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

*of counsel*  
JASON T. MURPHY

June 7, 2021

**Knoxville-Knox County Planning**  
City-County Building  
400 Main Street, Suite 403  
Knoxville, TN 37902

Re: Agenda Item No. 11  
Applicant: Jenkins Builders, Inc.  
File No. 5-G-21-RZ

Dear Planning Commission:

I represent the Applicant, Jenkins Builders, Inc., relating to their property 0 Old Tazewell Pike, Knoxville, Tennessee 37918 (the "Property"). The Property is bounded to the Southwest by Murphy Road, a major collector road, near a traffic signal on Tazewell Pike, an arterial. We are requesting a rezoning from A (Agricultural) to PR (Planned Residential) at a density of five (5) dwelling units per acre (du/ac). The PR zoning is consistent with the zoning in the area insofar as adjacent parcels to the East and Southeast are already zoned PR; therefore, the rezoning application extends the current zoning. See Exhibit 1 Zoning Map for the Property.

The Property is designated LDR (Low Density Residential) under the North City Sector Plan (the "Sector Plan"). The LDR Sector Plan allows for densities up to 5 du/ac in the County and LDR is the predominate sector plan in the immediate area. See Exhibit 2 Sector Plan Map for the Property. Thus, my client's proposed development will not require a Sector Plan Amendment to accommodate its proposed density.

The Property is designated a "Rural Area" under the 20-year Growth Policy Plan adopted by the County, the City, and the Town of Farragut in January 2001 ("GPP"). See Exhibit 3 the GPP Map for the Property. The GPP ostensibly restricts density in a "Rural Area" to 3 du/ac per sections 3.2, 3.3, 3.4, 3.5, and 3.6 under Section 1, *Policies*, of the GPP. Staff, relying upon these sections, is recommending up to 3 du/ac primarily because of the density limitations in the Rural Area of the GPP; however, as set forth in more detail below, these limitations on density in the GPP for the Rural Area of the County are no longer in force and the densities allowed on this property is only directed by its Sector Plan Designation.

**A. The Knox County Commission and Knox County Mayor acknowledged that the GPP expired on December 31, 2007 in a recent resolution to adopt and amend the GPP.**

On October 28, 2019, the Knox County Commission adopted a Resolution to Amend and Reinstate the Knoxville-Farragut-Knox County Growth Policy Plan, Resolution No. R-19-10-906 (the "Resolution"). Relevantly, the Resolution provides in the recitals that "the Knox County-Knoxville-Farragut comprehensive Growth Policy Plan agreement expired by its own terms in 2007[.]" See the Resolution attached hereto as Exhibit 4. Although the City of Knoxville adopted a sister resolution to Amend and Reinstate the GPP, Resolution No. R-379-2019, the Town of Farragut failed to also adopt the required resolution to amend and reinstate the GPP as required pursuant to Tenn. Code Ann. § 6-58-104(d)(1). The Knox County Resolution therefore did not reinstate or amend the GPP.

Nevertheless, the plain language of the approved the Resolution demonstrates that Knox County's formal position is that the GPP is not in effect, is currently enforceable, and that the GPP should not be used to evaluate the propriety of land use designations in Knox County. Upon this basis, any restriction in the GPP affecting my client's ability to apply for a rezoning to PR with a density of 5 du/ac is unenforceable and should not be used as a basis to deny the rezoning application.

**B. The Knox County Law Department also believes that the GPP expired by its own terms in 2007.**

The Knox County Law Department has explicitly stated, both in a memorandum opinion and in response to my inquiries, that the GPP expired in 2007. See Memorandum Opinion from Richard B. Armstrong, Jr., Knox County Law Director, to Knox County Commission dated August 10, 2017 attached hereto as Exhibit 5 and e-mail correspondence between Benjamin Mullins and David Buuck, Knox County Law Director, attached hereto as Exhibit 6. Mr. Armstrong provided the following opinion with respect to the GPP:

The City of Knoxville entered into an Agreement on January 11, 2001, as approved by Commission on January 4, 2001, by Resolution #01-1-SS-101. The resolution and contract are attached hereto as Exhibit 1. This agreement approved the Growth Plan **as amended by the agreement**.

The agreement, at ¶ 11 sets out its own termination date of December 31, 2007.

"11. DURATION, EFFECT, and AMENDMENT

This Agreement shall be in full force and effect for through and including December 31, 2007..."

Therefore, even if the Growth Plan could be construed to limit County Commission from approving a property owners ability to build 3.25 dwelling units per acre in the Rural Area, it would be unenforceable after December 31, 2007.

See Exhibit 5. Moreover, David Buuck explained that “[i]t has been this office’s opinion and that of the Mayor that upon expiration of its own terms in 2007, the growth policy plan is no longer in effect.” See Exhibit 6. The Knox County Law Department has consistently stated, based on their competent legal opinions, that the GPP expired in 2007.

Former Law Director Armstrong and current Law Director Buuck are correct. The GPP did expire on its own terms in 2007. Attached hereto as Exhibit 7 is a copy of the January 4, 2001 Resolution where Knox County adopted the GPP. This Resolution adopts the GPP “**as amended by the Agreement by the City of Knoxville and Knox County...**” Just as former Law Director Armstrong opined, the Agreement provides that it expired as of December 31, 2007. See Agreement attached hereto as Exhibit 8. The GPP provision can no longer serve as a legal basis to restrict density in the Rural Area of the County to no more than 3 du/ac.

**C. The 2019 Resolution demonstrates that the GPP is not the appropriate tool to determine land use designations in Knox County.**

Because the GPP had expired, Mayor Jacobs convened the Knox County Growth Policy Coordinating Committee in an effort to revise and reinstate the Growth Policy Plan. From those meetings, Resolution R-19-10-906 was conceived and approved by County Commission. This Resolution included only one amendment to the GPP: Knox County Commission sought to remove Sections 3.2 through 3.6, which only concern land use designations in Rural Areas. The Resolution provides that the GPP shall be revised as follows:

The Knox County Commission hereby reinstates the Knoxville-Farragut-Knox County Growth Policy Plan and amends the Plan as follows:

1. Delete sections 3.2, 3.3, 3.4, 3.5, and 3.6 under section 1, Policies, at pages 5, 6, and 7 of the Plan.
2. Insert a new Section 3.2 to read as follows:

Rezoning in the Rural Area shall be consistent with and controlled by the applicable Sector Plans as adopted by the Metropolitan Planning Commission and Knox County Commission.

See Exhibit 4. The Resolution clearly indicates that a strict application of the GPP to my client’s rezoning application is contrary to Knox County Commission’s intent in following land use designations in the Sector Plan alone. Accordingly, my client respectfully requests that you approve its rezoning application because the density designation complies with the Sector Plan, and the Sector Plan is the most appropriate way to evaluate updated, accurate land use designations.

**D. The GPP plan is outdated by its own terms and under the provisions of the Comprehensive Growth Plan Act, Tenn. Code Ann. § 6-58-101, *et seq* ("CGPA").**

Assuming, for the sake of argument, that the GPP did not expire on its own terms in December 31, 2007, then it has expired in 2021 and the strict application of the GPP does not effectively promote the health and safety of Knox County residents through the County's zoning power. Knox County has grown and developed significantly since the GPP's adoption in 2001, and the GPP has never been updated to reflect these changes as required under the CGPA.

First, the very statute requiring the County to adopt the GPP acknowledges that the GPP was only intended to apply to land use designations for twenty years following its adoption. The GPP was adopted on January 4, 2001. Tenn. Code Ann. § 6-58-106, in providing the County's and City's obligations in adopting the GPP, expressly states that the comprehensive growth plan must identify urban boundaries, planned growth areas, and rural areas for projected growth in the next twenty years. On January 4, 2021, twenty years had passed since the County adopted the GPP, rendering all designations therein utterly obsolete. Moreover, the CGPA provides a procedure by which the County may amend the GPP upon a showing that such a change is reasonable and necessary. Tenn. Code Ann. § 6-58-104(d). Knox County Commission necessarily found that the amendment was reasonable and necessary in adopting the Resolution. Therefore, the application of the density requirements to my client's Property, inasmuch as it remains a "Rural Area" under an expired GPP, is contrary to the GPP's fundamental purpose.

