

# Development Review Committee

## Staff Report

March 19, 2025



<b>Case No:</b>	24-DDP-0078, 24-FFO-0005
<b>Project Name:</b>	Aiken North Subdivision
<b>Location:</b>	16907 Aiken Rd; 16907 R Aiken Rd.
<b>Owner(s):</b>	Aiken 103 Partners, LLC
<b>Applicant:</b>	Bardenwerper, Talbott, & Roberts, PLLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	19 – Anthony Piagentini
<b>Case Manager:</b>	Kaitlin Dever, Planner I

### REQUEST(S)

- **Floyds Fork Waiver** from Land Development Code (LDC) Section 3.1.3.E to allow disturbance of slopes greater than 30%
- **Floyds Fork Special Zoning Overlay District Review**
- **Revised Detailed District Development Plan / Revised Major Preliminary Subdivision Plan** subject to existing binding elements

### CASE SUMMARY

The subject site is approximately 55.87 acres zoned PRD Planned Residential Development in the Neighborhood form district near the intersection of Aiken Road and Johnson Road and lies partially within the Floyds Fork Special Zoning Overlay District. The applicant is revising a portion of the original development plan approved under case 21-ZONE-0001 / 21-MSUB-0001 to reduce the number of lots, increase open space, and realign the internal road network. For this specific section, the previously approved plan contained 286 buildable lots and 5 non-buildable lots with approximately 237,595 square feet of total open space. The revised subdivision plan now proposes 215 buildable lots and 6 non-buildable lots with 559,850 square feet of total open space.

The subject site contains numerous environmental constraints, including the presence of two historic inactive cemeteries, intermittent streams, jurisdictional and non-jurisdictional wetlands, karst features, 20-30% slopes and slopes in excess of 30%, and encroachment in the FEMA 100-year floodplain. This revised subdivision is not located within the Floyds Fork conveyance zone or the required 200' streamside buffer area.

### STAFF FINDING

The requested Floyds Fork Waiver is adequately justified for approval based on staff's analysis contained in the standard of review.

The proposal meets the guidelines of the Comprehensive Plan and the requirements of the Land Development Code, with the exception of the requested Floyds Fork Waiver.

## **TECHNICAL REVIEW**

Transportation Planning and MSD have preliminarily approved the proposal.

### **Cemeteries**

The two historic inactive cemeteries on site will be located in non-buildable open space lots and will observe a 30' buffer with access provided via an ingress-egress easement where necessary. The applicant has submitted the Corn Island Archaeology report dated 3/18/2021 as well as site photos. The Historic Preservation Officer has approved the proposal in accordance with LDC Section 4.4.6.

### **Waterways and Wetlands**

All intermittent streams will observe the required 25' streamside buffer in accordance with LDC Section 4.8.3. No buildable lots contain an intermittent stream buffer area.

The applicant provided a waterways and wetlands determination map conducted by Resource Environmental Solutions, LLC dated 7/3/2024. Non-jurisdictional wetlands are proposed to be mitigated on Open Space Lot 221. LDC Section 4.8.5.C states that wetland buffer areas shall be at least 25 feet in width. The total width and design shall conform with USDA Natural Resources Conservation Service criteria, but shall not exceed 100 feet. LDC Section 4.8.6.A states that no land-disturbing activity, development, or subdivision of any type shall occur in a protected waterway or buffer area, except as expressly allowed in this part and other applicable county, state, or federal laws and regulations. The County shall not approve any land-disturbing activity, development, or subdivision until the Applicant obtains all other necessary county, state, and/or federal permits. All buffer areas shall remain in a vegetated, natural state and shall not be modified in any manner except as expressly allowed in this section. Plant material adequate for filtering surface drainage shall be maintained within all buffer areas. LDC Section 4.8.6.G states the prohibition on development lots in this subsection shall not preclude the designation of the buffer area as a tract of land within the preliminary and final plats related to such real property, provided there is a plat note on such preliminary and final plat that references that the buffer area is subject to the terms and conditions of this section and that the buffer area tracts are clearly identified as non-buildable tracts. Notes 19, 20, and 21 on the face of the proposed subdivision plan address the requirements of LDC Section 4.8.6.

