

# Land Use Law Update

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# Waters of the United States

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# Sackett, et. ux. V. U.S. Env'l Protection Agency

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- Sacketts sought to build home and filled in wetlands on their property.
- EPA ordered Sacketts to restore the site and threatened severe penalties for failure to do so.
- Sacketts sued, alleging that wetlands on their property weren't "waters of the United States."

# Sackett Decision

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- Federal District Court and 9<sup>th</sup> Circuit Court of Appeals both sided with the EPA.
- 9<sup>th</sup> Circuit held that the Clean Water Act covers wetlands with an ecologically significant nexus to traditional navigable waters and that Sacketts' wetlands satisfied that standard.

# Sackett Decision

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- Supreme Court held that, in order to establish jurisdiction of an adjacent wetland, a party must establish “first, that the adjacent [body of water constitutes]...’water of the United States’ (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection.



# Bussell v. LFUCG Board of Adjustment

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- Property Owners sought to construct wall around their home that was too high (6' v. 4')
- Board of Adjustment held hearing and denied application
- Owners appealed, alleging that the Board's decision wasn't based on "substantial evidence."
- Held?

# Bussell v. LFUCG Board of Adjustment

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- The Court of Appeals held that the Bussells had the burden of proving to the Board that the variance was needed.
- “To compel a ruling in favor of the Bussells, the proof in their favor must be so overwhelming that no reasonable person could have reached the same decision as the Board, i.e., that the Board acted arbitrarily.”



# Frederic v. City of Park Hills Board of Adjustment

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- Church sought to build a grotto and prayer garden on property not zoned for church use.
- Church was granted a Conditional Use Permit and Variance for the grotto, which decision was affirmed by the Circuit Court
- Court of Appeals held that the church was a non-conforming use and that expansion of non-conforming use was specifically prohibited.

# City of Covington v. Covington Board of Architectural Review

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- Applicant sought to open dog kennel and pursued rezoning, which was denied.
- Board found that the use was a permitted use in the original zone and approved the kennel.
- City sued but suit was dismissed because the City failed to claim that it was “injured or aggrieved.”



# Bluegrass Trust for Historic Pres. V. LFUCG Planning Commission, ex rel. Coleman

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- KRS 100.3471, a.k.a. the “appeal bond” statute was declared unconstitutional.
- Court found that the Kentucky constitution guarantees a right of appeal and that the courts, not the legislature, is the appropriate rule-making body to establish parameters around that right of appeal.
- Interestingly, the Planning Commission’s decision to allow the demolition was upheld.

# RAZ, Inc. v. Mercer Cnty. Fiscal Court

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Two issues: Waiver of Deed Restrictions and Fiscal Court Zoning Decision

Deed Restriction limited property to farming

Portion of property developed with storage

Property proposed for Dollar General

# HB 388

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- Amends KRS Chapter 67C regarding incorporation.
  - Cities can incorporate in Jefferson County if qualified:
    - Minimum of 6,000 people
    - Not within Urban Services Boundary
    - Not within any other currently incorporated area

# HB 388

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- Incorporation Con't.
  - Louisville Metro Council must approve, if it received a qualifying petition signed by a number of registered and qualified voters in the area to be incorporated greater than 75% of the votes cast in the last presidential election.
  - If petition doesn't meet that threshold, Louisville Metro Council can still approve.
  - Mayor cannot veto.



HOME

WHY INCORPORATE?

FAQs



# Welcome To The City Of Eastwood

Don't let the signs backed by Developers scare you. Learn what it means to be a Home Rule City below.

GET THE FACTS

MEETING + PETITION SIGNING SCHEDULE



# HB 388

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- Annexation changed
- Pre-HB 388, cities had to pass an ordinance requesting permission from Louisville Metro Council to annex, which Louisville Metro Council could refuse.
- Post-HB 388, cities can petition, with the “75% of voters in the last presidential election” standard and Louisville Metro Council must approve.

# HB 388

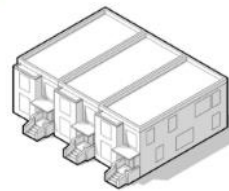
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- Prevents changes to the Land Development Code that would affect the allowable density in a given residential zone until April 2025
- Allows map amendments to continue
- Allows non-density related amendments to occur

# Middle Housing-Big Deal or No Deal

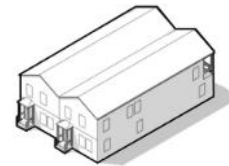
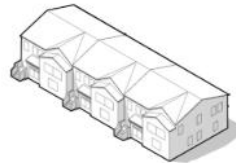


## Middle Housing Types



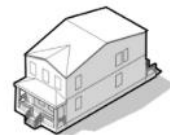
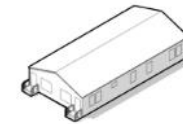
Townhouse

**A Townhouse Development** consists of three (3) to six (6) individual Townhouse buildings with shared sidewalls. Each Townhouse may have up to 2 dwelling units with a shared entrance.



Duplex: Side-by-Side

**Duplex: Side-by-side** consists of two (2) dwelling units beside each other in a single building, with a separate entrance for each unit.



