Community Forum – Response to Recode Knoxville, Draft 1—May 10, 2018

TOPICS:
(1): ACCESSORY DWELLING UNIT (ADU): Accessory Structures and Uses, Article 10, 10.3, page 10-4
(2): HOME OCCUPATION: Accessory Structures and Uses, Article 10, 10.3, page 10-9
(3): DAY CARE HOME, DAY CARE CENTER, PRE-SCHOOL/KINDERGARTEN: Permitted Uses: Article 9, 9.3, page 9-4,
(4): PLANNED DEVELOPMENT, (PD): Article 15, 15.6, page 15-12.
(5): HILLSIDE AND RIDGETOP PROTECTION
(6): ANIMAL CARE FACILITY-SMALL: Article 9, 9.3, page 9-3.
(7): ANCILLARY vs. ACCESSORY USES AND STRUCTURES: Article 2, 2.3, page 2-2 and Article 10, 10.3, page 10-4.
(8): MORE THAN ONE PRINCIPAL USE ON A "SITE": Article 9, 9.1, page 9-1.
(9): SPECIAL USE: Article 15, 15.2, page 15-4.
(10): ROLE OF LEGALLY-MANDATED ADOPTED COMPREHENSIVE PLAN
(11): HEALTH FACILITIES AND LIVING FACILITIES: Article 2, 2.3.
(12): PERSONAL SERVICE ESTABLISHMENT--COLLECTION FACILITY vs. INDUSTRIAL LAUNDRY/DRY CLEANING ESTABLISHMENT: Article 2, 2.3, page 2-13.

TOPIC (1): ACCESSORY DWELLING UNIT (ADU): Accessory Structures and Uses

ISSUES PRESENTED:
1. Should Accessory Dwelling Units (ADU) be allowed, as proposed, in the Low Density R-1, R-1E, EN-1 and EN-2 zoning districts (Proposed RN-1 and EN zoning districts)?
2. Are the Standards in **Article 10, 10.3 B. (1) and B. (5). page 10-4,** adequately defined? Do they provide too much discretion to the City Building Official? Specifically, the words in **B. (1)** ***"practical difficulties"*** and in **B. (5)** ***"unless warranted by the circumstances of the particular building"*** appear to provide giant loopholes, including the ability to increase the size of the ADU. This give too much authority for one person to in essence grant variances from the Standards.
3. Is it appropriate to increase the density above Low Density, (defined as less than 6 dwelling units per acre) by allowing ADUs in Low Density residential districts as a right of all owners?
4. How different is the impact of a duplex in Low Density residential from an ADU in Low Density residential?
5. Why are duplexes and ADUs treated so differently in RN-1--duplex requires a Special Use permit (Use on Review), ADU is a use by right?

Definition, Article 2, 2.3, page 2-1: Accessory Dwelling Unit (ADU), ***"An additional dwelling unit located on the same lot with and is incidental to, a principal single-family dwelling. An accessory dwelling unit may be attached or detached and must include separate cooking and sanitary facilities, with its own means of ingress and egress."***

As an Accessory Use, ADUs will be allowed **without** Use on Review in **every** residential zone as a right of all owners, if the standards are met. The standards are set out in **Article 10, 10.3. B., page 10-4.:**
"1. The design and size of the accessory dwelling unit must conform to all applicable building codes. When there are practical difficulties involved in carrying out the provisions of the building codes, the building official may grant modifications for individual cases.
2. The building official must certify that utilities are adequate for the ADU.

3. Only one ADU is permitted per lot. A lot must have a minimum area of 5,000 square feet to qualify for an ADU.
4. The ADU may be within, attached to, or detached from the primary dwelling structure and may be a part of a detached accessory structure. An ADU may be developed within an existing structure or as a new development.
5. In no case may an ADU exceed 40% of the primary dwelling habitable floor area, nor more than 1,000 square feet or less than 300 square feet, nor more than 2 bedrooms, unless warranted by the circumstances of the particular building.
6. The ADU must be designed so that the appearance of the primary structure remains that of a house. The entrance to the ADU must be located in such a manner as to be unobtrusive from the same view of the structure that encompasses the entrance to the principal dwelling.
7. No additional parking is required for the ADU."

The Accessory dwelling unit will be required to be **setback from a property line** by no more than **5 feet. Article 10, 10.3 A. 5. page 10-3,** states: ***"Detached accessory structures, including those listed in this section and Section 10.4, must be setback five feet from any lot line, unless otherwise permitted or restricted by this Code."***

COMMENT: ADUs as proposed in Section 10.3, will significantly change the character of our existing R-1, R-1E, EN-1 and EN-2, Low Density neighborhoods. The streets in most of these neighborhoods were **not** designed on an urban grid pattern and do **not** have sidewalks. Many of these neighborhoods have narrow, winding residential streets designed to accommodate vehicular demands of low density development. Access to public transportation is often miles, not blocks, away.

Greater density and increased traffic will easily overburden these residential streets.

The consultants' July, 2016, response to the City's request for proposals states on page 14: ***"Use should respond to established community values and habits. Some neighborhoods are built around exclusive land use districts, while in other neighborhoods these relationships are more intermixed. These differing characteristics should be integrated into the ordinance to assure desired patterns of neighborhood livability and provide relative ease of review and approval."***

Allowing ADUs in every residential zoning district is contrary to the consultants' stated goals.

The impact of an Accessory Dwelling Unit on a Low Density Residential neighborhood is similar to the impact of a Duplex on a Low Density Residential neighborhood. The proposed ordinance recognizes the impact of a duplex on a Low Density Residential neighborhood. Because of the impact, the proposed ordinance requires Special Use approval to locate a duplex in RN-1, Low Density Residential district (existing R-1 and R-1E districts) and does not allow duplexes in the proposed EN district (existing EN-1 and EN-2 districts). Yet, the proposed ordinance allows ADUs as a right of all owners in Low Density Residential neighborhoods.

Furthermore, the recently adopted **2018 One Year Plan, Chapter 3, Development Policy, Residential Classifications, A. 2. b. and c.**, **page 14,** recognizes the impact of duplexes on Low Density Residential areas. It provides standards that must be met for the placement of duplexes in Low Density Residential areas:

"b. Duplexes may be permitted in low density areas where their development will not significantly affect the service demands or aesthetics of the area. Within areas designated for low density residential use, duplexes should be allowed where one or more of the following conditions exist:
i. The proposed site is located on a collector street.
ii. Development of the duplex would provide a desirable buffer between residential and non-residential areas.
iii. The site is in an area having a gross density exceeding 5 dwelling units per acre.
iv. The site is in an area which has experienced a significant loss of housing but is still desirable for residential use.
v. The site is a part of a planned residential development."

"c. Conversion of a detached house into a duplex should be permitted where the structure meets the location criteria listed above and does not require significant variances from the provisions of the zoning ordinance."

Just as duplexes impact the character and service demands in Low Density Residential areas, so will Accessory Dwelling Units.

REQUEST: In order to maintain the existing character and stability of Low Density Residential neighborhoods, and to maintain quality of life as well as property values, we request that ADUs, either by right or as a special use, not be allowed in the existing R-1, R-1E, EN-1 and EN-2, (proposed RN-1 and EN) residential zoning districts.

TOPIC (2): HOME OCCUPATION: Accessory Structures and Uses

ISSUES PRESENTED:
1. Should the standards for HOME OCCUPATION include the clear Standards from the existing zoning Ordinance?
2. Should an updated list of examples of permitted or prohibited Home Occupations be included in the Standards?

