

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

BAXTER PROPERTIES, LLC,

Plaintiff,

vs.

**CITY OF KNOXVILLE, KNOXVILLE CITY
COUNCIL, ADAIR GARDENS RESIDENTS'
ASSOCIATION, INC., and FOUNTAIN CITY
TOWN HALL, INC.,**

Defendants.

No: 200839-3

FILED
2020 AUG 18 PM 3:53
HOWARD G. HOGAN

COMPLAINT FOR DECLARATORY JUDGMENT

Comes the Plaintiff, Baxter Properties, LLC (hereinafter "Baxter Properties"), by and through counsel, pursuant to Tennessee Code Annotated §§ 29-14-101, *et seq.*, and seeks this Court to review the recent actions of the City of Knoxville, Tennessee, through its legislative body, the Knoxville City Council (hereinafter "City Council"). Baxter Properties requests that this Court declares the actions of the Planning Commission and City Council in denying recommendation of Plaintiff's application for re-zoning illegal, arbitrary, and capricious because it is plainly contrary to the zoning laws, the denial to of the rezoning appeal lacked any rational basis, and the legislative body failed to cite any reason to support their denial. For cause, Plaintiff would respectfully demonstrate the following to the Court:

PARTIES AND JURISDICTION

1. Plaintiff Baxter Properties is a Knoxville based Limited Liability Company with a principal address of 3901 Sam Cooper Lane, Knoxville Tennessee 37918.

COPY

2. Defendant City of Knoxville (“City”) is a municipal corporation organized under the laws of the State of Tennessee and may be served with process upon Charles W. Swanson, its City Law Director, at his official office, located at 400 Main Street, Suite 699, City-County Building, Knoxville, Tennessee 37902.

3. Defendant City Council is the chief legislative body for Knoxville, Tennessee, and may be served with process through its law director Charles W. Swanson, at his official office, located at 400 Main Street, Suite 699, City-County Building, Knoxville, Tennessee 37902.

4. Defendant Adair Gardens Residents’ Association, Inc. is a nonprofit corporation duly authorized to conduct business in the state of Tennessee. Pursuant to Tenn. Code Ann. § 29-14-107(a), this Defendant is being added as a party because it, and several of its members, communicated opposition to Baxter Properties’ rezoning request at issue in this litigation; therefore, it may “have or claim any interest which would be affected by the declaration....” *Id.* It may be served with process in the care of its President, Matt McMillan, at 116 E. Adair Drive, Knoxville, Tennessee 37918.

5. Defendant Fountain City Town Hall, Inc. is a nonprofit corporation duly authorized to conduct business in the state of Tennessee. Pursuant to Tenn. Code Ann. § 29-14-107(a), this Defendant is being added as a party because it, and several of its members, communicated opposition to Baxter Properties’ rezoning request at issue in this litigation; therefore, it may “have or claim any interest which would be affected by the declaration....” *Id.* It may be served with process in the care of its registered agent, Charlotte Davis, at 104 Crawford Road, Knoxville, Tennessee 37918.

6. Pursuant to Tennessee Code Annotated sections 29-14-101, et. seq., the Chancery Court has jurisdiction to hear this declaratory judgment action.

7. Venue is proper as this suit concerns real property situated within the City of Knoxville, the Planning Commission, City Council, Adair Gardens Residents' Association, and Fountain City Town Hall are entities each with a principal place of business in Knox County, Tennessee.

FACTS

A. Background and Prior Staff Reports

8. Plaintiff incorporates all preceding paragraphs verbatim as if fully set forth herein.

9. This suit concerns a parcel of real property owned by Baxter Properties commonly known as 0 Sanders Drive, Knoxville, TN 37918 (Parcel ID 58MB02201) (hereinafter the "Property")¹.

10. The Property is approximately 0.28 acres located at the intersection of Adair Drive and Sanders Drive, west of Tazewell Pike. It is currently zoned RN-4 (General Residential Neighborhood Zoning District).

11. Baxter Properties also owns three adjacent parcels 3029 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike and 3019 Tazewell Pike, Knoxville TN 37918 (both under the single Parcel ID 58MB004) and 220 Adair Drive, Knoxville TN 37918.

12. The Tazewell Pike Parcels each are currently zoned C-G-2 (General Commercial District) and together constitute a contiguous block of property at the convergence of Adair Drive, Sanders Drive, and Tazewell Pike.

¹ See Letter from Benjamin C. Mullins to Vice Mayor Gwen McKenzie and all attachments thereto attached to this Complaint as Collective Exhibit A.

13. Baxter Properties originally submitted a combined rezoning request for both the Property and 220 Adair Drive to rezone both parcels to C-3² and combine 220 Adair Drive and the Property.³

14. 220 Adair Drive is currently zoned RN-1, Single-Family Residential Neighborhood Zoning District, and would require both a One-Year Plan and a Sector Plan amendment to rezone the property to a commercial zone.

15. Baxter Properties intended at that time to use the Property as a site for the development of a Fountain City Beer Market operated by Bearden Beer Market and to use 220 Adair Drive as a parking lot for the development.⁴

16. Planning Commission Staff initially recommended the approval of both parcels for C-3 zoning and stated that C-3 zoning was appropriate as an extension of the zoning of the adjacent parcels and that “the proximity of these parcels to Tazewell Pike make them viable commercial properties and the proposed parking area and landscape buffer will act as a transition between the commercial and residential uses.”⁵

17. The Planning Commission Staff’s approval was subject to (7) conditions to mitigate potential adverse impacts on the residential neighborhood which abuts these parcels; only two of these conditions were relevant to the Property (a 25-foot landscape buffer along Sanders Drive and a sidewalk to be installed along the frontage of the lots.)

18. Following the Planning Commission Staff’s recommendation, there was significant neighborhood opposition to the requested rezoning because the residents opposed the encroachment of commercial development into a historical neighborhood.

² C-3 is the past equivalent zoning to C-G-2 under the current zoning ordinance.

³ Original application attached as Exhibit 1 to Collective Exhibit A.

⁴ The initial Bearden Beer Market concept is attached as Exhibit 2 to Collective Exhibit A.

⁵ Initial Knox County-Knoxville Staff report attached as Exhibit 3 to Collective Exhibit A.

19. Residents also opposed the ingress and egress of the proposed parking onto Adair Drive and labored under the misconception that Baxter Properties illegally and surreptitiously removed the residence at 220 Adair Drive.

20. While the residence on 220 Adair Drive was removed by Baxter Properties, it was done so after properly obtaining a demolition permit through the City of Knoxville and waiting the required 60 days to remove improvements that is within an existing historic overlay.

21. At this time, residents raised concerns regarding the required Sector Plan and One-Year Plan amendments which would be required prior to rezoning 220 Adair Drive.

22. Ultimately, the requested rezoning was postponed until the January 9, 2020 Knoxville/Knox County Planning Commission Meeting.

23. Following multiple calls and e-mails in opposition to the rezoning of 220 Adair Drive, Planning Commission Staff's recommendation changed from recommending approval of a "minor extension of commercial zoning" to a denial of the rezoning because "it encroaches on a residential neighborhood."

24. The comments to Staff's Recommendation in the January 9, 2020 Plan Amendment Report provided the following reason for denial:

Staff's previous approval was based on the belief that neighborhood residents had been notified and were in support of the development. However, due to the volume of feedback in opposition to the proposed rezoning and land use staff understands this is not the case and has reviewed these requests further recommending denial.⁶

25. Based on the Planning Commission's Staffs' revised recommendation to deny the rezoning and plan amendments, legal counsel was retained and a subsequent postponement was

⁶ See Exhibit 4 to Collective Exhibit A to this Complaint.

granted to provide the owner and the neighbors time to discuss alternatives or conditions that might make the proposed zoning more palatable to the community.

26. One such change, suggested by the neighborhood, was to flip the proposed development layout by placing the building for the Beer Garden building on 220 Adair Drive parcel and place the parking for the Beer Garden on the 0 Sanders Drive parcel.

27. This suggestion was preferred by the neighborhood as it would allow ingress and egress access for traffic via Sanders Drive rather than from Adair Drive.⁷

28. As the neighbors continued to express concern over the potential commercial uses for 220 Adair Drive, the application was revised from C-G to CN (Neighborhood Commercial) to limit many of the potential invasive commercial uses on Adair Drive.

29. The parties also discussed various options for landscaping, fencing, decorative walls, a potential “split zone” for 220 Adair, and deed restrictions for certain uses.

30. The contemplated split zone would leave a small strip on the southern portion of 220 Adair Drive zoned RN-1, Single-Family Residential Neighborhood Zoning District, so that it would serve as a barrier/buffer for future encroachment of commercial zoning into the neighborhood.

31. Although these conversations were productive and conducted by the parties in good faith, the parties were unable to reach a consensus on all these issues. Consequently, the owners of the Beer Market elected to look outside of the City limits for a new location for a Beer Garden and Baxter Properties looked at other development/ tenant options for the Properties.

32. As any non-residential use for 220 Adair Drive would require both a Sector Plan and One-Year Plan Amendment, Baxter Properties decided to abandon its attempt to rezone that

⁷ See the Revised Concept attached as Exhibit 5 to collective Exhibit A.

parcel so it could remain zoned residential and serve as a buffer between 0 Sanders Drive and the Adair Gardens neighborhood.

33. The existing Sector Plan and One-Year Growth Plan designate 0 Sanders Drive as GC (General Commercial); therefore, no amendments to the Sector Plan and One-Year Growth Plan would be necessary to rezone 0 Sanders Drive to C-G-2.

34. Where conflicts exist between the current zoning and the One-Year Plan and Sector Plan designations, Planning staff typically relies on neighborhoods and property owners to initial the plan amendments or general rezoning.

35. The current application was accordingly amended to seek rezoning only for 0 Sanders Drive to C-G-2 zoning -- consistent with the current Sector Plan and One-Year Plan designations.

B. Current Proposed Use

36. Plaintiff incorporates all preceding paragraphs verbatim as if fully set forth herein.

37. Due to the Beer Garden's withdrawn interest, Baxter Properties is currently seeking to combine 0 Sanders Drive with the parcel it owns to the east (3029 Tazewell Pike, Parcel ID 58MB001). The intent would be to use 0 Sanders Drive as additional parking for the upcoming tenant for the Tazewell Pike Property.

38. The new tenant for the 3029 Tazewell Pike Property is Sweet P's Barbeque, who desires to use to 0 Sanders drive parcel as additional parking for the restaurant.

39. Baxter Properties explored whether or not the parcels could be combined, and the 0 Sanders parcel could be used as a secondary or accessory use for parking without rezoning the property; however, the Knoxville County Codes Department opined that that any accessory parking use would need to be on a combined parcel of property that was uniformly zoned to

accommodate the primary use the parking lot was to serve. See Section 11.8 of the Knoxville Zoning Ordinance.

40. As a result of this interpretation. The owner sought the C-G-2 zoning for the 0 Sanders Drive property to serve as the accessory use for parking for the restaurant.

41. The C-G-2 zoning sought for the 0 Sanders Drive Property is a minor extension of the current zoning on the adjacent parcels owned by Baxter Properties, the zoning would need to be consistent if the Property is going to be used as a secondary or accessory use for the restaurant, the neighbors had previously agreed that this property may serve as a secondary use as parking for the Beer Garden, and the zoning is consistent with the current Sector and One-Year plans.⁸

C. Current Staff and Planning Commission Action

42. Plaintiff incorporates all preceding paragraphs verbatim as if fully set forth herein.

43. Although the Planning Commission Staff noted that the requested zoning is an extension of the adjacent C-G zone to the east and that both the Sector and One-Year Plan specifically call for General Commercial zoning for 0 Sanders Drive, Planning Commission Staff recommended to deny the rezoning.

44. The Planning Commission justified their denial in explaining that “it would allow commercial uses too intense to be located at an interior intersection at the entry of a stable, single-family neighborhood and would be incompatible with the adjacent single-family residential zoning.”

45. The most current of the Knoxville-Knox County Planning Department Staff recommendation is inconsistent with their initial recommendation that “the proximity of [0

⁸ See Maps depicting the current Sector and One-Year plans attached as Exhibit 6 in collective Exhibit A.

Sanders Drive] parcels to Tazewell Pike make them viable commercial properties and the proposed parking area and landscape buffer will act as a transition between commercial and residential uses.”

46. With the exclusion of 220 Adair Drive from the rezoning request, 220 Adair would remain zoned RN-1 Single-Family Residential Neighborhood Zoning District and serve as a buffer to act as a transition between the commercial and residential uses.

47. Regarding whether or not the proposed rezoning is consistent with, and not in conflict with, the General Plan of Knoxville, Planning Commission staff noted that CG zoning is consistent with the current North City Sector Plan’s General Commercial Land use designation; however, staff attempted to minimize the import of the Sector Plan designation by pointing out that “the North City Sector plan is one of the oldest sector plans” and claimed that, as such, it is outdated.

48. Staff’s comments did not address the One-Year Plan and its land use designation for the Property as “General Commercial.” Staff did not comment that the One-Year Plan designation is in error.

49. The Charter for the City of Knoxville provides in Article VIII, Section 801(A) the following:

the mayor shall have the metropolitan planning commission prepare a one-year development plan which delineates the city's proposed land use development pattern for a succeeding twelve-month period and is based upon the development goals and objectives specified in the city's five-year development plan. **The one-year development plan shall provide the basis for zoning of all properties within the city limits.**

Id. (**emphasis** added).

50. Pursuant to the Charter for the City of Knoxville, Article VIII Section 801(B), the one-year plan was amended in May 2020 and the 0 Sanders Drive Property is

designated “GC- General Commercial.” See Collective Exhibit 6 to Collective Exhibit A attached hereto.

51. Moreover, the purpose of the Sector Plan is provided in Appendix B to the Knoxville City Codes “Zoning Ordinances” at Article One Section 1.1(B):

Promote orderly development of the City and implement the adopted Knoxville-Knox County General Plan, which incorporates more specialized adopted plans including adopted one-year plan, sector plans, corridor plans, and small area plans adopted by City Council.

52. The Sector Plan currently designates 0 Sanders Drive as “G-C- General Commercial.”

53. The Planning Commission considered this rezoning at its June 11, 2020 meeting.

54. There was no neighborhood opposition at the meeting.

55. The only opposition to the rezoning was provided by an e-mail from a resident of Adair Gardens and two e-mails from Charlotte Davis and Carlene Malone from Fountain City Town Hall.

56. The Commission voted, 11-1, to deny the requested zoning.

57. Baxter Properties appealed the decision of the Planning Commission to Knoxville City Council.

D. City Council Hearing

58. Plaintiff incorporates all preceding paragraphs verbatim as if fully set forth herein.

59. City Council heard Baxter Properties’ appeal on July 28, 2020.

60. Matt McMillan represented Defendant Adair Gardens Residents’ Association and spoke in opposition to Baxter Properties’ appeal.

61. Defendant, The Fountain City Town Hall, sent an e-mail in opposition to Plaintiff’s appeal.

62. Prior to the meeting, Baxter Properties' representative was approached by a member of City Council to revise the rezoning application from C-G to CN and to include the adjacent parcels owned by Plaintiff and currently zoned C-G to CN. The concept of conditioning a rezoning on the downzoning of adjacent parcels owned by Plaintiff but not subject to the instant rezoning request was further discussed at the meeting.

63. Plaintiff was encouraged by City Council to revise the rezoning application to down-zone the adjacent 3029 Tazewell Pike parcel to C-N, as well as request to rezone 0 Sanders Drive C-N, rather than the current appeal, requesting C-G.

64. It was the position of City Council that combining both 3029 Tazewell Pike and 0 Sanders Drive and rezoning both to C-N would allow Baxter Properties to use 3029 Tazewell Pike as a Sweet P's because an "Eating and Drinking Establishment" is allowed as a Special use in the C-N zone, and the parking lot would be an accessory use to the restaurant located on the current 3029 Tazewell Pike parcel.

65. The City Ordinances for the City of Knoxville provides the following in Appendix B, Section 16.1(D)(2)(a)(ii) "For zoning map amendments, the City Council must approve or deny the application. No conditions may be imposed as part of a zoning map amendment."

66. The City of Knoxville, through the actions of its City Council, indicated it would only approve a rezoning of 0 Sanders Drive to commercial zoning if the adjacent Tazewell Pike parcels were included in the request and zoned to a less intensive CN zone.

67. The City of Knoxville, through the actions of its City Council, has attempted to force Baxter Properties to downgrade property currently zoned C-G⁹ in order to gain its approval for the development of 0 Sanders Drive and 3029 Tazewell Pike as Baxter Properties has intended.

68. Effectively, the City of Knoxville has placed a condition upon the approval of the rezoning application for 0 Sanders Drive if Baxter Properties desires to use the parcel in the manner provided herein.

