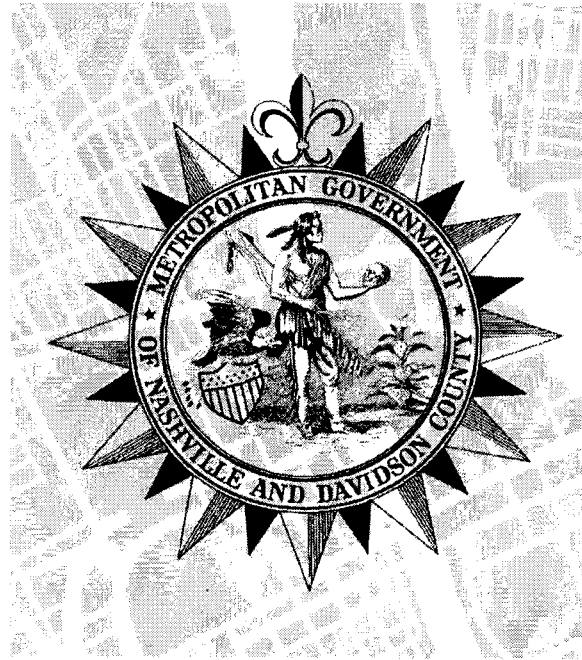


# Metropolitan Planning Commission



Staff Reports

**March 25, 2010**

*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.*

# **ZONING MAP AMENDMENT**





**Project No.**  
**Council District**  
**School District**  
**Requested by**

**Zone Change 2010Z-005PR-001**  
35 – Mitchell  
9 – Simmons  
Kenneth Ferrante, owner

**Staff Reviewer**  
**Staff Recommendation**

Swaggart  
*Disapprove*

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**APPLICANT REQUEST**

**Rezone from R40 to CS.**

**Rezoning**

**A request to rezone from One and Two-Family Residential (R40) to Commercial Service (CS) zoning property located at 6703 River Road Pike, approximately 850 feet south of Gower Road (5.14 acres).**

**Existing Zoning**  
R40 District

R40 requires a minimum 40,000 square foot lot and is intended for single-family dwellings and duplexes at an overall density of 1.16 dwelling units per acre including 25% duplex lots. Under R40 *this site would permit approximately five lots with one duplex lots for a total of six residential units.*

**Proposed Zoning**  
CS District

Commercial Service is intended for retail, consumer service, financial, restaurant, office, self-storage, light manufacturing and small warehouse uses.

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**CRITICAL PLANNING GOALS**

N/A

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**BELLEVUE  
COMMUNITY PLAN**

**Natural Conservation (NCO)**

NCO policy is intended for undeveloped areas with the presence of steep terrain, unstable soils, and floodway/floodplain. Low intensity community facility development and very low density residential development (not exceeding one dwelling unit per two acres) may be appropriate land uses.

**Consistent with Policy?**

No. The proposed commercial zoning is not consistent with the property's NC policy. The policy recognizes the floodway and floodplain for Overall Creek, and a majority of the property is encumbered by floodplain. The property has been disturbed and it appears that other than once being a farm it has also been used for the dumping/storage of construction materials.



## Metro Planning Commission Meeting of 3/25/2010

While the commercial zoning would provide some protection for the floodplain, it is not consistent with the policy or the surrounding area. With the exception of a junkyard to the south of this site, the area along this stretch of River Road Pike is residential in character and a commercial zoning would be incompatible with that character.

### **PUBLIC WORKS RECOMMENDATION**

A TIS may be required at development.

#### Typical Uses in Existing Zoning District: R40

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Detached (210)	5.14	1.16 D	5 L	48	4	6

#### Typical Uses in Proposed Zoning District: CS

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Strip Shopping (814)	5.14	0.066 F	14,777 SF	670	19	57

#### Traffic changes between typical: RS40 and proposed CS

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	-	+622	+15	+51

#### Maximum Uses in Existing Zoning District: RS40

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Detached (210)	5.14	1.16 D	5 L	48	4	6

#### Maximum Uses in Proposed Zoning District: CS

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Shopping Center (820)	5.14	0.6 F	134,339 SF	8228	184	776



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Traffic changes between maximum: RS40 and proposed CS

