41 Mr. Straight, another engineer, believes there is not enough data to make reasonable conclusions about the proposed stormwater design. The increase in traffic will lead to a degradation of the quality of life within his subdivision (Sutherland).

00:42:20 Ms. Sweets-Runyan, River Fields, stated the site is nearly impossible to drain and the development can't resolve the issues for subdivisions located downstream. There is also a concern for the wetlands in Garvin Brown Preserve which could be impacted by runoff from portions of the site. Ms. Sweets-Runyan distributed a letter, to the commissioners, from the State Historic Preservation Officer.

#### **3<sup>rd</sup> Tape**

00:13:17 Ms. Huggins provided information about the creation of the James Taylor Subdivision and other subdivisions that were created for African Americans in the area.

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The stormwater drainage design needs to be completed and reviewed by all parties involved before the Planning Commission votes on the proposal.

00:19:28 Mr. Stowers provided photos of flooding in the area and expressed concern about the stormwater drainage plan for the proposed subdivision. The engineer should be required to show the existing capacity in Sutherland and show the proposed plan can accommodate the stormwater runoff for the proposed subdivision in addition to helping remedy the issues in Sutherland.

Mr. Stowers questioned the impact the additional traffic could have on emergency response times in the area and presented a petition for the file.

00:27:56 Mr. Reibling, an engineer, spoke about the ethics of engineers in society. More time, effort and review should be put into the stormwater drainage plan.

00:40:12 Mr. Morgan said “comply” does not mean “approve” and that further review is needed.

00:41:28 Mr. Lindsay stated that traffic is an issues within the neighborhood, on River Rd. and on US 42. Also, construction plans should be open to the public and available for review to ensure the best interest of all the subdivisions.

00:44:06 Mr. Long is a developer who has developed a number of complicated sites throughout the community. He asks the Planning Commission to reject the plan because it is incomplete from an engineering standpoint and will have significant hydrologic effects on surrounding subdivisions.

00:50:50 Mr. David discussed concerns about the wellhead protection area and the potential impact on the area’s drinking water.

00:54:46 Ms. Hunter spoke about the natural and historical resources both on and adjacent to the site. The power point presentation provided photos and plans from the Olmstead Brothers’ designs for the original Sutherland farm, part of which is the site of this development.

**4<sup>th</sup> Tape**

00:01:28 Mr. Jackson, president of the James Taylor/Jacobs School Neighborhood, stated that MSD needs to do more to protect the historic area from stormwater. Also, additional time is needed to review the engineering for the site and the potential effects on the downstream subdivisions.

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00:04:10 Ms. Wathen provided a power point citing concerns about the wetlands and wildlife in the area.

00:07:28 Mr. Hayden stated he has concerns about the stormwater plans and believes MSD should take more responsibility to correct existing problems in the area before allowing new development.

Mr. Hayden asked if a transportation impact study was conducted for the development.

00:10:33 Mr. Haas, president of Beechland Beach Homeowners Association, discussed the ditch where the stormwater is proposed to go after it leaves the site. The ditch is stopped up at this time.

00:12:03 Ms. Frankowski stated her yard floods frequently and traffic has increased over the years. The traffic will only become more congested with this proposed subdivision.

00:15:03 Ms. Welch is concerned about the wetland proposed to be removed, primarily because if it gets covered, the water will be forced to go elsewhere, potentially her property.

00:18:42 Mr. Clark stated he has had many conversations with MSD regarding drainage in the area. The drainage pipes can't handle the heavy rains in the Sutherland subdivision and water backs up into the streets. A drainage plan in 1992 failed and pushed water to the Taylor neighborhood. MSD is aware of it but doesn't have the money to fix it.

00:20:49 Commissioner Carlson asked Ms. Sweets-Runyan why River Fields would not allow them to work in the existing easement that crosses the preserve. Ms. Sweets-Runyan explained that allowing them to do so would be against the primary mission of their organization and could jeopardize their non-profit status.

**Rebuttal**

00:28:55 Mr. Ashburner asked some general questions to Joey Ashby about the review conducted by MSD. Mr. Ashby stated that MSD looks at the amount of area and amount of volume involved with a proposed development and determines if it can be accommodated on site. He also stated the purpose of a basin is to shave the peak flow rates during a storm.