As demonstrated by the GPP Map for the Property (Exhibit 3), the property to the east of Murphy Road, including this Property, is designated in the Rural Area while the Property to the west of Murphy Road is designated "Urban Growth." The Urban Growth area also extends to the north of the Property. There is no intermediary "Planned Growth" areas between the Rural Area and the Urban area. It stands to reason that if the GPP's own instructions to review the growth boundary designations were actually reviewed every 3 years then the Property at issue, to the east of Murphy Road, a major collector with 34.1 ft of pavement and 70 ft. of right-of-way, would have been upgraded to the Planned Growth area or even Urban Growth area. Staff's report reflects the changing conditions in the area including steady transition for Agricultural to Planned Residential and have access to sewer services and adequate roads to serve the area. Additionally, as demonstrated by both the Zoning Map and the Sector Plan Map to the Property (Exhibits 1 and 2) the LDR designation dominates the property both inside and outside of the Rural Area and the requested 5 du/ac is consistent with the densities surrounding the property that are west of Murphy Road.

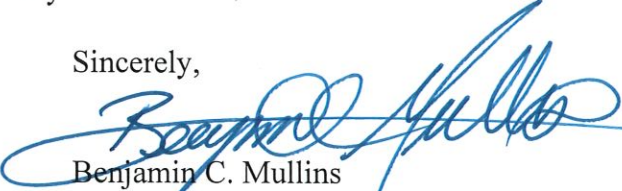
**CONCLUSION**

Density restrictions in the GPP with respect to real property designated "Rural Areas" should not affect my client's application. The rezoning is consistent with the zoning in the area and is an extension of the existing PR Zone to the East. The requested density at 5 du/ac is specifically allowed under the Sector Plan. The GPP is obsolete because it was designed to anticipate growth areas in the City of Knoxville, Knox County, and the Town of Farragut for only

twenty years after its adoption. Because more than twenty years have passed since the GPP was adopted, the GPP does not accurately or beneficially designate land uses for the existing development in Knox County. Moreover, the Knox County Law Department, the Knox County Mayor, and the Knox County Commission have consistently, and correctly, opined that the GPP expired in 2007.

For all these reasons, the applicant respectfully requests this commission recommend approval of its application to County Commission.

Sincerely,

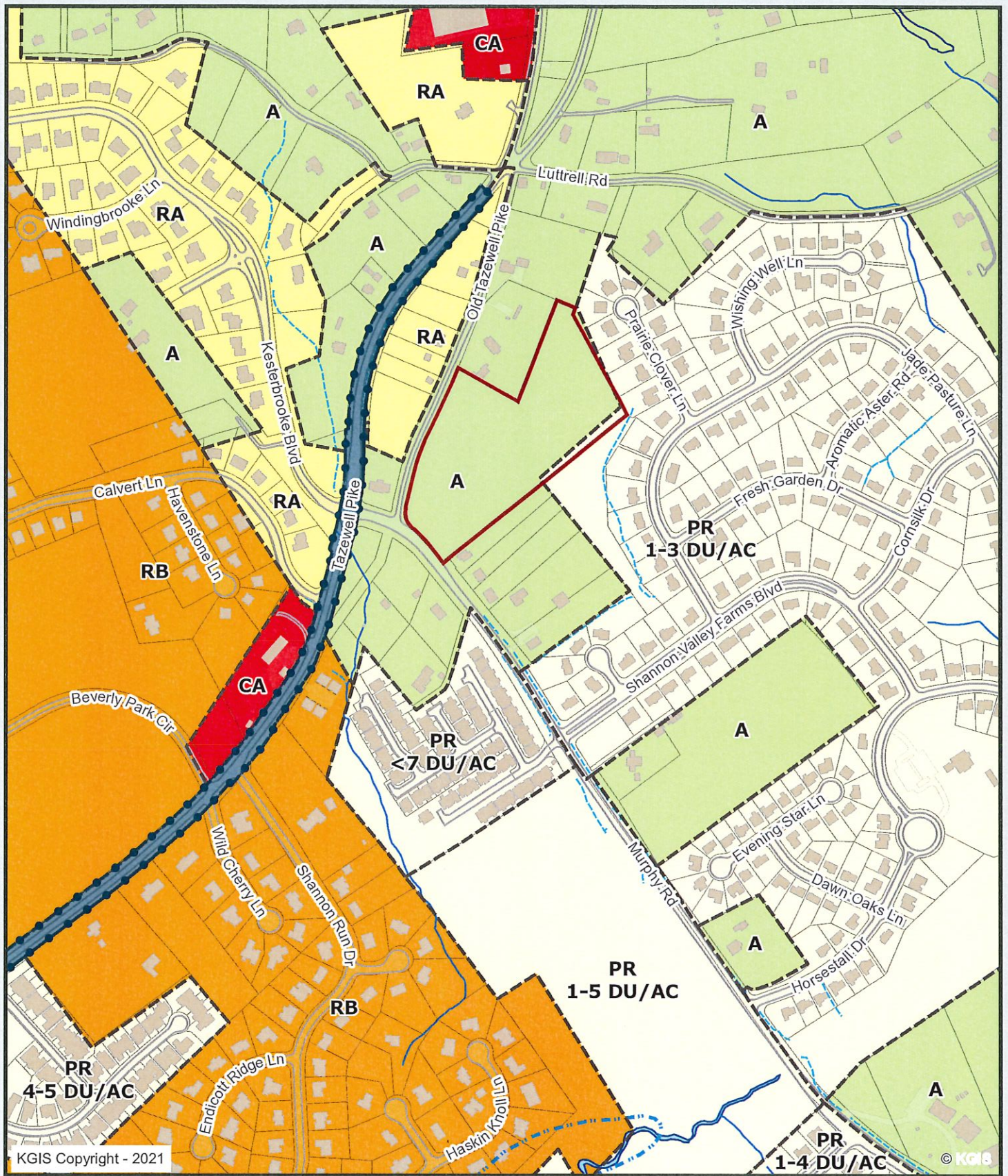


Benjamin C. Mullins  
FRANTZ, McCONNELL & SEYMOUR, LLP

BCM:rph

Enc.





