



# Minutes

## December 8, 2011

1:30 P.M. ◊ Main Assembly Room ◊ City County Building

The Metropolitan Planning Commission met in regular session on December 8, 2011 at 1:30 p.m. in the Main Assembly Room, City/County Building, Knoxville, Tennessee. Members:

	Mr. Robert Anders, Chair		Mr. Michael Kane
A	Ms. Ursula Bailey	A	Mr. Nate Kelly
	Mr. Bart Carey	**	Mr. Robert Lobetti
	Ms. Laura Cole		Ms. Rebecca Longmire, Vice Chair
	Mr. Art Clancy		Mr. Brian Pierce
	Ms. Jeff Roth		Mr. Jack Sharp
	Mr. George Ewart		Mr. Wes Stowers
	Mr. Stan Johnson		

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\* Arrived late to the meeting.

\*\* Left early in the meeting.

A – Absent from the meeting

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**1. ROLL CALL, INVOCATION AND PLEDGE OF ALLEGIANCE**

**\* 2. APPROVAL OF DECEMBER 8, 2011 AGENDA.**

THIS ITEM WAS APPROVED ON CONSENT.

**\* 3. APPROVAL OF NOVEMBER 10, 2011 MINUTES**

THIS ITEM WAS APPROVED ON CONSENT.

**4. REQUEST FOR POSTPONEMENTS, WITHDRAWALS, TABLINGS AND CONSENT ITEMS.**

Automatic Postponements read

**POSTPONEMENTS TO BE VOTED ON READ**

**MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO APPROVE POSTPONEMENTS AS READ 30 DAYS UNTIL THE JANUARY 12, 2012 MPC MEETING. MOTION CARRIED 13-0. POSTPONED.**

**MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO APPROVE POSTPONEMENTS AS READ 60 DAYS UNTIL THE**

**February 9, 2012 MPC MEETING. MOTION CARRIED 13-0.  
POSTPONED.**

Automatic Withdrawals Read

***WITHDRAWALS REQUIRING MPC ACTION***

None

**REVIEW OF TABLED ITEMS**

- |   |                   |
|---|-------------------|
| <p><u>METROPOLITAN PLANNING COMMISSION</u><br/>Amendment of the City of Knoxville Zoning Ordinance adding Section 4.2 (Cumberland Avenue District) to the proposed Article 4, Secti4 (Form Districts) to establish development regulations and standards for the area described in the Cumberland Avenue Corridor Plan. Council District 1.</p> | <p>8-A-08-OA</p>  |
| <p><u>WILSON RITCHIE</u><br/>Request closure of Lecil Rd between Asheville Highway and N. Ruggles Ferry Pike, Council District 4.</p>   | <p>3-F-10-SC</p>  |
| <p><u>METROPOLITAN PLANNING COMMISSION</u><br/>Ft. Sanders Neighborhood District Long Range Planning Implementation Strategy. Council District 1.</p>   | <p>6-A-10-SAP</p> |
| <p><u>METROPOLITAN PLANNING COMMISSION</u><br/>Central City Sector Plan Amendment as recommended by the Ft. Sanders Neighborhood District Long Range Planning Implementation Strategy. Council District 1.</p>  | <p>7-C-10-SP</p>  |
| <p><u>WILLOW FORK - GRAHAM CORPORATION</u><br/>a. Concept Subdivision Plan<br/>Southeast side of Maynardville Hwy., southwest side of Quarry Rd., Commission District 7.</p>  | <p>11-SJ-08-C</p> |
| <p>b. USE ON REVIEW<br/>Proposed use: Retail subdivision in PC (Planned Commercial) &amp; F (Floodway) District.</p>  | <p>11-H-08-UR</p> |
| <p><u>HARRISON SPRINGS - EAGLE BEND DEVELOPMENT</u><br/>a. Concept Subdivision Plan<br/>Southeast side of Harrison Springs Ln., northeast of Schaeffer Rd., Commission District 6.</p>  | <p>4-SC-09-C</p>  |
| <p>b. Use On Review<br/>Proposed use: Detached dwellings in PR (Planned Residential) District.</p>  | <p>4-D-09-UR</p>  |
| <p><u>TIPPIT VILLAGE - SITES TO SEE, INC.</u><br/>a. Concept Subdivision Plan<br/>Northeast side of Andes Rd., north of David Tippit Wy., Commission District 6.</p>  | <p>9-SA-10-C</p>  |

- b. Use On Review 9-E-10-UR  
Proposed use: Detached dwellings in PR (Planned Residential) District.
  
- LONGMIRE SUBDIVISION 1-SA-11-C  
West side of Tazewell Pk., north of E. Emory Rd., Commission District 8.
  
- BEN H. MCMAHAN FARM RESUBDIVISION OF PART OF TRACT 1 2-SO-09-F  
Intersection of I-40 and McMillan Road, Commission District 8.
  
- METROPOLITAN PLANNING COMMISSION/CITY OF KNOXVILLE 8-O-08-RZ  
Area generally described from White Avenue to Lake Avenue between CSX Railroad Corridor and Seventeenth Street (See Map), Council District 1. Rezoning from C-3 (General Commercial), C-7 (Pedestrian Commercial), O-1 (Office, Medical & Related Services), O-2 (Civic & Institutional) and R-2 (General Residential) to Cumberland Avenue Form District.
  
- JAMES L. MCCLAIN  
Southeast side Lovell Rd., northeast side Hickey Rd., Commission District 6.
  - a. Northwest County Sector Plan Amendment 9-A-09-SP  
From LDR (Low Density Residential) & STPA (Stream Protection Area) to C (Commercial) & STPA (Stream Protection Area).
  - b. Rezoning 9-A-09-RZ  
From A (Agricultural) to CB (Business and Manufacturing).
  
- CITY OF KNOXVILLE 7-D-10-RZ  
South side Joe Lewis Rd., east of Maryville Pike, Council District 1. Rezoning from I-3 (General Industrial) to R-1 (Low Density Residential).
  
- BUFFAT MILL ESTATES - CLAYTON BANK & TRUST 4-B-10-UR  
South side of Buffat Mill Rd., north side of McIntyre Rd., Council District 4. Proposed use: Detached dwellings in RP-1 (Planned Residential) District (part pending).

***ITEMS REQUESTED TO BE UNTABLED OR TABLED***

None

**CONSENT ITEMS**

*Items recommended for approval on consent are marked (\*). They will be considered under one motion to approve.*

**MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO HEAR THE CONSENT ITEMS AS READ. MOTION CARRIED 13-0.**

**MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO APPROVE CONSENT ITEMS AS READ. MOTION CARRIED 13-0. APPROVED.**

## **Ordinance Amendments:**

**5. KNOX COUNTY COMMISSION**

**12-A-11-OA**

Amendments to the Knox County Zoning Ordinance regarding regulating signs, billboards, electronic message centers and other advertising structures in Knox County.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend to Knox County Commission:

- An expansion of the prohibition of billboards and other advertising signs to all zone districts in accordance with the amendments to the Knox County zoning ordinance shown in Exhibit C
- The creation of regulations for electronic message centers in accordance with the amendments to the Knox County zoning ordinance shown in Exhibit D.

Mark Donaldson: Knox County Commission has been considering acting on billboards for some time through a series of moratoria on new billboard construction. They finally pulled the trigger by asking us to take a look at the code and make recommendations regarding billboards. They recently expanded that to electronic message centers. The jest of the discussion was that sometimes along our highway corridors it is really vey difficult to tell whether a property is within the City and within the County and that there was a desire by the County Commission to bring the sign related regulations into some sort of compatibility. This is the first effort to do that. Currently in the city new billboards are prohibited throughout the city and new electronic message centers are prohibited throughout the city except in areas that have some sort of a design guideline iin place with an approval body for any new development. So we have drafted three different exhibits for you here. One expanding the current prohibition that exists in the County from most of the zone districts to all of the zone districts and in doing that putting in a provision comparable to what is in the city to require registration of all current legal billboards in order to solidify their legal nonconforming status. Then with regard to electronic message centers, we have provided definitions and regulations that mimic those in the city. On one path simply to regulate them. Currently the Knox County Zoning Ordinance doesn't recognize electronic message centers as a type and has no regulations relating to them. We are offering one path to create definitions and create regulations and then a separate path to prohibit new electronic message centers and provide operational regulations for those that are legally existing today. Staff is recommending the amendments that would expand the prohibition in the county from most of the districts to all of the districts. With regard to the electronic message centers to define them and to regulate them with regulatory standards that are comparable to the

city with regard to the static hold time on the messages, the way that the messages are moved from one message to another, the brightness of the signs and the size of text and that sort of thing. In order to prohibit new EMC's then we are talking about creating legal nonconforming status for those that already exist linking those to a set of new operational standards and then perhaps even considering an amortization program in the long run to remove all of the currently existing EMC's once their useful life has expired. We are recommending then the Exhibit C with regard to billboards which would, to prohibit billboards throughout the zoning ordinance and to create a registration and a log to establish legal nonconforming status for those signs that are currently in place. Then Exhibit D to regulation electronic message centers in all zone districts by creating a definition and addressing operational and performance standards by inserting that into the zoning ordinance. Any questions.

Joyce Feld, 1540 Aquila Avenue, I am here on behalf of Scenic Knoxville. I am the president of Scenic Knoxville. Scenic Knoxville is fully supportive of the proposed amendment. However there are just a few places where we would like to see some additional items addressed. The first one has to do with amortization of the EMC's if a ban is enacted. As Mr. Donaldson said it would be a good idea to put in place an amortization clause, but the proposal before you doesn't specify any period of time. So we are suggesting a period of three years from the date that this amendment is passed for all nonconforming EMC's or a period of five years from the time that the EMC was permitted whichever comes first. On the subject of digital billboards, while the amendment poses a band on all new billboards it doesn't say anything specifically about digital billboards. The industry practice is not so much to erect a new digital billboard as to convert an already existing traditional billboard to digital format. We just think it would be safer and clearer to include specific language in the amendment which bans the conversion of traditional billboards to digital format. Another point on digital billboards has to do with the illumination controls. The proposed amendment borrows language regarding the control of illumination levels for EMC's from the City of Knoxville ordinance, but it doesn't say anything about illumination levels for digital billboards. That is probably because there is no language like that in the city since there are no digital billboards in the city there are however several in the county. I don't know if the same language could be used that is already written into the amendment for EMC's or whether new language would have to be drawn up. I don't know if the illumination levels and measurement units are comparable or not. I will certainly defer to Mr. Donaldson on that. Also there is nothing in the amendment about a hold time for digital billboards; again probably because there is no language in the city ordinance regarding digital billboards. As the electronic message centers we are recommending a 60 second hold time for digital billboards. This is not only an aesthetic issue but a safety issue as well. All billboards are designed to distract passing motorists. As an illustration of this, I don't know how many of you have seen the billboard that has gone up recently on 640, but it's sponsored by a

local body shop, auto body shop. The billboard just says in large letters "If you are looking at this we will see you soon". I think that is a clear acknowledgement that if you are looking at a billboard you are a distracted driver. Digital billboards because they stand out even more in the landscape are an even greater distraction. The eyes are especially drawn to novel stimuli which means that every time a billboard face changes a driver's eyes are drawn away from the road to the billboard. A longer hold time will minimize this.

Anders: Ms. Feld I will let you continue, but is there anybody else that is going to speak against this. Just want to make sure we have time for everybody.