An existing ephemeral stream is being relocated in a 20' sewer and drainage easement which drains into jurisdictional wetlands proposed to be mitigated on buildable Lots 5-7 and a small portion of Street A. LDC Section 4.8.5 states that no person shall engage in any activity that shall disturb, remove, fill, drain, dredge, clear, destroy, or alter any area, including vegetation, within a wetlands that falls in the jurisdiction of the federal government and its agencies, except as may be expressly allowed under applicable federal laws or regulations. Draining any wetland that falls in the jurisdiction of the federal government and its agencies is prohibited except in keeping with the provisions of paragraph 2, below. It further states that MSD shall not grant final approval to any land disturbing activity, development, or subdivision in a wetland that falls within the federal government's jurisdiction until the Applicant demonstrates that all necessary federal approvals and permits have been obtained. Jurisdictional wetlands are subject to the same buffer and use restrictions aforementioned in LDC Section 4.8.6.

### **Floodplain**

The proposed locations of buildable Lots 169, 170, and 171 are within the FEMA 100-year floodplain. LDC Section 4.8.6.B states that any land disturbing activity, development, or subdivision in the 100-year floodplain shall demonstrate compliance with the Jefferson County Floodplain Ordinance, as amended.

### **Karst Features**

LDC Section 4.9.3.A requires the applicant to conduct a karst survey of the property when land disturbing activity is located within the Karst Prone area of Jefferson County as indicated on the Karst Prone Area Map located within Appendix 4I and shall identify on plans all karst geologic features. Note 10 on the face of the plan states a karst survey was conducted by Travis Brown, P.E. on 2/10/2021 that visually confirmed sinkholes on the subject site as identified on Lot 150 and off-site which will require remediation with a geotechnical consultant on site.

### **Steep Slopes**

LDC Section 4.7.5 states that land disturbing activities on slopes greater than 20% is permitted on lots created by major subdivision after the effective date of this regulation only if the activity is in keeping with the Comprehensive Plan and the proposed activity complies with the following standards:

1. The Commission finds that the design and configuration of the development results in the minimum disturbance of slopes greater than 20% necessary to accommodate the proposed use of the site; and,
2. Compatible on-site utilities (electric, phone, cable) are placed in a common trench; and,
3. A geotechnical survey report shall be submitted for land disturbing activities on slopes greater than 20% and less than 30%. A geotechnical survey report shall be submitted for land disturbing activities on slopes greater than 30%. Such survey will ordinarily include information obtained by drilling, locating of bedrock and testing of soils for shear strength. The report shall be prepared by a licensed and Kentucky-registered professional engineer practicing in accordance with KRS 322 and whose area of expertise includes geotechnical engineering. The report shall include mitigation measures as needed to ensure stability and minimize environmental impact during site preparation and construction phases of the regulated activity, including erosion and sediment control measures to assure compliance with the Jefferson County Erosion and Sediment Control Ordinance. The report shall demonstrate that:
  - a. The slope's ground surface and subsurface are not unstable;
  - b. Development of the slope and associated mitigation measures will not increase the degree of risk of slope instability both on-site and on adjacent lands; and,
  - c. If a geotechnical report is required, the applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical report will be implemented.

The review of land disturbing activities on slopes greater than 30% for the subject site occurred at the August 5, 2021 Planning Commission hearing under case number 21-ZONE-0001 / 21-MSUB-0001. The Planning Director has waived the requirement for the submittal of geotechnical survey report based on the minimal extent of slope disturbance within this section of the revised subdivision supported by the Environmental Impact Statement issued by Kaitlin J. Illick of Resource Environmental Solutions, LLC on 1/22/2025.

### **Floyds Fork Special Zoning Overlay District**

A portion of this revised subdivision plan is subject to the Floyds Fork Special Zoning Overlay District regulations adopted June 3, 2024 per Ordinance 73, Series 2024. This plan proposes development that meets the threshold for Tier 2 Regulated Activities in LDC Table 3.1.1, which requires approval by the Planning Commission or its designee, including the following:

- Clearing of treed area greater than 5,000 square feet for development. For the purpose of this section, "treed area" is defined as "an area of at least 20,000 square feet with an average of more than 20 living, non-diseased and non-invasive trees exceeding a caliper of four inches [trunk diameter measured at 4 feet 6 inches (breast height) above the ground] per 20,000 square feet."