## Zoning Map

5-G-21-RZ

### Knoxville - Knox County - KUB Geographic Info

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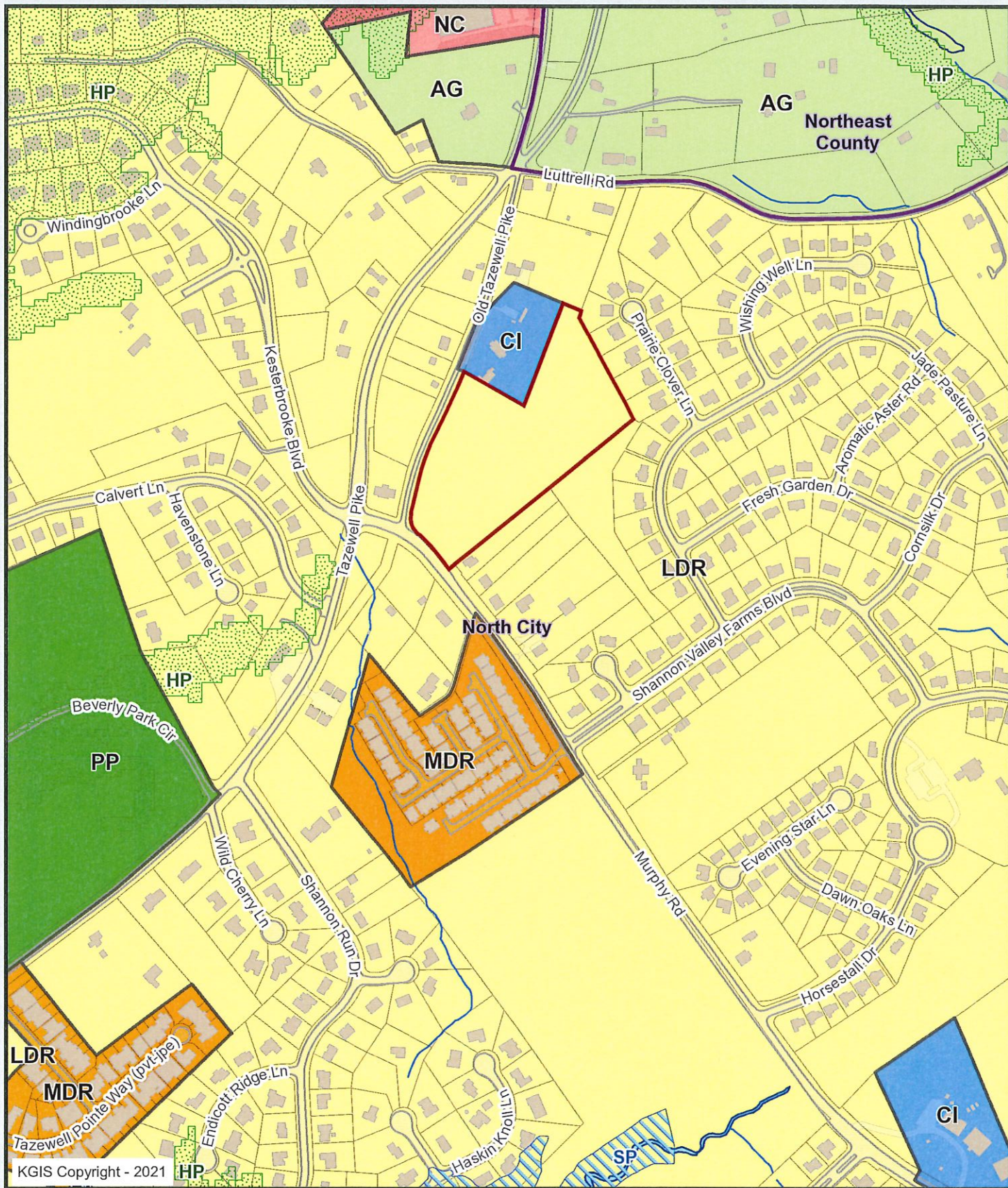
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## Sector Plan

5-G-21-RZ

Knoxville - Knox County - KUB Geographic Information System

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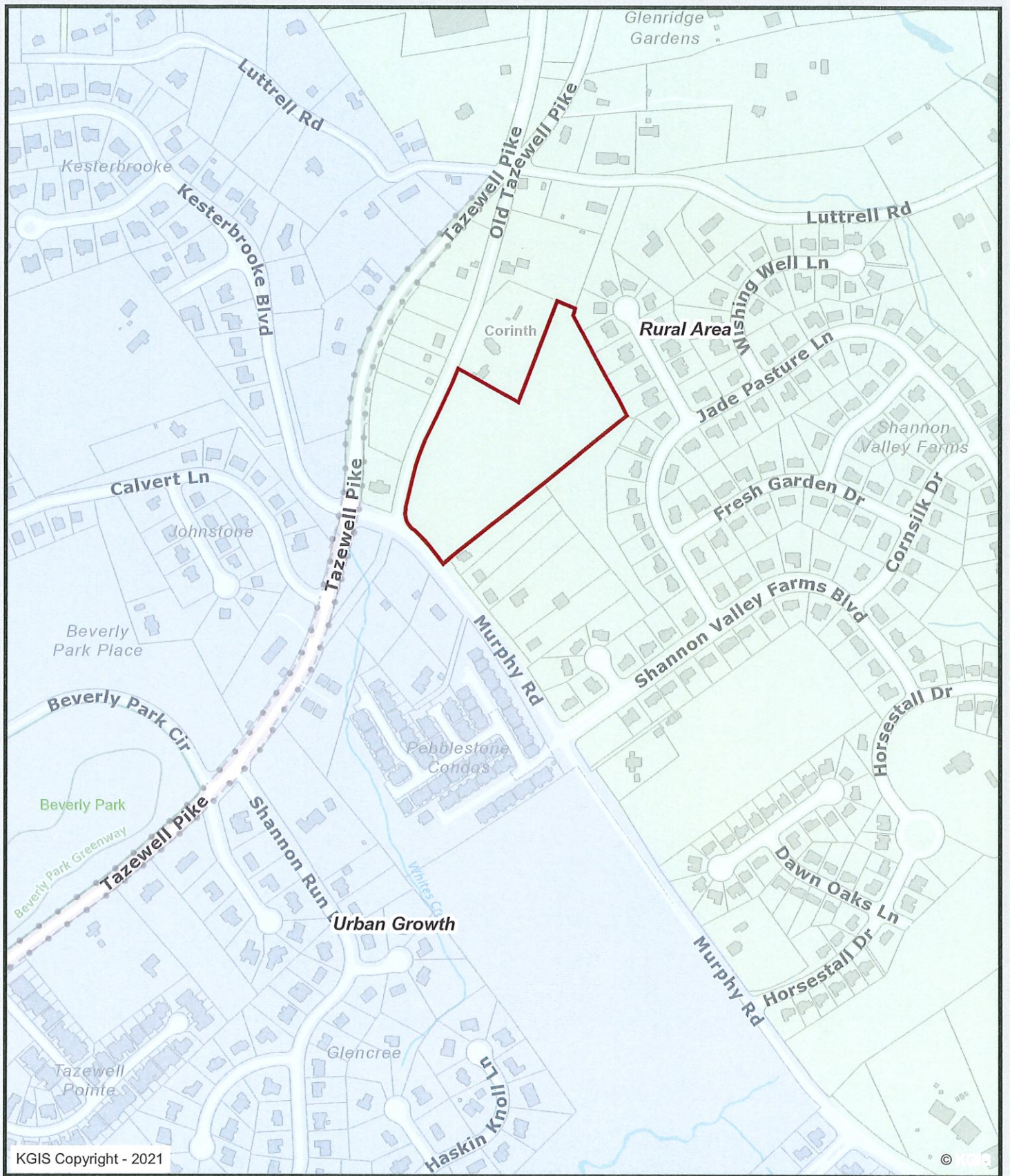
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## Growth Policy Plan 5-G-21-RZ

Knoxville - Knox County - KUB Geographic Info

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RESOLUTION

A RESOLUTION OF THE COMMISSION  
OF KNOX COUNTY, TENNESSEE,  
TO AMEND AND REINSTATE THE  
KNOXVILLE-FARRAGUT-KNOX COUNTY  
GROWTH POLICY PLAN.