69. When Baxter Properties declined to seek to rezone adjacent Tazewell Pike parcels to CN, City Council voted to deny Baxter Properties' request for rezoning with respect to the 0 Sanders Drive property in an 9-0 unanimous vote.

CAUSE OF ACTION: DECLARATORY JUDGMENT

70. Plaintiff incorporates all preceding paragraphs verbatim as if fully set forth herein.

71. Even though the proposed rezoning complied with the applicable zoning regulations, Sector Plan, and One-Year Plan, City Council denied Plaintiff's appeal.

72. City Council failed to state a rationale for its denial. City Council lacked a legal ground to deny the rezoning appeal.

73. The purpose of both the One-Year Plan and the Sector Plan is to promote orderly development of the City.

74. City Council lacked a debatable, rational basis to support its denial of the rezoning request because its decision was not based on the existing One Year Plan which allows for commercial zoning on 0 Sanders Drive.

⁹ "Eating and Drinking Establishments" are expressly allowed under the C-G zone; however, Baxter Properties would be forced to spend more time to acquire a Special Use permit to place the anticipated tenant on the 3029 Tazewell Pike Property if that property is rezoned C-N.

75. City Council had already made its policy decision concerning the suitability of 0 Sanders Drive for commercial zoning in adopting the One-Year Plan in May 2020 and the Sector Plan, each designating 0 Sanders Drive “General Commercial.”

76. While Sector Plans shall serve as a guide for zoning decisions, the One Year Plan is mandated by the City Charter to serve the basis for land use regulations. Compliance with the One Year plan is legally required by the Charter.

77. Article VIII, Section 801 of Knoxville City Charter requires that future zoning in the City conform to the community’s comprehensive development plans. Section 801(A) states that “[t]he one-year development plan shall provide the basis for zoning of all properties within the city limits.”

78. As stated by the City of Knoxville, Tennessee, 2020 One Year Plan, “Previously, plans were guides for zoning, but conformance to the plans was not legally required”.¹⁰ Section 801(A) states that “[t]he one-year development plan shall provide the basis for zoning of all properties within the city limits.”

79. Neither the Knoxville-Knox County Planning Department, the Knoxville-Knox County Planning Commission, or the City Council suggested that the One-Year Plan designation of General Commercial for 0 Sanders Drive was in error.

80. Per the One-Year Plan. Areas designated for GC (“General Commercial”) should be zoned O (Office), OP (Office Park), C-G (General Commercial), C-H (Highway Commercial), or C-R (Regional Commercial).

81. If the City of Knoxville had intended to preclude all commercial zones, including C-G, C-H, or C-R, as an option for 0 Sanders Drive, and only leave O or OP, it could have

¹⁰ Attached as Exhibit 8 to Collective Exhibit A.

amended its One-Year Plan designation for the Property to either Office (O) or Medium Density Residential/Office (MDR/O).

82. Once the legislative body adopts the General Plan (or by extension, any other plan—including the One-Year Plan), then any land use decision made thereafter by the legislative body, planning commission, or board of zoning appeal must be consistent with the General Plan.

83. Residential Zoning is inconsistent with the General Commercial designation for the North East County Sector Plan and the One-Year Plan.

84. By denying the requested rezoning, leaving it zoned RN-4, the decision by the Planning Commission is therefore also inconsistent with the City Charter and Title 13 of the Tennessee Code.

85. The Neighborhood previously suggested using 0 Sanders Drive as a parking lot. The neighborhood's negotiations with Baxter Properties concerning their demand to rezone the adjacent C-G parcels C-N indicates that the neighborhood desired less intensive commercial zones on properties not included in the instant application.

86. City Council's denial of the rezoning application for 0 Sanders Drive after Baxter Properties refused to rezone the C-G adjacent properties to C-N demonstrates that the denial was based on an unfulfilled condition, in violation of the zoning ordinances.

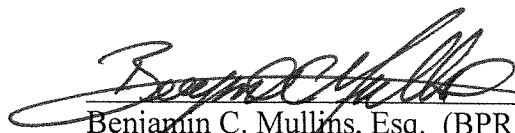
87. Rather than considering the rezoning application based on its merits, the 0 Sanders Drive property's proximity to other commercially zoned properties, and compliance with the City Charter, One-Year, and Sector Plan, City Council conditioned its approval of any rezoning to the satisfaction of the neighborhood's requests.

88. Baxter Properties' current proposal would limit other obtrusive commercial uses from encroaching on the Adair Gardens neighborhood by leaving an entire parcel, 220 Adair Drive, zoned RN-1 and to buffer any intrusion into the residential area.

89. Therefore, the Court should declare the actions of the Planning Commission and City Council arbitrary, capricious and unreasonable because it is plainly contrary to the zoning laws, the City's Charter, General Plan, and One Year Plan, the denial of the rezoning appeal lacked any rational basis, and the legislative body failed to cite any reason to support their denial other than relying on community opposition.

WHEREFORE, Plaintiff prays that upon appropriate process issuing for Defendants, that the Court conduct such proceedings as may be appropriate to adjudicate the foregoing Complaint and that the Court enter a judgment declaring that the actions of the City Council were null and void because they abused their discretion and denied Plaintiffs rezoning request for the 0 Sanders Drive property without a rational basis for the denial, and that this matter be remanded to City Council for a vote approving the rezoning request.

This the 18th day of August, 2020.


Benjamin C. Mullins, Esq. (BPR No. 20924)
FRANTZ, McCONNELL & SEYMOUR, LLP
P.O. Box 39
Knoxville, TN 37901
Email: bmullins@fmsllp.com
(865) 546-9321
Attorney for Plaintiff Baxter Properties, LLC

COST BOND

Frantz, McConnell & Seymour, LLP, as Surety, is held and firmly bound unto the Clerk and Master of the Chancery Court for Knox County, for the payment of all clerk's costs awarded against the principals in this action. To that end, we bind ourselves, our heirs, executors and administrators.

The Principal is commencing legal proceeding in the Circuit Court for Knox County. If the Principal shall pay all the Clerk's costs which are adjudged against them, then this obligation is void. If the Principal fail to pay, then the surety shall undertake to pay all costs adjudged against the Principal. Tenn. Code Ann. § 20-12-120 *et seq.*



Benjamin C. Mullins, Partner
FRANTZ, MCCONNELL & SEYMOUR, LLP
Surety

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

of counsel
JASON T. MURPHY

July 7, 2020

Via hand delivery and e-mail

Vice Mayor Gwen McKenzie
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Vice Mayor McKenzie:

I represent Baxter Properties, LP, the owner of 0 Sanders Drive (Parcel ID 58MB02201) (the "Property"). My clients also own three adjacent parcels – 3209 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike, and 3019 Tazewell Pike (both under the single Parcel ID number 58MB004), and 220 Adair Drive (Parcel ID 58MB022). Of these adjacent parcels, the three Tazewell Pike parcels are currently zoned C-G-2 and together constitute a continuous block of property at the convergence of Adair Dr., Sanders Dr., and Tazewell Pike. Before you on July 28, 2020, is my client's appeal of the Planning Commission's June 11, 2020, denial of our request to rezone the Property from RN-4 to C-G-2 consistent with the Sector Plan, the One-Year plan, and the adjacent parcels owned by my client.

I. Background and Prior Staff Reports:

A. Procedural History.

The procedural history for the rezoning request at issue is lengthy. The Property is approximately 0.28 acres located at the intersection of Adair Drive and Sanders Drive, west of Tazewell Pike. The Property was originally part of a combined rezoning request for both the Property and 220 Adair Drive filed on July 25, 2019 (Original application attached hereto as Exhibit 1). At that time the intent was to rezone both the Property and 220 Adair Dr. to C-3¹, combine 220 Adair with the Property into a single lot and lease the combined property to the Bearden Beer Market for the development of the proposed Fountain City Beer Garden. The initial concept, attached hereto as Exhibit 2, envisioned the 220 Adair property to become the parking lot for the Beer Garden with the Beer Garden building being located on the Sanders Drive lot. Staff initially recommended approval of both parcels for the requested C-3 zoning and

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Via hand delivery and e-mail

Tommy Smith
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Council Member Smith:

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A. Procedural History.

The procedural history for the rezoning request at issue is lengthy. The Property is approximately 0.28 acres located at the intersection of Adair Drive and Sanders Drive, west of Tazewell Pike. The Property was originally part of a combined rezoning request for both the Property and 220 Adair Drive filed on July 25, 2019 (Original application attached hereto as Exhibit 1). At that time the intent was to rezone both the Property and 220 Adair Dr. to C-3¹, combine 220 Adair with the Property into a single lot and lease the combined property to the Bearden Beer Market for the development of the proposed Fountain City Beer Garden. The initial concept, attached hereto as Exhibit 2, envisioned the 220 Adair property to become the parking lot for the Beer Garden with the Beer Garden building being located on the Sanders Drive lot. Staff initially recommended approval of both parcels for the requested C-3 zoning and

¹ C-3 is the past equivalent zoning to C-G-2 under the current zoning ordinance.

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

of counsel
JASON T. MURPHY

July 7, 2020

Via hand delivery and e-mail

Seema Singh
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Council Member Singh:

I represent Baxter Properties, LP, the owner of 0 Sanders Drive (Parcel ID 58MB02201) (the "Property"). My clients also own three adjacent parcels – 3209 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike, and 3019 Tazewell Pike (both under the single Parcel ID number 58MB004), and 220 Adair Drive (Parcel ID 58MB022). Of these adjacent parcels, the three Tazewell Pike parcels are currently zoned C-G-2 and together constitute a continuous block of property at the convergence of Adair Dr., Sanders Dr., and Tazewell Pike. Before you on July 28, 2020, is my client's appeal of the Planning Commission's June 11, 2020, denial of our request to rezone the Property from RN-4 to C-G-2 consistent with the Sector Plan, the One-Year plan, and the adjacent parcels owned by my client.

I. Background and Prior Staff Reports:

A. Procedural History.

The procedural history for the rezoning request at issue is lengthy. The Property is approximately 0.28 acres located at the intersection of Adair Drive and Sanders Drive, west of Tazewell Pike. The Property was originally part of a combined rezoning request for both the Property and 220 Adair Drive filed on July 25, 2019 (Original application attached hereto as Exhibit 1). At that time the intent was to rezone both the Property and 220 Adair Dr. to C-3¹, combine 220 Adair with the Property into a single lot and lease the combined property to the Bearden Beer Market for the development of the proposed Fountain City Beer Garden. The initial concept, attached hereto as Exhibit 2, envisioned the 220 Adair property to become the parking lot for the Beer Garden with the Beer Garden building being located on the Sanders Drive lot. Staff initially recommended approval of both parcels for the requested C-3 zoning and

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JASON T. MURPHY

July 7, 2020

Via hand delivery and e-mail

Lauren Rider
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Council Member Rider:

I represent Baxter Properties, LP, the owner of 0 Sanders Drive (Parcel ID 58MB02201) (the "Property"). My clients also own three adjacent parcels – 3209 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike, and 3019 Tazewell Pike (both under the single Parcel ID number 58MB004), and 220 Adair Drive (Parcel ID 58MB022). Of these adjacent parcels, the three Tazewell Pike parcels are currently zoned C-G-2 and together constitute a continuous block of property at the convergence of Adair Dr., Sanders Dr., and Tazewell Pike. Before you on July 28, 2020, is my client's appeal of the Planning Commission's June 11, 2020, denial of our request to rezone the Property from RN-4 to C-G-2 consistent with the Sector Plan, the One-Year plan, and the adjacent parcels owned by my client.

I. Background and Prior Staff Reports:

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JASON T. MURPHY

July 7, 2020

Via hand delivery and e-mail

Charles Thomas
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Council Member Thomas:

I represent Baxter Properties, LP, the owner of 0 Sanders Drive (Parcel ID 58MB02201) (the "Property"). My clients also own three adjacent parcels – 3209 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike, and 3019 Tazewell Pike (both under the single Parcel ID number 58MB004), and 220 Adair Drive (Parcel ID 58MB022). Of these adjacent parcels, the three Tazewell Pike parcels are currently zoned C-G-2 and together constitute a continuous block of property at the convergence of Adair Dr., Sanders Dr., and Tazewell Pike. Before you on July 28, 2020, is my client's appeal of the Planning Commission's June 11, 2020, denial of our request to rezone the Property from RN-4 to C-G-2 consistent with the Sector Plan, the One-Year plan, and the adjacent parcels owned by my client.

I. Background and Prior Staff Reports:

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JASON T. MURPHY

July 7, 2020

Via hand delivery and e-mail

Lynne Fugate
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Council Member Fugate:

I represent Baxter Properties, LP, the owner of 0 Sanders Drive (Parcel ID 58MB02201) (the "Property"). My clients also own three adjacent parcels – 3209 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike, and 3019 Tazewell Pike (both under the single Parcel ID number 58MB004), and 220 Adair Drive (Parcel ID 58MB022). Of these adjacent parcels, the three Tazewell Pike parcels are currently zoned C-G-2 and together constitute a continuous block of property at the convergence of Adair Dr., Sanders Dr., and Tazewell Pike. Before you on July 28, 2020, is my client's appeal of the Planning Commission's June 11, 2020, denial of our request to rezone the Property from RN-4 to C-G-2 consistent with the Sector Plan, the One-Year plan, and the adjacent parcels owned by my client.

I. Background and Prior Staff Reports:

A. Procedural History.

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ARTHUR G. SEYMOUR, JR.
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of counsel
JASON T. MURPHY

July 7, 2020

Via hand delivery and e-mail

Janet Testerman
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Council Member Testerman:

I represent Baxter Properties, LP, the owner of 0 Sanders Drive (Parcel ID 58MB02201) (the "Property"). My clients also own three adjacent parcels – 3209 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike, and 3019 Tazewell Pike (both under the single Parcel ID number 58MB004), and 220 Adair Drive (Parcel ID 58MB022). Of these adjacent parcels, the three Tazewell Pike parcels are currently zoned C-G-2 and together constitute a continuous block of property at the convergence of Adair Dr., Sanders Dr., and Tazewell Pike. Before you on July 28, 2020, is my client's appeal of the Planning Commission's June 11, 2020, denial of our request to rezone the Property from RN-4 to C-G-2 consistent with the Sector Plan, the One-Year plan, and the adjacent parcels owned by my client.

I. Background and Prior Staff Reports:

A. Procedural History.

The procedural history for the rezoning request at issue is lengthy. The Property is approximately 0.28 acres located at the intersection of Adair Drive and Sanders Drive, west of Tazewell Pike. The Property was originally part of a combined rezoning request for both the Property and 220 Adair Drive filed on July 25, 2019 (Original application attached hereto as Exhibit 1). At that time the intent was to rezone both the Property and 220 Adair Dr. to C-3¹, combine 220 Adair with the Property into a single lot and lease the combined property to the Bearden Beer Market for the development of the proposed Fountain City Beer Garden. The initial concept, attached hereto as Exhibit 2, envisioned the 220 Adair property to become the parking lot for the Beer Garden with the Beer Garden building being located on the Sanders Drive lot. Staff initially recommended approval of both parcels for the requested C-3 zoning and

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ARTHUR G. SEYMOUR, JR.
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of counsel
JASON T. MURPHY

July 7, 2020

Via hand delivery and e-mail

Amelia Parker
Knoxville City Council
400 Main St., Room 467
Knoxville, TN 37902

Re: 10-B-19-RZ

Dear Council Member Parker:

I represent Baxter Properties, LP, the owner of 0 Sanders Drive (Parcel ID 58MB02201) (the "Property"). My clients also own three adjacent parcels – 3209 Tazewell Pike (Parcel ID 58MB001), 3021 Tazewell Pike, and 3019 Tazewell Pike (both under the single Parcel ID number 58MB004), and 220 Adair Drive (Parcel ID 58MB022). Of these adjacent parcels, the three Tazewell Pike parcels are currently zoned C-G-2 and together constitute a continuous block of property at the convergence of Adair Dr., Sanders Dr., and Tazewell Pike. Before you on July 28, 2020, is my client's appeal of the Planning Commission's June 11, 2020, denial of our request to rezone the Property from RN-4 to C-G-2 consistent with the Sector Plan, the One-Year plan, and the adjacent parcels owned by my client.

