



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

**Minutes
of the
Metropolitan Planning Commission**

March 25, 2010

4:00 PM

*Metro Southeast at Genesco Park
1417 Murfreesboro Road*

PLANNING COMMISSION:

James McLean, Chairman
Phil Ponder, Vice Chairman
Stewart Clifton
Judy Cummings
Tonya Jones
Councilmember Jim Gotto
Andrée LeQuire, representing Mayor Karl Dean

Staff Present:

Brian Sexton, Planner I
Jason Swaggart, Planner II
Kelly Armistead, Administrative Services Officer III
Dennis Corrieri, Planning Technician I
Rick Bernhardt, Executive Director
Doug Sloan, Legal
Ann Hammond, Assistant Executive Director
Bob Leeman, Planning Manager II,
Carrie Logan, Planner II
Brenda Bernards, Planner III
Marie Cheek, Planning Tech II

Mission Statement: The Planning Commission is to guide the future growth and development for Nashville and Davidson County to evolve into a more socially, economically and environmentally sustainable community with a commitment to preservation of important assets, efficient use of public infrastructure, distinctive and diverse neighborhood character, free and open civic life, and choices in housing and transportation.

I. CALL TO ORDER

The meeting was called to order at 3:59pm.

II. ADOPTION OF AGENDA

Dr. Cummings moved and Councilmember Gotto seconded the motion, which passed unanimously, to adopt the agenda as revised which added a new Item #5 and renumbered the agenda accordingly. **(7-0)**

III. APPROVAL OF MARCH 11, 2010, MINUTES

Mr. Ponder moved and Councilmember Gotto seconded the motion, which passed unanimously, to approve the March 11, 2010 minutes as presented, including the addition of Item #5. **(7-0)**

IV. RECOGNITION OF COUNCILMEMBERS

No Councilmembers were present.

V. PUBLIC HEARING: ITEMS REQUESTED TO BE DEFERRED OR WITHDRAWN

- 1. 2010Z-005PR-001 A request to rezone from R40 to CS zoning property located at 6703 River Road Pike, approximately 850 feet south of Gower Road (5.14 acres), requested by Kenneth Ferrante, owner. -Deferred Indefinitely
- 2. 2007S-209G-12 A request to rescind final plat approval for Brentwood Knoll, containing 15 lots and open space located along Brentwood Knoll Court and Bryce Road (5.09 acres), zoned RS10 and AR2a, requested by Councilmember Parker Toler, Mark Sarmadi and Dean Baxter, owners. -Defer to the April 22, 2010, meeting

Mr. Clifton moved and Mr. Ponder seconded the motion, which passed unanimously, to approve the deferred and withdrawn items. (7-0)

Ms. Hammond announced, "As information for our audience, if you are not satisfied with a decision made by the Planning Commission today, you may appeal the decision by petitioning for a writ of cert with the Davidson County Chancery or Circuit Court. Your appeal must be filed within 60 days of the date of the entry of the Planning Commission's decision. To ensure that your appeal is filed in a timely manner, and that all procedural requirements have been met, please be advised that you should contact independent legal counsel."

VI. PUBLIC HEARING: CONSENT AGENDA

PUBLIC HEARING: PLANNED UNIT DEVELOPMENT REVIEW

- 3. 286-84P-001 A request to the Metro Planning Department for a periodic review of the Dinwiddie Square Residential Planned Unit Development district located at 2401 Fairfax Avenue and Fairfax Avenue (unnumbered), approved for seven multi-family dwelling units.
 - 1. Find that the PUD is "inactive" and retain the RS7.5 zoning district, and
 - 2. Recommend to the Metro Council that the PUD be cancelled and the RS7.5 base zoning remain, and support a future rezoning to SP or to an RM zoning district with a PUD overlay or UDO to permit multi-family uses at a density consistent with the land use policy.

