



Suite 403 • City County Building
400 Main Street
Knoxville, Tennessee 37902
365 • 215 • 250 C
FAX • 215 • 206 E
www.knoxmpc.org

Minutes

October 11, 2012

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

The Metropolitan Planning Commission met in regular session on October 11, 2012 at 1:30 p.m. in the Main Assembly Room, City/County Building, Knoxville, Tennessee. Members:

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|-----------------------------|---|--------------------------|
| Ms. Rebecca Longmire, Chair | | Mr. Michael Kane |
| Mr. Herb Anders | A | Mr. Nate Kelly |
| Mr. Bart Carey, Vice Chair | | Mr. Charles F. Lomax, Jr |
| Ms. Laura Cole | | Mr. Brian Pierce |
| Mr. Art Clancy | A | Mr. Jeff Roth |
| Mr. George Ewart | | Mr. Jack Sharp |
| Mr. Len Johnson | | Mr. Wes Stowers |
| | | Ms. Janice Tocher |

* Arrived late to the meeting.

** Left early in the meeting.

A – Absent from the meeting

1. ROLL CALL, INVOCATION AND PLEDGE OF ALLEGIANCE

* **2. APPROVAL OF OCTOBER 11, 2012 AGENDA.**

THIS ITEM WAS APPROVED ON CONSENT.

* **3. APPROVAL OF SEPTEMBER 13, 2012 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

COMMISSIONER LEN JOHNSON RECUSED FROM VOTING ON THE POSTPONEMENTS.

William Mays: Would like for number 7 & 8 to be heard.

MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO POSTPONE ITEM NO 28 ONLY. MOTION CARRIED 12-0-1. POSTPONED UNTIL THE NOVEMBER 8, 2012 MPC MEETING.

Automatic Withdrawals Read
None

WITHDRAWALS REQUIRING MPC ACTION
None

REVIEW OF TABLED ITEMS

METROPOLITAN PLANNING COMMISSION 8-A-08-OA
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.

WILSON RITCHIE 3-F-10-SC
Request closure of Lecil Rd between Asheville Highway and N. Ruggles Ferry Pike, Council District 4.

METROPOLITAN PLANNING COMMISSION 6-A-10-SAP
Ft. Sanders Neighborhood District Long Range Planning Implementation Strategy. Council District 1.

METROPOLITAN PLANNING COMMISSION 7-C-10-SP
Central City Sector Plan Amendment as recommended by the Ft. Sanders Neighborhood District Long Range Planning Implementation Strategy. Council District 1.

WILLOW FORK - GRAHAM CORPORATION
a. Concept Subdivision Plan 11-SJ-08-C
Southeast side of Maynardville Hwy., southwest side of Quarry Rd., Commission District 7.

b. Use on Review 11-H-08-UR
Proposed use: Retail subdivision in PC (Planned Commercial) & F (Floodway) District.

HARRISON SPRINGS - EAGLE BEND DEVELOPMENT
a. Concept Subdivision Plan 4-SC-09-C
Southeast side of Harrison Springs Ln., northeast of Schaeffer Rd., Commission District 6.

b. Use On Review 4-D-09-UR
Proposed use: Detached dwellings in PR (Planned Residential) District.

TIPPIT VILLAGE - SITES TO SEE, INC.
a. Concept Subdivision Plan 9-SA-10-C
Northeast side of Andes Rd., north of David Tippit Wy., Commission District 6.

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 Rd., 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

MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO TABLE ITEM #19. MOTION CARRIED 13-0. TABLED.

CONSENT ITEMS

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

COMMISSIONER MICHAEL KANE RECUSED FROM THE CONSENT LIST.

Arthur Seymour, Jr. asked that the South County Sector plan Item 11 be heard.

MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO HEAR THE CONSENT ITEMS AS READ EXCEPT ITEM #11. MOTION CARRIED 12-0-1.

MOTION (CLANCY) AND SECOND (EWART) WERE MADE TO APPROVE CONSENT ITEMS AS READ EXCEPT ITEM # 11. MOTION CARRIED 12-0-1. APPROVED.

Ordinance Amendments:

5. **KNOXVILLE CITY COUNCIL (REFERRED BACK TO MPC FOR RECONSIDERATION)**

1-A-12-OA

Amendments to the Knoxville Zoning Ordinance regarding definitions, standards and locations for funeral establishments, crematories and related facilities.

Mark Donaldson: Many of you will remember this from several months ago. This is our second crack at making a recommendation to City Council. Our previous recommendation created a path by which we could review facilities for cremation as they went into existing establishments funeral establishments after a workshop by City Council they did not like that idea and gave us fairly specific menu to consider and I will walk you through all of those. Essentially it is to manage future funeral establishments through a use on review process and limit future crematories to industrial the I-4 industrial zone district and some other standards that we will go through as we go through the specific exhibits. The impact of that is to essentially grandfather in the right of existing funeral establishments to install facilities for cremation at their existing locations without further review which is something that we were trying to create with our first recommendation. In your packets are a number of exhibits. Exhibit A simply highlights where a variety of terms are used within that current zoning ordinance all revolving around funeral establishments but using a multitude of different terms ranging from undertaking establishments to mortuaries to funeral homes. We will address that in Exhibit C. Exhibit B then creates new definitions for the zoning ordinance regarding those terms associated with funeral establishments, cemeteries and crematories. Exhibit C shows where we are eliminating the old use of terms and installing the term funeral establishments to replace those. The biggest in of interest in Exhibit C is that in Article 4, Section 2.2.1 which is the Office, Medical and Related Service zone district we are striking the term undertaking establishments and funeral homes from uses permitted and in this case not replacing it which is a direction from City Council. Our previous recommendation had been to simply replace those existing terms with funeral establishments. So then in the C-3 zone district we are removing funeral homes from a use permitted and replacing funeral establishments as a use permitted on review. In C-4 we are establishing funeral establishments as a use

permitted on review doing the same in C-6 and in a couple of other sections of the code simply replacing old terms with the new term funeral establishments. In Exhibit D which is added language to Article 5, Section 4, which deals with accessory uses, buildings and structures. It is a place in the code where a variety of accessory uses are specified for different principal uses. We are adding indoor columbarium and outdoor columbarium and memorial gardens for interment of cremated remains to the list of accessory uses for churches, chapels, temples or synagogues. And then we are creating a new section for cemeteries and adding crematories which was a direction from City Council, indoor columbarium and outdoor columbarium and memorial gardens so that those types of uses can be located in conjunction with a cemetery Exhibit E is the section on uses permitted on review which establishes general criteria and then specific criteria and standards for a variety of different uses that are permitted on review. The first section there is under the cemetery already has several standards established and we are adding to that indoor columbarium, outdoor columbarium, memorial garden as uses related to a setback there. And then we are adding crematories constructed accessory to a cemetery with the provision that they be located no less than 500 feet from the nearest property line from an existing school, park, daycare center or residence to bring that into review in establishing some criteria for a use permitted on review for cemetery. And then we are adding funeral establishments to this section and creating some criteria for the review of a facility for cremation as part of the funeral establishments in the future related to a distance requirement from existing schools, parks, daycare centers or residence of 500 feet. That there be only a single facility for cremation in a funeral home and that that facility occupy no more than 33% of the floor area. That is the section on criteria and standards for uses permitted on review. Exhibit F shows where we are adding crematories and animal crematories to the list of uses permitted on review in the I-4 zone district. We did receive just yesterday a letter from Fountain City Town Hall with a page of requested changes. I would like to address some of those; one related to the definitions. The definitions that staff has provided to you reflect those that have been used by a couple of other communities in Tennessee as well as in Charlotte, North Carolina. Particularly the definition for crematory and the definition for funeral establishments; the Town Hall has recommended some changes there. They have requested that we consider not listing crematories as a permitted as part of a cemetery. If I am reading this right "to prohibits crematories in cemeteries" which frankly surprises me because it was a member of the audience at the workshop for City Council that is in the audience that made that suggestion to City Council that they all seemed to be in favor of. We probably will have to talk about that. Then there was a question about listing the standards for funeral establishment as a use permitted on review rather than as standards for crematories as an accessory use. Exhibit E does in fact do that. Exhibit E is

the section for uses permitted on review. It specifically lists those standards for funeral establishments as a use permitted on review. I will turn it over to you for discussion.

Art Clancy: What is the reason behind, if Fountain City Town Hall or somebody here can explain your reasoning about why you don't think it should be a permitted use in a cemetery.

Carlene Malone: Thank you I am Carlene Malone. I am said person from Fountain City Town Hall who spoke at the workshop. I live at 351 Fountain Road, Knoxville, TN 37918. I am here representing Fountain City Town Hall. The reason we asked that it not be, that it be prohibited in a cemetery is a lot of cemeteries are zoned R-1. Those in Fountain City for instance are zoned R-1. It seems to use odd to have a facility, this is a free standing crematory, really quite an industrial use, requiring use on review approval in I-4 or part of the cemeteries use on review. So that was our reason for our position there. Regarding what I said at the workshop what I believe I said was we wanted crematories and cemeteries dealt with by the City. We did not say we wanted them to be allowed or not allowed or a use on review or not a use on review or an accessory or anything else. We just said we want them dealt with. We happen to disagree with the way it is being dealt with. We would therefore suggest prohibition. Regarding our comments let me just say one more thing it is my understanding from the law department from the workshop and from Council members that having made a facility for cremation a use on review in a funeral home did not, would not because of law suits that were filed in West Tennessee, would not have required use on review approval for existing funeral homes in the City of Knoxville. That is something that was said earlier by the Director with which we disagree. My presentation is simply this we appreciate the work that has been done. We appreciate the changes that have been made. You have copies of our recommended changes. We ask that they be made part of the record. I have a copy which I will be happy to circulate. I know there is at least one other person who wants to speak. If you are going to ask me any questions, can we stop the clock so his time is preserved?

Longmire: We can. We don't take off for questions. Did you say there was another person who wished to speak? Is there anyone else besides this gentleman? You have 2 minutes and 45 seconds.

Randy Kerr, Fountain City resident, 4016 Sam Cooper Lane, Knoxville, TN 37918. Prior to the August workshop there were some recommendations that were made to the City Council and MPC regarding some reporting requirements for these establishments that are going to have crematoriums. The recommendations include a requirement that cremation facility operators submit an annual report to the City with a copy to the Knox County Air Quality Board certifying that the facilities is

operating in compliance with applicable zoning standards and their operating permit. This requirement was not incorporated into the proposed standards. I would like to request that MPC reconsider that request for the following reasons. I think enforcement of these standards would be enhanced by requiring the facilities to review their operations annually and self certify that they are operating in compliance with the standards and their own operating permit. In the case where a facility is operating a crematorium as an accessory use the report would require that the information be submitted to document compliance with conditions of accessory use. Also self certification by the operators would provide the information necessary for the City and County to quickly and efficiently verify compliance. Without a reporting requirement tracking, verifying and enforcing these compliance standards is going to be extremely difficult. I hope MPC will reconsider this request. Thank you.

Mr. Donaldson: Elsewhere in the Knoxville zoning ordinance there is a section on performance standards. There is language throughout authorizing the Building Official when issuing permits to require that sort of recording at any time as part of the permitting process and then as part of any ongoing enforcement of that permit. It is probably not an appropriate place in this section of the zoning ordinance to call that out. We certainly could as new funeral establishments come through the process and information is updated and as laws change and data is created and captured by various agencies address that through the use on review process. But it is going to change. It is my feeling there are sufficient authorizations elsewhere in the code to require just that sort of thing with any use that requires a permit.

Longmire: I will say that in other industrial things as a Commission when it comes to us as use on review we do often require reports and standards. Any other questions or comments?

Michael Kane: Did you want to go onto something else? I had my light on. Ah you can't see the light. Sorry. I wanted to make a few comments. I appreciate the work that has been done on this. This has obviously been a very long process and a lot of changes were made out of the result of City Council's workshop. I did want to review a couple of things and make sure I had my understanding correct from Agenda Review on Tuesday. One again the interpretation from the City law director is that crematorium is an accessory use to a funeral establishment. Correct.

Donaldson: The opinions are that crematories and funeral establishments are essentially one and the same.

Kane: It is not even accessory. It is essentially a natural part of that operation. Right:? I guess one of the definitions that for funeral establishments it doesn't really even recognize that I guess in terms of what our proposal is. Is that correct?

Donaldson: We have tried to differentiate between the definition for a crematory as a freestanding principle use and then using the term facility for cremation as part of the definition for funeral establishments to make that kind of a distinction.

Kane: So what we have is facilities for cremation and that is how we take care of that. Right?

Donaldson: Within the definition of a funeral establishment.

Kane: Now the question is for existing funeral establishments if we wanted to, if there was not an existing cremation device on the, at the facility and they wanted to add something, would there be requirements on that similar to what we have here for accessory use? In other words the 500 feet and all that kind of stuff. If somebody wanted to, at an existing funeral home, wanted to put in a unit. Is there any regulation on them at all as a result of this activity?

Donaldson: Not as a result of the amendments that we have proposed. I believe the opinion was that the City would be on thin ground in creating new regulations for that.

Kane: That is the distinction I think between what has been proposed by Fountain City Town Hall and we have currently here. It is the interpretation that that really cannot happen based upon what we have from the Law Director. We cannot define that for future establishments. Is that correct, or for existing establishments. But for new funeral establishment would they come under the accessory use provision?

Donaldson: They would come under the use on review provisions where they could determine then the relationship between a facility and the balance of that facility.

Kane: Right. All funeral establishments are use on review for the future. I apologize that is the little distinction on that. The second thing I have was it does seem that one of the objectives that you did state was from the workshop was to eliminate or minimize the crematoriums on residential areas. Given that the use on review for a crematorium is only in I-4 as a new use on review and we are also putting it in a cemetery it does seem to be a valid thing. I can't support that.

Donaldson: I couldn't agree with you more.

Kane: Just wanted to clarify that. The distinction between Article 4, Section 3, there shall be no more than a single facility. I think Fountain City Town Hall had recommended a unit. I know it is a slight wording change, but it is.