Feld: I don't think so and I just have one more point then I will be done. As an illustration for the distraction a resident in the county approached me recently to complain about a digital billboard that stands on Kingston Pike. Apparently this billboard stands next to a traffic signal. He said that he found that when the billboard face changed, and by the way I think it is changing about every 8 seconds now, when the billboard face changed around the same time as the signal changed, it was very confusing for the driver who found it very confusing and it took him a moment to really register and realize which one had changed; was it the billboard or was it the traffic signal. Anyway I think that a longer hold time of 60 seconds will also minimize this problem. Thank you very much.

Donaldson: Let me respond. Our direction from the County Commission was not so expansive as to include amortization or addressing the issue of the currently existing dynamic billboards that are out there. Those really do warrant separate discussion. We would be happy to look at that should we get instruction from the County Commission once this set of amendments goes forward.

Michael Kane: Question for Mr. Donaldson. You had recommended, or in the staff recommendation it does not address the proposed amendment, well the other way around. It describes the EMC's are banded except within an approved design overlay district. We don't have that similar language in what is proposed for the county. What is the rationale for not doing that?

Donaldson: My fear was that County Commission really wasn't aware that there was a prohibition against new EMC's. I am thinking of doing this incrementally. First establish some regulations, but by providing them a path to follow if they do want to prohibit new EMC's they have that in front of them. In the County we don't have as many overlay districts that have separate design guidelines as we do in the city. There is a Tech Corridor Overlay which is a large area which already has design guidelines. But I am not sure if that prohibits EMC's or...

Buz Johnson: In that case we would go by what the County has opined. We did have one situation where it was more of actually the time. It wasn't, in fact it was approved as a non static EMC.

Donaldson: So this is an incremental approach to getting the discussion to that point where the Commission can decide whether they really want to go the path of banning new EMC's in the future. This puts the road map out in front of them and we will see where they want to go.

Kane: Appreciate that. Regarding Ms. Feld's response or comments, as much as understand the rationale I think that in terms of the digital billboards that is a lot larger scope than what I think we can deal with here at Commission today in my personal opinion. If we wanted to deal with that we would need to postpone it and send it back to staff for an analysis. Given what Mr. Donaldson said I am not so sure that is the direction we really want to go. That would be my comment on that. And then the other one, yeah that is all I want to say on this thing.

Art Clancy: Not to downplay any of Ms. Feld's comments, I think the amortization issue, illumination and hold times are all issues. I think like Mark said this is a good first step. I think this will get the ball rolling. This is by no means an end all solution to the whole thing. It will get us moving in the right direction. It will get County Commission started on, and they will have to consider a lot of the issues that you brought up which are excellent points. I would like to make a motion right now per staff recommendation.

**MOTION (CLANCY) AND SECOND (KANE) WERE MADE TO APPROVE STAFF RECOMMENDATION.**

Wes Stowers: I just want to ask a question of Mr. Donaldson again. I think everybody he is on board with the need to try to get a rational policy that is county-wide and not just city-wide. While we are putting this together, did we... all the advocacy groups are in the middle of this and adding good comments, did we engage anybody in the business community either through the Chamber, the restaurant association, car dealers, convenience stores, people whose businesses do use these signs to make sure that we are not missing something that we need to be aware of.

Donaldson: We did not hold a separate meeting. Based on the lack of response that we had for a similar topic with the City sign ordinance just a couple of months ago. We advertised heavily in the newspaper and through other means a meeting and it was attended by the advocacy groups.

Stowers: Yes suggestion would just be and this is the business day to day, I would suggest that we push to some of the business organizations. When we do something that is this far reaching and hopefully the answer will be that everybody has a, can live with. Just

let the Chamber know this is getting ready to happen. I think they will be able to get the interested parties at the table and you will have something that, hopefully you will have a consensus.

**MOTION CARRIED 11-2 (Roth & Ewart). APPROVED.**

**6. KNOXVILLE CITY COUNCIL**

**12-B-11-OA**

Amendments to the City of Knoxville Zoning Ordinance regarding electric security fences.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend to City Council that no immediate amendment to the zoning ordinance is needed with regard to its recent approval of an ordinance establishing requirements for electric security fences. Rather, an electric security fence that is a component of a permitted outdoor storage, open storage, sales yard or storage yard should be treated as part of a principal permitted use in the appropriate zone districts and be subject to the required minimum setbacks established for each district.

In addition, MPC could be directed to review the issue of outdoor storage in all its forms and fences with all their different requirements and make recommendations for a comprehensive, unified treatment of these uses and structures.

Mark Donaldson: This one comes to us from City Council. They recently adopted in their Code of Ordinances a section regulating the use of electric security fences constructed in an outdoor storage area located in compliance with the zoning ordinance and then passed it on to us to review and comment on its impact with respect to land use. Currently the term outdoor storage, open storage, sales yards and storage yards are used kind of interchangeably throughout the ordinance and are specifically listed as uses permitted in the C-3 zone district, the C -4 zone district, the I-3 district, planned commercial II, as a use permitted on review in the A-1, the agricultural district for commercial livestock, feed and sales yard, and also in the floodway district for storage yards. So we have a defined use that is permitted in several zone districts. One of those in the C-3 they literally tie any fencing of open storage areas to the setback required for principal buildings. I think that is a pretty good approach to take with electric security fences as well. The regulations that were adopted by the City actually require that every time there is an electric security fence put up there has to be an additional fence put around the perimeter in order to keep people away from the electric security fence presumably. So they can't put an electric security fence right on the property line because they have to accommodate another fence with some separation. So then we get into whether perhaps we could treat them as accessory uses which then brings into play allowing them in all of the required yards. I thought that following the model that was established in the C-3 General Commercial district which is probably our most prevalent commercial district where the fencing is must meet the setback requirements for principal buildings was a

good way to go in the short run. In the long run we really do need to examine the entire code and to bring into conformity the various uses when trying to describe open storage and outdoor storage. We previously talked at the Planning Commission level about outdoor display as well. Then fencing is just scattered throughout the ordinance. It is very hard for a property owner, for example, to discern what kind of regulations would apply to each and every property with regard to any kind of a fence, so we really need to do an exhaustive scrubbing of the zoning ordinance to bring all of these storage spaces into conformity as well as to provide a common place for dealing with fences. That would be a good project. At that time we can flesh out the debate as to whether we see these as accessory uses or permitted uses and what kind of dimensional requirements should be associated with each type of fence. We are pretty comfortable with the idea of leaving it alone in the near term and hopefully getting some direction from Council on examining the whole zoning ordinance.

Michael Kane: Just for clarification Mr. Donaldson I just want to make sure I understand. Is there in this situation as recommended a situation where the owner of property essentially would have reduced amount of storage area that there is for them to use. It is my understanding what I heard you say was that the C-3 zone district does not allow a fence beyond the current building setback. Is that correct?

Donaldson: Correct.

Kane: If that is the case, they are really losing any storage area other than what the difference is between the outer fence and inner fence is that correct?

Donaldson: Correct. In some of the other zone districts there may be a situation where they are currently using open storage and sales yards in the required yard beyond the setback where they may have to change their pattern if they want to install a security fence.

Kane: So there are some zone districts that that would be a reduction in?

Donaldson: Could be. We haven't done an exhaustive inventory. But I would suspect that it in the I-3 industrial zone district for example that they are using the entire property to store stuff. By putting an electric fence on and meeting the setbacks, that would probably shrink that.

George Ewart: Mark the question is on a parking lot in C-3 you can't, that is to say the parking area is not in the setback you cannot have an electric fence on there for say overnight security for cars or vehicles. Is that correct?

Donaldson: People aren't supposed to be fencing in their parking lots in the required yard anyway. With the dimensions that are required for, the regulations require a 10 foot height on these structures plus that protective fence around the perimeter. It becomes structural in appearance in my opinion. There isn't anything to prohibit a parking lot in a required yard. It is just that if you were to put an electric security fence around it then you would have to move it back to the setbacks.

Art Clancy: Mark is our staff recommendation specifically to comply with this one instance and then we look to the future to possibly clean up our fence and consolidate our fencing regulations? If we pass this as per staff recommendation, are we going to be cutting our nose off in any other, if we ever do get to the point where we are working on all our fencing regulations and ordinances? Is this something that we might step on our own toes?

Donaldson: We are probably preventing ourselves from cutting our noses off by punting on third down.

Clancy: That is kind of what I thought. In that case I would like to make a motion that we approve this per staff recommendation.

**MOTION (CLANCY) AND SECOND (STOWERS) WERE MADE TO APPROVE STAFF RECOMMENDATION. MOTION CARRIED 13-0.**

**Alley or Street Closures:**

- \* 7. **UNIVERSITY OF TENNESSEE** **10-A-11-SC**  
Request closure of Phillip Fulmer Way between Cumberland Avenue and Lake Loudoun Boulevard, Council District 1.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* 8. **UNIVERSITY OF TENNESSEE** **10-B-11-SC**  
Request closure of Peyton Manning Pass between Volunteer Boulevard and Phillip Fulmer Way, Council District 1.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* 9. **UNIVERSITY OF TENNESSEE** **11-A-11-SC**  
Request closure of Tee Martin Dr between Phillip Fulmer Way and east terminus, Council District 1.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

**P 10. GERDAU**

**12-A-11-SC**

(2-9-12) Request closure of Stonewall Street between Ely Avenue and northwest property line of parcel 081P

THIS ITEM WAS POSTPONED EARLIER IN THE MEETING.

**P 11. GERDAU**

**12-B-11-SC**

(2-9-12) Request closure of Ely Avenue between Stonewall Street and northeast property line of parcel 081P

THIS ITEM WAS POSTPONED EARLIER IN THE MEETING.

**Street or Subdivision Name Changes:**

None

**Plans, Studies, Reports:**

**12. KNOX COUNTY COMMISSION AND KNOXVILLE CITY COUNCIL**

**12-A-11-SAP**

Hillside and Ridgetop Protection Plan dated November 2011.

STAFF RECOMMENDATION: Staff recommends that the planning commission approve the version of the Hillside and Ridgetop Protection Plan dated November 2011 as initiated by Knoxville City Council and that Knox County Commission consider removing the amendment to the plan added on November 21<sup>st</sup> or, as an alternative, replace the amendment with the language provided as Exhibit B.