I. Background and Prior Staff Reports:

A. Procedural History.

The procedural history for the rezoning request at issue is lengthy. The Property is approximately 0.28 acres located at the intersection of Adair Drive and Sanders Drive, west of Tazewell Pike. The Property was originally part of a combined rezoning request for both the Property and 220 Adair Drive filed on July 25, 2019 (Original application attached hereto as Exhibit 1). At that time the intent was to rezone both the Property and 220 Adair Dr. to C-3¹, combine 220 Adair with the Property into a single lot and lease the combined property to the Bearden Beer Market for the development of the proposed Fountain City Beer Garden. The initial concept, attached hereto as Exhibit 2, envisioned the 220 Adair property to become the parking lot for the Beer Garden with the Beer Garden building being located on the Sanders Drive lot. Staff initially recommended approval of both parcels for the requested C-3 zoning and

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noted that the C-3 zoning, for both parcels, was appropriate since it was an extension of C-3 zoning on the adjacent parcels. (Initial Staff report attached hereto as Exhibit 3). Staff's recommendation was subject to 7 conditions to mitigate potential adverse impacts on the residential neighborhood that abuts these parcels. The focus of these 7 conditions, however, was on the 220 Adair parcel. Only 2 of the proposed conditions (a 25-foot landscape buffer along Sanders Drive and a sidewalk to be installed along the frontage of the lots) addressed any potential mitigation for the Sanders Drive property. Staff further noted that "the proximity of these parcels to Tazewell Pike make them viable commercial properties and the proposed parking area and landscape buffer will act as a transition between the commercial and residential uses."

Following Staff's initial recommendation, there was significant neighborhood opposition to the requested rezoning. The opposition centered on the encroachment of commercial development into a historical neighborhood, the ingress and egress from the proposed parking onto Adair Drive, and the misperception that Baxter Properties illegally and surreptitiously removed the residence on 220 Adair Drive.² Significant opposition was also raised regarding the required Sector Plan and One-Year Plan Amendments that would be required prior to rezoning 220 Adair Drive.³ Ultimately, the requested rezoning was postponed until the January 9, 2020, Knoxville | Knox County Planning Commission meeting.

Following multiple calls and e-mails in opposition to the rezoning of 220 Adair Drive, Staff's recommendation changed from recommending approval of "a minor extension of commercial zoning" to deny the rezoning because "it encroaches on a residential neighborhood." The rationale for the change was succinctly stated in the Comments to Staff's Recommendation in the January 9, 2020 Plan Amendment Report:

Staff's previous approval was based on the belief that neighborhood residents had been notified and were in support of the development.⁴ However, due to the volume of feedback in opposition to the proposed rezoning and land use, staff understands this is not the case and has reviewed these requests further recommending denial.

Id. at Pages 9-2 and 9-3 (attached hereto as Exhibit 4).

² While the residence on 220 Adair Dr. was removed by Baxter Properties, it was done so after properly obtaining a demolition permit through the City of Knoxville and waiting the required 60-days as required to remove property that is within an existing historic district overlay.

³ No Sector Plan Amendment or One-Year Plan Amendment is required by the current application to rezone the Property at 0 Sanders Drive. In fact, this was noted in the initial staff recommendation to amend the Sector Plan and One-Year Plan for 220 Adair since "it would be a minor extension of the existing GC designation...."

⁴ Leading up to Staff's initial recommendation, there were meetings with representatives of the Adair Gardens Home Owner's Association between representatives for the owner, for the Beer Garden and with the Executive Director of the Planning Department and these parties believed that the HOA was in support of the proposed rezoning and Beer Garden.

Based on staff's revised recommendation to deny the rezoning and plan amendments, legal counsel was retained and a subsequent postponement was granted to provide the owner and the neighbors to discuss alternatives or conditions that might make the proposed zoning more palatable to the community, but to also allow the proposed Beer Garden to be developed the properties. One such change, suggested by the neighborhood, was to flip the development layout that was previously proposed by placing the parking for the Beer Garden on the 0 Sanders property and the building to be placed on the 220 Adair Dr. location. This was preferred by the neighborhood as it would allow traffic to ingress and egress via Sanders Drive and not from Adair. Revised concept attached hereto as Exhibit 5. As the neighbors continued to express concern over the potential commercial uses for 220 Adair Drive, the application was revised from C-G to CN (Neighborhood Commercial) to limit many of the potential invasive commercial uses on 220 Adair Dr. The parties also discussed various options for landscaping, fencing, decorative walls, a potential "split zone" for 220 Adair⁵, and deed restrictions for certain uses. Although these conversations were productive and conducted by the parties in good faith, the parties were not able to reach a consensus on all these issues, and, due to the delay and impasse in negotiations, the owners of the Beer Market elected to explore other locations for its business.

With the concept for the Beer Garden no longer an option, the owner looked at other options for the properties. As any non-residential use for 220 Adair Gardens would require both a Sector Plan and One-Year plan Amendment, the owners elected to abandon its attempt to rezone that parcel so that it could remain in the residential zone and serve as the buffer between 0 Sanders Drive and the Adair Gardens neighborhood. And since the existing Sector Plan and One-Year Plan designation for 0 Sanders Drive is GC (General Commercial), no plan amendments would be needed to rezone this property. The current application was amended to only seek rezoning for 0 Sanders Drive to C-G zoning—consistent with the current Sector Plan and One-Year Plan designations.

B. Proposed Use.

With the Beer Garden withdrawing its interest in leasing the property, the owners are seeking to combine 0 Sanders Drive with the parcel it owns to the east (3209 Tazewell Pike (Parcel ID 58MB001)). The intent would be to use 0 Sanders Drive as additional parking for the upcoming tenant for the Tazewell Pike Property.⁶ This concept seemed like it would be palatable by the neighbors since it was their suggestion that 0 Sanders, and not 220 Adair, be used for customer parking. The owner explored whether or not the parcels could be combined, and the 0 Sanders Drive parcel could be used as a secondary or accessory use for parking without rezoning the property; however, it was the opinion of Knoxville Codes that any accessory parking use would need to be on property whose zone would accommodate the primary use. As a result of this interpretation, the owner must obtain the C-G zoning for the property to serve as the accessory use for parking for the restaurant.

⁵ Leaving a small strip of the southern portion of 220 Adair Dr. zoned residential so that it would serve as a buffer/barrier for future encroachment of commercial zoning into the neighborhood.

⁶ The tenant, Sweet P's BBQ, is opening a location on the moving onto the 3209 Tazewell Pike and desires additional parking.

The applicant currently seeks C-G zoning for the property specifically because it is a minor extension of the current zoning on the adjacent parcels owned by Baxter Properties, because the zoning would need to be consistent if the property is to serve as a secondary use to the restaurant, because the neighbors had previously agreed with the idea of this property serving as secondary parking to the Beer Market, and because the zoning is consistent with the current Sector and One-Year Plans. Maps depicting current Sector Plan and One Year Plan designations for the property and contiguous properties are attached hereto as Collective Exhibit 6.

C. Current Staff Report and Planning Commission Action.

Despite noting that the requested zoning is an extension of the adjacent C-G zone to the east, and noting that both the Sector Plan and One Year Plan specially call for General Commercial Zoning for the Property, Staff recommended to deny the rezoning “because it would allow commercial uses too intense to be located at an interior intersection at the entry of a stable, single-family neighborhood and would be incompatible with the adjacent single family residential zoning.” This recommendation is inconsistent with the initial recommendation that “the proximity of [this] parcels to Tazewell Pike make them viable commercial properties and the proposed parking area and landscape buffer will act as a transition between the commercial and residential uses.” In fact, with the exclusion of 220 Adair Drive from the request, there is a substantially more significant buffer to act as a transition between the commercial and residential uses.

Regarding whether or not the proposed rezoning is consistent with, and not in conflict with, the General Plan of Knoxville, staff noted that the CG zoning is consistent with the current North City Sector Plan’s General Commercial land use designation, but attempted to minimize the Sector Plan designation by pointing out that “the North City Sector plans is one of the oldest sector plans” and claimed that, as such, it is outdated. Staff did not address, one way or the other, the One-Year Plan and its land use designation for the Property as “General Commercial.”

The Planning Commission considered this rezoning at its June 11, 2020 meeting. There was no neighborhood opposition present at the meeting.⁷ The Commission voted, 11-1, to deny the requested rezoning. This appeal timely followed.

II. City Council Should Grant the Requested Rezoning Because It Is Consistent With Both the Sector Plan and the One Year Plan for the City of Knoxville:

A. The City of Knoxville’s Authority to Regulate the Free Use of Property Within Its Boundaries Is Limited.

Local governments, like the City of Knoxville, lack the inherent power to regulate or control the use of private property within their boundaries. Their power is derived solely from the state though specific delegations of the General Assembly found in Title 13 of the Tennessee

⁷ There was one e-mail from a resident of Adair Gardens and two e-mails from Charlotte Davis and Carlene Malone from Fountain City Town Hall, provided to Commission in opposition to the request.

Code Annotated. *Ready Mix USA, LLC v. Jefferson Cnty.*, 46 S.W. 3d 52, 64 n. 17 (Tenn. 2012); *Cherokee County Club, Inc. v. City of Knoxville*, 152 S.W.3d 466 (Tenn. 2004). *421 Corp. v. Metropolitan Government of Nashville and Davidson County*, 36 S.W. 3d 469, 475 (Tenn. Ct. App. 2000). As these laws and regulations are in derogation of common law and operate to deprive property owners of a use of their property which would otherwise be lawful, they are to be strictly construed by the courts in favor of the property owners' right to the free use of their property. See *State ex rel. Wright v. City of Oak Hill*, 321 S.W.2d 557 (Tenn. 1959); *Anderson County v. Remote Landfill Services*, 833 S.W.2d 903 (Tenn. Ct. App. 1991). Although local governments and administrative agencies have broad discretion when it comes to decisions involving local land-use matters, that discretionary authority must be exercised within existing standards and guidelines. *McCallen v. City of Memphis*, 786 S.E. 2d 633, 639 (Tenn. 1990). Finally, in making land use decisions, "[I]t is not the function of the board to conduct a referendum on public attitudes relative to [a] petition." *Wilson County Youth Shelter v. Wilson County*, 13 S.W.3d 342 (Tenn. Ct. App. 1999) (citing *Sexton v. Anderson County*, 587 S.W.2d 663, 664 n. 1 (Tenn. Ct. App. 1979)).

B. The City Charter Requires Zoning Decisions Be Consistent with the One Year Plan.

Both the North City Sector Plan and the One Year Plan designate the appropriate land use for this Property as General Commercial. The adopted Sector Plans are to "be used on a month to month basis by the Planning Commission as the guide to zoning and subdivision decisions." <https://knoxmpc.org/plans/sector-plans/about>. The North City Sector Plan was adopted in July 2007 and amended in 2010 and 2018. The 2018 amendment was specifically to the Land Use Maps which provide the current GC designation for the Property. This sector plan is part of the overall Knoxville-Knox County comprehensive planning program, which also includes the General Plan and Growth Policy Plan. The purpose of the plan includes recognizing development constraints and issues and to create land use, community facility and transportation plans over the next 15 years. North City Sector Plan, pertinent portions attached hereto as Exhibit 7, at page 1. While staff noted the North City Sector Plan was "one of the oldest" plans, it has been changed since its adoption and is intended to serve as a guide for decisions through 2022. At no time since the process began in July 2019 was it suggested by Planning Staff the Sector Plan and One Year Plan were outdated or in error.

While Sector Plans shall serve as a guide for zoning decisions, the One Year Plan is mandated by the City Charter to serve the basis for land use regulations. Compliance with the One Year plan is legally required by the Charter. Article VIII, Section 801 of Knoxville City Charter *requires* that future zoning in the City conform to the community's comprehensive development plans. "Previously, plans were guides for zoning, but conformance to the plans was not legally required". The City of Knoxville, Tennessee 2020 One Year Plan, Chapter 1, Introduction at page 1 (Attached hereto as Exhibit 8). Section 801(A) states that "[t]he one-year development plan shall provide the basis for zoning of all properties within the city limits."

As explained in the 2020 One Year Plan, "The One Year Plan, by law and by practice, is developed with a high level of community involvement. The required updates keep the plan a

current and accurate guide for community growth, preservation, and enhancement. The structured amendment process allows the entire community to participate in the consideration of changes to the plan and provides more complete information on which to base decisions.” 2020 One Year Plan at page 2. Section 801(B)(1) requires that the One Year Plan be updated no later than May each year. The One Year Plan, which was amended and adopted after this zoning application was filed⁸, identifies this property as General Commercial, therefore, it cannot be said that the CG (General Commercial) Zoning is inconsistent with the General Plan of the City of Knoxville. If it were, the Plan should have been amended to a designation different than General Commercial. As it was not amended, the Charter mandates a zoning consistent with the One-Year Plan. “Following the annual update and adoption of the city’s development plans, the council shall amend the city’s zoning ordinance and conform it to the updated development plans in accordance with procedures prescribed by general law.” Charter, Article VIII, Section 801(B)(5) attached hereto as Exhibit 9. Stated another way, “Future zoning changes **must conform** to the plan or meet the criteria for an amendment.” 2020 One Year Plan at page 4.

The importance of complying with these adopted plans was underscored by the City of Knoxville Law Department in its September 11, 2017 Memorandum “The Significance of and Compliance with Plans” (attached hereto as Exhibit 10). “Once the legislative body adopts the General Plan (or by extension, any other plan), then any land use decision made thereafter by the legislative body, planning commission, or board of zoning appeals ..., **must be consistent** with the General Plan.” *Id.* at page 2, citing Tenn. Code Ann. § 13-3-304(b)(**emphasis added**).

Residential Zoning is inconsistent with the General Commercial designation for the properly mandated by the North East County Sector Plan and the One-Year Plan. By denying the requested rezoning, leaving it zoned RN-4, the decision by the Planning Commission is therefore also inconsistent with the City Charter and Title 13 of the Tennessee Code.

C. Planning Commission Comments on the Proposed Parking Lot:

Planning Commission’s comments centered around the proposed use as a parking lot for Sweet P’s and their perception that this use would be intrusive on residential homes in the area. In fairness, this was concern when the proposed plan for the parking lot for the Beer Garden when the plan was to have the Garden situated on Sanders and the parking lot located on 220 Adair Garden lot; however, it was the neighborhood, based on discussions with Baxter Properties and the Beer Garden, that proposed the more acceptable location for the parking lot be on Sanders Drive. There are few residential homes near 0 Sanders Drive, traffic would not need to ingress or egress on Adair, and the buffer for the neighborhood between the parking lot and the residences would be maintained by the Adair Drive lot. Additionally, the parking lot for the prior business on 0 Sanders Drive was on the west side of the parcel, closer to Adair Drive and the Neighborhood. (See KGIS Aerial attached hereto as Exhibit 11). Parking Lots are allowed in any zone, as a secondary or accessory use, so long as the primary use they serve is a use allowed in the underlying zone. Therefore, the reasons articulated by the Planning Commission were essentially aesthetic in nature—they would not prefer a parking lot at that location;

⁸ There were 14 amendments to the One-Year plan in 2020, but none of them related to the Property at issue.

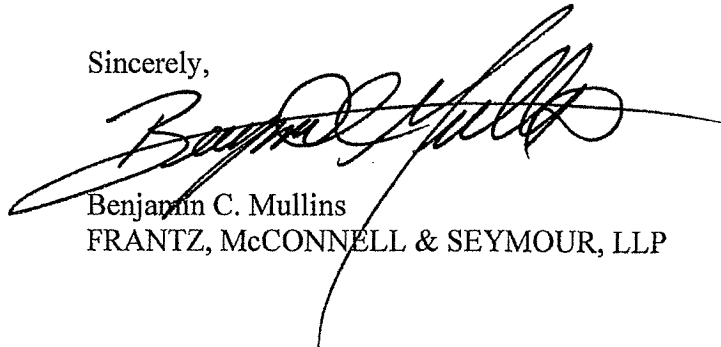
however, these considerations cannot undermine the decisions already made through the adoption of the Sector and One Year Plan. "Speculations, expressions of fears, and considerations of aesthetic matters do not form a sufficient basis to countermand the determinations made by [the City of Knoxville]." *Benson v. Knox County*, 2016 Tenn. App. LEXIS 320 (Tenn. Ct. App. May 12, 2016) at *31. To back away from the previously adopted policy decisions set for in the General Plan, the Sector Plan and the One Year plan can only be because of a pretextual reaction to prior neighborhood opposition. Staff's first Amended Rezoning Report signaled as much when it stated, "due to the volume of feedback in opposition to the proposed rezoning and land use, staff understands this is not the case and has reviewed these requests further recommending denial." However, neither at the administrative level or the legislative level should vocal opposition be given greater weight than adopted plans that were developed, in law and in practice, with a high level of community involvement prior to adoption by the City. Once those plans are in place, they must be followed, and it is not this body's job to conduct an *ad hoc* public referendum on a rezoning or land use decision. *Wilson County Youth Shelter v. Wilson County*, 13 S.W.3d 342 (Tenn. Ct. App. 1999) (citing *Sexton v. Anderson County*, 587 S.W.2d 663, 664 n. 1 (Tenn. Ct. App. 1979)).