RESOLUTION: R-19-10-906

REQUESTED BY: GROWTH POLICY  
COORDINATING  
COMMITTEE

PREPARED BY: KNOX COUNTY LAW  
DIRECTOR'S OFFICE

APPROVED AS TO FORM  
AND CORRECTNESS: Richard B. Armstrong Jr.  
DIRECTOR OF LAW

APPROVED: October 28, 2019  
DATE

VETOED: \_\_\_\_\_  
DATE

VETO  
OVERRIDE: \_\_\_\_\_  
DATE

MINUTE  
BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

WHEREAS, in 1998, the Tennessee General Assembly enacted comprehensive growth policy planning legislation, codified at Tenn. Code Ann. § 6-58-101 *et seq.*; and

WHEREAS, pursuant to Tenn. Code Ann. § 6-58-104, a Growth Policy Coordinating Committee (the "Coordinating Committee") was formed to develop a recommended growth plan to the county legislative body and the governing body of each municipality for ratification; and

WHEREAS, the Coordinating Committee submitted its recommended Growth Policy Plan, dated January 12, 2000, to the Knoxville City Council, Farragut Board of Aldermen, and the Knox County Board of Commissioners for ratification; and



**WHEREAS, in 2001, Knox County, the City of Knoxville, and the Town of Farragut agreed to a comprehensive Growth Policy Plan; and**

**WHEREAS, the Knox County-Knoxville-Farragut comprehensive Growth Policy Plan agreement expired by its own terms in 2007; and**

**WHEREAS, the Growth Policy Plan required that the Plan be reviewed every three years and amended if warranted by changed conditions and such a review has never occurred; and**

**WHEREAS, Tenn. Code Ann. § 6-58-104(d)(1) authorizes the Mayor of any municipality in the County or the County Mayor to propose an amendment to the growth plan by filing notice with the County Mayor and with the Mayor of each municipality in the County and, upon receipt of such notice, the County Mayor shall take appropriate action to reconvene or reestablish the Coordinating Committee; and**

**WHEREAS, on February 22, 2019, the Knox County Mayor sent notice that he was reconvening the Coordinating Committee to consider an amendment to the Growth Policy Plan; and**

**WHEREAS, the Coordinating Committee held four (4) public meetings in 2019; and**

**WHEREAS, at its meeting on September 30, 2019, the Coordinating Committee determined to recommend to the Knox County Commission, Knoxville City Council, and Farragut Board of Alderman that the Growth Policy Plan be amended and reinstated as set forth on Exhibit A attached hereto; and**

**WHEREAS, the Knox County Commission desires to reinstate and amend the Growth Policy Plan as recommended by the Coordinating Committee.**

**NOW THEREFORE BE IT RESOLVED BY THE COMMISSION OF KNOX COUNTY AS FOLLOWS:**

**The Knox County Commission hereby reinstates the Knoxville-Farragut-Knox County Growth Policy Plan and amends the Plan as follows:**

- 1. Delete sections 3.2, 3.3, 3.4, 3.5, and 3.6 under Section 1, *Policies*, at pages 5, 6, and 7 of the Plan; and**
- 2. Insert a new Section 3.2 to read as follows:**

**Rezoning in the Rural Area shall be consistent with and controlled by the applicable Sector Plans as adopted by the Metropolitan Planning Commission and Knox County Commission.**


- 3. All other Sections of the Plan and statutory requirements that have been instated shall remain in full force and effect.**

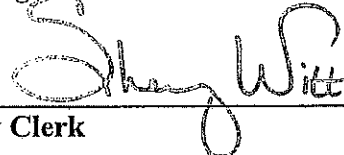


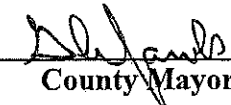
**BE IT FURTHER RESOLVED**, that pursuant to Tenn. Code Ann. 6-58-104(d), this amendment shall become part of the Knoxville-Farragut-Knox County Growth Policy Plan after it is approved by the Knox County Commission, Knoxville City Council, Farragut Board of Alderman, and the Local Government Planning Advisory Committee.

**BE IT FURTHER RESOLVED** that if any notifications are to be made to effectuate this Resolution, then the County Clerk is hereby requested to forward a copy of this Resolution to the proper authority.

**BE IT FURTHER RESOLVED** that this Resolution is to take effect from and after its passage, as provided by the Charter of Knox County, Tennessee, the public welfare requiring it.

 10/28/19  
Presiding Officer of the Commission Date

 10/29/19  
County Clerk Date

Approved:  11/1/19  
County Mayor Date

Vetoed: \_\_\_\_\_  
County Mayor Date

## AMENDMENT AND REINSTATEMENT OF GROWTH POLICY PLAN

**WHEREAS**, The Growth Policy Plan was established in 1998 by the state legislature to:

1. Eliminate Annexation out of fear; and
2. Establish incentives to annex where appropriate; and
3. Preserve rural land and agriculture.

**WHEREAS**, The legislature has since abolished forced annexations; and

**WHEREAS**, The Growth Policy Plan specifically enables Farragut and Knoxville to annex within their Urban Growth Boundary, contrary to existing law; and

**WHEREAS**, T.C.A. § 6-58-104(d)(1) grants the Mayors of the Town of Farragut, The City of Knoxville and Knox County to submit proposed amendments for consideration by a Growth Policy and Coordinating Committee (Committee); and

**WHEREAS**, the existing Growth Policy Plan (Plan) was adopted by the Committee in January 2000; and

**WHEREAS**, the Plan, by agreement, expired on December 31, 2007; and

**WHEREAS**, the existing Growth Policy Plan required that the Committee remain intact at all times and such has not been accomplished (p. 8); and

**WHEREAS**, the existing Growth Policy Plan required that the plan be reviewed every 3 years for amendment to meet changed conditions (p. 8); and

**WHEREAS**, Nineteen (19) years have passed without a review; and

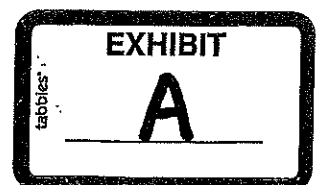
**WHEREAS**, Knox County Commission and the MPC director all acknowledge that there have been changed conditions requiring amendment so as to remove obstacles to smart growth as mandated by the Growth Plan to allow such smart growth as cluster development (p.8); and

**WHEREAS**, the Plan acknowledged that housing demand grows faster than the population and that higher residential densities will reduce the long range demand for land (p. 35); and

**WHEREAS**, Concerns of "urban sprawl" are already addressed in the Plan as being reduced by the City of Knoxville as previously set out in the City's *Heart of Knoxville Empowerment Zone Plan*; and

**WHEREAS**, the Plan already grants zoning and planning authority to the affected governments and their citizens as follows:

The Rural, Planned Growth, and Urban Growth Boundary designations of this plan shall not impair the rights of a landowner to lawfully use property in accordance with the provisions of the Zoning Ordinances of Knoxville, Knox County and Farragut; and





**WHEREAS**, the Plan provides that the Knox County zoning ordinance shall apply to territory in the Rural Area of Knox County as follows:

3.1 The Knox County Zoning Ordinance and Zoning Map shall determine land uses permitted in the Rural Area. The rural designation shall not impede the right of a property owner to use or develop the property for a purpose permitted by that property's zoning...; and

**WHEREAS**, the Plan lists restrictions contrary to Knox County's zoning regulations in the Rural Area of Knox County; and

**WHEREAS**, the Plan does not impose any limitations upon the City of Knoxville's and the Town of Farragut's exercise of complete autonomy and discretion in land use planning within their respective jurisdictions; and

**WHEREAS**, the amendment does not alter the Plan as to zoning the Urban Growth area of the Town of Farragut or the City of Knoxville; and

**WHEREAS**, the amendment does not alter the Plan as to zoning in the Planned Growth Area surrounding the Town of Farragut or the City of Knoxville; and

**WHEREAS**, the amendment herein proposed by the Mayor of Knox County, simply grants the County and its citizens the same rights of self determination in land use planning as is already present in the City of Knoxville and the Town of Farragut.

**NOW, THEREFORE**, it is proposed to amend and reinstate the Plan as follows:

1. **Delete** sections 3.2, 3.3, 3.4, 3.5, and 3.6 under *Section 1, Policies* at pages 5, 6, and 7 of the Plan.
2. **Insert** a new Section 3.2 to read as follows:

Rezoning in the Rural Area shall be consistent with and controlled by the applicable Sector Plans as adopted by the Metropolitan Planning Commission and Knox County Commission.

