



METROPOLITAN PLANNING COMMISSION MINUTES

Thursday, February 23, 2012

4:00 pm Regular Meeting

700 Second Avenue South

(between Lindsley Avenue and Middleton Street)

Howard Office Building, Sonny West Conference Center (1st Floor)

MISSION STATEMENT

The Planning Commission guides growth and development as Nashville and Davidson County 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.

Commissioners Present:

Jim McLean, Chair
Stewart Clifton
Greg Adkins
Judy Cummings
Phil Ponder
Derrick Dalton
Councilmember Phil Claiborne

Staff Present:

Rick Bernhardt, Executive Director
Ann Hammond, Assistant Executive Director
Kelly Armistead, Administrative Services Officer III
Craig Owensby, Public Information Officer
Dennis Corrieri, Planning Technician I
Bob Leeman, Planning Manager II
Jennifer Carlat, Planning Manager II
Brenda Bernards, Planner III
Jason Swaggart, Planner II
Greg Johnson, Planner II
Brian Sexton, Planner I
Doug Sloan, Legal

Commissioners Absent:

Hunter Gee
Jeff Haynes
Andree LeQuire

Richard C. Bernhardt, FAICP, CNU-A

Secretary and Executive Director, Metro Planning Commission
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Notice to Public

Please remember to turn off your cell phones.

The Commission is a 10-member body, nine of whom are appointed by the Metro Council and one of whom serves as the mayor's representative. The Commission meets on the 2nd and 4th Thursday of each month at 4:00 p.m., unless otherwise noted. The Planning Commission makes the final decision on final site plan and subdivision applications. On all other applications, the Commission recommends an action to the Metro Council (e.g. zone changes, specific plans, overlay districts, and mandatory referrals). The Metro Council can accept or not accept the recommendation.

Agendas and staff reports can be viewed on-line at www.nashville.gov/mpc/agendas or weekdays from 7:30 a.m. to 4:00 p.m. at the Planning Department office located at 800 2nd Avenue South, downtown Nashville. Also, at the entrance to this meeting room, a binder of all staff reports has been placed on the table for your convenience.

Meetings on TV can be viewed live or shown at an alternative time on Channel 3. Visit www.nashville.gov/calendar for a broadcast schedule.

Writing to the Commission

You can mail, hand-deliver, fax, or e-mail comments on any agenda item to the Planning Department. For the Commission to receive your comments, prior to the meeting, you must submit them by **noon the day of the meeting**. Otherwise, you will need to bring 14 copies of your correspondence to the meeting and during your allotted time to speak, distribute your comments.

Mailing Address: Metro Planning Department, 800 2nd Avenue South, P.O. Box 196300, Nashville, TN 37219-6300
Fax: (615) 862-7130
E-mail: planningstaff@nashville.gov

Speaking to the Commission

If you want to appear in-person before the Commission, view our tips on presentations on-line at www.nashville.gov/mpc/pdfs/mpc_mtg_presentation_tips.pdf and our summary regarding how Planning Commission public hearings are conducted at www.nashville.gov/mpc/docs/meetings/Rules_and_procedures.pdf. Briefly, a councilmember may speak at the very beginning of the commission meeting, after the individual item is presented by staff, or after all persons have spoken in favor or in opposition to the request. Applicants speak after staff presents, then, those in favor speak followed by those in opposition. The Commission may grant the applicant additional time for a rebuttal after all persons have spoken. Maximum speaking time for an applicant is 10 minutes, individual speakers is 2 minutes, and a neighborhood group 5 minutes, provided written notice was received prior to the meeting from the neighborhood group.

- Day of meeting, get there at least 15 minutes ahead of the meeting start time to get a seat and to fill-out a "Request to Speak" form (located on table outside the door into this meeting room).
- Give your completed "Request to Speak" form to a staff member.
- For more information, view the Commission's Rules and Procedures, at www.nashville.gov/mpc/pdfs/main/rules_and_procedures.pdf

Legal Notice

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.



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MEETING AGENDA

A. CALL TO ORDER

The meeting was called to order at 4:05 p.m.

B. ADOPTION OF AGENDA

Mr. Ponder moved and Councilmember Claiborne seconded the motion to adopt the agenda. (6-0)

C. APPROVAL OF FEBRUARY 9, 2012 MINUTES

Mr. Ponder moved and Mr. Clifton seconded the motion to approve the February 9, 2012 minutes (6-0)

D. RECOGNITION OF COUNCILMEMBERS

Councilmember Baker spoke in support of Item 4 rezoning.

E. ITEMS FOR DEFERRAL / WITHDRAWAL

No Cases on this Agenda

F. CONSENT AGENDA

1. **2012CP-000-001**
MAJOR AND COLLECTOR STREET PLAN
3. **2007SP-186U-09**
ROLLING MILL HILL: DISTRICT BLDG
5. **2012Z-005PR-001**
1628 & 1630 6TH AVENUE NORTH
6. **2008S-061U-12**
BRENTWOOD BRANCH ESTATES
7. A request for an Open Space Dedication Agreement between Summerfield Development, LLC, and the Metropolitan Government of Nashville and Davidson County, Tennessee for a portion of property on Ashford Trace, south of Shadowbrook Trail (Map 164, Part of Parcel 262), to allow a portion of the Cane Ridge Elementary School property to be counted towards future open space requirements of the Treehaven Subdivision, Phase V, when the final plat is approved and recorded.

Mr. Ponder moved and Mr. Clifton seconded the motion to approve the Consent Agenda. (6-0)

G. PREVIOUSLY DEFERRED ITEMS

Community Plan Amendments

1. **2012CP-000-001**
MAJOR AND COLLECTOR STREET PLAN
Council District N/A
Staff Reviewer: Michael Briggs

A request to amend the adopted Major and Collector Street Plan designations for various areas as outlined in Davidson County.
Staff Recommendation: APPROVE

APPLICANT REQUEST
Amend designations of the Major and Collector Street Plan

Major Street and Collector Plan

A request to amend the adopted Major and Collector Street Plan designations for various areas as outlined in Davidson County.

Deferral

This item was deferred by the Planning Commission in order to address additional questions raised by Planning Commissioners at their work session on January 12, 2012, involving the inclusion of local streets into the Major and Collector Street Plan (MCSP). At the January 26, 2012 Planning Commission Meeting, changes to MCSP designations involving streets in the Bellevue Community Plan Area were approved, and changes to correct errors in other areas of Davidson County and include local streets were deferred until February 23, 2012.

MAJOR AND COLLECTOR STREET PLAN

The Major and Collector Street Plan (MCSP) is a comprehensive plan and implementation tool for guiding public and private investment in the major streets (Arterial-Boulevards and Arterial-Parkways) and collectors (Collector-Avenues) that make up the backbone of the city's transportation system. It is a part of, and implements, *Mobility 2030*, which is the functional plan component of the General Plan for Nashville and Davidson County.

Need to Amend the Plan

Implementing Complete Streets: Major and Collector Street Plan of Metropolitan Nashville, A Component of Mobility 2030 was adopted on April 24, 2011. As an element of the General Plan, the MCSP should be amended as updates occur to each Community Plan to reflect change that has occurred and to respond to future planned growth, development, and preservation.

Analysis

There are two broad categories of amendments for the MCSP at this time:

- Fixing Errors** - Since the adoption of the MCSP in April 2011, Planning staff have found errors in the document; primarily errors where the street classification does not reflect existing street conditions. These MCSP changes were deferred by the Planning Commission until February 23, 2012 and are detailed below.
- Local Streets** - Planning staff also recommends amending the MCSP to include the ROW for local streets. This will ensure that ROW is established for these streets as per the current design standards utilized by Metro Public Works. The ROW would be set at 50 feet, which reflects the predominant width of existing local streets today. These MCSP changes were deferred by the Planning Commission until February 23, 2012 and are detailed below.

Major and Collector Street Plan Proposed Amendments Related to Errors and Local Streets

Street	Segment Number	Termini	Adopted MCSP Designation	Bike Infrastructure/ Median	Adopted Standard ROW	Amended MCSP Designation	Bike Infrastructure/ Median	Updated Standard ROW	Recommendation					
									Amend Street Plan	Update Street Plan	Update Sidewalks Plan	Update Greenways Plan	Update Transit Plan	
All Local Streets	1	All Local Streets in Davidson County				Local Street	<i>As Identified in the Strategic Plan for Sidewalks & Bikeways</i>	50'	X	X				
2nd Avenue South	2	From Chestnut Street to approx. 325 feet south of Lafayette Street	T4-R-AB2-UM	Planned Bike Lane	69'	T4-R-AB3-UM	Planned Bike Lane	76'	X	X				
21st Avenue South	3	From Wedgewood/ Blakemore Avenue to Magnolia Boulevard	T4-M-AB4-UM	Planned Bike Lane	91'	T4-M-AB5-UM	Planned Bike Lane	82'	X	X				
Anderson Road	4	From Smith Springs Road to Priest Lake Drive	T3-M-CA3		66'	T3-M-CA2		55'	X	X				
Lafayette Street	5	From Interstate 40 to Peabody Street/7th Avenue South	T6-M-AB6-UM	Planned Bike Lane	117'	T6-M-AB5-UM	Planned Bike Lane	96'	X	X				
Natchez Trace	6	From Fairfax Avenue to Blair Boulevard	T4-R-CA2	Bike Route Existing	51'	T4-R-CA4	Bike Route Existing	73'	X	X				
Old Hickory Boulevard/ Bell Road	7	From approx. 1/3 mile east of Nolensville Pike to approx. 1/10 mile east of the intersection of Old Hickory Boulevard & Bell Road	T3-R-AB7-S & T3-M-AB7-S	Planned Bike Lane	118'	T3-M-AB5-S	Planned Bike Lane	96'	X	X				

The following changes are proposed to the MCSP document related to the inclusion of local streets:

Page 2 - Add text:

In addition to the detailed analysis of all the major streets within Davidson County, the MCSP also provides basic information on right-of-way widths for local streets.