Donaldson: Yea, in fact since yesterday I have reviewed language in a variety of different zoning ordinances throughout the country and probably the dominant term being used is chamber, a single cremation chamber, rather than unit or facility.

Kane: Is that the only place where that shows up in terms of a single chamber or single facility. Do you know?

Donaldson: I believe so but your recommendation could be to direct us to take a look at changes anywhere else.

Kane: I might need some help on this. I would like to make a motion.

MOTION (KANE) WAS MADE TO APPROVE STAFF RECOMMENDATION WITH THE FOLLOWING CHANGES: EXHIBIT D WOULD BE ARTICLE 5, SECTION 4.B.8 I THINK THERE ARE TWO A'S HERE. I WOULD ELIMINATE THE FIRST A. EXHIBIT D, SECOND PAGE, 8.A, THE FIRST "A" WOULD BE EASY TO ELIMINATE SINCE IT IS ANTICIPATED. ALSO I THINK THIS WOULD BE CORRECT ON EXHIBIT E WE WOULD ELIMINATE ITEM 2.F SINCE IT WOULD NO LONGER BE AN ACCESSORY TO A CEMETERY. Is that correct?

Donaldson: Yes and plus eliminating the phrase but not including a crematory in section c.

Kane: Eliminating "but not including a crematory" in 2.c. Then Exhibit E, Article 5, Section 3, item 2.b, change the terminology from single facility to single chamber and anywhere else that is applicable. That is Exhibit E, Article 5, Section 3, item 12.b. Changing out from single facility to single chamber and any where else that terminology is used in that context. Is that complete in terms of the whole...

Longmire: So you made three changes. Is that correct?

Kane: Actually four. WOULD BE EXHIBIT D, ARTICLE 4, SECTION 4.B.8 THE FIRST "A" WOULD BE ELIMINATED. EXHIBIT E, ARTICLE 4, SECTION 3, ITEM F.2.C WOULD ELIMINATE THE PHRASE "BUT NOT INCLUDING A CREMATORY". ALSO ELIMINATE IN THAT SAME SECTION ELIMINATE 2.F "ANY CREMATORY CONSTRUCTED ACCESSORY TO A CEMETERY". THE WHOLE THING WOULD BE ELIMINATED. IN EXHIBIT E, ARTICLE 5, SECTION 3, ITEM 12.B CHANGE THEIR TERMINOLOGY FROM "A SINGLE FACILITY" TO A "SINGLE CHAMBER" AND ANY OTHER AREA WHERE THAT TERMINOLOGY IS USED AND WOULD BE APPLICABLE. CLANCY SECONDED THE MOTION

George Ewart: I just want to make sure on 12.b he said there shall be no more than a single chamber for cremation. Then it says in there they need two chambers a primary chamber and a secondary chamber to control air emissions.

Kane: That is true. It may be better to say unit in that case. You are right. I apologize.

Donaldson: There is part of a unit is called retort and some communities use that as the principle term.

Kane: From an engineering standpoint, I think unit is a very good term.

Donaldson: Yes, since we have chambers mentioned elsewhere.

KANE AMENDED THE MOTION FROM CHAMBER TO UNIT
which was Fountain City Town Hall's recommendation.

Malone: Thank you so much I really appreciate the thought that has gone into this and consideration by the Commissioners. At the risk of pushing our luck and I know this unless you have got a lot of good will, we would ask that you include the language prohibiting in cemeteries only because we frequently get confronted with the idea well there is one at Highland Memorial, that went in as an accessory use somewhere around the turn of the century and you didn't say you can't have one, you didn't say you could, but you got one. If you allowed one there then by gosh then how can you not allow them any place else. Prohibiting them at this time sets the record clear from now on unless further action is taken by the Commission and the legislative body, incinerators would be prohibited in cemeteries. We think that is an important marker to put down; an important clarification. Thank you all very much.

Kerr: I would just like to submit these for the record.

Kane: I would like to ask Mr. Donaldson's comment on our response to that comment, if it is is that fairly typical?

Donaldson: My personal opinion is that a use isn't permitted unless it is specific in the code so that stated prohibition is redundant and can lead to some clumsiness. In quickly looking at the definition of cemetery for example we also amended that to include the crematory. We need to circle back to your original motion and specifically take that out because we specifically put it in in order to accommodate what has now been removed.

Kane: So is there one we missed. Is that an appropriate place then maybe to say which does not include a crematory?

Donaldson: Yea, as part of the definition that is probably the best way.

Kane: So instead of saying in Exhibit B, Article 2 for cemetery "any land or structure dedicated to or used or intended to use for interment of human remains a cemetery does not include a crematory".

Donaldson: Well we would want to change it to "a cemetery may include" and delete "crematory" from that list. Then perhaps add a phrase "but may not include a crematory."

Kane: The amendment then would be to eliminate the term "may include" in the second sentence and add a sentence that says "A cemetery does not, may not include a crematory."

Donaldson: I would rework that so that it reads "A cemetery may include a mausoleum, columbarium and memorial garden or a scattering garden for interment of cremated remains, but may not include a crematory."

Longmire: So you are amending your motion to include that 5th change.

Donaldson: That is in Exhibit B in our definition of cemetery, the second sentence.

Longmire: In this amended motion **Exhibit B the cemetery definition would read "Any land or structure dedicated to and used or intend to be used for interment of human remains. A cemetery may include a mausoleum, columbarium, memorial garden or a scattering garden for the interment of cremated remains but may not include a crematory."** Is that correct? Yes.

CLANCY SECONDED AMENDED MOTION

MOTION CARRIED 13-0. APPROVED AS AMENDED.

6. KNOX COUNTY COMMISSION

10-A-12-OA

Amendments to the Knox County Zoning Ordinance regarding conversion of billboards to digital billboards.

STAFF RECOMMENDATION: Recommend to County Commission a definition of electronic advertising signs as shown in Exhibit A be added to the zoning ordinance at Article 2, Section 2.20; and Language as shown in Exhibit A prohibiting the conversion of advertising signs to electronic advertising signs be added to the zoning ordinance at Article 3, Section 3.90.16 and Consideration of an incentive program to encourage the reduction in the total number of billboards in the County

Mark Donaldson: We are dealing with the blue sheets here. Per our discussion on Tuesday I have added a section regarding an incentive program. Just to review for a number of years Knox County Commission has had in place a moratorium on installation of new billboards in the County. About a year ago discussion on that topic picked up and last December the Planning Commission made recommendations to the Commission regarding how they could go about enacting a prohibition on all new billboards in the County outside the jurisdiction of the City. In addition to how they could go about regulating electronic message centers which the Commission had talked about creating some standards that were comparable to what is in place in the city. Last December almost a year ago you made those recommendations. The topic has come back to the surface at the Commission level in recent months and in doing so they added yet another discussion item which has resulted in the need for a recommendation from the Planning Commission. That is how do we go about preventing the conversion of existing billboards to digital billboards. We have provided language on how to do that coupled with a prohibition on new billboards. After the discussion on Tuesday and after seeing a fairly recent summary of what a whole bunch of other cities are doing throughout the southeast and the county and how they are using the permitting of digital boards as an incentive to reduce the total number of billboards in the community by creating a swath program whereby in order to get a permit for a new digital board the applicant must remove a number of billboards that already exist. In the southeast Gulfport, Mississippi has that kind of a program in place at a 6 to 1 swap rate. There are two communities in Florida; Stuart, Florida, and Pinellas County, Florida, where they have a swap rate of 7 and 8 billboard faces for every new digital face that goes up. Throughout the country that number goes anywhere from 2 to as high as 15. Some communities do it on a square footage basis so that they can't swap out smaller billboard faces for bigger digital spaces. I wanted to get that in the record so that County Commission could consider that in the future. I think that same sort of incentive program if they do in fact ultimately prohibit all new billboards could be applied to the relocation of existing billboards. Billboard companies have expressed their desire to maintain some flexibility so that they can place billboards more strategically throughout the community as it changes. There is always a desire perhaps to relocated existing billboards. Well why couldn't you tie some sort of incentive swap to that relocation permit as well if your goal is to reduce the total number of billboards that are out there this is one way to do it other than through attrition which has proven to be not very effective. Essentially if you cap the number of billboards by allowing no new ones you increase the value of those that already exist and people take better care of them because they know there is not going to be any new ones. So the only way you get a billboard to come down is through the redevelopment of a piece of property that happens to be that part of the parcel for development. I

wanted to get that in the staff record so that would be in front of County Commission as they consider dealing with the conversion of billboards. The recommendation is fairly straight forward creating a new definition and then inserting a sentence into the nonconforming sign section of the sign code that after an effective date no person shall convert any legal nonconforming advertising sign to an electronic advertising sign or to an EMC. With that I will turn it back to you.

Art Clancy: There are already digital billboards in Knox County. That would have to get permits in order to keep those as digital signs after that nothing else would be allowed. Is that correct?

Donaldson: They would become legal nonconforming structures and they would be essentially grandfathered in.

Clancy: They would still have to apply for a permit to operate a nonconforming based on Exhibit A.

Donaldson: Yes. They would have to register and get established on a list of legal, nonconforming signs.

Clancy: My second thing is I would like to make a motion that we

MOTION (CLANCY) AND SECOND (LEN JOHNSON) WERE MADE TO RECOMMEND TO KNOX COUNTY COMMISSION A DEFINITION FOR ELECTRONIC ADVERTISING SIGNS AS SHOWN IN EXHIBIT A BE ADDED TO THE ZONING ORDINANCE AT ARTICLE 2, SECTION 2.20 AND LANGUAGE AS SHOWN IN EXHIBIT A PROHIBITING THE CONVERSION OF ADVERTISING SIGNS TO ELECTRONIC ADVERTISING SIGNS BE ADDED TO THE ZONING ORDINANCE AT ARTICLE 3, SECTION 3.90.16 AND THE CONSIDERATION OF AN INCENTIVE PROGRAM TO ENCOURAGE THE REDUCTION OF THE TOTAL NUMBER OF BILLBOARDS IN THE COUNTY.

Janice Tocher: I would just like a little bit of clarification on the other advertising signs and the electronic message signs. Do these also pertain to like gas stations where prices are frequently changing that the gas stations would not be able to use electronic signage?

Donaldson: The city's treatment of that was to carve out a special little niche for that type of sign called a changeable price sign and to allow those to continue to change. The city's approach was to prohibit new boards and impose some new operating characteristics on the existing ones which include a minimum 60 second hold time and an instant message change so that you cannot have flashing and scrolling messages. That message has to change instantaneously and stay there for at least a minute. Frankly that part of the city's ordinance has been pretty effective.

As you drive down the highways you are not seeing signs change. That same language was incorporated into the recommendation that we made previously.

Tocher: So that is included in the county recommendation. Thank you.

Joyce Feld: 1540 Agawela Avenue, Knoxville, TN. President of Scenic Knoxville. For digital price signs in the city they also require a minimum street frontage of 200 feet and then everything else Mr. Donaldson said. I am a little confused here because this swap amendment that is new and I was not expecting that in here. It wasn't what County Commission requested or on the original agenda. Is that also being voted on today?

Longmire: It is not on the current motion. It is simply a consideration. If Commissioner Clancy, you did not include the consideration of...

Clancy: I did. It is asking County Commission to consider that. Which would come back and we would amend that to be more, we would make that more concise. It is an effort to try to reduce the amount of billboards.

Donaldson: We haven't proposed any specific language yet. The recommendation that we have asked the Planning Commission to make is simply for the County Commission to consider that sort of program.

Feld: Mr. Donaldson if you can clarify for me because I remember this came up as an issue when we dealt with this in the city and if you could stop the clock because I just need a clarification here. I need an answer to a question. Thank you. When this came up this was briefly put on the table in the City. It was taken off because, my understanding was, it was determined by the law director that it actually was not legal. So it never was not voted on or seriously considered.

Donaldson: I would characterize the opinion that was expressed that it would be difficult but not impossible. That is based on the fact that there are two players involved on every billboard. There is the owner of the structure and then the owner of the land. While it is in the best interest of the owner of the structure if an incentive program would be put in place, they would be incentivized to work with the owner of the land to make that happen. That is usually played out through the market. I think a usable effective legal program could be put in place. You have to do it carefully and you have to take into consideration that there are multiple players on every billboard.

Feld: I would just like to address that one thing and I would like to see how your vote goes. There is somebody else that wants to speak. She may want to speak. If the motion on the floor fails then I would like to come back and finish my remarks. I just want to address this swap program. I am familiar with it. It has not been successful in other cities. What happens is that the billboard companies either do not end up complying with it or what they take down are old dilapidated boards in parts of the rural areas of the city that aren't profitable to begin with and they are not equivalent to what they end up putting up in terms of a digital board. I believe that a lot of cities that have gone for that compromise have in the end been very unhappy with the fact that they did. I would like to see how the motion carries.

Longmire: You don't even want County Commission to consider it?

Feld: I do not want County Commission to consider that. Scenic Knoxville would be completely opposed to it. I also want to add that we would like to see operating characteristics imposed on the existing digital billboards which are similar to what exists for the EMC's in the city and that would be a 60 second hold time, no scrolling, no flashing and no animation and controls on brightness. Thank you.

Clancy: I would like to ask Ms. Feld a question. As the President of Scenic Knoxville, Scenic Knoxville isn't interested in any kind of incentive program to reduce the total number of billboards in the county? This is not a specific, it doesn't say swap them for what. It doesn't say swap them for anything. You're saying that you don't think there is any way that anybody could come up with any kind of incentive program that would reduce the number of billboards in Knox County.

Feld: What this program incorporates though is that you are going to allow the outdoor advertising industry to convert existing traditional billboards to digital technology. We are completely opposed to that. We are completely opposed to the further proliferation of digital billboards. They are distracting. They are unsafe. They are aesthetically displeasing. They frequently shine their lights into residential areas. They shine into people's yards. They shine into people's homes.

