

ROBERT L. KAHN
REGGIE E. KEATON
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
SHARON H. KIM
RICHARD E. GRAVES
REBEKAH P. HARBIN
MICHAEL A. C. LEE
NIKOL D. PLUESS



client-centric & committed to success

Email: bmullins@fmsllp.com
Direct Fax: 865-541-4609

550 W. Main Street
Suite 500
Knoxville, Tennessee
37902

phone 865.546.9321
fax 865.637.5249
web fmsllp.com

August 5, 2024

Knoxville Knox County Planning
400 Main Street
Suite 403
Knoxville, TN 37902

Re: Agenda Item No. 26
File No. 6-O-24-RZ
0, 8757 Grospoint Dr/Parcel IDs 132 03603, 03605

Dear Planning Commission:

I represent the owners of these Properties where we are seeking permission to rezone this property from RAE (Exclusive Residential) to PR (Planned Residential) at 4 du/ac. Staff is recommending approval of the PR zoning at the requested density. Staff, however, conditioned the rezoning on two conditions:

1. Disturbing no more than 4.98 acres within (sic) the HP (Hillside Protection) area, per the recommendation of the slope analysis.
2. No disturbance within the HP area along the rear lot line where slopes exceed 25% and along the 35-ft periphery boundary at the west lot line that abuts the Hanna Place subdivision, as shown in **Exhibit B¹** [to staffs' report].

The applicant objects to these conditions for the following reasons.

Illegal Hillside Protection Conditions:

Both conditions seek to improperly impose the requirements of the Knoxville-Knox County Hillside Protection Plan on this Property. While the plan was fully adopted by the City, and later modified and codified in Recode, it has never been adopted by Knox County. In fact, the plan contains the following "Knox County Amendment"

¹ Exhibit B is attached to this letter for ease of reference.

KNOX COUNTY AMENDMENT

NATURE OF PLAN AND LEGAL EFFECT

This plan and the principles, objectives, policies and guidelines included herein are advisory in nature and constitute non-binding recommendations for consideration in connection with development of steeply sloped areas. While this plan is being adopted as an amendment to the Knoxville-Knox County General Plan 2033, it is intended to provide background and supplemental information of an advisory nature and to serve as a guide to future MPC staff recommendations, but it is not intended to form an official part of the General Plan which would be binding on future land use decisions by County Commission, MPC, the County Board of Zoning Appeals pursuant to T.C.A. § 13-3-304. Any comparable provisions of the Knoxville-Knox County General Plan 2033 or any Sector Plan which relate to hillside and ridgetop protection shall also be considered advisory consistent with this plan.

So, while the Hillside Protection Plan may serve as a guide to staff's recommendations, these recommendations are "non-binding" to this Commission. Therefore, it is inappropriate to impose them as a condition upon the current zoning for a plan that was not formally adopted by the legislature.

Moreover, while the Hillside Protection Plan was discussed during the recent adoption of both the updated Growth Policy Plan and the recently adopted Comprehensive Land Use and Transportation Plan,² until the upcoming Uniform Development Ordinance has been fully created and adopted through the public legislative process it would be improper and illegal to imposed Hillside Protection policies on county properties., the Hillside Protection Act's provisions were specifically **NOT** adopted as part of that process. This is significant since the current Growth Policy Plan states that "Rezoning of slopes **shall be based** on the adopted policies of each legislative body." (See "Policies" Section 3; **emphasis** added). Pursuant to Tenn. Code Ann Section 6-58-107, "[a]fter a growth plan is so approved, 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." (**emphasis** added). Therefore, imposing an unadopted Hillside Protection provision on this property as a condition of the rezoning is inconsistent with the adopted growth plan; therefore, this Commission lacks the legal authority to follow staff's recommendation.

Improper Peripheral Boundary Non-Disturbance Conditions:

Additionally, Condition 2 imposes an additional condition that there be a non-disturbance 35-ft periphery boundary at the west lot line that abuts the Hanna Place subdivision. This non-disturbance isn't based exclusively on Hillside Protection grounds, but a desire to screen future residential development on these properties from an established residential neighborhood in Hanna Place. However, this condition is too restrictive, and these goals could be accomplished through less restrictive means.

In the PR zone, there is a default 35' periphery boundary. See Article 5.13.06 of the County Zoning Ordinance. This boundary, which can be reduced to not less than 15 feet when adjacent to certain zones, including other PR zones, is **not** a "non-disturbance zone" but rather a setback preventing buildings from being placed in this periphery. This periphery boundary can be platted as part of individual lots and the backyards of these lots are placed in this periphery boundary. Imposing a condition of "non-disturbance," which staff defined disturbance as "any

² Development Policy 7.6 of the Comprehensive Plan states only that the County should "[c]onsider regulations in the unified development ordinance to or by guidance of the Hillside and Ridgetop Protection Plan."

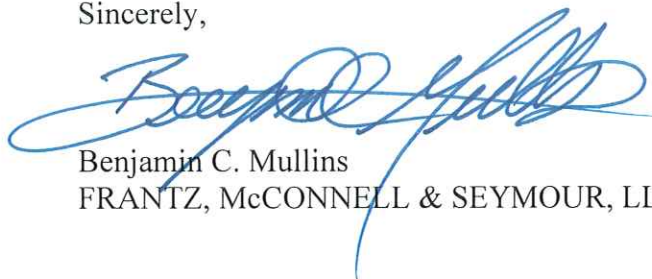
activity that changes the physical conditions of land form, vegetation and hydrology, creates bare soil, or otherwise may cause erosion and sedimentation,” would prevent the developer (or even future resident/owner of a lot) from removing vegetation (i.e. dead trees, vines, scrub brush etc.), grading the property or creating drainage swales to direct property away from residential structures, clearing and expanding their yard, or even constructing a below-grade swimming pool on their property with some or all of it within the periphery. A more appropriate consideration would be to require that the 35’ periphery boundary not be reduced and/or to require a landscape buffer, such as a Type C landscape buffer, along the peripheral boundary line of the development. These conditions would be less restrictive to future property owners and still serve the apparent purpose of buffering one residential development from another.

Conclusion:

Because Knox County has not adopted the Hillside Protection Plan, and the Comprehensive Land Use and Transportation Plan does not adopt the Hillside Protection Plan, then Condition 1 and the slope provisions of Condition 2 are illegal and inappropriate for consideration and this rezoning. Additionally, the 35’ peripheral non-disturbance provision of Condition 2 is overly restrictive and potential concerns could be mitigated by less-restrictive means such as not reducing the peripheral boundary and the planting of a landscape buffer appropriate between two residential uses. The applicant respectfully requests that these conditions be removed, and the rezoning for PR at 4 dua be recommended for approval to the County Commission.

Please contact me if you have any questions.

Sincerely,



Benjamin C. Mullins
FRANTZ, McCONNELL & SEYMOUR, LLP

BCM:mlk

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