- Construction of roadways or parking lots serving more than 1 dwelling unit
- Utility construction, including water, sewer, or waste disposal, natural gas and electric
- Non-agricultural grading excavation, construction of retaining walls, or ground alteration

LDC Section 3.1.3.E states that areas with slopes 30 percent or greater shall not be disturbed. This proposal contains small pockets of slopes greater than 30 percent on buildable Lots 1, 33, 87, 102, 152, 170, 190, 193, 194, 199, 200, 214, and non-buildable Open Space Lot 220 within the limits of site disturbance and is the subject of the Floyds Fork Waiver. The Planning Director has waived the requirement for the submittal of geotechnical survey report based on the minimal extent of slope disturbance within this section of the revised subdivision supported by the Environmental Impact Statement issued by Kaitlin J. Ilnick of Resource Environmental Solutions, LLC on 1/22/2025.

LDC Section 11.11.3 states that Waiver applications which request to waive or modify the prohibition on disturbing slopes 30 percent or greater shall require an independent environmental assessment of the impact to the health of the Floyds Fork waterway. An independent environmental assessment shall be a summary review of the environmental impacts of a project to identify any recognized environmental concerns on the Floyds Fork waterway. The review must be conducted by a party licensed or qualified to perform such environmental assessments. Its purpose will be to provide relevant information to the Planning Commission or its designee on the potential environmental impact of projects that include requests for waivers to one or more of the design standards listed above. The complexity of the environmental assessment will depend on the scope of the proposed project and magnitude of the impact to the Floyds Fork waterway based on the requested waiver or modification to the design standard(s). The applicant has submitted an Environmental Impact Statement issued by Kaitlin J. Ilnick of Resource Environmental Solutions, LLC dated 1/22/2025.

LDC Section 11.11.7 states that the Commission may impose additional conditions or restrictions intended to mitigate the impact of the modification or waiver. These conditions or restrictions shall be considered as binding elements. A copy of the Floyds Fork Special Zoning Overlay District regulation is attached as an agenda item.

### **INTERESTED PARTY COMMENTS**

All interested party comments have been incorporated into the record and are attached as an agenda item.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR FLOYDS FORK WAIVER**

- a. The waiver or modification will not adversely affect adjacent property owners; and,

STAFF: The waiver or modification will not adversely affect adjacent property owners as none of the steep slopes within the limits of disturbance extend onto adjacent properties and are not of significant size to affect the drainage of the greater area. A portion of the small ridgeline of slopes greater than 30% on Lots 193, 199, and 200 are protected within a non-buildable open space lot part of the original development plan under case 21-ZONE-0001. These slopes abut an intermittent stream internal to the subject site and will not affect or be visible to adjacent property owners.

- b. The waiver or modification will not violate the Comprehensive Plan and any neighborhood or small areas plans approved by Metro Council that include the subject property; and,

STAFF: The subject site is not subject to any neighborhood or small area plans approved by Metro Council. Plan 2040 Community Goal 3 Policy 7 encourages natural features to be integrated within the prescribed pattern of development. Community Goal 3 Policy 8 calls to conserve, restore, and protect vital natural resource systems such as mature trees, steep slopes, streams, and wetlands. Open space should be integrated with other design decisions to shape the pattern of development. This policy further encourages the use of conservation subdivisions, conservation easements, transfer of development rights and other innovative methods to permanently protect open space. Community Form Goal 3 Policy 9 also encourages development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems. Livability Goal 1 Policy 1 similarly encourages the use of conservation subdivisions and other practices that conserve open space and natural features. The proposal does utilize the smaller lot sizes afforded by the PRD zoning district to allow a clustering of smaller residential lots with the preservation of environmental features. Community Goal 3 Policy 10 calls for development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exist in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation. Per the Environmental Impact Statement, the slopes within the limits of site disturbance do not contain jurisdictional streams, wetlands, threatened or endangered species, and found that grading of these areas will result in more stable site conditions than present. Furthermore, the Environmental Impact Statement does not anticipate any sediment runoff into jurisdictional streams or wetlands in the vicinity of these slopes. The nearby intermittent stream will maintain the 25' streamside buffer as required by the LDC and will not be affected by the disturbance of slopes greater than 30 percent. Therefore, the proposed slope disturbance will not contribute to any severe erosion problems in the area.