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	-	+8180	+180	+770

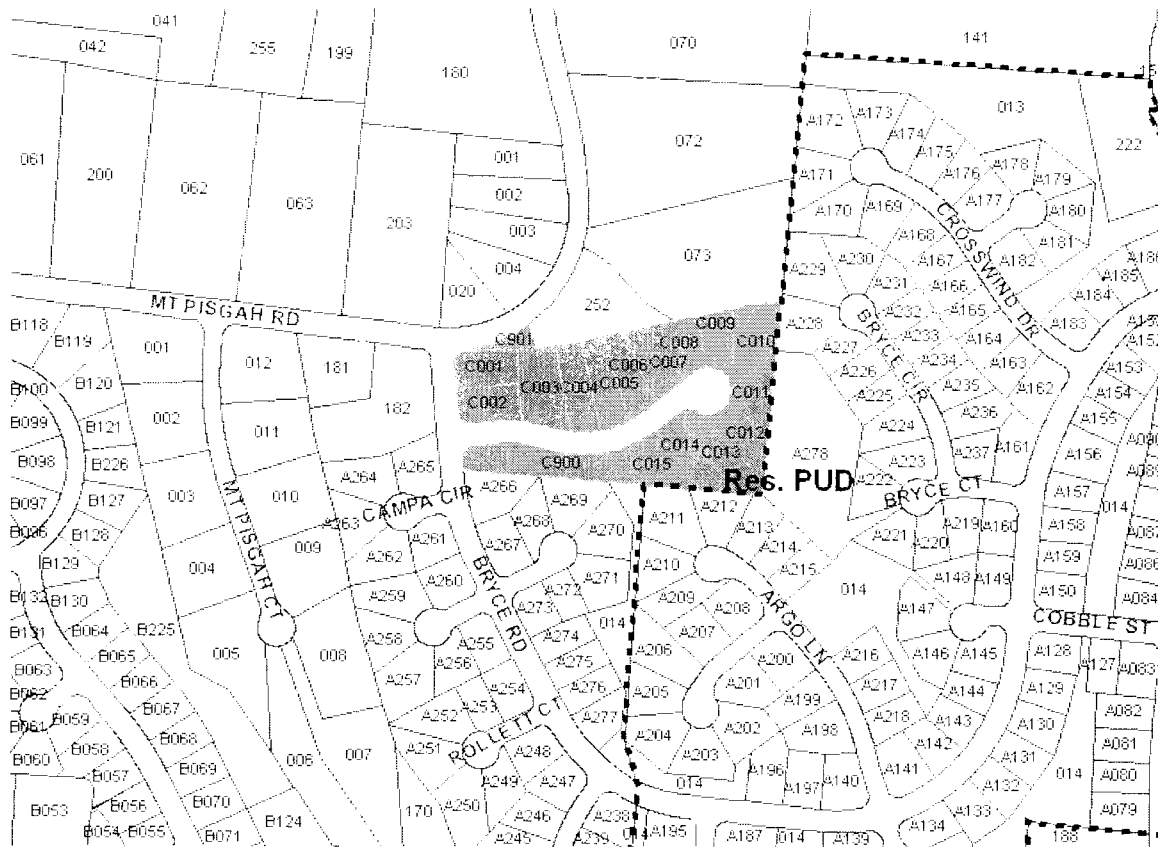
### STAFF RECOMMENDATION

Staff recommends that the proposed CS zoning district be disapproved. The proposed zoning district is not consistent with the area's Natural Conservation policy, nor is it compatible with the surrounding single-family residential development pattern.

**SEE NEXT PAGE**



**FINAL PLAT**



**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



**Project No.**  
**Project Name**  
**Council District**  
**School District**  
**Requested by**

**Subdivision 2007S-209G-12**  
**Brentwood Knoll**  
31- Toler  
2- Brannon  
Metro Planning Department on behalf of  
Councilmember Parker Toler; Mark Sarmadi and Dean  
Baxter, owners

**Staff Reviewer**  
**Staff Recommendation**

Logan  
*Approve*

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**APPLICANT REQUEST**

**Rescind final plat approval.**

**Rescind Final Plat**

**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 Single-Family Residential (RS10) and Agricultural/Residential (AR2a).**

**ZONING**  
RS10 District

RS10 requires a minimum of 10,000 square foot lot and is intended for single-family dwellings at a density of 3.7 dwelling units per acre.