III. Conclusion

Based on the prior level of community engagement and conversation when the proposed application included both 220 Adair and 0 Sanders Drive, Baxter Properties has demonstrated a desire to work with the community in bringing quality businesses into the Fountain City Community. This only makes sense since as Jennifer Baxter Reynolds was raised in the area and her father, Bill, is a life-long resident and advocate for the community. Baxter Properties will continue to work with the neighborhood moving forward. However, in these economic uncertain times it is not the best policy to drive away business that want to invest in the City of Knoxville and in the Fountain City area. Additionally, compliance with the previously adopted plans are more than mere guidelines but required by state law and City Charter to be complied with.

Baxter Properties and I respectfully request you approve this rezoning for C-G-2 consistent with the North City Sector Plan and the 2020 One-Year Plan. We further welcome the opportunity to speak you about this matter. If you have any questions, then please contact me at 865-546-9321.

Sincerely,



Benjamin C. Mullins
FRANTZ, McCONNELL & SEYMOUR, LLP

BCM:erl
Enc.



DEVELOPMENT REQUEST

DEVELOPMENT

- ☐ Development Plan
☐ Use on Review / Special Use

SUBDIVISION

- ☐ Concept Plan
☐ Final Plat

ZONING

- ☐ Plan Amendment
☒ Rezoning

RECEIVED

JUL 25 2019

Knoxville-Knox County
Planning

Jennifer Reynolds- Baxter Properties

Applicant

07/25/2019

09/12/2019

Date Filed

Meeting Date (If applicable)

10-B-19-RZ / 10-B-19-PA

File Number(s)

CORRESPONDENCE

All correspondence related to this application should be directed to the approved contact listed below.

- ☐ Applicant ☐ Owner ☐ Option Holder ☐ Project Surveyor ☐ Engineer ☒ Architect/Landscape Architect

Brian Ewers

Dollar & Ewers Architecture

Name

Company

111 E. Jackson Ave Suite 101

Knoxville

TN

37915

Address

City

State

Zip

865 546 9374

bewers@dollar-ewers.com

Phone

Email

CURRENT PROPERTY INFO

Baxter Properties

3901 Sam Cooper Lane

(615) 653-0616

Owner Name (if different)

Owner Address

Owner Phone

(1) 0 Sanders Drive & (2) 220 Adair Drive

(1) 058MB021 & (2) 058MB022

Property Address

Parcel ID

Fountain City - Corner of Sanders Dr. & Adair Dr.

(1) 0.3 & (2) 0.25

General Location

Tract Size

City Council District 4- Lauren Rider

(1) R-2 (2) R-1

Jurisdiction (specify district above) ☒ City ☐ County

Zoning District

North City

(1) GC (2) LDR

Planning Sector

Sector Plan Land Use Classification

Growth Policy Plan Designation

Unused Land

N

KUB

KUB

Existing Land Use

Septic (Y/N)

Sewer Provider

Water Provider

Exhibit 1

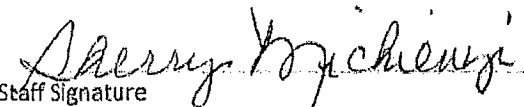

Re. 10-B-19-RZ

REQUEST

DEVELOPMENT	<input type="checkbox"/> Development Plan <input type="checkbox"/> Use on Review / Special Use <input type="checkbox"/> Residential <input type="checkbox"/> Non-Residential		
	<input type="checkbox"/> Home Occupation (specify): _____ <input type="checkbox"/> Other (specify): _____		
SUBDIVISION	<input type="checkbox"/> Proposed Subdivision Name _____		Unit / Phase Number _____
	<input type="checkbox"/> Parcel Change <input type="checkbox"/> Combine Parcels <input type="checkbox"/> Divide Parcel Total Number of Lots Created: _____		
	<input type="checkbox"/> Other (specify): _____		
	<input type="checkbox"/> Attachments / Additional Requirements _____		
ZONING	<input checked="" type="checkbox"/> Zoning Change: <u>C-3</u> Proposed Zoning _____		
	<input checked="" type="checkbox"/> Plan Amendment Change: <u>GC</u> Proposed Plan Designation(s) _____		
	<input type="checkbox"/> Proposed Property Use (specify) _____		Proposed Density (units/acre) _____ Previous Rezoning Requests <u>10-5-96-RZ</u> <u>10-6-96-PA</u>
	<input type="checkbox"/> Other (specify): _____		

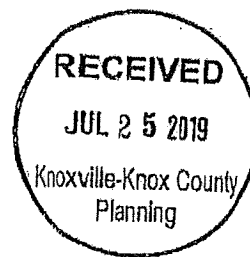
STAFF USE ONLY	PLAT TYPE		
	<input type="checkbox"/> Administrative <input type="checkbox"/> Meeting		
	ATTACHMENTS		
	<input type="checkbox"/> Property Owners / Option Holders <input type="checkbox"/> Variance Request		
	ADDITIONAL REQUIREMENTS		
	<input type="checkbox"/> Design Plan Certification (Final Plat only) <input type="checkbox"/> Use on Review / Special Use (Concept Plan only) <input type="checkbox"/> Traffic Impact Study		
	FEE 1: <u>1000.00</u> FEE 2: <u>600.00</u> FEE 3: _____		TOTAL: <u>1600.00</u>

AUTHORIZATION

 Staff Signature	Sherry Michienzi Please Print	7/25/19 Date
 Applicant Signature	Jennifer Reynolds Please Print	7/24/19 Date



ARCHITECTURE, INC.



July 24, 2019

Knoxville – Knox County Planning
City County Building Suite 403
400 Main Street
Knoxville TN 37902

Re: Supplemental Information regarding Rezoning of '0 Sanders Drive & 220 Adair Drive'

To Whom It May Concern-

We are requesting a Rezoning for the contiguous properties located at 0 Sanders Drive (R-2) and 220 Adair Drive (R-1) Knoxville TN 37918 from their current zoning to proposed C-3.

These properties are owned by the same commercial entity, Baxter Properties. The intention is to build a new commercial property on these lots that maintain a similar density and character to the small commercial district at the corner of Sanders Drive, Tazewell Pike & Jacksboro Pike.

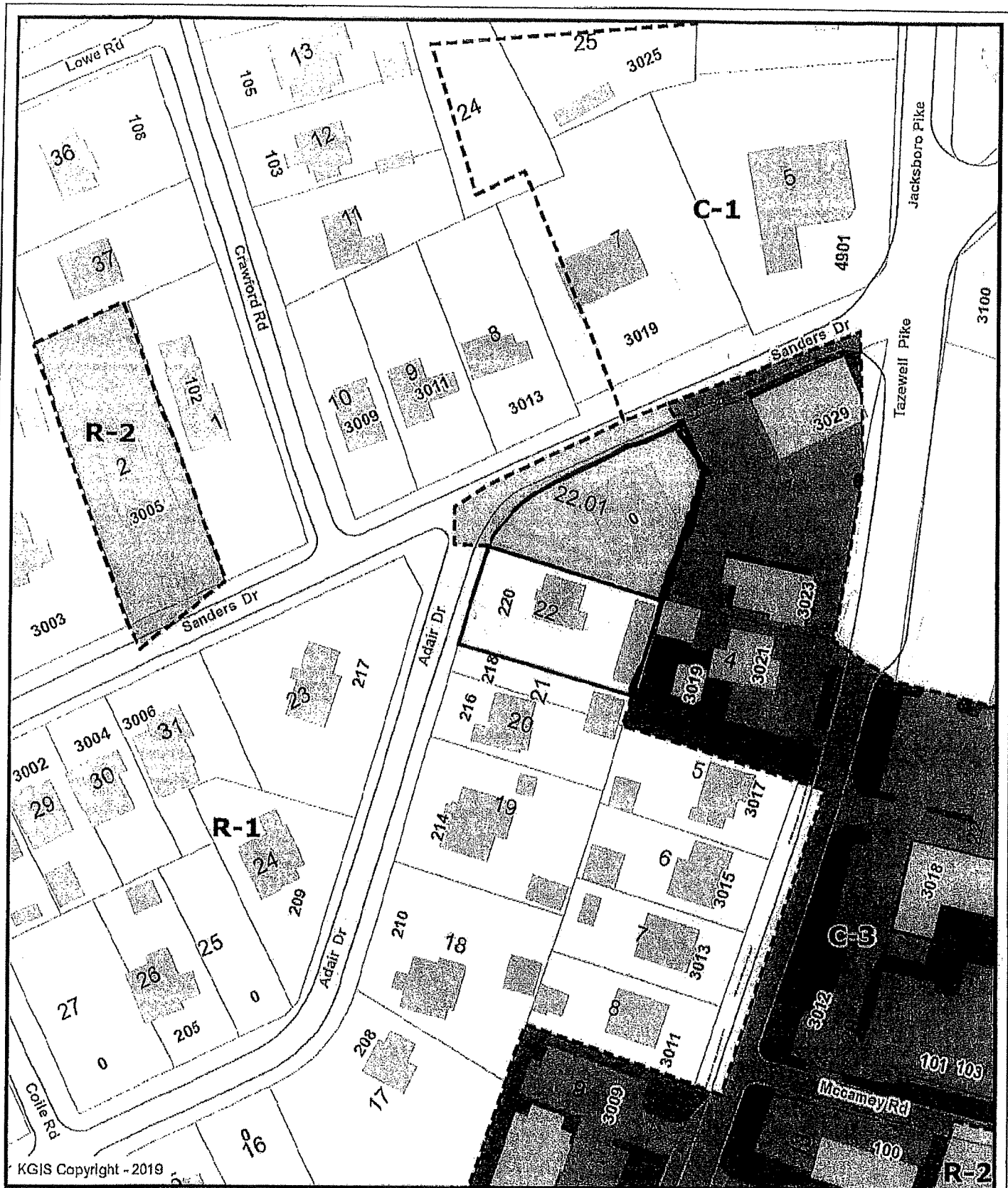
Please let us know if there are any questions or issues. Thank you.

Sincerely,

Dollar & Ewers Architecture, Inc.

A handwritten signature in black ink, appearing to read 'Brian Ewers', written in a cursive style.

Brian K. Ewers, AIA, LEED AP
President



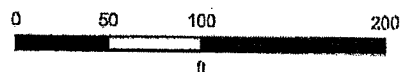
Letter Portrait

Knoxville - Knox County - KUB Geographic Information System

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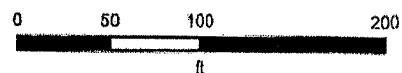
Letter Portrait

Knoxville - Knox County - KUB Geographic Information System

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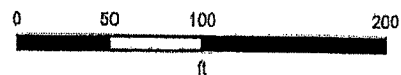


Letter Portrait

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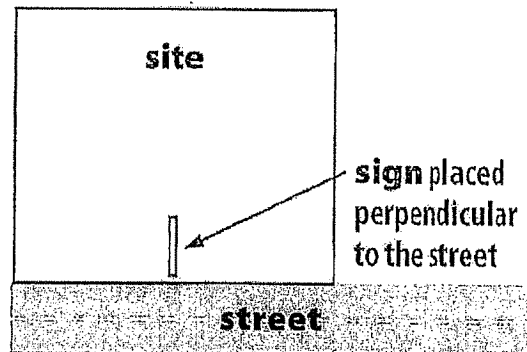
REQUIRED SIGN POSTING AGREEMENT

For all rezoning, plan amendment, concept plan, use on review, right-of-way closure, and street name change applications, a sign must be posted on the subject property, consistent with the adopted MPC Administrative Rules and Procedures.

At the time of application, MPC staff will provide a sign(s) to post on the property as part of the application process. If the sign(s) go missing for any reason and need to be replaced, then the applicant will be responsible for picking up a new sign(s) from the MPC offices. The applicant will be charged a fee of \$10 for each replacement sign.

LOCATION AND VISIBILITY

The sign must be posted in a location that is clearly visible from vehicles traveling in either direction on the nearest adjacent/frontage street. If the property has more than one street frontage, then the sign should be placed along the street that carries more traffic. MPC staff may recommend a preferred location for the sign to be posted at the time of application.



TIMING

The sign(s) must be posted 15 days before the scheduled MPC public hearing and must remain in place until the day after the meeting. In the case of a postponement, the sign can either remain in place or be removed and reposted 15 days before the next MPC meeting.

I hereby agree to post and remove the sign(s) provided on the subject property consistent with the above guidelines and between the dates of:

(Wed) Sept 25 and (Fri) Oct 11
(15 days before the MPC meeting) (the day after the MPC meeting)

Signature: _____

Printed Name: _____

Phone: _____

(865) 799-0231 Email: CWOODCOCK@DOLLAR-EWERS.COM

Date: _____

7-25-19

MPC File Number: _____

10-B-19-BZ, 10-B-19-PA, 10-B-19-SP

10-B-19-RZ / 10-B-19-PA
Exhibit B. Concept Plans

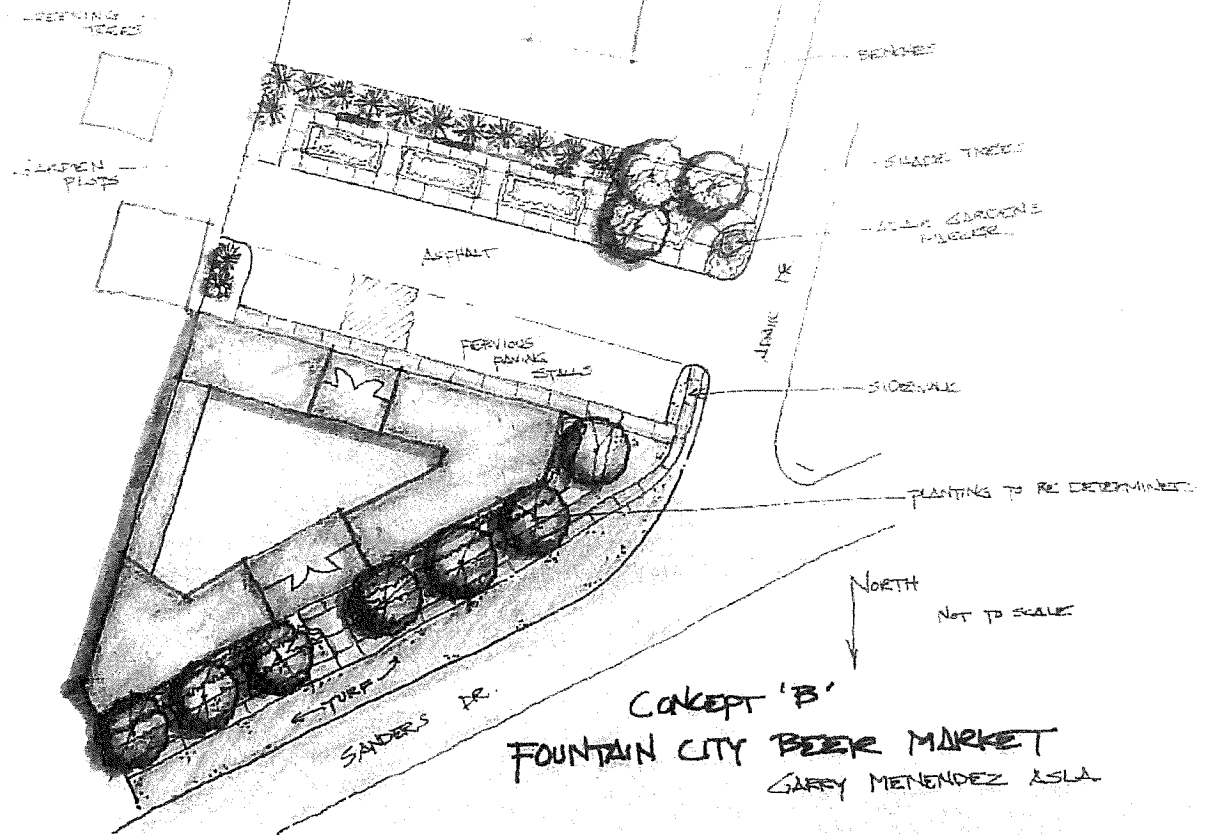


Exhibit 2

Re. 10-B-19-RZ

10-B-19-RZ / 10-B-19-PA
EXHIBIT A. Contextual Images

20 Adair Dr. and 0 Sanders Dr.

Applicant: Brian Ewers / Dollar and Ewers Architecture

REZONING STAFF RECOMMENDATION:

Approve C-3 (General Commercial District) zoning for both parcels, subject to seven conditions.

MOTION:

Approve the requested C-3 (General Commercial District) zoning for both parcels since it is an extension of C-3 zoning, subject to seven conditions per staff's recommendation.

