



**KNOXVILLE/KNOX COUNTY METROPOLITAN PLANNING COMMISSION
PLAN AMENDMENT/REZONING REPORT**

FILE #: 9-A-09-RZ
9-A-09-SP

AGENDA ITEM #: 31
AGENDA DATE: 3/13/2014

POSTPONEMENT(S): 9/10/09-5/13/10, 11/14/13

APPLICANT: JAMES L. MCCLAIN
OWNER(S): James L. McClain

TAX ID NUMBER: 104 168
JURISDICTION: Commission District 6
STREET ADDRESS: 2214 Lovell Rd

LOCATION: Southeast side Lovell Rd., northeast side Hickey Rd.

TRACT INFORMATION: 19.44 acres.

SECTOR PLAN: Northwest County

GROWTH POLICY PLAN: Planned Growth Area

ACCESSIBILITY: Current access is via Lovell Rd., a minor arterial street with 20' of pavement width within 50-80' of right of way. Access could also be gained from Hickey Rd., a local street with 19' of pavement width within 50' of right of way.

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

WATERSHED: Beaver Creek

PRESENT PLAN DESIGNATION/ZONING: LDR (Low Density Residential) & STPA (Stream Protection Area) / A (Agricultural)

PROPOSED PLAN DESIGNATION/ZONING: C (Commercial) & STPA (Stream Protection Area) / CB (Business and Manufacturing)

EXISTING LAND USE: Wholesale/retail nursery, irrigation and landscaping supplies

PROPOSED USE: Wholesale/retail nursery, irrigation and landscaping supplies

EXTENSION OF PLAN DESIGNATION/ZONING: No

HISTORY OF ZONING REQUESTS: None noted

SURROUNDING LAND USE, PLAN DESIGNATION, ZONING
North: Lovell Rd. - Residential subdivision / LDR / A (Agricultural), RA (Low Density Residential) and PR (Planned Residential) @ 1-4 du/ac

South: Condominiums / LDR / PR (Planned Residential) @ 1-5 du/ac

East: House and vacant land / LDR / PR (Planned Residential) @ 1-5 du/ac

West: Hickey Rd. - Houses / LDR / RA (Low Density Residential) and A (Agricultural)

NEIGHBORHOOD CONTEXT: This area is developed primarily with residential uses under A, PR and RA zoning. The exception is the subject property, which is developed with a

wholesale/retail nursery that also sells irrigation and landscaping supplies, under A zoning.

STAFF RECOMMENDATION:

▶ **DENY C (Commercial) sector plan designation.**

The Knoxville-Knox County General Plan 2033 policies do not warrant the redesignation of this site for commercial uses. The site is completely surrounded by residential uses, and placing a commercial designation on the 19.44 acre site would be incompatible with surrounding land uses and would constitute a spot sector plan amendment.

▶ **DENY CB (Business & Manufacturing) zoning.**

CB zoning at this location would be an incompatible spot zoning.

COMMENTS:

It is staff's understanding that this use was originally acceptable under A zoning as a nursery which grew products on-site, but has since grown into a larger, more commercial business. After receiving a complaint and upon a site visit, the Knox County Code Administration Department has deemed the current operation non-conforming with the current A zoning, and advised that it must be rezoned commercial in order to come into compliance. According to the applicant, the current operations have taken place on the site since about 1996. The nursery was established originally sometime in the 1980's. On October 28, 2009, the Knox County Board of Zoning Appeals denied an appeal by the applicant of the Code Administration Department's interpretation that this is a commercial use, requiring commercial zoning. The Knox County Zoning Ordinance does not define agriculture. The applicant argued that the State of Tennessee definition of agriculture could apply to this development. The vote by BZA was 4-4. Five votes would be needed to uphold the appeal, which could have allowed this use to continue in conformance with the current Agricultural zoning.

SECTOR PLAN REQUIREMENTS FROM GENERAL PLAN (May meet any one of these):

CHANGES OF CONDITIONS WARRANTING AMENDMENT OF THE LAND USE PLAN:

INTRODUCTION OF SIGNIFICANT NEW ROADS OR UTILITIES THAT WERE NOT ANTICIPATED IN THE PLAN AND MAKE DEVELOPMENT MORE FEASIBLE:

No road improvements have been made recently in the area. The current use of this property has been in place since about 1996 under the same road conditions. Utilities are available in the area.

AN OBVIOUS OR SIGNIFICANT ERROR OR OMISSION IN THE PLAN:

The plan appropriately calls for LDR development at this location.

CHANGES IN GOVERNMENT POLICY, SUCH AS A DECISION TO CONCENTRATE DEVELOPMENT IN CERTAIN AREAS:

No changes have occurred that warrant this sector plan change.

TRENDS IN DEVELOPMENT, POPULATION OR TRAFFIC THAT WARRANT RECONSIDERATION OF THE ORIGINAL PLAN PROPOSAL:

Although the current use has been in place for many years under Agricultural zoning, there have not been significant changes that have taken place to justify amendment of the sector plan to commercial or rezoning to CB.

REZONING REQUIREMENTS FROM ZONING ORDINANCES (must meet all of these):

THE PROPOSED AMENDMENT SHALL BE NECESSARY BECAUSE OF SUBSTANTIALLY CHANGED OR CHANGING CONDITIONS IN THE AREA AND DISTRICTS AFFECTED, OR IN THE CITY/COUNTY GENERALLY:

1. No significant changes have occurred in the area that warrant the requested change in zoning.
2. The surrounding area is developed with primarily low density residential uses, under A, PR and RA zoning. CB zoning would not be compatible with those uses.
3. Staff recognizes that the property is already used for the proposed wholesale/retail nursery, with sales of irrigation and landscaping supplies. However, this use does not conform with the current A zoning, and establishment of CB zoning would open up the property to a wide range of incompatible uses. An aerial photo

of the site is attached to provide an idea of how it is currently developed.

4. It is staff's understanding that Lovell Rd., where the site is accessed from, is scheduled to be improved to four lanes at some point in the future. However, this site is still surrounded by residential uses, and the intersecting Hickey Rd. is only classified as a local street, making the location less appropriate for a small commercial node.

THE PROPOSED AMENDMENT SHALL BE CONSISTENT WITH THE INTENT AND PURPOSE OF THE APPLICABLE ZONING ORDINANCE:

1. The requested CB zoning provides for a wide range of business and manufacturing uses. The nature of such businesses is to attract large volumes of automobile and truck traffic and have adverse effects on surrounding properties. Hence, they are not properly associated with, nor compatible with residential or institutional uses, or with other uses that require an environment free of noise, odors and congestion.
2. Based on the above description and intent of CB zoning, this property is not appropriate to be rezoned to CB.