Longmire: Ms. Feld, but this does not even mention digital. We are just looking at possible programs. There may be other programs. Is that not what you are...

Clancy: Yea, I know that it infers that they are digital; lots for digital signs. It doesn't really say that. I don't necessarily agree with you that the lights on a regular billboard sign are any less bright or irritating than the lights of a digital because you can control those in nits. I just wanted to ask you that question. I

understand if you say no we are not interested in any kind of program that would reduce the total number of billboards in the County. I guess I will take you at your word.

Feld: We are not interested in a program if it allows the construction of any new billboards and certainly not if allows the conversion of traditional to digital.

Margot Kline: 8845 Ebenezer Oaks Lane, President, Council of the West Knox County Homeowners, 37 different homeowner associations in County Commission Districts 3, 4, 5, and 6. I am here because I am concerned mostly about digital billboards and also about the idea of this incentive program because that is not something the Dr. Briggs asked for when he made the proposal to change the ordinance. Digital billboards are essentially on one structure, but it could have 300 different ads on it. They are changed from a distance. I work in the publishing business. What you are talking about really is removing jobs from people who hang the billboards, who transport the physical billboards of the current standard to the location. We are talking about taking away the structure from, if you do an incentive swap program, from someone who owns a piece of property and makes money off it. The local billboard owners I think are more concerned with that. They don't have the \$200,000 or \$300,000 a piece to do conversions to digital. I think that the idea of a swap is something coming from the larger, probably Lamar in this area, companies that would stand to gain. A lot of other people would stand to lose including our local business people. I am mostly concerned with the digital technology allowing a great deal of content that we could have objections to and the fact that the first amendment rights protect those who would like to put on a billboard an ad for atheism, an ad for an APP, for any number of kinds of meeting people online. It has happened. It is happening all over the country.

Longmire: Ms. Kline. We cannot control billboards as far as the content.

Kline: That isn't the question. You can control how many there are allowed to be built. You can control whether they are converted. I am really not talking about content. I am talking about opening Pandora's Box. Anyone who wants to can put the content on a static billboard today. However it is a lot more expensive to do so because you have to hang a physical billboard. Nobody is going to do that 1/2 a day. If you are talking about digital. If you go online go to Lamar. Go to any of them. You can put an ad on for 1/2 a day, one day if it is digital. You are really opening the door. I am just thinking you need to look at what you are opening the door to. I am not asking you to censor. I am asking you to be really conscious of what your decision would really mean to the community. I am not against the existing business owners either. I really do think that the argument of

cutting jobs is not a valid one. There is a lot to think about. That is what we are asking you today. Don't talk about this incentive program. Do not allow more billboards. According to Lamar's own site, they have almost, they have 800 and some faces within a 10 mile radius of Sequoyah Hills and Kingston Pike. That is a lot of billboards. Some of them are empty. We have plenty of billboards.

Cole: I just wanted to say that unfortunately it is already in the record. So it is going to be considered. I understand the concern about the incentive program. The thing that concerns me about starting another program is it is going to cost money and it is going to add resources or require resources to be loaded. That is what concerns me about it. But since we have already talked about it and it is just a suggestion to think about it, I think I am going to support that motion.

George Ewart: I guess I am getting kind of confused. We are talking about these billboards and going to electronic won't be able to pay people to hang up the signs on the existing billboards. Now we are putting a moratorium on there which will put people out of work anyway. I just think that if the goal of this thing is to reduce or limit or put a moratorium on billboards, we still have got to give them the opportunity to make the most out of what they have because there is no more. That is it. What is out there is what's going to be here. To limit what is on those signs now I think is hard to do. I think the electronic billboard is the way to go to allow them to continue revenue. Because now you have people that you are going to pay instead of hangers you will be paying computer operators to program in the different ads and control that etc. etc. If we can reduce the billboards, which is what I am assuming that Keep Knoxville Beautiful wants us to do; I think this is a great measure to do it. There is a lot of language that still needs to be worked out. I think the initial offering to County Commission to have them look into it is what we need to do and I support the motion.

Longmire: Let me repeat the motion as it stands. We will follow staff recommendation recommending to County Commission a definition for electronic advertising signs as shown in Exhibit A to be added to the zoning ordinance, language as shown in Exhibit A prohibiting the conversion of advertising signs to electronic advertising signs be added to the zoning ordinance at Article 3, Section 3.9.06 and consideration of an incentive program to encourage the reduction of the total number of billboards in the County. That is the motion that is on the floor.

Clancy: Let me just clarify my motion. I started off with we recommend to Knox County and ended with they consider an incentive program. They are big people. They can figure out whether they want to consider it or not. You all will have a voice at that forum as well. They count their votes. We don't. This is

land use and what we feel like is best for all of Knox County and how to accomplish a specific task. That is kind of why I made the motion with the consider incentive program as part of it. I will stand by it.

Donaldson: It was implied that Lamar had pitched this idea initially. I need to correct that record. Lamar has not talked to me about this. In fact they spoke against this idea at the City Council level. This is an idea that is being used successfully in many communities to eliminate every traditional billboard that existed in exchange for specified numbers of new digital billboards at specified locations that were agreed upon by the municipal government. You can tailor a program to meet any desires that you have. You can specify corridors where you may allow a digital board and specify corridors from which traditional billboards have to be removed. You can play with the ratio to meet your goals. This is an idea that the industry has resisted locally.

Cary called for the question.

MOTION CARRIED 13-0. APPROVED PER STAFF RECOMMENDATION.

Alley or Street Closures:

7. GERDAU (REVISED)

12-A-11-SC

Request closure of Stonewall St between New York Avenue and Ely Avenue, Council District 5.

COMMISSIONER LEN JOHNSON RECUSED FROM DISCUSSION OR VOTING ON ITEMS NUMBER 7 AND 8.

STAFF RECOMMENDATION: Approve the closure of this portion subject to any required easements.

Arthur Seymour Jr., 550 W Main Avenue on behalf of the applicant and I will speak to 7 and 8 if I may. Mr. Mays is here. This was on postponement. I am here simply requesting postponement and let me tell you why if I may. On Monday of this week the plant manager Johnny Miller and several other Gerdau employees met at KCDC at a meeting suggested by Alvin Nance, CEO of KCDC. Present also were Becky Wade of the Redevelopment Department of the City of Knoxville and Rogers Daugherty. I can't remember whether Mr. Massey, where you there? You missed that meeting. There was a general discussion for an hour or two and the consensus of everyone present was that Gerdau request postponement of all these street closures until there could be further meetings between city representatives, KCDC and members of the Lonsdale Community. 30 days it may take longer I am not sure. At any rate on Wednesday, no Tuesday following that, I met with the executive

committee of Lonsdale United and Mr. Daugherty was there for that meeting. It was a very informal meeting by pool side. We explained to members of that executive committee what we were about and that we were requesting a postponement for further discussion with neighborhood representatives of these street closures. I think everybody was satisfied at that meeting weren't they Mr. Daugherty. We have not at this time scheduled any further meetings but we intend to before we come back. We want to come back with a consensus between Lonsdale United and the Gerdau Company on these street closures. Mr. Mays and I understand his problem he owns two lots at the east end of Ely. He has requested that Gerdau buy those two lots. Gerdau does not have the money in this year's budget to purchase those two lots. He has, a representative of his has talked to me on a number of occasions and I said Gerdau would certainly be interested in purchasing those lots but it is not in the budget. Until it is in the budget they cannot purchase it. We certainly hope to in the future. He may want to explain other reasons that he is opposed to postponement of these street closures, but that is what I understand.

William Mays: 1316 Kasell Drive Knoxville, The reason why we want to go ahead and be heard today is it is an investment property of ours that we have tenants in both properties. From the beginning of this procedure they were supported to buy all of these lots before they could close these roads down. So when my tenants got word of that that has lived there since we owned these properties for over seven years now they have already found housing elsewhere and they will be moving out by the end of this month. When that happens what we are going to be faced with is every property on both sides of ours is vacant. There's going to be no neighbors there. In front of Ely Street is the property of Ameristeel where there is no people. Behind us on the other side of the alley there is a lot of vacant lots. Then you have a glass company, a church where there is nobody at at night time and one other house. Anybody that knows anything about the Lonsdale community, it is not a prime neighborhood in Knoxville. There is a safety issue. For one even the people that live there told us they are not even interested in staying if they could because they do not want to be on that entire block by themselves with just one other house. We all know that when you look at areas like Lonsdale when you get areas where there is no people around the type of traffic that that brings in, the unlawful act that could take place of drug use, you could have prostitution going on. Not only that but the vandalism that takes place. We own other properties in Lonsdale and when you get a vacant lot like that those properties that we count on for income are going to be vandalized because it is going to be hard to put tenants with nobody around. From the very beginning they were supposed to buy all these houses on Ely Street. Which we had no problem with that. When they get to your property they say they don't have money, but they have said that and bought other

properties when it wasn't in the budget. It is just something that I want to be heard on because in the interest of public health and safety I don't think it is safe place to have just those two houses sitting on an island all by themselves. On the other side of Bragg Street there is nothing there but empty lots. Here I am stuck with houses that we bought years ago for investment that we pay taxes on yearly that now we are not going to be able to have a return of investment on because Ameristeel owns everything around it it seems like. Nobody is interested in living in these houses for safety reasons.

Longmire: But Mr. Mays if we approved per staff recommendation, the roads are going to be closed. I appreciate your concern. I would like to make a statement. Any place that is deserted, it does not have to be in Lonsdale, any place that is deserted leaves itself open to acts. I have worked in the Lonsdale Community before I assure you it there are some wonderful people there. I think it is rather unfair to characterize that in a certain way. How would postponement harm your... I mean you didn't want it postponed to allow for more conversation. So you think having it heard by us today would make it better for you.

Mays: What is going to happen is that during this month and we are actually from the Lonsdale community so I don't want to put an overall umbrella over the people from that community. My grandfather everybody; we have lived there. When these tenants move out we are going to have two, and it is going to happen this month. We are going to have these two houses sitting there that's going to get windows broken out of. They are going to get spray painted. They are going to get vandalized just like every other property in Lonsdale that gets left vacant for any period of time. The longer that these hearings keep getting postponed if they do, the more time that I am going to have to keep going in and repairing things that potentially happens to my property.

William Mays Sr. 1316 LaSale. Gerdau bought three houses on New York Avenue that they had changed from I-3 to residential. KCDC and probably Rogers Daugherty wanted that property changed where they could close everything off where they could go ahead and change it to housing. They built housing up through there. We own ten more lots up there by the railroad tracks that is industrial. So if they close this stuff down, in the future they might put warehouses up there. If we, if they change anything out to residential then we aren't going to have the houses by themselves and then that other property is going to be changed over. There will be other meetings up here. They are going to be trying to change it to R-1 or H-1 whatever housing is and then we will be stuck with two houses there with the iron company. Another thing is that iron company right there. I have lived there for 60 years almost. All around the iron company is a lot of people that have bad health and stuff. People died with the girl next door, Shirley, she died with cancer. Everybody in

Lonsdale is dying of cancer because of the iron company. Nobody wants to live right there near the iron company.

Michael Kane: Mr. Mays Jr. I am trying to understand how the road closure changes your situation. Something we need to be concerned about. How does the road closure itself, not the postponement, but the road closure itself?

Mays: In the very beginning when MPC said all these houses on Ely had to be bought before roads could be closed. What is going to happen now if this is granted they are going to close up to our property and then they are going to have to go in and build a street, an access that they propose with a turn about or a cull de sac if you will. That is going to cost some money. We are in the paving business. We know that is going to cost thousands of dollars. If it is not in the budget to buy the houses why is in the budget to build the street. The moment they allowed to do that then they may come back and say well we are satisfied with what we have already acquired on Ely Street we don't want any more of the property. Then at that moment here we are stuck with just two properties on an island in the middle of Lonsdale with nothing around.

Kane: So what you are asking us to do is to not do anything that would permit them from needing your property for their use in the future. The question is there anything in writing regarding this understanding that all the properties on that side of Ely would be or is this a verbal commitment? I understand your predicament. I am not unsympathetic to it. I am trying to figure out what basis we have for trying to not either postpone this or eventually not allow that closure of these streets. Postponement is we are going to vote on whether to close the streets or not. That is what the issue is. Postponement is something that I think of working out things in terms of greenway and air monitoring systems and that kind of stuff which was access and other community interests. I am just trying to find out again. What does the closure of this street how does it negatively impact you and that property?

Mays: Because from the very beginning we though nothing would be closed until the entire lots were acquired. What bothers us is that we are going to be sitting there with...

Kane: Are you saying that by closing those streets you will not be able to have residences on that street.

Mays: The people that are there now even said that they may still be able to stay there for a while because they are not going to buy our houses, but they are not interested. They said when you look this way there is nothing, when you look this way there is nothing, and when you look in front of us there is nothing. Behind us is a business that is closed at night and a church that is closed other than Sundays on their regular services, and one other

house. They have children. They just said they do not feel safe being there.

Kane: Are you saying the closure of that street would prevent other people from moving in to occupy those properties?

Mays: They are not going to move in if Ameristeel owns them all.

Longmire: May I ask Mr. Seymour something that you brought up. About the purchase of the properties is there a written agreement about purchasing the properties? Do you know.

Seymour: Not that I am aware of. For full disclosure we are interested in obtaining all the properties along there. We have purchased within the past year I believe 5 properties which Gerdau intends to fence and remove the houses from. We have no contract with Mr. Mayes. We have utilized the budget that was available for property purchase this year on those homes. No. We have never had an agreement with Mr. Mays. He is pressing for one and would like one and if the money were available I suspect there might be one. There is no agreement and never has been.

Bart Carey: Mr. Seymour could you kind of address his concerns and how you... I can see a valid and legitimate issue they have there. They are being left on an island. I don't know if there was, you said there is no written agreement, but was there ever an indication made to the neighbors on that street that those houses would be acquired?