Mr. Ashburner stated they are not required to produce complete engineering studies and plans for a preliminary subdivision plan approval. The preliminary plan approval



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gives the developer the go ahead to complete these costly studies and prepare for construction, and if the plans do not provide the protection they need then they are not approved and the subdivision doesn't get constructed. The applicant is dedicated to providing downstream improvements and continued maintenance to make sure the proposed stormwater system functions properly. Potential impacts to endangered species are part of future reviews and studies but are not regulated by the Land Development Code or Subdivision Regulations.

00:45:56 Mr. Dominik provide rebuttal to the testimony provided by the applicant regarding the proposed stormwater drainage plan. The easement across the River Fields property is a private easement and once it is improved for the subdivision, it would be required to be public, which is a potential problem for MSD. The second option was to abandon the private easement for a new public easement along the northern portion of the preserve, but that offer was rejected as well. The newest plan was put in place to address the wellhead protection concerns and offers a simple solution for drainage with the retention basin that is being designed.

00:59:34 Mr. Ashburner stated the evidence and record before the Planning Commission supports approval of the preliminary subdivision plan.

**5<sup>th</sup> Tape**

00:02:32 Commissioner Carlson asked the applicant if they would be willing to allow the Planning Commission to approve the record plat once construction plans are submitted and allow other engineers to evaluate the plan once it is submitted. Mr. Ashburner said the final decision of the construction plan should be made by MSD, not a third party.

00:06:44 Commissioner Brown asked the applicant if they were reducing peak flow because of the oversizing retention basin. Mr. Dominik said yes. Also, does the plan warrant a traffic impact study? Mr. Dominik said no it doesn't.

00:08:25 Mr. Tomes inquired about the direction of the flow of stormwater on the site. Mr. Dominik said the flow goes towards the proposed lake and will be directed away from the James Taylor Subdivision.

**Deliberation**

00:18:47 Planning Commission deliberation.

Commissioner Carlson stated this case is not a rezoning, but a subdivision case and there's not as much discretion allowed. Some of the arguments would warrant binding



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elements if it were a zoning case but this case is zoned appropriately and meets the subdivision regulations. Also, MSD is aware of the flooding issues and will be mindful before approving.

00:23:16 Commissioner Howard said the plan meets the subdivision regulations of the Land Development Code. This is a preliminary/concept stage and that's why all the construction plans were not available. Permits will have to be obtained before receiving construction approval.

00:25:14 Commissioner Brown agrees with Commissioner Howard. This is the very first step in the process. Commissioner Brown supports the plan and condition of approvals including the additional one proposed by the applicant.

00:26:07 Commissioner Tomes agrees. The drainage issue is not being caused by the proposed development.

00:28:09 Commissioner Smith stated the plan meets the subdivision regulations of the Land Development Code.

00:29:26 Commissioner Daniels stated the applicant's plan for drainage should improve the other subdivisions

00:30:18 Acting Chair Lewis agrees with the other commissioners.

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

**Major Preliminary Subdivision Plan**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution based on the staff report and testimony heard today was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Major Preliminary Subdivision Plan **SUBJECT** to the following Conditions of Approval:

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater

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number of lots than originally approved will occur without approval of the Planning Commission.

2. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
3. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
4. All street signs shall be installed by the Developer, and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
5. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public rights of way as shown on the preliminary subdivision plan. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
6. Open space shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
7. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
8. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.

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9. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
10. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
11. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
  - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
12. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
13. Any signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
14. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all

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construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

15. Limits of disturbance/building envelopes as shown on the preliminary plan shall be shown and recorded with the record subdivision plat.
16. There shall be no signage (other than required street signage) for the Breakers at Prospect at the Innisbrook/Sutherland Farm Road entrance at US Highway 42 or along any portion of Sutherland Farm Road except within the limits of the approved subdivision. Signage on Sutherland Farm Road shall be restricted to 2 stone pillars (1 on each side of the drive) and shall not exceed 10 feet in height.

**The vote was as follows:**

**YES: Commissioners Carlson, Brown, Howard, Tomes, Daniels, Smith and Lewis**  
**NOT PRESENT AND NOT VOTING: Commissioners Peterson and Jarboe**

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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Site Inspection Committee**

No report given.

**Planning Committee**

No report given.

**Development Review Committee**

No report given.

**Policy and Procedures Committee**

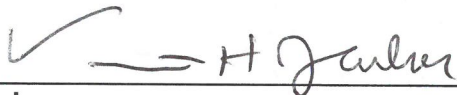
No report given.


**CHAIRPERSON/DIRECTOR'S REPORT**

No report given.

**ADJOURNMENT**

The meeting adjourned at approximately 10:58 p.m.

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Planning Director