Duplex: Stacked

**Duplex: Stacked** consists of two (2) dwelling units, with one unit on the first story and one unit on the second story.



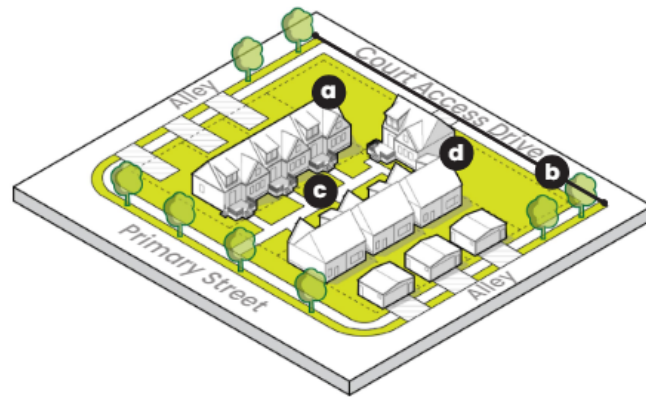
Triplex: 2 Story

**Triplex: 2-Story Stacked** consists of three (3) dwelling units, with one unit on one story and two units on another story.



# Middle Housing

## Cottage Court



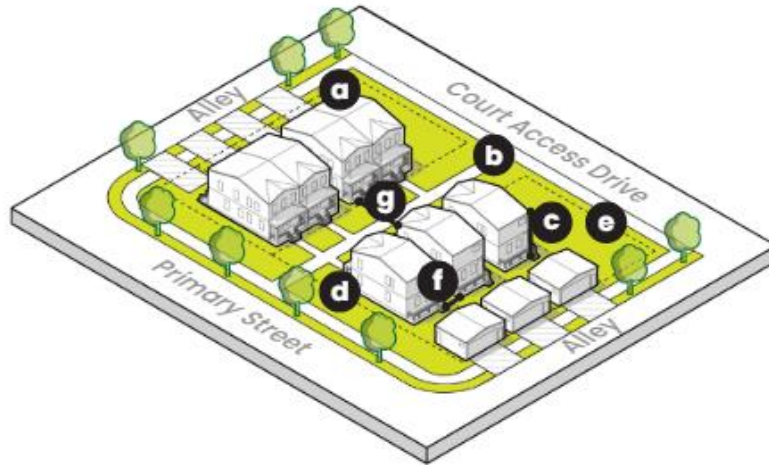
Example of Cottage Court

**A Cottage Court** consists of a group of at least three (3) buildings arranged around a central court. Each building contains a maximum of two (2) dwelling units. A Cottage Court may be on a single lot, or each building may be on its own lot, and each building can contain a maximum of two (2) dwelling units.

# Middle Housing



## Walking Court



Example of Walking Court

**A Walking Court** consists of a group of at least four (4) buildings, each on their own lot, arranged around a central pedestrian way. Each building contains a maximum of two (2) dwelling units.

