

Planning Commission Staff Report

March 19, 2020



Case No:	19-ZONE-0062
Project Name:	South Park Road Warehouse
Location:	3105R & 3308 South Park Road
Owner(s):	Utica Properties, LLC
Applicant:	Utica Properties, LLC
Representative(s):	Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	13 – Mark Fox
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Change-in-Zoning** from C-2, commercial to EZ-1, enterprise zone
- **Revised Detailed District Development Plan**

CASE SUMMARY

The applicant has requested to rezone 43.4 acres of land in the northwest quadrant of the intersection of Interstate-65 and Interstate-265 to facilitate the development of 300,000 sq. ft. of industrial warehousing. The subject property is situated between I-65 and an existing warehouse in the EZ-1 district. Primary access will be obtained from South Park Road, a collector level roadway.

Associated Cases

09-64-86: Change in zoning from R-4 to R-8 & C-2 (approved by PC 8/21/86 with revisions 1/26/89-rdddp, 2/23/89-binding elements, & 10/30/03-staff rdddp)

STAFF FINDING

The proposal conforms to the Land Use and Development Policies of Plan 2040. The proposed district is in the Suburban Workplace form district. It is located to take advantage of nearby transportation and infrastructure with access to I-65 & I-265, the airport, and arterial roadways. Locating proposed industry within existing Workplace forms relieves pressure in citing near residential communities.

TECHNICAL REVIEW

Existing binding elements last approved on February 23, 1989 for a commercial center known as Crown Pointe will be abandoned across the subject site and replaced by the proposed binding elements provided in *Attachment 5*.

STANDARD OF REVIEW FOR REZONING

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable land use and development policies of Plan 2040; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING

The Following is a summary of staff's analysis of the proposed rezoning against the Land Use and Development Policies of Plan 2040:

The site is located in the Suburban Workplace Form District

Suburban Workplace is a form characterized by predominately industrial and office uses where the buildings are set back from the street in a landscaped setting. Suburban workplaces often contain a single large-scale use or a cluster of uses within a master planned development. New larger proposed industrial uses are encouraged to apply for a planned development district.

In order to provide adequate transportation access in suburban workplaces connected roads, public transportation and pedestrian facilities should be encouraged. Walkways to workplace-serving uses are encouraged for workplace employees. Development within suburban workplace form districts may need significant buffering from abutting uses.

The proposed district is in the Suburban Workplace form district in a primarily industrial area. The Suburban Workplace is a form characterized by predominately industrial and office uses. The proposed higher intensity use is located to take advantage of nearby transportation and infrastructure as it is located with access to I-65 & I-265, the airport, and local arterial roadways. The industrial district is also situated to take advantage of a concentration of industrial uses in the workplace form district to relief pressure in citing near residential communities. The immediate area previously contained a residential community which relocated as the airport expanded in the 1990's and the area has transitioned to industrial uses over the last few decades.

No adverse impacts of traffic are expected on nearby communities as the subject site has access to interstates and major arterials, as well as the airport without transporting through residential areas. No adverse impacts of noise are expected on nearby communities as the site is bounded by the interstate which provides mitigation against sound on nearby residential communities. The proposed district is in an area that supports a wide range of employment opportunities that, in-turn, supports fewer trips and efficient transportation. Public Transit routes are present along National Turnpike and Preston Highway.

The site contains natural features that have been acknowledged and accommodated by the development. MSD preliminary approval has been received for this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP

- 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: The site contains natural features that have been acknowledged and accommodated by the development. MSD preliminary approval has been received for this proposal. No historic or cultural features are present.

- 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 will be provided as no adverse impacts of traffic are expected on nearby communities as the subject site has access to interstates and major arterials, as well as the airport without transporting through residential areas. Public Transit routes are present along National Turnpike and Preston Highway. Sidewalks and connection to building entrances is also provided.

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

STAFF: Sufficient open space is provided as floodplain compensation will be provided.