COMMENTS:

REZONING REQUIREMENTS FROM ZONING ORDINANCES (must meet all of these):

THE PROPOSED AMENDMENT SHALL BE NECESSARY BECAUSE OF SUBSTANTIALLY CHANGED OR CHANGING CONDITIONS IN THE AREA AND DISTRICTS AFFECTED, OR IN THE CITY/COUNTY GENERALLY:

1. There are no significant recent changes that would warrant a rezoning. However, the proximity of these parcels to Tazewell Pike make them viable commercial properties and the proposed parking area and landscape buffer will act as a transition between the commercial and residential uses.
2. The structures on both parcels have been demolished so that the parcels are now vacant land.

THE PROPOSED AMENDMENT SHALL BE CONSISTENT WITH THE INTENT AND PURPOSE OF THE APPLICABLE ZONING ORDINANCE:

1. This was originally requested in October, 2019 under the previous zoning ordinance. The new zoning ordinance took effect on January 1, 2020, so the requested C-3 zoning ordinance will no longer be in effect when this request goes forward. Therefore, staff has amended the application to request C-G-2, since the comparable zone in the new ordinance is C-G (General Commercial District) and the adjacent properties fronting Tazewell Pike are zoned C-G-2.
2. The C-G General Commercial Zoning District is intended to provide for a heterogeneous mix of retail, personal service, office, and residential uses within and along Knoxville's commercial nodes and corridors. The C-G District is intended to promote mixed-use development in a pedestrian-oriented environment that recalls the City's traditional business districts, and offers flexibility in the creation of integrated commercial, office and residential spaces. The C- G District is divided into three levels of intensity related to the overall form and design of the development; however, uses are the same across all levels. This zone is intended primarily for indoor commercial uses with limited exceptions per special use approval.
3. Design Standards for C-G-2 apply to new construction and to any additions that exceed 30% or more of the existing structure's square footage. Commercial development on this property would be required to meet these standards (Table 5.2 in the new zoning code) if the rezoning and plan amendment requests are approved.

10-B-19-RZ / 10-B-19-PA

EXHIBIT A. Contextual Images

4. In addition to the C-G standards, commercial development would be required to meet the Parking Standards (Section 11), the Landscaping Standards (Section 12), and the Lighting Standards (contained within Section 10) of the new zoning ordinance.
5. Rezoning should be based on the entire range of uses allowed within a zone to ensure that any development brought forth at a future time would be compatible with the surrounding land uses.

THE PROPOSED AMENDMENT SHALL NOT ADVERSELY AFFECT ANY OTHER PART OF THE COUNTY, NOR SHALL ANY DIRECT OR INDIRECT ADVERSE EFFECTS RESULT FROM SUCH AMENDMENT.

1. Staff proposes the following seven conditions to mitigate potential adverse impacts on the residential neighborhood that abuts these parcels:
 - (1) A 25-foot minimum landscape buffer shall be installed along Sanders Drive.
 - 2) A 12-foot minimum landscape buffer, in accordance with Landscape Type B in the Landscape Screening Design Guidelines, shall be placed between the parking lot and the adjacent residence.
 - 3) Dumpsters shall not be located in the parking lot adjacent to residential structures.
 - 4) Outdoor lighting shall meet the requirements in the recently adopted city zoning ordinance, Article 10, Section 10.2, beginning on page 10-1.
 - 5) There shall be a garden marker and landscaping at the entry to the parking lot off of Adair Drive per the Concept B sketch submitted by the applicant (Exhibit B).
 - (6) A sidewalk shall be installed along the frontage of the lots.
 - 7) The entry on Adair Drive will need to be coordinated with and approved by the City of Knoxville's Engineering Department.

Buffer
220
Adair

THE PROPOSED AMENDMENT SHALL BE CONSISTENT WITH AND NOT IN CONFLICT WITH THE GENERAL PLAN OF KNOXVILLE AND KNOX COUNTY, INCLUDING ANY OF ITS ELEMENTS, MAJOR ROAD PLAN, LAND USE PLAN, COMMUNITY FACILITIES PLAN, AND OTHERS:

1. C-3 for the property on Sanders Drive is compatible with the North City Sector Plan's General Commercial land use designation.
2. Extending the General Commercial designation to 220 Adair Drive would be a minor extension of GC, and would enable the rezoning of that property to C-3.
3. This property is in the School Parental Responsibility Zone for Gresham Middle and Central High Schools. Sidewalks are required to be installed with any new development.
4. This parcel is located in Flood Zone X, but is not in a floodplain or floodway.

ONE-YEAR PLAN AMENDMENT STAFF RECOMMENDATION:

Approve the GC (General Commercial) designation for 220 Adair Drive subject to seven conditions.

MOTION:

Staff recommends approval of GC (General Commercial) as the One-Year Plan designation for 220 Adair Drive since it would be a minor extension of the existing GC designation, subject to seven conditions per staff's recommendation.

COMMENTS:

10-B-19-RZ / 10-B-19-PA

EXHIBIT A. Contextual Images

ONE YEAR PLAN AMENDMENT REQUIREMENTS:

CHANGES OF CONDITIONS WARRANTING AMENDMENT OF THE LAND USE PLAN (May meet any one of these.)

AN ERROR IN THE PLAN:

1. There are no apparent errors in the plan.

A SIGNIFICANT CHANGE IN THE DEVELOPMENT PATTERN, OR THE COMPLETION OF A PUBLIC IMPROVEMENT (ROAD, PARK, SEWER), WHICH CHANGES THE BASIS ON WHICH THE PLAN WAS DEVELOPED FOR AN AREA:

1. There are no significant changes in the development pattern or public services that would warrant a plan amendment. However, the proximity of these parcels to Tazewell Pike make them viable commercial properties and the proposed parking area and landscape buffer will act as a transition between the commercial and residential uses.
2. The structures on these properties have been demolished so that the parcels are now vacant land.
3. Staff proposes the following seven conditions to mitigate potential adverse impacts on the residential neighborhood that abuts these parcels:
 - 1) A 25-foot minimum landscape buffer shall be installed along Sanders Drive.
 - 2) A 12-foot minimum landscape buffer, in accordance with Landscape Type B in the Landscape Screening Design Guidelines, shall be placed between the parking lot and the adjacent residence.
 - 3) Dumpsters shall not be located in the parking lot adjacent to residential structures.
 - 4) Outdoor lighting shall meet the requirements in the new zoning ordinance, Article 10.
 - 5) There shall be a garden marker and landscaping at the entry to the parking lot off of Adair Drive per the Concept B sketch submitted by the applicant (Exhibit B).
 - 6) A sidewalk shall be installed along the frontage of the lots.
 - 7) The entry on Adair Drive will need to be coordinated with and approved by the City of Knoxville's Engineering Department.

A CHANGE IN PUBLIC POLICY, UNANTICIPATED BY THE PLAN:

1. There has been no change in public policy that would stimulate the need for a plan amendment.

NEW INFORMATION (INCLUDING NEW PLANS AND STUDIES PRODUCED BY KNOXVILLE-KNOX COUNTY PLANNING) BECOMING AVAILABLE, WHICH REVEALS THE NEED FOR A PLAN AMENDMENT:

1. No new information has become available to reveal the need for a plan amendment.

SECTOR PLAN AMENDMENT STAFF RECOMMENDATION:

Adopt resolution #10-B-19-SP, amending this parcel in the North City Sector Plan map to the GC (General Commercial) designation, subject to seven conditions.

MOTION:

Staff recommends adoption of resolution #10-B-19-SP, amending this parcel in the North City Sector Plan map to the GC (General Commercial) designation since it would be a minor extension of the GC designation, subject to seven conditions per staff's recommendation.

10-B-19-RZ / 10-B-19-PA

EXHIBIT A. Contextual Images

COMMENTS:

SECTOR PLAN AMENDMENT REQUIREMENTS FROM GENERAL PLAN (May meet any one of these):
CHANGES OF CONDITIONS WARRANTING AMENDMENT OF THE LAND USE PLAN:

1. There are no recent changes to conditions that would warrant amending the land use plan.

INTRODUCTION OF SIGNIFICANT NEW ROADS OR UTILITIES THAT WERE NOT ANTICIPATED IN THE PLAN
AND MAKE DEVELOPMENT MORE FEASIBLE:

1. No new roads or additional utilities have been introduced in this area.

AN OBVIOUS OR SIGNIFICANT ERROR OR OMISSION IN THE PLAN:

1. There are no obvious or significant errors or omissions in the plan regarding this parcel.

TRENDS IN DEVELOPMENT, POPULATION OR TRAFFIC THAT WARRANT RECONSIDERATION OF THE
ORIGINAL PLAN PROPOSAL:

1. There are no new trends in the development pattern that would warrant a plan amendment.
However, the proximity of these parcels to Tazewell Pike make them viable commercial properties and the proposed parking area and landscape buffer will act as a transition between the commercial and residential uses.
2. The structures on these properties have been demolished recently so that the parcels are now vacant land.
3. Staff proposes the following seven conditions to mitigate potential adverse impacts on the residential neighborhood that abuts these parcels:
 - 1) A 25-foot minimum landscape buffer shall be installed along Sanders Drive.
 - 2) A 12-foot minimum landscape buffer, in accordance with Landscape Type B in the Landscape Screening Design Guidelines, shall be placed between the parking lot and the adjacent residence.
 - 3) Dumpsters shall not be located in the parking lot adjacent to residential structures.
 - 4) Outdoor lighting shall meet the requirements in the new zoning ordinance, Article 10.
 - 5) There shall be a garden marker and landscaping at the entry to the parking lot off of Adair Drive per the Concept B sketch submitted by the applicant (Exhibit B).
 - 6) A sidewalk shall be installed along the frontage of the lots.
 - 7) The entry on Adair Drive will need to be coordinated with and approved by the City of Knoxville's Engineering Department.



PLAN AMENDMENT/ REZONING REPORT

Exhibit 4
Re. 10-B-19-RZ

► **FILE #:** 10-B-19-RZ

AGENDA ITEM #: 9

10-B-19-PA

AGENDA DATE: 1/9/2020

POSTPONEMENT(S): 1/9/2020

► **APPLICANT:** JENNIFER REYNOLDS / BAXTER PROPERTIES

OWNER(S): Jennifer Reynolds / Baxter Properties

TAX ID NUMBER: 58 M B 022 AND 58 M B 02201

[View map on KGIS](#)

JURISDICTION: Council District 4

STREET ADDRESS: 220 Adair Drive and 0 Sanders Drive

► **LOCATION:** At the intersection of Adair Drive and Sanders Drive, west of Tazewell Pike

► **TRACT INFORMATION:** 0.52 acres. (Parcel 58 M B 022 is 0.24 acres and parcel 58 M B 02201 is 0.28 acres.)

SECTOR PLAN: North City

GROWTH POLICY PLAN: Urban Growth Area (Inside City Limits)

ACCESSIBILITY: Sanders Drive is a major collector with a pavement width of 20 feet and a right-of-way width that varies from 40 to 47 feet. Adair Drive is a major collector with a pavement width of 18 feet and a right-of-way width of 36.75 feet.

UTILITIES: Water Source: Knoxville Utilities Board

Sewer Source: Knoxville Utilities Board

WATERSHED: First Creek

► **PRESENT PLAN DESIGNATION/ZONING:** LDR (Low Density Residential) / R-1 (Low Density Residential) and R-2 (General Residential) [RN-1 AND RN-2 (both are Single-Family Residential Districts), effective 1/1/20]

► **PROPOSED PLAN DESIGNATION/ZONING:** GC (General Commercial) for 220 Adair Drive only / C-3 (General Commercial) [C-G-2 is the most comparable zone in the new zoning ordinance, effective 1/1/20]

► **EXISTING LAND USE:** O (Office) & SFR (Single Family Residential); All structures have been demolished, so the parcels are now vacant

► **PROPOSED USE:** Beer Garden; Commercial use of similar character to commercial node at the corner of Sanders Drive, Tazewell Pike, and Jacksboro Pike

DENSITY PROPOSED: n/a

EXTENSION OF PLAN DESIGNATION/ZONING: Yes, GC is adjacent to the east

HISTORY OF ZONING REQUESTS: None noted for these properties

SURROUNDING LAND USE, PLAN DESIGNATION, AND ZONING North: Office, Multifamily Residential, and Single-Family Residential - O (Office) and LDR (Low Density Residential) - R-1 (Low Density Residential)

Residential District) and C-1 (Neighborhood Commercial District) [RN-1 (Single Family Residential District) and C-N (Neighborhood Commercial District) after 1/1/20]

South: Single Family Residential - LDR (Low Density Residential) and GC (General Commercial) - R-1 (Low Density Residential District) [RN-1 Single Family Residential District) after 1/1/20]

East: Commercial and Office - GC (General Commercial) - C-3 (General Commercial District) [C-G-2 (General Commercial District) after 1/1/20]

West: Single-Family Residential - LDR (Low Density Residential) - R-1 (Low Density Residential District) [RN-1 (Single Family Residential District) after 1/1/20]

NEIGHBORHOOD CONTEXT: This property is at the entrance to a single-family residential neighborhood with lots varying in size from 0.1 to 0.7 acres. This is a stable neighborhood surrounded by commercial properties in two directions as N. Broadway Avenue lies less than a quarter mile to the west, and there is a commercial node to the east at the intersection of Sanders Drive, Tazewell Pike, and Jacksboro Pike that runs north to south.

STAFF RECOMMENDATION:

- ▶ **Deny the One Year Plan amendment to General Commercial for 220 Adair Drive because it encroaches on a residential neighborhood.**

Should the Planning Commission wish to approve the plan amendment request, staff recommends approval of the General Commercial land use designation for 220 Adair Drive, subject to seven conditions. The reasons stated would be those discussed and decided upon by the Commission at the meeting.

- ▶ **Deny C-G-2 zoning for both parcels because it encroaches on a residential neighborhood and is not consistent with the North City Sector Plan.**

Should the Planning Commission wish to approve the rezoning request, staff recommends approval of C-G-2 zoning subject to seven conditions. The reasons stated would be those discussed and decided upon by the Commission at the meeting.

COMMENTS:

ONE YEAR PLAN AMENDMENT REQUIREMENTS:

Staff's previous approval was based on the belief that neighborhood residents had been notified and were in support of the development. However, due to the volume of feedback in opposition to the proposed rezoning and land use, staff understands this is not the case and has reviewed these requests further, recommending denial.

CHANGES OF CONDITIONS WARRANTING AMENDMENT OF THE LAND USE PLAN (May meet any one of these.)

AN ERROR IN THE PLAN:

1. The property at the intersection of Adair Drive and Sanders Drive (parcel 58 M B 022.01) is across the street from both residential and office uses, and the property rounds the corner into the residential neighborhood. The GC (General Commercial) designation for this property allows zoning and land uses that are not compatible with the adjacent detached, single-family houses. LDR (Low Density Residential) or O (Office) land use designations would be more appropriate in this location as they are less intense and therefore less intrusive than GC.

A SIGNIFICANT CHANGE IN THE DEVELOPMENT PATTERN, OR THE COMPLETION OF A PUBLIC IMPROVEMENT (ROAD, PARK, SEWER), WHICH CHANGES THE BASIS ON WHICH THE PLAN WAS DEVELOPED FOR AN AREA:

1. There are no significant changes in the development pattern or public services that would warrant a plan amendment.

2. The structures on these properties have been demolished so that the parcels are now vacant land; one of these structures was on the National Historic Register. However, these demolitions are not enough of a change to warrant a plan amendment.
3. Should the Planning Commission approve the plan amendment request, staff proposes the following seven conditions to mitigate potential adverse impacts on the residential neighborhood that abuts these parcels. These conditions do not refer to the exact dimensions, plants, or design of landscaping or amenities in the concept plan, as it is by its nature conceptual. These provisions refer instead to the presence and general location of these amenities. The development will be required to meet zoning ordinance requirements.
 - a. A 25-foot minimum landscape buffer shall be installed along Sanders Drive to lessen the visual impact of the parking lot and preserve the front yard space established in the neighborhood.
 - b. A 20-foot minimum landscape buffer, in accordance with the Class B Buffer in Section 12.8 of the new zoning ordinance, shall be placed between the parking lot and the adjacent residence.
 - c. Dumpsters shall not be located in the parking lot adjacent to residential structures.
 - d. Outdoor lighting shall meet the requirements in the recently adopted city zoning ordinance, Article 10, Section 10.2, beginning on page 10-1.
 - e. There shall be a garden marker and landscaping at the entry to the parking lot off of Adair Drive per the Concept B sketch submitted by the applicant (Exhibit B).
 - f. A sidewalk shall be installed along the frontage of the lots.
 - g. The entry on Adair Drive will need to be coordinated with and approved by the City of Knoxville's Engineering Department.