AR2a District

Agricultural/Residential requires a minimum lot size of 2 acres and intended for uses that generally occur in rural areas, including single-family, two-family, and mobile homes at a density of one dwelling unit per 2 acres. The AR2a District is intended to implement the natural conservation or interim nonurban land use policies of the general plan.

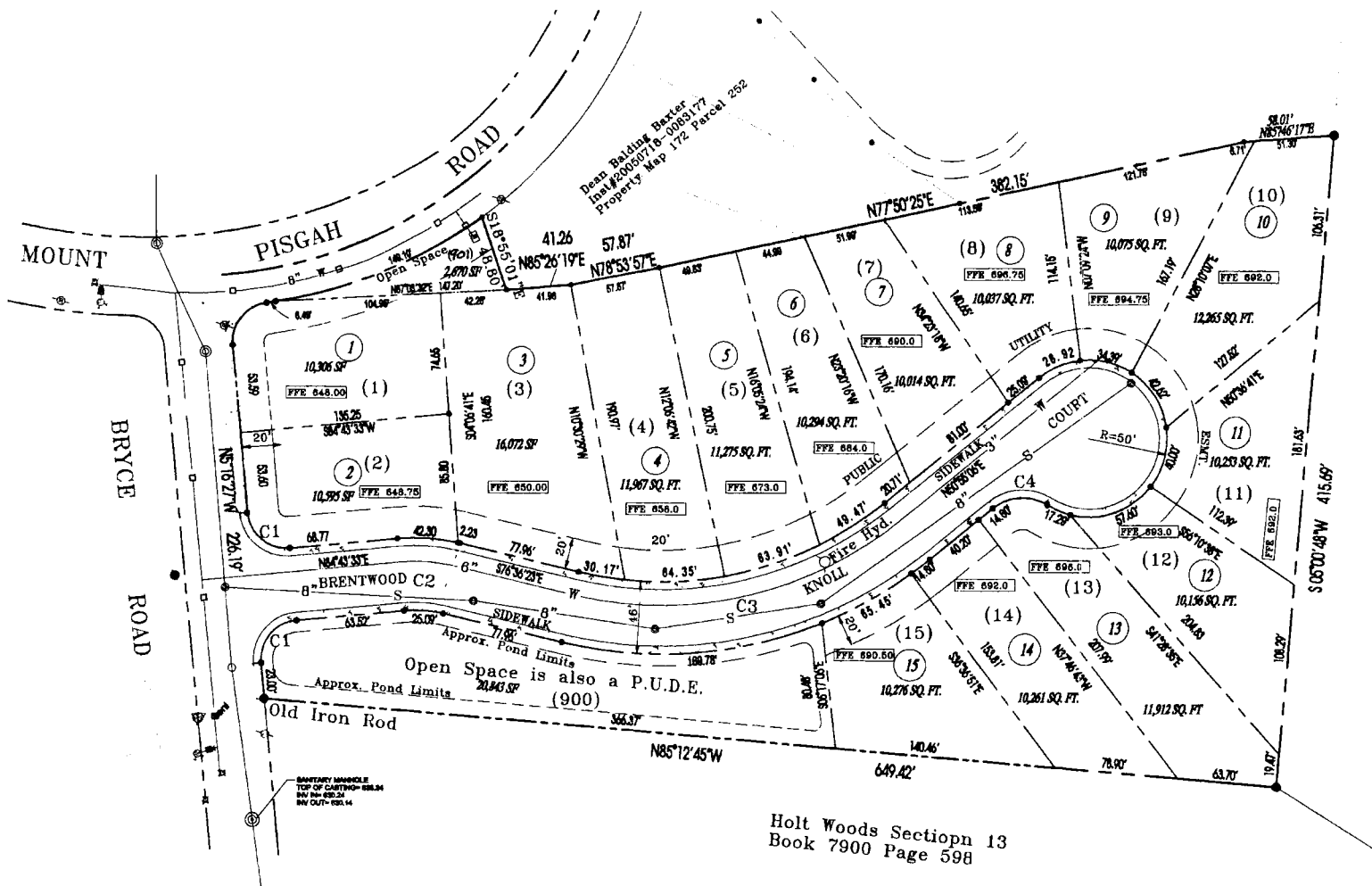
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**PLAN DETAILS**

The preliminary plat for Brentwood Knoll was approved on February 24, 2005. The final plat for Brentwood Knoll was recorded on May 22, 2008, and created 15 lots. All lots are owned by the original owner. Notices were sent via certified mail to the owner of the property as well as others that research showed may have a financial interest in the property.