Mark Donaldson: It was a year ago that the Planning Commission adopted the December 2010 version of the Hillside and Ridgetop Protection Plan. Since then there has been a lot more discussion. Following a series of facilitated meetings between City Council and County Commission, on November 10<sup>th</sup> there was consensus to go forward with a revised plan that reflected a series of changes that were discussed during that series of meetings. Those changes are reflected in yellow in the copy that you have. At their November 21<sup>st</sup> meeting County Commission added an additional paragraph to their version of the plan that they initiated. On November 29<sup>th</sup> City Council opted not to follow that path but to go with the version that was agreed upon by consensus on November 10<sup>th</sup>. So we have a provision in State law that says that a plan amendment, an amendment to the General Plan, which we are considering this as, that is initiated by the Legislative Body must first go to the Planning Commission for its review and consideration. You are given three options. You are given the option of approving, not approving, or transmitting back to the Legislative Body with no recommendation. The law is the Legislative Bodies have asked you to review and consider it. I think it is perfectly appropriate that you can make recommendations. Ultimately you must vote on each of the plans since they are different. We need a vote for the version initiated by

City Council which will apply only to the area within the City boundaries and then we must have a separate vote for the plan as initiated by the County Commission which will apply to the area outside of Knoxville and Farragut. Our recommendation is that you vote to approve the version as submitted by City Council and that you not approve the version that is submitted by County Commission. Rather than in doing so make a recommendation to either go without the paragraph that was added or we have provided alternative language that could be considered as a recommendation to both of them actually. We tried to mimic the intent of the paragraph as initiated by County Commission, but in language that we feel will make it actually work. The paragraph is problematic in my mind. One it, I don't believe it is necessary. The paragraph speaks to the advisory nature of plans which is fairly well understood in planning language and the language of the plan itself is filled with examples of language about guidelines and recommendations and plans simply are not regulatory. If they are not regulatory, they become advisory. There is a provision in State law that land use decisions have to be made consistent with adopted plans. That is a path that someone could take to label land use plans as regulatory or binding. We don't feel that it is necessary to state out front that plans are nonbinding. I think that injects uncertainty into the planning process and the use of the plan. It frankly can be confusing to people. It is confusing to us. The language of the amendment is confusing. In one sentence it refers to adopting as an amendment to the General Plan, but further on in the same sentence it says but not officially, this is just for background and informational purposes. Then it tries to undue all of the previously adopted related provisions in other plans. Because we have a situation where our General Plan makes reference to the Growth Policy Plan and the Growth Policy Plan has been adopted as part of the general plan, there is this relationship between the two. While the two of them have completely separate and different paths towards being amended, that becomes another factor in injecting confusion and uncertainty with the addition of this particular paragraph. The Growth Policy Plan by State law can be amended only by convening a coordinating committee at the request of the Mayor and having that coordinating committee submit its recommendations to the Legislative Body; whereas an amendment to the General Plan can be initiated by either the Legislative Bodies or the Planning Commission. You are pretty familiar with that path. Since the Growth Policy Plan was adopted in 2001, there have been no amendments to it. The coordinating committee, to my knowledge, has never met since that time. It would be a completely new and different path for either the County Commission or City Council to amend the Growth Policy Plan. We like the clean copy. We think there is adequate flexibility and clarity as to its role in existing language and that there is simply not a need for the paragraph that was added by County Commission under the auspices of trying to clarify what is the role of the plan. So ultimately we are going to need two votes from you and the vote has to be in terms of either approving, not approving or transmitting without

recommendation. Regardless of what the Planning Commission does the Legislative Bodies may amend on the fly once they get it back in their hands. We are satisfying a step in the amendment process as laid out by law.

Robert Anders: Just to frame it for my simpleton mind, we have got two votes; one on the City plan, one on the County. Staff is recommending to approve the City plan as written and to either not approve the County plan and current wording or approve the County plan with the substitute paragraph.

Donaldson: Technically you don't have the authority to adopt a different version. But in making any motion or action you certainly can make recommendations.

Anders: So basically the County, for both of them it is up or down. Up or down or...

Donaldson: You always have the option of making no recommendation.

Anders: I don't know how good an option that is. Anybody in the audience care to speak? Let me frame this a little bit. There has been, regardless of what you feel about this plan it has been a great public process. There has been an awful lot of meetings: County Commission, MPC, City Council, Chamber of Commerce. There's been a lot of meetings. The nuts and bolts of the plan have been discussed over and over again. I think that is valid. I would like if we could, I do not want to stifle any comments or any debate at all, but if we could I would like to stay focused in our comments on what we are doing today with the changes that have been made or have been proposed if we could.

Margot Kline: 8845 Ebenezer Oaks Lane, I am here because I am the president of the Council of West Knox County Homeowners and I have been since May of this year. We have had two votes since May to support the original plan which was voted on by you last December and to support the revised plan that came out of that joint meeting and to not support the Briggs amendment, to support the City Plan. Even though I represent pole in the County, many of these people live adjacent to land that has been annexed into the City and they have suffered from the runoff and clear cutting right next door. So that is the reason I have anything to say about what happens in the City. I need to also say that at our last meeting with the County and the Council of West Knox County Homeowners we had some heated debate and there was confusion as I am sure there has been among a lot of people about what the MPC Commission can or cannot do as far as changing the wording of the Briggs amendment. We did not have a quorum. So I am here to talk about what the Council of West Knox County Homeowners has supported for the past two years that I have been on the board or been the president. We have supported this plan because it is, as

the clean plan, because it protects the property of homeowners that live adjacent to where there could be this clear cutting and runoff. I would ask you to support, to vote yes to the City plan and no to the County plan on that basis. Thank you.

Anders: How many others want to talk in favor? One more.

Robert Hill: 11504 Mountain View Road in Farragut. I am a resident of Knox County. I am here on behalf of the Sierra Club. I am the Chairman of the Harvey Broome Group of the Sierra Club. We have, that is an environmental organization that covers 19 counties in this area. We have about 750 members in Knoxville and Knox County. We have watched with interest the development of this plan. I also in another role I served on the Planning Commission service for 27 years and as Chairman for about 20. I think it is one of the best plans that I have seen come out of Knox County in years. It is probably the most important piece of land use legislation that I have ever seen produced and discussed and decided on for this county including the City of Knoxville. It contains a lot of things that we already do. It contains things that are new. It contains some flexibility in design for developers which allows them to do some things they cannot now do and that is important in terms of cost. So we have watched this evolution and we have watched the facilitated discussion of the plan between the City Council and the Knox County Commission. Consensus was reached on a document with that discussion. You have that in your work plan there. We prefer the version of the plan that City Council adopted that did not include the paragraph that County Commission put in. We recommend that the County Commission have the same kind of plan that the City has in the event of, well just in the sense of uniformity it is needed. So that is our recommendation. We would appreciate your consideration of it. Thank you very much.

Anders: What about opposition to this plan. How many folks do we have in opposition, that want to speak in opposition. Just one. Two. We have got two. Three. Remember that we have got five minutes guys. Let's make sure that we coordinate appropriately.

D. H. Andy Andrew: 712 Summit Lake Court, You have my letter with regard to this agenda item 12. I request that it be made a copy, be made part of your permanent file. Today I recommend that you, the appointed Commissioners of MPC approve the General Plan amendment that was approved by Knox County's legislative body on November 21<sup>st</sup> and transmitted to you per TCA 3-3-304. Knox County Commission is our elected legislated body representing all of Knox County. As our representatives they approved the plan amendment by a margin greater than 2 to 1. Thank you.

Sally Absher at 5517 Riverpoint Cove in Knoxville. There has been a lot of talk about the amount of time that has gone into the MPC Hillside and Ridgetop Plan; several years of planning at a cost of close to \$400,000. There were many meetings with both County

Commission and City Council which were followed by the many facilitated joint meetings. Not much has been said about the amount of time that has, that this has taken from taxpayers who have had to take time off from work and attend and watch these many meetings to protect our property rights. Our time is important also. Our time has not been respected. I have come here today to speak to you about a serious issue. The MPC director Mark Donaldson has given conflicting statements to both County Commission and City Council. The ethics policy like our own Knox County Charter speaks to false or conflicting instructions as an ethic violation. In today's agenda Mr. Donaldson again excused the statutory authority granted by the State to MPC in section TCA 13-3-304. The word gaming, the semantic play on words has to stop. MPC cannot amend the Briggs amendment. Yet Mr. Donaldson in today's agenda encourages you to do exactly that. That is an ethics violation. The reason the Briggs amendment was created was that Mr. Donaldson repeatedly attempted to exceed State statutory authority and attempted to morph the MPC into a quasi-legislative body. This is illegal. MPC can suggest. MPC can plan, but you cannot form law. You are not a legislative body. A plan by definition is not binding. It is not an ordinance. A plan by definition is advisory. It is not law. The Briggs amendment was necessary because of the continuous attempt by Mr. Donaldson to usurp Tennessee law. This has to stop or State ethical violations will be filed. Mr. Donaldson does not have the authority to change the meaning of the word plan. There is no reason for the County plan to be the same as the City plan given that 93 percent of the undeveloped land is in the County. MPC cannot amend the Briggs amendment. I have come to you today to request that you obey the laws of the State of the Tennessee and that you respect the time of the taxpayers and property owners. Enough is enough. Put an end to these word games or State ethics complaints against Mr. Donaldson will be necessary. Thank you.

Anders: Ms. Absher let me respond real quick. Not five minutes ago Mr. Donaldson point blank I asked the question. He said you can only vote to approve it or not approve it and you cannot amend the Briggs amendment. You cannot make any adjustments to it. That is what he said in a public forum.

Absher: He did. But Mr. Donaldson when he spoke to the County Commission he said the MPC may vote up or down, vote the plan up or down. When he spoke to the City Council he said the MPC could vote up or down or amend the plan. The instructions to each body should have been the same.

Anders: We can make suggestions. We can make recommendations. We can't amend. I think that is the same comment he made five minutes ago. He said that you can make recommendations, but you can't amend it. I just want to clarify that.

Absher: Thank you.

Victor Jernigan: 10255 Kingston Pike, Knoxville, TN 37922. What I wanted to and what Lonnie is handing out is a package, there will be three drawings. The drawings are what I view to be some of the unintended consequences of the Hillside Plan. There has been lots of talk and fantastic involvement by neighborhoods and neighborhood groups over a three and one half year period. Enormous work by staff to look at how a plan should be drawn. The issues get to be as so many times, what does really happen under the plan. What these drawings are is this is a 39 acre tract of ground which is for sale today. It has been for sale for about 3 ½ years on Merchant Drive about 1,000 feet east of Pleasant Ridge Road. It is the dark green on the colored map, comes directly off the KGIS showing the Hillside Protection area in slopes of I believe it is up to about 22 percent to the top of the ridge. The light green areas are areas that are part of the agricultural zone same as the Hillside Protection area and part of the overview of what the Hillside Protection area would include. The pink area the lighter colored area in the front a commercial zoned property. The second map, just orient it so it looks like that, shows how the property would be able to be divided in the agricultural zone with acres lots and no variances required by MPC. The last map is a hand sketch sort of showing how the overlay of the hillside...

Anders; Mr. Jernigan this is getting into a technical presentation.

Jernigan: The last part of it. This map shows how those lots are impacting the hillside regulations. The reason that it is critical is that the plan talks about the possibility of bonuses or other development. What I am showing with this map is that there is no incentive of any kind for the property owner to agree to an extension to develop the property under the hillside regulations when it can be developed immediately if someone chose to under the agricultural zoning. With the agricultural zoning there would be no need to meet any hillside regulations, no clearing requirements, no architectural requirements, no aesthetic requirements and you could build on top of the ridge without any problem if you wanted to get a driveway up to it. The unintended consequence of the plan as it is going forth is that the agricultural zones wind up not being rezoned in the areas of the, specifically in the areas of the city that would be challenged for the development cost of the property. That is just what I wanted to point out as you are considering how this thing begins to move forward.

Anders: I just want out of fairness go back to the supports if anybody has any other comments you still have some time. They went a little bit over on their time. If there are no comments, we will go to Commission.

George Ewart: I appreciate all the joint efforts that City Council and County Commission has done, but I think coming back to here is just parliamentary procedure in that they are going to pretty much do

whatever they want to do; in fact I think City Council is going to vote on it this month. Is that correct from what I understand?

Donaldson: They expressed that we get this back to them for their December 13<sup>th</sup> meeting.

Ewart: I don't know which one to start with first, but I will start with the City of Knoxville. I want to make a motion that we transmit back to the City of Knoxville with no recommendation the Hillside Ridgetop Protection Plan.

**MOTION (EWART) AND SECOND (CLANCY) WERE MADE TO TRANSMIT BACK TO THE CITY OF KNOXVILLE WITH NO RECOMMENDATION.**

Laura Cole: Just for clarification I wanted to point out there was some confusion about which amendment we are looking at. The one in the Hillside Plan in yellow was slightly different from the one in our packet. I wanted to make sure the Exhibit A amendment was the one.