- c. The extent of the waiver or modification of the regulation is the minimum necessary to afford relief to the applicant; and,

STAFF: The extent of the waiver or modification of the regulation is the minimum necessary to afford relief to the applicant. Disturbing the scattered pockets of slopes greater than 30 percent is unavoidable in the design of the subdivision. The ridgeline of steep slopes at the rear of Lots 193, 199, and 200, were previously approved for development in the original subdivision under case 21-ZONE-0001 and are not proposed to change at this time.

- d. The waiver or modification of the design standard will not adversely impact the health of the waterways of the Floyds Fork Special Zoning Overlay District; and,

STAFF: The waiver or modification of the design standard will not adversely impact the health of the waterways of the Floyds Fork Special Zoning Overlay District as supported by the Environmental Impact Statement. With proper Best Management Practices (BMPs) and Erosion and Sediment Control (EPSC) measures utilized during grading and construction, the Environmental Impact Statement does not anticipate any sediment runoff into jurisdictional streams or wetlands in the vicinity of these slopes. It further states that the existing protected 25' streamside buffer on the main stream channel through the central portion of the parcel will continue to be protected and act as a buffer from any natural sediment or runoff from upland areas.

- e. The waiver or modification of the design standard will not adversely impact the visual quality of the waterways or designated Floyds Fork Special Zoning Overlay scenic corridor; and,

STAFF: The waiver or modification of the design standard will not adversely impact the visual quality of the waterways or designated Floyds Fork Special Zoning Overlay scenic corridor as the adjacent intermittent stream will observe the 25' streamside buffer required by the LDC. The proposal is located approximately 2,250 feet from the nearest scenic corridors at the intersection of Aiken Road and Johnson Road. The portions of the revised subdivision disturbing slopes greater than 30 percent are approximately 3,350 feet away and will not affect the quality of the aforementioned scenic corridors.

f. Either:

- (i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
- (ii) 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.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant as it would prevent the construction of housing on lots which have been evaluated by a qualified third party to have minimal impact on the environmental integrity of the area. A portion of these slopes near the intermittent stream will be protected in Open Space Lot 220 and another non-buildable open space lot as approved in the original subdivision under case 21-ZONE-0001.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED DETAILED DISTRICT DEVELOPMENT PLAN**

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

STAFF: Numerous environmental constraints are present on the subject site, including two historic inactive cemeteries, intermittent streams, jurisdictional and non-jurisdictional wetlands, karst features, slopes between 20-30% and greater than 30%, and encroachment in the FEMA 100-year floodplain. However, it is not located within the Floyds Fork conveyance zone or the required 200' streamside buffer. All environmental constraints are being protected and conserved to the extent required by the LDC, with the exception of the requested Floyds Fork Waiver. The proposal demonstrates compliance with the more stringent 50% tree canopy requirement of the Floyds Fork Special Zoning Overlay District.

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided. Alternative street design variations including eyebrows and loop lanes are proposed for Street A and Street C to provide visual interest and break up the block face. Metro Public Works has approved the preliminary development plan.

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

STAFF: The PRD zoning district requires developments with gross densities less than 4.84 dwelling units per acre to provide common open space according to the land area equal to 50% of the difference in each lot area and 9,000 square feet per LDC Section 2.7.3.G.5.a. Furthermore, this open space requirement must meet the standards for outdoor recreation, natural resource protection, or public health and safety open space in LDC Section 5.11.4. This proposal exceeds the required 287,845 square feet of open space, instead providing a total of 410,706 square feet of open space designated as natural resource or recreational use. Furthermore, the revised subdivision is providing an additional 149,144 square feet of general open space which meets the requirements of the LDC.

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

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

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

STAFF: The overall site design and land uses are compatible with the existing and future development of the area as the subject property is compliant with all requirements of the Floyds Fork Special Zoning Overlay District with the exception of the requested Floyds Fork Waiver. Any proposed buildings and parking lots will meet all required setbacks.