THE PROPOSED AMENDMENT SHALL NOT ADVERSELY AFFECT ANY OTHER PART OF THE COUNTY, NOR SHALL ANY DIRECT OR INDIRECT ADVERSE EFFECTS RESULT FROM SUCH AMENDMENT:

1. Public water and sewer utilities are available to serve the site.
2. Establishment of CB zoning at this location would adversely impact surrounding residential properties.
3. If CB were approved for this site, it would bring the current use into conformance with zoning. However, it would open up the property to a number of additional uses that would have the potential of further negative impact on surrounding uses.
4. Upon receiving a complaint from an adjacent property owner, the Knox County Code Administration Dept. has assessed the use of this property and determined that the only way to bring the property into conformance with zoning would be to seek rezoning to commercial. Up until that point, no complaints had been received, so the business continued to operate and grow over the years since it was initially established as a nursery in the Agricultural zoning district. An aerial photo is attached to present an idea of how the property is currently being used.

THE PROPOSED AMENDMENT SHALL BE CONSISTENT WITH AND NOT IN CONFLICT WITH THE GENERAL PLAN OF KNOXVILLE AND KNOX COUNTY, INCLUDING ANY OF ITS ELEMENTS, MAJOR ROAD PLAN, LAND USE PLAN, COMMUNITY FACILITIES PLAN, AND OTHERS:

1. With the requested amendment to GC, CB zoning would be consistent with the Northwest County Sector Plan. However, staff is recommending that the current sector plan designation and zoning be maintained for compatibility with surrounding land uses and zoning.
2. The site is located within the Planned Growth Area on the Knoxville-Knox County-Farragut Growth Policy Plan map.
3. Approval of this request may lead to future rezoning and plan amendment requests for commercial development in the immediate area, on properties zoned residential or agricultural. The current sector plan proposes low density residential uses for all of the surrounding properties in the immediate area. The closest commercially designated area on the sector plan is about 2000 feet north along Middlebrook Pike. The closest commercial zoning (CB) is located about 750 feet north along Lovell Rd.

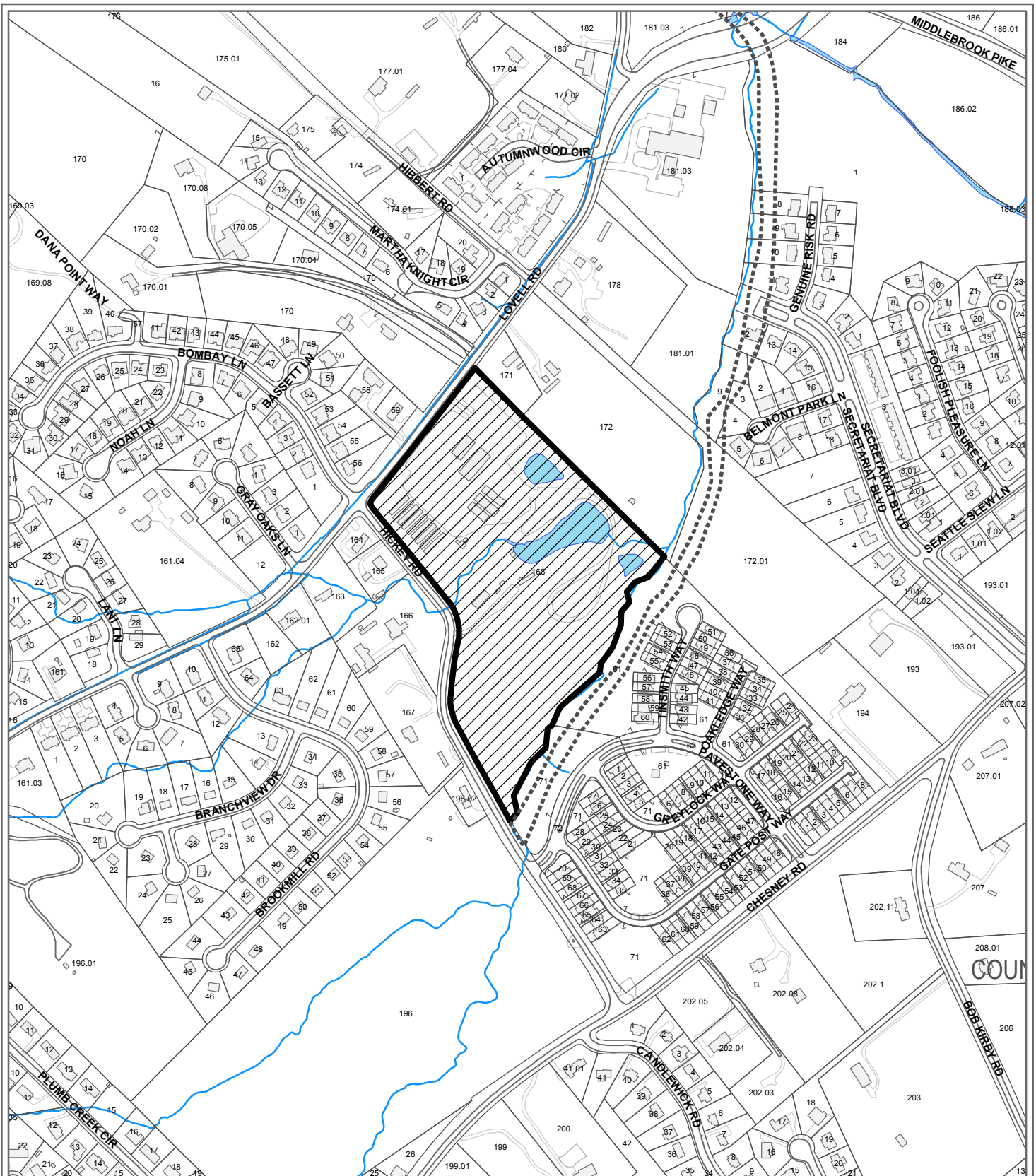
State law regarding amendments of the general plan (which include Sector Plan amendments) was changed with passage of Public Chapter 1150 by the Tennessee Legislature in 2008. New law provides for two methods to amend the plan at TCA 13-3-304:

1. The Planning Commission may initiate an amendment by adopting a resolution and certifying the amendment to the Legislative Body. Once approved by majority vote of the Legislative Body, the amendment is operative.
2. The Legislative Body may also initiate an amendment and transmit the amendment to the Planning Commission. Once the Planning Commission has considered the proposed amendment and approved, not approved, or taken no action, the Legislative Body may approve the amendment by majority vote and the amendment is operative.

ESTIMATED TRAFFIC IMPACT: Not required.

ESTIMATED STUDENT YIELD: Not applicable.

If approved, this item will be forwarded to Knox County Commission for action on 4/28/2014. If denied, MPC's action is final, unless the action to deny is appealed to Knox County Commission. The date of the appeal hearing will depend on when the appeal application is filed. Appellants have 30 days to appeal an MPC decision in the County.



**9-A-09-SP / 9-A-09-RZ
NORTHWEST COUNTY SECTOR PLAN AMENDMENT**

From: LDR (Low Density Residential) & STPA (Stream Protection Area)

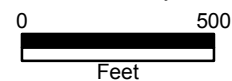
To: C (Commercial) & STPA (Stream Protection Area)



Petitioner: McClain, James L.

