



AGENDA ITEM#: 8

MEMORANDUM

TO: Metropolitan Planning Commission

FROM: Mark Donaldson, Executive Director

DATE: June 14, 2012

SUBJECT: Amendments to the Knoxville-Knox County Minimum Subdivision Regulations regarding land ineligible for subdivision following timber harvesting within the Hillside and Ridgetop Protection Area.
5-A-12-OA

REQUEST

This request is initiated by MPC staff in an effort to begin implementing the recommendations of the Hillside and Ridgetop Protection Plan, as adopted by the City of Knoxville in December 2011 and Knox County in January 2012. This proposed amendment to the Knoxville-Knox County Minimum Subdivision Regulations creates limitations on the amount of land that may be timbered through a clear-cutting method at any time as a first step in the subsequent subdivision and development of the land.

BACKGROUND

Trees matter. They are an important part of our ecology and biosphere. They contribute to the balance in our soils and water that sustain life, they act as air and water filters, they absorb toxic wastes, they release chemicals that benefit human health, and they act as a heat shield to help temper the climate.

The Hillside and Ridgetop Protection Plan, beginning at page 29, advises and recommends the principle that conservation of forested hillsides and ridges is an important component of environmental and economic sustainability in Knoxville and Knox County. Maintenance of tree cover and undisturbed land is a key element in protection of land within the Hillside and Ridgetop Protection Area (HRPA) from potential damages resulting from changes in the amount and velocity of storm water coming from development within the HRPA.

The Hillside and Ridgetop Protection Plan at page 46 advises that "both the city and county should adopt code changes to better regulate timber production and logging operations." The plan recommends a series of actions that could be taken, including:

- Adoption of best practices for forest regeneration;
 - Preparation and review of timber cutting and forest management plans;
 - A time frame after cutting and logging to allow forests to grow;
 - Exemptions for tree cutting provisions for house lots of a certain size or for emergency situations;
- and

- Provisions for protection of outstanding and noteworthy specimen trees.

This proposed amendment of the subdivision regulations addresses the time frame after cutting and logging to allow forests to grow. The plan advises on page 46: *timbering should not be a precursor to development, merely for the purpose of cutting trees without the intent to further produce trees as agricultural products. This can be cross-referenced in subdivision regulations.*

The proposed amendment implements this recommendation in the subdivision regulations.

AUTHORITY

MPC is granted authority at TCA 13-3-403 to adopt subdivision regulations for the region, but both the City of Knoxville and Knox County have also adopted these regulations as part of their respective Code of Ordinances. This requires two actions on the part of the planning commission: 1) to adopt the proposed amendments, and 2) to recommend to the City and County legislative bodies that they adopt them as well in order to maintain a current version of these regulations in their respective codes.

ANALYSIS

Growing and cutting timber as an agricultural endeavor is a vastly different practice than clear-cutting a forest and grading for subdivision and subsequent development purposes. Under state law, zoning cannot limit agricultural practices, which include tree harvesting for lumber and other commodities. Two Tennessee zoning-related statutes are Title 13, Chapter 7, Part 114 (regarding county zoning powers) and Title 6, Chapter 54, Part 54 (regarding municipal zoning powers) address this agricultural exemption from zoning authority.

TCA 13-7-114 provides the exemption from a county's zoning:

This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise. Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.

TCA 6-54-126 provides the exemption from a municipalities zoning:

For any land that is used for agricultural purposes as of May 10, 1998, a municipality may not use its zoning powers to interfere in any way with the use of such land for agricultural purposes as long as the land is used for agricultural purposes.

TCA Title 43, Chapter 26 is known as the Tennessee Right To Farm Act. It defines farms, farm operations, and farm products; and includes the harvesting of trees as an agricultural practice. The act declares that it is a rebuttable presumption that a farm or farm operation is not a public or private nuisance.

The City of Knoxville Code of Ordinances, at Chapter 14 (Horticultural) provides two regulatory steps related to timber harvesting.

- At Section 14-33, the code provides that a site plan for timber harvesting must be submitted for review and approval by the city horticulturist prior to tree removal or concurrent with subdivision approval.
- At Section 14-34, the code provides that where a building permit for new construction or subdivision approval has not been issued, the destruction, within any five-year period, of more than twenty-five (25) percent of the trees on any one (1) parcel of nonexempt land, without the prior approval of the city horticulturalist, shall be prohibited.