Page 19 - Add paragraph:

Local Streets

Local streets are a separate category of functional design type. Local street designations do not include the Environment or Street Context elements that are part of the major street designations. Local streets provide access to individual properties. On local streets, speeds and motor vehicle traffic volumes are low, providing a safe and comfortable environment for pedestrians and bicyclists.

Page 20 - Add Local Street to the MCSP Legend

Page 24 - Add paragraph:

A Standard right-of-way for local streets shall be set at fifty feet for all existing streets. The fifty foot right-of-way shall be used to determine the appropriate building placement in conjunction with the Metro Zoning Code. Construction of new local streets and the acquisition of right-of-way on existing local streets shall be considered on a case by case basis with regard to environment and context.

Page 74 - Add Local Street to Table A2: Standard Right of Way Widths

COMMUNITY PARTICIPATION

The housekeeping amendment package was posted on the Planning Commission's website on January 12, 2012, and those subscribed to the Planning Department's *Development Dispatch* were notified of the amendment package on January 13, 2012. In addition to that general notification, e-mail notification was sent on January 13, 2012, to those individuals that participated in the update to the MCSP in 2011. Additional transportation stakeholders and related agency stakeholders were also notified via e-mail regarding the housekeeping amendments on January 13, 2012.

STAFF RECOMMENDATION

Staff recommends approval.

Approved (6-0), Consent Agenda

Resolution No. RS2012-43

"BE IT RESOLVED by The Metropolitan Planning Commission that 2012CP-000-001 is **APPROVED. (6-0)**"

H. COMMUNITY PLAN POLICY CHANGES AND ASSOCIATED CASES

No Cases on this Agenda

I. RECOMMENDATIONS TO METRO COUNCIL

Zoning Text Amendments

2. 2012Z-006TX-001

BL2012-109 / JOHNSON

SIGNS: NON-CONFORMING STATIC BILLBOARD CONVERSION

Staff Reviewer: Brenda Bernards

A request to amend the Metro Zoning Code, Section 17.40.690 (Nonconforming Signs) to add requirements for the conversion of nonconforming static billboards to tri-face billboards, requested by Councilmember Karen Johnson.

Staff Recommendation: APPROVE

APPLICANT REQUEST

Require BZA determination to convert certain static non-conforming billboards to tri-face billboards

Text Amendment

A request to amend Chapter 17.40 of the Metropolitan Code to add requirements for the conversion of non-conforming static billboards to tri-face billboards.

CRITICAL PLANNING GOALS

N/A

PURPOSE OF THE TEXT AMENDMENT

This text amendment will require that, before a legally non-conforming static billboard is converted to a tri-face billboard, the Board of Zoning Appeals (BZA) must first determine that the conversion will not result in a greater negative impact on the adjacent properties. For purposes of discussion, references to non-conforming billboards in this staff report include only legally non-conforming billboards.

Existing Law

A tri-faced billboard is defined in the Zoning Code as

"...a non-internally illuminated billboard consisting of a sign face comprised of a series of vertical triangular louvers that can be rotated to show up to three separate sign messages.

Section 17.32.050.G, tri-face billboards are specifically excluded from the height restrictions.

"Signs with any copy, graphics, or digital displays that change messages by electronic or mechanical means, other than tri-face billboards, shall not be permitted in the CA, CS, CF, CC, SCR, IWD, IR and IG districts unless the following distance requirements are satisfied, based upon the overall height of the sign:"

Currently, the Zoning Code does not distinguish between static and tri-face billboards. These are both considered conventional billboards. When regulations for changeable message signs were added to the Zoning Code in May 2008, tri-face billboards were placed into this new category. By adding a definition for tri-faced billboards, and excluding them from the height restrictions imposed on digital signs in January 2011, tri-face billboards were, once again, treated as conventional billboards. The Planning Commission recommended approval of this text amendment at its December 9, 2010, meeting.

Proposed Bill

Originally, a text amendment that would prohibit the conversion of any non-conforming static billboard to a tri-face billboard was proposed. That text amendment was discussed at the November 10, 2011, Planning Commission meeting and the January 26, 2012, work session. As the sponsor had not intended to prohibit conversions entirely, but to add a public process to conversions, the first bill was withdrawn and substituted with this bill. Neither text amendment was intended to halt the conversion of these billboards but rather to create a public process when the conversions would occur. This new text amendment defines that process for certain conversions of non-conforming static billboards to tri-face billboards.

ANALYSIS

Billboards are considered to be a use and the Zoning Code defines a non-conforming use in the following way:

"Nonconforming use" means a use originally legally established, but which now does not currently conform to the applicable use regulations of the zoning district in which it is located.

The state nonconforming use statutes allow certain existing non-conforming businesses to remain when a change in local zoning regulations makes the business no longer technically in compliance with the law. The purpose of the grandfathering statute is to prevent a hardship to existing property owners and businesses that were in compliance with the applicable laws at the time a new zoning restriction was enacted. Tennessee courts have interpreted the non-conforming use statute to be applicable to advertising signs, which allows the sign face to be changed without losing its protected non-conforming status.

There are many billboards that were legally installed but changes in the Zoning Code have made them non-conforming, including:

- Increasing the separation distance between billboards from 750 feet to 1,000 feet;
- Requiring all billboards to be on a single pole; and
- Requiring all billboards to be located on a street at least four lanes in width.

Alternatively, a change in circumstance may have made the billboard non-conforming. For example, the required setback for a billboard is 20 feet. But if a street is widened, the billboard may no longer be 20 feet from the property line and would become non-conforming.

Currently, any non-conforming static billboard in the County could be replaced with a tri-face billboard. With this text amendment, certain requests for conversions would require a determination by the BZA.

This bill will not impact the conversion of all non-conforming static billboards. The type of non-conformity will determine which billboards will need to go through this process. Billboards can be non-conforming for one or a combination of reasons:

- They do not meet the bulk standards of the Code (see exception below).
- They do not meet the separation requirements between billboards or other specified uses.
- They are located on a road less than four lanes in width.
- They are supported by two or more poles (see exception below).

State law offers some protections that would exempt certain non-conforming billboards from this new requirement. The scope of the text amendment is discussed in the analysis section. Non-conforming uses are given certain protections in state regulations. State Statute 13-7-208.I, provides that

(i) Notwithstanding subsection (d), any structure rebuilt on the site must conform to the provisions of the existing zoning regulations as to setbacks, height, bulk, or requirements as to the physical location of a structure upon the site, provided that this subsection (i) shall not apply

to off-site signs.

Exception for Bulk Standards

This section of state law gives added protection to non-conforming billboards based on bulk regulations. If a billboard is non-conforming only because it does not meet setbacks, height requirements, or other bulk standards, then it is not considered non-conforming. A new billboard would be required to meet all of these standards but those in place prior to the change in the standards do not. As a result, if the non-conformity is based only on a bulk standard, the static billboard could be converted with the application of a permit.

Exception for Billboard Structure

Any billboard that is non-conforming because it does not meet the separation requirements, and/or is located on road less than four lanes wide, and/or has multiple poles will be required to go to the BZA before being converted to a tri-face billboard. The exception to this is a multi-poled billboard subject to the state requirements for billboards on controlled access highways. The state requires that, when a billboard is replaced, it must be replaced with a similar billboard. For example, a multi-poled billboard must be replaced with a multi-poled billboard. As a result, if the non-conformity of a billboard on a controlled access highway is only because it is on more than one pole and meets all separation requirements and is on road at least four lanes wide, the static billboard could be converted with the application of a permit.

STAFF RECOMMENDATION

Staff recommends approval of this bill since it will allow a public process for abutting property owners to bring concerns about impacts of the conversion of billboards that may be addressed by the Board of Zoning Appeals.

ORDINANCE NO. BL2012-109

An Ordinance amending Chapter 17.40 of the Metropolitan Code to add requirements in the conversion of nonconforming static billboards to tri-face billboards, all of which is more particularly described herein (Proposal No. 2012Z-006TX-001).

