



AGENDA ITEM #: 48

MEMORANDUM

TO: Knoxville-Knox County Planning Commission

FROM: Mike Reynolds, Senior Planner

DATE: Thursday, April 1, 2021

SUBJECT: Consideration of Concept Plan Extension for Post Oak Bend, LLC (8-SA-18-C) for 2 years to 9/14/2023.
4-D-21-OB

STAFF RECOMMENDATION:

Approve the extension of the Concept Plan for Post Oak Bend, LLC (8-SA-18-C) for 2 years to 9/14/2023 pursuant to Section 2.07.F of the Knoxville-Knox County Subdivision Regulations.

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
KEVIN A. DEAN
DANIEL P. ZYDEL
SHARON H. KIM
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February 24, 2021

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ARTHUR G. SEYMOUR, JR.
(1945 - 2019)

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JASON T. MURPHY

Knoxville-Knox County Planning
c/o Amy Brooks, Executive Director
City-County Building
400 Main Street, Suite 403
Knoxville, TN 37902

Re: Renewal of Development Plan and Concept Plan
Applicant: Post Oak Bend, LLC
File #: 8-A-18-UR and 8-SA-18-C

Dear Ms. Brooks:

This letter is to provide the basis of the attached Development Request application for the extension of the previously approved Development Plan and Concept Plan in this matter. Our request is to extend the approval of the approved development plan (8-A-18-UR) to November 28, 2023 and the approved concept plan (8-SA-18-C) to September 18, 2023 due to the ongoing litigation related to these approvals.

As you know, the Vested Property Rights Act of 2014, codified in relation to regional planning commissions at Tenn. Code Ann. § 13-3-413, provides that

The vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided, that the applicant obtains local government approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains local government approval of a final development plan, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year period.

Additionally, subsection (c) allows for extensions to be granted on construction projects which require a building permit.

This statute defines “preliminary development plan” as “a plan which has been submitted by an applicant and that depicts a single-phased or multi-phased planned development typically used to facilitate initial public feedback and secure preliminary approvals from local governments.” Tenn. Code Ann. Section 13-413(k)(6). Therefore, under the state vested rights statute, both the Concept Plan under the Subdivision Regulations and the Development Plan (required as part of the Use on Review in the PR zone) fall within this broader definition of “preliminary development plan” and would be vested for three years and subject to 2-year renewals.

As you know, the Development Plan and Concept Plan for this development were approved by the Planning Commission on September 18, 2018, and the BZA upheld the Planning Commission’s approval of the Development Plan on November 28, 2018. As the three-year vesting period is set to expire on September 18, 2021 and November 28, 2021 respectively, we wanted to go ahead and ask that these be extended by the Planning Commission for an additional two years so the litigation, which is currently pending before the Tennessee Court of Appeals (and very likely may be heard by the Tennessee Supreme Court), can be concluded.

The question was also raised that even though the current subdivision regulations allow for a concept plan to remain valid for thirty-six months (with subsequent 24-month renewals consistent with Tenn. Code Ann. Section 13-3-413)(See Section 2.07.G of the current Knoxville-Knox County Subdivision Regulations) since this amendment was not adopted until 2019, the Concept Plan would still be subject to the provisions of the prior subdivision regulations (Section 2.09.C of the February 8, 2018 Knoxville-Knox County Subdivision Regulations). Applicant would respectfully submit that the protections of the 2014 Vested Property Rights Act control regardless of the differences in the language of the local Subdivision Regulations. “[A]dministrative regulations cannot overrule a statute.” *Wright v. Tenn. Peace Officer Stds. & Training Comm’n*, 277 S.W.3d 1, 15 (Tenn. Ct. App. 2008) *citing* *Hobbs v. Hobbs*, 27 S.W.3d 900, 903 n. 1 (Tenn. 2000) (“any administrative rule...must give way to a statute in express contravention.”). Consequently, the Concept Plan is still ripe for an application for an extension.

To be clear, Post Oak is not waiving any argument that this extension is required (either under the Vested Property Rights Act or the applicable Bylaws and Subdivision Regulations). It is Post Oak’s position that due to the litigation filed by the opposition Post Oak is unable to obtain a permit and proceed with this development until the litigation is concluded. Therefore, these development plans are not formally approved until there is a final judgment on the appeal. Nevertheless, it is the safest course of action to request such an extension despite this position that the time for the expiration of the concept plan and development plan has not started.