All other Sections of the Plan and statutory requirements that have been instated shall remain in full force and effect.

## MEMO

TO: Knox County Commission  
FROM: Richard B. Armstrong, Jr., Knox County Law Director  
RE: Application of 2001 Growth Plan Agreement among Town of Farragut, City of Knoxville, and Knox County

DATE: August 10, 2017

QUERY: Does the Growth Policy Plan as agreed upon by Knoxville, Knox County and the Town of Farragut, prevent Knox County Commission from allowing 3.25 dwelling units per acre in the Rural Area of Knox County?

ANSWER: No, for the reasons set out herein.

### The Issue

MPC has taken the consistent position that property owners in the rural area are not allowed to have more than 3 dwelling units per acre and that Knox County Commission is barred from approving residential land use in excess of 3 dwelling units per acre, notwithstanding the Knox County zoning ordinance. In so holding, the MPC has cited the following language in the Growth Plan at page 6:<sup>1</sup>

“Extensions of low density residential development (densities of 1 to 3 dwelling units per acre) into the rural area shall be limited to the following conditions:”

The efficacy of this sentence as a limitation on Knox County Commission’s delegated powers is discussed below.

### The Facts

The applicant whose property lies in the Rural Area, made an application to re-zone from A (Agricultural) to LDR/PR. MPC recommended a sector plan amendment, but denied the requested zoning of 4.5 dwelling units per acre.

### The Growth Policy Agreement between Knoxville and Knox County has expired.

The City of Knoxville entered into an Agreement on January 11, 2001, as approved by Commission on January 4, 2001, by Resolution #01-1-SS-101. The resolution and contract are attached hereto as Exhibit 1. This agreement approved the Growth Plan **as amended by the agreement.**

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<sup>1</sup> It is noted that the Plan would allow more intrusive land uses in the rural area such as commercial, light industrial and industrial uses.





The agreement, at ¶ 11 sets out its own termination date of December 31, 2007.

**"11. DURATION, EFFECT, and AMENDMENT**

This Agreement shall be in full force and effect for through and including December 31, 2007..."

Therefore, even if the Growth Plan could be construed to limit County Commission from approving a property owners ability to build 3.25 dwelling units per acre in the Rural Area, it would be unenforceable after December 31, 2007.

**The Growth Plan did not apply to zoning ordinances in place on January 11, 2001**

The State Attorney General has opined that the Growth Plan does not apply to zoning ordinances not already in place prior to the time the Plan was adopted.

"Under the Growth Law, after a growth plan has been approved as required under the statute, "all land use decisions made by the legislative body and the municipality's or county's planning commission shall be consistent with the growth plan." This provision would not apply to a zoning ordinance in place before the plan is adopted. Whether a county zoning ordinance adopted after a plan is approved could be nullified under this statute could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances." Attorney General Opinion No. 00-184, December 13, 2000

*att. gen.  
opinion*

The Knox County Zoning Ordinance which was in place on January 11, 2001, did not limit a property owner of Low Density Residential to an intensity of 3 dwelling units per acre. Therefore the sentence in the Growth Plan, relied upon by the MPC could not, as a matter of law, be enforced against a property owner desiring LDR in the Rural area.

In fact, the Growth Plan at §3.1 specifically refers to the existing zoning ordinance:

"3.1 The Knox County Zoning Ordinance and Zoning Map shall determine land uses permitted in the Rural Area. The rural designation shall not impede the right of a property owner to use or develop the property for a purpose permitted by that property's zoning."

**Vagueness and Ambiguity within the Growth Plan**

The Growth Plan as adopted by the legislative bodies of Knox County (Farragut, Knoxville, Knox County) is conflictual, vague, and ambiguous with regards to the rights of landowners to develop residential housing in the rural area.

An analysis of the wording of the Growth Plan must begin with the legal propositions set forth by our Courts:

"Ordinances regulating the use and development of property are generally held to lie within the police power of municipal corporations and are constitutional." Draper v. Haynes, 567 S.W. 2d 462 Tenn 1978.

"Zoning laws are in derogation of the common law and operate to deprive an owner of a use of land which might otherwise be lawful, and consequently they must be strictly construed in favor of property owner, Red Acres Imp. Club v Burkhalter, 241 S.W.2d 921, 1951; State ex rel. Wright v. City of Oak Hill, 321 S.W.2d 557, 1959.

" [An] ordinance must contain narrow, objective, and definite standard to guide those who exercise the authority to restrict protected constitutional right: standards must be susceptible to objective measurement and terms of the regulation should be "precisely defined." Broadway Books, Inc. v. Roberts, 642 F. Supp. 486, U.S. District Court E.D. Tenn. 1986.

The Growth Plan, by its own words, does not mandate and limit a property owner to 3 dwelling units per acre. Nor does the Knox County zoning ordinance which was in effect on the date of the approval of the Growth Plan. The phrase relied upon by MPC is a parenthetical expression.

Parenthetical expressions by definitions are departures from the meaning of the declaratory sentence which would be grammatically complete without the parenthetical. *Black's Law Dictionary, Third Edition*, page 1323.

Likewise the Harbrace Handbook states that a parenthetical element is a word or phrase that adds detail to a sentence but is not essential for understanding the core meaning of the sentence. *Hodges' Harbrace Handbook, 16<sup>th</sup> Edition*, p. 726.

The parenthetical reference of 1-3 dwelling units per acre presumes that this density (intensity is the word used in the zoning ordinance) is established somewhere else. It is not.

When one looks at the entire sentence under § 3.5 of the Plan,<sup>2</sup> it must be noted that the parenthetical is not essential to the core meaning of the sentence. The sentence sets specific conditions on LDR in the rural area. The sentence does not state, nor does it state anywhere in the plan or the zoning ordinance, that a property owner is limited to 3 residential units per acre.<sup>3</sup>

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<sup>2</sup> " Extensions of low density residential development (densities of 1 to 3 dwelling units per acre) into to the rural area shall be limited to the following conditions: (a) the property must be zoned Planned Residential (PR); (b) provision of sanitary sewer and public water services; (c) connecting collector and arterial roads from the proposed development to the Urban Growth Boundary or Planned Growth Area which meet the standards of the Knox County Engineering and Public Works Department or its successor; and (d) a traffic impact analysis demonstrating to the satisfaction of the planning commission that the effect of the proposed and similar developments in the traffic analysis zone will not unreasonably impair traffic flow along the arterial roads through the adjacent Planned Growth Area."

<sup>3</sup> Further obfuscating the meaning, the Plan provides that all residential development in the rural area must be zoned under PR with a density of 2 units per acre.



Throughout the Knox County ordinance, density or intensity limits are specifically, unambiguously set forth - but not in the Growth Plan.

Additional conflictual and ambiguous provisions in the agreement, reside in Par. 3 of the Agreement.

Par. 3 RURAL DESIGNATION:

The Coordinating Committee state tha "land use" in the Rural area would be governed by permitted uses in various zoning classification....However, ecause the Knox County Commission may modify permitted uses in any zone classificationor develop new zone classifications, it is unclear how thes changes should be made in the Rural Area.. Thus it is agreed that any such amendments must firs be approved by resolution by the respective municipal legislative body within its sphere of influence<sup>4</sup>... **The provisions of this paragraph shall not apply to decision to re-zone property by the Knox County Commission.** *Agreement dated January 11, 2001 and expired on Dec. 31, 2007.*

Clearly, this section recognizes that the County has the ultimate authority in zoning matters.

**The three legislative bodies have abandoned the provisions of the original Growth Plan.**

Under 1998 Public Acts, Chap. 1110, an adopted growth plan was mandated to remain in effect for three (3) years. By agreement of the three governing bodies, the plan continued in effect until December 31, 2007 whereupon it expired of its own terms.