Map No: 104

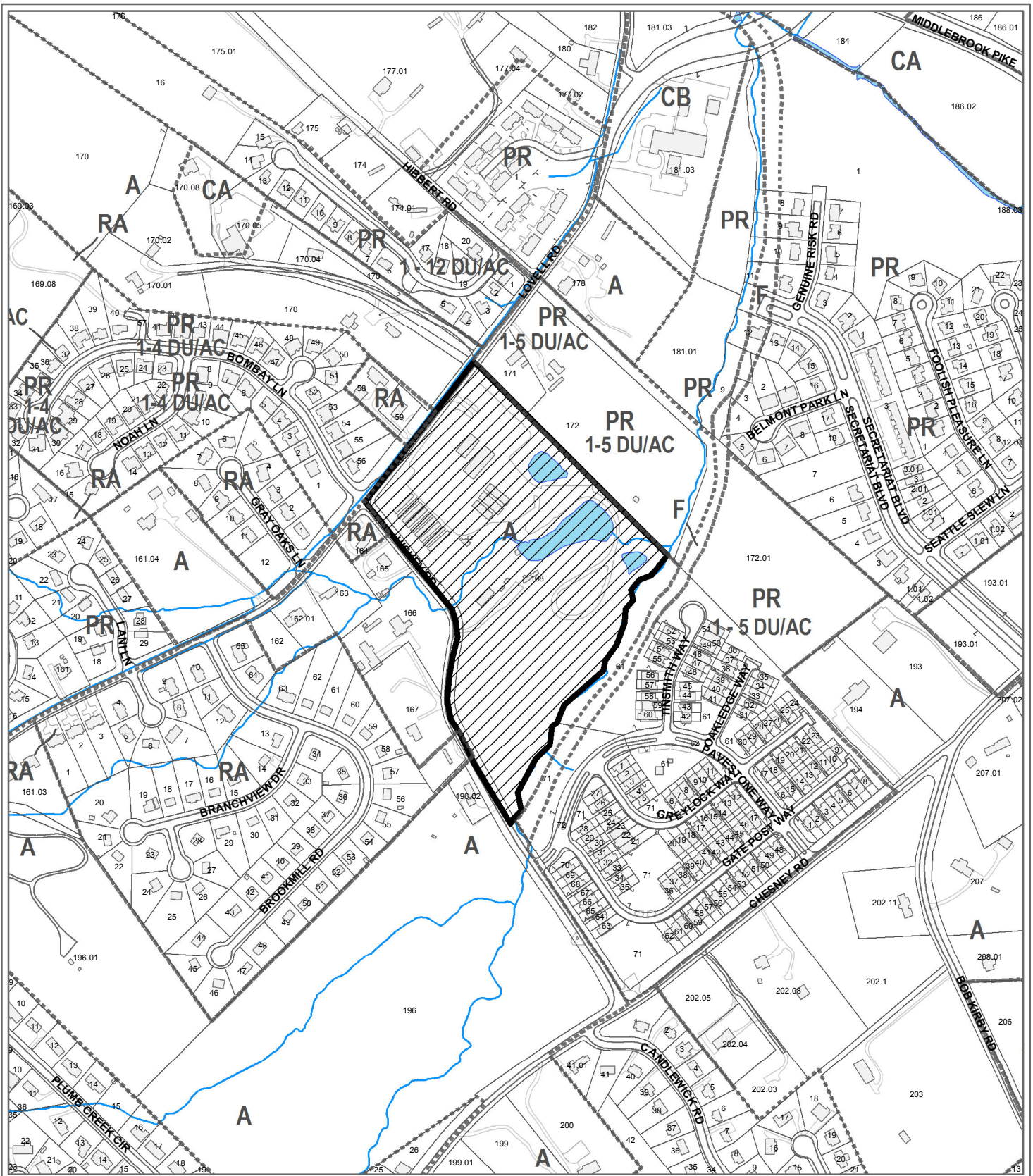
Jurisdiction: County



Original Print Date: 8/24/2009

Revised:

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



**9-A-09-RZ
REZONING**

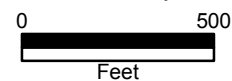
From: A (Agricultural)
To: CB (Business and Manufacturing)



Petitioner: McClain, James L.

Map No: 104

Jurisdiction: County



Original Print Date: 8/24/2009 Revised:
Metropolitan Planning Commission * City / County Building * Knoxville, TN 37902



ARTHUR G. SEYMOUR, JR.
ROBERT L. KAHN
REGGIE E. KEATON
DONALD D. HOWELL
DEBRA L. FULTON
MICHAEL W. EWELL
JOHN M. LAWHORN
JAMES E. WAGNER
BEVERLY D. NELMS
MARY ELIZABETH MADDOX
BENJAMIN C. MULLINS
RICHARD T. SCRUGHAM, JR.
MATTHEW A. GROSSMAN
SHARON POTTER
KEVIN A. DEAN
TAYLOR D. FORRESTER

LAW OFFICES
FRANTZ, MCCONNELL & SEYMOUR LLP
ESTABLISHED 1992

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Direct Fax: 865-541-4612

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P.O. Box 39
KNOXVILLE, TENNESSEE 37901

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FACSIMILE: 865-637-5249
WEB SITE: WWW.FMSLLP.COM

OF COUNSEL:
FRANCIS A. CAIN
IMOGENE A. KING

September 11, 2013

METROPOLITAN PLANNING COMMISSION

Suite 403, City-County Building
400 Main Avenue
Knoxville, TN 37902

Re: Agenda Item No. 28 – James McClain

Dear Metropolitan Planning Commissioners:

In support of the above-captioned rezoning application and to support a change in the Northwest County Sector Plan adopted in 2003, I would submit the following:

1. Changes in conditions - Lovell Road is in the process of being four-laned, and will be four-laned in front of the McClain Nursery at 2214 Lovell Road within the next several years.
2. Obvious error or omission in plan - Just to the northeast of the property is the West Knox Utility District, which has its office and shops and truck parking at the site. This property is zoned CB.
3. Obvious error or omission in plan - Knox County and the State of Tennessee for many years have recognized this nursery as a legal commercial business.

To that end, I enclose herewith the following:

- A. Certificate of Occupancy issued by Knox County on March 23, 1998;
- B. Plant Dealer Certificate issued by the State of Tennessee in 2011;
- C. A Retail Agricultural Seed License issued by the State of Tennessee in 2010;
- D. Business License and Gross Sales Receipt issued by the Knox County Court Clerk for 2010; and
- E. Construction Permit issued by Knox County in 1997 recognizing this location as a commercial use and the type of occupancy as business.

I enclose herewith photographs of the operation.

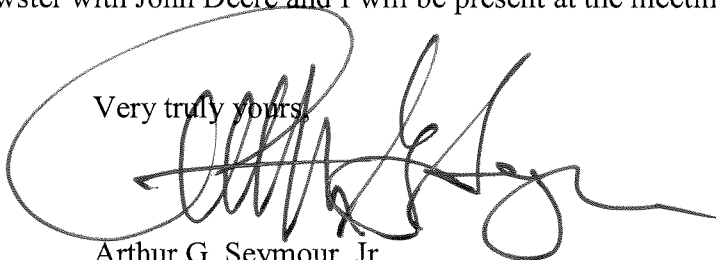
The rezoning would simply recognize the existence of a nursery business which has been permitted by Knox County for many years and will not adversely affect any part of the County, nor the surrounding homes.

