CASE NO. 8453

Change in zoning from R-3 and R-4 Single Family Residential to R-5 Single-Family Residential on property located at 4308, 4310, 4314, 4316, & 4318 Rudy Lane containing 7.49 acres, and being in St. Matthews and Windy Hills.

Owner:	TWB Properties, LLC; Jackie Dehart; Dorothy J. Bosco 5801 Brittany Valley Rd. Louisville, KY 40222
Applicant:	TWB Properties, LLC 5801 Brittany Valley Rd. Louisville, KY 40222
Engineer/Designer:	Ken Haden Land Design and Development 8014 Vine Crest Ave, Suite 8 Louisville, KY 40222
Attorney:	Clift Ashburner Bardenwerper, Talbott & Roberts 8311 Shelbyville Rd Louisville, KY 40222
Existing Use:	Residential/Vacant
Proposed Use:	Single-Family Residential Subdivision
Form District:	Neighborhood
Council District:	7 – Ken Fleming
Staff Case Manager:	**Beth Allen, Planning Supervisor**

Notice of this public hearing appeared in **The Courier Journal,** a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

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

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the cd of the June 7, 2007 proceedings.

SUMMARY OF STAFF PRESENTATION:
02:37:14 A summary of this request was presented by Beth Allen using a PowerPoint presentation, which included a zoning map showing the area around the site, photos of the site and surrounding properties as well as a Comprehensive Plan review. This is a rezoning with variance requests. Part of the property is in Windy Hills with the bulk being in St. Matthews. Ms. Allen received an opposition letter by e-mail, which she passed around to the commissioners. Staff recommends approval of the rezoning, the development plan and the variances.

The following spoke in favor of this request:

Cliff Ashburner
8311 Shelbyville Rd
Louisville, KY 40222

Tony Bayus
2808 Eastpoint Parkway
Louisville, KY 40223

Kevin Young
503 Washburn Ave
Louisville, KY 40222

Dan Lane
110 Bentwood Place Court
Louisville, KY 40207

The following spoke in opposition:

John J. Bleidt
4315 Rudy Lane
Louisville, KY 40207

Glenn Wilson
1803 South Park Dr.
Louisville, KY 40214

Lynn S. Renau
726 Waterford Rd
Louisville, KY 40207

Kate Greer
2514 Windy Way
Louisville, KY 40207

The following spoke as interested parties (other):

John L. Mann Jr.
1003 Windsong Way
Louisville, KY 40207

Fred Crismon
4216 Rudy Lane
Louisville, KY 40207

SUMMARY OF TESTIMONY OF PROPONENTS:

02:46:00 Cliff Ashburner used a PowerPoint presentation to present the applicant's case. The presentation showed site plans and surrounding areas along with photos and renderings of the area. The 100 year flood plan as well as tree canopies were discussed.

02:52:46 Tony Bayus of Bayus Design Works, the architect for the project discussed the concept for the design using a PowerPoint presentation showing renderings.

02:56:39 Kevin Young, Land Design and Development discussed renderings of the perimeter buffers proposed and showed more details of where the proposed wall would be located along the property perimeters and where landscaping would be used for screening using a PowerPoint presentation. He answered questions from commissioners.

03:02:33 Dan Lane a resident of Bentwood Place Court, thinks this development will increase the value of his home and be an asset to the community.

A Summary of Testimony was submitted by Cliff Ashburner. A copy can be found in the case file.

SUMMARY OF TESTIMONY OF OPPONENTS:

03:03:33 John J. Bleidt attorney for JJLR Investments and a resident of Rudy Lane expressed his concerns and is against the development. Traffic and the rear of the properties are a concern. His major concern is the drainage issue and flooding in the past. He submitted a photo of the flooding of the creek which affected his pool. He showed the location of his property on the PowerPoint presentation.

03:09:24 Glenn Wilson with Vision Design and Construction Managers discussed drainage issues and disagrees with calculations of the applicant. He showed on a PowerPoint presentation where the water shed and problems occur. He passed around photos of the flooded culverts. He answered commissioner's questions. Mr. Wilson answered questions from Mr. Ashburner regarding his licensure as a professional engineer.