Donaldson: Exhibit A is the amendment that was read into the record by Doctor Briggs.

Anders: But we are talking about the City right now.

Cole: I realize that. But I wanted to make sure. I tried to catch you earlier.

Anders: That is a good point. Since we do have to take these separately any further comments on this one first. Then we will go to the County one.

Art Clancy: Short comments. I have heard it said in this room twice now. Is this actually the MPC plan. Did you start this one? Weren't we asked to head a task force or coordinate or work on a task force specifically to address this issue. Was it you who did that?

Donaldson: In late spring early summer of 2008 the City Council and County Commission passed a joint resolution, each passed their own separate, but identical resolution creating the task force and assigning MPC to support that task force through its work. For about a year the task force met to research and prepare a plan. Following that it spent about a year and one half in public meetings taking the plan around the County in a multitude of meetings ultimately bringing the task force brought the plan to the Planning Commission in fall of 2010. I think we first had it on our agenda in October. Ultimately the Planning Commission adopted a version of the plan after some revisions from the task force in December and transmitted it to the legislative bodies in order to make it operative. County Commission voted against it. City Council has never voted on the MPC version. After the County Commission voted against it, they approached the

City about working together in a series of facilitated meetings. That has lasted a year now. That is a brief time line.

Clancy: I just wanted to clarify. I wasn't sure why it was our task force and not the assignment of Knox County Commission and City Council that we facilitate this task force. Pretty much they ask and we do and I think that is how we have gotten to this point. They are going to keep asking until we give them the answer they want which is what Commissioner Ewart has just indicated which would be why I seconded his motion.

Rebecca Longmire: That was my question. Why send it back without a recommendation instead of an approval? Is there a... for the City.

Ewart: I guess what difference would it make. Really if we approve it, deny it or send it back with no recommendation, they are going to do whatever they want to. They kind of made that evident that they are voting on it this time no matter what we do. So.

Longmire. I understand that we are just advisory, but I would like for them to know that I do like the plan and I support the plan.

Ewart: Well I think everybody in here has worked on it for a long period of time. Those people in the legislative body have done workshops and have come to an agreement. It is almost this is actually their plan now. I agree with the plan also. I think that it does a lot of good. I think there are still some things we need to tweek on it. I think we have done some of that already. I would rather take no action on it because I just don't, I think it just doesn't make any difference. I hate to say that. It is a sad statement that I made there. It doesn't make any difference they are going to do what they want to.

Longmire: I guess I just want to say if I vote against it it is not because I am against the plan, because I want to take a stand supporting the plan.

Anders: Well obviously if we approve the plan as the City submitted it gives them much more credibility as they go back to their final vote on it.

Upon roll call the Planning Commission voted as follows:

Carey	Yes
Clancy	Yes
Cole	No
Ewart	Yes
Johnson	No
Kane	No
Lobetti	Yes
Longmire	No
Pierce	No
Roth	Yes

Sharp Yes  
Stowers Yes  
Anders No

**MOTION CARRIED 7-6. NO RECOMMENDATION.**

Cole: I wanted to make a comment about something Ms. Absher said about respecting people's time. I have spent a lot of time reading the plan, trying to understand the plan process. When I look back at the time that has been put into the Growth Policy Plan and the General Plan and the Sector Plans that have been built all around us, it is justice at work; not only by planners, but legislative bodies and communities. That work represents a huge amount of time the community spent trying to build a vision for the future. I just wanted to point out that one of the things we should consider in terms of respecting that body of work and it concerns me that it is not looked at with that kind of perspective.

Ewart: I am not going to repeat my earlier comments. I would like to make a motion that we transmit with no recommendation to Knox County the Hillside and Ridgetop Plan.

**MOTION (EWART) AND SECOND (COLE) WERE MADE TO TRANSMIT BACK TO THE COUNTY COMMISSION WITH NO RECOMMENDATION.**

Kane: My personal opinion that these plans need to be identical and not different even with one statement at the front. I just think that after all the effort that has been put into this it is just a bad precedent that they should come to some kind of total agreement. The other thing I am a little concerned about again the County's statement in the front in terms of what does that mean for us in terms of moving forward? Does it mean anything different to us? I can understand a statement to remind people what plans are and how they fit into the overall picture, I can understand that. But from what I have heard from our staff is that statement essentially is contradictory in itself. What would it mean to us if it were there, if it moved forward without recommendation? What we are saying is to County Commission is okay we can live with this statement and we know how to move forward. I am not too sure I know how to move forward with this statement in here. What does that mean?

Donaldson: In my opinion it injects a great deal of uncertainty into the development review process with regard to property within the hillside ridgetop area by advertising up front that these recommendations are non binding and advisory only.

Kane: Will we have to look at this plan differently than we look at all the other plans that we have?

Donaldson: Ultimately with regard to plan amendments, land use plan amendments and zoning cases we are in a position of making recommendations. We make those recommendations based on the

plans that are adopted. That won't change. We have authority to approve development plans as part of the planned zoned district process. We use the plans in guiding our staff recommendations. Ultimately you will be put in a position of testing site specific plans against the recommendation of the plans within the hillside area.

Kane: This statement essentially could cause question whether or not, I mean, that would be different from other plans that we consider in those issues, those concept plan approvals. I don't think I would do that. I mean I support it. But it just seems to me that it.. Obviously County Commission can move forward and do what it wants and then send it back to us for an opinion. My opinion is that is this adds confusion and that it should not be there. It would appear that people who are professional planners have problems with the language. I just can't support that. I could support language that if there needs to be some kind of language in there that will help people understand the use of plans, then the language proposed by staff we could recommend that. I could support that, but again I don't think we are going to do that. I would probably include in all future plans just as a point of clarification. It doesn't make this one any more special than any other the other ones that we do.

Anders: I agree with you. I just think we need to give it a yes or no vote and not have this paragraph on there. Just send it on back to County Commission and if they want to go ahead and pass it that is fine as written if they want to add it. I think we are sending them the wrong signal.

Longmire: Two points. First and I think I am going along with what Commissioner Cole said especially about the sector plans. Sector plans are site specific. They are specific to communities and communities work to develop plans that they wanted to see for their community. And the word is plans; not law. It is not a law. It is a plan. Plans are flexible. Plans can be looked at. As advisory to both City Council and County Commission whatever we advise they can change. It bothers me to have language that says that sector plan can be thrown aside without any consultation with people involved. But the other thing is we were asked for an opinion. When I was teaching my unfavorite answer was I don't know. I know you don't know, but I want to know what you think. I think we need to support a plan that applies to both city and county because we don't have one of those electric fences with another fence beside it to separate city and county. If something happens in the county, you do get runoff. If it happens in the city, it might affect a water supply in the county. Again I just want to stand up and say I support the plan as it is written. I don't see the need of any other amendment that says it is advisory because the word plan by its very nature is advisory.

Stan Johnson: What I am worried about is them sending it back to us with the same problem, the same situation. I see Mr. Norman in

the audience. I was wondering if you could give us an opinion on what is going on a bit.

Anders: Explain your question a little more specific if you would.

Johnson: I guess the pulse of what is happening. Are we approving it, declining it or ending them no opinion.

Tony Norman: Thanks Stan for calling on me. I would like to ... I didn't want to speak in the open session given the discussion right now. From my perspective we need you all and we feel like, I feel like you are the specialized review body for planning. We have a lot broader responsibility than that. I am looking at, as a County Commissioner I am looking to this body for your recommendation. For you all to come and bring us back a no recommendation, I don't think that is why you are supposed to be sitting there. I think you are sitting there to vote, to say yes or say no. That is what you do. That is what you should do. That is what I would urge you to do. Do something, but no recommendation is like a pass. What the heck is a pass on this? We have done this so long we are at least due some kind of statement as to what you think about this plan. That is where I am. I think that is what you need to do.

Wes Stowers: Along these lines when this thing first went to County Commission it was voted down. It was turned down as no. That was a vote. Then they had another vote to consult and try to come with some kind of compromise with City Council. There is still a difference of opinion. With all due respect although there has been a lot of hard work on this, I don't think it is cooked yet. I really don't I think you got everybody in this room agrees we don't want to savage our hillside or our view sheds. That is a given. There is a lot of devil in the details though in this 90-page list of what will become rules get added up to the other 10 feet of rules that we already have to comply with it. We still have a lot of opposition to pieces of it. Still in the community I think you have very little support from anybody that has to build, make stuff. It has still got some issues. The County Commission might just vote it down. That is their call, not ours. I think they spoke loud and clear when they had their 7 to 3 vote with this amendment on it that is the way they wanted to come from. It went to the City Council and they are not in agreement. I think those two bodies if they are going to come up with something, they need to keep working. We have a new County Commission and a new City Council here next month and this may still continue there. I think for us, this thing is supposed to have a lot of compromise and go back and hear all parties. There is with very little change fundamentally from this plan here and the one we ourselves had a lot of controversy with a year ago. I think we need to send this back to the elected bodies and they can vote it up or down.

Bart Carey: I have been wrestling with this like all of us for a number of years. I don't know that there is anybody sitting on this board today that wants to send the Briggs amendment back as a

recommendation. I am torn here. The result of sending it back without a recommendation certainly leaves to chance the Briggs recommendation to be in there. It is confusing to me, it is almost like if planners started writing medical directives. It probably doesn't make a lot of sense for it to work that way. I would much rather see the new amendment be accepted by the County than leaving the Briggs amendment in place. The language of non advisory seems to me kind of the critical part there. Is there a motion right now?

Anders: There is a motion to send it back with no recommendation. We have to vote on that.

Carey: We cannot make a recommendation for the staff's written version of the amendment cannot be recommended. Is that what I understand?

Donaldson: You can make that recommendation. You can't vote to amend their plan by inserting it.

Anders: I guess you would approve with a recommendation to replace the paragraph with the suggested language from staff.

Carey: As we have already said County Commission has voted twice to turn this whole thing down, but accepted it based on the new . Using that guideline, to me it seems our best chance to have an impact would be to recommend language that is basically acceptable as planners to this whole thing but at the same time give them a chance to vote it through.

Anders: That is kind of what the alternative statement is.

Carey: The alternative statement cleans up the issues that planners had with the first statement. I am looking at what happens when it gets back to them. I don't think anybody here wants to see it pass with that language in there. How do we get there.

Cole: I just want to make a comment about why I feel forward with no recommendation. I was thinking more about the nature of the statement itself. I think there is some question about if it is even legal. I don't know that you can say something is part of the plan, but not intended to be part of the plan in the same sentence and also reach forward in time and undo things that have been done, I guess reach back and undo things that have been done in the past. It is not just that. The plan itself I appreciate the public process that we have gone through and it has been a long time and I think City Council has decided to move forward with it as is. I don't think there is a question about that. But the problem I have is the way this thing was introduced. After the City and County came to an agreement through all these facilitated meetings, at the last minute this statement was literally put together during the last County Commission meeting. It was done, it was written in haste and was poorly executed. I guess I want nothing to do with the statement as

it is written right now. That is why I am leaning toward no recommendation. Although I would support voting it down.