Definition: Article 2, 2.3, page 2-10. Home Occupation: ***"Any commercial activity carried out for economic gain by a resident, conducted as an accessory use in the resident's dwelling unit."***

As an Accessory Use, Home Occupations will be permitted by right in all residential districts if they meet the standards. The standards for a Home Occupation are set out in **Article 10, 10.3, P., page 10-9**:
"P. Home Occupation
1. No more than one person other than members of the household residing on the premises may be engaged in such occupation.
2. There must be no change in the outside residential appearance of the building. Outdoor storage is prohibited and no other visible evidence of the conduct of such home occupation is allowed except one sign not exceeding two square feet in area, non-illuminated, and mounted flat against the wall of the principal building.
3. No traffic may be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.
4. No equipment or process may be used in such home occupation that increases noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot or outside the dwelling unit. In the case of electrical interference, no equipment or process may be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuation in the line voltage off the premises.
5. Motor vehicle repair and vehicle dispatch for any business where vehicles to be dispatched congregate on site are prohibited as home occupations.
6. Day care homes are not considered a home occupation and are regulated as a principal use per Article 9.

COMMENT: The proposed standards for a Home Occupation are less clear and less restrictive than the existing Knoxville Zoning Ordinance standards for Home Occupations. Home Office as defined and regulated in the existing Knoxville Zoning Ordinance is deleted. (**See existing Knoxville Zoning Ordinance, Article V. Section 12**. A.)

For example, the existing ordinance includes the following additional standards not included in the proposed ordinance:
"2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation."
"4. No home occupation shall be conducted in an accessory building."
"5. There shall be no sales in connection with such home occupation other than sales of services and products produced on the premises."
"6. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be off the street and other than in a required front yard."

Additionally, the present Knoxville Zoning Ordinance lists examples of occupations that are "permitted" or "prohibited" as Home Occupations and places limits on some "Permitted" Home Occupations.

For example, teaching is a Permitted Home Occupation but is limited: **Article V, Section 12, B.** ***"5. Teaching, including tutoring, musical instruction or dancing, but limited to one (1) pupil per teacher at any given time."***

Occupations that are Prohibited as Home Occupations include Animal Hospitals, Repair shops, tourist homes, tea room, and catering services.

The policies of the adopted One Year Plan, support stronger standards.

The 2018 One Year Plan, Chapter 3, Development Policy, Residential Classifications, A. 2. d., page 14, states:
"d. Home occupations should be strictly controlled with only those uses permitted that do not detract from the aesthetic quality or general function of residential uses."

REQUEST: Strengthen the proposed standards by citing the One Year Plan policies and including the standards from the existing ordinance cited above. Include an updated list of examples of occupations that are permitted or prohibited as Home Occupations. For instance, computer repair might be an appropriate home occupation. Whereas engine repair, large household appliance and air conditioning repair, may not be appropriate.

Please note that we are not asking that Home Occupations remain a Use Permitted on Review or Special Permit Use.

TOPIC (3): DAY CARE HOME, DAY CARE CENTER, PRE-SCHOOL/KINDERGARTEN: Permitted Uses

ISSUES PRESENTED: DAY CARE HOME

1. For Day Care Homes permitted by right in all residential zoning districts, should the number of children or adults allowed be limited to fewer than 6 unrelated persons, as in the present zoning ordinance?

2. For Day Care Homes caring for 6 or more unrelated children or adults, should a Special Use permit (Use on Review) be required, and standards specified, as in the present zoning ordinance and the 2018 One Year Plan, page 21?

3. Should Knoxville rely solely on the State's standards, as proposed in the new ordinance?

Day Care Home: Definition, Article 2, 2.3, page 2-6. ***"Day Care Home. A residential dwelling where a permanent occupant of the dwelling provides care for children or adults from outside households in a protective setting for less than 24 hours per day. A day care home does not include facilities that only receive children from a single household."***

COMMENT: In the proposed ordinance, Day Care Homes would be a **Permitted Use by right** in **every residential** zoning district.

There is no limitation on the number of children or adults and there are no standards.

The proposed ordinance seems to rely on what the State allows and state requirements. The State regulations appear to provide for both **"Family Day Care Home"--**occupied residence caring for 5-7 persons up to age 17; and **"Group Day Care Home"--**any facility operated by a person, social agency, for 8 to 12 children.

It is unclear if a "Group Day Care Home" would be considered a "Day Care Home" as proposed in the zoning ordinance, if the Group Day Care Home operated out of a home with a permanent resident. Additionally, State laws, rules, and requirements change, without notice.

Our existing ordinance, **Article II,** defines ***"Day nursery, private: An agency, organization, or individual providing care for six (6) or more children, not related by blood, marriage to, or not legal wards or foster children of the attendant adult."***

In our present zoning ordinance, by definition, providing care for fewer than 6 unrelated children, is not a Day nursery-private, and therefore does **not** require local zoning approval.

The existing zoning ordinance, **Article V, Section 3, F. 4.,** establishes standards and **requires Use on Review approval** (special use permit) if 6 or more unrelated children are being cared for in a home or elsewhere. Our present ordinance does not rely solely on the state.

When caring for 6 or more unrelated children, the standards in our present zoning ordinance require a minimum lot area of 15,000 square feet, and require minimum indoor and outdoor square footage.

REQUEST: 1. Permit by right in all residential districts **Day Care Homes** with operated by an owner-occupied resident, caring for fewer than 6 unrelated children or adults, as in our present zoning ordinance.

2. Prohibit six or more children or adults being cared for in a owner-occupied home in a Residential District, or, **require a Special Use Permit** (Use on Review) in residential districts for **Day Care Homes** caring for 6 or more unrelated children or adults.
3. If 6 or more unrelated children or adults are allowed in Residential Districts, restore the standards from the present zoning ordinance **(Article V, Section 3, F. 4)** for **Day Care Homes** with more than 6 unrelated individuals.

DAY CARE CENTER:

ISSUES PRESENTED: 1. Is there a need to clarify Day Care Centers as a permitted use vs. an accessory use, in various settings?
2. Is there a need to include Day Care Centers as a Permitted Use, or an Accessory Use in the proposed IOP District (Proposed Industrial Office Park, present O-3, Office Park) and the proposed I-RD District (Proposed Research and Development, present O-2, Civic and Institutional District)?
3. Is a Day Care Center serving only the children of employees an Accessory Use?
4. Is a Day Care Center located in a church but serving the general community, not just church members during church functions, considered an Accessory Use? An Ancillary Use? A Principal Use?
5. Should there be additional standards?
6. Should the definition of Day Care Center, **Article 2, 2.3, page 2-6,** be reworded to: "Day Care Center. A facility where, for a portion of a 24 hour day, care and supervision is provided in a protective setting for children or elderly and/or functionally impaired adults that are not related to the owner or operator."?

Day Care Center: Definition: Article 2, 2.3, page 2-6. ***"Day Care Center. A facility where, for a portion of a 24 hour day, care and supervision is provided for children or elderly and/or functionally impaired adults in a protective setting that are not related to the owner or operator."***

Day Care Centers are a Permitted Use in Office and Commercial zoning districts, and other **non-residential districts.**

Article 9, 9.3. E. page 9-4, lists three standards for Day Care Centers:
"1. Each facility must comply with all applicable Tennessee Department of Human Services (TDHS)
2. The operator's license must be displayed publicly.
3. A day care center must provide a pickup/drop off area. The pickup/drop off area must not interfere with vehicle circulation in the right-of-way or a parking lot, and cannot block any drive aisle."