Seymour: If you could go back to the preceding diagram that was up there. Who is managing that, Nathan? That one. It is sort of hard to see, but if you look in your packet Ely Street runs for one block. I would say it runs east/west but actually it runs northeast/southwest. Gerdau a number of years ago acquired several lots at the corner of Stonewall and Ely. Those properties the house was removed. Earlier in the year they acquired several lots from Mr. Williams who is next to that. Then the lady that owns 3 or 4 lots just to the northeast of that, Ms. Cazano, died this past spring. Her daughter came to Gerdau and wanted to sell the property and they bought it. Gerdau will remove the houses from those properties. They will fence them. That is all they are doing right now. They won't close the streets, we want to have further discussion with Lonsdale United and get the neighborhood on board with what we are doing. I don't understand why he cannot rent those two houses because there are properties behind him, a church. He may own some of those properties behind him. There is a church. There is a viable business there, a glass company. To the northeast there are other residential properties. There are a number of residential properties through there.

Carey: How far away would be nearest residential property.

Seymour: I cannot tell you. Mr. Mays could probably tell you that. There is residential property behind him. I think there is at least one house back there. I have not driven New York Avenue in a month or two. Do you know.

Carey: We have been battling this around for a couple of years now. This is kind of the first time I remember us getting into this kind of sticky wicket.

Seymour: If we bought his property, he would be gone. He would not be here. We simply do not have the money to buy his property. Corporation like most people have to operate within a budget. If you did what he wanted today, I would simply refile a revised application in due course and we would be back here again. But there is nothing I can do about Mr. Mays' situation.

Carey: I am not sure that hearing it versus postponement is the solution to their situation.

Seymour: I wonder how it helps them but be that as it may. That would be our only choice.

Longmire: Mr. Mays as you look at this diagram you all are parcels 27 and 28 near the corner. We have three choices Mr. Mays. We can postpone it which leaves everything as it is right now. We can vote to approve the street closures or we can recommend that the street not be closed. Those are the only three things that we can do. I can't make them buy your property. I can't make them rent your property. Do you understand it is either postponement, close the street or don't close the street.

Mays: Yes.

Longmire: Which is your preference? I am not going to vote that way. I am just saying I am trying to understand what, I just don't understand.

Mays Sr.: If they were to set a contract buying the property. You leave the road open for access going in and out of the property besides where it dead ends all the time to the cul de sac. If the property is left open to Bragg Street people can go through there. You will traffic if anything was to happen. You have people seeing what is happening.

Longmire: Mr. Mays do you know how often we have subdivisions that want cul de sacs because they don't want through traffic?

Mays: I lived there for 60 years. If they want to make an agreement to buy the property and they don't have it in the

budget, they put it next year. They bought three lots on New York Avenue and changed from I-3 to residential.

MOTION (EWART) AND SECOND (CLANCY) WERE MADE TO POSTPONE 30 DAYS. MOTION CARRIED 12-0-1. POSTPONED UNTIL NOVEMBER 8, 2012.

8. GERDAU (REVISED)

12-B-11-SC

Request closure of Ely Ave between Stonewall Street and northeast property line of parcel 081PK029, Council District 5.

COMMISSIONER LEN JOHNSON RECUSED FROM DISCUSSION OR VOTING ON ITEMS NUMBER 7 AND 8.

STAFF RECOMMENDATION: Approve

MOTION (EWART) AND SECOND (CLANCY) WERE MADE TO POSTPONE 30 DAYS. MOTION CARRIED 12-0-1. POSTPONED UNTIL NOVEMBER 8, 2012.

P 9. GERDAU

10-A-12-AC

Request closure of Unnamed alley between Stonewall Street and northeast property line of parcel 081PK00102, Council District 5.

THIS ITEM WAS POSTPONED EARLIER IN THE MEETING.

Street or Subdivision Name Changes:

10. BECK CULTURAL EXCHANGE CENTER, INC.

10-A-12-SNC

Change Keller St to 'Dewey Roberts Sr St' between Linden Avenue and Martin Luther King Jr Avenue, Council District 6.

STAFF RECOMMENDATION: RECOMMEND that City Council APPROVE the street name 'N and S Dewey Roberts Street.'

Mike Brusseau: MPC has an adopted ordinance for street naming and addressing. As far as MPC's Administrative Rules as proposed the Sr could not be included for two reasons: abbreviations are not allowed as well as three word street names are not allowed. We are fine with the street name being changed. We also recommend that the north and south that are on Keller street name be retained. The north section is one way and south section is two way divided by McCalla Avenue which is two way. We are recommending Dewey Roberts Street which is consistent with the addressing ordinance.

Longmire: I would like to draw Commission's attention, we did get a letter in opposition in your packet.

Avon Rollins: 1407 Roslyn Drive. I want to clear up something. It is not to honor Dewey Roberts for his stay as President of the NAACP. That is Dewey Roberts Jr. What we are recommending is basically

Dewey Roberts Sr. who was a renowned educator here in Knoxville. He was principal of Green Elementary School Number 1 as well as Green School Number 2. Many of you might not remember, but there was two Green Schools on Town View. Also Professor Roberts was also principle of Austin night school for many many years. One of his great achievements was that was a time when there was a variance in teachers pay between black and white teachers. Dewey Roberts Sr. pushed to equalize the teachers pay in the City of Knoxville. He also helped to facilitate the various school transitions in terms of the segregation of schools in the City of Knoxville.

Longmire: I wish he has pushed for equalization between men and women because when I started teaching in Knoxville City men automatically got paid more than women.

Clancy: I have got a question Michael. Do they have to change the name of Ely Street? You said you cant have three letter words.

Longmire: No three names.

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

Michael Kane: I would like to ask Mr. Rollins a question. We did get in our packet a letter from Ms. Dirl I guess. Part of her concern was the expense that she and other are going to have to entail in order to have their address changes and also just the overall heartache of doing that. Have you talked with those neighbors? Has the Beck Cultural Center talked with them. Have you made offers to help them at all.

Rollins: Lisa is here now. I knew her family very well. I sympathize with her outline in her correspondence. There is a transitional period in terms of street changes and the name to give them ample opportunity to make that transition in terms of change their checking accounts, addresses, etc. We will be glad to work with them. I was surprised when, I keep calling her Lisa because that is what I have known her by all her life. I don't know her by her married last name. I think this is going to be a tremendous contribution to Knoxville and to east Knoxville in particular. My disappointment is that we were not able to put Sr. onto it because there is a Dewey Roberts Jr. who is here. I don't know if he has made the same kind of contribution that his daddy did.

Longmire: Was there consideration given to the idea of changing one of the school names since Mr. Roberts Sr. was such an important educator?

Rollins: You have so many people who have graduated Vine and Austin High Schools. Schools are not available here. Maybe some time in the future if they build another elementary school in east Knoxville as they did initially. You know they built the East Knoxville

elementary school subsequently you know it is called Sarah Moore Green Elementary School. I don't know of any other school coming along. This is probably something that is long overdue to honor a great man Mr. Roberts. I sympathize with the Jackson Family and List in terms of the arguments that they prevailed. I think it would be a good transition in terms of a street name change over a period of time. You probably could have somebody speak from MPC in terms of how that transition takes place.

Lisa A Dirl Jackson. No one from the Beck Cultural Center contacted me on our street. I hate that I am the only resident here today. But the majority of the other people which is 5 houses, they are older and most of them are ill. The man on North Keller just passed away two weeks ago. That was my suggestion was to rename a school since he was such a great educator. Which I suggested Vine Middle School in my letter. I have a question. If it does changes will we receive any kind of documentation to send to businesses that we have business with? Because I have looked into it and several of the people that I deal want some kind of documentation. I can't just go in and say the name of my street changed.

Brusseau: I don't know if... Obviously once the City's ward maps officially change which will be the result of this if it is approved. We could print out a copy of that and it would show that that name is no longer Keller. Beyond that I am not sure I can answer that.

Longmire: I know that when my street address changed because of a subdivision going in, I got a postcard from the post office I think that told me what my new address would be. I think that would serve as documentation.

Donaldson: I am speculating a little bit, but once the City Council acts and they are authorized body to change a street name, then the post office would be informed of that. My general experience is that the post office will literally use both addresses for a period of time so that you have the time to change your address as mail comes through. You don't have to do it all at once. I think that period of time is at least a year where they recognize that the old Keller is now the new Dewey Roberts.

Anders: I have a question for Mr. Rollins. It was indicated that none of the residents on Keller was notified of your' all's intent to request this name change. Can you explain why Beck chose not to do that?

Rollins: As I recall something was sent by the Council of street name change. Somebody sent to the residents of that area. She received the information that you have before you that was put together as it relates to the name change. I personally did not go knock door to door or send communication, but there was some entity that did send the information out. Lisa had the information she received that came from some entity or government.

Anders: My question was was there some reason that Beck chose not to contact those residents and let it go through the other process.

Rollins: It was an oversight. I thought some of his kids that lived on this street would do that. The Beck Center and I personally did not do that.

Janice Tocher: In reading Lisa's letter she also suggested that a city park be named after this individual. Has there been consideration of that?

Rollins: You have got to find a park. It is interesting that when we brought this up initially to the City of Knoxville Street Naming and this was all brought up by Councilman Brown former Mayor almost at the same time. We changed the name of Union Park to Paul Hogue Park. Again you have to find a park to name after Professor Roberts. I don't know what happened. See I also got caught up in the deterioration of the house and that is owned by one of the grandsons now. I don't know what is going to happen to that property eventually. All I want to do is to find something to designate and to honor a person that has made a tremendous contribution to our city and county in an expeditious way. That is why I am here before you today.

Tocher: I have one other question. It appears there are only 5 residences on both North and South Keller. Would we be able to as a part of this recommendation ask Beck Cultural Center to work, these individual are older individuals, would be able to make a stipulation that that cultural center work with these individuals to help them get their address changed?

Donaldson: Your comments will be in the record and certainly City Council can take that into consideration. Let me just set this particular case in context. This is an example of a case that has gone initially to the City's Council's Public Property Naming Commission and as a result has disrupted our normal flow of things. We when we get a direct application for a street name change put the onus on the applicant to demonstrate that they have talked with all the people whose addresses will be affected by this. Because it is coming through the City Council's committee to us that normal flow is disrupted. There is no applicant truly. We literally become the applicant on behalf of Beck Cultural Center. So but we notified people but not until after the fact.

Longmire: Mr. Rollins do you think Beck would be able to help especially some of the older people who might have difficulty. Do you think that the Beck Cultural Center or some of the community people would be able to help some of the elderly people on Keller Dewey Roberts?

Rollins: We will be glad to. Another reason we selected Keller is Mr. Roberts lived on Keller and secondly it is not a heavily populated street. There are about 5 houses in the second block that Ms. Jackson, Lisa, lives on. The second block there are very few houses at all.

Longmire: So it would not be difficult for you to find people that might help. I am asking this because it is going in the record and it is kind of like a promise.

Rollins: Okay. Thank you.

Len Johnson: This is just questions for Mark. We discussed an honorary street name at our meeting Tuesday. Could you explain that a little bit?

Donaldson: One of the possible actions that the Public Property Naming Committee has before them when they get this type of request is to create an honorary street name rather than to change the actual street name. That process literally creates two street names, but it doesn't involve the change of address for all of the people because the old street is the official street name and the honorary street name is then a secondary street sign at every intersection clearly marked as honorary. We just started doing that and have just a couple of examples in place now. It is relatively new. People generally are used to the Victor Ashe approach of just changing the actual street names. That is kind of the history of everything.

MOTION CARRIED 10-3 (Kane, Anders, Tocher). APPROVED.

A BREAK WAS TAKEN AT THIS POINT AND THE CASSETT TAPE CHANGED.

Plans, Studies, Reports:

11. METROPOLITAN PLANNING COMMISSION

8-A-12-SP

South County Sector Plan Update. Commission Districts 8 & 9.
Council District 1.

COMMISSIONER CHARLES LOMAX RECUSED FROM DISCUSSION AND VOTING ON THIS ITEM.

STAFF RECOMMENDATION: Staff recommends that the planning commission adopt the South County Sector Plan and forward it to both the City Council and County Commission with recommendations for adoption.

Donaldson: The South County Sector Plan is the second of the sectors we have updated within the last year after a series of public meetings. I think a total of six in the area. During mid course of the process we actually expanded it to include a small

area plan for the commercial development along Alcoa Highway and the surrounding neighborhoods at their request. We thought we had consensus on the recommendations of the plan including the future land use plan. We had put it on the consent agenda. I will be able to respond or have Liz or Mike respond to any specific questions that may come up during the course of discussion.

Arthur Seymour, Jr: My request very briefly and it was made to Mr. Carberry at the end of September is on behalf of Rick and Michael Adams of Adams Brothers Construction. They own parcels map book 147, two parcels 39 and 3801 on John Sevier Highway just a short way towards Alcoa Highway from the interchange with Old Maryville Pike. Their request is there be consideration given to these tracts of property for mixed use development in the future. These two properties are in the urban growth boundary of the City of Knoxville. They are adjacent to a commercial node at John Sevier and Maryville Pike. There is a Weigels store on the same side of the street they are on. Between them and Weigels is a car lot and what appears to be a car repair facility which has been there for a number of years. It is not zoned commercial as it should be. But it is a commercial use that has been there for a long time. They adjoin that commercial use. Across the street from them is office use and other uses. They are simply requesting that this property be considered for mixed use development in the future rather than low density residential as the plan now calls for. Mixed use would not prohibit low density residential use of the property in the future but would allow for consideration of broader uses. The Adams is about 10 acres. There is a house on there. They would like to use the house for their office. They are in the construction business. They do utility construction primarily in Knox County. Their biggest customer is KUB. They work also with the City of Knoxville and Knox County and other utility districts. They need a place to have an office that would be used by one or two people. They need a place for temporary storage of construction equipment. I am probably getting ahead. This is what they would like to use the property for. At this time they are only asking that the sector plan reflect that these two lots, and I would suggest the property immediately between them and Weigels be considered for mixed use development to recognize what it is. If they every got the mixed use designation then they could come forward at some time in the future and ask for a rezoning to an appropriate zone. I will tell you that they have met with the South Doyle Homeowners Association. A meeting will occur in November again with them to discuss various issues about the use of this property. We are simply asking for the flexibility to request a rezoning for this property in the future.