Upon roll call the Planning Commission voted as follows:

- Carey Yes
- Clancy Yes
- Cole Yes
- Ewart Yes
- Johnson No
- Kane No
- Lobetti Yes
- Longmire No
- Pierce No
- Roth Yes
- Sharp Yes
- Stowers Yes
- Anders No

**MOTION CARRIED 8-5. NO RECOMMENDATION.**

**Concepts/Uses on Review:**

- \* **13. CHESTER COCHRAN PROPERTY 12-SA-11-C**

North side of Dutch Valley Dr., east side of Bruhin Rd., Council District 5.

STAFF RECOMMENDATION: Approve variance 1 and the Concept Plan subject to 5 conditions.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **14. DEER PARK 12-SB-11-C**

North side of El Camino Ln., west of Watt Rd., Commission District 6.

STAFF RECOMMENDATION: Approve variances 1-5, deny variances 6-7 and approve the concept plan subject to 13 conditions.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

**Final Subdivisions:**

- \* **15. THE CHURCH OF GOD OF THE UNION ASSEMBLY, INC. 6-SA-11-F**

At the intersection of Shipetown Rd and Mitchell Rd, Commission District 8.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- P 16. MILLERTOWN COMMERCIAL CENTER 9-SF-11-F**

West of Millertown Pike, south of Loves Creek Rd., Council District 4.

THIS ITEM WAS POSTPONED EARLIER IN THE MEETING.

- P 17. CARTREF ADDITION RESUBDIVISION OF LOTS 10 & 16 BLOCK A** **11-SB-11-F**  
South side of Sherwood Dr, west of Westland Dr., Council District 2.

THIS ITEM WAS POSTPONED EARLIER IN THE MEETING.

- \* 18. RESUBDIVISION OF W & L PROPERTIES LLC AND TRINITY UNITED METHODIST CHURCH** **11-SC-11-F**  
Southeast side of Palmetto Rd at northeast side of Western Ave., Council District 3.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* 19. W. JACKSON AVENUE PROPERTY** **12-SA-11-F**  
Intersection of N Gay St and W Jackson Ave., Council District 6.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* 20. MADGETT PROPERTY** **12-SB-11-F**  
West side of Washington Pike, south of Dunsmore Ln., Commission District 8.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* 21. FOREST PARK ADDITION RESUBDIVISION OF LOTS 26-29 BLOCK A** **12-SC-11-F**  
Southwest intersection of Dinwiddie St. and Rudy St., Council District 5.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* 22. RESUBDIVISION OF THE RAYMOND W OGLE JR PROPERTY** **12-SD-11-F**  
Southeast side of Rosewood, south of Millertown Pike, Commission District 8.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **23. WOODLAND TERRACE ADDITION RESUBDIVISION OF LOTS 5 & 6** **12-SE-11-F**  
South side of Buffat Mill Rd, east of Carsdale St., Council District 2.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **24. SILVER LEAF PHASE 2** **12-SF-11-F**  
Both side of Anniversary Ln, southeast of Skyline Dr., Council District 6.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **25. JOE MALCOLM MENCER PROPERTY** **12-SG-11-F**  
Northwest side of Westland Dr, southwest of Clover Hill Ln., Commission District 5.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **26. JAMES F KING FARM RESUBDIVISION OF LOTS 1-3** **12-SH-11-F**  
East side of W Ford Valley, South side of Chapman Hwy., Council District 1.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **27. FALCON POINTE RESUBDIVISION OF LOTS 106R & 112R1** **12-SI-11-F**  
North and south side of Sawgrass Road at current terminus, south of Sailpointe Lane., Commission District 5.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **28. MONTVIEW RESUBDIVISION OF LOTS 28-29** **12-SJ-11-F**  
West side of Windgate Street, east of Iskagna Drive, Council District 2.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- \* **29. RODGERS CADILLAC PROPERTY** **12-SK-11-F**  
South side of Kingston Pike, east side of Gallaher View Road, Council District 2.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

### **Rezoning and Plan Amendment/Rezoning:**

**30. FRED LANGLEY**

**9-A-11-RZ**

Northwest side Dutchtown Rd., southwest side Simmons Rd., Commission District 6. Rezoning from CB (Business and Manufacturing) / TO (Technology Overlay) to CB (Business and Manufacturing).

STAFF RECOMMENDATION: DENY CB (Business & Manufacturing) zoning. Retain the current CB zoning with the TO (Technology Overlay).

Arthur Seymour, Jr. 550 West Main Avenue here on behalf of Mr. Langley.

Jason Murphy for Lane Hayes.

Seymour: I have a little board here. I am here on behalf of Fred Langley. Mr. Epperson who is handing out maps here is with Fred Langley, Mike Groves here on the right is handing out maps. He also is with Fred Langley and can certainly answer any questions along with Mr. Epperson or me that you all may have. The request is simple. Mr. Langley's property goes from Simmons Road over to west here. Over half, the whole property is zoned CB under the County Ordinance. The property on the east side adjacent to Simmons Road has an overlay, the technology corridor overlay. The same lot that the western portion does not have the overlay on it. He is asking that the overlay be removed. This will not change the zoning. It will simply, in Mr. Langley's opinion, make it easier to sell and develop this property. He at one time owned a considerable amount of property. At the north end of the map you have in front of you is Murdock Road. Across the road is the U.S. Cellular property which is not covered by the overlay but a very nice development. Mr. Langley sold them that property and worked with them on that. To the east of that are the soccer fields that are owned by U.S. Cellular. Those properties that field is in the overlay. It has the overlay on it. There is a very nice building to the east that is occupied by Mesa Engineering. That property is in the overlay, very nicely done. There are two developments facing Murdock Road to the west that Mr. Langley at one time owned with nice office parks compatible with everything else along there. Those are not in the overlay. There is an argument I am sure that the overlay contributes greatly to the development of this property. Frankly if you drive along Murdock Road and look it really doesn't make any difference. It adds another layer of approval however for anybody developing the property. What really sets the tone for development along Murdock Road there is price of the property. It is expensive on

Murdock Road which Mr. Langley, by the way, dedicated to Knox County when Dwight Kessell was County Executive. He was a proponent for development along there and has been all along. So he is simply asking that you all remove the overlay from a portion of his lot here. It is not going to hurt anybody I assure you because Mr. Langley has holding power. He is not going to sell that property unless he gets his price. His price is going to determine what kind of development goes in there. There is some rumor that this has to do with a mulch operation. Mr. Langley did have a perspective tenant, an interim user who wanted to run a mulch operation there. He is the guy who contracts with the County and has the property on Solway Road. He got approval for the mulch operation there. He bought the property from the County on Solway Road and is not coming here. The property is vacant now and Mr. Langley simply wants to be able to sell the property as a whole and be able to tell a perspective purchaser what he can do with the property and not have the overlay on part of it and not on the remainder of it. The property is not within view of Pellissippi Parkway. It is about  $\frac{1}{4}$  of a mile away from Pellissippi Parkway. Removing the overlay will not affect the use. Mr. Langley is requesting that this overlay be removed from this property so he can assure a prospective buyer that he will have one set of approvals. Thank you very much.

Jason Murphy, 900 South Gay Street, Suite 900, Knoxville, TN. I here on behalf of Ms. Lane Hayes. Ms. Hayes is resident of Knox County. She also owns several pieces of property in the vicinity of this property, one of which includes property immediately to the east across Simmons Road. Mr. Seymour brought up some good points. One of the points that he brought up, of the points he brought up however I don't believe they justify removing this technology overlay from this property. Mr. Seymour's first argument was his property lies in a split zone. To illustrate that he passed out a subdivision plat that ironically was recorded just in 2005 it was also done by either, I think it was Mr. Langley's trustee Phyllis Brown. So it was knowing where the zoning lines were located he nonetheless decided to draw the boundary lines where he did. I know there was at one point some discussion by Mr. Seymour about well this won't affect any of the properties around it and in addition to that it can't be seen from Pellissippi Parkway. The problem it can be seen from several other pieces of property that on which millions of dollars have been spent that are in very short distances from it. Even if it cannot be seen from Pellissippi Parkway the purpose of this, it can be seen from these properties. It's important I think to keep in mind that the purpose of this corridor was to create a contiguous strip of property which could attract technology based uses made like a campus style approach. That is why when the State legislature passed the technology act back in 1983 they did apply it to just individual pieces of property. Instead they applied it in a corridor manner. That act was later ratified by the County Commission on a 2/3 vote. In fact it was required to be because it was a private act. Now Mr. Seymour also stated that Mr. Langley had concerns or as stated that he will not sell until he gets his price and his price is high. Well that may

be case. That may be his intention. I don't doubt that for a minute. What I do doubt is our ability to tell the future and how sometimes we have very grand plans but they go awry for one reason or another for things that we do not anticipate happening. For that matter if Mr. Langley is confident that his property will bring the price he demands, then there will be a limited number of uses one of which will be a very nice office space that can be used on that property and should not pose a problem to find a buyer who wants to use it for that purpose with the overlay on it. Getting back just a moment to his statement about the property being split, we had a meeting with the Tech Corridor authority on Monday, a hearing, and they suggested that perhaps we put, just expend the technology overlay over the remainder of Mr. Langley's property. After all if you look at lot 3 on the map that you were provided, that piece is also split zoning and yet it was developed into a very nice office complex. Finally I think the most important perhaps aspect of this is what kind of message are you sending if you approve Mr. Langley's request? He has no plan in mind. He has no purpose in mind and yet he wants this overlay removed. If you approve that, what happens to the next person that applies here and wants the technology overlay removed.

Anders: Mr. Murphy I think you had somebody else who wanted to speak and you are about to use up all the time.

Murphy: Thank you for the reminder Chairman Anders. What I would say is Mr. Kelly Millum. He was one of the founders of TCI that was purchased by Seaman and that is located just down the road from this property. They located in that corridor for that reason that is why they got there originally. That is why they are still there today. I guess I am out of time. Can I just finish that one thought before Mr. Millum? I think what is important to keep in mind is if you allow this to be taken out today with no purpose, no plan, what about the next guy that comes along. How can you turn him down? You can't because you don't need a reason. No longer do you need a reason to have your property removed from the overlay. For those reasons we ask that you deny Mr. Langley's request.

Anders: Before we go to Commission let's go to Mr. Brusseau. Mike if you would just talk about why we are recommending denial.

Mike Brusseau: Our recommendation for denial is pretty simple. It is basically application of the design guidelines which are required in the TO overlay. We feel the result has been an upgrade in the level of development in that area over the years. If this is removed from this property, basically it excludes this property from that same design review and that in turn would have a negative impact on the surrounding properties. I would agree with the opponents statement that it is also a precedent and that people could commonly come before us asking for the TO to be removed.

Anders: Before I go to Mr. Stowers I don't think it is a valid reason to change this just so it will make it easier to sell. I don't know that that is a valid reason.

Wes Stowers: I may have missed it but Mr. Seymour did Mr. Langley own this property before the overlay was put in place or did he buy it afterward?

Seymour: He did. He owned it before. He has owned property out there since the 60's or 70's. They say the 70's and the overlay went I believe in 1984.

Stowers: The overlay did split his property. He didn't buy it after the fact.

Seymour: Right and it split U.S. Cellular's property too. The soccer field. But he used to own that property also.