PRE-SCHOOL/KINDERGARTEN:

ISSUE PRESENTED: 1. Should locational standards for placing pre-schools/kindergartens in residential zoning districts as a Special Use, be included?

Pre-School/Kindergarten: Definition: Article 2, 2.3, page 2-13. ***"Pre-School/Kindergarten.*** **An educational establishment that offers early childhood education prior to the start of required education at the primary school level."**

COMMENT: In the proposed ordinance, Pre-School/Kindergarten, is a Special Use (Use on Review) in all Residential zoning districts and a Permitted Use in Office, Commercial and South Waterfront District.

Article 9, 9.3, X, page 9-15, provides three standards that must be met:
"1. Each facility must comply with all applicable federal and state regulations.
2. The operator's license must be displayed publicly.
3. A pre-school/kindergarten must provide a pickup/drop off area. The pickup/drop off area must not interfere with vehicle circulation in the right-of-way or a parking lot, and cannot block any drive aisle."

REQUEST: The locational standards included in the recently adopted **2018 One Year Plan, Institutional, Parks and Open Space Classifications, B. Civic/Institutional (CI) Education, 1. a. and b., page 21,** for placing pre-schools/kindergartens in residential zoning districts as a Special Use, should be included in the zoning ordinance. For instance, require the pre-school/kindergarten to be located on a collector street.

TOPIC (4): PLANNED DEVELOPMENT (PD):

Introductory Remarks about Planned Development: Planned development represents a totally new concept in Knoxville. All planned zoning districts, including Planned Residential, Planned Commercial, Shopping Center, in the existing Knoxville Zoning Ordinance, are deleted. The Planned Development Process can be applied to **all zoning districts--**residential, office, commercial and industrial.

The Planned Development process can only be initiated by the property owner, not by government.

To fully understand the significance of these changes and the new process, requires a careful reading of the entire section, **Article 15, 15.6, pages 15-12 to 15-19.** There is a flow chart diagram on pages 15-18 and 15-19 which is helpful in understanding the new procedure.

This document follows the Outline in the proposed ordinance and only calls attention to certain key items regarding Planned Development in the proposed Ordinance. This document will offer some Issues Presented, Comments and Questions, and in some instances, offer specific Requests for changes. It will also question the rationale for some of the proposed changes.

OUTLINE:

A. Purpose
B. Initiation
C. Authorization
D. Exceptions
E. Procedure
  1. Pre-Application Consultation
  2. Optional Concept Plan
  3. Preliminary Plan
  4. Final Plan
F. Modifications to Approved Final Plans
G. Appeal

A. Purpose

Article 15, 15.6, A., page 15-12, Purpose: ***"Planned developments (PD) are intended to encourage and allow more creative and flexible development of land than is possible under district zoning regulations and should only be applied to further those applications that provide compensating amenities to the City. The underlying zoning district dimensional, design, and use regulations apply to a PD unless specifically modified through the approval process."***

The objectives of Planned Developments are described in **Article 15, 15.6, A., 1-8, page 15-12.** They include: flexibility in development, greater creativity, architectural and environmental innovative design, efficient use of land, preservation of natural vegetation, respect for topography and geologic conditions, and refraining from adverse impacts of flooding, soil, drainage and other natural ecologic conditions.

Planned Development is intended to facilitate the implementation of adopted City land use policies, particularly with respect to areas planned for potential redevelopment.

B. Initiation

ISSUE PRESENTED: 1. Should Planned Developments be initiated by Government as well as by private property owners?

Article 15, 15.6, page 15-12, B. Initiation: ***"The entire property proposed for the planned development must be in single ownership or under unified control. All owners of the property must be included as joint applicants on all applications and all approvals will bind all owners."***

COMMENT: The planned zoning districts in our existing ordinance can be initiated by government.

REQUEST: Should there be option available to Government to initiate some type of planned development using a different process than what is proposed?

C. Authorization

Article 15, 15.6, page 15-12, C. 1. ***"A planned development is authorized in all zoning districts."***

D. Exceptions from District Regulations

ISSUES PRESENTED: 1. To what extent can use exceptions be granted?
2. Should there be standards for defining "excessive adverse impact"?

Exceptions to the underlying zoning district dimensional design **and use** regulations may be recommended by MPC and granted by City Council if certain standards are met. They include:

Article 15, 15.6, D. 2. d. page 15-12: ***"Will not cause excessive adverse impact on neighboring properties."***

COMMENT: How much can the Planned Development process change the underlying zone **"use regulations?"** For example, can the exception change the use regulations of a zone from totally residential to 20% residential and 80% office or commercial?

REQUEST: Provide information on the extent to which **uses** can be modified by the Planned Development process.
Provide examples of what would be considered "an excessive adverse impact" on neighboring properties and provide standards for that determination.

Article 15, 15.6, D. 2. e, page 15-13. ***"Are compatible with adopted land use policies."***

ISSUE PRESENTED: Should the documents containing **"adopted City land use policies"** be specified?

COMMENT: The documents which detail the ***"adopted land use policies"*** are not specified. It is vitally important that they be specified. It is unreasonable to expect the citizens of Knoxville to examine every document generated by the City to determine if a new land use policy has been formulated and adopted.

Furthermore, State law and the Knoxville Charter require the adoption of a Comprehensive Plan and establish a comprehensive planning process. All land use policies should be set out in the adopted components of the Comprehensive Plan. The Comprehensive Plan, and its components, should be cited in this section.

REQUEST: Change to: **"Are compatible with adopted land use policies in the Comprehensive Plan and its components, the General Plan, Sector Plan, and One Year Plan."**

E. Procedure

ISSUES PRESENTED: 1. What is the rationale for this new approach to planned development and new procedure?
2. What is gained by this new approach? Who benefits and who is potentially harmed?

Article 15, 15.6, E, pages 15-13 to 15-19 sets out a totally new procedure and steps for processing an application for Planned Development. ***"The following procedures, requirements, restrictions, and conditions are required. The approval of a planned development includes a pre-application consultation, optional concept plan review, preliminary plan approval, and final plan approval."***

COMMENT: There are many unanswered important questions about Planned Development and the proposed new procedure which require a great deal of public discussion.

1. PRE-APPLICATION CONSULTATION:
Article 15, 15.6, E, 1, a, page 15-13, Pre-Application Consultation. ***"Prior to formal submittal of an application, a pre-application conference with the Metropolitan Planning Commission staff is required."***

Article 15, 15.6, E, 1, b, page 15-13. ***"At a pre-application consultation, the applicant must provide information as to the location of the proposed planned development, the proposed uses, proposed improvements, including the public benefits and amenities, anticipated exceptions to this Code, and any other information necessary to explain the planned development."***

COMMENT: There is no notice to the public so the citizens will not know this conference is taking place or know what is presented or discussed.

2. OPTIONAL CONCEPT PLAN:
ISSUES PRESENTED: 1. Why is the Concept Plan optional, not mandatory? **2.** If it remains optional, why is there no required notice to the public? **3.** Why is there not a public hearing rather than meeting? **4.** Will the public meeting be the regular monthly MPC meeting, or the Agenda Review Meeting or a

special meeting? **5.** Does this meeting involve "deliberation" by the Commissioners and, therefore, even though a decision is not being made at the meeting, fall under the State Open Meeting Law? **6.** What is the advantage of less public participation? **7.** What is the advantage of limiting public participation to a later phase of the process?