Charles Lomax: Before we go any further I need to recuse myself from this particular case.

Laura Cole: Just a question on procedure. I know we are here to talk about the sector plan in general, but I feel like I am listing to a specific rezoning case kind of ahead of the whole process. I am wondering if this is appropriate for us to hear at this time.

Longmire: Well I think probably what Mr. Seymour is asking for is in the future to keep in mind that they may be asking for a rezoning. Is that correct?

Cole: Rather than asking for a plan amendment and a rezoning?

Seymour: Typically at the sector time you recognize existing land uses and proposed future land uses. We will not be back with a zoning any time soon on this property. We are simply asking that the plan not restrict us. We don't want to come back in the future and somebody say well we just redid the South County Sector plan a year ago and you are locked into low density residential forever until we redo the plan. So is our purpose to go on the record.

Longmire: Often when we are looking at sector plan amendments well every time we look at a sector plan amendment we have to have, we have to show there has been significant changes in order to change the sector plans whether is a change in the roadways or something of that sort. Mr. Carberry why don't you speak and maybe sooth our troubled brain.

Mike Carberry: 400 Main Street with MPC. A couple of clarifications since last week. Mr. Seymour and I did talk about this case. In one sense there is logic that this is sort of a commercial node and could be considered in the future. At that public meeting last week we also heard from several concerned citizens that live on the back half away from the property. We did not realize until it was brought up using current aerial photos that it wasn't just the front site that was being graded it was the back half that was being graded. It was very apparent and looking at a series of those photos to see the siltation of the lake that is not on the property in question. As far as the car sales or storage or repair in between we have brought to the attention of Roy Braden, the Building Official, to have him please look at that because it is potentially a zoning violation. What we are saying in either of these cases until there is restoration of the site from Mr. Seymour's client not to have any plan amendments nor rezoning considerations to solve what is clearly a siltation problem at this point in time.

Gail Wood: 3233 Topside Road. My property is on the back of the Adams property. I have a pond that is about an acre and one half full of fish. It is sort of a forested sanctuary down there. There is a creek that feeds the pond. At the back of the Adams property it has been recontoured. It is quite steep. My pond is in

a flat area at the bottom of the steep area and I have siltation run off in the creek. On the other side of this acre and one half pond there is another creek which is connected. As that creek flow off it flows into the Tennessee River. Aside from that problem and that is quite a problem because with the recontouring of the Adams slope it is quite steep. Naturally everything is going to run off of that. In addition to that there are other pollutants such as sound this equipment isn't small. Trucks are probably 20 something tons. This is earth moving equipment. This is excavation equipment. I can also now see I was all wooded before I can see traffic on John Sevier. Obviously I can hear those big diesel trucks strain to make the grade. This is a serious problem. I am so concerned and so anxious about what happed to our home. Three generations have fished in that pond. Dogs swim there. On the back of my house, my property actually adjoins the Adams property back where the pond is but up along the driveway at the side of the house and even with the leaves on the trees I can still even now see traffic on John Sevier. The earth moving equipment doing their things. It's not only damaged my property's value but it is very saddening. Thank you for listening to me.

Charles Richman: 1821 Governor John Sevier Highway. I will admit I am a bit confused about this too. It appears, first of all let me tell you that this construction project that Arthur Seymour represents has been going on for almost three years. And they have not finished the grading. The first I think 6 or 9 months they did it without a permit and I think there was an amendment somehow they... I don't know if they are have been fined or paid a fine or not. That is where we are. He mentioned something about that is a great spot for commercial. The last conversation I had with MPC was the commercial around John Sevier Highway and Maryville Pike has expanded, you know store after store after store, to a point where it is not any longer a cluster. It becomes that highway is becoming a commercial corridor. We all historically and presently wish to keep John Sevier Highway a Scenic Highway without a little store here, here. The scattergun method that has been used over the past years. I don't know why they cannot ask for a rezoning after the sector plan has been approved. Go out to John Sevier Highway and ride down John Sevier Highway and see what has happened to that thing in the last 10 or 15 years. It is a strip highway. It is becoming a strip highway. John Sevier has a reputation. If you go down there you will see nonconforming, nonconforming, nonconforming buildings in ag zones; residences in two story metal buildings with a mail box that says residence. It is actually a business. This whole area needs to be looked at.

Seymour: Mr. Adams wanted me to express to Mr. Richman and the Commission that he has never worked without a permit out there. He is a contractor in Knox, Sevier and other Counties. He knows how to get a permit. He has had a permit in Knox County

the whole time he has done any work on this property and will continue to do so as long as he does so. I am not asking for rezoning today. I am simply trying to assure that if and when we come back in the future and ask for a rezoning on this property somebody doesn't stand up and say well you let the sector plan go through. It is set in stone now and you are not entitled to an amendment to the sector plan and you are not entitled to the rezoning. We are here saying that we think this property is appropriate in the future for use as some use other than low density residential. At some point we will probably be back and ask for a rezoning.

Laura Cole: Mr. Carberry, I am I to understand that this is now a residential zone but there is a commercial use?

Carberry: It is now agricultural. There are two properties in question. Mr. Seymour's client's property where the grading has transpired and then a property next door which abuts the presently zoned commercial which is where we drew the line on where the commercial should end. It has apparently been used for car repair and apparently sales for a number of years. That is the one where we asked the building official to look at that situation.

Cole: So that has not happened yet?

Carberry: That has not happened yet. If I might Leo LeCamera we had spoken to him as far as what permits had transpired on the subject property. He may want to speak to that.

Leo LeCamera: Knox County Engineering. I would like to just say there actually was no permit from the County when they started working. Mr. Adams did go to TDEC and got a TDEC general construction permit, but he is also supposed to come to the County to get a permit. He was given notice of violation for not having a county permit to begin with and he paid a fine for that. Subsequently he submitted plans to us, did get a County permit and he did get a second notice of violation for not installing sediment pond. He got a notice of violation for that as well which has been paid at this point. But he did get those two.

Cole: Has that sediment pond been installed? Has Knox County gone out and taken a look at Ms. Woods' property.

LeCamera: Yes. Yea we have an inspector assigned to that and he does do monthly inspections there.

Kane: That answers several of my questions. One for Mr. Carberry I guess. The South County Sector Plan has been going on for you have had meetings for how long a period of time?

Carberry: Starting in the spring of 2010 and continuing in the spring of 2011 and then more recently in the month of September.

Kane: When did Mr. Seymour come to you about this mixed use for the particular area?

Carberry: It was the question was can office and equipment storage be done on the site. This was the first time I have heard about mixed use. That was roughly 10 days ago September 28th.

Art Clancy: The much anticipated question. We are here to do the South County Sector Plan. I am not sure how we got into the specifics of this property. Mr. Richmond is exactly right. We can approve a change and an amendment to the sector plan. It will be much more difficult; and it should be much more difficult. I think that is the appropriate time to address these concerns. If you have got a pond that is being silted up you should call these gentlemen right here. Apparently these guys are on it.

MOTION (CLANCY) AND SECOND (LEN JOHNSON) WERE MADE TO APPROVE STAFF RECOMMENDATION. MOTION CARRIED 12-0-1. APPROVED.

Concepts/Uses on Review):

* 12. THE VILLAS AT TYLER'S GATE - TRANTANELLA CONSTRUCTION COMPANY

a. Concept Subdivision Plan

Northeast side of Heiskell Rd., northwest of Copeland Rd., Commission District 7.

10-SA-12-C

STAFF RECOMMENDATION: Approve variances 1-9 and approve the concept plan subject to 6 conditions.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

* **b. USE ON REVIEW**

Proposed use: Detached Residential Subdivision in PR (Planned Residential) District.

10-B-12-UR

STAFF RECOMMENDATION: Approve the development plan for up to 26 detached residential lots subject to 1 condition.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

Final Subdivisions:

* 13. WESTLAND MANOR RESUBDIVISION OF LOTS 3 & 4

8-SG-12-F

West side of Gothic Manor Way, southeast of Westland Drive,
Commission District 5.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

14. THE VILLAGE AT HARDIN VALLEY RESUB. OF LOT 7

9-SI-12-F

Southeast side of Greenland Way, south of Hardin Valley Rd.,
Commission District 6.

STAFF RECOMMENDATION: Deny Variance and Plat.

COMMISSIONER BRIAN PIERCE RECUSED FROM DISCUSSION OR
VOTING ON THIS ITEM.

Arthur Seymour, Jr., 550 W Main Street

Tom Brechko: This is a request for a resubdivision of lot 7 within the Village of Hardin Valley subdivision. The request is basically to remove a joint permanent easement that serves lot 8 to add the area of the joint permanent easement that provides access to lot 7 and then across the new lot 7 apply an exclusive permanent easement that would provide access back to lot 8 from the joint permanent easement that serves the rest of the development. The variance that they are asking for is basically a variance from the minimum standards for access for a subdivision basically staff's interpretation of that. Just to give you a brief overview of that access requirements under the subdivision regulations it states that all lots shall have either frontage of not less than 25 feet in width on a public street for the lot or an approved exclusive permanent easement or a joint permanent easement giving access to a public street. Our application of that provision requires anytime there is a further subdivision in a development that has a joint permanent easement as access that it is an extension of that joint permanent easement. If there is a new subdivision all the lots within that would have to be served by a joint permanent easement. We have not allowed a mix of joint permanent easements and exclusive access easements from that. An exclusive easement is an easement across the piece of property that provides access to a single lot and has access back to the public street. Under a joint permanent easement it is an easement it is a basically a right of way that serves two or more lots even though it is called an easement it is actually a separate private right of way that is separate from lots within the subdivision. It is not an easement across property. Because of that the joint permanent easement is not a part of the lot is not considered as part of the lot for density purposes. Part of the process when we look at any subdivision with a joint permanent easement there is a

requirement to also require a maintenance agreement for the maintenance of that joint permanent easement. By looking at something where you have a mix of access easement, joint permanent easement it would complicate the whole issue on how maintenance is handled or roads within the subdivision. We are not dealing in this case with a hardship of meeting access standards to subdivide property. The property is already subdivided. The easement is already there to serve the lots. They are basically asking to remove that and add that property and use a different access standard than we normally apply or have applied in all subdivision that come before you. In the materials in the blue sheet you have a letter from Arthur Seymour. At the end of the letter he basically states the property owner, Mr. Doss, is requesting approval of this subdivision plat so that as soon as the apartments within this development are completed on lot 7 he will be a position to sell the apartments on lot 7 and on lot 8 as a whole. He cannot combine the two lots because there are separate lenders invoked. The issue is the subdivision is there. The access is there. The approvals are there. He can still sell these two lots as a single package. The access easement or the jpe that is there doesn't impact how he can sell the lots. We feel there is no hardship. Therefore we recommend denial.

Arthur Seymour, Jr. I am here with Benny Moorman of Benchmark. We are both here on behalf of the applicant. One we respectfully disagree with MPC staff. Benny is handing out the portion of the subdivision regulations which are referred to. Basically the subdivision regulations require that no lot be created unless it has access to a public street. That access can be done several ways. I can be by frontage on a public street or it can be by an approved exclusive permanent easement to a public street or a joint permanent easement giving access to a public street. I submit that under the wording there we don't need a variance. What we are doing here creates a legal lot with access to a public street. Presently there is a joint permanent easement that comes off Hardin Valley Road. If you look at the bigger map in your plat or in your packet, you will see Hardin Valley Road generally running east/west. This property is accessed through a joint permanent easement. What MPC is says is because of the language in the subdivision regulations your access to a public road has to be one either by an exclusive permanent easement or two by a joint permanent easement. The statutory construction in Tennessee says that when you have an "or" in a sentence like this it can be construed as "and" and likewise when you have an "and" it can be construed and should be construed as an "or" if necessary. Basically when you have either and or or an and it is and/or when you are connecting two phrases like this. I don't want to say anything about Mr. Wise, I assumed Mr. Wise would

be here today but I just noticed he isn't. He and I discussed the issue and I am not going to speak for him. He and I discussed the issue earlier in the week when this came up. The obvious purpose of the subdivision regulations is to ensure that when you create a lot you have access to a public street. If our request were to be granted, lot 8 would go on joint permanent easements, excuse me, on an exclusive access easement to a joint permanent easement with complete legal access to Hardin Valley Road. It would be there and always have public access or access to a public street that could not be taken away unless an alternative route to a public street is created. No plat could be approved unless there was an alternative way to get to Hardin Valley Road. I put the last sentence that Mr. Brechko read in there on why Mr. Doss is requesting this. I think we ought to be up front. There is no secret about why he is requesting this. He has completed the apartments on Lot 8. He is in the process of completing them on Lot 7. He simply has separate lenders on both tracts and wants to be able to market these as readily and as quickly as he can once the apartments on lot 7 are completed and leased up. That is the purpose for the request. He meets the spirit and the letter of the subdivision regulations and the law in the State of Tennessee by using an exclusive permanent easement to connect to a joint permanent easement. We ask that the plat be approved as presented. Thank you.

Longmire: Mr. Seymour I would like to point grammatically that the coordinated conjunction either renders or necessary. You can't use and in a sentence when there is an either.

Seymour: I will take that back. There are plenty of cases that say and/or should be construed alternative. The law is a little different than what we learned in grammar. The way statutes are constructed.

Art Clancy: I remember when this came through the first time. The problem is if I stand on this piece of property if we approve it or deny it one or way or another would it change how any of this looks one way or the other?

Brechko: It is not going to change how it looks. It may change how the roads are maintained. When we have dealt with easements extending from a joint permanent easement we have treated that as an extension of the joint permanent easement which modifies, you have to go through modifying the joint permanent easement maintenance agreement and those type of things. In a way, I don't know if you can reverse it and have a lot served by an exclusive or a permanent easement that is not a JPE and then run a JPE off of that and say well I get through to the exclusive back to the road.

