

▶ **FILE #:** 12-Q-00-RZ **AGENDA ITEM #:** 66
 POSTPONEMENT(S): 12/14/00,10/11/12,8/10/06 **AGENDA DATE:** 10/12/2006

▶ **APPLICANT:** CITY OF KNOXVILLE
 OWNER(S): CHURCH WESTLAKE BAPTIST

TAX ID NUMBER: 144 30.02
 JURISDICTION: City Council District 2

▶ **LOCATION:** North side of Westland Dr., west side Emory Church Rd., east side of I-140.

▶ **APPX. SIZE OF TRACT:** 28.94 acres

SECTOR PLAN: Southwest County
 GROWTH POLICY PLAN: Urban Growth Area (inside City Limits)

ACCESSIBILITY: Access is via Westland Dr., a minor arterial street with 30' of pavement width within 150-200' of right of way, or Emory Church Rd., a minor collector street with 25' of pavement width within 60' of right of way.

UTILITIES: Water Source: First Knox Utility District
 Sewer Source: First Knox Utility District

▶ **PRESENT ZONING:** No Zone (formerly PR (Planned Residential) @ 1-5 du/ac)

▶ **ZONING REQUESTED:** RP-1 (Planned Residential)

▶ **EXISTING LAND USE:** Church

▶ **PROPOSED USE:** Same

EXTENSION OF ZONE: No

HISTORY OF ZONING: Two uses on review were previously approved for a church (5-I-99-UR) and a daycare (3-Q-06-UR) at this location.

SURROUNDING LAND USE AND ZONING: North: Vacant land / A (Agricultural)
 South: Westland Dr. - Residential / A (Agricultural)
 East: Vacant land and residential / A (Agricultural)
 West: I-140 right of way / OS-1 (Open Space Preservation)

NEIGHBORHOOD CONTEXT The area around the east side of the Westland Drive / I-140 interchange is predominantly vacant, with a few residential dwellings and a church.

STAFF RECOMMENDATION:

▶ **APPROVE RP-1 (Planned Residential) zoning.**
APPROVE a density of up to 5 du/ac.

RP-1 at the recommended density is the most comparable City zone to the previous County zone and is consistent with the surrounding land use and zoning pattern.

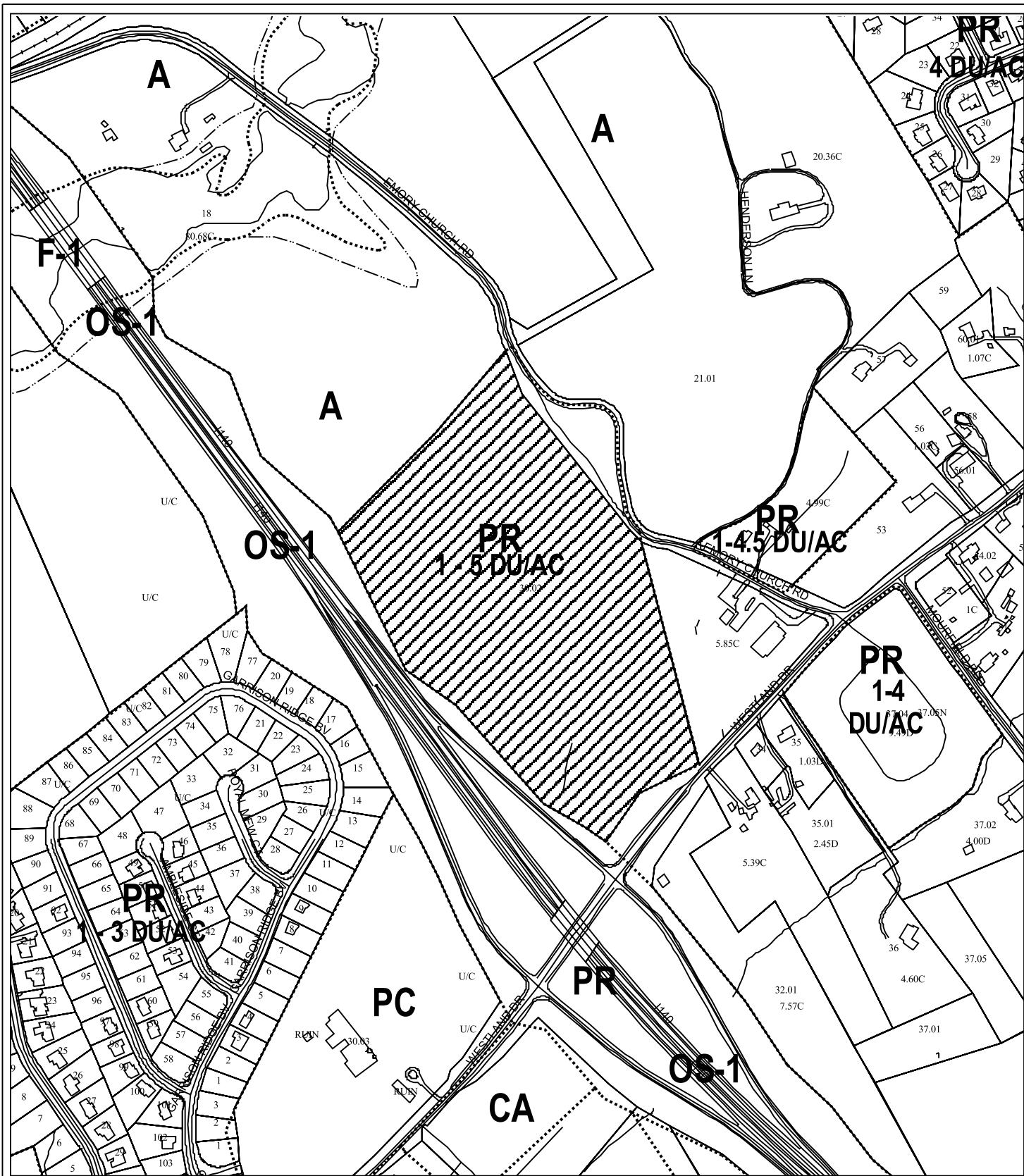
COMMENTS:

The Southwest County Sector Plan proposes public institutional uses for this site, consistent with the use of the property for a church.


A lawsuit was filed prior to the original application date, contesting the annexation of this property, and it is still

pending (see attached letter from the City of Knoxville Law Department). The lawsuit was filed by a private party, not by the owner of this subject property. The City Law Department, the applicant, MPC staff and MPC's attorney are now in agreement that this rezoning should proceed in order to assign a City zoning district to this property, which is within the City Limits of Knoxville. MPC postponed this request numerous times between December 2000 and January 2002. On January 10, 2002, MPC tabled the request, where it remained until untabled on June 8, 2006.

If approved, this item will be forwarded to Knoxville City Council for action on 11/7/2006 and 11/21/2006. If denied, MPC's action is final, unless the action to deny is appealed to Knoxville City Council. The date of the appeal hearing will depend on when the appeal application is filed. Appellants have 15 days to appeal an MPC decision in the City.



**12-Q-00-RZ
GOVERNMENTAL REZONING**


 From: No Zone (formerly PR @ 1-5 du/ac)
 To: RP-1 (Planned Residential) @ 1-5 du/ac

Petitioner: City of Knoxville
 Map No: 144
 Jurisdiction: City



Metropolitan Planning Commission * City / County Building * Knoxville, TN 37902

**CITY OF KNOXVILLE
LAW DEPARTMENT**

P.O. Box 1631, Knoxville Tennessee 37901
Telephone: (865) 215-2050
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MEMORANDUM

to: Steve Wise, Attorney for Metropolitan Planning Commission
from: Debra C. Poplin, Deputy Law Director
date: May 15, 2006
subject: Rezoning Applications 12-D-00-RZ, 12-Q-00-RZ, 12-Y-00-RZ, and 3-R-02-RZ

In follow up to our telephone conversation on May 11, 2006, the following is a summary of the status of the annexation ordinances, which are the subject of the above-referenced rezoning applications.

As discussed more fully below, the first three ordinances are the subject of a declaratory judgment action filed by the Westland West Community Association. Contrary to the statement appearing in the MPC Case Summary regarding these properties, the properties are within the corporate limits of the City as there are no pending quo warranto lawsuits contesting the annexations.

The last ordinance is not in any way affected by the declaratory judgment action of the Westland West Community Association and therefore will be addressed separately.

12-D-00-RZ/Rizvi

On February 16, 1993, the Knoxville City Council passed Ordinance Nos. 0-68-93 and 0-70-93 on second reading, annexing part of the right-of-way of Interstate 140 ("Pellissippi Parkway") into the City of Knoxville.

On September 13, 1994, the Knoxville City Council passed Ordinance No. 0-380-94 on second reading, annexing another part of the right-of-way of Interstate 140 ("Pellissippi Parkway") into the City of Knoxville.

