

From: Tom McAdams <tmcadams@bsmlaw.com>
To: "anders@holstongases.com" <anders@holstongases.com>, "ubailey@esper.com" <ubailey@esper.com>, "bartcarey@comcast.net" <bartcarey@comcast.net>, "artclancy3@gmail.com" <artclancy3@gmail.com>, "cole5137@bellsouth.net" <cole5137@bellsouth.net>, "rlcraig@usit.net" <rlcraig@usit.net>, "gewart@georgeewart.com" <gewart@georgeewart.com>, "s.johnson692@gmail.com" <s.johnson692@gmail.com>, "makane1@bellsouth.net" <makane1@bellsouth.net>, "Nathan.J.Kelly@gmail.com" <Nathan.J.Kelly@gmail.com>, "rebeccalongmire@hotmail.com" <rebeccalongmire@hotmail.com>, "brianpierce@mbiarch.com" <brianpierce@mbiarch.com>, "wstowers@stowerscat.com" <wstowers@stowerscat.com>
Date: 9/7/2010 5:48:25 PM
Subject: MPC Agenda Item 33, MPC File No. 9-F-10-RZ Consideration of Re-Zoning of all Public Parks in the City of Knoxville to OS-1 (Open Space Preservation) District

Dear Commissioners:

City Council asked MPC to consider the re-zoning of all City parks and all park expansion areas to OS-1 Open Space, with conditions which would prohibit the development, construction or operation of houses, multi-dwelling structures or developments, commercial marinas or communication towers within the parks. While we appreciate the efforts of MPC staff and its extensive review, we would respectfully submit that the MPC staff recommendation is inconsistent with City Council's request, does not provide the desired protection for public parks and recommends an overly complicated process that would require amendment of every zoning district in the City. There are simpler methods of accomplishing the appropriate results, and we hope you will reject the staff recommendation and recommend re-zoning the City parks to the OS-1 zone with conditions, as initially requested by City Council.

The City Council Resolution which initiated this process noted four bases for the requested OS-1 zoning:

§ public parks within the City of Knoxville should be preserved and expanded for recreational purposes and not converted to other uses;

§ land within public parks should not be sold, leased or otherwise utilized for construction of housing or office or commercial developments without a formal process and extensive public review and input;

§ re-zoning of park property and park expansion areas before any change in use from recreational purposes will ensure a formal process and extensive public review and input; and

§ City Council has historically made a special effort to re-zone the parks within the City of Knoxville to the OS-1 zone.

The MPC staff recommendation does not address City Council's expressed concerns.

§ It recommends re-zoning only 9 of the City parks to OS-1, leaving over 70 City parks unprotected by appropriate zoning.

§ It recommends no conditions on the re-zonings, leaving every park in the City exposed for development for multi-dwelling structures or developments at up to 12 units per acre, marinas and commercial communications towers.

§ It leaves most City parks subject to a change of use which could include private or commercial development without a formal process requiring posting of the property, multiple public hearings, professional planning review and extensive public review and input.

§ It overlooks City Council's request that designated park expansion areas also be protected.

The MPC staff recommendation essentially leaves the City parks unprotected and subject to development.

MPC staff recommends against the OS-1 re-zoning for essentially four reasons:

1. City Council can control use of park lands by control of its ownership and capital budgets.
2. Many parks would not meet the setbacks, intensity of use requirements and minimum lot coverage regulations of the OS-1 zoning ordinance, as currently drafted.
3. Parks are permitted in many zones and should be permitted in every zone.
4. The use on review process provides adequate review for construction of multi-dwelling structures or developments, marinas and commercial telecommunication towers in City parks.

We would respectfully suggest that MPC staff missed the point of City Council's resolution. The OS-1 zoning ordinance is the only zoning district that is specifically intended for parks. The zoning ordinance provides that OS-1 is to be used for "the preservation and protection of park and recreation lands" and "hiking, cycling and equestrian trails." The permitted principal and accessory uses and structures include: "park and recreation uses including: parks, playgrounds, golf courses, cycling, hiking and equestrian trails, parkways...." City Council has consistently re-zoned City parks to OS-1.

The OS-1 zone has minimal area regulations (front yard - 50 feet, side yard - 20 feet, rear yard - 50 feet, height - 35 feet). The only regulation that would be an issue in most parks is maximum lot coverage which provides that manmade structures or features that are not seeded or otherwise returned to natural conditions cannot cover more than 5% of the lot area. That one section can be easily amended to accommodate park and recreational improvements.

One of the essential functions of the municipal planning process is to ensure that there is adequate public notice and an opportunity for public review and input on any proposed changes in use. Re-zoning the parks to the OS-1 zone will ensure that process is followed. The MPC staff recommendation, on the other hand, would permit a change of use in public parks at a single meeting of City Council, with no posting of the property, no advance public notice and no meaningful opportunity for public input. There would be much greater protection for the City's parks if the parks were in the OS-1 zone with conditions, which would prohibit changes from park use unless the proposed change in use had been fully considered in multiple public forums after public notice. A use on review hearing does not provide the level of public involvement that should be required before changing the use of a public park, and that is why City Council asked for the re-zoning.

We would urge you to make the following recommendation to City Council.

1. APPROVE OS-1 (Open Space Preservation) Zoning for all City parks and park expansion areas, with conditions which prohibit the development or use of property within the parks for multi-dwelling structures or developments, marinas or commercial telecommunications towers.

2. AMEND the maximum lot coverage regulations set forth in Section 2.4.2.D.6 of the City of Knoxville Zoning Ordinance to read as follows:

6. Maximum Lot Coverage. All manmade structures or features, excluding earth work which has been seeded or otherwise returned to its natural condition and excluding trails, parking lots, recreation facilities and other park improvements within City parks, shall cover not more than five (5%) percent of

the lot area.

This will ensure that the City parks are protected and that there is a thorough review process for any change in use of a City park. It requires only a minor amendment to the zoning ordinance to make the zoning workable for every City park. The MPC staff recommendation does not accomplish these results, and we urge you to reject the recommendation and approve the re-zonings.

I appreciate your consideration in regard to this matter.

TNM

Thomas N. McAdams
Bernstein, Stair & McAdams LLP
4823 Old Kingston Pike, Suite 300
Knoxville, Tennessee 37919
Telephone (865) 546-8030
Telecopier (865) 522-8879

This E-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. This information is confidential information and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

This communication (including attachments) does not constitute tax advice by Bernstein, Stair & McAdams LLP regarding any matters or issues involving federal tax law.

CC: "mark.donaldson@knoxmpc.org" <mark.donaldson@knoxmpc.org>