**Bond Information**

Generally, in order to record a final plat, the construction plans for the required infrastructure must be approved by Public Works, Stormwater and Water Services (hereinafter "the reviewing departments"). If the developer chooses not to install the required infrastructure prior to recording the final plat, the



Dean Baldwin Better  
 Iss. #20000718-0063177  
 Property Map 172 Parcel 252

BENCHMARK  
 TOP OF CAST-IRON PILE  
 BY P. 820.24  
 BY CUT-102.14

Holt Woods Section 13  
 Book 7900 Page 598



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reviewing departments will determine a bond amount based on the approved construction plans. The developer will then post a bond prior to recording the final plat.

The bond is comprised of two parts:

- 1) the performance agreement, which is the contract signed by the developer stating that they will complete the infrastructure, and
- 2) the security in the form of a letter of credit, cashier's check or surety bond.

The bond insures that the Metro Government will be able to complete the infrastructure in the event that the developer is unwilling or unable.

In this case, a bond was posted prior to recording the final plat. The surety company securing this bond is Developers Surety and Indemnity Company. This surety company is currently excluded from providing surety bonds to the Planning Commission until November 13, 2010, because they have not paid on this bond and two other bonds.

On October 9, 2009, the Planning Department made a demand on the surety bond for this development. On November 3, 2009, the case was sent to the Department of Law. To date, the surety company has not completed the infrastructure nor paid the amount of the bond (\$118,000). Since the bond is required to secure the satisfactory construction, installation, and dedication of the required improvements of the final plat, the bond will be released if the plat is rescinded.

### Stormwater Easements

Metro Stormwater has requested that the easements for the detention pond be retained, even if the plat is rescinded. However, the Department of Law has stated that the easements are unnecessary due to the existing maintenance agreement that requires the developer to maintain the storm water infrastructure. The maintenance agreement runs with the land and is filed at the Register of Deeds to insure that future owners of the property continue to maintain the existing infrastructure. Should the owner of the property fail to maintain the existing infrastructure, Metro could pursue legal action to enforce the provisions of the existing agreement.



## Metro Planning Commission Meeting of 3/25/2010

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### **PUBLIC WORKS RECOMMENDATION**

No Exception Taken

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### **STORMWATER RECOMMENDATION**

If the plat can be rescinded and easements be retained, then Stormwater would like the easement for the detention pond retained. If the easements can't be retained by rescinding the plat, then Stormwater is ok with the rescission of the plat without easements.

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### **STAFF RECOMMENDATION**

Staff recommends approval of rescinding the plat since the infrastructure is incomplete and the surety company has not paid the amount of the bond.

**PLANNED UNIT DEVELOPMENT  
REVIEW**



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





**Project No.**  
**Project Name**  
**Council District**  
**School Board District**  
**Requested By**

**Planned Unit Development 286-84P-001**  
**Dinwiddie Square PUD Review**  
18 – LaLonde  
8 – Fox  
Councilmember Kristine LaLonde, applicant; Glenn A. Ferguson Revocable Living Trust, owner

**Staff Reviewer**  
**Staff Recommendation**

Bernards  
*Staff recommends that the Commission:*  
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.

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**APPLICANT REQUEST**

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**Periodic Review of the Dinwiddie Square PUD**

**PUD Review**

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.

