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[MPC Comment] Millstone - File Numbers 7-D-16-RZ, 8-SC-16-C, and 8-H-16-UR

1 message

Briton S. Collins <bcollins@kmfpc.com>

Tue, Apr 11, 2017 at 10:44 AM

Reply-To: bcollins@kmfpc.com

To: "gerald.green@knoxmpc.org" <gerald.green@knoxmpc.org>, "Dan Kelly (Dan.Kelly@knoxmpc.org)" <Dan.Kelly@knoxmpc.org>

Cc: "commission@knoxmpc.org" <commission@knoxmpc.org>

Gentlemen:

Attached please find a copy of a lawsuit that was filed yesterday afternoon challenging the rezoning of this property. In light of this development, I would request and recommend that MPC stay further consideration of the concept plan/use on review until this lawsuit has been resolved.

Thanks,

Briton

Briton S. Collins, Esq.

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 **Complaint (filed) 04.10.17.pdf**
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FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

ALEXANDER G. DeTRANA and)
wife, NANCY R. DeTRANA;)
MICHAEL J. CAMPBELL and wife,)
NOLEN R. CAMPBELL;)
TIMOTHY C. GIBSON and wife,)
SHIRLEY ANN GIBSON,)

2017 APR 10 PM 4:27

HOWARD H. GIBSON

Case No. 193523-1

Plaintiffs,)

v.)

COUNTY COMMISSION OF)
KNOX COUNTY, TENNESSEE;)
S&E PROPERTIES, LLC;)
SCOTT SMITH;)
ERIC MOSELEY;)
C. EDWARD DANIEL; and)
THOMAS J. OVERTON,)

Defendants.)

**COMPLAINT FOR DECLARATORY JUDGMENT
AND FOR INJUNCTIVE RELIEF**

The above-named Plaintiffs, by and through their undersigned counsel, respectfully file this complaint for declaratory judgment pursuant to T.C.A. § 29-14-101, *et seq.*, for additional relief (including, without limitation, injunctive relief and attorneys' fees) pursuant to T.C.A. § 28-14-110, and for injunctive relief pursuant to Tenn. R. Civ. P. 65.04. Specifically, the Plaintiffs hereby petition this Court:

- I. To declare null and void the action taken by the Knox County Commission at its Regular Session meeting on January 23, 2017, with respect to its approval of S&E Properties, LLC's application to rezone the Subject Property, as more fully described herein;

- II. To enjoin the Defendants, S&E Properties, LLC, Mr. Smith, Mr. Moseley, Mr. Daniel and Mr. Overton, from taking any further action(s) with respect to the Subject Property until such time as the rezoning application of S&E Properties has been (i) properly resubmitted to the MPC and (ii) lawfully considered and voted upon by the County Commission; and
- III. To grant the Plaintiffs such other relief to which they may be entitled, at law or in equity, including (without limitation) injunctive relief and attorneys' fees, as authorized pursuant to T.C.A. § 29-14-110.

PARTIES, JURISDICTION & VENUE

1. The Plaintiffs, Alexander G. DeTrana and wife, Nancy R. DeTrana ("Mr. and Mrs. DeTrana"), are citizens and residents of Knox County, Tennessee, residing at 9314 Millstone Lane, Knoxville, Tennessee 37922. Pursuant to Tenn. R. Civ. P. 5.01, Mr. and Mrs. DeTrana may be served with pleadings and correspondence through their undersigned counsel.

2. The Plaintiffs, Michael J. Campbell and wife, Nolen R. Campbell ("Mr. and Mrs. Campbell") are citizens and residents of Knox County, Tennessee, residing at 9318 Millstone Lane, Knoxville, Tennessee 37922. Pursuant to Tenn. R. Civ. P. 5.01, Mr. and Mrs. Campbell may be served with pleadings and correspondence through their undersigned counsel.

3. The Plaintiffs, Timothy C. Gibson and wife, Shirley Ann Gibson ("Mr. and Mrs. Gibson"), are citizens and residents of Knox County, Tennessee, residing at 800 Freels Lane, Knoxville, Tennessee 37922. Pursuant to Tenn. R. Civ. P. 5.01, Mr. and Mrs. Gibson may be served with pleadings and correspondence through their undersigned counsel.

4. The Defendant, Knox County, Tennessee, is a governmental entity created and existing in the State of Tennessee and can be served through its Law Director, Richard "Bud"

Armstrong, at 400 Main Street, Suite 612, Knoxville, Tennessee 37902. (The County Commission of Knox County (hereinafter, the “County Commission”) is a body of elected officials that form a political subdivision of the Defendant, Knox County, Tennessee.) When used herein, the term “County Commission” shall refer to the Defendant, Knox County, Tennessee.

5. The Defendant, S&E Properties, LLC (hereinafter, “S&E Properties”), is a Tennessee limited liability company with its principal office located at 405 Montbrook Lane, Knoxville, Tennessee 37919. S&E Properties may be served with process through its registered agent, Richard A. Sedgley, at 2923 Sutherland Avenue, Knoxville, Tennessee 37919.