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

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code with the exception of the requested Floyds Fork Waiver. Plan 2040 Community Form Goal 1 Policy 3.1.3 characterizes the Neighborhood form district as predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. Neighborhood streets may be either curvilinear, rectilinear, or in a grid pattern and should be designed to support physical activity for all users and invite human interaction. Streets are connected and easily accessible to each other. Mobility Goal 1 Policy 1 promotes healthy lifestyles and reduces congestion in calling for sidewalks along the streets of all developments as well as walkways between residential areas and nearby neighborhoods. Mobility Goal 2 Policy 3 calls for the provision of adequate street stubs for future roadway connections in new development and redevelopment that support access and contribute to appropriate development of adjacent lands. The revised subdivision plan provides an adequate street network carefully designed with environmentally sensitive features in mind with minimal intermittent stream crossings. It provides vehicular and pedestrian connections to adjacent properties as required by the LDC.

Community Form Goal 1 Policy 4 calls to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1 Policy 11 seeks to ensure setbacks, lot dimensions, and building heights are

compatible with those of nearby developments that meet Form District guidelines. Livability Goal 1 Policy 1 advocates for the use of conservation subdivisions and other practices that conserve open space and natural features. The proposal utilizes smaller lot sizes afforded by the PRD zoning district to allow a clustering of smaller residential lots with the preservation of environmental features, providing a development pattern similar to other neighborhoods in the area such as The Courtyards at Curry Farms conservation subdivision to the southeast on Aiken Road. Livability Goal 1 Policy 12 promotes the minimization of impervious surface area and taking advantage of soil saturation capacities. This development is compliant with the Floyds Fork Special Zoning Overlay District standards, including the provision limiting impervious surfaces to 40% of the whole development site.

Community Form Goal 3 Policy 1 encourages the creation of common, usable, and accessible open space in new residential development based on density, need for open space, size of development, and proximity to greenways through the use of regulatory incentives and other tools. Community Form Goal 3 Policy 2 advocates for open space to be designed to meet outdoor recreation, natural resource protection, aesthetic, cultural and educational, public, or health and safety needs. Community Form Goal 3 Policy 3 further states that open space should be designed to be compatible with the pattern of development in the Form District. Community Form Goal 3 Policy 6 encourages open space that is created by new development to help meet the recreation needs of the community. The proposal provides a significant amount of open space well in excess of the requirement, including a total of 410,706 square feet of natural resource and recreational open space and another 149,144 square feet of general open space. A residential clubhouse with amenities, pickleball courts, and a sports field are proposed in recreational open space areas. Community Form Goal 3 Policy 7 promotes natural features being integrated within the prescribed pattern of development. Community Form Goal 3 Policy 8 calls to conserve, restore, and protect vital natural resource systems such as mature trees, steep slopes, streams, and wetlands. Open space should be integrated with other design decisions to shape the pattern of development and it encourages the use of conservation subdivision, conservation easements, transfer of development rights and other innovative methods to permanently protect open space. Community Form Goal 3 Policy 9 similarly states development should respect the natural features of the site through sensitive site design, avoid substantial changes to the topography, and minimize property damage and environmental degradation resulting from disturbance of natural systems. Tree Canopy Credit Areas, existing historic cemeteries, intermittent streams, and non-jurisdictional wetlands are being preserved through non-buildable open spaces with appropriate buffers, where required.

Community Form Goal 4 Policy 2 seeks the preservation of distinctive cultural features including landscapes, natural elements, and built features. Community Form Goal 4 Policy 3 also encourages preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state, or local government historic preservation agencies. The historic inactive cemeteries are being protected in natural resource open space lots with the required 30' buffer. The stone wall enclosing the cemeteries shall be repaired with in-kind materials and the existing plantings shall be pruned and generally left in its natural state.

Livability Goal 1 Policy 11 seeks the protection of solid blueline streams, defined by the current floodplain management ordinance, from channelization, stripping, relocation, or other alterations. It calls for a vegetative buffer on the banks on blueline streams to protect the functional integrity of the channel. Livability Goal 1 Policy 21 wants to mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events. Livability Goal 1 Policy 29 calls for the utilization of Best Management Practices (BMPs)



to preserve or restore stream banks/corridors, and Policy 30 continues in stating that BMPs should account for varied site conditions and construction activities to maintain appropriate water quality levels, prevent erosion, and control sedimentation. The adjacent intermittent stream will observe the required 25' buffer and is not proposed to be relocated. The subdivision development conforms to the shape of the blueline stream and avoids disturbance. Any land disturbing activity in the local regulatory floodplain shall comply with the Louisville Metro Floodplain Ordinance. The Environmental Impact Statement bases its support of the development on the implementation of Best Management Practices and Erosion and Sediment Control measures during grading and construction, thereby demonstrating compliance with the Comprehensive Plan.