Buz Johnson: Just to, not to belabor the point, but just to add on to what Mike said I am speaking for what the Technology Corridor Authority discussed on Monday. I notice it was mentioned that you can't see this property from the parkway. You really can't see it from the interstate to the south. I might remind folks here if you have ever heard of the PetSafe Corporation you can't see that property from the parkway or from the interstate. I don't think. I haven't been able to see it and they have been undergoing for the last 3 or 4 years a multi-phase expansion. It is a very nice looking campus. It blends well, the architecture with the surrounding area. They have done some nice signage. That hasn't stopped the fact that they are in the corridor plus it is in what we have always termed the older portion of the corridor where you had businesses up in there for a long time. It's worked well especially in this area because in a lot of ways we have been able to upgrade, if you allow me to use that term, some of those developments that were there in terms of signage, in some cases it has been landscaping, in other cases it has been major renovations. If you don't mind me pointing out, Stowers Equipment is there. If you look at, you want to consider an industrial type of use, that is a good-looking, if you don't mind me using that term, industrial use. To me that would be an attraction point to locate in this area. There have been other projects too where we have dealt with split zones. Part of what I do is to work people through the process to help them navigate that process and make it as seamless as possible. We can work with split zones. That is not a hindrance. Again I preached the fact that over the years this has been one of the healthier parts of Knox County in terms of development. We have developed over 5 million square feet of space of all kinds of uses. It's an idea that needs to be maintained. If the notion is to reduce the technology overlay, we shouldn't do it piecemeal. We should do it based on some sort of comprehensive review of the entire area. We did that back in the early 90's. We, I don't recall the number, we took out a half dozen to a dozen properties on the edges of the overlay. But that was based on a

comprehensive look at the overlay, what it had done, the impact and several other factors. Tech Corridor voted 4 to 1 not to issue their certificate of appropriateness and following what Mike said, staff is recommending that you deny it as well.

**MOTION (CLANCY) AND SECOND (PIERCE) WERE MADE TO APPROVE STAFF RECOMMENDATION.**

Stowers: One thing that I would add though is the corridor has definitely worked where it was intended. But keep it is in straight lines drawn. I hope you have the flexibility where there is something where there is a split property on the periphery that doesn't impact the visual aspect from either Pellissippi or I-40. This thing there is some common sense just because there is a line there and it is on the edge but that splits some property by somebody who purchased it before this was put in. I am not talking about somebody that came in afterwards. If it is original it does limit to some degree that person's ability to sell it. That is all I will say.

Michael Kane: I am curious in not having the part of the development in the overlay zone district, is the visual aspect from I-40 and Pellissippi the only purpose for the Technology Corridor?

Buz Johnson: Back when the Enabling Legislation was established in 1983 the Technology Development Authority was a much broader organization. At that time they probably had a staff of about ten, today you are looking at the staff that remain. Due to lack of budgeting and so forth, they were not able today to do a lot of the marketing in terms of economic development activity, but we still have the land use control responsibility. The reason they added that piece to the overlay legislation was the old movie, they will come if you build it. Well in this case they will come if you build it in the right kind of way; if you make it look like an attractive kind of operation that's going to be one other thing that will attract people to locate here. In the early days the, the opposition attorney represents some people that in the early days developed the property in keeping with that initial thrust. It is one of several pieces that were added to the legislation. It is not only trying to get the businesses here, the good businesses, the high paying businesses; but also doing it in a way that as businesses come in they create a visual look that makes other businesses want to come in.

Anders: We might also add that we got several letters from other businesses in that area that had developed under those guidelines and that are opposed to this, removing this overlay.

Brian Pierce: I would just like to echo what Commissioner Stowers said. I think we need to keep in mind that we need to leave ourselves flexibility in a split situation to remove or add to the overlay. I think one thing we have to keep in mind is that we have got to have a plan and something specific to look at. It is very difficult to consider something like this on a blank slate. I think we

have got to have something to look at and look at what the needs of removing this overlay would be.

Anders: I agree with you 100 percent. I think we ought to have the flexibility. If Mr. Langley gets a buyer and he comes in and makes a proposal and we know what is happening, it makes it a lot easier to do some of those moves.

Bart Carey: Just real quick. The differences between application for CB versus TO Technology Overlay, I know there has got to be a review process. What are the costs... are there significant cost differences between those two applications?

Buz Johnson: IN this case there is only review application, that would be with the Tech Corridor Authority and the fee is \$375, which is a lot, relative to MPC fees, it is a lot lower.

Ewart: Mr. Seymour, is lot number 4 developed?

Seymour: No that is vacant also.

Ewart: That is in TO also. How come you are not asking to change that?

Seymour: It is not split like this lot is.

**MOTION CARRIED 9-4 (Ewart, Sharp, Lobetti, Stowers). DENIED.**

**31. DMS PROPERTIES, LLC**

West side Boruff St., north side I-40, south of Wheeler St., Council District 6.

**a. Central City Sector Plan Amendment**

From LI (Light Industrial) to HI (Heavy Industrial).

**12-A-11-SP**

STAFF RECOMMENDATION: Deny HI (Heavy Industrial)

Doug Campbell: 1801 First Tennessee Plaza. Counsel for the applicant.

Mike Brusseau: This request came about because there was storage of shingles going on at the site. There were complaints from citizens and City Building Official deemed its use as it is being conducted is not in conformance with zoning. They were informed that for shingle storage they would need to seek I-4 zoning on the property in order for that to be in conformance. That is just for shingle storage. That also because the I-4 is a Heavy Industrial zone that warranted the change on the sector plan. A sector plan amendment to Heavy Industrial also. Staff is recommending denial of both requests based on the fact that the area surrounding the site includes... the majority of the surrounding properties are residential although they are zoned I-3. Those residential uses would certainly be more negatively

impacted by I-4 zoning which allows much more intense use than even I-3. The street system that provides access to the site all goes through residential neighborhoods which is inappropriate for heavy truck traffic and hauling of materials in and out of the site. We looked up the amount of I-4 zoning available in the city and there is more than 1900 acres of I-4 zoned land and at least 400 acres of it is currently vacant. It is not like there is not a lot of land available for this type of use. Basically probably the biggest point is that it is not a good idea to change the zoning of a property which is permanent to I-4 for what staff deems to be somewhat of a temporary use. The storage of these shingles as we understand it has been brought about by the hail storms that occurred back in the spring. Shingles that are being ripped off these houses are being stored on site. At some point the flow of those shingles will come to an end. There is a process in the ordinance that allows consideration of a temporary use permit for uses that can be deemed temporary. We spoke to the building official about that. There didn't seem to be a whole lot of interest in doing that. That is another option, but the more obvious option is for them to find a site zoned I-4. It is certainly not a good option to recommend I-4 for that site and put that permanent zoning in for a temporary use.

Campbell: I may go first. This may pull the plug on a lot of this. I have talked briefly with Mr. Brusseau this morning. I just, what every lawyer loves, I got a call yesterday afternoon and thrown in the middle of a fairly complicated issue. It may be, I am going to ask the Commission and move to postpone this matter until I am able to get my arms around exactly the scope and potential resolutions to this that may or may not involve an application for rezoning of the property. Mr. Brusseau and I discussed briefly on voice mail back and forth and I looked at some of the potential resolutions that he mentioned. I don't see any prejudice to any part in delaying this. What is there is there. If it is a violation of some sort of existing code, then it is. There are procedures to deal with that. I represent the owners of the property. They are not the operators of the property. I have not had any discussion with the operators of the property. The owners of the property want to do the right thing. They want to make sure that the property is used in a way that is consistent with zoning. If it is not then they want to go through a legitimate, legal, regulatory process in making sure that the use there is done in some way that conforms with the applicable zone. We don't know what that process is at this point. So at this point I would just request a postponement until the meeting in January, I believe January 12 meeting of this Commission at which time we could report back as to what our progress has been. We are willing to meet with members of staff, with building officials, codes enforcement folks and any other interested parties to try to figure out a way to address this situation. I will save the rest of my time.

Anders: There is a cease and desist order on the property right now, on the activity on the property right now isn't there?

Campbell: I have no idea. Again I represent the owners and they have a lease with the operator that requires the operator to operate in accordance with applicable law. But I don't know the answer to that.

Brusseau: I can't say with 100 percent certainty that there is, but based on our meeting the other day with the Building Official that was my understanding.

Anders: But nothing else is supposed to be flowing onto this property right now.

Brusseau: As far as we can tell it is not. There is another site they operate it is. This particular one we don't think they area.

Campbell: Maybe I will reserve a little less. If there is we would expect everyone to comply with that. By delaying this for a month that doesn't really, that in no way affects the validity of that order. It just gives us a chance to make a determination as to whether or not this application would be appropriate or needed or needs to be followed up as the next move.

Anders: Mr. Donaldson and I were just having a private conversation that I want to make public. I said well the owner has a right to ask for a 30 day postponement without a vote and he clarified if done in advance.

Campbell: We looked at the rules and I agree. We didn't get our postponement application right in and the rules say basically that this body has to act on that as any other request.

Anders: Let's go to the opposition. You all took the time to come down here. If you would try not to repeat what the other one has said.

Mark Franklin: 1410 Boruff Street. I am opposed to having this zone rezoned. I also want you to know that the residents in the area are not very happy with the situation also. I continuously see operation of this. Operators are still dumping. As I came here today they had two trucks come by. I didn't take pictures. I should have. The other thing I am against the gentleman who asked for a postponement. I want you to vote on it today. I relinquish any of my time to this gentleman here.

Glen Shipman, I have property on 1726 Wheeler that backs up to this. I got the notice about a shingle storage. That is confusing. That is nothing but a dump. They got wood in there. They have got pallets and everything. It backs up to my property probably 50 foot tall. I asked the gentleman that was running to come down there and look at he. He said well I will put up an 8 foot fence. I said I will still see 40 foot. It has devalued my property as it stands. I have got 7 properties within 200 yards of that. Three of them you can visually

see it; the others you can't. Four of them is on Glider. That is the main access up to that dump. I own 4 out of 5 houses. All the day the trucks and trailers. It's an incline so the diesel motors are working hard. Anytime of the day you can go up through there and pick up a handful of roofing tacks. I have had 4 flats myself. I don't know where they came from. I don't even go that way no more. I need to be there to work on those 4 houses at times. I just come down the interstate to that real nice entrance we have got there on I40 and you look over and you see a dump that is representing Knoxville; a big nice Knoxville sign there. Before they had a tire reprocessing thing there and it was nothing but a mess. I know the guy's got to make a business, got to make a living; but this needs to be out somewhere. It is just too residential, too much traffic, too much noise. It has devalued my property as I said. I told the guy you are going to leave town with your money. I think that is what he done. I have not seen him in a while, the guy that was actually running it. He was making about \$8,000 or \$10,000 dollars a day. So they have made a fortune. Now it is in my face. Thank you.

Dwight Guinn, 1249 Monroe Street, 37917, Parkridge Neighborhood. My houses sits in an H-1 overlay within ½ a mile of this. One of the main accesses to this property for all the shingles has been Washington Avenue, Monroe Street, Boruff, Glenwood right through the heart of the Parkridge H-1 overlay. This is inappropriate rezoning and plan change in my opinion. Also I would prefer the Commission to hear this today. Thank you.

Gilbert Taylor: Me and my wife own the property at 7230 Wheeler. I have a picture. I didn't bring a picture for everyone. I object to it because shingle storage, because there is not a complete shingle anywhere. I would be happier if they referred to it as building waste. That is all it is a big pile of waste in the back of the property. I am also worried about the chemicals; the asbestos or whatever material that might be in waste shingle from 30 years from where the wind is blowing and everything. We have kids around there. Thank you very much.

Anders: Mr. Brusseau clarify for me. There is no ambiguity on this that is what is being done right there is not allowed in light industrial and I-3. Is that correct? Mr. Campbell I am curious about what you are trying to get your arms around. What exactly are you thinking about? It can't be there unless you get a zoning change. I don't see any justification for a zoning change. Tell me what you are trying to get your arms around in 2 minutes and 59 seconds.