Notwithstanding, the Plan provided that the Committee remain intact and that the plan be reviewed every three years after the initial 3 year period. None of the legislative bodies has seen fit to maintain that provision for the sixteen years since adoption. Further the agreement provision sunseting the agreement on Dec. 31, 2007, obviates the need for triennial evaluations ad infinitum.

It is noted that the MPC staff has publicly stated that the Law Director's office is not "competent legal counsel" to advise the Commission and the Knox County property owners. If the commission so chooses to adopt that position, it is certainly within the province of the Commission to do so.

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<sup>4</sup> This provision is dangerously close to the prohibited practice of "contract zoning." Contract zoning means that the zoning decision is not made on the health and welfare of the county, but rather is made dependent upon an agreement with another party.

## Benjamin C. Mullins

---

**From:** David Buuck <David.Buuck@knoxcounty.org>  
**Sent:** Thursday, May 27, 2021 1:33 PM  
**To:** Benjamin C. Mullins; Myers Morton  
**Subject:** RE: [External]Growth Policy Plan Question

It has been this office's opinion and that of the Mayor that upon expiration of its own terms in 2007, the growth policy plan is no longer in effect. Mayor Jacobs attempted to reconvene a growth policy committee which the statute required every 7 years, but which had never been done. The City and the County agreed on a new growth plan but Farragut refused to agree to it. Therefore there is no growth plan in effect at this time.

**David L. Buuck**

Knox County Law Director  
Knox County Law Director's Office  
(865) 215-2327

**CONFIDENTIAL:**

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---

**From:** Benjamin C. Mullins <bmullins@fmsllp.com>  
**Sent:** Thursday, May 27, 2021 10:56 AM  
**To:** Myers Morton <Myers.Morton@knoxcounty.org>  
**Cc:** David Buuck <David.Buuck@knoxcounty.org>  
**Subject:** [External]Growth Policy Plan Question

Per this resolution, and statements made during the October 2019 County Commission meeting, the Growth Policy Plan expired on its own terms in 2007. The resolution was to amend and reinstate the GPP with the amendments. The City also passed the amendment. Farragut rejected it. So what effect does the GPP have at this point? Is it still in effect, or is it expired until a plan can be passed by the County, the City, and the Town of Farragutt?

**Benjamin C. Mullins** *Attorney*

550 W. Main Street, Suite 500 | Knoxville, Tennessee 37902  
phone: 865.546.9321 | fax: 865.637.5249 | email: [bmullins@fmsllp.com](mailto:bmullins@fmsllp.com)



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*For additional information about Frantz, McConnell & Seymour, LLP, including a list of attorneys, please visit our website at [www.fmsllp.com](http://www.fmsllp.com)*

**>>>CAUTION<<<**

**This message originates outside of the Knox County email system. Use caution if this message contains attachments, links or requests for information.**



RESOLUTION

A RESOLUTION OF THE COMMISSION  
OF KNOX COUNTY, TENNESSEE,  
APPROVING THE GPCC GROWTH  
PLAN AS AMENDED BY THE  
AGREEMENT BETWEEN THE CITY  
OF KNOXVILLE AND KNOX COUNTY.

RESOLUTION: R-01-1-SS-101

REQUESTED BY: COUNTY EXECUTIVE

PREPARED BY: KNOX COUNTY  
LAW DIRECTOR

APPROVED AS TO FORM  
AND CORRECTNESS: Michael W. Hogg  
DIRECTOR OF LAW

APPROVED: January 4, 2001  
DATE

VETOED: \_\_\_\_\_  
DATE

VETO  
OVERRIDE: \_\_\_\_\_  
DATE

MINUTE  
BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

WHEREAS, pursuant to the requirements of Public Chapter 1101 (the "Act") (T.C.A. §6-58-101 et. seq.), a Growth Policy Coordinating Committee was established for Knox County, Tennessee (the "GPCC"); and

WHEREAS, the GPCC conducted multiple public meetings over a period of many months in order to develop a county-wide growth plan as mandated by T.C.A. §6-58-104; and



**WHEREAS, the GPCC developed and submitted a plan (the "Growth Plan") to the respective legislative bodies of the County (the Knox County Commission) and of the City (the Knoxville City Council), as required by the Act, a copy of which Growth Plan is attached hereto; and**

**WHEREAS, the Growth Plan was rejected by the Knox County Commission and the Knoxville City Council; and**

**WHEREAS, after reconsideration by the GPCC and resubmission to the legislative bodies, the Growth Plan was once again rejected and an impasse was declared; and**

**WHEREAS, pursuant to the requirements of the Act, the Secretary of State appointed a dispute resolution panel (the "Panel") consisting of three (3) administrative law judges; and**

**WHEREAS, the Panel conducted a mediation of the dispute on December 7, 2000, in Nashville, Tennessee, for the purpose of resolving the impasse; and**

**WHEREAS, as a result of this mediation, the City and the County have reached an agreement with respect to the adoption of the Growth Plan, as modified herein, the City's involuntary annexation of certain types of property within the Urban Growth Boundary, and with respect to other matters stated herein; and**

**WHEREAS, pursuant to the provisions of T.C.A. §6-58-104(6) and T.C.A. 5-1-113, the City and County intend that this Agreement shall be binding upon the City and the County, respectively, to refrain from exercising those powers or privileges specifically stated herein; and**

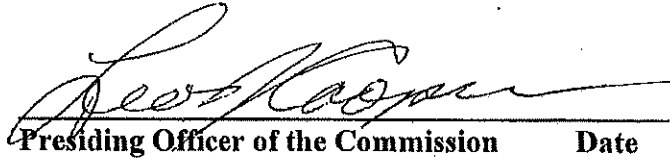
**WHEREAS, except as explicitly limited herein, the City and the County intend that each shall enjoy all rights, powers, and privileges permitted under Tennessee law, including but not limited to the right of a municipality to annex pursuant to T.C.A. §6-51-101, et seq.**

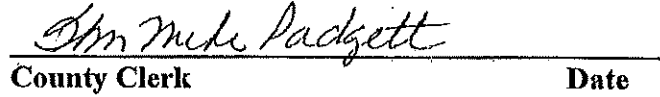
**NOW THEREFORE BE IT RESOLVED BY THE COMMISSION OF KNOX COUNTY AS FOLLOWS:**

**That the GPCC Growth Plan for Knox County, as amended by the Agreement by the City of Knoxville and Knox County is hereby approved. The GPCC Growth Plan and amending agreement are attached hereto and incorporated herein by reference.**

**BE IT FURTHER RESOLVED, that if any notifications are to be made to effectuate this Resolution, then the County Clerk is hereby requested to forward a copy of this Resolution to the proper authority.**

**BE IT FURTHER RESOLVED**, that this Resolution is to take effect from and after its passage, as provided by the Charter of Knox County, Tennessee, the public welfare requiring it.

  
\_\_\_\_\_  
Presiding Officer of the Commission      Date

  
\_\_\_\_\_  
County Clerk      Date

Approved:  / gem 1-24-01  
\_\_\_\_\_  
County Executive      Date

Vetoed: \_\_\_\_\_  
County Executive      Date



VICTOR ASHE  
MAYOR  
(865) 215-2040



THE CITY OF KNOXVILLE, TENNESSEE

MICHAEL S. KELLEY  
DIRECTOR OF LAW  
(865) 215-2050  
FAX: (865) 215-2643

January 11, 2001

BY HAND DELIVERY

Mike Moyers  
Knox County Law Director  
7th Floor  
City-County Building  
400 Main Street  
Knoxville, Tennessee 37902

Re: Urban Growth Plan Agreement

Dear Mike:

Enclosed, for your files, please find an original Urban Growth Plan Agreement that has been signed by all parties.