Clancy: I understand all of that. What we are dealing with this is not, I mean it is a subdivision but it is a group of apartments that are, we have a developer that has a huge amount of investment in the land that he is trying to do something with. I think this was his original intention. In this economy we are trying you know he trying to push through and develop his piece of property. I think we went back and forth on this before they started the second set of apartments. He is not trying to use it to increase his density. He has already got that. They are all there. I think we are arguing over semantics. I don't think it poses a safety issue to any of the people in the apartments. Go ahead Dan, blast. I just don't understand why we can't just so go ahead and say let's just do it and get it to where they can get their development done, finished and go on to their next development.

Dan Kelly: Let me address kind of the background here. If you adopt Arthur's argument that I it don't even need a variance in order to be able to do this, that's a real concern we have because in essence what would happen at that point would be you could do multiple subdivisions off of easements that would be done administratively. They would have to be... at that point they would meet the requirements. We would have to approve them and you could turn a 5 lot subdivision into a 10 lot subdivision very easily with minimal access. That's why it is written with the "or" and the "or" in there is so that we try to maintain, make sure that everyone not only has the 25 feet of access but an adequate roadway on which to travel on to do that. I probably wrote this paragraph back in the 80's sometime because prior to that you could not even do a joint permanent easement. A joint permanent easement unto itself was a variance to the regulations and we didn't have any. You either built on a public street or you served one lot with a permanent access easement and that was it. The JPE is the newcomer here. Once we put that in there we said well we have to guard against the idea of somebody doing a JPE and then coming in and doing further subdivision because of the maintenance agreements. This property is owned and controlled by a private entity. They have to give permission for people to use it and stuff like that. So that is why it is written with "ors" the way they are.

Clancy: It only services their development and their properties that they are trying to keep leased which is in their best interest to maintain it to where people can get in and out safely. I don't think they are saying they don't need a variance, I am just saying they are asking for the variance and the plat to be approved.

Dan Kelly: The first thing out of Arthur's mouth was we don't need a variance.

Clancy: Well, he is an attorney.

Wes Stowers: If there wasn't a line between 7 and 8 that is one tract, this would be a mute point. Correct? Okay, I don't care whether they have a variance or not we can dance on a pin but this is one of those common sense things. I see no justification to deny a variance to get access to something that wouldn't even be questionable if it were the same tract. We have got two different lenders and two different tracts. It is tough today to get a lender period. I am going to put one fact out here. Keep in mind in 2007 there was 6800 members of the Tennessee Homebuilders Association. How many are there today? Do you know? 2800 roughly. There has been a 4,000 2/3 reduction in the number of people building things. I think it is grievous if the body stands in the way of somebody doing something over a variance on two tracts of land that they own.

Longmire: Don't forget we set precedents which we have to keep in mind. If you have two tracts could you not have two separate buyers? Would that not cause a problem?

Stowers: One development.

Longmire: Yes but he could sell each tract separately.

Stowers: He could but there would be a joint permanent easement access to Hardin Valley Road. It would, it is going to be done.

Brechko: My light doesn't work. Dan has got his on for me. Maybe I didn't make myself clear. If this were a case that somebody was proposing a subdivision and there was something that the access interpretation prohibited them from coming in a getting approval to develop I think is one thing. They may be able to document a hardship. In this case the subdivision exists. The JPE's exist as we have required them to do and has been approved by the planning commission and has been done that way under the same type of interpretation for years. The first apartments were built under approvals that they got through the County. The second one has been approved by the planning commission through a use on review. There was a revision I mean something that allowed them to do a little higher density than what staff had recommended, but they have the approvals for all this. They can build the apartments. The lots exist. I am just puzzled as to why there is, bringing in this issue that well we want to be able to market it. They have all the approvals they need to market. There is nothing that

keeping the plat the way it is that would prohibit him from selling his property unless there is something that they have not brought up. Now if they take the joint public easement which is a private right of way and add that to that lot, yes they possibly get more units out there at a higher density than is already approved.

Clancy: They are already built.

Brechko: Some are built the others are, but adding that property to the JPE into the lot that would give them more area that they could actually come back and ask for another approval. At the time it was made that they can't, this isn't going to given them more density. It could potentially do that. The issue is there is nothing with the existing plat that would keep them from selling those properties individually or together because they have all the legal access. They have the approvals to build what they want to build themselves.

George Ewart: Mr. Seymour, let me make sure I am very clear on this. You are asking the jpe to be now an exclusive permanent easement.

Seymour: For the benefit of lot 8 yes. Only on that portion crossing lot 7.

Ewart: Then I would like to make a motion that we **APPROVE VARIANCE 1 TO REDUCE THE ACCESS EASEMENT REQUIREMENTS AS REQUIRED IN THE MSR 64.24 AS INTERPRETED BY MPC STAFF AND APPROVE THE PLAT. SECOND CLANCY.**

Michael Kane: What was, was the motion to basically approve deny per staff or was it to approve.

Longmire: His motion was to approve the variance.

Kane: Approve the variance which is to go against staff recommendation. My question is and the point of legality the joint permanent easement has people who have rights essentially within the joint permanent easement. Normally I would ask this to Mr. Wise but somebody can help me hopefully. That would be my understanding. The exclusive easement has essentially only two people who have interest. Right? The property owner which would be lot 8 and whatever property they are going over. Right? So from an interest standpoint, if your joint permanent easement decides they want to close the street, does the person who has the exclusive easement have any rights in deciding that and if they don't then we have essentially created a future legal problem. Is that correct?

Seymour: They could not close the joint permanent easement without the consent of lot 8. Correct. He rights into the joint permanent easement. He has an exclusive...

Kane: He has rights into the joint permanent easement even though he has an exclusive easement into the joint permanent easement. That is what you are telling me.

Seymour: Right.

Longmire: So both lots 7 and 8 would retain rights for the joint permanent easement. There would be no way to isolate either of those properties.

Dan Kelly: I think it would be highly dependent upon how it is written. That is one of these things where if whoever rights the easement agreement better make sure that they do maintain that right. Otherwise it is an agreement between two parties and that is it.

Len Johnson: Dan, how does this plat change if we grant them the variance? It doesn't change does it?

Brechko: The plat that is before you will be as it is submitted. What your.. the motion on the floor is to approve the variance and the plat that is before you. It does change the recorded plat by eliminating the JPE.

Dan Kelly: I just want to make sure that you all are granting a variance and not adopting his argument the he doesn't need a variance. I can assure you that we will continue to recommend that if you have multiple lots and multiple easements served off that that we want them under a maintenance agreement being controlled by hopefully a single body so everyone can be assessed for the maintenance equally and things like that over a period of time. That is basically my bottom line on this.

Longmire: The motion is to approve the variance and the plat. That is the motion and the second on the motion. So we are not buying into anything we are just saying we are going to approve the variance or not depending on how the vote goes.

Upon roll call the Planning Commission voted as follows:

Anders	No
Carey	Yes
Clancy	Yes
Cole	No
Ewart	Yes
Johnson	No

Kane No
Lomax No
Sharp Yes
Stowers Yes
Tocher No
Longmire No

MOTION FAILED 7-5-1.

MOTION (LEN JOHNSON) AND SECOND (KANE) WERE MADE TO APPROVE STAFF RECOMENATION TO DENY.

Upon roll call the planning commission voted as follows

Anders Yes
Carey No
Clancy No
Cole Yes
Ewart No
Johnson Yes
Kane Yes
Lomax Yes
Sharp No
Stowers No
Tocher Yes
Longmire Yes

(Pierce recused earlier)

MOTION CARRIED 7-5-1. DENIED VARIANCE AND FINAL PLAT.

- * **15. BONVIEW ADDITION RESUB. OF LOTS 23-25 **10-SA-12-F**
North side of Baxter, east of McSpadden, Council District 6.**

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **16. STAUB, VANGILDER, & HENDERSON ADDITION TO KNOXVILLE **10-SB-12-F**
East side of Hall of Fame Dr. at northwest intersection of Randolph & E Depot, Council District 6.**

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **17. CLAUDE E & LINDA C LOY PROPERTY **10-SC-12-F**
North side of Shipe Rd, northwest of Trout Rd, Commission District 8.**

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **18. BARRINGTON LOT 79R AND BLACKSFERRY POINTE LOTS 9-10 RESUBDIVISION** **10-SD-12-F**
North side of Archer Ln, north of Old Blacks Ferry Ln, Commission District 6.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

(File Nos. 10-SE 12-F & 10-SF-12-F were not assigned)

- T **19. EARL KAPLAN PROPERTY RESUBDIVISION OF LOT 2** **10-SG-12-F**
South side of David Ln, south of Durwood Rd, Commission District 6.

THIS ITEM WAS TABLED EARLIER IN THE MEETING.

- * **20. DOYLE DUKES BUILDING** **10-SH-12-F**
S Gay St. at the intersection of W Jackson Ave., Council District 6.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **21. THE VILLAS AT TYLER'S GATE RESUBDIVISION OF LOTS 1-30** **10-SI-12-F**
Northeast side of Heiskell Rd, northwest of Copeland Rd, Commission District 7.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **22. WHISPERING WOODS, PHASE II** **10-SJ-12-F**
Southeast end of Whisper Trace Lane, southeast of Nubbin Ridge Road, Commission District 4.

STAFF RECOMMENDATION: Approve.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

Rezoning and Plan Amendment/Rezoning:

- * **23. ROBERT GREENE** **10-A-12-RZ**
North side Dutch Valley Dr., west of Old Broadway, Council District 5. 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.

- * **24. ARROW PROPERTIES** **10-A-12-SP**
Northwest side Greenway Dr., northeast of Amber Ridge Way, Council District 4.
 - a. North City Sector Plan Amendment**
From MU-SD (Mixed Use Special District) (MU-NC8) and HP (Hillside/Ridge Top Protection Areas) to MU-SD (Mixed Use Special District) (MU-NC8), including I-2 and HP (Hillside/Ridge Top Protection Areas).

STAFF RECOMMENDATION: ADOPT RESOLUTION #10-A-12-SP, amending the North City Sector Plan to Mixed Uses-Special District (MU-NC8), including I-2, and recommend that Knoxville City Council also approve the sector plan amendment, to make it operative.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **b. One Year Plan Amendment** **10-A-12-PA**
From LDR (Low Density Residential) to LI (Light Industrial).

STAFF RECOMMENDATION: Approve LI (Light Industrial) for the front portion of the site only.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **c. Rezoning** **10-B-12-RZ**
From R-1 (Low Density Residential) to I-2 (Restricted Manufacturing and Warehousing).

STAFF RECOMMENDATION: Approve I-2 (Restricted Manufacturing and Warehousing) for the front portion of the site only.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **25. CHARLES SKALET** **10-C-12-RZ**
North side Chambliss Ave., west of Lebanon St., Council District 2. Rezoning from R-2 (General Residential) to O-1 (Office, Medical, and Related Services).

STAFF RECOMMENDATION: Approve O-1 (Office, Medical, and Related Services).

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **26. HUNTER VALLEY FARM** **10-D-12-RZ**
Northwest side Hunter Valley Ln., northeast of Tedford Ln., Commission District 4. Rezoning from A (Agricultural) to T (Transition).

STAFF RECOMMENDATION: Approve T (Transition) zoning, limited to use as an event facility, subject to use on review development plan approval of the use by MPC.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **27. METROPOLITAN PLANNING COMMISSION** **10-B-12-SP**
Southwest side Primus Rd., northwest of Murray Dr. Council District 3 and Commission District 7. Northwest City Sector Plan Amendment from LDR (Low Density Residential) to C (Commercial).

STAFF RECOMMENDATION: ADOPT RESOLUTION #10-B-12-SP, amending the Northwest City Sector Plan to C (Commercial) and recommend that Knox County Commission and Knoxville City Council also approve the sector plan amendment, to make it operative..

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

Uses on Review

- P **28. BEVERLY HOLLAND** **6-C-12-UR**
Southeast side of Holston Dr., northwest side of Speedway Circle. Proposed use: Child Day Care Center for up to 100 children in C-3 (General Commercial) District. Council District 6.

THIS ITEM WAS POSTPONED EARLIER IN THE MEETING.

- * **29. JASON COOPER** **10-A-12-UR**
East side of Lavesta Rd., north of Longwood Dr. Proposed use: Accessory structure that exceeds 900 sq. ft. in R-1 (Low Density Residential) District. Council District 4.

STAFF RECOMMENDATION: APPROVE the request for a 1092 square foot accessory building as shown on the site plan subject to 7 conditions.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- 30. KRISTEN CHRISTOPHER** **10-C-12-UR**
East side of Hackberry Rd., north of Hazelnut Dr. Proposed use: Child day care center for up to 32 children in A (Agricultural) District. Commission District 6.

STAFF RECOMMENDATION: Approve the request for a child day care center to serve up to twenty (20) children (applicant requests 32 children) as shown on the site plan subject to 6 conditions.

Kristen Christopher, 3404 Hackberry Road 37931

Jennifer Baumgartner, 3412 Hackberry Road, I am here today also representing neighbors, my family and some that have given letters and verbal consent and I have their names and addresses. James Baumgartner and Brad Baumgartner also of 3412 Hackberry Road, Bobby Smith...

Longmire: You do not have to read them you can just give him the list in a moment.