OTHER BUSINESS

- 4. Employee contract renewal for Brandon Burnette -Approved

Mr. Ponder moved and Councilmember Gotto seconded the motion, which passed unanimously, to adopt the Consent Agenda as presented. (7-0)

VII. PUBLIC HEARING: ZONING MAP AMENDMENT

- 1. **2010Z-005PR-001**
Map: 101-00 Parcel: 103
Bellevue Community Plan
Council District 35 – Bo Mitchell
Staff Reviewer: Jason Swaggart

A request to rezone from R40 to CS zoning property located at 6703 River Road Pike, approximately 850 feet south of Gower Road (5.14 acres), requested by Kenneth Ferrante, owner.

Staff Recommendation: Disapprove

The Metropolitan Planning Commission DEFERRED INDEFINITELY 2010Z-005PR-001 at the request of the applicant.

VIII. PUBLIC HEARING: FINAL PLAT

2. **2007S-209G-12**
Brentwood Knoll (Rescind Recorded Plat)
Map: 172-15-0-C Parcel: 001 – 015, 900, 901
Southeast Community Plan
Council District 31 – Parker Toler
Staff Reviewer: Carrie Logan

A request to rescind final plat approval for Brentwood Knoll, containing 15 lots and open space located along Brentwood Knoll Court and Bryce Road (5.09 acres), zoned RS10 and AR2a, requested by Councilmember Parker Toler, Mark Sarmadi and Dean Baxter, owners.

Staff Recommendation: Approve

The Metropolitan Planning Commission DEFERRED 2007S-209G-12 to the April 22, 2010 Planning Commission meeting, at the request of the applicant. (7-0)

IX. PUBLIC HEARING: PLANNED UNIT DEVELOPMENT REVIEW

3. **286-84P-001**
Dinwiddie Square (Periodic Review Request)
Map: 104-11 Parcels: 170, 171
Green Hills/Midtown Community Plan
Council District 18 – Kristine LaLonde
Staff Reviewer: Brenda Bernards

A request to the Metro Planning Department for a periodic review of the Dinwiddie Square Residential Planned Unit Development district located at 2401 Fairfax Avenue and Fairfax Avenue (unnumbered), at the southwest corner of 24th Avenue South and Fairfax Avenue, zoned RS7.5, (0.64 acres), approved for seven multi-family dwelling units, requested by Councilmember Kristine LaLonde, The Glenn A. Ferguson Revocable Living Trust owner.

Staff Recommendation: Staff recommends that the Commission:

3. Find that the PUD is “inactive” and retain the RS7.5 zoning district, and
4. Recommend to the Metro Council that the PUD be cancelled and the RS7.5 base zoning remain, and support a future rezoning to SP or to an RM zoning district with a PUD overlay or UDO to permit multi-family uses at a density consistent with the land use policy.

APPLICANT REQUEST -PUD Review- Periodic Review of the Dinwiddie Square PUD

A request to the Metro Planning Department for a periodic review of the Dinwiddie Square Residential Planned Unit Development district located at 2401 Fairfax Avenue and Fairfax Avenue (unnumbered), at the southwest corner of 24th Avenue South and Fairfax Avenue, zoned Single-Family Residential (RS7.5), (0.64 acres), approved for seven multi-family dwelling units.

Existing Base Zoning

RS7.5 District RS7.5 requires a minimum 7,500 square foot lot and is intended for single-family dwellings at a density of 4.94 dwelling units per acre.

CRITICAL PLANNING GOALS N/A

PERIODIC PUD REVIEW Section 17.40.120 H of the Metro Zoning Ordinance authorizes a councilmember to request, and the Metropolitan Planning Commission to review, any Planned Unit Development (PUD) overlay district, or portion thereof, to determine whether the PUD is “inactive,” and if so, to recommend to the Council what action should be taken with respect to the PUD. The Commission determines whether the PUD is “inactive” by examining whether development activity has occurred within six years from the date of the initial enactment, subsequent amendment, or re-approval by the Metro Council. If the Planning Commission determines the PUD to be inactive, the Commission is required to recommend legislation to the Council to re-approve, amend, or cancel the PUD.

PLAN DETAILS The Dinwiddie Square PUD was approved for seven townhouse units by the Metro Council and became effective on January 15, 1985. The units were oriented towards 24th Avenue with parking in front. Landscaping was included to screen the parking from the street and to provide a buffer for the adjacent single family residential units. The density of the approved development is approximately 10 units per acre.