On August 8, 2000, subsequent to the annexation of Pellissippi Parkway, the Knoxville City Council passed Ordinance No. 0-352-00 on second reading annexing property owned by Javed and Mehjabeen J. Rizvi located at the southeast corner of the intersection of Westland Drive and the Pellissippi Parkway ("Rizvi Property").

No quo warranto lawsuit was filed to challenge the Rizvi Property annexation. The Rizvi Property became incorporated into the City on or about September 8, 2000.

12-Q-00-RZ/Westlake Baptist Church

On July 25, 2000, the Knoxville City Council passed Ordinance No. 0-324-00 on second reading, annexing property owned by Westlake Baptist Church located at the

northeast corner of the intersection of Westland Drive and the Pellissippi Parkway (“Westlake Baptist Church Property”).

No quo warranto lawsuit was filed to challenge the Westlake Baptist Church annexation. The Westlake Baptist Church Property became incorporated into the City on or about August 24, 2000.

12-Y-00-RZ/Hanggi

On August 22, 2000, the Knoxville City Council passed Ordinance No. 0-377-00 on second reading, annexing property owned by Robert Scott and Camille W. Hanggi located southwest of the intersection of Westland Drive and the Pellissippi Parkway (“Hanggi Property”)

No quo warranto lawsuit was filed to challenge the Hanggi Property annexation. The Hanggi Property became incorporated into the City on or about September 22, 2000.

Westland West Community Association Declaratory Action challenging the annexation of Pellissippi Parkway

On September 25, 2000, after the annexations of Westlake Baptist Church, the Rizvi Property, and the Hanggi Property became operative, the Westland West Community Association (“WLWCA”) filed a declaratory judgment action claiming that the City’s annexation of Pellissippi Parkway was void as a matter of law. WLWCA did not file a quo warranto action under T.C.A. § 6-51-103 challenging the annexation, nor would WLWCA have standing to do so, since it does not have an ownership interest in any of the properties. Accordingly, the annexations were not “held in abeyance,” as would be the case in a quo warranto action. Instead, the annexations became operative and have been treated as if they are incorporated into the limits of the City.

It is well settled that the validity of an ordinance or statute is presumed valid and that those questioning its validity have the burden of proving otherwise. State ex rel. Senff v. City of Columbia, 343 S.W.2d 888 (Tenn. 1961). Therefore, the ordinance annexing Pellissippi Parkway is presumed valid unless and until WLWCA is successful in proving it to be invalid, and only then, could the ordinance possibly be subject to being set aside by a reviewing court, which would potentially affect adjoining properties such as the Westlake Baptist Church, the Rizvi Property and the Hanggi Property. Until such time, we have and will proceed to treat the properties as being a part of the City and request that MPC remove these rezoning applications from the table and act on the rezoning application affecting these properties.

3-R-02-RZ

On January 22, 2002, the Knoxville City Council passed Ordinance No. 0-21-02 on second reading, annexing property owned by William A. “Pat” Scruggs, Trustee and

Hughlen R. Thornton, Jr., Trustee, located east of Sherlake Lane and south of the intersection of Parkside Drive and Sherlake Lane (“Scruggs/Thornton Property”).

No quo warranto lawsuit was filed to challenge the Scruggs/Thornton Property annexation. The Scruggs/Thornton Property became incorporated into the City on or about February 21, 2002.

On April 9, 2002, after the annexation of the Scruggs/Thornton Property became operative, William A. “Pat” Scruggs, Trustee and Hughlen R. Thornton, Jr., Trustee, who no longer had standing to file a quo warranto action under T.C.A. § 6-51-103 due to the expiration of the 30-day period, filed a declaratory judgment action attempting to indirectly challenge the annexation. They claim in the declaratory judgment action that the contiguity required for the annexation of the subject property is dependent upon one or more strip annexations, which they claim to be invalid.

Similar to the above discussion, it is the City’s position that the alleged strip ordinances at issue in the Scruggs/Thornton matter are presumed valid unless and until they are proven to be invalid, and only then, could the ordinances possibly be subject to being set aside by a reviewing court, which would potentially affect the Scruggs/Thornton Property. Until such time, we have and will proceed to treat the property as being a part of the City and request that MPC remove this rezoning application from the table and act on the rezoning application affecting this property.

If you should have any questions, or need any additional information, please do not hesitate to contact me at 215-2613

Thank you in advance for your consideration of this matter.

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