WHEREAS, tri-face billboards are potentially more distracting to motorists than static billboards, and have a more intensive impact on the surrounding community; and

WHEREAS, the Metropolitan Council recognizes that Tennessee Code Annotated § 13-7-208 provides certain protections to non-conforming uses; and

WHEREAS, the Metropolitan Council desires to allow nonconforming static billboards to continue to be used as such in accordance with Tennessee Code Annotated § 13-7-208, but require the Board of Zoning Appeals to determine the appropriateness of the conversion of non-conforming static billboards to tri-face billboards.

BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 17 of the Code of The Metropolitan Government of Nashville and Davidson County, Zoning Regulations, is hereby amended by amending Section 17.40.690 by adding the following provision as a new subsection at the end thereof:

"F. Prior to a nonconforming static billboard being altered, modified, converted, changed, or replaced to result in the billboard becoming a tri-face billboard as defined in section 17.04.060, the metropolitan board of zoning appeals shall determine that the conversion of the billboard will result in no greater negative impacts to adjacent property owners, subject to the provisions of Section 17.40.180.D."

Section 2. That this Ordinance shall take effect five (5) days from and after its passage and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Karen Johnson

Mrs. Bernards presented the staff recommendation of approval.

Mr. Sloan arrived at 4:14 p.m.

Dr. Cummings arrived at 4:15 p.m.

Bill Rush, 1993 Southerland Drive, spoke against the proposal, noting a Court of Appeals decision for a similar case in Johnson City, and asked for disapproval.

Mr. Clifton moved and Councilmember Claiborne seconded the motion to close the Public Hearing. (7-0)

Chairman McLean asked if the Johnson City case is a parallel to this case.

Mr. Sloan stated that he wasn't sure without researching it, but clarified that no case law directly relates to this case.

Mr. Adkins stated that he does not feel like this is a change in use and will vote against the proposal.

Mr. Clifton noted that he would like to have a response to the Johnson City case.

Mr. Ponder inquired if there is a fee if the applicant takes their request before the BZA.

Ms. Bernards clarified that there is a fee but she is unsure of the exact amount.

Councilmember Claiborne stated that he would like to know whether the Johnson City case is relevant to this case or not.

Councilmember Claiborne moved and Mr. Adkins seconded the motion to defer to the March 8, 2012 Planning Commission meeting. (7-0)

Resolution No. RS2012-44

“BE IT RESOLVED by The Metropolitan Planning Commission that 2012Z-006TX-001 is DEFERRED to the March 8, 2012, Planning Commission meeting. (7-0)”

Specific Plans

3. 2007SP-186U-09

ROLLING MILL HILL: DISTRICT BLDG

Map 093-11, Part of Parcel(s) 252

Council District 19 (Erica S. Gilmore)

Staff Reviewer: Brian Sexton

The periodic review of an approved Specific Plan (R) district known as "Rolling Mill Hill: District Building", to determine its completeness pursuant to Section 17.40.106.I of the Metro Zoning Code (Review of a Development Plan), for a portion of property located at Middleton Street (unnumbered) within the Rutledge Hill Redevelopment District, (0.48 acres), approved for construction of the "District Building" with no maximum height at the property line via Council Bill BL2007-87 effective on January 15, 2008, review initiated by the Metro Planning Department.

Staff Recommendation: Find the SP district inactive and direct staff to prepare a report to the Council to continue the implementation of the development plan as adopted and that no rezoning is recommended on this property.

APPLICANT REQUEST

Four year SP review to determine activity

SP Review

The periodic review of an approved Specific Plan (R) district known as "Rolling Mill Hill: District Building", to determine its completeness pursuant to Section 17.40.106.I of the Metro Zoning Code (Review of a Development Plan), for property located at Middleton Street (unnumbered) within the Rutledge Hill Redevelopment District (0.48 acres), approved for construction of the "District Building" with no maximum height at the property via Council Bill BL2007-87 effective on January 15, 2008.

Zoning Code Requirement

Section 17.40.106.I of the Zoning Code requires that a SP district be reviewed four years from the date of Council approval and every four years after until the development has been deemed complete by the Planning Commission.

Each development within a SP District is to be reviewed in order to determine if the project is complete or actively under development to implement the approved development concept. If the review determines that the project is complete or actively under development, then no further review is necessary at this time. If the review determines that the project is inactive then the Planning Commission is to determine if its continuation as an SP District is appropriate.

DETAILS OF THE SP DISTRICT

The Rolling Mill Hill SP: District Building was originally approved to permit no maximum height limits at the property line for the "District Building." The District Building is part of the Rolling Mill Hill development plan approved by Metro Development and Housing Agency (MDHA). The Specific Plan district changed only the height standards of the previous zoning on the property which was Core Frame (CF). All bulk standards of the CF zoning district still apply with the exception of the height standards.

SPECIFIC PLAN REVIEW

Staff conducted a site visit in January 2012. Although the Rolling Mill Hill Development is clearly active, there did not appear to be any construction activity on the portion of the development zoned SP. A letter was sent to the property owner of record requesting details that could demonstrate that the SP was active. The owner did not respond to the letter. As no documentation of activity was submitted, the staff preliminary assessment of inactivity remains in place.

FINDING OF INACTIVITY

When the assessment of an SP is that it is inactive, staff is required to prepare a report for the Planning Commission with recommendations for Council Action including:

1. An analysis of the SP district's consistency with the General Plan and compatibility with the existing character of the community and whether the SP should remain on the property, or

2. Whether any amendments to the approved SP district are necessary, or
3. To what other type of district the property should be rezoned.

If the Planning Commission agrees with the staff assessment, staff will prepare a written report of the Commission's determination to Council with a recommendation on the following:

1. The appropriateness of the continued implementation of the development plan or phase(s) as adopted, based on current conditions and circumstances; and
2. Any recommendation to amend the development plan or individual phase(s) to properly reflect existing conditions and circumstances, and the appropriate base zoning classification(s) should the SP district be removed, in whole or in part, from the property.

Permits on Hold

Section 17.40.106.I.1 of the Zoning Code requires that once the review of an SP with a preliminary assessment of inactivity is initiated, no new permits, grading or building, are to be issued during the course of the review. For purposes of satisfying this requirement, a hold shall be placed on all properties within the SP on the date the staff recommendation is mailed to the Planning Commission so that no new permits will be issued during the review.

ANALYSIS

Consistency with the General Plan

The SP is consistent with the Mixed Use in Downtown Neighborhood Policy. The SP was approved for the height of the building only. The building is part of a larger Rolling Mill Hill plan that has been approved by Metropolitan Development and Housing Agency (MDHA).

Amendments/Rezoning

As the SP is consistent with the MxU in DN land use policy, the SP remains appropriate for the site and area. There are no amendments to the plan proposed and no new zoning district is proposed for the property.

Recommendation to Council

If the Planning Commission agrees with the staff assessment, staff will prepare a written report of the Commission's determination to Council to continue the implementation of the development plan as adopted and that no rezoning is required on this property.

STAFF RECOMMENDATION

Staff recommends that the Rolling Mill Hill SP: District Building be found to be inactive and that the Planning Commission direct staff to prepare a report to the Council to continue the implementation of the development plan as adopted and that no rezoning is recommended on this property.

Find the SP district inactive and direct staff to prepare a report to the Council to continue the implementation of the development plan as adopted and that no rezoning is recommended on this property.

(6-0). Consent Agenda

Resolution No. RS2012-45

“BE IT RESOLVED by The Metropolitan Planning Commission that 2007SP-186U-09 is **APPROVED, FINDING THE SP INACTIVE and directing staff to prepare a report to the Council to continue the implementation of the development plan as adopted and that no rezoning is recommended on this property. (6-0)”**

Zone Changes

4. 2012Z-004PR-001

BL2012-104 / BAKER
200, 202, 204 & 206 OCEOLA AVENUE
Map 103-02, Parcel(s) 032-035
Council District 20 (Buddy Baker)
Staff Reviewer: Jason Swaggart

A request to rezone from the R6 to CS district properties located at 200, 202, 204 and 206 Oceola Avenue, at the northeast corner of Oceola Avenue and Burgess Avenue (0.91 acres), requested by DHJ Associates, Paul and Michele Somers, and Somers Properties LLC, owners.

Staff Recommendation: DISAPPROVE

APPLICANT REQUEST

Rezone from residential to commercial.

Zone Change

A request to rezone from the One and Two Family Residential (R6) to Commercial Services (CS) district properties located at 200, 202, 204

and 206 Ocoola Avenue, at the northeast corner of Ocoola Avenue and Burgess Avenue (0.91 acres).

Existing Zoning

R6 District

R6 requires a minimum 6,000 square foot lot and is intended for single-family dwellings and duplexes at an overall density of 7.71 dwelling units per acre including 25% duplex lots.