Sincerely,

Michael S. Kelley  
Law Director

MSK:mab

Enclosure

g:\letters\growthpol.ltr



## AGREEMENT

This Agreement is made and entered into as of the 11th day of January, 2001, by and between the County of Knox (hereinafter, "County") and the City of Knoxville (hereinafter, "City"), both of the State of Tennessee, pursuant to applicable provisions of Tennessee law, including but not limited to the provisions of Tennessee Code Annotated, Sections 6-58-101 et seq. and Tennessee Code Annotated, Sections 51-1-113.

WHEREAS, pursuant to the requirements of Public Chapter 1101 (the "Act") (T.C.A. § 6-58-101 et. seq.), a Growth Policy Coordinating Committee was established for Knox County, Tennessee (the "GPCC"); and

WHEREAS, the GPCC conducted multiple public meetings over a period of many months in order to develop a county-wide growth plan as mandated by T.C.A. § 6-58-104; and

WHEREAS, the GPCC developed and submitted a plan (the "Growth Plan") to the respective legislative bodies of the County (the Knox County Commission) and of the City (the Knoxville City Council), as required by the Act, a copy of which Growth Plan is attached hereto; and

WHEREAS, the Growth Plan was rejected by the Knox County Commission and the Knoxville City Council; and

WHEREAS, after reconsideration by the GPCC and resubmission to the legislative bodies, the Growth Plan was once again rejected and an impasse was declared; and

WHEREAS, pursuant to the requirements of the Act, the Secretary of State appointed a dispute resolution panel (the "Panel") consisting of three (3) administrative law judges; and

WHEREAS, the Panel conducted a mediation of the dispute on December 7, 2000, in Nashville, Tennessee, for the purpose of resolving the impasse; and

WHEREAS, as a result of this mediation, the City and the County have reached an agreement with respect to the adoption of the Growth Plan, as modified herein, the City's involuntary annexation of certain types of property within the Urban Growth Boundary, and with respect to other matters stated herein; and

WHEREAS, pursuant to the provisions of T.C.A. § 6-58-104(6) and T.C.A. 51-1-113, the City and County intend that this Agreement shall be binding upon the City and the County, respectively, to refrain from exercising those powers or privileges specifically stated herein;

WHEREAS, except as explicitly limited herein, the City and the County intend that

each shall enjoy all rights, powers, and privileges permitted under Tennessee law, including but not limited to the right of a municipality to annex pursuant to T.C.A. § 6-51-101 et seq.; and

WHEREAS, the City and the County intend in this agreement to embody each and every term of their agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter stated, including but not limited to the financial commitment by Knox County stated herein, the sufficiency of which is hereby acknowledged, the County and City do hereby agree and manifest their intentions as follows:

#### 1. SPHERE OF INFLUENCE.

The "sphere of influence" of each respective local government is recognized as important. Knox County has the entire county as its sphere of influence, especially in the non-incorporated area. The sphere of influence for the Town of Farragut is the municipality itself, as it may change from time to time, and the territory most adjacent to its borders. The sphere of influence for Knoxville is the municipality itself, as it may change from time to time, and the territory most adjacent to its borders. To best address this issue and bring order to a process of future modifications in the approved Plan, a division of the non-incorporated territory in Knox County is made for each city. The dividing line agreed to is as follows:

Beginning at the Anderson County line, following Pellissippi Parkway south to its intersection with Lovell Road; thence, south along Lovell Road to the beginning of Canton Hollow Road; thence, south along Canton Hollow Road to the Tennessee River/Fort Loudon Lake and following the Lake line in a generally westerly direction to the Loudon County line.

The area west and north of this line is placed in the Farragut Division, and the land east and south of this line is placed in the Knoxville Division. This division is used for making future modifications in the Plan as outlined below, to the extent permitted by law.

#### 2. EXTRAORDINARY CIRCUMSTANCES.

To the extent permitted by State law, the City and the County agree that, during the three-year statutory period after the approval of the Growth Plan by the Local Government Planning Advisory Committee, a showing of extraordinary circumstances shall be made as follows. The Knoxville-Knox County Metropolitan Planning Commission (MPC) shall solely determine the issue by a formal vote. Either the City or the County may request by resolution a determination of whether "extraordinary circumstances" have been established and may develop the rationale for the request. The MPC has ninety (90) days after such



resolution to act upon the request. If a favorable vote occurs by MPC, the Knox County Commission and the City Council must also concur for the finding of extraordinary circumstances in order for the Growth Plan to be amended. The parties agree that extraordinary circumstances may only be made for commercial or industrial development, not for a residential subdivision or development.

### 3. RURAL DESIGNATION

The Rural Area designated is not proposed to be altered from that proposed by the Coordinating Committee. The Coordinating Committee stated that "land use" in the Rural Area would be governed by permitted uses in various zoning classifications. Rezoning of property and changes in land use under certain conditions were outlined in the Plan developed by the Coordinating Committee. However, because the Knox County Commission may modify permitted uses in any zone classification or develop new zone classifications, it is unclear how these changes should be made in the Rural Area. Thus, it is agreed that any such amendments to the Knox County Zoning Ordinance that apply to property within the Rural Area must first be approved by resolution by the respective municipal legislative body within its sphere of influence. The parties agree that this approval is needed only for land use in the Rural Area and not for land use decisions within the Planned Growth Area, the city limits of the two municipalities, or the Urban Growth Boundary Area. The provisions of this paragraph shall apply only to relevant proposed amendments to the text of the Knox County Zoning Ordinance. The provisions of this paragraph shall not apply to decisions to rezone property by the Knox County Commission.

### 4. ALTERATION OF APPROVED GROWTH PLAN.

To the extent permitted by state law, the City and the County agree to the following process for altering the Growth Plan subsequent to the running of the statutory three-year period prohibiting alterations to the Plan (except upon a showing of extraordinary circumstances). Proposed changes in the conditions approved in the Plan or changes in the boundary line for a Rural Area, Planned Growth Area or Urban Growth Boundary area can be initiated by resolution by any local legislative body. The proposed change shall be reviewed by the Coordinating Committee. Within 120 days after receipt of the resolution, the Coordinating Committee shall make a recommendation to the two respective legislative bodies of 1) Farragut and Knox County in the Farragut Division or 2) Knoxville and Knox County in the Knoxville Division. The Coordinating Committee may use the staff of the MPC to assist in its work. Members of the Coordinating Committee from various organizations shall be appointed by the board of directors of their respective organizations as required by Chapter 1101. The Coordinating Committee shall conduct at least two public hearings as required by Chapter 1101. The recommendation of the Coordinating Committee may be modified by the two respective legislative bodies or in a negotiated agreement that is approved by resolution. The County Clerk, the City Recorder, and the LGAPC will be notified of such change in the Plan. Failure of the two legislative bodies to reach an agreement

within six months after action by the Coordinating Committee the request dies, unless mutually extended.

## 5. URBAN GROWTH BOUNDARY OF CITY OF KNOXVILLE

A. Subject to the three exceptions to the City of Knoxville Urban Growth Boundary ("UGB") identified in paragraph B below, the City and the County approve and adopt in its entirety the Growth Plan developed and approved by the GPCC, which is attached hereto as Exhibit A and incorporated by reference.

B. The City and the County agree that the highlighted areas identified on Exhibit B and Exhibit C, attached hereto, will be excluded from the City's UGB and added to the County's Planned Growth Area ("PGA"). The final boundary of the UGB and the PGA shall be changed accordingly.

The City and the County agree that the highlighted areas identified on Exhibit D, attached hereto, will be excluded from the County's PGA and included within the City's UGB. The final boundary of the PGA and UGB shall be changed accordingly.

## 6. LIMITATIONS ON RESIDENTIAL ANNEXATION BY CITY OF KNOXVILLE

A. Subject to the exceptions identified in paragraph B and C below, the City agrees for a four-year period not to annex property within any residential subdivision that has been platted and filed with the Metropolitan Planning Commission ("MPC") on or before the date December 7, 2000. This moratorium shall commence on January 1, 2001, or the date upon which it has been approved by both legislative bodies, whichever occurs later, and it shall terminate on December 31, 2004. The City agrees that this moratorium shall be automatically extended for an additional three-year term, which shall terminate on December 31, 2007.