The applicant is simply asking the Planning Commission to recognize an existing business that has been permitted to operate for many years.

Also enclosed is my argument to the BZA (which I lost) regarding this being a permitted use in the Agricultural Zone.

Mr. McClain, Mr. Brewster with John Deere and I will be present at the meeting tomorrow to discuss this.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Arthur G. Seymour, Jr.', is written over the closing 'Very truly yours,'. The signature is fluid and cursive, with a large loop at the end.

Arthur G. Seymour, Jr.
FRANTZ, McCONNELL & SEYMOUR, LLP

AGSJ:lbb
Enc.

S:\WDOX\CLIENTS\5241\0000001\CORRESPO\01054174.DOC

CERTIFICATE OF OCCUPANCY

Knox County, Tennessee
Issued by the Department of Code Administration and Inspection

Permit #: 45965

Zone: AG

Project: McGinnis Farms Office Building

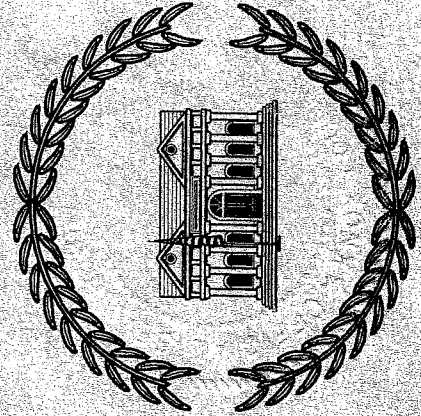
Project Address: 2214 Lovell Road

Owner: McGinnis Farms

Contractor: Owens Construction

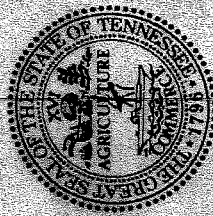
Date: March 23, 1998

This Certificate issued pursuant to the requirements of Section A103.9.1 of the Southern Building Code Certifying that at the time of issuance this structure was in compliance with the various ordinances of the County regulating building construction or use.



Roy C. Braden
Chief Building Official

PLANT DEALER CERTIFICATE



STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE
REGULATORY SERVICES - NASHVILLE, TENNESSEE 37204

The UNDERSIGNED HEREBY CERTIFIES that the stock belonging to the individual or firm whose name appears hereon, is hereby authorized to re-ship such nursery stock and other plants or plant propagating material, purchased from sources in Tennessee and other States as is received under valid Nursery Inspection Certificate of Tennessee or other State or origin, provided said stock otherwise complies with the State of Tennessee rules and regulations.

Cert # 1165



This certificate expires September 30, 2011
unless sooner revoked

JOHN DEERE LANDSCAPES # 196
MIKE GRIFFITH
2200 LOVELL ROAD
KNOXVILLE, TN 37932

Issued to
JOHN DEERE LANDSCAPES
ATTN: KAY LIGHT, REG. AFFAIRS
1385 EAST 36TH ST.
CLEVELAND, OH 44114

AG-0127-03

As Required by: TCA 43-6-101

Date Issued: Wednesday, September 1, 2010

Fee Paid: \$ 200.00

Late Fee Paid: \$ 0.00



Director

Must be posted in a conspicuous place

Document #

RETAIL AGRICULTURE SEED LICENSE
STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE
REGULATORY SERVICES
NASHVILLE, TN. 37204

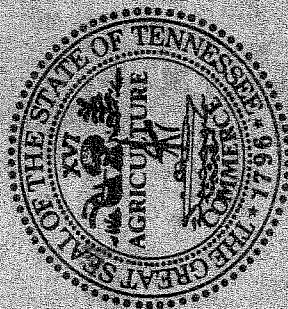
Permit# 31-33519-33521

2010-11

JOHN DEERE LANDSCAPES, INC.
ATTN: KAY LICHT, EXT. 2218
1385 EAST 36TH ST.
CLEVELAND, OH 44114-4114

JOHN DEERE LANDSCAPES #196
2200 LOVELL ROAD
KNOXVILLE, TN 37932

The above entity is authorized to conduct business within the State of Tennessee conditioned on the faithful observance of the Laws, Rules, and Regulations governing such.



As Required by: ICA 43-10-118
Date Issued: 06/17/2010
Expiration Date: 06/30/2011
Amt. Paid: 10.00
066830

[Signature]
Division Director

[Signature]
Commissioner

Post Conspicuously

**FOSTER D ARNETT JR
KNOX COUNTY CLERK**

PO BOX 1566
300 MAIN AVE. ROOM 226
KNOXVILLE, TN 37901

LICENSE
0231962

MINIMUM BUSINESS LICENSE AND GROSS SALES RECEIPT, NOT A BILL

196

Mailing

Location

56109 JOHN DEERE LANDSCAPES, INC.
650 STEPHENSON HWY
TROY, MI 48083

JOHN DEERE LANDSCAPES, INC.
2200 LOVELL RD
KNOXVILLE, TN 37932

JOHN DEERE INC

LOCAL ACCOUNT NUMBER 56109
STATE ACCOUNT NUMBER 165238604
TRANSACTION NUMBER _____
CLASS 1B
SALES TAX NUMBER 103643265

ISSUE DATE 03/04/11
TAX PERIOD 01/01/2010 - 12/31/2010
EXPIRATION DATE 12/31/2011


DEPUTY CLERK SIGNATURE DRW WK29 Drawer:100 Site:1

-- POST AT LOCATION OF BUSINESS --
IF BUSINESS CLOSES, MOVES, OR CHANGES OWNERS, NOTIFY THIS OFFICE

DETACH THIS PORTION FOR CONFIDENTIAL FILE

FOSTER D ARNETT JR, KNOX COUNTY CLERK

LICENSE
0231962

MINIMUM BUSINESS LICENSE AND GROSS SALES RECEIPT, NOT A BILL

DRW WK29 Drawer: 100 Site: 1
Work Date:

MPC March 13, 2014

Agenda Item # 31

Arthur Seymour
919-0035

637-5249

CONSTRUCTION PERMIT - KNOX COUNTY

PERMIT NO: 45965 APPLICATION DATE: Sep 3, 1997 INT: DEH
RECORDED: Sep 18, 1997 FINALED: Feb 6, 1998

REMARK:
USE CLASSIFICATION: COMMERCIAL TYPE OF OCCUPANCY: BUSINESS
TYPE PERMIT: 57 DESCRIPTION: OFFICE BUILDING UNITS:
CLTM: 104 GROUP: PARCEL: 168 LOT#: ZONING: AG
LOTSIZE: DWELLINGS PER PARCEL: FLOODPLAIN APP'D:

PROJECT NAME: MCGINNIS FARMS PADD: 2214
PROD: LOVELL RD.
SUBDIVISION:
CONTACT PERSON: ERNIE OWENS DAYTIME PHONE: 523-1181

OWNNAME: MCGINNIS FARMS OWNPHN: SAME:
OWNRD: LOVELL RD. OADD: 2200
OWNERS CITY/STATE: KNOXVILLE, TN.