Proposed Zoning

CS District

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

CRITICAL PLANNING GOALS

N/A

WEST NASHVILLE COMMUNITY PLAN

Suburban Neighborhood Evolving

T3 NE policy is intended to create suburban neighborhoods that are compatible with the general character of classic suburban neighborhoods as characterized by their building form, land use and associated public realm, with opportunities for housing choice and improved pedestrian, bicycle and vehicular connectivity. The resulting development pattern will have higher densities than classic suburban neighborhoods and/or smaller lot sizes, with a broader range of housing types providing housing choice. This reflects the scarcity of easily developable land (without sensitive environmental features) and the cost of developing housing - challenges that were not faced when the original classic, suburban neighborhoods were built.

Consistent with Policy?

No. The Suburban Neighborhood Evolving policy is a residential policy. The proposed Commercial Services zoning district is a commercial zoning and is not consistent with the existing residential policy.

Commercial and office zoning districts are located on the east and west side of Ocoola Avenue north of the subject properties, and a multi-family development, zoned RM9 is located directly across Ocoola to the west. The zoning south of the subject properties and south of Burgess Avenue is single and two-family residential. The area just north of Burgess Avenue which includes the subject properties and the multi-family district is a transitional area between the more nonresidential area north of Burgess and the predominately residential area south of Burgess. The proposed CS zoning district does not promote transitional uses, but permits commercial uses such as service stations, pawnshops and retail that are typically found on arterial and collector streets. The uses permitted in CS are not appropriate at this location and could have a negative impact on the residential area south of Burgess.

STORMWATER RECOMMENDATION

- Ignore

PUBLIC WORKS RECOMMENDATION

- Traffic study may be required at time of development

Typical Uses in Existing Zoning District: **R6**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Residential (210)	0.91	7.71 D	7 L	67	6	8

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
Retail (814)	0.91	0.355 F	14,072 SF	640	19	56

Traffic changes between typical: **R6** and proposed **CS**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	-	+573	+13	+48

Maximum Uses in Existing Zoning District: **R6**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Residential (210)	0.91	7.71 D	7 L	67	6	8

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
Retail (814)	0.91	0.6 F	23,783 SF	1056	27	79

Traffic changes between maximum: **R6** and proposed **CS**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	-	+989	+21	+71

STAFF RECOMMENDATION

Staff recommends that the request be disapproved because the proposed commercial zoning district is not consistent with the residential land use policy on these properties.

Mr. Swaggart presented the staff recommendation of disapproval.

Shawn Henry, 315 Deaderick Street, spoke in support of the proposal and stated that his client (property owner) does not believe that this property will ever develop residentially.

Carl Dreifuss, 5633 Charlotte Pike, spoke in support of the proposal.

Janice Tomlinson, 130 Oceola Ave, spoke in support of proposal.

Beth Gaddes, 119 Oceola Ave, spoke against the proposal, stating concerns with traffic, lack of sidewalks, and noted that turning this commercial would not be the best for the neighborhood.

David Cotton, 209 Oceola Ave, spoke against the proposal and stated that his main concern is the large leap from residential to commercial. He also noted concerns with traffic issues and Burgess being a small street with no sidewalks but a lot of pedestrian traffic.

Kyle Miller, 125 DeMoss Ave, spoke against the proposal and stated that Burgess can not currently handle traffic the way it is.

Shawn Henry clarified that his client does not believe that it's practical to develop this property as residential.

Mr. Dalton moved and Mr. Adkins seconded the motion to close the Public Hearing. (7-0)

Mr. Dalton spoke in support of staff recommendation and stated concerns with safety/traffic issues, lack of sidewalks, and affecting the character of the community.

Mr. Adkins spoke in support of staff recommendation and noted that CS zoning, without a plan, seems to frighten the neighbors and that there may be a better transitional zoning.

Mr. Clifton spoke in support of staff recommendation and stated that there was room for residential development in mixed-use areas and that the CS zoning is too stark a commercial use in this area.

Dr. Cummings spoke in support of staff recommendation and stated that CS zoning will negatively impact the community.

Mr. Ponder spoke in support of staff recommendation asked for examples of what would be allowed under the CS district

Mr. Swaggart provided a list of permitted uses in the CS zoning district

Mr. Ponder expressed his concern that it was not known what would be on this property.

Councilmember Claiborne stated that CS zoning is a leap and another district such as the CL zoning district would be more appropriate.

Dr. Cummings moved and Mr. Clifton seconded the motion to approve staff recommendation. (7-0)

Resolution No. RS2012-46

"BE IT RESOLVED by The Metropolitan Planning Commission that 2012Z-004PR-001 is **DISAPPROVED**. (7-0)

The proposed CS zoning district is not consistent with the T3 Neighborhood Evolving policy."

Mr. Clifton left at 5:01 p.m.

5. 2012Z-005PR-001

1628 & 1630 6TH AVENUE NORTH

Map 081-08, Parcel(s) 496-497
Council District 19 (Erica S. Gilmore)
Staff Reviewer: Greg Johnson

A request to rezone from the R6 to RM20-A district properties located at 1628 and 1630 6th Avenue North, at the southeast corner of 6th Avenue North and Garfield Street (0.27 acres), requested by R.J. York Homes LLC, applicant, Ray C. Nathurst, owner.

Staff Recommendation: APPROVE

APPLICANT REQUEST

Permit multi-family development to a maximum of 20 dwelling units per acre.

Zone change

A request to rezone from One and Two Family Residential (R6) to Multi-Family-Alternative (RM20-A) district properties located at 1628 and 1630 6th Avenue North, at the southeast corner of 6th Avenue North and Garfield Street (0.27 acres).

Existing Zoning

R6 District

R6 requires a minimum 6,000 square foot lot and is intended for single-family dwellings and duplexes at an overall density of 7.71 dwelling units per acre including 25 percent duplex lots.

Proposed Zoning

RM20-A District

RM20-Alternative is intended for single-family, duplex, and multi-family dwellings at a density of 20 dwelling units per acre and is designed to create walkable neighborhoods through the use of appropriate building placement and bulk standards.

CRITICAL PLANNING GOALS

- Supports Infill Development
- Provides a Range of Housing Choices
- Promotes Compact Building Design
- Creates Walkable Neighborhoods

The proposed RM20-A multi-family zoning district promotes infill development on a vacant lot within a developed residential neighborhood through the allowance of increased housing choices beyond single-family and duplex development. Compact building design through attached and stacked housing is appropriate in this location due to its location along a residential collector-avenue (Garfield Street) and adjacent to the Neighborhood Center mixed-use policy area at the same intersection. RM20-A is a multi-family zoning district that is intended to increase housing diversity and to improve the walkable design of the neighborhood through the removal of parking areas from lot frontages.

WEST NASHVILLE COMMUNITY PLAN

T4 Urban Neighborhood Evolving (T4 NE)

T4 NE policy is intended to create and enhance urban neighborhoods that are compatible with the general character of existing urban neighborhoods as characterized by their development pattern, building form, land use and associated public realm, with opportunities for housing choice and improved pedestrian, bicycle and vehicular connectivity. The resulting development pattern may have higher densities than existing urban neighborhoods and/or smaller lots sizes, with a broader range of housing types providing housing choice. This reflects the scarcity of easily developable land (without sensitive environmental features) and the cost of developing housing.

Consistent with Policy?

Yes. The proposed RM20-A zoning district embodies the density, building placement, and housing choice recommendations of the T4 Urban Neighborhood Evolving (T4 NE) policy. Both the policy and zoning promote shallow building setbacks to promote walkable neighborhoods. The maximum density of the RM20-A zoning district is 20 dwelling units per acre, which falls within the maximum density recommendation of the policy of 40 dwelling units per acre. Housing choice is recommended by the policy with higher intensity development placed along corridors or adjacent to centers. This proposal for RM20-A is located adjacent to both a residential corridor and a mixed-use center.

PUBLIC WORKS RECOMMENDATION

An access study may be required at the time of development.

Typical Uses in Existing Zoning District: **R6**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Residential(210)	0.27	7.71 D	2 L	20	2	3

Typical Uses in Proposed Zoning District: **RM20**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Multi-Family Residential(220)	0.27	20 D	5 U	34	3	4

Traffic changes between typical: **R6** and proposed **RM20**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	-	+14	+1	+1

Maximum Uses in Existing Zoning District: **R6**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Single-Family Residential (210)	0.27	7.71 D	2 L	20	2	3

Maximum Uses in Proposed Zoning District: **RM20**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
Multi-Family Residential (220)	0.27	20 D	5 U	34	3	4

Traffic changes between maximum: **R6** and proposed **RM20**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	-	+14	+1	+1

SCHOOL BOARD REPORT

Projected student generation 0 Elementary 0 Middle 0 High

Schools Over/Under Capacity

Students would attend Buena Vista Elementary School, John Early Middle School, or Pearl-Cohn High School. Of these, only Buena Vista Elementary School has been identified as being over capacity by the Metro School Board. There is capacity for elementary students within the cluster. This information is based upon data from the school board last updated October 2011.