Article 15, 15.6, E, 2., a, b, page 15-14. Optional Concept Plan. ***"Before submitting a formal application for a planned development, the applicant may present a concept plan before the Metropolitan Planning Commission, at his/her option, for the purpose of obtaining information and guidance prior to formal application."***
a. "The concept plan will be presented at a public meeting and no notice is required."
b. "The Metropolitan Planning Commission will review the concept plan, and provide information and guidance it deems appropriate. ...The review of the concept plan is not a public hearing. No decision will be made on the application."

COMMENT: As proposed, the public is involved in the process only after a great deal of private discussion within government.

REQUEST: The proposed Optional Concept Plan should be mandatory and should include a public hearing with required notice to the public.

3. PRELIMINARY PLAN:
Article 15, 15.6, E, 3, page 15-14 to 15-15. Preliminary Plan

ISSUE PRESENTED: Is public involvement meaningful at the Preliminary Plan stage, or have private discussions within government in the first two stages already determined the essential characteristics of the development?

ACTION BY MPC STAFF:
ISSUE PRESENTED: 1. Will there be sufficient notice to the public in advance of the public hearing?

Article 15, 15.6, E, 3, a, page 15-14. Action by MPC staff. ***"An application for a preliminary plan for a planned development must be filed with the MPC staff. Once it is determined that the application is complete, the MPC staff will schedule the application for consideration by the MPC."***

COMMENT: Because this will be the first time that the public will have notice about a Planned Development, there needs to be adequate time to prepare for the public meeting on the Preliminary Plan. If an entirely new, more open-ended, more flexible process is put into place, it makes sense that review time be adjusted to enable meaningful public participation.

QUESTIONS: 1. Does the notice to the public follow the same schedule as other items on the MPC agenda? **2.** What is the shortest amount of notice legally allowed? **3.** Is that amount of time reasonable for the public to review the Preliminary Plan and meaningfully respond? **4.** Will there be a need for repeated postponements?

REQUEST: Ensure a reasonable amount of time for the public to respond.

ACTION BY MPC:
Article 15, 15.6, E, 3, b, page 15-14. Action by MPC. At a public hearing, MPC will consider the preliminary plan, will review the application based upon the evidence presented, pursuant to the approval standards, and must recommend either approval, approval with conditions and/or modifications, or denial of the preliminary plan. MPC will then forward its recommendation to the City Council.

ACTION BY CITY COUNCIL:
Article 15, 15-6, E, 3, c, page 15-14. Action by City Council. ***"i. The city Council will hold a public hearing on the preliminary plan upon receipt of the MPC recommendation, and must approve, approve with conditions and/or modifications, or deny the preliminary plan." "ii. The City Council must finally act upon the application within 120 days of the MPC public hearing. Failure to act within 120 days means the application is denied."***

CONDITIONS:
Article 15, 15.6, E, 3, d, page 15-14. Conditions. ***"The MPC may recommend, and the City Council may impose conditions and restrictions upon the establishment, location, construction, maintenance and operation of the planned development as may be deemed necessary for the protection of the public health, safety, and welfare. Such conditions and restrictions must be reflected in the final plan."***

APPROVAL STANDARDS:
ISSUE PRESENTED: What do the words ***"generally been met"*** mean?

Article 15, 15.6, E, 3, e, page 15-15. Approval Standards. ***"The recommendation of the MPC and decision of the City Council must make a finding that the following standards for a planned development have generally been met."***

COMMENT: Either a standard has been met or it has not been met. "Generally" is too vague.

REQUEST: The word "generally" should be deleted.

e. Approval Standards:
ISSUES PRESENTED: 1. For standard **v.**, should there be any guidance to determine when a traffic study will be done, which level of study will be done, and who will pay for the traffic study?
2. For standard **vi.**, should approval of the Preliminary Plan also require a standard that the **proposed uses be compatible with the neighborhood** where the Planned Development is proposed, not just require that the structures, parking areas, etc., are compatible with the surrounding neighborhood?

The proposed planned development: ***"i. Meets the purpose of a planned development; ii. Will not be injurious to the use and enjoyment of other property in the vicinity; iii. Will not impede the normal and orderly development and improvement of surrounding property; iv. Provides for adequate utilities and infrastructure, drainage, off-street parking and loading, pedestrian access, and all other necessary facilities; v. Provides for adequate vehicular ingress and egress designed to minimize traffic***

congestion upon public streets. The MPC and/or City Council may require a traffic study to provide evidence that the circulation system is adequate; vi. The location and arrangement of structures, parking areas, walks, landscape, lighting, and other site design elements, are compatible with the surrounding neighborhood and adjacent land uses."

REQUEST: Include a standard regarding **uses** being **compatible** with the surrounding neighborhood.

EXPIRATION:
ISSUES PRESENTED: 1. Is there a limit on the number of times an extension can be granted?
2. Is there a limit on the total number of years an extension can be granted and the preliminary plan remain valid?
3. Is there a limit on the length of time of the "phasing plan"?
4. How does City Council approve an extension without a public hearing?

Article 15, 15-6, 3, f, page 15-15. Expiration. ***"i. The preliminary plan approval expires if a complete application for approval of a final plan has not been filed within three years after the date the City Council grants preliminary plan approval. ... The City Council may extend this period of time including the approval of a phasing plan where the validity period is longer than three years for the PD." "ii. An extension of this three year period may also be granted by the City Council if the applicant requests an extension in writing prior to the expiration date of the approval. A public hearing for an extension of time of a preliminary plan is not required."***

COMMENTS: The Planned Development Preliminary Plan should not be without a maximum number of extensions or years. How does City Council grant an extension without a public hearing? How does that meet the requirements of the State Open Meetings Law? Why should the public not be involved?

REQUESTS: 1. Place reasonable limits on the number of extensions and total number of years a Preliminary Plan remains valid. **2.** Place a limit on the length of any phasing plan. **3.** Require any extension of the Preliminary Plan validity period by City Council to be done at a public hearing.

4. FINAL PLAN:
Article 15, 15.6, E. 4, page 15-15 and 15-16. Final Plan. ***"Following the approval of the preliminary plan, an application for a final plan for a planned development must be filed with MPC staff." "a. Action by MPC Staff. i. If the final plan is in substantial compliance with the approved preliminary plan, the MPC staff will recommend approval of the final plan to the MPC...and certify to MPC that the final plan is in substantial conformance with the previously filed preliminary plan." "ii. If the final plan is not in conformance with the approved preliminary plan, the MPC staff must inform the applicant as to specific areas found not to be in compliance, and the applicant must submit the final plan to MPC staff with changes ... If the revised final plan remains noncompliant with the preliminary plan, the applicant may request that the MPC staff render a decision to be forwarded to MPC. In such case, the MPC staff will recommend to MPC that the final plan be denied. If denied, the applicant may reapply by submitting a new preliminary plan."***

"b. Action by MPC: Upon receipt of the MPC staff recommendation, the MPC must review the final plan... and approve or deny the final plan. If denied, the applicant may reapply be submitting a new final plan and the validity of the preliminary plan remains in effect."
"c. Effect of Approval. The final plan will constitute the development regulations applicable to the subject property."
"d. Expiration. i. The final plan approval expires if a building permit has not been issued within three years after the date of final approval. As part of the Metropolitan Planning Commission approval of the final plan, the Metropolitan Planning Commission may extend this period of time including the approval of a phasing plan where the validity period is longer than three years for the planned development."