Campbell: That is a legitimate question, what is going to change in 30 days. I don't know I may be back here in 30 days saying exactly the same thing. The point being from this time yesterday afternoon until now I have learned a great deal about what is going on there. The I-3 zone and in a lot of things that I have heard, I am not unsympathetic to it. My client is the owner, not the operator, of the property and is not unsympathetic to these concerns. But it is I-3

property. Big trucks come in out of there all the time. They probably drop things. The storage of coal and coke is permitted in an I-3 zone. The storage of shingles to be processed or ground up or otherwise disposed of is probably not. I would not say it is absolutely clear, but there certainly appears to be an issue in building, the codes enforcement thinks that is the case. If we ask for this rezoning there may be some justifications and some other reasons that we can come back and present to you folks that might change your mind. The problem and the reason, you say why are you asking for a postponement, the reason I don't know that I have identified what all of those arguments at this point might be. But the point I made earlier was that if we come back in 30 days there may be some issues that I can present to you that you can consider, but if I can't really what has happened. What has been the prejudice to anybody. If the codes today are being violated, they are being violated. I said that right off the get go. The person who is operating this facility needs to do so in accordance with city ordinances and applicable law.

Anders: I understand. I heard everything you just said. I didn't hear anything that said there was anything in you mind that would change the situation.

Campbell: What I did say is in the last 20 hours I have not been able to identify, because I haven't had the chance to review the appropriateness of asking for a rezoning change from I-3 to I-4. Nor have I been able to talk with the Building Officials, Code Enforcement as to whether a temporary permit might be operated. That is possible in this zone as you all know. We could get a temporary use.

Anders: Did the owners of this property not know what was going on here?

Campbell: The owners of this property as many landlords lease the property. It had previously been, and I will digress somewhat, it had previously been had somewhat of a checkered past, it had been a tire reclamation facility turning used tires into mulch and there were some incidences occurring on the property that brought it to the attention of various folks. Again they expect their tenants in the leases that I prepare for them to use the property in accordance with applicable law. The owner is here and very much concerned there is an issue with what is going on there. These owners are local. These operators, I don't know them I wouldn't know them if they were here, these owners are not going to go anywhere. They are not taking the money and running, but they would like to have the ability to utilize their industrial property for industrial uses and between now and next month we may say, hey you didn't consider this. All we are asking for is a chance to do that with the relief on my part that no one will be hurt by doing it.

Anders: That is duly noted. I am not very sympathetic.

Clancy: First of all nobody seems to know if there is a cease and desist order. Go head Arthur.

Arthur Seymour, Jr., I represent people in the waste handling industry who do things by the book. To get a site like this permitted it will a permit from the State of Tennessee and local Knox County. Rezoning this property isn't going to make the use legal. He has gotten notices from the Department of Environment and Conservation telling him to cease work there. I don't know whether he has gotten the second one or not. But he has no permit from TDEC solid waste division. He has no bond with the State of Tennessee as a waste processing handler must. The guy is completely out of bounds. Changing the zone isn't going to make this legal at all.

Clancy: Which is what I was going to say after I got finished with the cease and desist.

Anders: If you are going to make a motion, please wait a moment. I apologize to this lady. She has been waiting to talk and I moved over to Commission and I know you have something to say. So please. I apologize ma'am.

Lisa Franklin: 2306 Wheeler Street. My property on the side faces Boruff Street. We had the horrible pile three years ago in April 09. These people they are recycling tires. Now I am sure they are recycling shingles. It is the most dangerous thing you have ever seen. My husband and I are in our 80's. We bought this property years ago before he was sent over seas. He came back and retired and it is the only place we have. Now we have tried to get, since we have been there a while we have acquired several small houses to rent out to supplement our small retirement income. I think people that live there should not be exposed to such mess, such a horrible site and all those piles. It took your breath away. It is a huge black cloud and my husband has fought in combat for three years and made the invasion of Normandy. He is now incapacitated because he was on the front line for three years and now he has got to take this... crap. Excuse me.

Anders: I appreciate your restraint ma'am.

Clancy: Arthur made several of my points. The owner of the property I think has made a dubious decision here. It appears to me that it doesn't matter what we do. It doesn't matter if we approve, deny, postpone. It is not going to go away tomorrow. I came into this meeting hoping that I could find out was there actually a chance that this was going to be ground and recycled. But when you think about what liquid asphalt is worth, where it would have to trucked to, what you would have to ship out of it, I am pretty sure that pile is going to be there one way or another for a long time. How do we stop it from getting back in there? Nothing we do at this council will

do that. Postponing I don't see any merit in postponing. Denying I really I don't see a whole lot of ground gain there, but that would be what my motion would be is to support the decision to deny the rezoning, obviously we cannot rezone this piece of property. Obviously there is nothing we can do to keep, help protect these people. We don't have any key. We don't have an MPC police person to go out there and tell them no, no, no, stop doing it. I would assume there is a cease and desist order that is being violated right now. That is going to have to be addressed through the codes people. I make a motion that we deny. I know a lot of other people want to speak. I really was hoping we would be able to find some way to temporarily let them operate as long as they were grinding and recycling, but I have no, I am not that naive. I think they were here. I think they are gone. I hate it for your client. I think he has been had. I think the neighborhood is paying the price. I don't think he did it maliciously. I think he honestly believed these people were going to come in and recycle this stuff, but I am pretty sure this is going to be a mess that is going to go on for a long, long time. I hate that there is not any more that we can do for the neighborhood.

**MOTION (CLANCY) AND SECOND (STOWERS) WERE MADE TO APPROVE STAFF RECOMMENDATION TO DENY.**

Anders: Well we certainly can do a small part by not rezoning this to I-4. That is what we can do. That is my opinion.

Jeff Roth: I don't know anybody here would think it is a bad idea to recycle used shingles. I don't think after looking at the zoning myself that even rezoning the property will allow this to happen. I think the owner of the property is making an attempt to try to do the right thing legally. I think in this particular instance it is not a good idea to rezone the property. I don't think that it would make a difference any way.

Wes Stowers: I have personally been out there and it is a dump. We deal with a lot of companies, possibly including this one, I don't know, but who do it right. They are violating laws and it is a serious blight on this neighborhood. This is a clear case of enforcement that is just not getting done. That would be a signal I hope that staff will get back with the appropriate agencies and tell them to do their job. There is no way this is going to be out of there anytime soon. It is a mountain.

Bart Carey: Basically this point is just echoing the last two comments. Recycling is, this is one of the greenest ways to repurpose and recycle a product. It is a great concept and takes something out of the landfill and puts it on, it is a roof to road process. That is what it is called. It has got huge merits. We all know it is just in the wrong place. I think the issue coming forward is what you do with a 50 foot mountain of shingles. They were never going to take them out of there. They were going to be reground on

site. That was going to be a whole lot more disruptive to that neighborhood. When that grinder starts running at 7 in the morning and runs till whatever time. Noise, dust all kinds of situations going on there and more and more shingles coming in. I think the big problem, I am going to vote to deny, the big problem going forward is what you do with this, as Dan said, this big pile of shhingles.

Anders: I don't know the legality of it, but I would like to the owners, if the operators can't clean it up, I would like to see the owner have to clean it up.

Carey: I think that is where it is headed.

Campbell: Again I think there has been a lot said here that may or may not be accurate. I don't think anyone here has any malicious intent toward the owners of the property. I appreciate the comments that the owners appear to be doing the right thing because they are. Mr. Seymour represents the potential competitors, so that is neither here nor there. Whether or not these folks have the proper permits, whether or not cease and desist orders have been issued, I don't know. I know the intent was when this property was leased that it would be leased and these shingles would be brought there, equipment was to be obtained. It has not yet been obtained due to some backorders. This is information I got yesterday. But the point is it is not a very pretty green technology. It looks pretty ugly on the front end. It is not a bad idea. If this can't be done in I-3 and it can't be done in I-4, I am not sure where it can be done in the city. I do think it can be done in I-4 though it may be a use on review. Again I won't belabor this but I just wanted to point out that again we're only asking to keep our options open such that this industrial property, which is still industrial and I appreciate this not in my backyard sentiment of these folks who are living next to this site, but it is still industrial property.

Michael Kane: I just want to know. Has your client sent any letter to the operator saying for them to desist in terms of operating any legal activity?

Campbell: This is so fresh to them and again I don't think it is particularly unusual for landlords...

Kane: How can it be fresh to them if they made the application for the rezoning?

Campbell: The, as you might appreciate the process, sometimes tenants will say we have, we need you to do something for us. The landlord is not making a determination as to whether or not the operation is consistent with I-3 or I-4. The landlord is trying to help the person paying him or her rent to do something in a business, commercial fashion but that is legal. That is why I am here.

Kane: That sounds like the owner doesn't really understand what is going on in his property and is just doing what the operator has asked him to do.

Campbell: I wouldn't be here if the owner wasn't concerned about what is going on his or her property. They have become very concerned. They just did not realize that, as you guys know, many time when people like me are standing here asking for rezoning it is not to do something like grind up asphalt shingles it is to do something all nice and pretty. But that doesn't mean the owner has any particular knowledge. They just want their tenants to be able to do what they want. In this case it is not nice and pretty, but still the owner now having learned that there may be an issue has said go over and ask that we be able to step back and review this and see if there is something that can be done in the next 30 days. The owners is very concerned. Why? Because of the things that have been said here that I don't know to be true, cease and desist orders, allegations that a landfill is being run on the property on an unpermitted basis, all these things are a lot of concern to my client. They don't want that any more than you folks do.

Kane: We have in our packet two letters from the Tennessee Department of Environment and Conservation basically saying there is illegal activity. I don't know if you have seen these letters or not.

Campbell: I haven't had the benefit of them.

Becky Longmire: I guess the thing concerns me is not the asphalt shingles. You can't take off roofs of old houses and have strictly asphalt shingles. You are going to have asbestos. You are going to have fiberglass. You are going to have a lot of things. Has the owner even seen what is going on there?

Campbell: I can't speak to that. I really don't know as I stand here right now.

Longmire: But you say the owners is local.

Campbell: The owners are local, yes. Absolutely and they are not going anywhere.

Longmire: And they are very concerned about it, but you don't know if they have seen what is going on.

Campbell: The premise of your statement was that there was potentially asbestos. The owners have not tested any of that material. When you drive by it it looks like piles of building materials that have been torn off of a roof, which is exactly what they are. The owners are concerned about the potential for materials to be there that might be inappropriate, but we don't know as we sit here today that that is the case. I am not trying to be disingenuous. It is

just that I want to be very clear that you can be concerned about something, but not have knowledge of exactly what is present.

Longmire: I am like you I don't have knowledge, but I am very concerned about the materials that are there.

Laura Cole called for the question to take a vote.

**MOTION CARRIED 12-1. DENIED.**

**b. Rezoning**

**12-A-11-RZ**

From I-3 (General Industrial) to I-4 (Heavy Industrial).

STAFF RECOMMENDATION: Deny I-4 (Heavy Industrial)

**MOTION (CLANCY) AND SECOND (STOWERS) WERE MADE TO APPROVE STAFF RECOMMENDATION TO DENY. MOTION CARRIED 12-1. DENIED.**

\* **32. GERALD BOORSE** **12-B-11-RZ**

North side S. Middlebrook Pike, south side N. Middlebrook Pike, west side Henson Rd., Council District 2. Rezoning from I-2 (Restricted Manufacturing and Warehousing) to C-6 (General Commercial Park).

