

Mark Jendrek, P.C.
ATTORNEY AT LAW
800 SOUTH GAY STREET
SUITE 1900
KNOXVILLE, TENNESSEE 37929

865/824-1900
865/824-1910 FAX

ALSO ADMITTED IN MARYLAND

November 3, 2016

REPLY TO:
P.O. BOX 549
KNOXVILLE, TENNESSEE 37901
E-MAIL TO: mjendrek@gmail.com

Via email and First Class Mail

Commissioners
Knoxville-Knox County Metropolitan Planning Commission
400 Main Street, Suite 403
Knoxville, Tennessee 37902

Re: Bentley Fields; File No. 5-SE-16-C

Ladies and Gentlemen:

I hate to bother you again on this project, but it is at a critical stage, and it is important that you understand the **latitude you have as a Commissioner** with respect to this or any other project at the Concept Plan stage.

Contrary to what you might understand or believe, you are not required to approve a project simply because it seems to meet the regulations, or even if it does satisfy the regulations. You have much more latitude than that—latitude with which you are able to exercise your judgment, review a project, and make a decision based on what is good for our community. There would be no need for people to serve as Commissioners if the role was to merely assess whether a plan satisfied the regulations and stamp it “approved.” You serve a much more important purpose.

In other words, you are legally able to do more than merely rubber-stamp projects that come before you—you are appointed to use your sound discretion and make important decisions that contribute to the betterment of Knoxville and Knox County. The regulations themselves tell you this.

For example, the Subdivision Regulations specifically provide that those regulations are adopted “in order to provide for the harmonious development of the City of Knoxville.” If you take a quick look at the areas adjacent to this proposed project, it is clear that this project is anything but harmonious with the West Hills and Cavets Station subdivisions. Both of those developments are comprised of much larger lots than what is proposed for Bentley Fields, and each house in West Hills and Cavets Station was separately designed and built. Bentley Fields is not at all harmonious with the surrounding property.

The stated purpose of these regulations is to promote the “harmonious development” of the city. To the extent what is proposed does not satisfy that criterion, you have the authority to reject it.

That same section of the Subdivision Regulations goes on to assert, as a purpose, “the avoidance of such . . . subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of . . . transportation or other public services.” By now, you are aware of the blind hill on Broome Road just south of the proposed entrance to this subdivision, and the lack of any shoulder on Broome Road. A southbound school bus, discharging children at the entrance of the subdivision, will necessitate those children crossing Broome Road as northbound vehicles crest the hill without the time or distance to stop.

There is no shoulder on which those children can wait until traffic is clear; they will be required to disembark the school bus and immediately cross the road while northbound traffic has no warning that there are children in the road until they crest the hill and it is too late. Given the speeds at which cars accelerate up and then crest the hill, there will not be adequate time to stop when children are crossing that road.

That scenario itself is sufficient to deny this Concept Plan.

There are several other provisions in the Subdivision Regulations that give you the latitude to require more of a developer than mere satisfaction of the minimum requirements, but none is as clear as the language in the General Provisions section of the regulations:

Thus, the developer is encouraged to go beyond the standards of these regulations **and the Planning Commission may require standards above the minimum contained herein** upon finding that the public health, safety, and welfare justify such standards. (emphasis added)

Sometimes requiring more than compliance with the minimum standards is necessary. This project involves the potential destruction of an important historic site of significance to our city. It thwarts the stated purpose of the Subdivision Regulations in that it is anything but “harmonious” with the adjacent properties, and it certainly will have an adverse effect on children and the families of those children who will daily face the frightening prospect of crossing Broome Road to go home, along with the very real possibility of being struck by a northbound automobile unable to stop after cresting the blind hill just 300 feet or less from the subdivision entrance.

While, technically, the sight-distance available satisfies the minimum standard, all the “sight-distance” and “posted speed limit” criteria and calculations will not undo that tragedy when, not if, it occurs. I live nearby and have driven Broome Road everyday for the past 23 years. I know only too well how people drive up and down that road. There is a significant fallacy in using the 30 mile per hour posted speed limit as a basis to determine if the sight distance is sufficient—that presumes everyone obeys the posted speed limit. I suspect that each of you has driven over the posted speed limit more than once in your driving history. Knowing this, and knowing that you “may require standards above the minimum” contained in the Subdivision Regulations, you have a rare opportunity to stop a tragedy before it occurs.

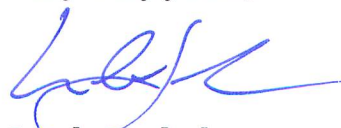
In a previous telephone conversation, one Commissioner said to me, “Most of the roads in Knox County need improvement.” That may be a true statement, but it is not a justification for jeopardizing the health, safety, and welfare of our citizens, generally, and our children, specifically, by knowingly approving a dangerous intersection. As the Subdivision Regulations provide, “the Planning Commission may require standards above the minimum contained herein.” This is a prime example.

Finally, you need not merely take my word for the contents of this letter. Please feel free to talk with your counsel, Steve Wise (544-1199), who is well-versed in these regulations and what Commissioners can and cannot do. It will **not** be a Sunshine Law violation to talk with Steve as he is your attorney in your capacity as Commissioners, and talking with your attorney is a recognized exception to the Sunshine Laws. You should verify this with Steve if you call him.

You not only have an opportunity to make a difference in our community, you have the legal authority—and the obligation—to do so. This is why you agreed to become a Commissioner. I trust you will exercise your judgment, and use the discretion given to you by the Subdivision Regulations and the Code of Ordinances for the City of Knoxville to protect the harmonious nature of this area of Knoxville, to preserve a significant historic site, and to ensure the safety of our schoolchildren.

Thank you for your consideration. If you have any questions, I am available at 824-1900 to talk about any of the above.

Very truly yours,



Mark Jendrek