COMMENT and QUESTIONS: Regarding **Action by MPC Staff, a. i,** this is a very narrow review by MPC staff, because the only issue considered is whether or not the final plan is in substantial compliance with the approved preliminary plan. Therefore, it is clear that the Preliminary Plan review stage is the point in the process where the public can impact the Planned Development.

Does the Final Plan only go to City Council on an Appeal from MPC decision? **(See Article 15, 15.6, G. page 15-17.)**

QUESTIONS: Article 15, 15.6, E. 4. d. i. page 15-16: What happens if a "phased development" is approved and the profit-making components of the development are built and then the developer abandons the project before the amenities "of substantial benefit to the city" are constructed? How well does bonding work? Which department will be responsible for establishing an adequate bond amount and enforcing/collecting the bond in a timely fashion?

F. MODIFICATIONS:

ISSUES PRESENTED: 1. Article 15, 15.6, 4. F. 2., page 15-16, 2. Minor Modifications by MPC Commissioners. ***"No notice is required for a minor modification***." Why no public notice?

Article 15, 15.6, F, page 15-16 to page 15-17. Modifications to Approved Final Plans. ***"No adjustments may be made to the approved final plan, except upon application to the City in accordance with the following."***
1. Administrative modifications--by the Zoning Administrator
2. Minor Modifications-- by MPC
3. Major Modifications--by City Council

COMMENT: It appears that a great deal can be changed in the three layers of Modification after the Final Plan is approved. The public should be involved at the "minor modification" level.

REQUESTS: 1. Require public notice of Minor Modifications.

G. APPEAL:

ISSUES PRESENTED AND QUESTIONS: 1. Does the **Article 15, 15.6, G. Appeal, pages 15-18 and 15-19,** the **Planned Development, flow chart,** need to be expanded to illustrate the appeal of a decision of City Council on the Preliminary Plan and the appeal of the decision of MPC on the Final Plan?
2. Should there be a flow chart illustrating the decision-making processes related to the three levels of requested Final Plan modifications?
3. Should there be a flow chart illustrating the appeal processes of the decisions regarding Final Plan modification requests, from the various entities?
3. Regarding the **Final Plan,** can an aggrieved party, applicant or neighbor, appeal the MPC decision on a Final Plan to City Council? **(See Article 15, 15.11, Zoning Appeals of Administrative Body Decisions, B., Initiation, page 15-23)**
4. Can City Council decisions on the **Final Plan** be appealed to Chancery Court? **(See Article 15, 15.6, G. 1., page 15-17, below).**

Article 15, 15.6, G., page 15-17 Appeal
1. City Council decisions on the Preliminary Plan may be appealed to Chancery Court.

2. MPC Commission decisions on Final may be appealed per Section 15.10.

COMMENT: This section is very confusing and appears to be incomplete.

REQUEST: 1. Rewrite **Article 15, 15.6, G. 2., page 15-17,** to read: **"MPC Commission decisions on the Final Plan may be appealed per Section 15.11.**
2. Provide clear direction on appeals and decision-making processes.

TOPIC (5): IMPACT OF DELETING ALL EXISTING PLANNED ZONING DISTRICTS ON HILLSIDE AND RIDGETOP PROTECTION:

ISSUE PRESENTED:
1. The removal of all of the planned zoning districts in the existing zoning ordinance, results in there being no mechanism to enforce the adopted Hillside and Ridgetop Protection Plan.

COMMENT: The Hillside and Ridgetop Protection Plan was adopted by City Council and incorporated into the General Plan in 2011. In 2017, the City determined that, except through Use on Review, and the Use on Review Development Plan process in Planned Zoning Districts, (Planned Commercial, Planned Residential, Shopping Center), the City's adopted Hillside and Ridgetop Protection Plan could not be enforced. The reason given for why the Hillside and Ridgetop Protection Plan could not be enforced is that the Plan had not been codified. (See C. Cuccaro 9-11-17 Memo, **EXHIBIT A,** attached.)

The failure to codify the Hillside and Ridgetop Protection Plan left the Use on Review Development Plan process in Planned zoning districts as the only enforcement mechanism.

Therefore, the removal of the existing planned zoning districts results in there being no mechanism to enforce the Hillside and Ridgetop Protection Plan.

Dedicated Knoxville and Knox County citizens, and City and MPC staff worked more than two years to develop the adopted Hillside and Ridgetop Protection Plan. The Preface of the adopted Plan states: ***"...and it recognizes that the implementation of these general objectives depends upon future adoption of ordinances and regulations by the legislative bodies of the city and county..."***.

REQUEST: The City Administration should immediately support and the City Council should prepare and adopt a Hillside and Ridgetop Protection Ordinance so that the adopted plan can be enforced. This should be done prior to the adoption of a new zoning ordinance.

(6): ANIMAL CARE FACILITY-SMALL ANIMAL:

ISSUES PRESENTED: 1. Do the proposed definitions fail to make important distinctions among the various pet services and, therefore, fail to properly address the impact of the various pet service on neighboring uses? **2.** Should the definitions in the present zoning ordinance, including the definition of "kennel" be restored so that the number of adult dogs allowed to be kept on a residential lot can continue to be limited? **3.** Are the proposed standards adequate?

Article 2, 2.3, page 2-2, Animal Care Facility-Small Animal: ***"An establishment that provides care for domestic animals, including veterinary offices for the treatment of animals, where animals may be boarded during their convalescence, pet grooming facilities, animal training centers and clubs, and pet boarding facilities, where animals are boarded during the day and/or for short-term stays. Animal care facilities do not include animal breeders."***

Article 2, 2.3, page 2-2, Animal Breeder: ***"An establishment where animals over six months of age are boarded, bred, raised, and trained for commercial gain. Animal breeder does not include animal care facilities or shelter and training facilities for canine or equine units of public safety agencies.***

As shown in **Article 9, 9.2, page 9-2, Use Matrix,** "Animal Care Facility-Small Animal" is proposed as a permitted principal uses in **Office, Neighborhood Commercial, General Commercial, Highway Commercial, Regional Commercial, Cumberland Ave., South Waterfront, Mixed Use, and Agriculture. The use would require special permission in the Downtown Knoxville District.**

"Animal Breeder" is proposed as a permitted principal use in the Agriculture District.

Article 9, 9.3, A, page 9-3, provides the following Principal Use Standards for Animal Care Facility-Small Animal and Animal Breeder:
A. 1. ***"Animal care facilities must locate exterior exercise areas to the side or rear of the building. In the O*** *(Office)* ***and C-N*** *(Neighborhood Commercial)* ***Districts, any exterior exercise area that abuts a residential district requires a Class A buffer yard per Section 12.9.*** **page 12-7.** (Note: A Class A buffer yard is a 10-foot planted area.)
2. Exterior exercise areas must provide covered areas over a minimum of 30% of the exterior area to provide shelter against sun/heat and weather. A fence a minimum of six feet and a maximum of eight feet in height is required for all exterior exercise areas.
3. Animal care facilities must located (sic) all overnight boarding facilities indoors. Outdoor boarding facilities for animal kennel/breeders are permitted but must be designed to provide shelter against sun/heat and weather.
4. All animal quarters and exterior areas must be kept in a clean, dry, and sanitary condition.