- 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 proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as the subject property situated to take advantage of a concentration of industrial uses in the workplace form district to relief pressure in citing elsewhere in residential communities and to take advantage of infrastructure

- 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 proposed development plan conforms to Plan 2040. The proposal is in the Suburban Workplace form district in a primarily industrial area. The Suburban Workplace is a form characterized by predominately industrial and office uses. The proposed warehouse is located to take advantage of nearby transportation and infrastructure as it is located with access to I-65 & I-265, the airport, and local arterial roadways. The warehouse is also situated to take advantage of a concentration of industrial uses in the workplace form district to relief pressure in

citing elsewhere in residential communities and to take advantage of infrastructure. The immediate area previously contained a residential community which relocated as the airport expanded in the 1990's and the area has transitioned to industrial uses over the last few decades. No adverse impacts of traffic or noise are expected.

REQUIRED ACTIONS:

- **RECOMMEND** to the Louisville Metro Council that the Change in zoning from C-2, commercial to EZ-1, enterprise zone on property described in the attached legal description be **APPROVED or DENIED**
- **APPROVE or DENY** the **Revised Detailed District Development Plan**

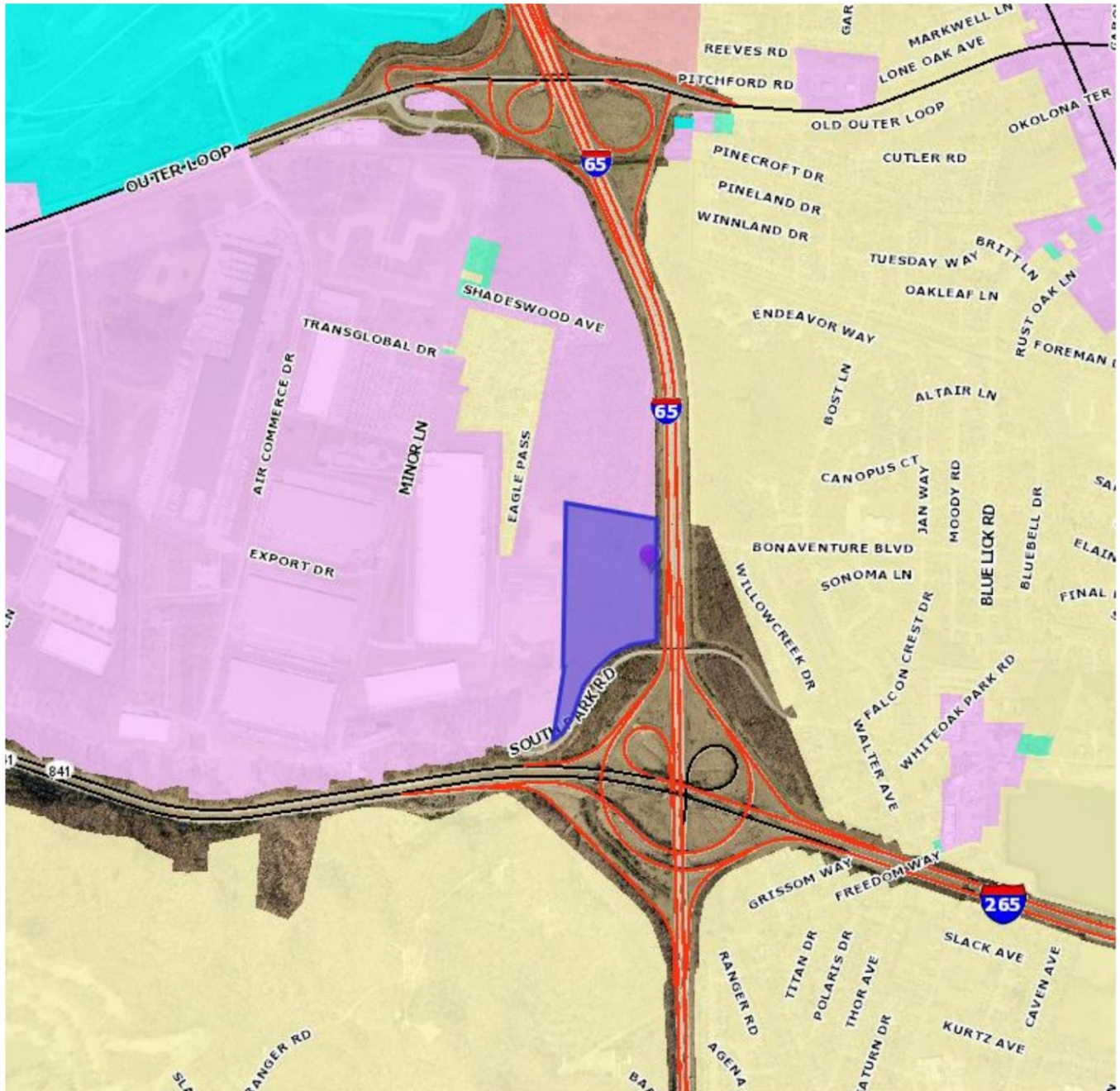
NOTIFICATION

Date	Purpose of Notice	Recipients
2/13/20	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 13
3/2/20	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 13
3/2/20	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

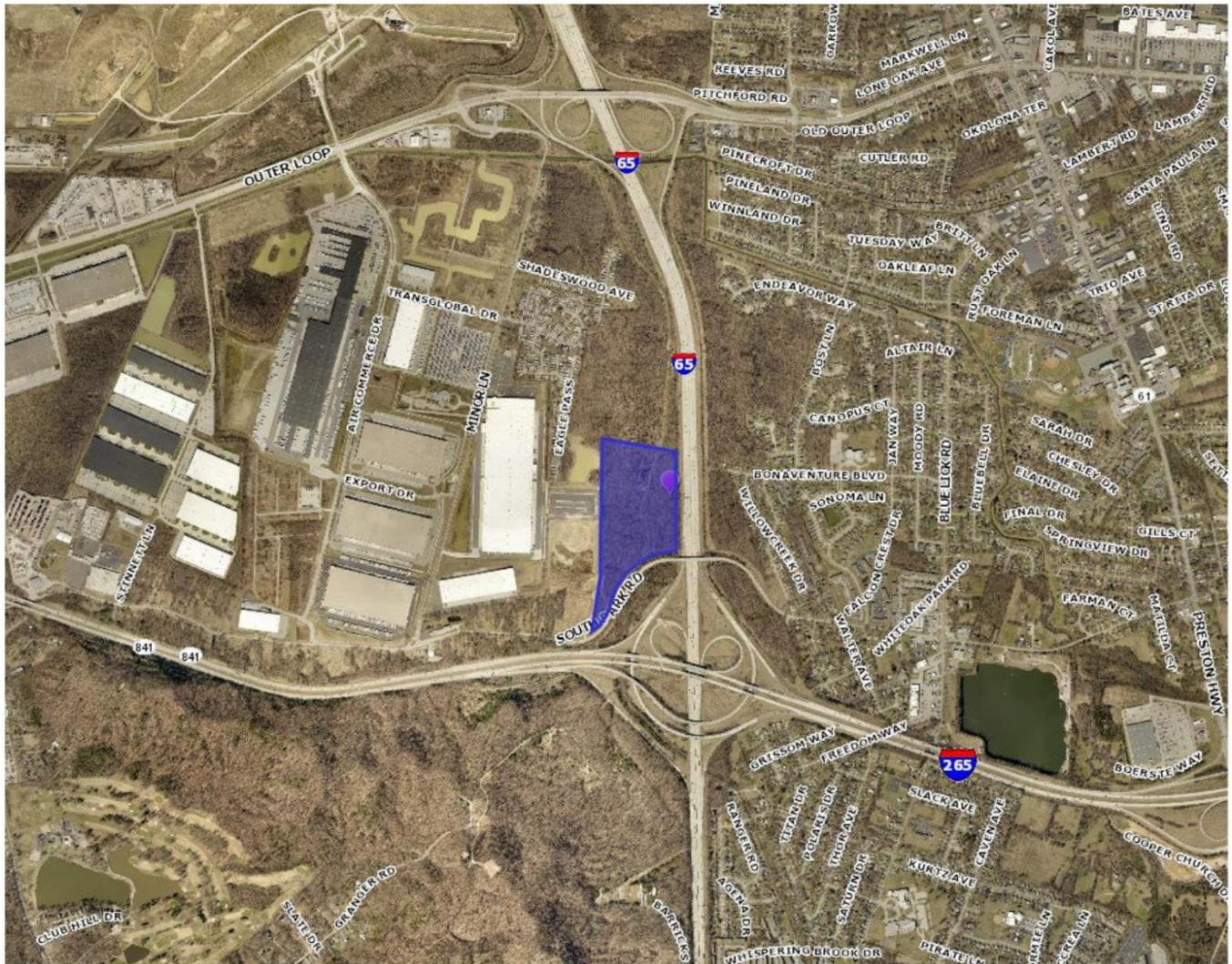
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Staff Analysis
4. Existing Binding Elements (to be abandoned)
5. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph



3. Plan 2040 Staff Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

Suburban Workplace: Non-Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 1	6. Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The proposed district is in the Suburban Workplace form district in a primarily industrial area. The Suburban Workplace is a form characterized by predominately industrial and office uses.
Community Form: Goal 1	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The proposed higher intensity use is located to take advantage of nearby transportation and infrastructure as it is located with access to I-65 & I-265, the airport, and local arterial roadways. A sufficient population is present in nearby communities to provide employment as needed.
Community Form: Goal 1	8. Encourage industries to locate in workplace Form Districts or in areas readily served by infrastructure and transportation facilities, including transit, rather than isolated industrial sites.	✓	The proposed district is located in the Suburban Workplace form district in a primarily industrial area. It is located with access to I-65 & I-265, the airport, and local arterial roadways.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 1	15. When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionately impacted.	✓	The proposed industrial district is situated to take advantage of a concentration of industrial uses in the workplace form district to relief pressure in citing elsewhere in residential communities and to take advantage of infrastructure. The immediate area previously contained a residential community which relocated as the airport expanded in the 1990's and the area has transitioned to industrial uses over the last few decades.
Community Form: Goal 1	16. Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected.	✓	The form district in which the site is located is intended to concentrate industrial and offices uses. Truck traffic and emissions should be expected in this form as it commonly serves warehousing and distribution centers.
Community Form: Goal 1	17. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	No adverse impacts of traffic are expected on nearby communities as the subject site has access to interstates and major arterials, as well as the airport without transporting through residential areas.
Community Form: Goal 1	18. Mitigate adverse impacts of noise from proposed development on existing communities.	✓	No adverse impacts of noise are expected on nearby communities as the site is bounded by the interstate which provides mitigation against sound on nearby residential communities.
Community Form: Goal 1	21. Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	✓	The proposed district is segregated from population centers. Hazardous uses, if present, are segregated from residential areas.
Community Form: Goal 2	1. Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The proposal has been appropriately located in a SW form district which is characterized by predominately industrial and office uses.
Community Form: Goal 2	6. Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposed district allows for the large-scale agglomeration of multiple uses in varying intensities.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Community Form: Goal 2	7. Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposed district allows for the large-scale agglomeration of multiple uses in varying intensities. Trips will be determined by employment which is supported by nearby populations opposite the interstate.
Community Form: Goal 3	9. Encourage 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.	✓	The site contains natural features that have been acknowledged and accommodated by the development. MSD preliminary approval has been received for this proposal.
Community Form: Goal 3	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	The site contains natural features that have been acknowledged and accommodated by the development. MSD preliminary approval has been received for this proposal.
Community Form: Goal 3	12. When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	✓	The site contains floodplain and conveyance zone. The site contains natural features that have been acknowledged and accommodated by the development. MSD preliminary approval has been received for this proposal.
Community Form: Goal 4	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	✓	It would not appear that the site contains features of historic or landscape significance.
Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	It would not appear that the site contains features of historic or cultural significance.