Analysis

Classification of PUD as “Inactive” Under 17.40.120 H., the Commission is first required to determine whether the Dinwiddie Square Planned Unit Development (PUD) is “inactive” by examining whether development activity has occurred within six years from the date of the initial enactment, subsequent amendment, or re-approval by the Metro Council. The initial enacting ordinance for the Dinwiddie Square PUD became effective January 15, 1985. There have been no amendments to the PUD requiring Metro Council approval since the initial enacting date.

Within the past six years, there has been no evidence of any physical improvement on the site to indicate construction has begun or is underway. Nor have there been any off-site improvements initiated or completed that were conditions of the PUD approval.

Section 17.40.120 H.3.a. of the Metro Code requires the Planning Commission to make three findings in order to determine whether a PUD has been “inactive” and is subject to review under 17.40.120 H.

- i. Six or more years have elapsed since the latter of
 - (1) The effective date of the initial enacting ordinance of the PUD,
 - (2) The effective date of any ordinance approving an amendment to the PUD,
 - (3) The effective date of any ordinance re-approving or amending a PUD after it has been reviewed and decided in accordance with subsection 5.a. or b. of this section, or
 - (4) The deadline for action by the metropolitan council in accordance with subsection 5.d. of this section, and
- ii. Construction has not begun on the portion of the PUD under review; construction shall mean physical improvements such as, but not limited to, water and sewer lines, footings, and/or foundations developed on the portion of the PUD under review; clearing, grading, the storage of building materials, or the placement of temporary structures shall not constitute beginning construction, and
- iii. Neither right-of-way acquisition from a third party nor construction has begun on off-site improvement(s) required to be constructed by the metropolitan council as a condition of the PUD approval.

Staff has reviewed each of these three issues and determined that the Dinwiddie Square PUD meets all three criteria. Accordingly, staff recommends that the Planning Commission make the finding that under each of the three criteria, the Dinwiddie Square PUD is “inactive” for purposes of 17.40.120 H.

Section 17.40.120 H.3.a. states that the Commission “may also take into consideration the aggregate of actions, if any, taken by the owner of the PUD within the prior 12 months to develop the portion of the PUD under review.” A letter was sent via certified mail requesting details of any development activity on the property over the past 12 months. The owner of the PUD contacted staff and stated that no actions have been taken within the timeframe to develop this property. Accordingly, staff recommends that the Planning Commission make the finding the Dinwiddie Square PUD is “inactive” for purposes of 17.40.120.H

Planning Commission Recommendation to Metro Council If the Planning Commission determines the PUD to be inactive, the Commission is required to recommend legislation to the Council to re-approve, amend, or cancel the PUD.

With respect to the legislation to be recommended to the Metro Council, the Planning Commission is directed by the Code to take two distinct steps. First, the Commission is to determine whether the “existing PUD is consistent with the goals, policies, and objectives of the General Plan and any applicable specific redevelopment, historic, neighborhood, or community plans.” Second, the Commission is to recommend the legislation, and include, as required:

- (a) The appropriate base zoning district(s), if different from current base zoning, to retain and implement the PUD overlay district as it exists.

(b) Any amendment(s) to the inactive PUD's master development plan and base zoning district(s) to reflect existing conditions and circumstances, including the land use policies of the general plan and the zoning of properties in the area.

(c) Base zoning district(s) consistent with the adopted general plan, should the PUD overlay district be recommended for cancellation.

Consistency with Policy RM policy supports a variety of housing types within a density range of four to nine dwelling units per acre. The most common housing types include compact, single-family detached units, town-homes, and walk-up apartments. The Dinwiddie Square PUD was approved at an overall density of 10 units per acre, which is not consistent with the policy. The RS7.5 zoning district permits 4.94 units per acre, which is consistent with the policy.

Recommended Legislation Staff recommends that the PUD be cancelled and the existing RS7.5 zoning district be retained. Based on the existing and planned development at the corners of 24th Avenue South and Fairfax Avenue, including the Martin Professional Development Center, the existing Ronald McDonald House and the planned Ronald McDonald House, development at the higher end of the density range of the policy is appropriate on this property. Staff recommends that a future rezoning to a higher density is appropriate, however, due to the need to ensure any development is contextually consistent, an SP or an RM zoning district with an associated PUD or UDO should be utilized.