COMMENT: As proposed, outdoor facilities, including outdoor exercise areas, would be allowed as part of every Animal Care Facility-Small. This includes Animal Care Facilities in the Office zone. The Office zone frequently serves as a transition area between residential and commercial zoning districts.

According to **Article 12, 12.9, page 12-7,** only a 10-foot planted (Class A) buffer is required when an outdoor facility abuts a Residential District. Surely, a 10-foot planted area, or a 20-foot planted area, is insufficient to protect residential property from the disturbance of the sound of barking dogs.

The proposed standards are inadequate. There is no requirement for sound-proofing, indoor climate control, specification of overnight hours during which the animals must be indoors.

Article 9, 9.3, A. 3, page 9-3, The term "kennel" is undefined.

A definition of "Kennel" is provided in the existing zoning ordinance. **Article II, Definitions, *"Kennel: Any lot or premises on which five (5) or more dogs, more than six (6) months of age, are kept."*** And, Kennels are allowed in the C-4 (Highway and Arterial) zoning district.

It is important to understand that it is the definition of "Kennel" in the existing ordinance, (which is consistent with the definition of "Kennel" in the Knoxville Code, Animals, Chapter 5, Article 1, Sec. 5-7) that limits the number of dogs allowed on a lot in zoning districts such as residential districts, which do not allow Kennels. Without the definition of "Kennel" and the assignment of kennels to a zoning district on the Principal Use Matrix, an individual would be able to obtain a kennel permit and have an unlimited number of dogs in all zoning districts, including residential.

COMMENT: Please see the definitions in the present Knoxville Zoning Ordinance, **Article II.** The definitions include Pet Day Care, Pet Grooming, Pet Services-Indoor, Pet Services-Indoor/Outdoor, and Kennel.

The definitions of animal service-related uses in the existing ordinance should be included in the proposed ordinance. The existing zoning ordinance definitions make finer, and more meaningful distinctions among the services based on impact to neighboring properties and uses, than is made by the proposed ordinance that simply distinguishes between small and large animal care and breeders.

In some cases it is possible to provide a meaningful general category of services rather than listing all of the individual services. "Personal Service Establishments" is such an example. There is little gained by separately listing beauty shops, barber shops, tanning salons, etc. These uses similarly impact an area. However, some uses, because of the significantly different impacts on the area, cannot be meaningfully subsumed under a general category. The various pet services and their differing components, and impacts, is an example of where uses should be specified.

REQUEST: 1. Restore the definitions of pet-related services in the existing Knoxville Zoning Ordinance.
2. Assign the various pet-related services to the proposed zoning districts.
3. Do not allow outdoor exercise areas in Office and Neighborhood Commercial districts and areas close to residential development.
4. Require Indoor facilities to have soundproofing and climate control in Office and Neighborhood Commercial zones, and when in close proximity to residential.

COMMENT: The present zoning ordinance: In the Office -1 district, veterinarians are prohibited. In C-1, Neighborhood Commercial, there is no mention of animal services. In C-2, Central Business District, Indoor Pet Services are Permitted. In C-3, General Commercial, only Indoor Pet Services and Veterinarians are Permitted and all animals must be kept inside a soundproofed and air conditioned building. C-4, Highway and Arterial District, allows Kennels.

Many aspects of the world are changing. But, dogs continue to bark and barking dogs remain a nuisance.

(7): ANCILLARY vs. ACCESSORY USE AND ACCESSORY STRUCTURE:

ISSUES PRESENTED: 1. Should the definitions used in the existing Knoxville Zoning Ordinance be used in the proposed ordinance?
2. Should "ancillary" structures be included in lot coverage?
3. In Residential Districts, should the footprint of a single, detached Accessory Structure be permitted to be as large as the footprint of the principal building?
4. In a Residential Zoning District, should an Accessory Structure with a footprint as large as the principal building be allowed 5 feet from the property line?
5. Is there a definition of "active agricultural use"?

Article 2, 2.3, Definitions, Page 2-2: ***Ancillary. In regard to principal uses (Article 9), an additional structure or use that provides support and is typically integral to a principal structure or use.***
Accessory Structure. A detached structure located on the same lot as the principal building that is incidental to the use of the principal building.
Accessory Use. A use of land or a structure, or portion thereof, customarily incidental and subordinate to the principal use of the land or structure.

COMMENT: The existing ordinance, **Article II,** provides stronger, clearer, more easily interpreted and enforced, definitions of Accessory Structure and Accessory Use, than what is being proposed.
Accessory Building: A minor building which is subordinate in area, extent, and purpose to a principal building, the use of which is customarily incidental to that of a main building and located on the same lot therewith.
Accessory Structure: A minor structure which is subordinate in area, extent, and purpose to a principal building, the use of which is customarily incidental to that of the main building and located on the same lot therewith.
Accessory Use: A use customarily incidental, appropriate, and subordinate in area, extent, and purpose to the principal use of land or buildings and located on the same lot therewith.

COMMENT: The definitions in the existing Knoxville Zoning Ordinance should be used in the proposed ordinance. It is important to clearly state the ways in which a use or structure is subordinate.

The words **"area, extent and purpose"** were added to the existing zoning ordinance definitions because of interpretation disputes in the 1990s**.**

The proposed definition of *Accessory Structure* is of concern. The word "subordinate" has been deleted. Furthermore**, Article 10, 10.3 A,7, page 10-4,** permits the footprint of a single detached Accessory Structure to be as large as the footprint of the principal building. ***"The footprint of any single detached accessory structure cannot exceed the footprint of the principal building. This does not apply to any structure accessory to an active agricultural use, which are not limited in area."***

This might be appropriate for non-residential districts. However, in Residential Districts it might not be appropriate, even with a proposed height limitation and even with percent of lot coverage limitations specified in each district.

What is the advantage of having a detached Accessory Structures as large as the footprint of the principal building, five feet from a property line?

The terms Ancillary and Accessory need to be clarified. For example, see "Food Pantry", **(Article 2, 2.3, page 2-8).** ***"Food Pantry: A non-profit organization that provides food directly to those in need. Food pantries receive, buy, store and distribute food. Food pantries may also prepare meals to be served at no cost to those who receive them. A food pantry may be an ancillary use to a place of worship, social service center, and/or homeless shelter."***

How is a "Food pantry" an ***ancillary use*** to a place of worship? How is it ***integral*** to a place of worship? Isn't it an **accessory use?** As an Accessory use it would have to be subordinate and customarily incidental to the place of worship. That is not the case if it is an ancillary use.

Also see the definition of "Health Care Institution" **(Article 2, 2.3, page 2-9).** It states, in part, ***" ...including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities, ...and ancillary uses such as, but not limited to, cafeterias, restaurants, retail sales, and similar uses."***
The definition of "ancillary" includes the term "integral".
Aren't "retail sales" an Accessory Use?
Aren't "laboratories" "integral" and therefore Ancillary?

Additionally, the word "Ancillary" affects Building Coverage.

Article 2, 2.4, page 2-21, ***C. Building Coverage. "That portion of the lot determined by building footprint, exclusive of eaves and other overhangs, that is or may be covered by buildings and accessory structures."***

COMMENT: Based on the definition of Building Coverage, are "ancillary structures" not included in the calculation of "Building Coverage"?