Mobility: Goal 1	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The proposed district is in an area that supports a wide range of employment opportunities that, in-turn, supports fewer trips and efficient transportation. Public Transit routes are present along National Turnpike and Preston Highway.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	Pedestrian accessibility to support the movement of employees using public transportation will be accommodated to the best of subject sites ability.
Mobility: Goal 3	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The use is appropriately located to segregate heavy truck traffic from passenger traffic and residential areas. Pedestrian accessibility to support the movement of employees using public transportation will be accommodated to the best of subject sites ability.
Mobility: Goal 3	4. Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following: 4.1. nodal connections identified by Move Louisville; 4.2. impact on freight routes; 4.3. time of operation of facilities; 4.4. safety; 4.5. appropriate linkages between neighborhoods and employment; and 4.6. the potential for reducing travel times and vehicle miles traveled.	✓	The area is a workplace district and the subject site will accommodate to the best of its ability pedestrian and multi-modal infrastructure.
Mobility: Goal 3	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	All improvements requested by Transportation Planning staff will be provided.
Mobility: Goal 3	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	The developer will share in the responsibility of provisioning for the safe movement of pedestrian via sidewalks.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Mobility: Goal 3	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	The developer will share in the responsibility of provisioning for the safe movement of pedestrian via sidewalks.
Mobility: Goal 3	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Long range improvements required of the development will be provided
Community Facilities: Goal 2	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The proposal will be served by existing utilities or capable of being served by public or private utility extensions.
Community Facilities: Goal 2	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	The proposal will have an adequate supply of potable water and water for fire-fighting purposes
Community Facilities: Goal 2	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	The proposal will have an adequate means of sewage treatment and disposal to protect public health and to protect water quality
Economic Development: Goal 1	1. Limit land uses in workplace Form Districts to compatible uses that meet the needs of the industrial subdivision or workplace district and their employees.	✓	The proposal will support existing and future uses within the workplace form and it is compatible with the scale and intensity of those uses.
Economic Development: Goal 1	2. Encourage industries, to the extent possible, to locate in industrial subdivisions or adjacent to an existing industry to take advantage of special infrastructure needs.	✓	The proposal is in a developing industrial area within the bounds of the workplace form to take advantage of special infrastructure needs
Economic Development: Goal 1	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	✓	The proposal is in a developing industrial area with appropriate connectivity to interstates, the airport, and major arterial roadways.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Livability: Goal 1	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	The site contains natural features that have been acknowledged and accommodated by the development. MSD preliminary approval has been received for this proposal
Livability: Goal 1	21. 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.	✓	The subject property is in the floodplain. MSD preliminary approval has been received for this proposal
Livability: Goal 1	24. Ensure, to the extent feasible, that critical facilities and those that store or use hazardous wastes are located outside the regulatory floodplain. Where essential community facilities must be located within a floodplain (e.g., pumping stations), ensure that these facilities are designed, located and operated in a manner that minimizes loss of services during flood events as well as limits, to the extent possible, floodplain disturbance.	✓	The subject property is in the floodplain. MSD preliminary approval has been received for this proposal