6. Defendant Scott Smith (“Mr. Smith”) is a citizen and resident of Knox County, Tennessee. Upon information and belief, Mr. Smith may be served with process through his attorney, Mr. Arthur G. Seymour, Jr., at 550 W. Main Street, Suite 500, Knoxville, Tennessee 37901.

7. Defendant Eric Moseley (“Mr. Moseley”) is a citizen and resident of Knox County, Tennessee. Upon information and belief, Mr. Moseley may be served with process through his attorney, Mr. Arthur G. Seymour, Jr., at 550 W. Main Street, Suite 500, Knoxville, Tennessee 37901.

8. Defendant C. Edward Daniel (“Mr. Daniel”) is a citizen and resident of Knox County, Tennessee. Upon information and belief, Mr. Daniel may be served with process through his attorney, Mr. Arthur G. Seymour, Jr., at 550 W. Main Street, Suite 500, Knoxville, Tennessee 37901.

9. Defendant Thomas J. Overton (“Mr. Overton”) is a citizen and resident of Knox County, Tennessee. Upon information and belief, Mr. Overton may be served with process

through his attorney, Mr. Arthur G. Seymour, Jr., at 550 W. Main Street, Suite 500, Knoxville, Tennessee 37901.

10. This Court has personal jurisdiction over all of the parties to this action and subject-matter jurisdiction over all claims and causes of action asserted herein.

11. Venue is also proper in this Court and County because this action relates to actions taken in Knox County, Tennessee, concerning real property that is situated in Knox County, Tennessee.

FACTUAL ALLEGATIONS

12. The Plaintiffs repeat the foregoing allegations, which are expressly incorporated herein by reference as if set forth herein verbatim.

13. Upon information and belief, Mr. Daniel and Mr. Overton are the fee simple owners of approximately 40.34 acres of undeveloped land situated in west Knox County, located to the southeast of Millstone Lane and to the west of Freels Lane (hereinafter, the "Subject Property").

14. The Subject Property consists of three (3) separate tax parcels, which are more particularly identified as follows: Knox County Tax ID # 132-049.09, Knox County Tax ID # 132-049.17 and Knox County Tax ID # 132-049.18.

15. On or about May 23, 2016, Defendant S&E Properties filed an application with the Knox County Metropolitan Planning Commission (the "MPC") to rezone the Subject Property from AG (Agricultural) to PR (Planned Residential) at a density of five (5) dwelling units per acre.

16. The application was formally opposed by a number of neighboring property owners, including the within-named Plaintiffs, who were represented by Mr. Briton S. Collins and Jack M. Tallent, II of the Kennerly, Montgomery & Finley law firm.

17. A true and correct copy of the MPC report of recommendation (bearing MPC File Number 7-D-16-RZ) is attached hereto as collective Exhibit A.

18. The MPC staff recommended County Commission approval of the application at a density of up to three (3) dwelling units per acre, **subject to three (3) specific conditions** that were detailed in the MPC recommendation report. Those conditions included the following (which are recited herein verbatim):

Condition # 1: Lots that abut parcels 132-049.01 and 132-049.12 must have an average lot size of 1 acre, with no lot being less than .75 acres in size.

Condition # 2: Lots that abut parcels 132-050 and 132-050.02 must have an average lot size of .5 acres, with no lot being less than .4 acres in size.

Condition # 3: Prior to approval of a Final Plat or issuance of any building permits for a development proposed at a density of greater than 1 dwelling unit per acre, Millstone Lane must be improved to a minimum of 20 feet in width from the entrance of the development to the improved portion to the east, and a 5-foot wide sidewalk must be installed on the south side of Millstone Lane from the development entrance to the existing sidewalk to the east.

(See Exhibit A).

19. The matter came before the MPC for hearing on November 10, 2016. At the meeting, the MPC voted 14-0-1 (Defendant Smith recused himself from the vote) to approve the staff recommendation to rezone the Subject Property at a density of up to three (3) dwelling units per acre, and subject to the three (3) specific conditions stated above. (See Exhibit A – MPC Minutes dated November 10, 2016).

20. Upon approval by the MPC, the rezoning application (along with the MPC's recommendation report) came before the County Commission at its Regular Session meeting on December 19, 2016.

21. A true and correct copy of the December 19, 2016 County Commission meeting minutes are attached hereto as collective Exhibit B.

22. A motion was made (and seconded) for the County Commission to approve the rezoning application at a density of two (2) dwelling units per acre, subject to the three (3) specific conditions contained in the MPC's recommendation report, and one (1) additional condition (regarding the construction of the sidewalk and related improvements to Millstone Lane). (See Exhibit B).

23. A substitute motion was made (and seconded) to defer the rezoning application to the County Commission's January 23, 2017 Regular Session meeting. The substitute motion carried and the matter was deferred. (*Id.*)

24. The rezoning application (and the MPC's recommendation report) came before the County Commission at its Regular Session meeting on January 23, 2017.