REQUEST: 1. Use of Ancillary vs. Accessory should be reviewed throughout the proposed ordinance.
2. The effect of "Ancillary" on lot coverage needs to be assessed.
3. Definitions in existing ordinance should be used for Accessory structures, and Accessory Uses.
4. The impact of detached accessory structures as large as the footprint of the principal building in the residential zoning districts should be evaluated. (Do we really want two buildings, one principal and one accessory, with 1000 sq. ft. footprints, on a 7500 square foot lot? That would meet the 30% lot coverage limitation. The accessory building could be 5 feet from the property line.)
5. Define "active agricultural use"?

TOPIC (8): MORE THAN ONE PRINCIPAL USE ON A "SITE":

ISSUES PRESENTED:
1. Define "site."
2. How is more than one principal use on a "site" applied to residential districts?
3. Can a "site" in an RN-1 (existing R-1 and R-1E) zoning district have both a duplex and a single-family home or two single-family homes?
4. Can a "site" have two duplexes in RN-1 and RN-2 zoning districts?
5. Does the proposed language provide for both several single-family dwellings or several duplexes on one lot in one zoning district, while at the same time limiting the principal use to one single-family dwelling or to one duplex on one lot in another zoning district?
6. Should the definition of "multi-dwelling development" from the present ordinance be adopted?

Article 9, Uses, 9.1 D. page 9-1, General Use Regulations: ***"A site may contain more than one principal use, so long as each principal use is allowed in the district. Each principal use is approved separately. In certain cases, uses are defined to include ancillary uses that provide necessary support or are functionally integrated into the principal use."***

The Article 2, 2.3, page 2-7, defines ***"Dwelling-Single Family: A structure containing only one dwelling unit on a single lot."*** This may be sufficient to ensure that only one such principal use can be built on a lot. But, we must be clear on this. **(See Article 2, 2.1, A., Rules of Interpretation, page 2-1:** ***"The singular number includes the plural, and the plural the singular.")***

How is the definition of Dwelling-Single Family, interpreted? "Structures containing only one dwelling unit on a single lot"? Or, "Structures containing only one dwelling unit on single lots"?

The Chattanooga zoning ordinance, (A. IV, 38-26), for instance, clearly states that ***"There shall be no more than one (1) principal building per lot used for residential purposes in R-1, R-2, R-5 and A-1 zones."***

COMMENT: Last year the issue of more than one principal use per lot in the residential zoning district was the subject of debate in Knoxville involving a neighborhood (Garden Dr.), MPC and the Zoning Official. The definition of "Multi-dwelling development" in the existing ordinance was critical to deciding the question. It was determined that only one duplex could be built on the lot.

REQUEST: 1. Define "site".
2. Provide clear language on how more than One Principal Use on a "site" affects residential property.
3. Include in the proposed ordinance the term ***"Multi-dwelling development"*** and the definition in **Article II** of the existing zoning ordinance. ***"A grouping of individual structures where each structure contains one (1) or more dwelling units. The land underneath the structures is not divided into separate lots. A multi-dwelling development may include an existing house with one (1) or more new detached houses, duplexes or multi-dwelling structures located on the same lot. The key characteristic of this housing type is that there is no requirement for the structures on the lot to be attached."***
4. Add "Multi-dwelling development" to the use matrix of permitted uses.

TOPIC (9): SPECIAL USE

ISSUES PRESENTED: 1. What is the role and power of the MPC Commissioners?
2. Should the clearer, more rigorous Approval Standards of the existing zoning ordinance be maintained?
3. Can conditions on "operations" be shown on a site plan, as required?
4. Should the documents that contain the adopted land use policies be cited?

Article 15, 15.2, pages 15-4
and **15-5** set out the purpose, process and standards for considering special use requests.

Article 15, 15.2, F., Conditions, 2., page 15-4, states: ***"Prior to final approval of the special use by the Metropolitan Planning Commission, the proposed conditions must be sent to City staff and Metropolitan Planning Commission staff for review and recommendation. The Metropolitan Planning Commission will approve the special use with conditions after receipt of the staff recommendation."***

COMMENT: According to **Article 2, 2.1., D., page 2-1,** will is mandatory. ***"D. The terms "must," "shall," and "will," are mandatory, while the word "may" is permissive.***

Is the intent to **require** the appointed Metropolitan Planning Commissioners approve a special use application, with conditions, after receiving the staff recommendation?
Should "will approve" be changed to "may approve"?

Article 15, 15.2, F. 1 and F. 3, page 15-4, appear to **conflict** with each other.
"F. 1. The Metropolitan Planning Commission may impose conditions and restrictions upon the establishment, location, construction, maintenance, and operation of a special use as may be deemed necessary for the protection of the public health, safety, and welfare."

"F. 3. Conditions placed upon the special use must be related to the physical development of the site and must be able to be shown on the site plan."

Are the ***"...restrictions upon the ...operation of a special use...."*** actually ***"...related to the physical development of the site...and...able to be shown on the site plan."*** as **mandated in F. 3.?**

Article 15, 15.2, G., page 15-4. Approval Standards

Although there is some overlap, the proposed Approval Standards, **Article 15., 15.2, G, Approval Standards,** are less clear and weaker than the Use on Review standards in the existing zoning ordinance, **Article V., Section 3, A, General Standards.**

Proposed Zoning Ordinance: Article 15, 15.2, G. Approval Standards:
"1. The proposed special use will not endanger the public health, safety, or welfare.
2. The proposed special use is compatible with the general land use of adjacent properties and other property within the immediate vicinity.
3. The special use in the specific location proposed is consistent with the spirit and intent of this Code and adopted City land use policies.

4. The special use in the specific location has sufficient public infrastructure and services to support the use."

<u>Existing Zoning Ordinance</u>: Article V., 3. A., General Standards:
"1. The use is consistent with adopted Plans and policies, including the General Plan and the One Year Plan.
2. The use is in harmony with the general purpose and intent of these zoning regulations.
3. The use is compatible with the character of the neighborhood where it is proposed, and with the size and locations of the buildings in the vicinity.
4. The use will not significantly injure the value of adjacent property by noise, lights, fumes, odors, vibration, traffic congestion or other impacts detract from the immediate environment.
5. The use is not of a nature or so located as to draw substantial additional traffic through residential streets.
6. The nature of the development in the surrounding area is not such as to pose a potential hazard to the proposed use or to create an undesirable environment for the proposed use."

REQUEST: 1. Keep the General Standards of the existing zoning ordinance instead of the proposed standards.
2. Determine the role and power of the appointed Metropolitan Planning Commissioners when reviewing applications for Special Uses.
3. Determine the nature of, and limitations of, the conditions that can be placed on a Special Use. How can conditions regarding "operations" be shown on a site plan?
4. In this Chapter and throughout the proposed ordinance, cite the specific plans that contain the ***"...adopted City land use policies."*** It is unreasonable to require every citizen of Knoxville to read and study every City document in search of ***"...adopted City land use policies."***

(10): ROLE OF LEGALLY-MANDATED ADOPTED COMPREHENSIVE PLAN

ISSUES PRESENTED AND QUESTIONS: 1. Do the land use standards in various components of the Comprehensive Plan need to be included in the proposed Zoning Ordinance in order to be enforced? **2.** Should Low Density Residential, Medium Density Residential and High Density Residential, be defined using the definitions in the One-Year Plan?