STAFF RECOMMENDATION In accordance with the requirements of 17.40.120 H, staff recommends that the Planning Commission:

1. Find that the PUD is “inactive” and retain the RS7.5 zoning district
2. Recommend to the Metro Council that the PUD be cancelled and the current base zoning retained, and support a future rezoning to SP or an RM zoning district with a PUD or UDO to permit multi-family uses at a density consistent with the land use policy.

Section 17.40.120 H: Periodic Review of Planned Unit Developments

H. Periodic Review of Planned Unit Developments.

1. Authorization to Review. The metropolitan planning commission is authorized to review any planned unit development overlay district (PUD), or portion thereof, to determine whether development activity has occurred within six years from the date of the latter of initial enactment, subsequent amendment, or re-approval by the metropolitan council, and, if determined inactive in accordance with subsection 4.a. of this section, to recommend legislation to the council to re-approve, amend or cancel the PUD and make conforming changes to the base zoning if necessary.

2. Initiation. Review of a PUD or portion thereof to determine inactivity may be initiated by the metropolitan planning commission

a. On its own initiative,

b. By written request of a member of the metropolitan council, or

c. By written request of a property owner within the area of the PUD overlay requested for review.

d. Notice of Review. Within five business days of the initiation of a review, the planning commission shall send written notice to the district councilmember(s) for the district(s) in which the PUD is located, to the zoning administrator, and to the owner(s) of property in the portion of the PUD overlay district to be reviewed.

3. Metropolitan Planning Commission Procedure. Within 90 days from the initiation of its review, the planning commission shall hold a public hearing in accordance with the planning commission's adopted Rules and Procedures to concurrently consider if the PUD or portion thereof should be classified as inactive and, if found inactive, provide a recommendation to the metropolitan council on legislation to re-approve, amend or cancel the PUD and make conforming changes to the base zoning district if necessary.

a. Determination of Inactivity. To determine that a PUD or portion thereof is inactive, the planning commission shall establish each of the findings i. through iii. below. The planning commission may also take into consideration the aggregate of actions, if any, taken by the owner of the PUD within the prior 12 months to develop the portion of the PUD under review.

i. Six or more years have elapsed since the latter of

(1) The effective date of the initial enacting ordinance of the PUD,

- (2) *The effective date of any ordinance approving an amendment to the PUD,*
- (3) *The effective date of any ordinance re-approving or amending a PUD after it has been reviewed and decided in accordance with subsection 5.a. or b. of this section, or*
- (4) *The deadline for action by the metropolitan council in accordance with subsection 5.d. of this section, and*
- ii. *Construction has not begun on the portion of the PUD under review; construction shall mean physical improvements such as, but not limited to, water and sewer lines, footings, and/or foundations developed on the portion of the PUD under review; clearing, grading, the storage of building materials, or the placement of temporary structures shall not constitute beginning construction, and*
- iii. *Neither right-of-way acquisition from a third party nor construction has begun on off-site improvement(s) required to be constructed by the metropolitan council as a condition of the PUD approval.*
- b. *Recommendation to Metropolitan Council. If the planning commission determines that the PUD or portion thereof under review is inactive, the commission shall recommend legislation to the metropolitan council to re-approve, amend, or cancel the PUD, or portion thereof that is determined to be inactive, including conforming changes to the base zoning district if necessary. In recommending legislation, the planning commission shall:*
 - i. *Determine whether the existing PUD is consistent with the goals, policies, and objectives of the General Plan and any applicable specific redevelopment, historic, neighborhood, or community plans adopted by the metropolitan government.*
 - ii. *Recommend legislation to re-approve, amend, or cancel the existing overlay district, including as required:*
 - (a) *The appropriate base zoning district(s), if different from current base zoning, to retain and implement the PUD overlay district as it exists.*
 - (b) *Any amendment(s) to the inactive PUD's master development plan and base zoning district(s) to reflect existing conditions and circumstances, including the land use policies of the general plan and the zoning of properties in the area.*
 - (c) *Base zoning district(s) consistent with the adopted general plan, should the PUD overlay district be recommended for cancellation.*

Failure of the planning commission to act within 90 days from the initiation of a review shall be considered a recommendation to re-approve by ordinance the existing PUD overlay district without alteration.

c. When Inactivity Not Established. If the planning commission determines that the PUD or portion thereof under review does not meet the criteria of Section 17.40.120.H.4.a for inactivity, the PUD review is concluded, the limitations of subsection 5 are terminated, and a re-review of the PUD shall not be initiated in the manner of subsection 2 of this section for 12 months following the commission's determination.