ARCHITECT/ENG: HOWARD WARE ARCH LIC NO: 10481
ARCH ADDRESS: CUSTIS DR.
ARCH CITY/STATE: KNOXVILLE, TN. 37920 ARCH PHONE: 573-5623
CONNAME: OWENS CONSTRUCTION CONT LIC NO: 14196
CONROD: N.FOURTH CONADD: 748
CONT CITY/STATE: KNOXVILLE, TN. 37917 CURRENT BUSINESS LIC#:
CONT PHONE: 523-1181 CONTACT PERSON: ERNIE
WORKMAN'S COMP SUBMITTED:

PLUMBER: PLUMB LIC NO:
PLUMB PHONE:

MECHANICAL: MECH LIC NO:
MECH ADDRESS:
MECH CITY/STATE:
MECH PHONE:

RECORDED SURVEY: TYPE CONSTRUCTION: METAL
SQUARE FT: 4000 HEIGHT: 1 BASEMENT: NO HEATING:
SANITATION: SEWER MASONRY FIREPLACE:
FRONT SB: 50 LSIDE: 35 RSIDE: 35 REAR: 35

VARIANCES GRANTED BY BZA: DATE:
CONST. STAN APPS: DATE: COMMIS: DATE:
PRE-APPROVED PLANS: PLANS DATE: PERMIT NO.:

ESTIMATED COST: \$100,000.00 REINSPECTION FEES DUE: \$30.00
BLDG. FEE: \$366.25 1ST LETTER: Mar 23, 1998
INSPECTION FEE: 2ND LETTER:
PLANS REVIEW: \$50.00 3RD LETTER:
TOTAL FEES: \$416.25 DATE REINSP PAID: Apr 13, 1998

CO SENT: Mar 23, 1998 INITIALS: PC FBCO: REC'D FBCO:

TYPE OF CO SENT: LETTERS NEEDED:

REMARKS:

GAS PERMIT INFORMATION SECTION

UNIT1: BTUS1: 1NO:
UNIT2: BTUS2: 2NO:
UNIT3: BTUS3: 3NO:
UNIT4: BTUS4: 4NO:

Knox County
CONSTRUCTION PERMIT

Get a copy
OKC
45965

DATE: Sep 3, 1997 DEH.

Department of Code Administration & Inspection
Phone: 215-2325, City/County Building

45965

PERMIT NO.

45965

PROJECT NAME: MCGINNIS FARMS

PERMIT TYPE: OFFICE BUILDING

JOB ADDRESS: 2214 LOVELL RD. SUBDIVISION:

MAP: 104 GROUP: PARCEL: 168 LOT#: ZONING: AG

OWNER: MCGINNIS FARMS ADDRESS: 2200. LOVELL RD. KNOXVILLE, TN. PHONE:

ARCH/ENG: HOWARD WARE ADDRESS: CUSTIS DR. KNOXVILLE, TN. 37920 PHONE: 573-5623

CONTRACTOR: OWENS CONSTRUCTION ADDRESS: 748 N. FOURTH, KNOXVILLE, TN. 37917 PHONE: 523-1181

CONTRACTOR'S LICENSE # 14196 CONTACT: ERNIE OWENS PHONE: 523-1181

PLUMBING: PHONE:

MECHANICAL: ADDRESS: PHONE:

LOT SIZE: FLOOD PLAIN: STORIES: 1 BASEMENT: NO S/F: 4000 DWELLINGS ON PARCEL:

BOARD OF ZONING: DATE:

PRE-APPROVED PLANS: DATED: PERMIT#:

MAR 23 1998

REMARKS:

ESTIMATED COST: 100,000.00

FRONT SETBACK: 50

BUILDING FEE:

L. SIDE SETBACK: 35

INSPECTION FEE:

R. SIDE SETBACK: 35

PLANS REVIEW FEE:

REAR SETBACK: 35

TOTALS FEES: \$0.00 416.25

INSPECTION REMARKS

1ST INSPECTION

2ND INSPECTION

FINAL

OK Slab Plumbing 10-13-97 RD ①

OK Slab WW 10-16-97 ②

OK with #1999
FOP & RUDY letter
& revision approval.
JF RB

Ref Final JRB 1/21/98 ⑥ ⑦
Cancel Final 11/14/98

ENGINEERING REVIEW DATE

BUILDING REVIEW DATE

FIRE BUREAU REVIEW DATE

- NOTES
1. It is the responsibility of the owner/contractor to telephone the Code Administration office for all required inspections.
 2. The building shall not be occupied without a Certificate of Occupancy.
 3. Building permit expires if construction has not begun within six months of issuance.
 4. Applicable codes are:

1991 SBCC Standard Building Codes	SEWER
1991 SBCC Fire Prevention Code	METAL
1991 SBCC NFPA - 101: Life Safety Code	1992 CABO 1 & 2 Family Dwelling Code

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and resolutions governing this type of work will be complied with whether specified herein or not. The granting does not presume to give authority to violate or cancel the provisions of any other State or Local law regulating construction or the performance of construction.

Signature of Owner/Contractor

Date

MPC March 13, 2014

Knox County Records Management

Aug 10, 2011 8:29AM
Agenda Item # 31



COMMERCIAL PERMIT NO: 45965

NAME: Own Const / Megmans

DATE: 3 Feb 98

LOCATION: 2214 Lovell Rd

O.K. REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

- Occupied before final approval
- NO approved plans on site

- completed everything required for reinspection except the plans on site (approved set)

INSPECTOR: M. Wicker SHEET: 7



COMMERCIAL PERMIT NO: 45965

NAME: McGinnip Farms

DATE: 2-6-98

LOCATION: 2214 Lovell Rd

O.K. REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

Pending approval of fire inspectors

INSPECTOR: R. Ayers SHEET: 8



COMMERCIAL PERMIT NO: 45965
 NAME: Owen Const
 DATE: 1/21/98
 LOCATION: PMC Garbis Farms
 O.K. REJECT Final

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

- 1) Need letter from plumber stating plumbing has been tested. Drains & vent
- 2) Need letter from Engineer/Arch accepting fiber concrete in place of 6" x 6" wire.
- 3) Need splash blocks on get water away from Bldg
- 4) Need permanent power

INSPECTOR: [Signature] SHEET: 6



COMMERCIAL PERMIT NO: 45965
 NAME: McGinnis Farms
 DATE: 1-16-98
 LOCATION: 2214 Lovell Rd
 O.K. REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

- 1) Install disconnect switch for furnace above office area
 - 2) Add hangers on gas line - every 6 ft. max spacing.
- Reinspect on Final

INSPECTOR: [Signature] SHEET: 5

GAS & BOILER INSPECTIONS OFFICE

Final Approval

GAS EQUIPMENT & BOILER INSPECTION

COMMERCIAL PERMIT NO: 45965

NAME: McGinnis Farms

DATE: 12-24-97

LOCATION: 2214 Lovell Road

O.K. Framing & Plumbing REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

- 1. Submit plans revisions on offices being rearranged.
- 2. No test on PVC drain. Must retest & submit letter.

* O.K. pending Fire Bureau approval & plan revision approval of letter.

INSPECTOR: Williamson

SHEET: 3



TO: K.U.B. GAS DEPARTMENT
Owner/Occupant McGinnis Farms
Address 2214 Lovell Rd.