3. Existing Binding Elements

1. ~~The development shall not exceed the following:~~

- ~~a) R-8 Apartment District – 82 dwelling units~~
- ~~b) C-2 Commercial District – 972,400 square feet~~

2. ~~Detailed district development plans shall be submitted for each site or phase of the development. Each plan shall be subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:~~

- ~~a) Screening, buffering, landscaping.~~
- ~~b) Points of access.~~
- ~~c) Density, floor area, size and height of buildings.~~
- ~~d) Land uses.~~
- ~~e) Signs.~~
- ~~f) Handicapped parking.~~
- ~~g) Loading berths.~~

3. ~~Prior to the issuance of certificates of occupancy:~~

~~A) For lot 2 and outlet 1:~~

- ~~1) Access Road "A" shall be constructed as a five (5) lane section from a specified location on Minors Lane (match of roadway section) to the second major entrance to lot 2.~~
- ~~2) Minors Lane shall be reconstructed to "T" into Access Road "A".~~

~~B) For lots 1, 3, and outlets 2, 3 and 4:~~

- ~~1) Access Road "A" shall be constructed as a three (3) lane section from the end of the five (5) lane section to South Park Road.~~
- ~~2) A left turn storage lane shall be constructed on South Park Road for Access Road "A".~~

~~C) For lot 1, 2 and 3:~~

~~Evergreen plantings shall be provided along the western property line outside of the 6-foot chain fence. The screening of the plan shall be submitted to and approved by the Planning Commission prior to issuance of building permits. Such plan shall be implemented prior to occupancy and maintained thereafter.~~

4. ~~The three (3) lane portion of Access Road "A" shall be substantially complete by the date one year after the opening of the Bigg's store. If an access road is constructed on the north side of lot 3 connecting Access Road "A" with Minors Lane, a left turn storage lane for southbound Minors Lane shall be constructed.~~

5. ~~Auto repair uses shall be incidental to the retail use of auto or parts sales. Freestanding auto repair garages shall not be permitted.~~

6. ~~There will be no direct access to South Park Road from any lot fronting thereon.~~

7. ~~Access points along the relocated Minor Lane and the proposed collector level roadway must be approved by the Jefferson County Department of Public Works and Transportation.~~

~~8. Prior to the request of the issuance of the Certificate of Occupancy a major subdivision plat will be recorded dedicating the relocation of Minor Lane and the collector level roadway from Minor Lane to South Dark Road as shown on the district development plan and preliminary subdivision plan Docket No. 10-16-86.~~

~~9. Minor Lane shall be relocated to "T" into the collector level roadway as shown on the general district development plan and preliminary subdivision plan. An exclusive storage lane shall be provided for right turn movements onto southbound Minor Lane from the proposed collector level roadway. The Minor Lane approach shall contain left and right turn lanes.~~

~~10. When the Jefferson County Department of Public Works and Transportation determines that traffic volumes at intersections within the development, excluding the new intersection of Minors Lane and Access Road "A", warrant the installation of traffic signals, the Developer shall agree to be responsible for their installation within 120 days of the notification from the County.~~

~~11. Roadside ditches in Minor Lane shall be piped. Existing ditches shall be filled in and regraded (east side only).~~

~~12. The minimum building elevation shall be 463.0, one foot above the existing 100 year flood elevation of 462.0.~~

~~13. Prior to construction plan approval a storm water routing for a 2, 10, 25 and 100 year storm shall be performed. The purpose of this routing is to determine what measures are necessary to retain storm water on low frequency storms.~~

~~14. Two access points will be provided to the east side of relocated Mud Creek at each end of Mud Creek. An acceptable access point would be a low water crossing or use of an existing access point.~~

~~15. All off-site drainage will be ditched around the perimeter of the site. If ditch slopes are less than 1%, a low flow paved ditch shall be installed.~~

~~16. If building permits are not issued within one year of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.~~

~~17. The development shall be permitted only 7 freestanding shopping center identification signs and 1 cinema identification sign as permitted by Article 11. (Two pylon signs 40 feet in height and 6 monument signs). The location of the signs shall be subject to the final approval at the time of detailed district development plans. Freestanding business identification signs shall not exceed the following:~~

- ~~(a) 10 signs (highway service uses) a maximum of 30 feet tall and 80 square feet in area; and~~
- ~~(b) 7 signs not to exceed 20 feet in height and 50 square feet in area.~~

~~18. The following land uses are prohibited at this development: furniture, storage, kennels, laundries, monument sales, plumbing, and heating shops, printing, lithographing, public transportation passenger terminals, public utility buildings and facilities, refrigerated lockers, rubber stamp manufacturing, sign painting, trade schools, veterinary hospitals and no adult entertainment activities.~~

~~19. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements must be implemented prior to requesting issuance of the certificate.~~

~~20. The existing Conditional Use Permit for a mobile home park (Docket No. B-49-69), which "overlays" part of the Crown Pointe development plan, shall remain in full force and effect, except as to those portions of the mobile home park which have received Crown Pointe building permits.~~

~~21. The above binding elements may be amended as provided for in the Zoning District Regulations.~~

4. Proposed 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. 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 Develop Louisville, 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. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
3. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
4. 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.
5. 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.
6. No new outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.