A CHANGE IN PUBLIC POLICY, UNANTICIPATED BY THE PLAN:

1. There has been no change in public policy that would stimulate the need for a plan amendment.

NEW INFORMATION (INCLUDING NEW PLANS AND STUDIES PRODUCED BY KNOXVILLE-KNOX COUNTY PLANNING) BECOMING AVAILABLE, WHICH REVEALS THE NEED FOR A PLAN AMENDMENT:

1. No new information has become available to reveal the need for a plan amendment.

REZONING REQUIREMENTS FROM ZONING ORDINANCES (must meet all of these):

Staff's previous approval was based on the belief that neighborhood residents had been notified and were in support of the development. However, due to the volume of feedback in opposition to both the proposed rezoning and land use, staff understands this is not the case and has reviewed these requests further.

THE PROPOSED AMENDMENT SHALL BE NECESSARY BECAUSE OF SUBSTANTIALLY CHANGED OR CHANGING CONDITIONS IN THE AREA AND DISTRICTS AFFECTED, OR IN THE CITY/COUNTY GENERALLY:

1. The structures on both parcels have been demolished so that the parcels are now vacant land. One of these structures was on the National Historic Registry. However, these demolitions are not enough of a change in conditions to warrant a rezoning.

THE PROPOSED AMENDMENT SHALL BE CONSISTENT WITH THE INTENT AND PURPOSE OF THE APPLICABLE ZONING ORDINANCE:

1. This was originally requested in October, 2019 under the previous zoning ordinance. The new zoning ordinance took effect on January 1, 2020, so the requested C-3 zone will no longer be in effect when this request goes forward. Therefore, staff has amended the application to request C-G-2, since the comparable zone to C-3 in the new ordinance is C-G (General Commercial District) and the adjacent properties fronting Tazewell Pike are zoned C-G-2.
2. The C-G General Commercial Zoning District is intended to provide for a heterogeneous mix of retail, personal service, office, and residential uses within and along Knoxville's commercial nodes and corridors. The C-G District is intended to promote mixed-use development in a pedestrian-oriented environment that recalls the City's traditional business districts, and offers flexibility in the creation of integrated commercial, office and residential spaces. The C-G District is divided into three levels of intensity related to the overall form and design of the development; however, uses are the same across all levels. This zone is intended primarily for indoor commercial uses with limited exceptions per special use approval.

3. Design Standards for C-G-2 apply to new construction and to any additions that exceed 30% or more of the existing structure's square footage. Commercial development on this property would be required to meet these standards (Table 5.2 in the new zoning code) if the rezoning and plan amendment requests are approved.
4. In addition to the C-G standards, commercial development would be required to meet the Parking Standards (Section 11), the Landscaping Standards (Section 12), and the Lighting Standards (contained within Section 10) of the new zoning ordinance.
5. Rezoning should be based on the entire range of uses allowed within a zone to ensure that any development brought forth at a future time would be compatible with the surrounding land uses.

THE PROPOSED AMENDMENT SHALL NOT ADVERSELY AFFECT ANY OTHER PART OF THE COUNTY, NOR SHALL ANY DIRECT OR INDIRECT ADVERSE EFFECTS RESULT FROM SUCH AMENDMENT.

1. The rezoning and plan amendment requests would encroach into the residential neighborhood should they be approved, as the property across the street from 0 Sanders Drive (3313 Sanders Drive) is a detached, single-family home and is the beginning of residential development.
2. Extending a commercial zone inside this neighborhood would completely change the character of the front of the neighborhood, which has consistent features (i.e., setbacks, architectural standards, and scale).
3. If the Commission does approve the request, staff proposes the following seven conditions to mitigate potential adverse impacts on the residential neighborhood that abuts these parcels. These conditions do not refer to the exact dimensions, plants, or design of landscaping or amenities in the concept plan, as it is by its nature conceptual. These provisions refer instead to the presence and general location of these amenities. The development will be required to meet zoning ordinance requirements.
 - a. A 25-foot minimum landscape buffer shall be installed along Sanders and Adair Drives to lessen the visual impact of the parking lot and preserve the front yard space established in the neighborhood.
 - b. A 20-foot minimum landscape buffer, in accordance with the Class B Buffer in Section 12.8 of the new zoning ordinance, shall be placed between the parking lot and the adjacent residence.
 - c. Dumpsters shall not be located in the parking lot adjacent to residential structures.
 - d. Outdoor lighting shall meet the requirements in the recently adopted city zoning ordinance, Article 10, Section 10.2, beginning on page 10-1.
 - e. There shall be a garden marker and landscaping at the entry to the parking lot off of Adair Drive per the Concept B sketch submitted by the applicant (Exhibit B).
 - f. A sidewalk shall be installed along the frontage of the lots.
 - g. The entry on Adair Drive will need to be coordinated with and approved by the City of Knoxville's Engineering Department.

THE PROPOSED AMENDMENT SHALL BE CONSISTENT WITH AND NOT IN CONFLICT WITH THE GENERAL PLAN OF KNOXVILLE AND KNOX COUNTY, INCLUDING ANY OF ITS ELEMENTS, MAJOR ROAD PLAN, LAND USE PLAN, COMMUNITY FACILITIES PLAN, AND OTHERS:

1. C-G-2 zoning is compatible with the North City Sector Plan's General Commercial land use designation. However, while extending the General Commercial designation 220 Adair Drive would seem to be a minor extension of GC since it is adjacent along Tazewell Pike, the extension would encroach into an existing residential neighborhood. One of the properties is at the corner leading into the development, and the other is along the road inside of the residential neighborhood.
2. This property is in the School Parental Responsibility Zone for Gresham Middle and Central High Schools. Sidewalks are required to be installed with any new development.
3. This parcel is located in Flood Zone X, but is not in a floodplain or floodway.

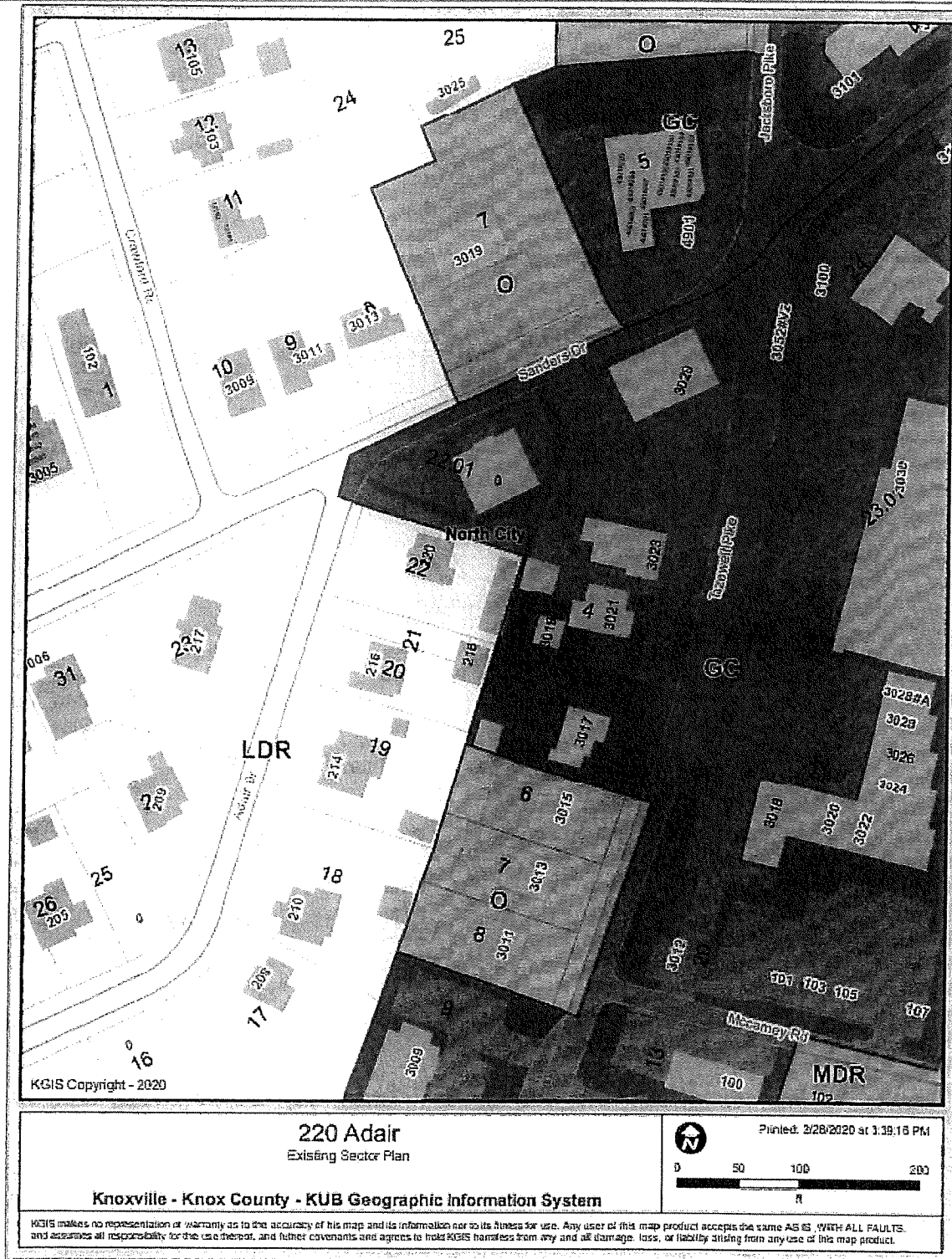
ESTIMATED TRAFFIC IMPACT: Not required.

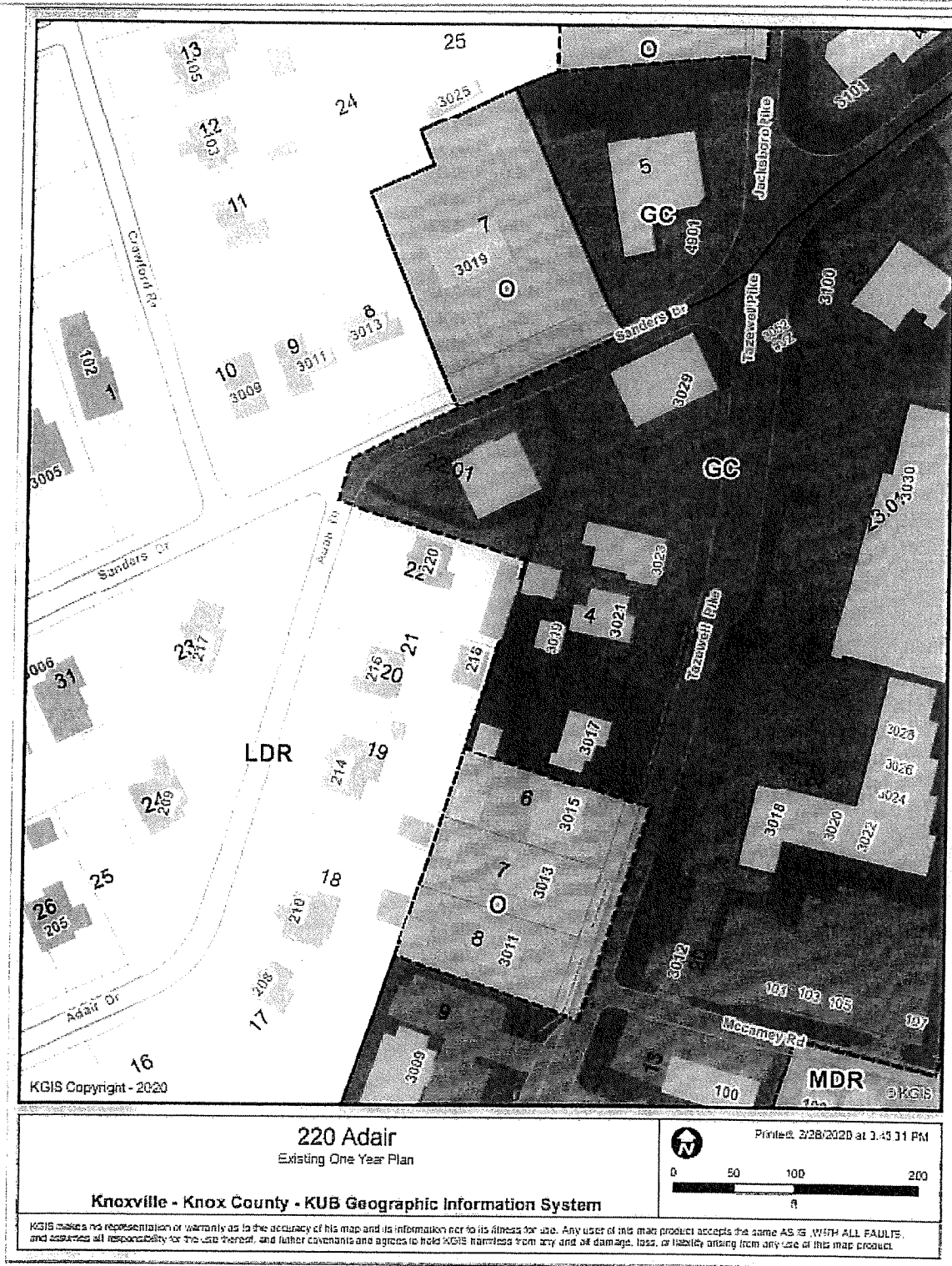
ESTIMATED STUDENT YIELD: Not applicable.

If approved, this item will be forwarded to Knoxville City Council for action on 2/11/2020 and 2/25/2020. If denied, Knoxville-Knox County Planning Commission's action is final, unless the action to deny is appealed to Knoxville City Council. The date of the appeal hearing will depend on when the appeal application is filed. Appellants have 15 days to appeal a Planning Commission decision in the City.

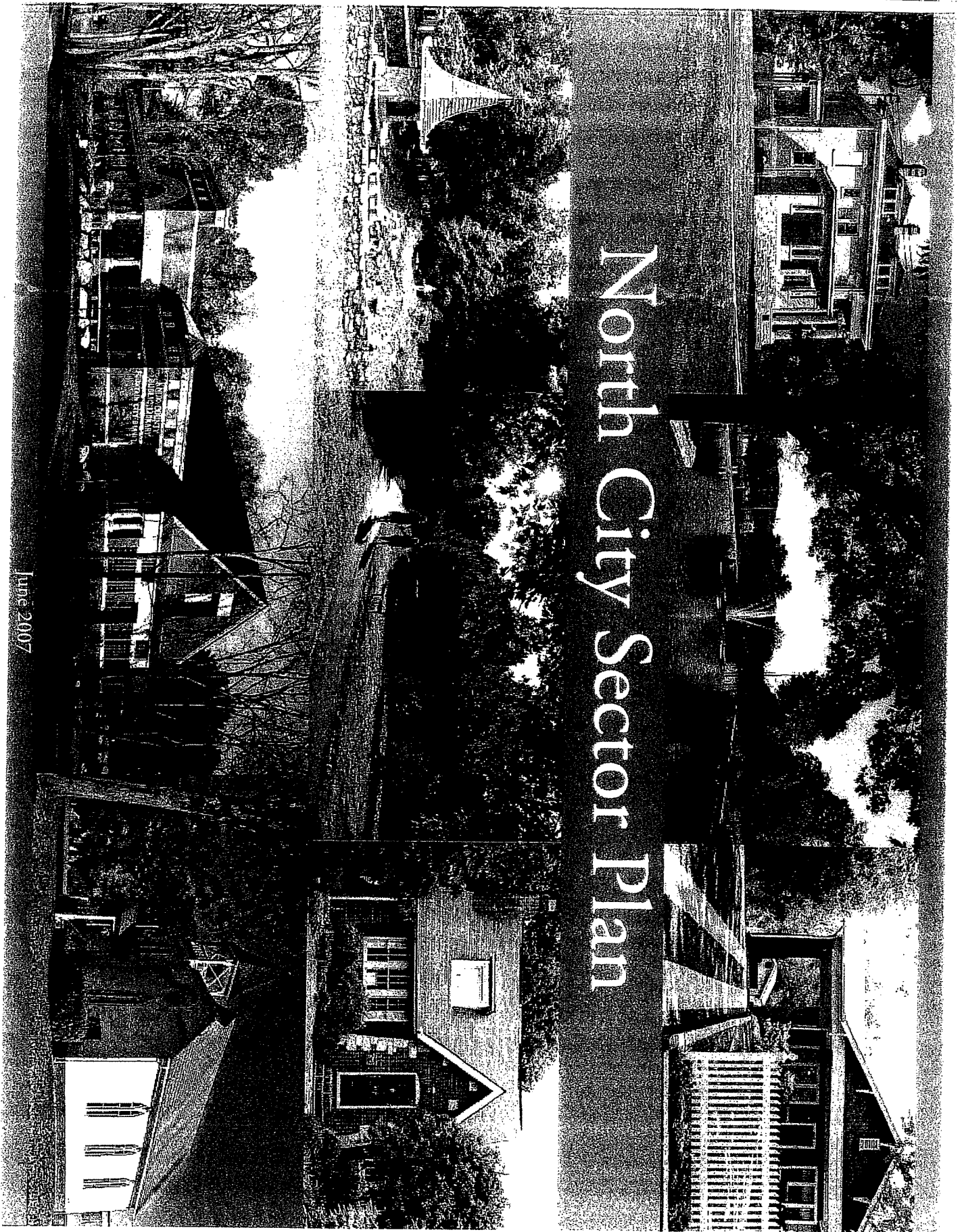


A Conceptual Masterplan for:





North City Sector Plan



June 2007

North City Sector Plan

June 2007

Adopted by:

Knoxville-Knox County Metropolitan Planning Commission on June 14, 2007

Knoxville City Council on July 17, 2007

Knox County Commission on July 23, 2007

Amended by the *Knoxville-Knox County Park, Recreation, and Greenway Plan*:

Adopted by:

Knoxville-Knox County Metropolitan Planning Commission on December 10, 2009

Knox County Commission on January 25, 2010

Knoxville City Council on January 26, 2010

Land Use Plan Maps Revised and Adopted by:

Knoxville-Knox County Metropolitan Planning Commission on April 12, 2018

Knoxville City Council on May 22, 2018

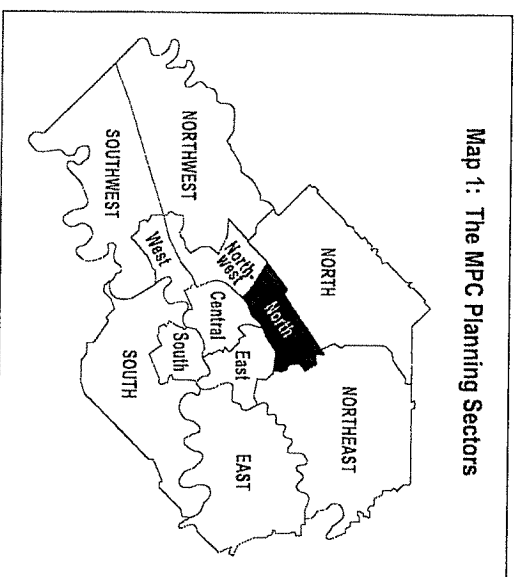
Knox County Commission on May 29, 2018

Chapter 1: Introduction

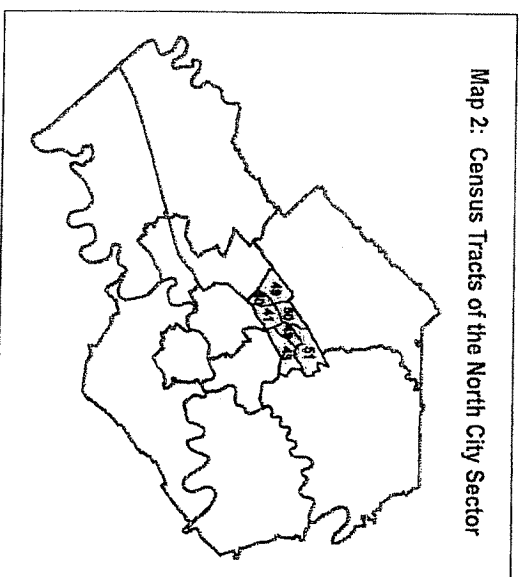
The Knoxville-Knox County Metropolitan Planning Commission (MPC) divides Knox County into twelve planning sectors based on census tract boundaries. The North City Sector Plan is one of the twelve sector plans prepared for the City and County. The focus of a sector plan is on physical development: land use, transportation, and community facilities. The North City Sector contains an area of 10,798 acres (approximately 16.87 square miles).

The boundaries of the North City Sector include Interstate 640 on the south and Interstate 75 to the west. The northern boundary is made up of Dante Road, Riffe Range Road, Brown Gap Road, and Carter Road. The eastern boundary follows Luttrell Road, Washington Pike, and Mill Road. The sector boundaries are consistent with census tracts 40, 41, 42, 43, 49, 50, and 51. Since the sector follows the census tract boundaries, it extends beyond the city limits and includes unincorporated portions of Knox County in the northeast corner of the sector.

This sector plan is part of the overall Knoxville-Knox County comprehensive planning program, which also includes the General Plan and the Growth Policy Plan. Each of those plans has a bearing on policies which affect the various sectors. The development policies of the General Plan are presented in Appendix A. The Growth Policy Plan outlines an area for future Knoxville growth and a Planned Growth Area with Knox County where the moderate intensities of land



Map 1: The MPC Planning Sectors



Map 2: Census Tracts of the North City Sector

development (such as suburban subdivisions and commercial projects) may take place. The growth policies also are directed to conservation of a Rural Area and such environmental resources as steep slopes and stream corridors. Those policies are contained in Appendix B.

CONTENTS

All sector plans contain a background report, a plan for community improvements, and a land use plan. The background report outlines existing conditions in the sector and contains information on environmental resources, development trends, and characteristics of the population. It serves as a tool to help the community identify development opportunities and plan for the future. Remaining sections include a comprehensive plan for future physical development of the sector. Additionally, this plan contains a Small Area Plan for Fountain City.

PURPOSE OF THE PLAN

- Identify significant environmental and historic resources
- Recognize development constraints and issues
- Explore special development opportunities, including recommendations for Fountain City
- Create land use, community facility and transportation plans proposals to guide development over the next 15 years
- Outline capital improvements and programs to implement plan proposals over the next five years



KNOXVILLE / KNOX COUNTY

2020 ONE YEAR PLAN

The City of Knoxville, Tennessee

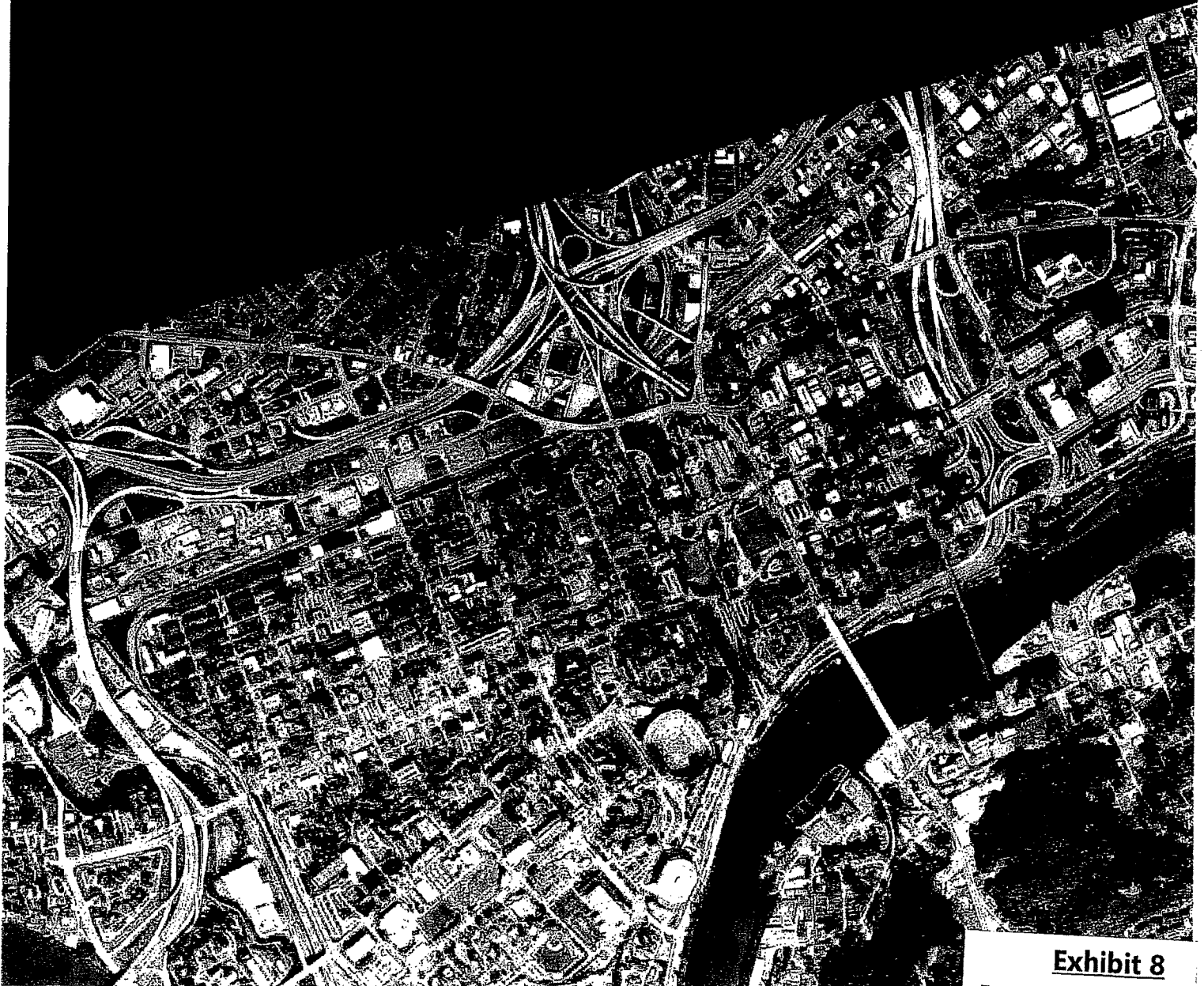


Exhibit 8

Re. 10-B-19-RZ

CHAPTER 1

INTRODUCTION

On November 2, 1982, Knoxville voters approved by referendum a revision of the City Charter which strengthened the relationship between planning and zoning.

The Charter—Article VIII, Section 801—requires that future zoning in the city conform to the community’s comprehensive development plans. Previously, plans were guides for zoning, but conformance to the plans was not legally required.

The Charter requires the annual preparation and adoption of a one-year comprehensive development plan covering the entire city. Fifteen- and five-year development plans (sector plans) are prepared to provide policy guidance on long and mid-range development issues and as a guide to development of the One Year Plan. The One Year Plan is specifically designed to be the basis for land use regulations and short-term public improvements.

ONE YEAR DEVELOPMENT PLAN

The One Year Plan is a tool to align the sector plans with the City’s zoning.

The Charter states [Article VIII, Section 801 (A)]:

“The mayor shall have the Metropolitan Planning Commission (now the Knoxville-Knox County Planning Commission) prepare a one-year development plan which delineates the city’s proposed land use development pattern for the succeeding twelve-month period and is based upon the development goals and objectives specified in the city’s five- year development plan. The one-year development plan shall provide the basis for zoning of all properties within the city limits.”

This text and the accompanying maps comprise the One Year Plan required by the Charter. The land use and zoning plan cover all of Knoxville; however, for the sake of convenience, each plan has been divided into six districts roughly corresponding to the six city planning sectors. The One Year Plan maps illustrate the city's proposed land use pattern by designating property into one of thirty-one land use classes. The text describes the intent of each class. In addition, the text identifies an appropriate range of zoning districts within the city's zoning ordinance which would be in conformance to the plan.

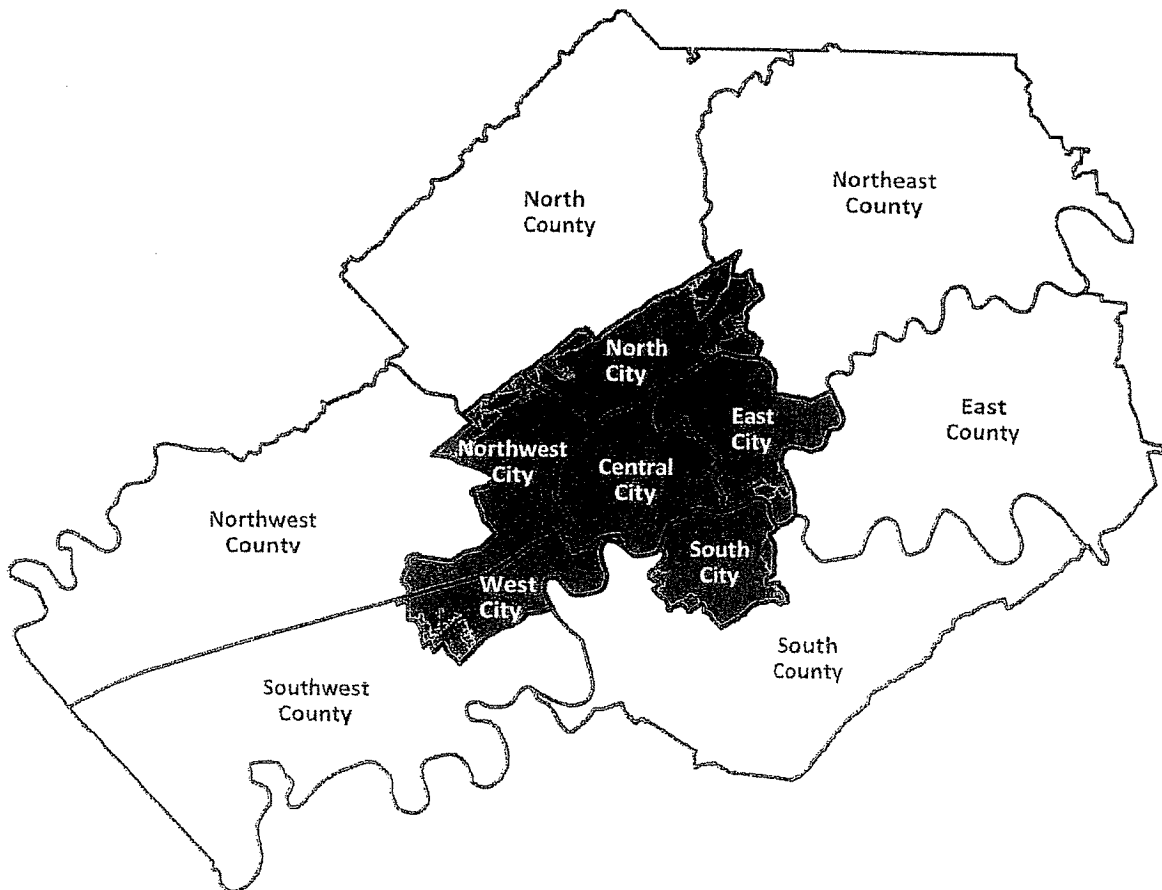
The One Year Plan, by law and practice, is developed with a high level of community involvement. The required updates keep the plan a current and accurate guide for community growth, preservation, and enhancement. The structured amendment process allows the entire community to participate in the consideration of changes to the plan and provides more complete information on which to base decisions.

SECTOR PLANS

Sector plans are a series of plans which provide policies and recommendations on land use, transportation, and public facilities for the twelve geographic sectors of Knoxville and Knox County, for planning periods of five and fifteen years. The sector plans are elements of the General Plan. Many of them incorporate small area plans and/or corridor plans – the results of study by planning staff. Sectors are not divided along city-county boundary lines, so there are small pockets of land that are incorporated into the City of Knoxville but are in a County sector.

The following sector plans were used in preparing the One Year Plan:

- Central City Sector, adopted by City Council - 9/30/14
- East City Sector, adopted by City Council - 5/27/14
- North City Sector, adopted by City Council - 7/17/07
- Northwest City Sector, adopted by City Council - 5/26/15
- South City Sector, adopted by City Council - 10/18/11
- West City Sector, adopted by City Council - 9/11/07
- East County Sector, adopted by City Council - 6/15/10
- North County Sector, adopted by City Council - 9/4/12
- Northeast County Sector, adopted by City Council - 1/19/16
- Northwest County Sector, adopted by City Council - 8/30/16
- South County Sector, adopted by City Council - 11/28/12
- Southwest County Sector, adopted by City Council - 10/25/16



The One Year Plan implements the listed long-range plans in an evolutionary manner. It balances the goals and objectives of long-range plans against the realities of existing land uses and zoning.

In some cases, planning staff makes recommendations to revise the One Year Plan map boundaries for each land use class as sector plan maps are amended.

EFFECT ON EXISTING ZONING

Staff utilizes the One Year Plan as a tool when reviewing rezoning and sector plan amendment applications. Future zoning changes must conform to the plan or meet the criteria for an amendment. In addition, the plan may propose amendments to the zoning ordinance text and zoning map to bring them into conformance.

PLAN UPDATES

The Charter specifies that the sector and One Year plans be updated and re-adopted. New conditions and changing community goals will gradually change the community's desired land use pattern. The process for plan updates progresses from the General Plan and sector plans to the One Year Plan. Through this process, citizens can see how long-range policies and goals relate to the specific recommendations of the One Year Plan.