Contractor Carroll
Permit Number 45965

The following gas equipment has been inspected and approved:

1.	Furnace	Amana	92,000
	(Unit)	(Make)	(B.T.U.)
2.	Unit Heater	Reznor	50,000
	(Unit)	(Make)	(B.T.U.)
3.	Unit Heater	Reznor	50,000
	(Unit)	(Make)	(B.T.U.)
4.	Unit Heater	Reznor	200,000
	(Unit)	(Make)	(B.T.U.)
5.	Unit Heater	Reznor	200,000
	(Unit)	(Make)	(B.T.U.)
Total B.T.U.			592,000

DATE 1-16-98 BY R.A. Jaffe
Inspector



4



COMMERCIAL PERMIT NO. 45965

NAME: McGinnis Farms

DATE: 10-13-97

LOCATION: 2214 Lovell Rd

O.K. Slab plumb. REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

Slab plumbing
I need Engineers letter on Footing

INSPECTOR: Buddy Dumbolt SHEET: 0



COMMERCIAL PERMIT NO. 45965

NAME: McGinnis Farms

DATE: 10-16-97

LOCATION: 2214 Lovell Road

O.K. Slab REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

Note: Will use Fiberglass mesh instead of 6x6 wire mesh.

INSPECTOR: W.W. Williams SHEET: 0



Howard R. Ware, Jr.

Post Office Box 9719

6009 John Hall Road

Knoxville, Tennessee 37940

Architect

Telephone 423-573-5623

15 October 1997

Owens Construction Company, Inc.
748 N. 4th Avenue
Knoxville, TN 37917

Re: McGinnis Farms project
2200 Lovell Road
Knoxville, Tennessee

To Whom It May Concern:

The soil bearing for the wall footings is solid, undisturbed, and satisfactory. The basic building loads will be transferred the column footings which are also on solid bearing. All footings have steel reinforcing rods. The column footings are as per the plans and the wall footings have 2 #4's continuous.

If I may be of further service, please call me.

Very truly yours,

Howard R. Ware, Jr.
Howard R. Ware, Jr.

HRWJR/rw

8380100

FERSNER PLBG. 7 7

01/28/98 00:18

P01

FERSNER PLUMBING COMPANY
7907 BLACKS FERRY RD.
KNOXVILLE, TN 37931
(423) 938-0100

January 28, 1998

Roy Braden
Inspections Office
400 Main St.
Room 547K
Knoxville, TN 37902

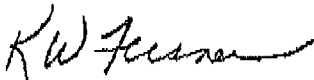
Bldg. Permit # 45965

Re: McGinnis Farms

Mr. Braden:

This letter is to inform you that the above slab plumbing work at McGinnis Farms has been installed and tested according to National Plumbing Code. If there are any further questions please feel free to contact our office.

Thank you,



K. W. Fersner, Owner

RECEIVED
JAN 28 1998
By _____

ERNIE OWENS



PHONE 523-1181
FAX: 523-856

748 16 4th Avenue — Knoxville, TN 37917

DATE: 1/28/98

TO: John Bird

FROM: Lone Hix

SUBJECT: Permit # 45965

NUMBER OF PAGES TO FOLLOW: _____

MESSAGE: _____

P. 01



Howard R. Ware, Jr.

Post Office Box 9719

5829 John Hall Road

Knoxville, Tennessee 37940

Architect

Telephone 615-573-5623

23 January 1998

Owens Construction Company, Inc.
748 N. 4th Avenue
Knoxville, TN 37917

Re: Building for McGinnis Farms
2200 Lovell Road
Knoxville, Tennessee

Blds. Permit # 45965

To Whom It May Concern:

Fibermesh reinforcing for the concrete slab was specified on the drawings for this project. It provides better reinforcing for concrete slabs than wire mesh.

Because of the need for OSB liner panels in the repair and storage area, the building shall be reclassified from Type IV to Type VI, unprotected, and unspinklered. This also meets the requirements of Table 400, 1991 SBC.

If I may be of further service, please call me.

Very truly yours,

Howard R. Ware, Jr.
Howard R. Ware, Jr.

HRWJr/rw

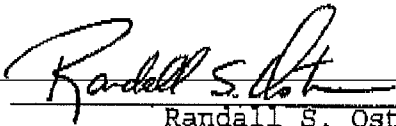
KNOX COUNTY FIRE PREVENTION BUREAU
CERTIFICATE OF COMPLETION
FOR
FIRE PROTECTION FEATURES
AND INSPECTION

To: Knox County Building Official
Subject: Certificate of Completion

This Certificate of Completion is issued for Permit Number 45965, Project Name MCGINNIS FARMS located at 2214 LOVELL RD.. This certifies that the facility listed hereon has complied with the Fire Prevention Bureau Plans Review and Fire Inspection process, the Standard Fire Prevention Code, Standard Building Code, and NFPA Life Safety Code 101. This certificate of completion is only applicable to the fire protection features of the facility.

This certificate was issued on Feb 6, 1998, by CHIP WIDENER

This facility shall not be occupied until the Certificate of Occupancy is issued by the Building Official of Knox County.



Randall S. Osterman
Knox County Fire Marshal

certcom.crt

ARTHUR G. SEYMOUR, JR.
FRANCIS A. CAIN
ROBERT L. KAHN
REGGIE E. KEATON
DONALD D. HOWELL
DEBRA L. FULTON
MICHAEL W. EWELL
IMOGENE A. KING
JOHN M. LAWHORN
JAMES E. WAGNER
BEVERLY D. NELMS
MARY ELIZABETH MADDOX
BENJAMIN C. MULLINS
RICHARD T. SCRUGHAM, JR.
MATTHEW A. GROSSMAN
SHARON POTTER
KEVIN A. DEAN

LAW OFFICES
FRANTZ, MCCONNELL & SEYMOUR LLP
ESTABLISHED 1902

Email: cjseymour@fmsllp.com
Direct Fax: 865-541-4612

550 W. MAIN STREET
SUITE 500
P.O. Box 39
KNOXVILLE, TENNESSEE 37901
TELEPHONE: 865-546-9321
FACSIMILE: 865-637-5249
WEB SITE: WWW.FMSLLP.COM

October 27, 2009

Knox County Board of Zoning and Appeals
c/o Mr. Grant Rosenberg
400 Main Street, Suite 345
Knoxville TN 37902

and

Robert C. McConkey, Esq.
Knox County Law Department
400 Main Street
Suite 612, City County Building
Knoxville TN 37902

Re: 1049 4a. Request of James L. McClain for variance of the Knox County Board of Zoning Appeals to appeal the decision of Knox County Zoning Inspectors to cease work and to be allowed to operate a nursery and irrigation distribution business in AG zone. Property is located at 2214 Lovell Rod. CLT Map 104, Parcel 168. Property is zoned AG. (Commission District 06)

I. QUESTION

Do the current uses of the property leased by John Deere Landscapes, located at the Southeast side of Lovell Rd. and the northeast side of Hickey Rd., ("the property") meet the statutory definitions of "Agriculture" and "Agricultural Use"? If so, does Tenn. Code Ann. § 13-7-114 prohibit Knox County from using its zoning authority to regulate John Deere's operations?