STAFF RECOMMENDATION

Staff recommends approval of the zone change proposal to the RM20-A zoning district. The request is consistent with the density and building form intent of the T4 Neighborhood Evolving land use policy.

Approved (6-0), Consent Agenda

Resolution No. RS2012-47

“BE IT RESOLVED by The Metropolitan Planning Commission that 2012Z-005PR-001 is **APPROVED. (6-0)**

The proposed RM20-A zoning district is consistent with the T4 Urban Neighborhood Evolving land use policy.”

J. PLANNING COMMISSION ACTIONS

Subdivision: Concept Plans

6. 2008S-061U-12

BRENTWOOD BRANCH ESTATES

Map 160, Parcel(s) 123
 Map 160-08, Parcel(s) 046, 048
 Map 160-08-0-A, Parcel(s) 010
 Council District 04 (Brady Banks); 26 (Chris Harmon)
 Staff Reviewer: Jason Swaggart

A request to permit the extension of an approved concept plan for one year from its expiration date of March 27, 2012, for the Brentwood Branch Estates Subdivision for 8 single-family clustered residential lots located at 501 Broadwell Drive, Hill Road (unnumbered) and at Trousdale Drive (unnumbered), zoned RS20 (4.42 acres), requested by Michael and Sharon Yates, owners.

Staff Recommendation: Approve the extension of the Concept Plan approval to March 27, 2013

APPLICANT REQUEST
Concept plan extension.

Concept plan extension

A request to permit the extension of an approved concept plan for one year from its expiration date of March 27, 2012, for the Brentwood Branch Estates Subdivision for 8 single-family clustered residential lots located at 501 Broadwell Drive, Hill Road (unnumbered) and at Trousdale Drive (unnumbered), zoned Single-Family Residential (RS20).

Existing Zoning

RS20 District

RS20 requires a minimum 20,000 square foot lot and is intended for single-family dwellings at a density of 1.85 dwelling units per acre.

CRITICAL PLANNING GOALS

N/A

PLAN DETAILS

Concept plan extension

This is a request to extend concept plan approval for Brentwood Branch Estates, a major subdivision. The request is to extend the approval for one year, to March 27, 2013. The properties included in the concept plan are located on the south side of Broadwell Drive in the Crieve Hall area. The concept plan was approved for eight single-family cluster lots by the Planning Commission on March 27, 2008. If granted, this will be the third extension to the original approval of the subdivision. The first extension was granted by the Commission on February 25, 2010, and the second on March 3, 2011.

According to the applicant, progress has been made in developing the subdivision as approved including:

1. Mandatory Referral process initiated (withdrawn due to a determination that it wasn't necessary).
2. Complete boundary and topographic survey.
3. Eighty percent construction drawing set, including detailed storm water calculations, hydraulic flood analysis and cut/fill calculations for flood plain disturbance.
4. Plans initially submitted to Stormwater for sufficiency review prior to placing the project on hold.

The applicant estimates that over \$25,000 has been spent on submittal, development, design and consultant fees. The applicant also states that over \$50,000 was spent to acquire additional land to complete the boundary of the concept plan and that this land would not have needed to be purchased without concept plan approval.

STAFF ANALYSIS

The current concept plan meets all Subdivision Regulations and Zoning Code requirements. Since the concept plan meets all applicable requirements, and the applicant has made progress in developing the subdivision, staff recommends that the Planning Commission extend the concept plan approval for one year.

STORMWATER RECOMMENDATION

Approved with conditions (Stormwater):

1. Construction plans have expired. Construction plans will need to be re-evaluated prior to construction.

PUBLIC WORKS RECOMMENDATION

No Exceptions Taken

STAFF RECOMMENDATION

Staff recommends that the concept plan be extended to March 27, 2013.

Approved the extension of the Concept Plan approval to March 27, 2013.

(6-0), Consent Agenda

Resolution No. RS2012-48

“BE IT RESOLVED by The Metropolitan Planning Commission that 2008S-061U-12 is APPROVED EXTENSION OF THE CONCEPT PLAN APPROVAL TO MARCH 27, 2013. (6-0)”

K. OTHER BUSINESS

7. A request for an Open Space Dedication Agreement between Summerfield Development, LLC, and the Metropolitan Government of Nashville and Davidson County, Tennessee for a portion of property on Ashford Trace, south of Shadowbrook Trail (Map 164, Part of Parcel 262), to allow a portion of the Cane Ridge Elementary School property to be counted towards future open space requirements of the Treehaven Subdivision, Phase V, when the final plat is approved and recorded.

OPEN SPACE DEDICATION AGREEMENT

This Open Space Dedication Agreement (“**Agreement**”) is made effective as of February 23, 2012 by and between **Summerfield Development, LLC**, its successors and assigns (“**Developer**”) and the **Metropolitan Government of Nashville and Davidson County** (“**Metro**”), acting by and through the Metropolitan Planning Commission (“**MPC**”).

RECITALS

WHEREAS, Developer is the owner of a portion of Tax Map/Parcel Number 16400026200, containing approximately 2.252 acres, as more completely described on **Exhibit A** (the “**Property**”); and

WHEREAS, Developer has set aside the Property for use as Open Space (as defined in Section 17.04.060 of the Code of Ordinances of the Metropolitan Government of Nashville and Davidson County) to be available to the future Phase Five of the Treehaven Subdivision, or any future subdivision located on the property included on the preliminary plat of Phase Five of the Treehaven Subdivision and developed by Developer or its successors and assigns (the “**Subdivision**”); and

WHEREAS, Metro desires to acquire the Property from the Developer for the purpose of using the Property as the main access to the adjoining Cane Ridge Elementary School property; and

WHEREAS, Developer is willing to transfer and convey the Property to Metro, provided that, as a condition to the consummation of the transaction, the MPC recognize the Property as Open Space available to the Subdivision in the future notwithstanding ownership thereof; and

WHEREAS, Metro and the Developer executed that certain Fee Simple Option Agreement, a copy of which is attached hereto as **Exhibit B** (the “**Option**”), which option agreement memorializes Metro’s obligation to use its best efforts to have the MPC recognize the Property as Open Space available to the Subdivision; and

WHEREAS, on February 7, 2012, the Metropolitan Council approved Resolution 2012-138, approving the Option and the terms and conditions therein, and authorizing the Director of Public Property to exercise the Option.

NOW THEREFORE, in consideration of the mutual benefits that will accrue as a result of hereof, the parties agree as follows:

The MPC hereby recognizes the Property as “Open Space” available to the Subdivision.

Notwithstanding Metro’s ownership of the Property, when the Developer seeks preliminary and final approval to develop the Subdivision, the MPC shall consider the Property and the Open Space provided therein as part of the Subdivision for the purpose of satisfying any Open Space requirement for the Subdivision as if the Developer owned the Property and were contributing the Property therefor.

The MPC reserves the right to require additional Open Space, in excess of the Open Space provided by the Property, if Developer requests an increase in density for the future Subdivision or if the laws, rules, and regulations of Metro require additional Open Space to be dedicated.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their heirs, successors, assigns, and administrators.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

DEVELOPER

Summerfield Development, LLC

By: _____

Name: _____

Its: _____

METRO

The Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Planning Commission

By: _____

Name: Richard C. Bernhardt

Its: Executive Director

Exhibit A

The Property

BEING LAND LYING IN THE CITY OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE, SAID LAND BEING A PORTION OF THE PROPERTY OWNED BY SUMMERFIELD DEVELOPMENT, LLC OF RECORD IN DEED BOOK 11571, PAGE 943 IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE, SAID SUMMERFIELD DEVELOPMENT, LLC PROPERTY BEING KNOWN AS A PORTION OF PARCEL 262 ON DAVIDSON COUNTY TAX MAP 164, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING IRON PIN LOCATED ON THE SOUTHEASTERLY MARGIN OF ASHFORD TRACE; SAID POINT FURTHER DESCRIBED AS BEING THE SOUTHWEST CORNER OF COMMON AREA 'B' OF THE TREEHAVEN SUBDIVISION, PHASE 3 OF RECORD AS INSTRUMENT NO. 20040913-0110149 IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE;

THENCE WITH THE SOUTHERN PROPERTY LINE OF SAID COMON AREA 'B' THE FOLLOWING CALL:

NORTH 72°33'59" EAST 148.52 FEET TO A POINT;

THENCE WITH THE SOUTHERN PROPERTY LINE OF LOT 39 AND LOT 40 OF SAID TREEHAVEN SUBDIVISION, PHASE 3 THE FOLLOWING CALL:

SOUTH 86°51'42" EAST 139.07 FEET TO A POINT;

THENCE WITH THE SOUTHERN PROPERTY LINE OF LOTS 41 AND 42 OF SAID TREEHAVEN SUBDIVISION, PHASE 3 THE FOLLOWING CALL:

