

## **PLANNING COMMISSION MINUTES**

**April 24, 2025**

### **PUBLIC HEARING**

#### **CASE NO. 24-DDP-0078**

Request: Revised Detailed District Development Plan, Revised Major Preliminary Subdivision, & Floyds Fork Overlay Review with a Floyds Fork Waiver

Project Name: Aiken North Subdivision

Location: 16907 Aiken Rd; 16907 R Aiken Rd.

Applicant: Aiken 103 Partners, LLC

Representative: Bardenwerper, Talbott, & Roberts, PLLC

Jurisdiction: Louisville Metro

Council District: 19 – Anthony Piagentini

Case Manager: Kaitlin Dever, Planner I

Notice of this public hearing notice was posted on the property and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Office of Planning offices, 444 S. 5th Street.)

#### **Agency Testimony:**

00:15:10 Rachel Casey presented the case on behalf of Kaitlin Dever. Rachel Casey provided an overview of the request and presented a PowerPoint presentation. Casey outlined the case history, slopes, and development plan. Casey responded to questions from Commissioners. (See recording for details).

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

John Talbott, 1000 N. Hurstbourne Parkway, Louisville, KY 40223

Rich Heareth, P O. Box 436494, Louisville, KY 40253

David Mindel, 11501 Hickory Bend Hollow, Louisville, KY 40291

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

00:26:10 John Talbott provided an overview of the request and presented a PowerPoint presentation. Talbott gave an overview of the current revised development plan, steep slopes in area, landscaping, reduction in lots, increased open space and community facilities. Talbott responded to questions from Commissioners. (See recording for details).

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00:47:30 Rich Heareth spoke in favor of the request and stated that they are creating open space by reducing the lots and adding community facilities like club house, pool, and pickle ball courts. Heareth responded to questions from Commissioners. (See recording for details).

#### **The following spoke in opposition of this request:**

Lucas Frazier, 15700 Piercy Mill Road, Louisville, KY 40245

Kacey Frazier, 15700 Piercy Mill Road, Louisville, KY 40245

Randy Strobo, 730 W Main Street, Suite 202, Louisville, KY 40202

Michael Diebold, 16901 Aiken Road, Louisville, KY 40245

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

00:52:10 Lucas Frazier spoke in opposition and presented a PowerPoint presentation. Frazier raised concerns about flood plain, housing density and increased number in lots. Frazier responded to questions from Commissioners. (See video for details).

00:59:30 Kacey Frazier spoke in opposition and raised concerns about flood plain, environmental impacts, traffic, and density. Frazier was concerned about lack of transparency, public clarity, and accountability in the process. Frazier responded to questions from Commissioners. (See video for details).

01:07:00 Michael Diebold spoke in opposition and raised concerns about flood plain, environmental impacts, increased run off, pollution, traffic, and density. Diebold responded to questions from Commissioners. (See video for details).

01:11:10 Randy Strobo representing the opposition and raised concerns about flood plain, environmental impacts, and density. Strobo stated that environmental assessment failed to address indirect and cumulative effects. Strobo responded to questions from Commissioners. (See video for details).

#### **Rebuttal:**

01:14:40 John Talbott stated that the plan was revised considering environmental benefits, financial needs, and adherence to regulations. Talbott stated that the objections raised by opposition are unrelated to the current revised plan, as many of their concerns were addressed in the original 2021 approval. The revised plan removes 71 lots and addition of 12 lots justified to offset additional costs for infrastructure and road

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improvements. The current plan adheres to required legal and regulatory standards and will benefit the Floyds Fork by reducing runoff by two million gallons per year. Talbott responded to questions from Commissioners. (See video for details).

01:28:10 Randy Strobo cross examined Mr. Talbott about fairness in process, current revision in plan and addition of 12 lots. Mr. Talbott, in return stated that he believes the current plan is the most beneficial plan for the Floyds Fork area and the addition of lots is justified for project improvements. (See video for details).

01:32:20 Following a question from Chair Sistrunk, David Mindel explained how the proposed plan would reduce water runoff, using area measurements and rainfall data. Mindel stated that impermeable surfaces contribute to runoff and the plan will improve conditions related to drainage and flooding. (See video for details).

01:35:00 Randy Strobo cross examined Mr. Mindel about development within floodplain and impact of adding fill material on downstream flow. Mr. Mindel, in return stated that changes in elevation along the stream could influence water flow timing and downstream conditions and varies with the compensation handled. (See video for details).