25. A true and correct copy of the January 23, 2017 meeting minutes are attached hereto as collective Exhibit C.

26. A motion was made (by Defendant Smith) and seconded, to approve the application to rezone the Subject Property (from AG to PR) at a density of up to three (3) dwelling units per acre, as per the MPC's recommendation, but to eliminate the MPC's recommended conditions # 1 and # 2 and to instead insert a "conservation buffer." (See Exhibit C).

27. A substitute motion was made (and seconded) to pass the rezoning application at a density rate of two (2) dwelling units per acre, and subject to the three (3) conditions in the MPC recommendation. The substitute motion failed by a vote of 4-6-0-1. (*Id.*)

28. Notwithstanding the deviation from the MPC's recommendation (i.e., the removal of conditions # 1 and # 2), the original motion (by Defendant Smith) then passed by a vote of 6-4-0-1. (*Id.*)

29. Tennessee Code Annotated § 13-7-105(a) provides as follows:

13-7-105 Amendments of zoning ordinance provisions Procedure.

(a) The county legislative body may, from time to time, amend the number, shape, boundary, area or any regulation of or within any district or districts or any other provision of any zoning ordinance; but any such amendment shall not be made or become effective unless the same be first submitted for approval, disapproval or suggestions to the regional planning commission of the region in which the territory covered by the ordinance is located, and, if such regional planning commission disapproves within thirty (30) days after such submission, such amendment shall require the favorable vote of a majority of the entire membership of the county legislative body.

30. Because it substantially deviated from the MPC's recommendation, the application of Defendant S&E Properties – as approved by the County Commission – constituted a “new proposal” for purposes of Tenn. Code Ann. § 13-7-105(a) and was therefore required to be resubmitted to the MPC for review before being considered by the County Commission. *Westland West Community Association, et al. v. Knox County, et al.*, 948 S.W.2d 281 (Tenn. 1997).

31. Therefore, the County Commission's action on January 23, 2017 to approve the rezoning application is null and void under applicable law and should be set aside by this Court.

**COUNT I:
DECLARATORY JUDGMENT**

32. The Plaintiffs repeat the foregoing allegations, which are expressly incorporated herein by reference as if set forth herein verbatim.

33. The Plaintiffs each own property adjacent to the Subject Property, and therefore they have standing to bring this cause of action.

34. Because it substantially deviated from the MPC's recommendation, the application of Defendant S&E Properties – as approved by the County Commission – constituted a “new proposal” for purposes of Tenn. Code Ann. § 13-7-105(a) and was therefore required to be resubmitted to the MPC for review before being considered by the County Commission.

35. Therefore, the County Commission's action on January 23, 2017 approving the rezoning application – with substantial changes from the MPC's recommendation – is null and void and should be set aside by this Court.

36. The Plaintiffs now come before this Court seeking a judgment declaring the County Commission's action on January 23, 2017 (with respect to approving the rezoning application of S&E Properties) to be null and void.

**COUNT II:
INJUNCTIVE RELIEF**

37. The Plaintiffs repeat the foregoing allegations, which are expressly incorporated herein by reference as if set forth herein verbatim.

38. As a result of the foregoing, the Plaintiffs are also entitled to an order enjoining the remaining Defendants, and each of them, from taking any further action(s) with respect to the Subject Property until such time as the County Commission has lawfully considered and decided upon the application filed by S&E Properties.

39. The injunctive relief requested herein is necessary under the circumstances and will not cause any undue hardship upon any party or non-party.

40. The Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs respectfully pray as follows:

(A) That process issue and be served on each of the Defendants;

(B) That each of the Defendants be required to answer this Complaint for Declaratory Judgment as required by the Tennessee Rules of Civil Procedure;

(C) That this Court enter an order declaring null and void the action taken by the County Commission on January 23, 2017, as more particularly described above;

(D) That this Court also enter an order enjoining S&E Properties, Mr. Smith, Mr. Moseley, Mr. Daniel and Mr. Overton, and each of them, from taking any action(s) with respect to the Subject Property until such time as the rezoning application of S&E Properties has been (i) properly resubmitted to the MPC and (ii) considered and voted upon by the County Commission; and

(E) That the Plaintiffs be awarded such other relief to which they may be entitled, whether at law or in equity.

**THIS IS THE PLAINTIFFS' FIRST REQUEST
*** FOR INJUNCTIVE OR EXTRAORDINARY RELIEF IN THIS ACTION *****

Respectfully filed this 10th day of April, 2017.

HODGES, DOUGHTY & CARSON, PLLC

By: W. Michael Baisley
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Attorneys for the Plaintiffs

COST BOND

We hereby acknowledge ourselves as surety for all taxable court costs in this case, in accordance with Tenn. Code Ann. § 20-12-120.

SURETY:

HODGES, DOUGHTY & CARSON, PLLC

By: W. Michael Baisley
W. Michael Baisley