NORTH 85°12'11" EAST 139.53 FEET TO A POINT IN THE EASTERN PROPERTY LINE OF BELZ-McDOWELL PROPERTY, ALSO KNOWN AS PARCEL 174 ON DAVIDSON COUNTY TAX MAP 164 OF RECORD IN DEED BOOK 4699, PAGE 101 IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE;

THENCE WITH THE EASTERN PROPERTY LINE OF SAID PARCEL 174 THE FOLLOWING TWO (2) CALLS:

SOUTH 05°52'00" WEST 173.60 FEET TO A POINT,

SOUTH 05°27'50" WEST 192.03 FEET TO A POINT,

THENCE LEAVING SAID BELZ-McDOWELL PROPERTY ACROSS LAND BELONGING TO SAID SUMMERFIELD DEVELOPMENT, LLC THE FOLLOWING FOUR (4) CALLS:

NORTH 50°22'05" WEST 172.54 FEET TO A POINT;

NORTH 38°58'45" WEST 46.62 FEET TO A POINT;

SOUTH 49°18'54" WEST 124.03 FEET TO A POINT IN THE PROPOSED EASTERN RIGHT-OF-WAY OF THE FUTURE EXTENTION OF ASHFORD TRACE;

THENCE WITH THE PROPOSED FUTURE EXTENTION OF ASHFORD TRACE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 565.88, A DELTA ANGLE OF 23°24'57", AND WHOSE CHORD BEARS NORTH 29°08'29" WEST 229.66 FEET TO A POINT IN THE EASTERLY RIGHT-OF-WAY LINE OF ASHFORD TRACE;

THENCE WITH THE EASTERLY RIGHT-OF-WAY LINE OF SAID ASHFORD TRACE THE FOLLOWING CALL:

NORTH 17°26'01" WEST 51.64 FEET TO THE POINT OF BEGINNING.

Said described parcel contains 98,115 sq. ft., or 2.252 Acres, more or less.

Exhibit B

RESOLUTION NO. . RS2012-138

A resolution authorizing the Director of Public Property, or his designee, to exercise an option to purchase real property (a part of Map 164- Parcel 262.00) for the use and benefit of the Metropolitan Nashville Public Schools (Proposal No. 2011M-017PR-001).

WHEREAS, pursuant to the terms of the agreement attached hereto and incorporated herein as Exhibit 1 to this resolution, the Metropolitan Government holds an option to purchase certain property known as an approximately 2.252 acre portion of 0 Old Hickory Blvd.; and,

WHEREAS, Section 2.24.250(F) of the Metropolitan Code of Laws provides:

Where land in fee simple is being purchased for purposes other than for rights-of-way for highways, streets, roads, alleys and other places for vehicular traffic, the director of public property administration shall negotiate for the purchase of such property and seek to obtain from the owner an option to sell to the Metropolitan government at a fixed price, subject to the approval of the Metropolitan Council by resolution, and no purchase shall be consummated until it has been so approved by the Metropolitan Council; and,

WHEREAS, pursuant to section 2.24.250(F) of the Metropolitan Code of Laws, the Director of Public Property Administration has negotiated an option (Exhibit 1) to acquire real property located in Davidson County being an approximately 2.252 acre portion of Map No. 164-00-0 Parcel 262.00, attached hereto and incorporated herein as Exhibit 2; and,

WHEREAS, the Metropolitan Board of Education has approved the acceptance of the Property; and,

WHEREAS, this property would serve as the main access to the adjoining Cane Ridge Elementary School property; and,

WHEREAS, it is in the best interest of the citizens of Nashville and Davidson County that the purchase of this property be approved.

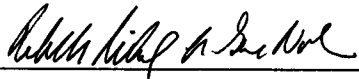
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Director of Public Property, or his designee, is hereby authorized to exercise the option to purchase the property (a portion of Davidson County Tax Map 164-00-0 Parcel 262.00) as approximately shown in Exhibit 2 and to execute the necessary documents pertaining thereto.

Section 2. That this resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:


INTRODUCED BY:


Gene Nolan, Director
Public Property Administration

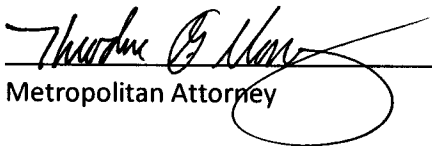


Council Member(s)

APPROVED AS TO FINANCIAL MATTERS:


Richard Riebeling, Director
Department of Finance

APPROVED AS TO FORM & LEGALITY:


Metropolitan Attorney

FEE SIMPLE ACQUISITION OPTION

ORIGINAL

For and in consideration of the mutual benefits that will accrue, Summerfield Development, LLC (“Grantor” or “Seller”) hereby grants and gives to The Metropolitan Government of Nashville and Davidson County, Tennessee (“Metropolitan Government” or “Buyer”) the right and option to purchase all of Grantor’s interest in the following property (“Property”):

A portion of Tax Map/Parcel Number 16400026200, containing approximately 2.252 acres as more completely described on Exhibit A.

Grantor hereby agrees to convey all of Grantor’s interest in the Property to the Metropolitan Government, by good and sufficient quitclaim deed, within 60 days after notice from the Metropolitan Government of its exercise of the option. This option shall expire unless the Metropolitan Government gives written notice of its exercise of the option within 90 days (the “Option Period”) after the date set out below. If the Metropolitan Government exercises its option to purchase the Property within the Option Period, the Metropolitan Government will pay Grantor **Eighty-three Thousand Five Hundred Dollars (\$83,500)** (the “Purchase Price”) as follows:

1. The Purchase Price shall be paid at closing (occurring on the “Closing Date”) upon conveyance by Grantor to the Metropolitan Government of:
 - a. a quitclaim deed conveying Grantor’s interest in the Property to the Metropolitan Government; and,
 - b. satisfactory evidence of (i) the payment of any and all back taxes owed on the Property as of the Closing Date, and (ii) the pre-payment, escrow, or payment of a credit toward the Purchase Price of 2012 real estate taxes (pro-rated).
2. Grantor agrees to carry out the following duties:
 - a. Within ten (10) days, allow access to the Property at all reasonable times to the Metropolitan Government, its agents, officers and employees, for the purpose of performing appraisals, surveys, environmental assessments and any other inspections deemed necessary. The Metropolitan Government shall repair any damage to the Property occurring as a result of the foregoing inspections, and will be responsible for any loss or claim for injury or property damage arising out of or resulting from such inspections.
3. Metropolitan Government agrees to:
 - a. Pay its inspection costs, including title, survey, and environmental. Buyer will pay any real estate transfer taxes and recording costs associated with recording the deed.
 - b. Work in good faith with Grantor to establish a separate tax parcel for the Property.
 - c. Extend Ashford Trace, together with applicable utilities, paving, curbing, from its current terminus approximately 280 feet along the “Proposed Future Extension” of Ashford Trace, as described in Exhibit A, or as required by the Metropolitan Planning Department.
 - d. Use its best efforts to obtain a written agreement from the Metropolitan Planning Commission that recognizes the Property as “open space” available to the future Phase Five of the Treehaven Subdivision such that the Grantor not be required to set aside



additional open space; provided, however, that the Metropolitan Planning Commission shall have the right to require additional open space if Grantor requests an increase in density for the future subdivision.

4. Grantor and the Metropolitan Government agree to the following additional terms:
 - a. Disclaimer Of Warranty.
 - i. Seller has not made and does not make, and Seller specifically and expressly disclaims, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) matters or warranties of title, (ii) zoning, (iii) tax consequences, (iv) physical or environmental conditions, (v) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology, (vi) availability of access, ingress, or egress, (vii) valuation, (viii), governmental appraisals, (ix) governmental regulations, (x) warranty of title, warranty of merchantability, warranty of fitness for a particular purpose, all implied warranties, all express warranties, or (xi) any other matter or thing relating to or affecting the Property, including, without limitation: (a) the value, condition, habitability, merchantability, marketability, suitability, or fitness for any particular use or purpose of the Property which is being conducted or which Buyer may conduct or which Buyer may desire to conduct thereon, (b) lack of liens and encumbrances, or (c) any other matter with respect to the Property.
 - ii. Seller has not made, does not make and specifically negates and disclaims any representations or warranties regarding compliance of the Property with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including, without limitation, those pertaining to solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R. Part 261, or the disposal or existence, in or on the Property, of any hazardous substances, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the regulations promulgated thereunder.
 - iii. Buyer expressly represents, covenants and agrees that Buyer has inspected and examined the Property to the extent deemed necessary by Buyer in order to enable Buyer to evaluate the purchase of the Property and enter into this Agreement. Buyer represents and covenants that it is a knowledgeable buyer of property.
 - iv. Buyer expressly represents, covenants and agrees that it is relying solely on its own information and that of its employees, consultants and independent contractors and that it shall not rely upon any information that Seller may have provided to Buyer (the truthfulness, accuracy or completeness of which Seller has not represented or warranted, and does not represent or warrant, to buyer). Buyer further acknowledges and agrees that Seller is selling and Buyer is acquiring and accepting the Property on an "as is, where is" and "with all faults" basis.
 - v. Except as expressly provided herein, (a) Seller shall not be responsible or liable to Buyer for any physical conditions affecting the Property, whether known or unknown, present or future, foreseeable or unforeseeable, including, but not limited

to, those arising due to the presence of any hazardous substances on, under or about the Property and any endangered species or otherwise protected flora or fauna on, under or about the Property; (b) the foregoing release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown or suspected claims, damages and causes of action; and (c) this covenant releasing Seller shall be a covenant running with the land and shall be binding upon Buyer, its successors and assigns.