Baumgartner: We do not want a commercial business operating in our neighborhood. A few reasons. My neighbors along with my family and myself have notice a lot of extra traffic in our neighborhood lately and are concerned. The cars fly up and down Hackberry and Hazelnut Roads. I am assuming the increase in the traffic is due to the parents dropping off and picking up their children. Our neighbors on both Hackberry and Hazelnut are mostly elderly. I am afraid of them getting hit by a car just trying to check their mailbox. Also there is a number of children that go to the end of Hackberry and Ball Road there to catch the bus and they have problems with cars having to dodge them also. I personally do not want the daycare in my neighborhood due to the fact that I am physically disabled and am home most of the time. I have to try to rest and avoid stress to decrease my pain diseases and the large number of children Ms. Christopher is wanting to keep will certainly have a huge impact on the serenity of my neighborhood. That would be extremely disruptive to me when they are outside playing. Also reading the proposal I notice that it says the house has the required sewer requirements. Our neighborhood does not have sewer. Each house has its own separate septic tanks. Our neighborhood has requested sewers but it was never approved by the City. We don't see how the child safety issue has been approved also. I have notice that there is a pool in the back yard that is inside the fence but does not have a separate fence to keep the children out of the pool. Also we have noticed 3 or 4 dogs at the home. I just ask that you consider the lives and homes of our residents and how the livelihood of one could do so much to change the small neighborhood that still clings to the ideals of community, family and neighbor taking care of neighbor. Thank you.

Kristen Christopher: I was not approved for a commercial. There will be no signs. I simply did ask for 32. I was denied that by MPC only to be able to take on 8 more. That accommodated the families that I already had in the facility and the person that works for me who is also having a baby. There will be no extra traffic except for one family at this point for people that are enrolled. I have photograph that show that

that there is a separate fence for the playground area. I do have dogs. I am licensed by the State of Tennessee for 12 children and I have been operating this facility for 13 months. I have gone through every hoop that has been asked of me. I was approved by MPC for my 12 and paid my fees and was asked to obtain the extra 8. I will continue to live in the home. There will be no signage. There will nothing that will change on the exterior of the home. The only thing that will increase is the already fenced in extra area that MPC is requiring to back up to have 3200 square feet for the amount of children that I have. I have the pictures. I live there. I took pictures of everything.

Longmire: You don't want those in the record. You just want us to look at them?

Christopher: Sure just start at one area.

Baumgartner: I just wanted to clarify she is not going to change the exterior. It shows the drive through and parking there and that is not there yet. I was just wonder if that...

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

Carey: Mr. Kelly there was an objection based on the sewer situation there. Can you tell us anything about that.

Kelly: Looking at the maps we have available, it appeared that sanitary sewer was available to the site. If it is on septic that may be a concern and the situation would be that we would, we may want to add a condition that would be subject to the Knox County Health Department approving the day care and home at that location for that number of children. I would anticipate that that toilet would be flushed a number of times a day with 20 kids.

Carey: Our third condition is meeting all applicable requirements of excuse me, number five the Health Department is already on there as a condition.

Kelly: We probably need to specifically make sure it is brought to the attention of the Health Department.

Longmire: Ms. Christopher are you on sewer or do you have septic?

Christopher I do have septic and I do have to be approved by the Health Department. They will come out and do their full approval afterwards. They actually did come out for the 12 as well. I have their statement.

Longmire: Is sewer available to you?

Christopher: I am not sure. Ms. Baumgartner doesn't think so either I have never even asked cause I didn't know that was available.

MOTION CARRIED 12-1 (Kane). APPROVED.

31. CAROL PHILLIPS

10-D-12-UR

North side of Bridgestone Place, northeast of Nubbin Ridge Dr. Proposed use: 1500 square foot garage (accessory structure) in R-1 (Low Density Residential) District. Council District 2.

STAFF RECOMMENDATION: Approve the request for a 1500 square foot accessory building as shown on the site plan subject to 6 conditions

Tom Brechko: If I remember the last meeting I am better off when I am presenting than when you ask me for questions later. This is a request for an accessory building that has a proposed footprint of 1500 square feet. It is proposed to be a garage with a workshop and storage area. Under the zoning ordinance accessory buildings in a residential area have certain size restrictions. If you have a piece of property that is at least an acre in size you are permitted to have an 1100 square foot accessory building, again and this is the footprint of the building, not the total area, as a basically by right use. If you go over 1100, you can go up to 1500 through a use on review approval. Again this is for an accessory building for a garage. I want to point out that a lot at least 12 pieces of correspondence or so in your packet from the neighborhood and a lot of comments have been raised about this being used as a residency. That is not what is before the planning commission. The applicant had submitted to the homeowners association initially for a carriage house that would be an additional dwelling unit on the property. As they were going through that process and looking at the zoning they found that they could not do a carriage house, separate residential unit on the property and have submitted to us just a proposal for an accessory building garage. Through the R-1 zoning district you can actually request a duplex on a piece of property but you would have to go through a use on review for that and it has to meet the requirements of a duplex. One of that is being attached units. So you could not request a separate detached unit in the R-1 district. The staff has looked at this proposal as to requirements for accessory building. It either meets or far exceeds some of the minimum standards. Side yard setbacks are fine. They are proposing 27 feet. The rear is 5. There is a 25 foot easement back there, but they are proposing a setback of 39 on the rear property. The height maximum is 15, they have reviewed the elevation on the building as it meets the requirements in the zoning for height

determination with building code and indicated that it was approvable as proposed. Also there is the coverage of the building on the site. Total building coverage within the district is 30%. The proposal of the existing residence with the addition of the accessory building is about 14%. So it is a little less than half what is permitted in the zoning. The other issue is for any use on review for an accessory structure over the 1100 up to the 1500 there are criteria for use on reviews specifically to address that. Basically those criteria are looking at the compatibility of the proposed accessory structure to the principle buildings on the site. So it is looking at scale proportion, the type of building materials that that is compatible with the existing residence on the site. It is staff position based on the documentation provided and that his in your package that the materials that they are using are consistent with the design of the house. We feel therefore it meets that criteria. Also this is located near the back of the property. Part of the siting on the site is restricted by sewer easements that cross the property and the existing tree stand that the applicant wants to preserve. So it kind of narrows the area in which they would be able to put the structure. They are also proposing planting Leyland cypresses along the drainage easement in the back of the property to help eventually screen that from neighboring residences. That 25 foot easement is half of a 50 foot easement, drainage easement that covers a drainage ditch and swale that goes down to the back of the property. This has been reviewed by engineering staff. It does not require any detention for the proposal. It is staff's position that the proposed accessory building meets the criteria for approval of use on review and we are recommending approval.

Longmire: Mr. Donaldson, before we go any further could you speak to homeowner association and deed restriction as it affects our decision making.

Donaldson: We received many comments from neighbors regarding deed restriction. We are not a part of those deed restrictions and have no authority to enforce them. Enforcement of the restrictions would have to be through a civil suite through court of law. We are limited to what criteria are in the zoning ordinance.

Richard Krieg: 919 Westmoreland Boulevard, in Westmoreland Hills, the affected subdivision. While I am an attorney I am not here in a representative capacity and I do not have an attorney/client relationship with anybody involved. I am speaking on my own behalf as a concerned neighbor and there are a number of other concerned neighbors that are here and I would ask them to hold up their hands. (about 4 people raised their hands) There were several more three and one half hours ago or three hours ago. We have lost a few by

attrition. Thank you all for staying. I thank you as a lawyer for not considering deed restrictions and encouraging litigation. To this proposal in scope and location it is inconsistent with the character of this neighborhood. There is no second structure in this neighborhood that comes close to the impact of this proposal which is a 1500 square foot footprint. Not usable space, but footprint. I think that is somewhere in the neighborhood of three standard double car garages. It is a large structure. The rear elevation, the view that the adjacent homeowners will have is massive. It is 26 feet. About the size of the elevation of my home in the front. There has been no effort with this proposal before you today by Ms. Phillips to reach out to the neighborhood; to talk to next door neighbors; to say anything to them about anything but use other than what the first proposal was. There have no efforts to address legitimate concerns the neighborhood has. There has been no efforts to consider mitigation. The proposed location as you have heard is at the absolute rear location of the Phillips property. I guess that is understandable since one might want to have storage and garage as far away from their property as possible, but what that does is put it as close to neighboring properties as possible. In fact it is closer to neighboring properties than it is to the Phillips property. Besides that it has a greater negative impact to the neighbors. The Phillips lot slopes from front to rear in a steep slope. There are already drainage issues and you should have in your packet photographs of the drainage issues showing flooding. The 1500 square foot footprint and the 6000 square foot of pavement for the driveway is going to add significantly to that flooding issue and will be an important problem to deal with. Property values we believe would be diminished. There are a number of realtors in our neighborhood and they unanimously say the property values will be negatively impacted. There again is no similar structure in this neighborhood that has been proposed since my wife and I became the first residents in 1965. I would ask that you deny this request.

Greg Roth: 7313 Nubbin Ridge I am going to go fast because I have two minutes. Thank you for your time. I appreciate the opportunity to give feedback regarding this project. Mr. Krieg outlined the concerns of the neighborhood. I would like for you to hear the comments of one person who lives very close to the structure. My wife and I, similar to some of the neighbors who are very close are very very concerned. The open green space was the reason that we bought our house in the first place. It was bad enough when the Phillips built a patio and fire pit directly behind their home. It is close to our property so we have the benefit of getting all the smoke from the fire. However it is at the far end of their property which is far from their house and not in line of their sight. Now in addition to the fire pit and patio we will have a 3,000 square foot structure because it will be two stories 26 feet high, two

stories. It will look like a good size house with a massive driveway. Additionally given they already have a multi story house with a three car garage with a large basement with plenty of room for storage, it is obviously just a matter of time before this house, this building will turn into a house with occupants. My wife and I made a conscious decision to buy a home in the City of Knoxville and paid double the property taxes to live in a very nice neighborhood with standards. Standards based on respect, common courtesy and deed restrictions. But now we will live next to an expansive compound with very large house, multi story; one good sized house multi-story; patio fire pit; massive driveway stretching from one end of the property to the other. Unfortunately this monstrosity will be conveniently tucked away next to our home and far from the owner's home so they can maintain their beautiful view which is the reason we purchased our house in the first place.

Benny Mormon, President of Benchmark Associates, 10308 Hardin Valley Road. I stand before you today representing Carol Phillips concerning a use on review approval of a detached accessory structure. The improvements as presented will be in compliance with applicable building codes and presented use on review conditions and in our position also with the homeowners' regulations which we will address with them later. However our plans are not completed and we can't do that. The side and rear yards as Mr. Brechko represented are far exceeded. The post construction lot coverage is far less than the allowable 50 percent. The review of surrounding properties represents that the post development conditions of this property will be in the lower percentile of lot coverage of the other surrounding properties. The structure will not be and is not intended to be used as a residence. I want to emphasize that. Planned and expected uses include a garage, storage, workshop and possibly physical conditioning area. Please note that the applicant has made very effort to work with the community. We held two advertised meetings of which we had little to no attendance. Thereby future communications have not taken place. Individual meetings were held with a few concerned citizens. There have been no hidden facts in those meetings. Everybody has been forthright. In return community members have made efforts to organize group concerns. A group of concerned members expressing concerns for the applicant. The group has gone so far as to address City codes about the existing situation while they have never expressed concerns to the applicant that they issues with her existing conditions. As of October 8 you had 8 letters of concern and since that time I am aware of 5 additional letters. Some of those addressing items with restrictions and we know about that. All letters and I mean every single letter contains false or misleading statements. That is sad to say. There is references to open spaces and green spaces. A review of Westmoreland

Hills shows that there are no open or green spaces within the entire development with the exception of boulevards within right of ways. Street grade issues; those do not exist. There is a grade but it is not classified as steep. Reducing the building footprint slightly over what we had presented to them, this is not true. The building footprint has been reduced 40% which is why we are not going to be able to implement living quarters. It is more than 50% smaller overall in square footage. The negative impacts on property values: Given Ms. Phillips' investment in her home, I think she would give consideration to her own property values in these efforts. The structure being located on the property to adversely affect the adjoining property owners while being blocked from the applicant's own home is simply not true. It is going to be visible from the applicant's home. It is being located on the property due to existing utilities and in an effort to save trees at the request of one of the neighbors. It has also been stated that the structure will be closer to other residences and homes. This is not true. It will be as close to her house as it will be any other house. As for many references to violations of homeowner's restrictions, this is not the forum to discuss those. But if you would like for me to address questions in this regard I will be happy to do so outside my allotted time to speak. In closing the applicant is seeking a detached structure on her property that does require your approval through the use on review conditions. Contrary to the opposition's concerns and representations you should know that as many as twenty other properties within Westmoreland Hills, almost 10 percent, have detached structures with one of those being far in excess of the size of the structure being requested for your permission. The applicants request asks nothing more from you than to allow her to utilize her property within the rights afforded her through all codes. We respectfully request that you approve the application at this time.

Longmire: I have a question. How tall is this going to be? We have heard so many different things.

Moorman: It will be 15 feet per code the way the code is interpreted. As far as how tall it is we haven't finished the design, but I assure you it will be within codes.

Longmire: So 15 feet from ground to...

Moorman: Yes ma'am.

Brechko: The way building height is determined in the code is based on the front building line of that accessory structure. The illustration that is now on your screen this is actually close to what the design will be where the taller portion that you see the total of 26 feet is when you are looking at the garage. The garage doors will be directly in front. The upper part that

has the 3 ½ feet and 12 ½ that is the upper portion of the structure which is storage as shown on the site plan that you have. The way they do the building code height requirement is they take what is considered to be the front building line. They take the corners of that from the ground to the eave of the roof and you add those together and you divide it by two. Then you add it to the height of the roof which is from the bottom of the roof to the top and its half that distance. You add them together and that is how you get the height. By the calculation shown here and it is my understanding that Mr. Moorman had gone over this with City Codes Department. It would be under the 15 foot height requirement. How what you have seen in the letters that the back side of this the downhill side of it you will actually be seeing that full height of the structure. But he meets code requirements, but the back side will be actually a higher elevation that you actually see. The ends will be a little bit different too. From what he submitted indication is that it does meet code requirements for height, but on the back side he is also proposing to plant Leland Cypresses that in time will start to provide an additional buffer to the building on the back of the structure

Longmire: That is why I taught English Mr. Brechko.