03:13:29 Lynn S.Renau is opposed to the development and gave a history of the area and the flooding of the creek.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES (OTHER):
03:20:19 John Mann Jr. is concerned about safety issues regarding traffic. He offered some suggestions. He talked about flooding and large objects being washed into yards.

03:24:59 Fred Crismon is concerned about the traffic on Rudy Lane.

AGENCY TESTIMONY:
0:25:50 Paula Wahl with Louisville Metro Public Works addressed the traffic and stub issues explaining that the stub was required to set up for a future connection from Rudy Lane to Westport Road.

03:30:04 David Johnson with MSD, 700 West Liberty Street, Louisville, KY 40202 addressed drainage concerns and explained that has provided more compensation than would typically be required for a development this size and that the detention being provided will at a minimum control runoff from the development and may improve some of the surrounding drainage problems slightly. He answered neighbor's questions and concerns.

03:47:06 Cliff Ashburner asked questions of Mr. Johnson regarding drainage issues.

03:47:48 David Johnson answered Mr. Ashburner's, neighbors and commissioner's questions regarding drainage.

03:51:10 Kate Greer is opposed to the development and asked Mr. Johnson questions regarding drainage issues.

03:52:17 Mr. Johnson answered drainage questions from neighbors and commissioners.

REBUTTAL:
03:58:08 Cliff Ashburner said they will commit to a binding element committing the developer to the extra compensation they have already agreed to do. He answered commissioner's questions.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the cd of the July 21st, 2007 proceedings.

In a business session subsequent to the public hearing on this request, the Commission took the following action.

04:11:30 Commissioners discussed the density, traffic and drainage. The design was also discussed.

On a motion by Commissioner Queenan, the following resolution was unanimously adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville/Jefferson County Metro Government and St. Matthews that the change in zoning **from R-3 and R-4 to R-5** on property described in the attached legal description be **APPROVED**.

WHEREAS; The proposal complies with Cornerstone 2020 guidelines, the zoning is compatible with the area.

WHEREAS: Open space, buffering and transitioning has been provided according to the renderings.

WHEREAS: St Matthews and the City of Windy Hills have approved the private alleys and the stub, sidewalks have been provided, meeting mobility standards.

WHEREAS: The applicant has worked with MSD to control the run-off of the development meeting livability requirements.

WHEREAS: The applicant is meeting tree canopy requirements of the new code.

WHEREAS: Further justification is based on the applicant's proposed justification and findings fact. The testimony and evidence presented at the public hearing and the staff report. To Include the discussion the commission had.

The vote was as follows:

YES: Commissioners, Abstain, Storm, Fleischaker, Ernst, Carlson, Queenan, Hamilton, Blake and Howard.
NO: No one.
NOT PRESENT FOR THIS CASE: Wells-Hatfield.
ABSTAINING: No One.

On a motion by Commissioner Queenan, the following resolution was unanimously adopted:

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the Variances on lots 1 through 21 to reduce the 25 ft front yard set back to 10 ft on property described in the attached legal description:

WHEREAS: The variances will not adversely affect the public health, safety or welfare and will accommodate a more compact urban subdivision development with a central common area.

WHEREAS:: The variance will not alter the central character of the general vicinity. Development has proposed screening and buffering to maintain and contribute to the Rudy Lane corridor.

WHEREAS: The variance will not cause a hazard or nuisance to the public because they impact the front yards of the proposed houses only, which affects the interior of the development but not adjacent property owners in that the houses will be closer to the interior proposed road than is typical.

WHEREAS: The variances will not allow unreasonable circumvention of the requirements of the zoning regulations.

The vote was as follows:

YES: Commissioners, Abstain, Storm, Fleischaker, Ernst, Carlson, Queenan, Hamilton, Blake and Howard.
NO: No one.
NOT PRESENT FOR THIS CASE: Wells-Hatfield.
ABSTAINING: No One.

On a motion by Commissioner Queenan, the following resolution was unanimously adopted:

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the Variances on lot 16 and 17 to reduce the rear yard set backs from 25 ft to 5 ft. on property described in the attached legal description:

WHEREAS: The required front yard set backs are met.