01:36:00 Randy Strobo cross examined Mr. Mindel about development within floodplain in section 3B. Mr. Talbott objected to the relevance of the question as the section 3B is not part of the application being currently reviewed by the Commission. Talbott stated that few lots will be removed from section 3B which are in floodplain. (See video for details).

#### **Deliberation:**

01:40:35 Planning Commission deliberation.

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

#### **Floyds Fork Waiver from Land Development Code (LDC) Section 3.1.3.E to allow disturbance of slopes greater than 30%**

01:52:00 On a motion by Commissioner Fischer, seconded by Commissioner Cheek, the following resolution, based on the staff report, applicant and staff testimony heard today and staff analysis, was adopted.

**WHEREAS**, the Planning Commission finds 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

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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, and

**WHEREAS**, the Planning Commission finds 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, and

**WHEREAS**, the Planning Commission finds 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, and

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**WHEREAS**, the Planning Commission finds 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 mainstream 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, and

**WHEREAS**, the Planning Commission finds 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, and

**WHEREAS**, the Planning Commission finds 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; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Floyds Fork Waiver from Land Development Code (LDC) Section 3.1.3.E to allow disturbance of slopes greater than 30%

**The vote was as follows:**

**YES: Commissioners Mims, Cheek, Lannert, Benitez, Fischer, Steff, Bond, and Kern**

**NO: Commissioner Sistrunk**

**ABSENT: Commissioner Lohan**

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

01:52:45 On a motion by Commissioner Fischer, seconded by Commissioner Cheek, the following resolution, based on the staff report, applicant and staff testimony heard today and staff analysis, was adopted.

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**WHEREAS**, the Planning Commission finds 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, and

**WHEREAS**, the Planning Commission finds the 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. Inick of Resource Environmental Solutions, LLC on 1/22/2025, and

**WHEREAS**, the Planning Commission finds the 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. Inick of Resource Environmental Solutions, LLC dated 1/22/2025., and



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**WHEREAS**, the Planning Commission finds the 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; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested Floyds Fork Special Zoning Overlay District Review.

**The vote was as follows:**

**YES: Commissioners Mims, Cheek, Lannert, Benitez, Fischer, Steff, Bond, and Kern**

**NO: Commissioner Sistrunk**

**ABSENT: Commissioner Lohan**

### **Revised Detailed District Development Plan / Revised Major Preliminary Subdivision Plan subject to existing binding elements**

01:53:25 On a motion by Commissioner Fischer, seconded by Commissioner Cheek, the following resolution, based on the staff report, applicant and staff testimony heard today and staff analysis, was adopted.

**WHEREAS**, the Planning Commission finds the 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. The protection and conservation of natural resources is further achieved by the proposed reduction in the number of lots and density of the development closest to the Floyds Fork waterway from 44 lots to 33 lots, coupled with the conversion of 14 previously approved lots and several alleys within the development site into 115,205 square feet of general open space, and

**WHEREAS**, the Planning Commission finds the 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, and

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**WHEREAS**, the Planning Commission finds 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, and

**WHEREAS**, the Planning Commission finds 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, and

**WHEREAS**, the Planning Commission finds 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, and

**WHEREAS**, the Planning Commission finds 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



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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. The requested increase in density is relatively minimal and enables the clustering of development promoted by the PRD zoning district, the Floyds Fork Special Zoning Overlay District, and Community Form Goal 4, Policy 7 which “encourages techniques such as clustering, buffers, building height limits, and setback requirements to protect the special features and scenic character of these [natural and historic] areas.” In permitting the clustering of development, the 0.10 density increase is sufficiently mitigated via the significant provision of 559,850 square feet of open space, exceeding that of nearby developments in addition to the provision of numerous recreational amenities to serve the proposed lots. 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

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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; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** that the Louisville Metro Council **APPROVE** the Revised Detailed District Development Plan / Revised Major Preliminary Subdivision Plan with existing binding elements on a **CONDITION** that a note be added to the plan that total lots shall not exceed 878 without Metro Council approval and compliance with Binding Element 25.

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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

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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

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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.
  - a) Articles of Incorporation in a form approved by Counsel for the Planning Commission and the Certificate of Incorporation of the Homeowners Association.
  - b) A deed of restriction in a form approved by counsel of the Commission outlining responsibilities for the maintenance of open space.
  - c) 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 homeowner's 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.

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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 330th 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



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**April 24, 2025**

### **PUBLIC HEARING**

#### **CASE NO. 24-DDP-0078**

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.

**The vote was as follows:**

**YES: Commissioners Mims, Cheek, Lannert, Benitez, Fischer, Bond, and Kern**

**NO: Commissioners Steff and Sistrunk**

**ABSENT: Commissioner Lohan**