My clients also suggested an amendment to the zoning ordinance, subdivision regulations, and/or planning commission bylaws addressing the circumstance where an approved concept and/or development plan is legally challenged and a vesting period is tolled while the

Ms. Amy Brooks

Re: *File #: 8-A-18-UR and 8-SA-18-C*

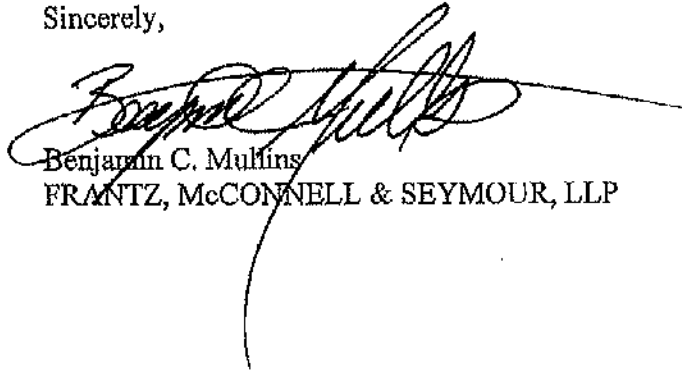
February 24, 2021

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litigation is pending. I would suggest that might be something for consideration in the future so that there is no confusion or potential for the inadvertent expiration of an approved plan simply because it is challenged through the courts.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin C. Mulhins", is written over a horizontal line. The signature is fluid and cursive.

Benjamin C. Mulhins
FRANTZ, McCONNELL & SEYMOUR, LLP

BCM:erl

Enc.



Development Request

DEVELOPMENT

- Development Plan
- Planned Development
- Use on Review / Special Use
- Hillside Protection COA

SUBDIVISION

- Concept Plan
- Final Plat

ZONING

- Plan Amendment
 - SP
 - OYP
- Rezoning

Benjamin C. Mullins o/b/o Post Oak Bend, LLC

Attorney

Applicant Name

Affiliation

2-24-21
Date Filed

April 8, 2021
Meeting Date (if applicable)

File Number(s)

CORRESPONDENCE All correspondence related to this application should be directed to the approved contact listed below.

- Applicant
- Owner
- Option Holder
- Project Surveyor
- Engineer
- Architect/Landscape Architect

Benjamin C. Mullins o/b/o Post Oak Bend, LLC

Frantz, McConnell & Seymour, LLP

Name

Company

550 West Main Street, Suite 500

Knoxville, TN

TN

37902

Address

City

State

ZIP

865-546-9321

bmullins@fmsllp.com

Phone

Email

CURRENT PROPERTY INFO

See attached

See attached

See attached

Owner Name (if different)

Owner Address

Owner Phone

See attached

See attached

Property Address

Parcel ID

First Utility District

First Utility District

Sewer Provider

Water Provider

Septic (Y/N)

STAFF USE ONLY

NE of Tooles Bend, NE of I-40, S of Northshore Dr.

260.51 acres

General Location

Tract Size

City County

PR 1-3 du/ac

Residences, farmland, and vacant land

District

Zoning District

Existing Land Use

Southwest Sector

Rural Residential

Rural Area

Planning Sector

Sector Plan Land Use Classification

Growth Policy Plan Designation

DEVELOPMENT REQUEST

- Development Plan
 Use on Review / Special Use
 Hillside Protection COA
 Residential
 Non-Residential

Related City Permit Number(s)

Home Occupation (specify) _____

Other (specify) Time extension approved development plan (8-A-18-UR) to 11-28-23

SUBDIVISION REQUEST

Related Rezoning File Number

Proposed Subdivision Name _____

Combine Parcels
 Divide Parcel
 _____ Total Number of Lots Created

Other (specify) Time extension of approved concept plan (8-SA-18-C) to 9-18-2023

Attachments / Additional Requirements

ZONING REQUEST

Pending Plat File Number

Zoning Change _____
 Proposed Zoning

Plan Amendment Change _____
 Proposed Plan Designation(s)

Proposed Density (units/acre) _____ Previous Rezoning Requests _____

Other (specify) _____

STAFF USE ONLY

PLAT TYPE

- Staff Review
 Planning Commission

ATTACHMENTS

- Property Owners / Option Holders
 Variance Request

ADDITIONAL REQUIREMENTS

- Design Plan Certification (Final Plat)
 Use on Review / Special Use (Concept Plan)
 Traffic Impact Study
 COA Checklist (Hillside Protection)

Fee 1	Total
Fee 2	
Fee 3	

ADDITIONAL INFORMATION

By signing below, I certify I am the property owner, applicant or the owners authorized representative.