WHEREAS: The variances will not adversely affect the public health, safety or welfare and will accommodate a more compact urban subdivision development with a central common area which is encouraged by the Comprehensive Plan.

WHEREAS:: The variance will not alter the central character of the general vicinity because buffering measures have been proposed that will insulate adjoining property owners from any impacts

WHEREAS: The variance will not cause a hazard or nuisance to the public.

WHEREAS: The variances will not allow unreasonable circumvention of the requirements of the zoning regulations because the need to request the variances can be tied to the unavailability of more accommodating regulations and zoning districts in the primary jurisdiction of the proposed development.

The vote was as follows:

YES: Commissioners, Abstain, Storm, Fleischaker, Ernst, Carlson, Queenan, Hamilton, Blake and Howard.
NO: No one.
NOT PRESENT FOR THIS CASE: Wells-Hatfield.
ABSTAINING: No One.

On a motion by Commissioner Queenan, the following resolution was unanimously adopted:

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan **SUBJECT** to the following binding elements with the change in binding elements regarding drainage that reads: "the applicant agrees to provide 200 percent of the required volume within the development to be detailed on construction plans reviewed and approved by MSD."

WHEREAS: The development concept includes the plan elements included in the Comprehensive Plan including provisions of diverse housing types to includes streets and open space design to invite human interaction and the connectedness which encourages pedestrian activity.

WHEREAS: The renderings illustrate the construction materials, house types and sizes which indicate compatibility.

The vote was as follows:

YES: Commissioners, Abstain, Storm, Fleischaker, Ernst, Carlson, Queenan, Hamilton, Blake and Howard.
NO: No one.
NOT PRESENT FOR THIS CASE: Wells-Hatfield.
ABSTAINING: No One.

Proposed Binding Elements

1. The development shall be in accordance with the approved District Development and Preliminary Subdivision Plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. The density of the development shall not exceed 3.0 dwelling units per acre (21 units on 7.5 acres).

3. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
    1. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
    2. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
    3. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
    4. Location of construction fencing for each tree/tree mass designated to be preserved.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:
    a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District.
    b. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
    c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

d. A minor plat or legal instrument shall be recorded creating the boundary of the proposed development. A copy of the recorded instrument shall be submitted to the Division of Planning & Design Services.

5. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

7. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.

8. All plans setting out Tree Canopy Protection Areas (TCPAs) must contain the following notes:
    a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.
    b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent minimum distances. The final boundary for each TCPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
    c. Tree protection fencing shall be erected around all TCPAs prior to site disturbance to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed, the fence shall be relocated to protect all remaining trees within that TCPA.

d. No parking, material storage, or construction activities are permitted within the TCPAs beyond that allowed for preliminary site investigation work.
g. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed twelve (12) feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at breast height (DBH) shall be removed without prior approval by DPDS.

9. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
   a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
   b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas, open space, TCPAs, WPAs.
   c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.

10. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

11. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

12. Trees will be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10. Said plans shall be submitted for review and approval prior to recording the record plat.

13. There shall be language in the deed restrictions requiring maintenance of the 20' Landscape Buffer Area along Rudy Lane by the Homeowner's Association.

14. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June, 21, 2007 Planning Commission meeting.

15. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than $3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.

16. The signature entrance plan shall be submitted to Planning Commission staff for review and approval prior to recording the record plat.

17. At construction approval, St. Matthews will require bond and inspection for both public and private roads. Private alleys are required to be constructed per public standards.

18. The applicant shall submit a landscape plan for review and approval by PDS staff for required plantings within the 20' LBA along Rudy Lane and for plantings within open space lot 1003. The number and type of plantings and the materials and appearance of the wall shall be substantially similar to those shown on the "Rudy Lane Buffer Exhibits A, B & C" and "Rudy Lane Open Space Exhibit" presented at the June 21, 2007 Planning Commission meeting. The plan shall also provide plantings within the detention area shown on lot 1001 as approved by staff.

19. The applicant agrees to provide 200% of the required volume within the development to be detailed on construction plans reviewed and approved by MSD.