B. Notwithstanding the limitations imposed in paragraph A above, the City may annex property within any residential subdivision that has been platted and filed with the MPC on or before the date December 7, 2000, in any one of the following circumstances:

(1) Pursuant to applicable state law, the annexation is approved by referendum of the registered voters residing with such subdivision;

(2) The City initiates the annexation after receiving a notarized petition requesting annexation from a majority of property owners with such subdivision;

(3) The day before the second and final reading at City Council of the annexation ordinance annexing the subdivision, the City Recorder has not received notarized letters from a majority of property owners objecting to the annexation. At least 30 days prior to the first reading of such annexation ordinance, the City will place in the mail written notification to each property owner by certified or registered mail, at the address shown on the tax rolls maintained by the Property Assessor for Knox County.

For purposes of B(2) and B(3) above, each building lot in a subdivision (including those

building lots already within the City) shall represent one and only one vote for determining the will of the majority of property owners within a subdivision. Only owners of building lots within a subdivision shall be entitled to vote in such election.

C. Notwithstanding the limitations imposed in paragraph A above, the City may annex any residential subdivision in which a majority of the parcels within the subdivision are within the municipal boundaries of the City as of December 7, 2000.

## 7. KNOX COUNTY DRAINAGE STANDARDS

If the County has not done so prior to the execution of this Agreement, the County will adopt drainage standards for development that are at least as strict as the drainage standards used by the City within sixty (60) days of the execution of this Agreement. This agreement applies to any drainage basins containing water that flows into the municipal boundaries of the City.

## 8. KNOX COUNTY INVESTMENT

A. Knox County Commission shall designate five million dollars (\$5,000,000) in its current five-year capital plan to be used in the Empowerment Zone within the City. The City shall have the sole authority to designate the use of these funds, except that the funds must be used for a capital project within the Empowerment Zone and must be approved in a budget ordinance properly adopted by the Knoxville City Council. By resolution of the City Council delivered to the County Clerk, the City may call for any or all of these funds within a five-year period, beginning January 1, 2001 and ending on December 31, 2005. The County Commission shall authorize the use of these funds within sixty (60) days of the County Clerk's receipt of the resolution. If the County Commission does not authorize the funds as stated herein or if the funds are not provided to the City within seventy-five (75) days of the County Clerk's receipt of the resolution, the City shall be entitled to the amount of the request and prejudgment interest thereon at a rate of ten percent (10%) in any action brought pursuant to Section 11 below.

B. In addition, Knox County Commission shall designate an additional two million dollars (\$2,000,000) in its subsequent capital plan for use by the City beginning Year 5 (January 1, 2005). The City shall have the sole authority to designate the use of these funds, except that the funds must be used for a capital project of the City and must be approved in a budget ordinance properly adopted by the Knoxville City Council. By resolution of the City Council delivered to the County Clerk, the City may call for any or all of these funds within the period beginning January 1, 2005 and ending on December 31, 2007. The County Commission shall authorize the use of these funds within sixty (60) days of the County Clerk's receipt of the resolution. If the County Commission does not authorize the funds as stated herein or if the funds are not provided to the City within seventy-five (75) days of the County Clerk's receipt of the resolution, the City shall be entitled to the amount of the request and prejudgment interest thereon at a rate of ten percent (10%) in any action brought



pursuant to Section 11 below.

C. If the City takes some action resulting in the residential annexation moratorium not being renewed for an additional three-year period, as described in Section 6 above, all funds granted to the City pursuant to paragraphs A and B above shall be immediately due and payable to the County. If the City does not provide the funds to the County within fifteen (15) days, the County shall be entitled to the amount of owed and prejudgment interest thereon at a rate of ten percent (10%) in any action brought pursuant to Section 11 below.

#### 9. JOINT ECONOMIC AND COMMUNITY DEVELOPMENT BOARD/ CITY OF KNOXVILLE INVESTMENT

A. In order to carry out the requirements of section 15 in Chapter 1101 on the establishment of a Joint Economic and Community Development Board for economic development, the Mayor of Knoxville and one additional director shall be added to the Board of Directors of the Knox County Development Corporation (referred to as the Development Corporation). The additional director shall be a non-government person and shall be appointed by the Mayor for confirmation by the Knoxville City Council. Pursuant to section 15, the duly elected or acting Mayor of Knoxville shall continue to serve on the board. Upon initial confirmation by City Council, the non-government appointee shall initially serve a regular four-year term. Pursuant to the requirements of section 15, the Mayor and future City appointees shall continue to serve after the term of this Agreement and shall be reappointed from time-to-time, as described above. Provided, however, that if the City takes some action resulting in the residential annexation moratorium not being renewed, as described in Section 6 above, the City shall forfeit its two seats on the Board and shall have no further right to representation on the Board.

B. By March 1, 2001, the Knox County Commission and the Development Corporation shall take any and all actions necessary to expand the board of directors of the Development Corporation to add the Mayor and Knoxville appointee, as reflected above, including the amendment of the Charter or ordinance creating the Development Corporation. The parties recognize and acknowledge that the actions stated herein and the deadline for such action are material terms of this Agreement

C. The City of Knoxville shall fund the Development Corporation operating budget at a rate of \$100,000 for the 2001-2002 fiscal year and at a rate of ten percent (10%) of the operating budget thereafter.

D. As required by Public Chapter 1101, the Knox County Executive shall advise the LGAPC of this action for approval so as to meet the requirements of section 15 (4)(j). Farragut City government is not required to make any contribution to the operation of the Development Corporation.

## 10. PENDING AND ANTICIPATED LITIGATION

The County agrees to take a voluntary dismissal with prejudice as to the County's challenge to Public Chapter 1101 in the lawsuit styled County of Knox and County of Hamilton v. Paul G. Summers et. al. (Knox County Chancery Court No. 147087-2) and further agrees to take any and all actions necessary to withdraw from the lawsuit. The County agrees not to continue providing funding of the lawsuit should it proceed without the County's participation.

The County agrees not to file any action challenging past strip, finger, or corridor annexations by the City, as authorized in Knox County Resolution No. R-00-8-902. By the execution of this Agreement, the County agrees to waive and to forego any right to file such an action.

## 11. DURATION, EFFECT, and AMENDMENT

This Agreement shall be in full force and effect from its execution by the parties hereto, and shall remain in full force and effect for through and including December 31, 2007. The parties agree that each term of this Agreement is specifically enforceable in the event of a breach by the other party. The parties agree that an action to enforce the terms of this Agreement shall be brought in the Chancery Court for Knox County, Tennessee. The parties further agree that, to be enforceable, any amendment to this Agreement must be in writing and must be authorized by the Knoxville City Council and the Knox County Commission by resolution.

IN WITNESS WHEREOF, the Chief Executive or Mayor and Clerk of each party have hereunto affixed their official signatures all as of the date herein first mentioned.

COUNTY OF KNOX, TENNESSEE

ATTEST:

APPROVED:

By: Thomas Schumpe  
COUNTY EXECUTIVE

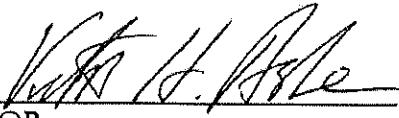
M. Phil W. Boyer  
COUNTY LAW DIRECTOR

Date: 1/11/01

Ann Mide Padgett  
COUNTY CLERK

THE CITY OF KNOXVILLE, TENNESSEE

ATTEST:

By:   
MAYOR

Date: 1-11-01

APPROVED:

  
CITY LAW DIRECTOR

  
CITY RECORDER