Applicant Signature

Benjamin C. Mullins o/b/o Post Oak Bend, I

Please Print

Date

2-24-21

865-546-9321

bmullins@fmsllp.com

Phone Number

Email

Staff Signature

Please Print

Date

(Attached to Development Request of Benjamin C. Mullins o/b/o Post Oak Bend, LLC)

Current Property Info:

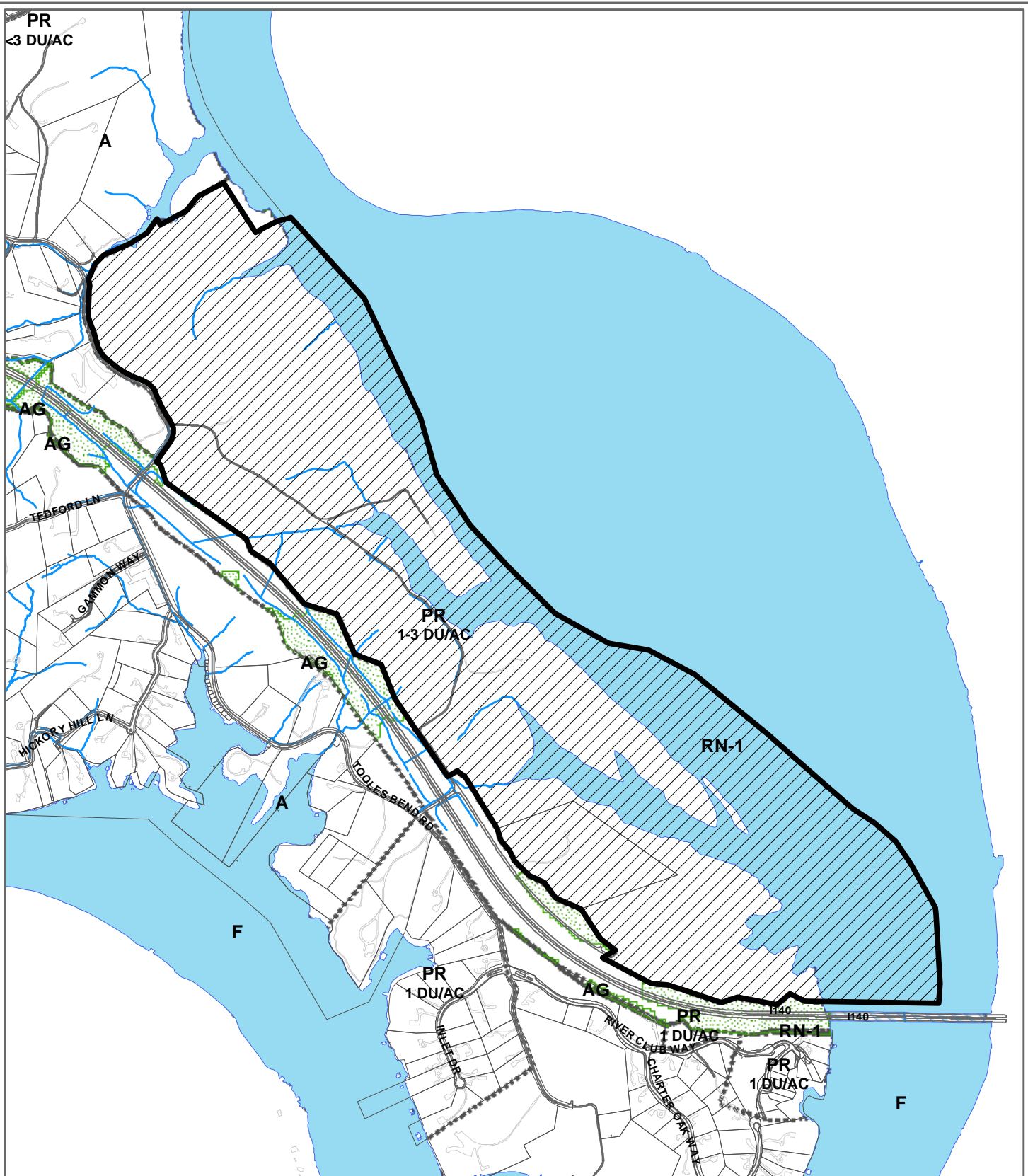
Owner Name: Post Oak Bend, LLC

Owner Address: c/o Culver Schmid, 265 Brookview Center Way, Suite 600, Knoxville,
TN 37919

Owner Phone: 865-971-5103

Property Address: 2616 Tooles Bend Road, Knoxville, TN, 39722

Parcel ID: 155 82.02 & part of 77



**4-D-21-OB
OTHER BUSINESS**

Petitioner: Benjamin C. Mullins O/B/O Post Oak Bend, LLC



Purpose of Request: Consideration of Concept Plan Extension for Post Oak Bend, LLC (8-SA-18-C) for 2 years to 9/14/2023

Map No: 999

Jurisdiction: Undefined



Original Print Date: 3/11/2021

Revised:

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