The answer based upon Tennessee Law is clearly yes.

II. DISCUSSION

A. Factual Background:

This property is presently zoned as STPA (Stream Protection Area)/ A (Agricultural) and its sector plan is LDR (Low Density Residential). The property, leased by John Deere Landscapes, was developed as a wholesale/retail nursery that also incidentally sells irrigation and landscaping supplies. The business has expanded to include the storing and distribution of

nursery stock, grown off-site and kept on the property, for subsequent distribution or sale on a commercial basis.

The property has been used for the above-described purposes since 1996. The property continued its storage and sale of nursery stock until the present. Grant Rosenberg, with Knox County, issued a Notice of Violation based upon his opinion that the storage of nursery-stock, grown off site but kept on the property for subsequent sale and distribution on a commercial basis, exceeded the property's Agricultural Zoning under the Knox County Ordinance.

B. Legal Background:

Local governments, like Knox County, lack the inherent power to regulate or control the use of private property within their boundaries. Their power is derived solely from the State of Tennessee through specific delegations of the General Assembly. As zoning laws are in derogation of the common law and operate to deprive property owners a use of their property that would otherwise be lawful, these regulations and ordinances are to be strictly construed by the courts in favor of a property owners' right to the free use of their property. *Tennessee Mfr's Housing v. Metropolitan Gov't of Nashville*, 798 S.W.2d 254 (Tenn. Ct. App. 1990).

Pursuant to Article 5, Section 5.22.02(C) of the Knox County Zoning Ordinance "Farming, including all types of agriculture and horticulture" shall be permitted in property in the Agriculture zone. The Knox County Zoning Ordinance does not define the term "Agriculture." As the Knox County Zoning Ordinance does not define "Agriculture", we must look to the enabling statutes to determine how the legislature has defined "Agriculture" or "Agricultural Uses" and to determine to what extent, if any, a county may affect, limit or control the agricultural uses of land. The Knox County Zoning Ordinance cannot be more restrictive than the grant of authority to regulate land use authorized by the Tennessee Legislature.

Tenn. Code Ann. § 1-3-105 is the definition section of the Tennessee Code. As mandated by statute, the definitions in this part determine the definition of all terms used in the Tennessee code, and any local ordinances enacted pursuant to the Tennessee code, unless the context otherwise requires. Pursuant to Tenn. Code Ann. § 1-3-105:

(2)(A) "Agriculture" means:

- ~~(i) The land, buildings, and machinery used in the commercial production of farm products and nursery stock;~~
- ~~(ii) The activity carried on in connection with the commercial production of farm products and nursery stock; and~~
- (iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock;

(B) As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and

grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food, feed, fiber or fur;

(C) **As used in this definition of agriculture, the term “nursery stock” means all trees, shrubs, or other plants, or parts of such trees shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis;**

Id. (Emphasis Supplied).

Having defined Agriculture, the question becomes to what extent a municipality may regulate agriculture or agricultural uses with the zoning authority as it is granted by Title 13 of the Tennessee Code. This answer to this question is found in Title 13.

13-7-114. Construction – Building Permits – Agricultural use of land. – 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.

Id. (Italics Supplied). Quite simply, as mandated by 13-7-114, if the activities on the property meet the Code’s definition of agriculture, then Knox County cannot limit its agricultural activities nor redefine what constitutes “agriculture” or “agricultural uses” for land located in Knox County.

C. Application of Law to Facts:

Having already determined that, as a matter of law, Knox County is prohibited from limiting or affecting in any way or controlling the agricultural uses of land, the threshold question is do the current uses of the property meet the statutory definitions of “Agriculture” and “Agricultural Use”?

As will be set forth in more detail at the upcoming BZA meeting, the primary use of the property is the storage, maintenance, and distribution and/or sale of nursery stock. Trees (conifers and both deciduous fruit bearing and deciduous but non-fruit bearing variety), shrubs, flowers, and flower bulbs constitute the majority of business on the property accounting for approximately 39% to 42% of the annual sales on the property. As photographs of the property reveal, over 50% of the property’s acreage is used in the storing and maintenance of this nursery stock. Agricultural supplies such as compost, pine straw, wheat straw, plant seed, plant fertilizer, landscaping constitute another 32% of the annual sales on the property. Irrigation equipment used in farming/landscaping operations constitutes another 24% of annual sales while the remaining 2% is miscellaneous retail of farming hand tools etc.

Knox County Codes Enforcement's rationale for determining that the property was not being used for agricultural purposes is based on the fact that the plants are not grown on site but are rather brought to the site to be stored and maintained until they can be sold. This rationale does not have any basis in Knox County's Code and contradicts the Tennessee Code's definition of nursery stock. As stated above, nursery stock includes plants "grown or kept for, or capable of, propagation, distribution or sale on a commercial basis." All of the plants on the property are being kept for, or are capable of, propagation, distribution or sale on a commercial basis. That is the basis of the business on the property. There is no requirement in Tennessee's Code that the plants be grown "on site" although the plants continue to grow while they are maintained, pruned, watered, feed and fertilized, as needed, while awaiting sale. The use of the property meets the very definition of nursery stock and agriculture and is in conformity with State Law and by necessity with the Knox County Zoning Ordinance.

CONCLUSION

Pursuant to Tenn. Code Ann. § 1-3-105(2) subsections (A) to (C), the uses of the property meet the statutory definitions of Agriculture. In Tennessee, a county is prohibited from using its zoning authority to regulate buildings "used for agricultural purposes" as well as "the agricultural uses of land." Tenn. Code Ann. § 13-7-114. As defined by statute, the activities on the property are "agricultural uses." As such, Knox County, and the Knox County BZA, must grant the appeal and overturn the Code's Enforcements determination that the property is not being used for agricultural uses.