# Transitional Housing

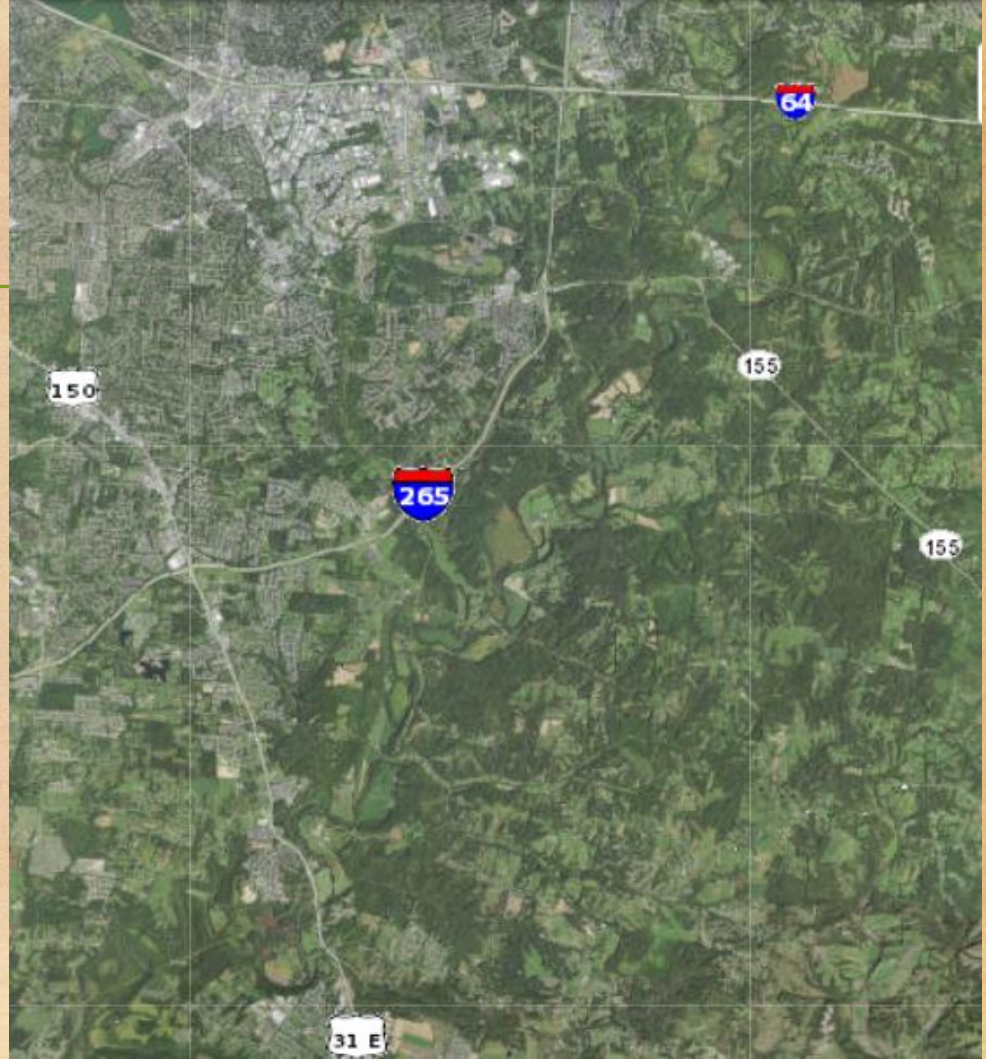
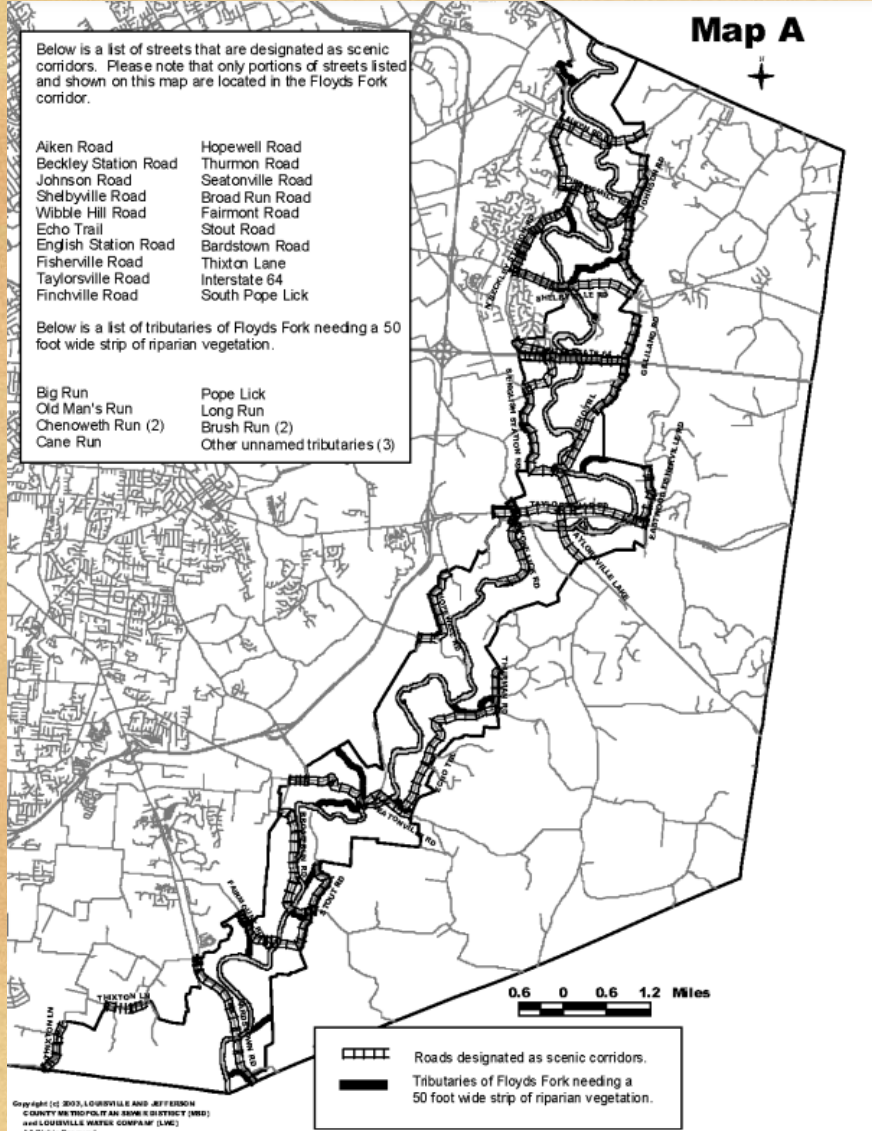
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- “Sober Living” “Re-entry Housing”, etc.
- Limited occupancy in all single family zones is 3 people
- Conditional Use Permit can raise that occupancy limit
- Must also be licensed by Metro annually

# Floyds Fork Overlay District

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- Adds significant limits to development near Floyds Fork
- Addresses environmental impact of development
- Limits lot coverage, limits lighting, requires significant setbacks from roads





Please phrase your  
question in the form of  
a question.