- vi. The agreements, acknowledgements, waivers and releases made by Buyer in this Section have been made voluntarily, intelligently and knowingly after Buyer has read and understood this Section and been afforded an opportunity to be informed by counsel of Buyer's choosing of possible alternative rights, and by executing this Agreement Buyer acknowledges so making such agreements, acknowledgements, waivers and releases.
 - vii. The provisions of this Section shall survive Closing.
- b. **Approval Order.** Notwithstanding the foregoing warranty disclaimer, the parties hereto acknowledge and agree that Buyer may rely upon that certain Expedited Agreed Order Granting Debtor's Expedited Motion for Approval of Sale of Assets Free and Clear of Interests, Liens, Claims, and Encumbrances, Approving Sale, and Other Relief on December 22, 2011 entered by the Bankruptcy Court for the Middle District of Tennessee, Nashville Division (Case No. 11-09966-GP3-11). In said Court Order, the Court:
- i. held that Seller holds fee simple interest to the Property;
 - ii. authorized and directed Seller to convey all of its right, title, and interest in and to the Property to Buyer, or its designee;
 - iii. released the first lien mortgage of LPP Mortgage, LTD without the need for any documentation to be signed by LPP Mortgage, LTD, such release to be effective upon Closing; and
 - iv. granted Buyer the protections of a good faith purchaser under 11 U.S.C. § 363(m).
- c. **Drainage Easements.** The Metropolitan Government and Seller acknowledge and agree that no express drainage easements are necessary to permit the natural flow of surface waters from the remainder of Seller's property over and across the Property. For avoidance of doubt, however, the quitclaim deed conveying the Property from Seller to the Metropolitan Government will expressly state that the Property will be burdened with the servitude of receiving and discharging all waters which naturally flow down to the Property from the remainder of the Seller's (and its successors and assigns) property.
5. **Survival.** The terms of Sections 3(b), 3(c), 3(d), and 4(c) shall survive the Closing and recording of the deed.

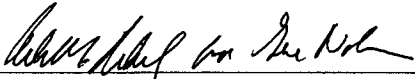
The exercise of this option and purchase of the Property is contingent upon the approval of the Metropolitan Council.

IN WITNESS WHEREOF, we hereunto set our hands, and obligate ourselves and our heirs, executors and assigns to faithfully perform this agreement, in its entirety, on this, the _____ day of _____, 2012.

Grantor

The Metropolitan Government:

Summerfield Development, LLC



Director, Public Property Administration

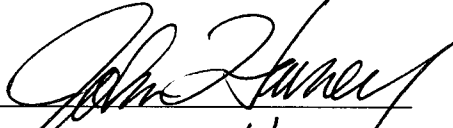
By: 
Name: JOHN HARNEY
Its: CHIEF MANAGER

EXHIBIT A

Legal Description

BEING LAND LYING IN THE CITY OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE, SAID LAND BEING A PORTION OF THE PROPERTY OWNED BY SUMMERFIELD DEVELOPMENT, LLC OF RECORD IN DEED BOOK 11571, PAGE 943 IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE, SAID SUMMERFIELD DEVELOPMENT, LLC PROPERTY BEING KNOWN AS A PORTION OF PARCEL 262 ON DAVIDSON COUNTY TAX MAP 164, SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING IRON PIN LOCATED ON THE SOUTHEASTERLY MARGIN OF ASHFORD TRACE; SAID POINT FURTHER DESCRIBED AS BEING THE SOUTHWEST CORNER OF COMMON AREA 'B' OF THE TREEHAVEN SUBDIVISION, PHASE 3 OF RECORD AS INSTRUMENT NO. 20040913-0110149 IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE;

THENCE WITH THE SOUTHERN PROPERTY LINE OF SAID COMMON AREA 'B' THE FOLLOWING CALL;

NORTH 72°33'59" EAST 148.52 FEET TO A POINT;

THENCE WITH THE SOUTHERN PROPERTY LINE OF LOT 39 AND LOT 40 OF SAID TREEHAVEN SUBDIVISION, PHASE 3 THE FOLLOWING CALL;

SOUTH 86°51'42" EAST 139.07 FEET TO A POINT;

THENCE WITH THE SOUTHERN PROPERTY LINE OF LOTS 41 AND 42 OF SAID TREEHAVEN SUBDIVISION, PHASE 3 THE FOLLOWING CALL;

NORTH 85°12'11" EAST 139.53 FEET TO A POINT IN THE EASTERN PROPERTY LINE OF BELZ-McDOWELL PROPERTY, ALSO KNOWN AS PARCEL 174 ON DAVIDSON COUNTY TAX MAP 164 OF RECORD IN DEED BOOK 4699, PAGE 101 IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE;

THENCE WITH THE EASTERN PROPERTY LINE OF SAID PARCEL 174 THE FOLLOWING TWO (2) CALLS;

SOUTH 05°52'00" WEST 173.60 FEET TO A POINT,

SOUTH 05°27'50" WEST 192.03 FEET TO A POINT,

THENCE LEAVING SAID BELZ-McDOWELL PROPERTY ACROSS LAND BELONGING TO SAID SUMMERFIELD DEVELOPMENT, LLC THE FOLLOWING FOUR (4) CALLS;

NORTH 50°22'05" WEST 172.54 FEET TO A POINT;

NORTH 38°58'45" WEST 46.62 FEET TO A POINT;

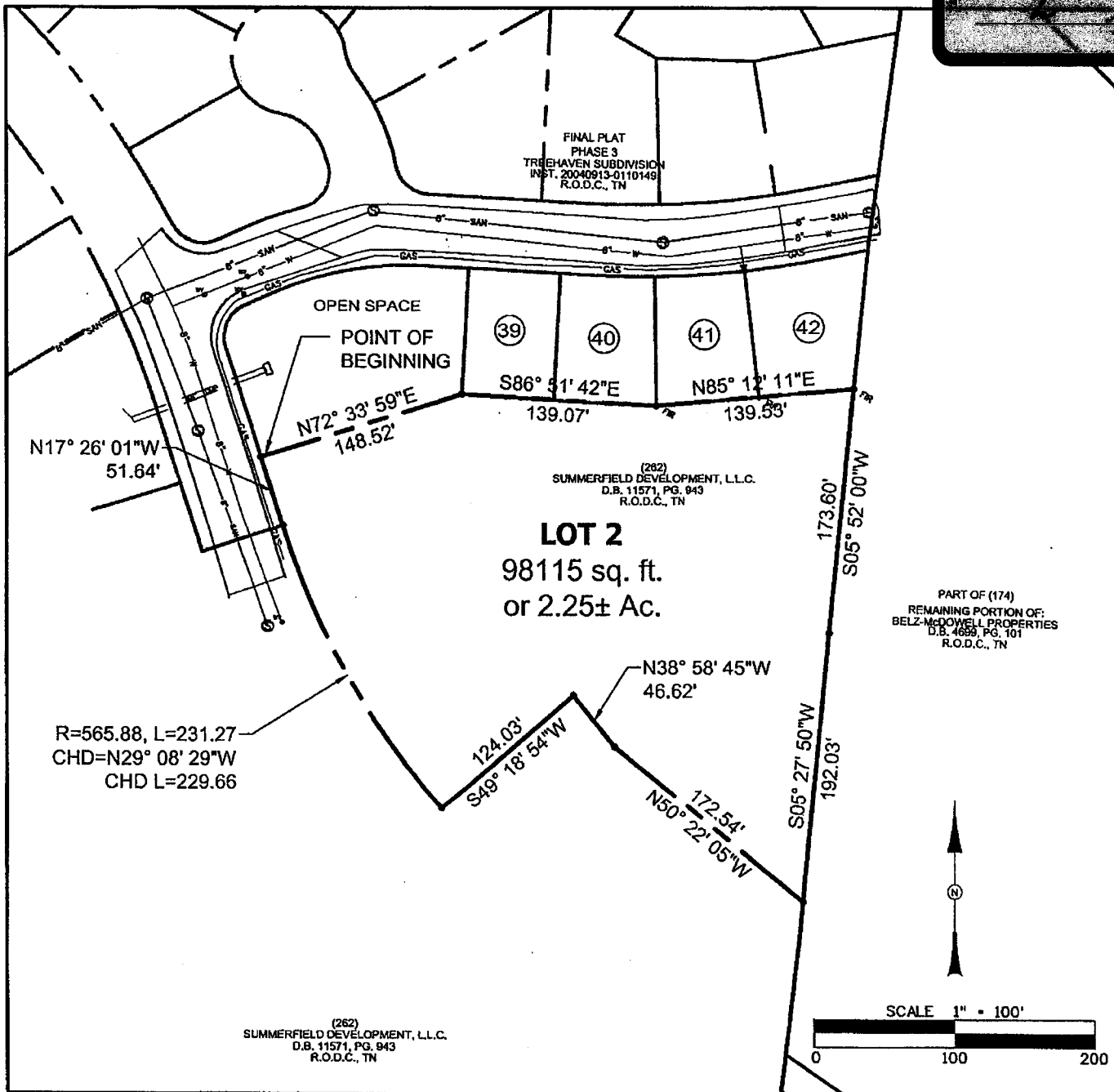
SOUTH 49°18'54" WEST 124.03 FEET TO A POINT IN THE PROPOSED EASTERN RIGHT-OF-WAY OF THE FUTURE EXTENTION OF ASHFORD TRACE;

