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VIA EMAIL

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Knoxville-Knox County Planning
City-County Building
400 Main Street, Suite 403
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RE: File No. 6-K-22-OA

Dear Planning Commission and Planning Commissioners:

The power of Knox County to enact zoning regulations is dependent on the authority given to Knox County under state law, and any zoning ordinance enacted by Knox County may not contravene state law.

The zoning powers given to Knox County appear at T.C.A. section 13-7-101 et seq.

These statutes provide “[t]he legislative body of any county which enacts zoning regulations under the authority of this part shall create a county board of zoning appeals.” (T.C.A. sec. 13-7-106). An appeal to the board of zoning appeals “may be taken by any person aggrieved . . . by any grant or withholding of a building permit or by any other decision of a building commissioner or other administrative official under this part.” (T.C.A. 13-7-108). The statute grants the board of zoning appeals the power to “[h]ear and decide appeals where it is alleged . . . that there is an error in any order, requirement, decision or refusal made by the county building commissioner or any other administrative official in the carrying out or enforcement of any ordinance enacted pursuant to this part[.]” (T.C.A. sec 13-7-109).

With regard to the role of the Knoxville-Knox County Planning Commission in this process under the Knox County zoning ordinance, this statute was interpreted in *State of*

Tennessee ex rel. Browning-Ferris Industries of Tennessee, Inc. v Board of Commissioners of Knox County, 806 S.W.2d 181 (C.A. Tenn. 1981). The court stated:

Under the Knox County Zoning Resolution, it is the responsibility and duty of the Department of Code Administration and Inspections to issue a building permit to an applicant if the applicant meets all the requirements of the zoning regulations, and there is no valid ground for denying the application. When an application for a use permitted on review is filed with the Knox County Zoning Department, the MPC takes the place of the Department of Code Administration and Inspections in carrying out the administrative step of issuing the permit. (Id at 192)

The Court of Appeals also stated that a party aggrieved by a MPC decision to approve a use permitted on review under the zoning ordinance may appeal to the Board of Adjustment and Enforcement, the Knox County predecessor to the BZA. (Id at 194)

State law thus requires Knox County to establish a BZA with enumerated powers including the power to review administrative decisions of the Knoxville-Knox County Planning Commission under the Knox County zoning ordinance. This includes decisions about uses permitted on review and decisions about development plans in a PR zone. The Knox County Commission may not change that process without a change in state law.

Respectfully,

HODGES, DOUGHTY & CARSON, PLLC



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WAK:kjc
Via electronic transmission
cc: Commissioner John Schoonmaker
Michael Moyers, Esq.