The proposed Section 48-10 of the Minimum Subdivision Regulations mimics the City of Knoxville Code of Ordinances with regard to the percentage of the trees on a parcel as a triggering mechanism for the regulations and the amount of time of the prohibition from subdivision.

The proposed Section 48-10 of the Minimum Subdivision Regulations provides opportunity for timbering of land as an agricultural practice and provides time for the forest to begin its regeneration to further produce trees. This amendment is proposed to limit for a period of time the amount of forested land that has been subject to clear-cut timbering from immediate subdivision and subsequent development, while in no way interfering with the continuation of timbering as an agricultural practice.

FINDINGS

Staff finds that this proposed amendment to the subdivision regulations:

- Is consistent with the exemption of agriculture from zoning regulations found at TCA Title 13, Chapter 7 and Title 6, Chapter 54; and the Tennessee Right to Farm Act as found at TCA Title 43, Chapter 26
- Is consistent with provisions of the City of Knoxville Code of Ordinances found at Chapter 14 (Horticulture), Section 14-34 (Destruction or removal of trees) of the Code of Ordinances;
- Is consistent with the intent of state enabling legislation for subdivision regulations by providing for harmonious development within the HRPAs and for the conservation of land resources promoting adequate storm water and drainage protection; and
- Is consistent with the advising principles found beginning at page 29 and recommendations found beginning at page 45 of the Hillside and Ridgetop Protection Plan with regard to timber harvesting

Staff finds that this proposed amendment to the regulations provides for harmonious development within the HRPAs and for the conservation of land resources promoting adequate storm water and drainage protection.

KEY TO ENFORCEMENT

At this time there are no permit requirements for timber harvesting in Knoxville and Knox County. This is a key to enforcement of this proposed provision of the Knoxville-Knox County Subdivision Regulations because a permit requirement would establish a date upon which timber harvesting activity may commence, thus establishing a date from which the period for proposed ineligibility for subdivision may be started.

In the absence of a permit process, an annual aerial photograph could be used to establish the year in which timber harvesting occurred, but Knoxville and Knox County have been without annual aerial photos since 2010 and there is no date certain for the commencement of annual aerial photography.

Until such time as a permit is required for timber harvesting, or annual photography of the entire land area of the county is reestablished, it is difficult to verify a start date for the period of ineligibility for subdivision.

STAFF RECOMMENDATION

Staff recommends the withdrawal of this item until such time that Knoxville and Knox County establish permit procedures and requirements for timber harvesting. When there is an adequate triggering mechanism to determine the date of timber harvesting, staff will reintroduce this proposed amendment.

ATTACHMENT

- EXHIBIT A

SUBDIVISION REGULATIONS

DEVELOPMENT STANDARDS FOR HILLSIDE AND RIDGETOP SUBDIVISIONS

PROPOSED NEW SECTION:

48-10 Land Ineligible for Subdivision.

Any parcel of land which meets all of the following criteria shall not be subdivided, other than an administrative plat pursuant to Section 46 hereof, during any timber harvesting, and for a term of five (5) years after cessation of such timber harvesting:

- The area of timber harvesting is within the Hillside and Ridgetop Protection Area as established by the Hillside and Ridgetop Protection Plan as adopted by the Knoxville City Council on December 13, 2011 and Knox County Commission on January 23, 2012;
- The parcel is greater than two (2) acres; and
- Timber harvesting has resulted in the removal of twenty-five (25) percent of its qualifying trees.

For the purposes of this section, the measurement of timber harvesting may be the percentage of the land area within which all qualifying trees are removed compared to the total area of the parcel or parcels under common ownership within the Hillside and Ridgetop Protection Area, or the selective removal of qualifying trees as a percentage of all qualifying trees.

A tree stump with a diameter at cut off of eight (8) inches or more shall be considered a qualifying tree for purposes of measurement of trees removed. A tree with a diameter at breast height of eight (8) inches or more shall be considered a qualifying tree for the measurement of all remaining trees.

In lieu of a complete inventory of trees on the parcel, a representative sample of forested area on the parcel of no less than 1,000 square feet may be used to estimate the total number of qualifying trees on the parcel.