THENCE WITH THE PROPOSED FUTURE EXTENTION OF ASHFORD TRACE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 565.88, A DELTA ANGLE OF 23°24'57", AND WHOSE CHORD BEARS NORTH 29°08'29" WEST 229.66 FEET TO A POINT IN THE EASTERLY RIGHT-OF-WAY LINE OF ASHFORD TRACE;

THENCE WITH THE EASTERLY RIGHT-OF-WAY LINE OF SAID ASHFORD TRACE THE FOLLOWING CALL;

NORTH 17°26'01" WEST 51.64 FEET TO THE POINT OF BEGINNING.

Said described parcel contains 98,115 sq. ft., or 2.252 Acres, more or less.



MAP SHOWING A PORTION OF SUMMERFIELD PROPERTY

PROPERTY SALE

BUYER

**THE METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY, TENNESSEE**

SELLER

SUMMERFIELD DEVELOPMENT, LLC

LAND IN NASHVILLE, DAVIDSON COUNTY, TENNESSEE

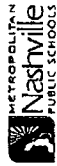
PROJECT NO. 10-086-01	EASEMENT NO.	SYSTEM
SCALE 1"=100'	MAP/PARCEL 164/262	DATE JULY 7, 2011
BY CIVIL SITE DESIGN GROUP		



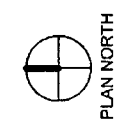
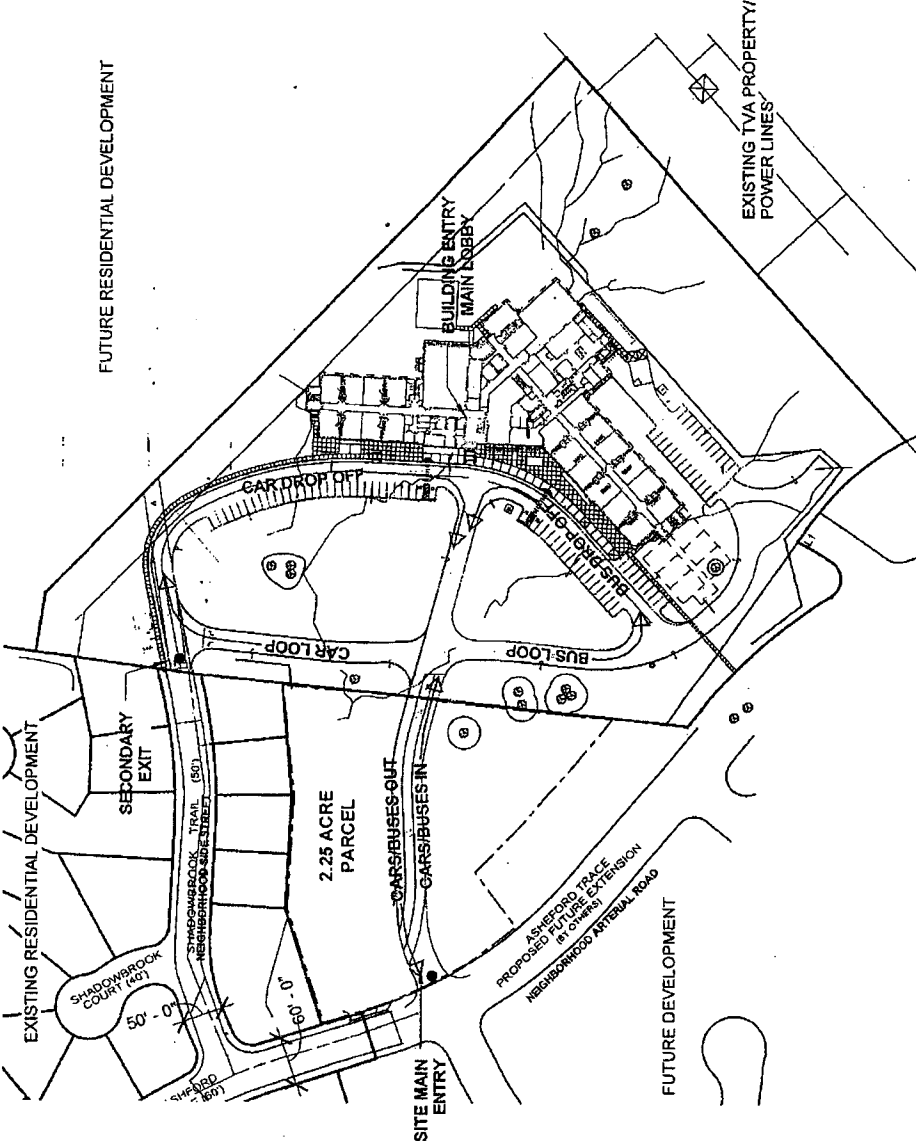
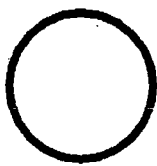
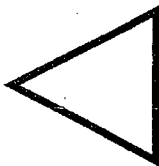
EOA
ARCHITECTS
humanizing design

500 UNIVERSITY BLVD
NASHVILLE, TN 37203
TEL: 615.259.8800
WWW.EOAARCHITECTS.COM

CANE RIDGE
ELEMENTARY SCHOOL



CANE RIDGE, TN 37206



PLAN NORTH
NOT TO SCALE

1 ARCHITECTURAL SITE PLAN

ORIGINAL

METROPOLITAN COUNTY COUNCIL

Resolution No. RS2012-138

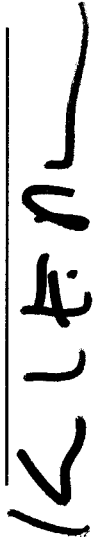
A resolution authorizing the Director of Public Property, or his designee, to exercise an option to purchase real property (a part of Map 164- Parcel 262.00) for the use and benefit of the Metropolitan Nashville Public Schools (Proposal No. 2011M-017PR-001).

Introduced FEB 0 7 2012

Amended _____

Adopted FEB 0 7 2012

Approved FEB 9 2012

By 
Metropolitan Mayor

2012 JAN 31 PM 2:02

FILED
METROPOLITAN
CLERK

Resolution No. RS2012-49

“BE IT RESOLVED by The Metropolitan Planning Commission that a request for an Open Space Dedication Agreement between Summerfield Development, LLC and the Metropolitan Government of Nashville and Davidson County, Tennessee for a portion of property on Ashford Trace, south of Shadowbrook Trail (Map 164, Part of Parcel 262), to allow a portion of the Cane Ridge Elementary School property to be counted towards future open space requirements of the Treehaven Subdivision, Phase V, when the final plat is approved and recorded is **APPROVED. (6-0)**”

8. Historic Zoning Commission Report

9. Board of Parks and Recreation Report

10. Executive Committee Report

11. Executive Director Report

12. Legislative Update

L. MPC CALENDAR OF UPCOMING MATTERS

February 23, 2012

Work Session

2:30pm, 800 Second Avenue South, Nash Room

Topic: Midtown Plan Amendment

MPC Meeting

4pm, 700 Second Ave. South, Howard Office Building, Sonny West Conference Center

February 29, 2012

MPC Executive Committee Meeting

8:30am, 800 Second Avenue South, Nash Room

Topics: Communication and Retreat Review

March 8, 2012

ULI Lunch for Commissioners

11:30am, 800 Second Avenue South, Davidson room

Topic: Sustainability – guest speaker Sadhu Johnston, deputy city manager of Vancouver, BC

MPC Meeting

4pm, 700 Second Ave. South, Howard Office Building, Sonny West Conference Center

March 22, 2012

MPC Meeting

4pm, 700 Second Ave. South, Howard Office Building, Sonny West Conference Center

M. ADJOURNMENT

The meeting was adjourned at 5:05 p.m.

Chairman

Secretary