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**CRITICAL PLANNING GOALS**

N/A

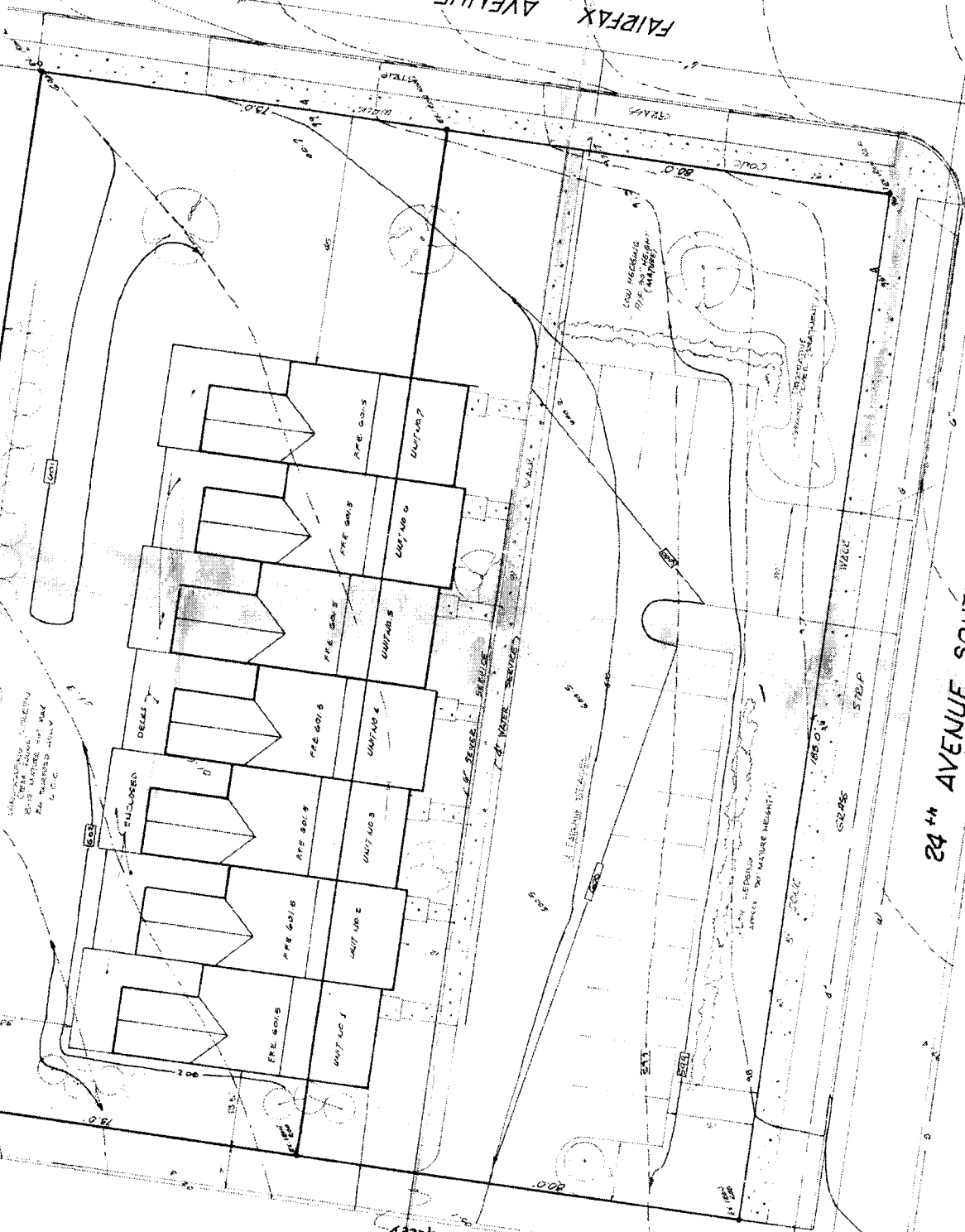
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**PERIODIC PUD REVIEW**

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

FAIRFAX AVENUE

24<sup>th</sup> AVENUE SOUTH





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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.

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### 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 24<sup>th</sup> 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.

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### 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,



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(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



## Metro Planning Commission Meeting of 3/25/2010

### 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 24<sup>th</sup> Avenue South and Fairfax Avenue, including the Martin Professional Development Center, the existing Ronald McDonald House and the planned Ronald McDonald



## Metro Planning Commission Meeting of 3/25/2010

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.

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### **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.



## Metro Planning Commission Meeting of 3/25/2010

### 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*



## Metro Planning Commission Meeting of 3/25/2010

- 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:*





## **Metro Planning Commission Meeting of 3/25/2010**

- 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.*