- 4. *Metropolitan Council Consideration. The procedures of Article III of this chapter (Amendments) shall apply to metropolitan council consideration of ordinance(s) to:*
 - a. *Re-approve the existing PUD master plan and apply the appropriate base zoning district(s), if different from current base zoning,*
 - b. *Amend the PUD master plan, or*
 - c. *Cancel the PUD overlay district, including any change(s) to the underlying base zoning district.*
 - d. *Decline to take action by ordinance. If the metropolitan council does not act to re-approve, amend, or cancel the PUD within six months of receipt of the planning commission's recommended legislation, the property may be developed in accordance with the master development plan last approved by the metropolitan council, or subsequently revised by the planning commission.*
- 5. *No grading permit nor any building permit for new building construction shall be issued within the PUD overlay district or portion thereof for which a review has been initiated until the earlier of:*
 - a. *The metropolitan council's final action to re-approve, amend or cancel the PUD overlay district, or*
 - b. *Six months following the planning commission's submission of a recommendation to the metropolitan council, or the deadline for that submission should the commission fail to act.*

Approved (7-0) **Consent Agenda**

Resolution No. RS2010-37

“BE IT RESOLVED by The Metropolitan Planning Commission that 286-84P-001 finds: **1. That the PUD is “inactive” and retain the RS7.5 zoning district; and 2. Recommends to the Metro Council that the PUD be cancelled and the RS7.5 base zoning remain, and support a future rezoning to SP or to an RM zoning district with a PUD overlay or UDO to permit multi-family uses at a density consistent with the land use policy. (7-0)**

X. OTHER BUSINESS

4. Employee contract renewal for Brandon Burnette

Approved (7-0) **Consent Agenda**

5. Rules and Procedures.

Amendment 1

- Add new section IV C
- Ex Parte Communications. In matters before the Commission that are advisory, it is best practices that the Commission members refrain from ex parte communications. As the Commission's role in matters not subject to Council approval is deemed quasi-judicial, all elected and appointed members shall refrain from ex-parte contact on pending actions for which Commission decisions are binding. If inadvertent contact does occur on quasi-judicial matters, the member of the Commission shall report on that contact in full to the Commission prior to any action on the matter.

Amendment 2

- Delete Section VIII I.7

Mr. Bernhardt clarified that the revised Rules and Procedures will come into effect immediately with the exception of Section VII.A.1. Early notice of application filing which will come into effect with the first application submittal deadline of July 2010. (7-0)

Resolution No. RS2010-38

“BE IT RESOLVED by The Metropolitan Planning Commission that adoption of the revised Rules and Procedures of the Metropolitan Planning Commission is **APROVED WITH TWO AMENDMENTS. The revised Rules and Procedures that will come into effect immediately with the exception of Section VII.A.1. Early notice of application filing, which will come into effect with the first application submittal deadline of July 2010. (7-0)**”

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6. Historical Commission Report
7. Board of Parks and Recreation Report
8. Executive Director Reports
9. Legislative Update

XI. ADJOURNMENT

The meeting was adjourned at 4:09pm.

Chairman

Secretary



The Planning Department does not discriminate on the basis of age, race, sex, color, national origin, religion or disability in access to, or operation of, its programs, services, and activities, or in its hiring or employment practices. For ADA inquiries, contact Josie Bass, ADA Compliance Coordinator, at 862-7150 or e-mail her at josie.bass@nashville.gov. For Title VI inquiries contact Shirley Sims-Saldana or Denise Hopgood of Human Relations at 880-3370. For all employment-related inquiries call 862-6640.