Sincerely,

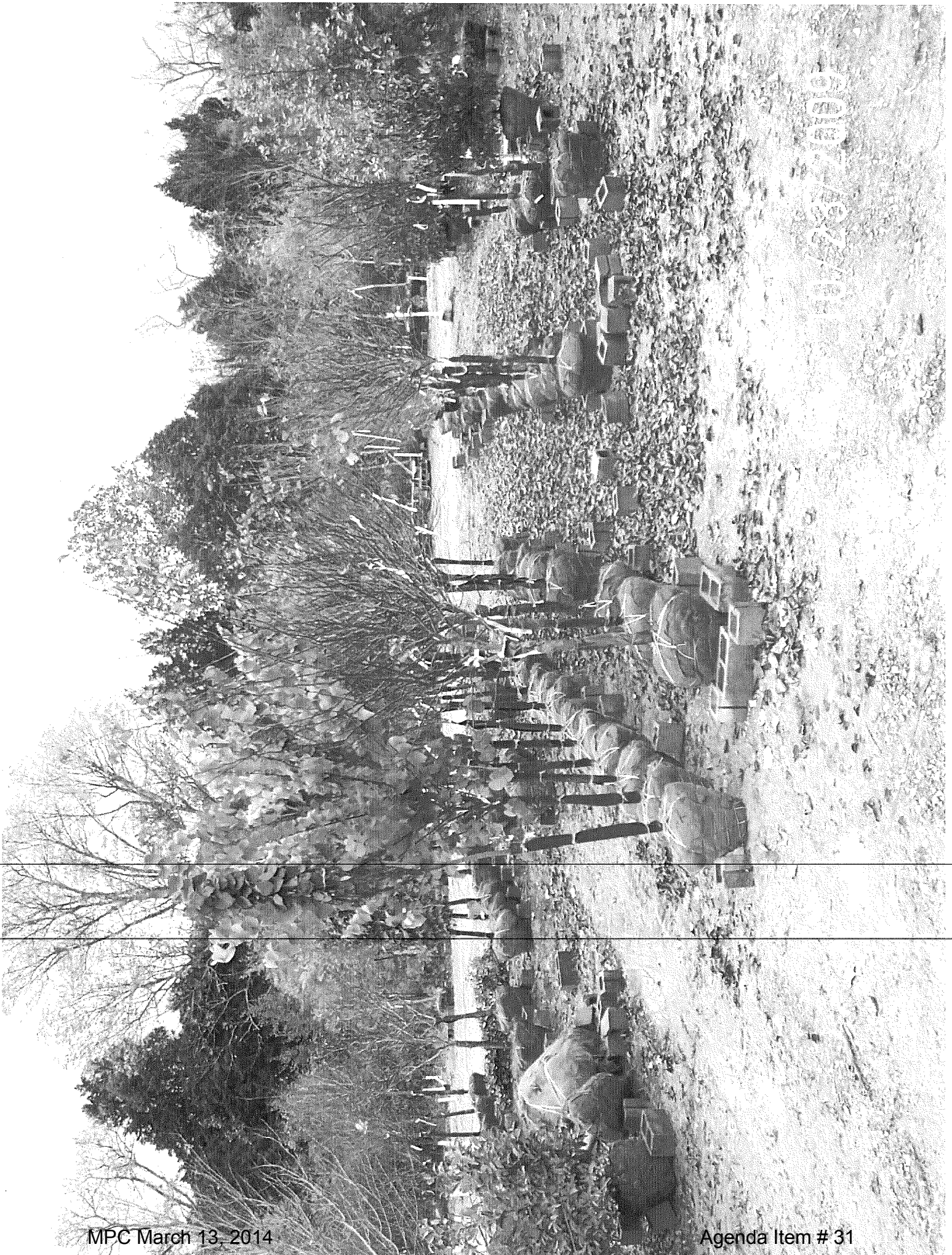
Arthur G. Seymour, Jr.
FRANTZ, McCONNELL & SEYMOUR, LLP

AGSJ:alh

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10/29/2009



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City of
Government
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10/23/2005

10/23/2009



ARTHUR G. SEYMOUR, JR.
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DONALD D. HOWELL
DEBRA L. FULTON
MICHAEL W. EWELL
JOHN M. LAWHORN
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MATTHEW A. GROSSMAN
SHARON POTTER
KEVIN A. DEAN
TAYLOR D. FORRESTER

LAW OFFICES
FRANTZ, McCONNELL & SEYMOUR LLP
ESTABLISHED 1902

Email: ajseymour@fmsllp.com
Direct Fax: 865-541-4612

September 9, 2013

550 W. MAIN STREET
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P.O. Box 39
KNOXVILLE, TENNESSEE 37901

TELEPHONE: 865-546-9321
FACSIMILE: 865-637-5249
WEB SITE: WWW.FMSLLP.COM

OF COUNSEL:
FRANCIS A. CAIN
IMOGENE A. KING

Via hand delivery

Mr. Michael Brusseau
Metropolitan Planning Commission
Suite 403, City/County Building
400 Main Street
Knoxville, TN 37902

Re: Agenda Item No. 28 – James L. McClain

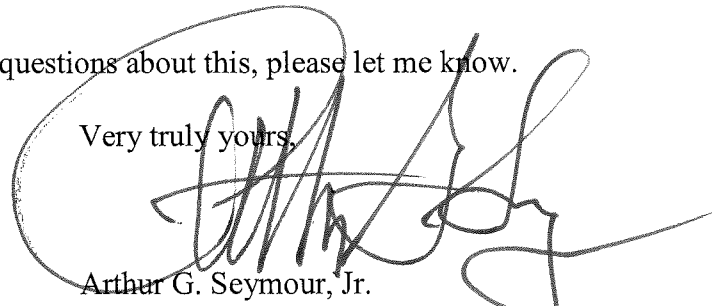
Dear Mike:

The John Deere Nursery which leases Mr. McClain's property and has leased it since 1996 uses the property for the storage, maintenance and distribution and/or sale of nursery stock. Trees, shrubs, flowers, and flower bulbs account for the majority of the business. Over half of the property is used in the storing and maintenance of this nursery stock. Compost, pine straw, wheat straw, plant seed, plant fertilizer and landscaping materials are also stored and sold from the property. Irrigation equipment and miscellaneous tools used in farming and landscaping operations are sold.

There is an office on the property where records are kept and sales are recorded and concluded.

If you have any further questions about this, please let me know.

Very truly yours,



Arthur G. Seymour, Jr.
FRANTZ, McCONNELL & SEYMOUR, LLP

AGSJ:lbb

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From: Mike Brusseau
To: Betty Jo Mahan
Date: 9/8/2009 8:25:05 AM
Subject: Fwd: Re: Item #30; MPC File No. 9-A-09-SP 9-A-09-RZ James McClain (John Deere Rezoning) 9-10-09 MPC A

>>> "Bob and Sally Fagg" <bobandsallyf@bellsouth.net> 9/4/2009 11:09 AM >>>
Re: James McClain (John Deere) request from Agriculture to Manufacturing (CB)

Dear Mr. Brusseau:

As president and on behalf of the nearby Sherman Oaks subdivision, we continue to be opposed to any CB rezoning in our area which is predominately residential and agriculture. However, we find that if a conditional rezoning from agriculture to CB did occur, it could be acceptable to allow the John Deere Landscaping Supply business to continue to operate on an as is basis with no further expansion into other areas other than their nursery, fertilizer and irrigation supplies. This would be acceptable if the property in question would revert back to Agriculture at the time that their business ceases to operate at the location.

It seems that a better solution would be some sort of compromise to allow them to continue under the agriculture guise on an as is basis. Their current building and grounds were evidently approved in 1998 and no one contested their operation by the county or surrounding community. Homes were purchased by individuals in the surrounding area with full knowledge of the John Deere operation. Another individual purchased property with the same knowledge and objected by filing a codes complaint. The John Deere operation is a benign operation that has little adverse effect on the surrounding community. To drive off a tax paying business that has been operating in the area for at least twelve years without objection, would be a travesty. Their lease on the property will last until at least the year 2020, I am told. It would seem to be a lot cleaner in this case, to exception the agriculture zoning for John Deere until they cease to do business at the location. In the future, the community would be better served to correct zoning issues at their inception rather than down the road when a tangle of legal issues occur. I believe the MPC is now doing that. Let's find a way to compromise and put this issue aside.

Respectively submitted,

Bob Fagg
President-Sherman Oaks Home Owners Association