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

Ewart: I guess I need to address this you Mr. Krieg. You had mentioned that there are significant impacts on property values for accessory structures. I drove out there and I looked at the property and went through there. I know there are a lot of pool houses in the neighborhood. I don't know what the square footage of them are. But lot number 10 at the end of the cul de sac at Bridgestone Place that accessory structure over there looks close to 1500 square feet driving by. I don't know how it is. I don't know how much that impacted property values of your all's neighborhood. I think it kind of blends in over there and it is nice. I don't know where we are going with statements like that until something is proven. I can say that looking at lot number 10 those accessory structures over there probably exceed any of the square footages that we have. I don't know that might your house. I am sorry if it is. It looks good and blends into the neighborhood I think. That place is full of estate houses and that is why I seconded the motion. I just don't see a problem with this if it is used for the intention that he is going to use it for. Now if he is putting people up there and sleeping in it that is a different thing. That is something else that we have to deal with. If we are looking at a garage that is roughly the same size or less than lot number 10, I don't see what we have a problem with.

Krieg: May I respond to that. I think started out as a questions before it became a speech. I appreciate you raising that because I didn't have enough time to also address the Farris residence which is what you are referring to. Not at all similar. Not at all a good example. Here are the reasons: Number one as you saw when you drove past it it is immediately adjacent to the front of the home. It is right there with the home. It is not way down a hill in the back.

Ewart: It is an accessory building. It does not make any difference where it is on the site.

Krieg: Right and a 150 foot square foot pool house would be an accessory building, but it is no where close to what we are talking about here. I am suggesting to you that the lot that you refer to is no where close to what we are talking about here. Number one it is adjacent at the front. Number two there is no negative impact to adjacent neighbors and to my knowledge, and I lived there when it was built, there were no objection by any neighbors whatsoever. Number 3 there are no water runoff issues created by that accessory structure. Number 4 there is no significant elevation of 26 feet to the rear right in the face of neighbors.

Ewart: But there is to front sloping down to Nubbin Ridge on that property.

Krieg: Commissioner the front has, I don't know the front of what. Are you talking about the front of lot number 10?

Ewart: Not the front but the back of it.

Krieg: But there are no adjacent homes immediately behind it.

Ewart: I understand but it sets precedent. That is all I am saying.

Krieg: I don't want to argue with you but you said you didn't understand the basis for saying there was a basis for negative impact and I am pointing out to you what we believe are the negative impacts. You are right across the drainage easement and had a 26 foot structure facing you across the entire back. That is entirely different from lot number 10 you are talking about. Finally you are right there have been no negative impacts from a monetary standpoint from the Farris or from lot number 10. It was built at the time. It doesn't have these other issues that this one has. If you want to know about negative impacts we have a realtor here from the neighborhood who can respond to that question

Longmire: Did that answer your question Mr. Ewart?

Ewart: Sure.

Bart Carey: I too have been over to look at this. My approach came from the street behind. I do have some concerns. I know there is not much we can say or do about 1100 square foot footprint. I guess I have a couple of questions. First of all looking at lot 10 I am not sure but it looks like it is by far the largest lot in the neighborhood possibly a double lot that was combined. I am not asking I am making an observation that lot 10 looks to be a double lot.

Krieg: It is a triple lot.

Carey: That really does not have any impact. There is a precedent there. I want to commend the applicant. The building that we see on the picture that is the original proposal of the carriage house is a very attractive building. I think it probably architecturally fits in well with the neighborhood. The size of it though I think exceeds, if I am those neighbors on the rear I have an issue. A 4 foot Leyland Cypress five of them would create a curtain basically on the property line or very close to it. For them to grow, if we are talking about a 26 foot elevation that is really not the top of the roof that is the way it is calculated at the mid point of the roof. I guess a question I have if the carriage house is indicative of the siting for this structure and I understand how the calculation for height is formed or based and the building line is that gabled wall that comes forward and it is a very irregular elevation look that I assume must be a retaining wall. Is that what is in the picture? When we are calculating building height is that based on the existing grade or modified grade?

Moorman: There is a retaining wall, yes sir. Codes requirement is post construction. However this is going to be close to the existing grade. The only reason there will be a retaining wall is because of the access behind that retaining was to the structure. To get to the garage doors. The grade at the front of the house will be altered very very slightly.

Carey; The guess the grade will be altered significantly going down the hill to the garage doors.

Moorman: The grade is going down and the reason for the retaining wall is to allow that. The garage itself at the rear of the structure there will be very little excavation and at the very front of it there will be very little excavation. As far as the Cypress I don't even know what size they will be planted. But Cypress do grow at a rapid pace. To speak to the 26 feet that they have said is height, if you look at it from the dimensions from the rear 26 feet is pretty close to what the height of the building would be measuring from the peak to the ground. You would take the 12 ½ and the 13 ½ and that is 26 feet.

That is from the peak. By codes if we were going to go around to rear of the house and utilize the codes method of measuring at the rear it would be 19.75 feet high. That would be the midpoint of the roof section. That is per the way codes reads.

Carey: In looking that the side elevation I guess that would be the right side elevation that shows basically a Kansas type lots a flat lot. Is that indicative of what elevation will truly read?

Moorman: I need to see the elevation again I am sorry. The side elevation represents looking at the side of the garage. Also looking into the door below the retaining wall. And then the retaining wall extending out to the front. It is not a Kansas type thing at all.

Carey: I am looking at the totally flat building line it is sitting on. I say Kansas like there is no topo.

Moorman: The bottom. That part is the part that is protruding forward. The retaining wall is on the left edge of that. The actual structure the other half of the structure is at the elevation above.

Carey: I think I am reading it right. I think my question is is the right elevation building line level like it shows here?

Moorman: I am not sure let me see if I can pull that out.

Carey: In looking at the site there is a slope in this case left to right. A natural slope. The natural grade.

Moorman: The nature slope is from front to back sir.

Carey: If I am looking at the side elevation in this picture that would be from left to right.

Moorman: And you are refereeing to the top elevation or the bottom elevation?

Carey: At the ground level. Where the building meets the ground. Is that an accurate...

Moorman: Both of those are representative of where the building meets the ground.

Carey: The site will be level at the whole depth of the building there. I know you are not.

Moorman: From that elevation that is what you will see. I am not denying that. If you went to the left elevation, you would see a slope down the side of the structure. The only reason

you see that view is because of the retaining wall and access to the garage.

Carey: I don't think any of us here can question or deny your ability to build an 1100 foot building. I can't support one this large. Having looked at it from the neighbors' perspective it is just...

Moorman: I would ask that you consider the fact that the structure that has been mentioned previously in the conversation is approximately 2300 square feet. The footprint. The detached structure on lot 10. It was mentioned that lot 10 is three lots. Actually that owner owns three lots, but the lot that you are looking at there that looks like it is larger than the other is one lot and it is impacted heavily by a detention basin. A good percentage of that lot is a detention basin issue.

Carey: I am familiar with that. I live well I usually walk I don't run much any more, I go through there all the time and I know that lot as well. I don't think it has a negative impact those structures do not have a negative impact on Nubbin Ridge. Are you saying that was not originally three lots there; it was just one?

Moorman: I am saying that the original subdivision of that property that was one property, one lot always has been platted that way and has not changed. And I would tell you that almost 35 to 40% of that lot is impact by a detention basin issue. While the property in question has a 25 foot drainage issue.

Carey: I am not sure I understand what the impact one way or the other of the drainage basin.

Mooreman: It impacts what he could have developed. What he could have used because there is a detention basin he could not have put anything in that area.

Carey: I am missing something. Again I can support the 1100 foot structure.

Can I have my 12 seconds?

Wes Stowers: This is a tough one for me because I am a good personal friends with people on both sides of the issue. I have been a guest in the homes that abut up against where this proposed structure is going to be. I am also president of the homeowners association. I wish that everybody had gone through the homeowners first to get what was approved and then come to this body to make sure it fits. That is a personal opinion. I would also add that homeowners association issues have nothing to do with our deliberation here. That is a

separate issue. I am very very torn on this. I am a believer in property rights. I also think there should be some common ground that could be worked out. I would urge you all to postpone this and work it out through the homeowners association. That would be my recommendation as a friend to several folks on both sides of this issue.

I just want to say that whenever you vote we have got a nice house, a nice community, a nice neighborhood and you are destroying my ability to sell my house.

Longmire: I would remind Commission even though you use your own judgment about things, that we approve according to whether someone meets all of the specifications. Although one of the specifications is is it an appropriate dwelling in that area or appropriate building in that area.

Jennifer Gosweith: 7304 Misty Meadow Place. We have been there since 1991. I am very familiar with the property you brought up. It is the Farris home. It is three lots. We live on the back side of that. They have about a 1600 square foot house so that house that they have attached to that is appropriate. This house is going to be on the back side. I am not going to see it. I am not going to see this house. It is not going to affect me personally. There is a whole street on Bridgestone, a whole street on Parliament all of those people have big patios and big decks that look right on that with a straight line. I can tell you as a realtor if you go into any of those people's houses when you get ready to sell it and they walk out into the back yard and see another huge thing right in the back. They are going to go no thanks I am not buying this house. If everybody in our neighborhood whenever their houses don't sell it affects the value of the property. I ask you to think about this. When you go look at a house with your wife and you go out into the back yard and you are from here to about you and you see a second home on the lot 1/8 the size of John Farris house. Are you kidding me? Who is going to buy that house? Who is going to buy any of their houses? Nobody. I do this every day for a living. And when somebody puts something on the back of the property where the Farris's is on the front of the property not affecting anybody you have just screwed them all.

Mooreman: I would respectfully ask for a chance to rebut that statement. Unfortunately I feel their pain. I do. But this will be done tastefully. They are asking to impact a person's private property and it be treated as public open space. That is simply not fair. They made mention to their taxes, paying both City and County taxes. This resident does as well. We even offered in one of our private meetings with one of the individuals to secure this at green space. That is all they want. That is all that is going to satisfy them is this be green space. But if they

would at least step up and help in some manner to afford that luxury. They are not interested.

Carey: I want to clarify or maybe I want to ask a question Tom. You asked about 1100 feet where that came from. Is the 1100 feet basically automatic in this situation?

Brechko: They can do an accessory structure up to 1100 square feet with an acre, a little over an acre size lot.

Carey: If that structure was based on that footprint, we would not be talking about this right now. That was the point. This is a use on review to allow for a larger structure than would be normally permitted. That is why I am going back to the 1100 feet. I kind of support what Wes said. If this didn't pass, a couple of things. There is a lot of animosity. At the end of day it is going to leave a bad stain. If it goes to this point there are going to be issues with neighbors down the road. It is going to be well. I don't think there is any question about that. Do those meetings maybe change anything? Maybe or maybe not, but goodwill makes good neighbors. I would think if we didn't approve this and we had a motion that asked you guys to go out and kum ba ya for while, look at what is out there and what the options are. If it is 1100 feet we are not talking about, it is the additional 400 square foot print that makes this thing why we are talking about it. After that it is up to the neighborhood association and their covenants and restrictions and all of that. We do not have anything to do with that. We have got to trust that engineering knows what the water is going to do. We can't really get involved with the water. It could be the same height and be 1100 feet so that can't really be into play. That is where I am coming from.

MOTION FAILED. (Clancy, Ewart, ??? Yes)

MOTION (CAREY) AND SECOND (STOWERS) WERE MADE TO POSTPONE FOR 30 DAYS AND LET THE NEIGHBORHOS AND APPLICANT HAVE SOME DISCUSSION.

Carey: That would have to be something that maybe we get an agreement on now that there be a significant effort made by both parties, or association and applicant to talk about this.

Moorman: I would tell you that we would welcome the opportunity to speak. We have already held two public meetings and spoke with anybody on the private level. It is going to impact the plans of the resident, but we would be happy to meet.

Krieg: Asked for clarification on the vote just taken.

Longmire: The vote was to approve the request. That vote failed. Right now we don't have a motion, we have a motion in place to postpone for 30 days. Because the approval failed I had to have a second motion. What is your question sir?

Donaldson: We have to have an affirmative vote on any action.

Krieg: That was my question. That is the question that is there. Mr. Wise is not here. Has he ruled that?

Donaldson: We have long history of requiring an affirmative vote on any action.

Longmire: We have to do something. We have to make some decision. We can't just let it go by.

Carey: My alternate motion might be to approve 1100 square foot. I don't think that will happen or to just deny it if that give them 100 square foot. I am really interested.. I hope you guys can make something positive come from this.

Krieg: I just don't want the commission to misunderstand. Mr. Moorman talks about these public meetings. Since this proposal that is before you was filed there has been no effort to communicate with anybody in the neighborhood. Period.

Longmire: That is what this motion is trying to do. To set a 30 day limit to come back at our November meeting in order to make sure that the community has talked. That is the motion.

MOTION CARRIED 13-0. APPROVED.

- * **32. SIMON PROPERTY GROUP, INC (Revised) **10-E-12-UR****

South side of Kingston Pike, west side of Morrell Rd. Proposed use: Restaurant in SC-3 (Regional Shopping Center) District. Council District 2.

STAFF RECOMMENDATION: Approve the request for a restaurant containing approximately 7,500 square feet of floor space as shown on the development plan, subject to 6 conditions.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

- * **33. KCDC **10-F-12-UR****

Southwest side of Wilson Av., northeast side of Curie Pl. Proposed use: Attached residential development (two duplexes) in RP-1 (Planned Residential) pending District. Council District 6.

STAFF RECOMMENDATION: Approve the request for the two sixplex dwelling structures as shown on the development plan subject to 6 conditions.

THIS ITEM WAS APPROVED ON CONSENT EARLIER IN THE MEETING.

Other Business:

None

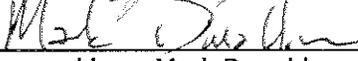
Adjournment

MOTION (CLANCY) WAS MADE TO ADJOURN

There being no further business, the Metropolitan Planning Commission meeting was adjourned in order at 5:06 p.m.



Prepared by: Betty Jo Mahan



Approved by: Mark Donaldson, Executive Director



Approved by: Rebecca Longmire, Chair

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