ARTICLE VIII. - METROPOLITAN PLANNING COMMISSION

Footnotes:

--- (4) ---

State Law reference— *Regional planning commissions, T.C.A. § 13-3-101 et seq.*

801. - [Duties and functions.]

The metropolitan planning commission, a regional planning commission established pursuant to state statute, shall be the comprehensive planning agency for the City of Knoxville, in accordance with general state law and charter provisions. The metropolitan planning commission shall also administer zoning and land subdivision regulations, as provided in general state law.

- (A) *Comprehensive development plan.* The mayor shall have the metropolitan planning commission prepare and maintain five- and fifteen-year comprehensive development plans of the City of Knoxville to be used as a guide for the growth and development of the city and which will identify its present and planned physical, social, and economic development. This plan shall:
- (1) Set forth the comprehensive development goals, objectives and policies for both the entire city and for small areas and communities within the city;
 - (2) Identify and set forth the scope of all programs and services to be provided by the city; and
 - (3) In conformance with such development goals, objectives and policies, identify the general location, character and extent of future land use for all classifications; parks, recreation and open space facilities; sites for public buildings and structures; city and privately owned utilities; street and thoroughfare systems, other transportation systems, services and facilities; housing; community facilities; and such other features, elements and policies as will provide for the improvement of the city over the five- and fifteen-year periods.

In addition, the mayor shall have the metropolitan planning commission prepare a one-year development plan which delineates the city's proposed land use development pattern for a succeeding twelve-month period and is based upon the development goals and objectives specified in the city's five-year development plan. The one-year development plan shall provide the basis for zoning of all properties within the city limits.

Prior to and during the preparation of each comprehensive development plan, the mayor shall encourage participation from individual citizens and community groups, in such manner as council may prescribe by ordinance.

(B) *Implementation, update and revision of comprehensive development plans:*

- (1) The mayor shall submit to the council such plans that will include a fifteen-year, five-year and one-year comprehensive development plan, along with a comprehensive zoning plan of all properties within city limits. The fifteen- and five-year plans, updated annually, shall be submitted to the council before its second regular meeting in January of each year. After conducting public hearings on such plans, the council shall adopt the plans, after making any amendments or revisions council considers appropriate, by not later than the first regular council meeting in March of the year.

The one-year comprehensive development plan and zoning plan, updated annually, shall be submitted to the council before its first regular meeting in April of each year. After conducting public hearings on the plan, the council shall adopt the plan, after making any amendments or revisions the council considers appropriate, by not later than the first regular meeting in May of each year.

- (2) Amendments to a comprehensive development plan may be made at any time during the year following the submission to and action thereon by the metropolitan planning commission. These amendments shall become effective when adopted by a majority vote of the membership of the council.
- (3) All approved comprehensive development plans shall be used as a guide in preparing the city's capital improvements program and capital budget.
- (4) The mayor shall cause to be maintained an up-to-date zoning map for all properties within city limits.
- (5) Following the annual update and adoption of the city's development plans, the council shall amend the city's zoning ordinance to conform it to the updated development plans in accordance with procedures prescribed by general law.

(C) *Capital improvements program:*

- (1) The mayor shall have the metropolitan planning commission annually prepare a capital improvements program of proposed capital expenditures for the ensuing fiscal year, and the next five (5) fiscal years thereafter, accompanied by the report and recommendations of the planning commission.
- (2) The mayor or an agent of the mayor shall obtain annually from all officers, departments, boards and commissions and other agencies requesting funds from the city for capital improvements, such information as may be necessary in order to enable the metropolitan planning commission to prepare a capital improvements program. These data shall be delivered to the planning commission

not later than four (4) months prior to the end of the fiscal year. The mayor shall submit a capital improvements program and budget of the council not later than forty-five (45) days prior to the commencement of the next ensuing fiscal year, and the method of financing them, noting the impact on the debt structure of the city, and shall include in the appropriate current operating budget any projects to be financed from current revenues for the ensuing fiscal year.

- (3) The council shall have the power to accept, with or without amendment, or reject, the proposed program and the proposed means of financing. The council shall not authorize expenditures for the construction or acquisition of any building, structure, work or improvement, unless the appropriation for such project is included within its capital improvements program, except to meet a public emergency threatening the lives, health or property of the inhabitants when passed by a vote of two-thirds [of the] members of the council. The capital improvements program must be acted upon finally by the council not later than fifteen (15) days prior to the commencement of the next ensuing fiscal year.
- (4) The mayor may submit amendments to the capital improvements program any time during the year, accompanied by the recommendations thereon of the metropolitan planning commission, which amendments shall become effective when adopted by a vote of two-thirds of the members of the council.

(D) *Preservation of historic structures and districts:*

- (1) The mayor shall have the metropolitan planning commission prepare an annual report on the status of the preservation of historic structures and districts within the city. This report shall be submitted to the mayor on or before May 1 of each year.
- (2) The mayor shall make a report to the council on the status of historic preservation within the city on or before July 1 of each year. This report shall include a summary of legislation and actions taken to promote historic preservation in the preceding year, recommendations and goals for the coming year, and a five-year plan to promote historic preservation.

(Ord. No. O-336-02, § 1, 9-3-02, ratified 11-5-02)

MEMORANDUM

To: Charles Swanson, Law Director
Gerald Green, MPC Executive Director
From: Crista Cuccaro, Attorney for the City of Knoxville
Date: September 11, 2017
Re: The Significance of and Compliance with Plans

Overview

At the recent City Council meeting on August 29, 2017, a proposed rezoning raised questions about the significance of and implementation of plans for the City of Knoxville. Specifically raised at the meeting was the Hillside Ridgetop Protection Plan¹ ("HRPP"), so that plan is used as an example in this memo with page references in the footnotes.

This memo concludes that plans are applicable when City Council, the Metropolitan Planning Commission, or the Board of Zoning Appeals are making land use decisions on items other than variances—which would include rezonings and uses on review.

Background and Discussion

The City of Knoxville and Knox County are served by the Knoxville-Knox County Metropolitan Planning Commission ("MPC"), which is a regional planning commission governed by TENN. CODE ANN. § 13-3-101, *et seq.* MPC was established in 1956 when the City of Knoxville ("City") and Knox County ("County") passed resolutions recommending the dissolution of their two separate planning organizations and the creation of a new single metropolitan planning commission to serve both the City and Knox County.

MPC is responsible for comprehensive county-wide planning (excluding the Town of Farragut) and administration of zoning and land subdivision regulations. The authority granted to regional planning commissions by state law is defined in broad and general language with respect to planning and development of the region in which it operates. For example, in addition to more specific language in the statute, MPC is also authorized as follows: "[i]n general, the commission has such powers as may be necessary for it to perform its functions and to promote regional planning." TENN. CODE ANN. § 13-3-104(d). Specifically, MPC is responsible for the following activities, as well as other activities not listed below:

¹ The County amended the plan to note: "This plan and the principles, objectives, policies and guidelines included herein are advisory in nature and constitute non-binding recommendations for consideration in connection with development of steeply sloped areas. While this plan is being adopted as an amendment to the Knoxville-Knox County General Plan 2033, it is intended to provide background and supplemental information of an advisory nature and to serve as a guide to future MPC staff recommendations, but it is not intended to form an official part of the General Plan which would be binding on future land use decisions by County Commission, MPC, the County Board of Zoning Appeals pursuant to T.C.A. § 13-3-304. Any comparable provisions of the Knoxville-Knox County General Plan 2033 or any Sector Plan which relate to hillside and ridgetop protection shall also be considered advisory consistent with this plan."

- Conferring with and advising the City and County Mayors and legislative bodies for the purpose of promoting a coordinated and adjusted development of the region, TENN. CODE ANN. § 13-3-104(a);
- Preparing and adopting a general regional plan, TENN. CODE ANN. § 13-3-301(a);
- Reviewing subdivision regulations and site plans, TENN. CODE ANN. § 13-3-401, *et seq.*;
- Preparing, reviewing, and making recommendations on zoning ordinances for consideration by the City Council and the Knox County Commission, *Charter of the City of Knoxville*, Article VIII, § 801 and Knox County Code of Ordinances, Appendix A, § 1.20;
- Preparing five- and fifteen-year comprehensive development plans, and a one-year development plan for the City, *Charter of the City of Knoxville*, Article VIII, § 801; and
- Preparing official zoning maps for the City and Knox County, *Charter of the City of Knoxville*, Article VIII, § 801 and Knox County Code of Ordinances, Appendix A, § 1.20.

In addition to the essential planning functions described above, MPC also performs special purpose studies and analyses of significant issues as requested by the City or Knox County.

Pursuant to its duties under state and local law, MPC has prepared numerous plans for the City of Knoxville and Knox County, including the Knoxville-Knox County General Plan 2033 (“General Plan”), six sector plans, the HRPP, the Tree Conservation and Planting Plan, the Park, Recreation, and Greenways Plan, the Major Road Plan, the Wireless Communication Facilities Plan, the Small Area and Neighborhood Plan, the One Year Plan, and others.

The General Plan is created and adopted pursuant to TENN. CODE ANN. § 13-3-301(a). The other plans noted above are extensions of or supplements to the General Plan, and those plans focus on applying the goals of the General Plan to guide land use development over shorter periods of time. Referred to as the regional plan in state law, the General Plan “**shall** show the regional planning commission’s **recommendations** for development of the territory covered by the plan [...]” and “**may** include [...] a land classification and utilization program” and “a zoning plan for the regulation of the height, area, bulk, location and uses of buildings, the distribution of population, and the uses of land for trade, industry, habitation, recreation, agriculture, forestry, soil and water conservation and other purposes.” (Emphasis added.)

Procedurally, the General Plan is required to be adopted first by MPC. TENN. CODE ANN. § 13-3-303. The legislative body or bodies for which the plan is applicable must also adopt it. TENN. CODE ANN. § 13-3-304. Once the legislative body adopts the General Plan (or by extension, any other plan), then any land use decisions made thereafter by the **legislative body, planning commission, or board of**

zoning appeals when the board of zoning appeals is exercising its powers on matters other than variances, must be consistent with the General Plan. *See id.* at 304(b) (emphasis added).

To reiterate, the language dictating the effect of plans states that it only applies to land use decisions of City Council, MPC, or the Board of Zoning Appeals ("BZA") when it is hearing items other than variances. Because the BZA does not often hear items other than variances, this narrows the applicability of adopted plans to rezonings and uses on review (including appeals of uses on review to City Council). Plans are not applicable in the context of administrative decisions made by staff for the issuance of permits or otherwise.

The scope of applicability for plans is echoed in the HRPP and other plans adopted by the City of Knoxville City Council. For example, the HRPP notes that the topographical maps in the plan "enable the planning commission, city council and county commission to have a process to consider rezoning requests for hillside areas on a consistent basis."² Furthermore, in a section on density recommendations based on the slope of property, the HRPP states that:

"As proposals for changes to the zoning map and development plans/concept plans are considered, the following factors are recommended to determine the overall allowable density for residential rezonings and the overall land disturbance allowable in new development or subdivisions for those portions of parcels that are within the Hillside and Ridgetop Protection Area. These factors should be codified as regulations in the future."³

The density recommendations are qualified further to note that until such time that regulations are codified by the appropriate legislative body, the factors for recommendation should be considered as guidelines to determine an overall recommended land disturbance area for development plans and concept plans that are considered for approval by the Metropolitan Planning Commission.³

Similarly, the Wireless Communication Facilities Plan explains the significance of the use on review approval process for implementing plans: "When telecommunications towers are submitted to MPC as uses on review," MPC is required to review the towers under specific standards for commercial telecommunications towers and general standards for all uses on review. Among the requirements of the City Zoning Ordinances for approval of a use on review are findings by MPC that any proposed towers are **in harmony with adopted comprehensive plans**. The stated intent of the use on review process is "to integrate properly the uses permitted on review with other uses located in the district." To accomplish this, MPC routinely attaches design or appearance related conditions to approval of uses on review.

Enacting zoning that requires use on review approval ensures that development in a specific area will be considered pursuant to adopted plans. Upon rezoning property, MPC and City Council are also bound by adopted plans for the City of Knoxville. Principles set forth in the plans should be reflected in the legislative action of rezoning and, ideally, those principles should also be reflected in the text of the zoning code and its regulations.

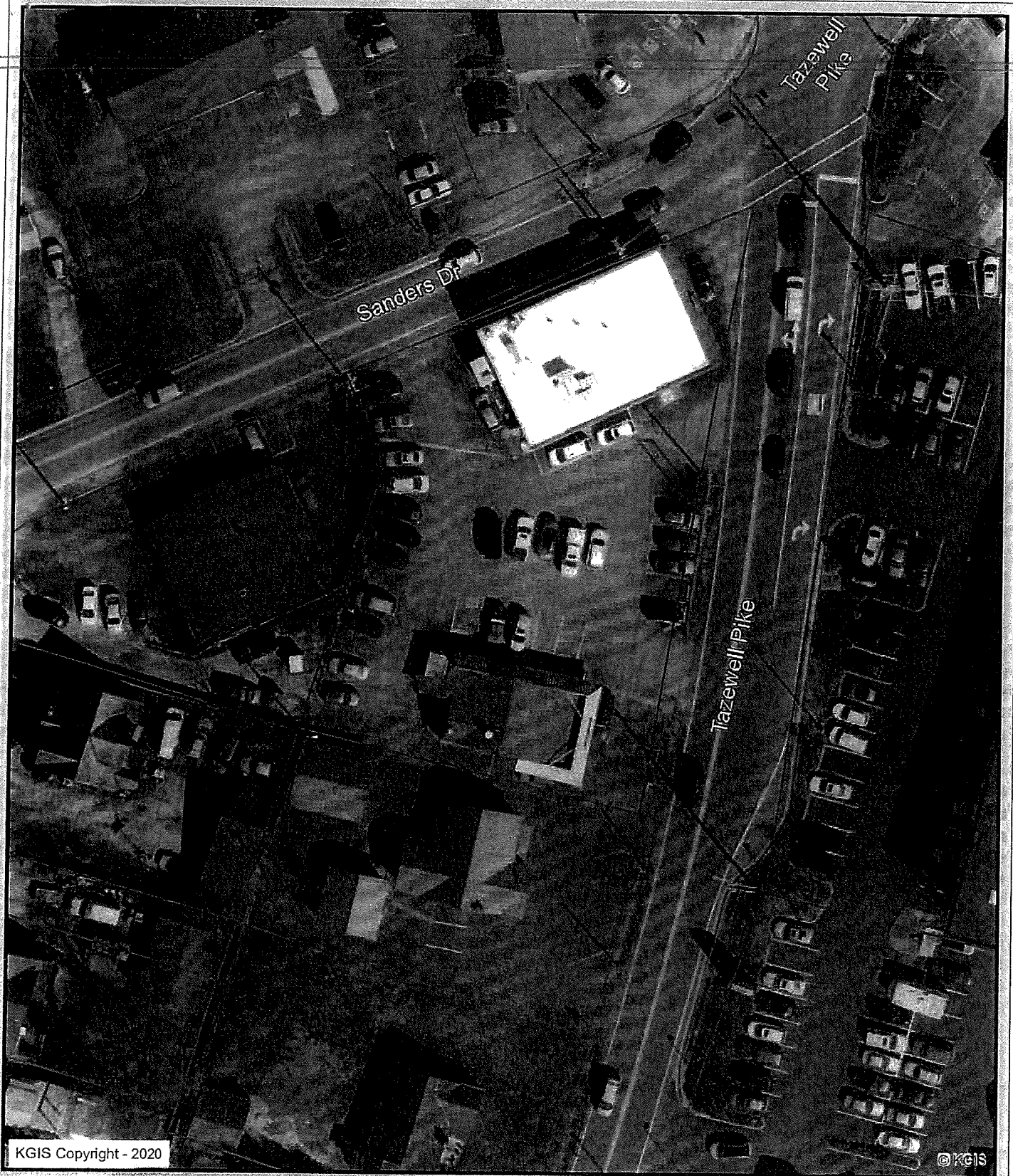
² At page 31.

³ At page 33.

³ At page 33.

Conclusion

Ultimately, land use decisions by MPC and City Council—namely, use on review and rezoning approvals—are the appropriate place for plans to be considered. The zoning code and zoning map are intended to reflect the plans, and therefore dictate the allowable uses in conformity with the plans. City of Knoxville staff does not examine plans in its administrative role, nor is the staff required to pursuant to state law. In fact, if staff examined plans for every single administrative action it performs, undoubtedly the City would cease to function due to this significant administrative burden.



220 Adair Aerial

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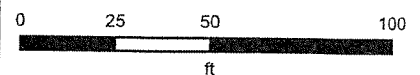


Exhibit 11

Re. 10-B-19-RZ