#### **REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Floyds Fork Waiver** from Land Development Code (LDC) Section 3.1.3.E to allow disturbance of slopes greater than 30%
- **APPROVE** or **DENY** the **Floyds Fork Special Zoning Overlay District Review**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan / Revised Major Preliminary Subdivision Plan** subject to existing binding elements

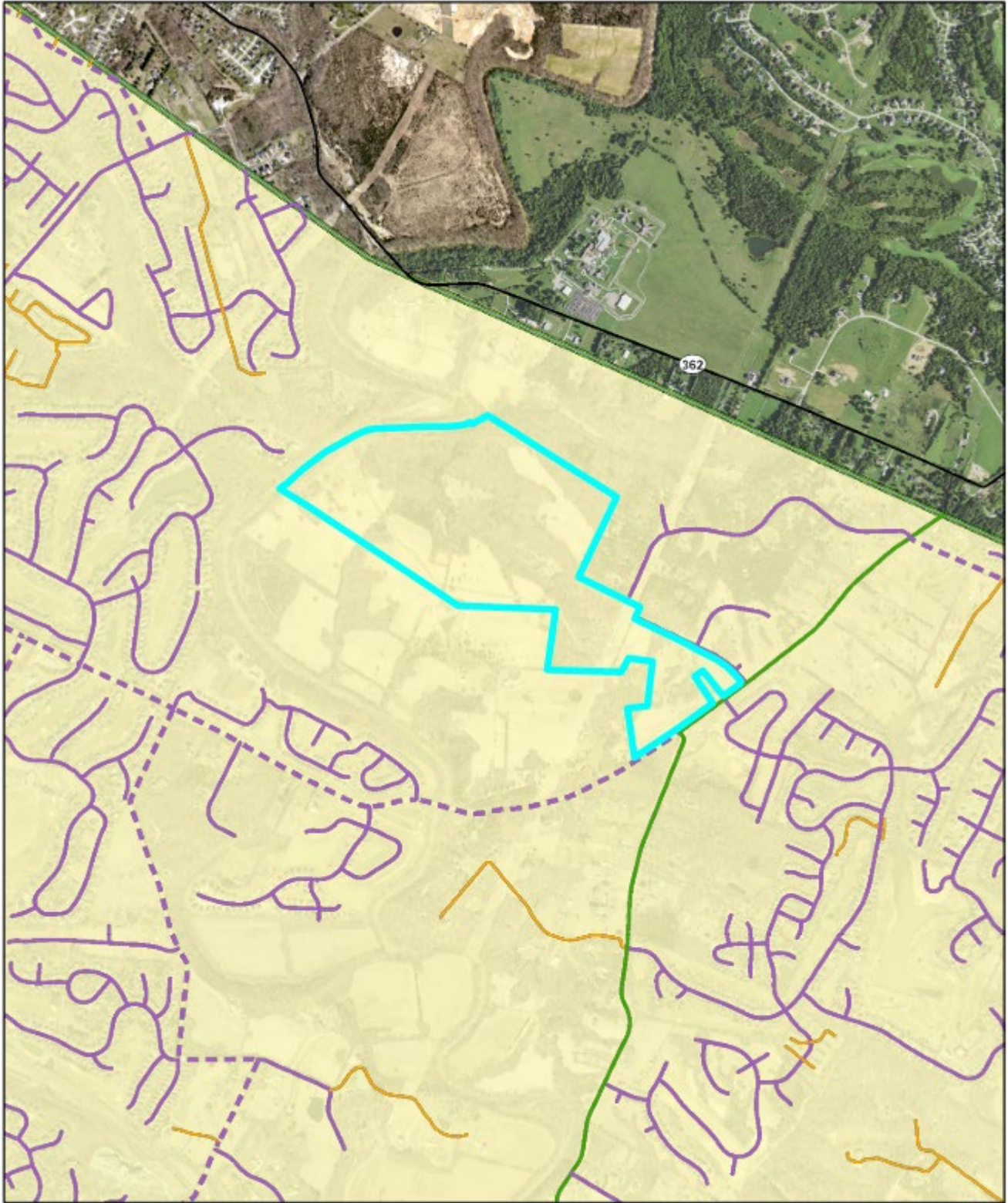
#### **NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>3/7/2025</b>	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners and current residents Speakers at any previous Planning Commission public hearing Registered Neighborhood Groups in Council District 19