STAFF RECOMMENDATION: Approve C-6 (General Commercial Park)

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

\* **33. SCOTT WILLIAMS** **12-C-11-RZ**

South side Old Clinton Pike, northeast side Meredith Rd., Commission District 6. Rezoning from PR (Planned Residential) & RB (General Residential) to A (Agricultural).

STAFF RECOMMENDATION: Approve A (Agricultural)

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

\* **34. HARVEY BUDDY BOWMAN** **12-D-11-RZ**

Northwest side Dutch Valley Dr., northeast of Lavaun St., Council District 5. Rezoning from R-1 (Low Density Residential) to R-2 (General Residential).

STAFF RECOMMENDATION: Approve R-2 (General Residential)

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

\* **35. SAMUEL J. FURROW** **12-E-11-RZ**

East side Simmons Rd, north side I-40/75, south of Lexington Dr., Council District 2. Rezoning from C-6 (General Commercial Park) / TO-1 (Technology Overlay) to I-3 (General Industrial) / TO-1 (Technology Overlay).

STAFF RECOMMENDATION: Approve I-3 (General Industrial/ TO-1 (Technology Overlay)

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

## Uses on Review

**P 36. REV. ALAN SMITH**

**11-A-11-UR**

South side of Dutchtown Rd., west of Rennboro Rd. Proposed use: Expansion/addition to church and school facility with after school care in A-1 (General Agricultural) District. Council District 2.

THIS ITEM WAS POSTPONED EARLIER IN THE MEETING.

Commissioner Robert Lobetti left the meeting.

**37. THE ENCLAVE PHASE 2**

**12-A-11-UR**

Northeast side of Greenland Way, south of Hardin Valley Rd. Proposed use: Apartments in OB (Office, Medical, and Related Services) / TO (Technology Overlay) District. Commission District 6.

STAFF RECOMMENDATION: Approve the development plan for up to 96 residential units for the second phase of an apartment complex subject to 8 conditions.

Commissioner Brian Pierce recused from discussion or voting on this item.

Jim Doss: 1201 Coral Lane. My grandson and my son and I own this property. We applied for development on this land back before the recession started. This piece of land was zoned for a grocery store. Because of the way the economic are and everything I have decided to add onto the apartments that I already have there. We can meet everything in this list of items except number 7. When I built my first apartments, I got permanent financing on it from Lincoln Financial. They have a first mortgage on it, so I can't combine all three of these properties at this time. I tried to get lot 7 and the joint permanent easement put together which would have made everything below 12 units per acre, but there was an MPC ruling that I couldn't do that. I guess what I am doing is telling you that I can meet all the requirements besides number 7, but I will not sell this development as separate items. When and if I sell this, and I hope I don't have to sell it anytime, it will be sold as one unit. That is the reason I am having the fence moved down, excuse me the gate, the gate moved down on the joint permanent easement and we have amenities from both sections are multiple use. It is written into the laws and stuff that whoever is in phase II can use the swimming pool and stuff in phase I and whoever is in phase I can use stuff from phase II. The plans are definite plan is to make this one unit when I can. I can't do that, I can either do this. When the second set of apartments are full, I can go to Lincoln Financial and see if they want to finance the second part. If they don't want to finance the second part, I will have to get another

person to finance that then I will have two people financing it. I will do that until such time as I sell it. As I say my plans are to never sell it.

Tom Brechko: The issue that you have is the sector plan for this area recommends a maximum density of medium density residential which is less than 12. To go 12 or more to high density designation it would require a sector plan amendment to make that change. However, in this sector and a number of them in the County there is no high density designation as a use on review. Although it could be there medium density is the highest. So the situation he is running into is that the site specific parcel here is over the 12 du's per acre, in fact it is a little over 13 du's per acre. So the sector plan does not support the density. By allowing consideration of use on review for them to go above the 12 or above, we felt the only way we could do that was the condition that the parcels be combined together where that total acreage of the two parcels and the joint permanent easement being added in with it puts them below the 12 dwelling units per acre which we can support. It is the condition that does that. The reason we made the ruling about eliminating the joint permanent easement to two separate parcels was that the property in the back would not have a legal access under the subdivision regulations without the joint permanent easement. Anytime there are easements off of a joint permanent easement it is considered an extension of that permanent easements. If there was a public street that that came off of then they could do just an exclusive easement to the property in the back. It creates a problem for them. Overall the combining or not combining the properties doesn't change the density that would be out there, but it brings it in compliance with the sector plan by giving the average they need based on the total units to be under 12 dwelling units per acre. He has the option of requesting a sector plan amendment to allow it, but I am not sure what staff's position would be on going to a high density residential designation for that property.

Anders: I don't want to sound dense here, but does this really have a material affect in that area for this property or is this crossing T's and dotting I's? I know that is a very broad question.

Brechko: There is a broad answer. The site specific parcels would not comply with the sector plan without combining them together. Whether you combine the parcels together or you don't, in reality you will have the same number of units out there on the property.

Anders: My question is so what unless it is a precedent issue.

Brechko: We are not going to recommend to go a density that is in violation of the sector plan. That is where our position is from.

Donaldson: Right now the subdivision regulations don't allow us to county the land within the easement as part of the lot that is used to calculate density.

Brechko: For the specific site there is a little over 13 dwelling units per acre. The other issue is the zoning allows consideration through a use on

review of 12 or more dwelling units per acre, but the sector plan in the county for this area does not support anything over that. The zoning allows you to consider, but the sector plan doesn't support it.

Becky Longmire: We have to have a reason to change in the sector plan.

Brechko: There is not a request.

Longmire: No. but if where we usually have to have a significant change in order to make a change in the sector plan. There has not been a change?

Buz Johnson: I don't know, we have not really examined it on the basis of approving the sector plan. We haven't gone into that kind of examination.

Michael Kane: I was just trying to think about, is there a way, obviously he could reduce the number of units to stay within the limits. That is an option. But barring that you mention the issue with the joint permanent easement and the access, is there some kind of variance from the Board of Zoning Appeals or anything like that that he could get that would essentially allow him to have the number of units he is wanting and have the access or essentially have a variance from the access issue?

Brechko: Well the zoning district requires if you have 12 or more dwelling units per acre you have to go through the use on review process. The application for the use on review criteria...

Donaldson: The provision about not using the land and easement as part of the calculation is in the subdivision regulations right?

Brechko: Well the joint permanent easement is not a part of this lot. It is a separate parcel from the lot that the apartments are on. It is not a part of the land area that they can use for the calculation.

Kane: I was just drawing on what staff said.

Doss: Not being disrespectful but it is that dot the I and cross the T. The joint permanent easement runs all the way to Hardin Valley. I don't know why we are here. This is the simplest thing in the world. It is just a case of, from day one when I went in and I told them I would like to change this from a grocery store site. In fact the grocery store site has more traffic than what I have got provided. That is in the traffic study. I asked them from day one. What do I have to do? What can I do. How do I do it. That is how we got here. I have followed every step that Commission has wanted and I am lost. I can change it. I can make one of the buildings smaller. If that is what I have to do...

Kane: As I understand we as Commission only have two options here in terms of the zoning. One is we can approve it as is which you say you cannot implement because of your mortgage situation and liens on the property or it has to be resubmitted for a sector plan change. That is my understanding is that correct. Those are our only two options legally. Is that correct? Because we cannot change the sector plan here now, we

can't do that. We can approve it as it, but he can't implement it so it does not do him any good. We could approve it but that would be worse for him because it is a requirement for him to do something that he can't do toward his lien. So it seems to me that we only have two options. I just want to make sure that is clear in my mind. His option is to make an application to have a sector plan change or to reduce the number of units he has to keep it under 12.

Johnson: I think most of our discussions have been with his surveyor. We talked about this. It wasn't something that we took likely or spent a small amount of time on.

Doss: I never meant that you took it lightly.

Johnson: I know. What I am getting to is it was complicated. We kept coming back to the fact there were no easy answers other than coming up with a proposal. We want this to go, but we have got this hang up.

Kane: The problem is there was a data point you guys didn't have when his recommendation was put together about the lien basically.

Doss: No that has been known from day one.

Art Clancy: Alright we can't approve this as per staff recommendation without item number 7 because it violates the sector plan. The only option we have is to approve it with what two less units per acre. At that point can he submit or ask for a variance is there something he can come back and do once we approve it with the lower density, but he can come back and get that changed?

Brechko: If I may. Right now they have plans to build three of the four buildings. They are allowed to do that by zoning by right. It is the fourth building that creates the issue. In looking at the criteria whether or not this is in compliance with the sector plan, and I don't know if you want to consider something like this, again our position is that it is not on a site specific basis we are evaluating this site but whether or not it is meeting the intent when you look at the overall property that again it is the technicality of combining the properties together or not. It doesn't change the number of units that are out there. I don't know if you want to take the position in stretching the interpretation of how that sector plan density applies. If it meets the intent or if overall it is under, we are going more by the letter that on that site it doesn't but if you combine it all together you could. The issue of approving this with that condition, a lot of times we approve projects that they don't building everything at one time which allows them to move forward and at some point in the future they may build the fourth building. I think they wanted to build them all at the same time which creates part of the problem for them. They could phase the project going in and it wouldn't be an issue until the point where they get to that last building.

Clancy: But at that point you are saying technically we could approve it with the exception of item number 7 on our interpretation of the sector

plan that it is one piece of property which the developer has stated it is intended as one piece of property and will be sold as one piece of property. I know we don't get any guarantees with that.

Doss: I will be glad to certify that in any way. I will file it in court.

Clancy: I am going to make a motion that we approve the development plan for up to 96 residential units for the second phase of an apartment complex subject to 7 conditions excluding condition number 7.

Donaldson: Mr. Clancy would consider putting into that motion that you consider the development project whole?

Clancy: I consider the development project as all one project considering that the amenities are going to be shared by all the other development parcels I would consider that as one development in light of how it is being presented.

**MOTION (CLANCY) AND SECOND (JOHNSON) WERE MADE TO APPROVE STAFF RECOMMENDATION EXCLUDING CONDITION NUMBER 7 AND CONSIDERING THE DEVELOPMENT PROJECT AS ALL ONE PROJECT. MOTION CARRIED 11-0-1. APPROVED AS AMENDED.**

\* **38. JOHNSON ARCHITECTURE, INC. 12-B-11-UR**

Northwest terminus of Pet Safe Wy., southwest side of Cogdill Rd. Proposed use: Business and parking expansion in PC (Planned Commercial) / TO (Technology Overlay) District. Commission District 6.

STAFF RECOMMENDATION: Approve the request for parking expansion as shown on the development plan subject to 5 conditions.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

**Other Business:**

**39. Consideration of Election of MPC Officers for CY 2012. 12-A-11-OB**

Robert Anders: Pursuant to Section IX, Article 4 of MPC Bylaws the Chair and Vice Chair of MPC are to be elected at the December meeting. At the November meeting Becky Longmire was nominated to serve as Chair and Bart Carey was nominated to serve as Vice Chair.

**MOTION (CLANCY) AND SECOND (COLE) WERE MADE TO APPROVE ELECTIONS. MOTION CARRIED 12-0.**

**Adjournment**

**MOTION (CLANCY) WAS MADE TO ADJOURN**

There being no further business, the Metropolitan Planning Commission meeting was adjourned in order after 4:00 p.m.

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Prepared by: Betty Jo Mahan

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Approved by: Mark Donaldson, Executive Director

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Approved by: Robert Anders, Chair

NOTE: Please see individual staff reports for conditions of approval and the staff recommendation.