#### **ATTACHMENTS**

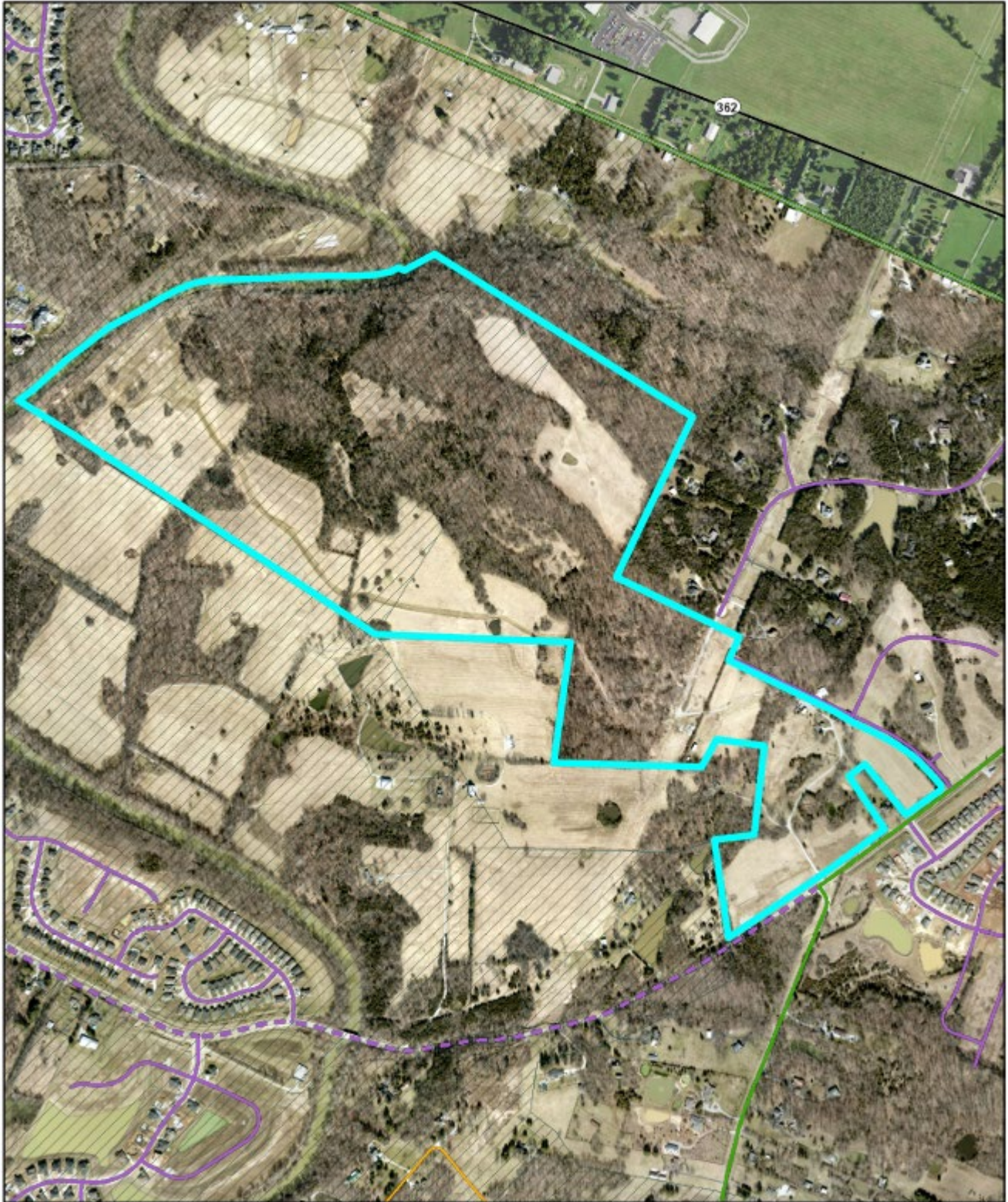
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements

1. Zoning Map





2. Aerial Photograph



### **3. Existing 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 be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
  - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance
5. 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.
6. 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.
7. The inactive cemeteries on Lot 880 and 881 shall be preserved and maintained as described in Chapter 4.4.6 of the Land Development Code. Ownership and maintenance of the cemetery shall be transferred to the homeowners' association. A deed restriction in a form approved by

the Planning Commission legal counsel shall be recorded acknowledging the location, site, ownership and maintenance of the cemetery.

8. The applicant shall submit a Tree Preservation Plan for approval by Planning and Design staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). 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.
9. 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."
10. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
11. 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 construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
12. All street signs shall be installed by the Developer, and shall conform with 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.
13. 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.
14. 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 larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
15. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  1. Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
  2. A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
  3. Bylaws of the Homeowners' Association in a form approved by Counsel for the Planning Commission.
16. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
17. 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. No homeowners' association funds shall be used by the developer to fulfill either the developer's obligations under Plan 2040 or any improvement submitted as part of the approved development plan, including but not limited to plantings and paving. Notwithstanding the foregoing, the homeowners' association funds may be used for the post-construction maintenance obligations of common elements, including maintenance of the open space. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.

18. The roadway connection from the development site to the existing Flat Rock Road right of way/pavement as shown on the approved development plan shall be constructed at the applicants, developers, or property owners' expense. Said Construction shall be completed at or before the dedication and recording of any roadways or lots west of the intersection of Flat Rock Road and Court "B"
19. The developer shall construct its north-eastern proposed entrance to Aiken Road prior to recording any lot.
20. The developer shall construct its second south-western entrance (near Johnson Road) prior to release of the subdivision bond and no later than the 330<sup>th</sup> lot going to record, (with Flat Rock Road being available as a second entrance), provided a commercially reasonable damage bond is put in place for Flat Rock Road. The damage bond will be released upon completion of the second southwestern entrance (near Johnson Road) and following post-inspection to determine if any claim on the damage bond is necessary for Flat Rock Road. Additionally, if permitted, developer shall place a temporary sign in the right of way at Aiken Road and Flat Rock Road prohibiting construction traffic.
21. The developer shall construct two left turn lanes at the Aiken Road/Arnold Palmer intersection prior to recording any lot, with the developer being given a credit for the System Development Charge on the first 114 lots.
22. A 15' voluntary buffer shall be provided as shown on the approved district development plan abutting lots located in the Hermitage Ridge Farms subdivision (PB 37, PG 8-9). Trees at least 4 inches in caliper or greater shall be preserved, unless listed in the prohibited plant list of the Land Development Code. This does not preclude the installation of fences or necessary utilities within the buffer, and the voluntary buffer is not subject to landscape/utility overlap provisions of the Land Development Code. Brush and invasive plant species are specifically authorized for removal. These requirements must be included in the restrictions of the subdivision as approved by the Planning Commission's legal counsel.
23. In addition to the minimum requirement of the Land Development Code, the developer shall install evergreen trees along the property line abutting the properties known as 2708, 2713, 2716, 2717, 2720, 2721, 2724, and 2725 Flat Rock Road in the Hermitage Ridge subdivision. The total number of evergreen trees planted shall equal 3 evergreen trees per 50 linear feet. The developer shall locate these additional trees to provide the greatest possible buffer for the aforementioned Flat Rock landowners to fill gaps in the tree line. Trees provided per this binding element shall be shown and approved with the landscape and/or tree preservation plan.
24. The developer shall not use Flat Rock Road for construction ingress or egress, except in the case of emergency.
25. Any increase in density on the property, any changes in use on the property, and/or any amendments to the binding elements shall be reviewed before the Planning Commission with final action to be determined by Metro Council.

26. After full construction of the Aiken Road access points, developer shall not oppose efforts by neighbors to close Flat Rock Road and install an emergency gate restricting access to the property.