COMMENT: The Comprehensive Plan for Knoxville is mandated by state law and City Charter. The Comprehensive Plan is made up of the General Plan 2033, Sector Plans, the One-Year Plan, Growth Plan, and other adopted plans dealing with more specific systems such as parks and greenways, corridors, Small Area Plans, etc. All of these plans are legally required to conform to each other.

Each of the plans has been adopted by City Council. Legally-established processes control the adoption, amendment, development, public involvement, and review of these plans. These processes come under the Sunshine Law requiring notice to the public.

Importantly, the plans were developed after a framework was enacted into law carefully describing the function and nature of the plans. This legal framework provides notice to the citizens as to the intent and scope of the plans and gives clear direction regarding how these plans are to be formulated and utilized in land-use decisions.

REQUEST: 1. Please answer Question 1, in Issues Presented.
2. Include definitions of Low Density, Medium Density and High Density Residential, specifying dwelling units per acre.

TOPIC (11): HEALTH FACILITIES & LIVING FACILITIES:

ISSUE PRESENTED AND REQUEST:
1. It would help the reader to understand and distinguish among the various health facilities and living facilities if they were listed in one location or cross referenced.

COMMENT: Article 2, 2.3, Definitions, pages 2-6, 2-9, 2-10, 2-12, 2-14: It would help the reader to understand and distinguish among the various health facilities and living facilities if they were listed in one location or cross referenced. (Drug/Alcohol Treatment Facility, Residential **p. 2-6**; Drug Treatment Clinic **p. 2-6**; Healthcare Institution **p. 2-9**; Group Home **p. 2-9**; Halfway House **p. 2.9**; Independent Living Facility **p. 2-10;** Medical/Dental Office **p. 2-12**; Residential Care Facility **p. 2-14**).

TOPIC (12): PERSONAL SERVICE ESTABLISHMENT:
ISSUE PRESENTED:
1. Should "dry cleaners" be limited to "cleaning and pressing collection stations?"
2. Should "commercial laundry/dry cleaning establishments" and "cleaning and pressing collections stations" be defined and listed as a separate use and assigned to appropriate zoning districts?

Article 2, 2.3, page 2-13: ***"Personal Service Establishment: An establishment that provides frequent or recurrent needed services of a personal nature. Typical uses include, but are not limited to, beauty shops, barbershops, tanning salons, electronics repair shops, nail salons, laundromats, health clubs, dry cleaners, and tailors."***

Personal Service Establishments are proposed as a Permitted use in Office and all Commercial districts.

COMMENT: I assume the intent is not to allow large-scale commercial dry cleaners and laundries in Office and some commercial zoning districts.

REQUEST: Limit "dry cleaners" to "cleaning and pressing collection stations". Define and list large commercial laundry/dry cleaning establishments as a separate use and assign to appropriate zones.

COMMUNITY FORUM—RESPONSE- RECODE KNOXVILLE-- SUPPLEMENT NUMBER 1:
MAY 10, 2018

TOPIC
(1): DWELLING--MANUFACTURED HOME, Article 2, 2.3, page 2-6; Article 9, 9.2, page 9-2; Article 9, 9.3, H, page 9-6; Article 9, 9.3, T, page 9-10 to 9-12; Article 16, 16.3, E, page 16-3.

TOPIC: (1). DWELLING--MANUFACTURED HOME

ISSUES PRESENTED: 1. Why does the proposed definition of **"Dwelling--Manufactured Home"** include references to the HUD Code?
2. Should the term **"mobile home"** be limited to **"single-wide manufactured home"?**
3. Should the proposed **Article 9, 9.2 Use Matrix** be amended so as to clearly show that only **"Multi-Sectional Manufactured Homes"** are permitted as principal uses in the residential districts?
4. Before establishing a policy change that would ***"allow all existing single-wide manufactured homes to be replaced in kind."***, **Chapter 25, 25-1**, should be fully reviewed to determine the need for a policy change.
5. How many single-wide manufactured homes exist in Knoxville outside Manufactured Home Parks (Mobile Home Parks)?
6. What is the advantage of allowing Single-Wide Manufactured Homes that are outside of Manufactured Home Parks, to continue forever?
7. Will there be a need for another filing date, as in **Chapter 25, 25-1,** to verify the existence of all single-wide mobile homes outside mobile home parks, as of the adoption date of this proposed zoning ordinance?

DWELLING--MANUFACTURED HOME: Definition: ARTICLE 2, 2.3, page 2-6 and 2-7, ***"A manufactured home dwelling is a prefabricated structure that is regulated by the U.S. Department of Housing and Urban Development (HUD), via the Federal National Manufactured Housing Construction and Safety Standards Act of 1974, rather than local building codes. Manufactured homes include those transportable factory-built housing units built prior to the Federal National Manufactured Housing and Safety Standards Act (HUD Code), also known as mobile homes. A manufactured home in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation."***
"1. Multi-sectional manufactured home is defined as two or more manufactured home sections designed to be attached to each other on a site and used as a dwelling unit."
"2. Single-wide manufactured home is defined as a one-section manufactured home designed to be occupied as a single living unit."
"3. Modular homes are not considered manufactured homes, but rather dwellings, and refer to a method of construction."

The existing Knoxville Zoning Ordinance, **Article II, Definitions,** uses similar definitions but does not reference the HUD Code in the definition of "Manufactured home".
QUESTION: Why is reference to the HUD Code included in the definition?
Additionally, the existing zoning ordinance, **Article II,** defines **"mobile home",** as ***"Sometimes referred to as a trailer home or a single-wide home."*** In other words, in the existing ordinance, "mobile home" does **not** include "multi-sectional manufactured homes."

The proposed ordinance uses the term **"mobile home"** as part of the definition of **"Dwelling -- Manufactured Home"** so that **both "multi-sectional manufactured homes"** and **"single-wide manufactured homes"** are, by definition, **"mobile homes."**
QUESTION: Should the term "mobile home" refer only to single-wide manufactured homes?

The existing zoning ordinance clearly allows **only Multi-Sectional Manufactured Homes**, not single-wide mobile homes, on individual lots outside of a Manufactured Home Park. It appears the proposed ordinance provides the same limitation, but states it less clearly.

Article 9, 9.2, Use Matrix, following page 9-2, lists ***"Dwelling--Manufactured Home"*** as a principal use in **almost all residential zoning districts.**

COMMENT: The **Use Matrix** should specify **"Dwelling--Manufactured, Multi-sectional manufactured home",** or simply, **"Multi-sectional manufactured home"** in order to avoid confusion and to be consistent with **Article 9, 9.3, page 9-6, Principal Use Standards**, **H., Manufactured Homes.** It should be clear that the intent is not to allow "single-wide" mobile homes in all residential zoning districts.

It should be noted that the proposed **Article 9, 9.3, page 9-6, Principal Use Standards, H., Dwelling-Manufactured Homes,** are the same as the standards in the present zoning ordinance for **Multi-sectional manufactured homes. Article V, Section 19.**

It should be further noted that **T.C.A., 13-24-201 and 13-24-202**, state that homes cannot be excluded from residential zoning districts simply because they are fully or partially manufactured off-site. But, the code makes clear that this does **not** apply to single-wide homes. And, the multi-sectional manufactured homes must have the same general appearance as site built homes.

MANUFACTURED HOME PARK

MANUFACTURED HOME PARK; Definition: Article 2, 2.1, page 2-12, of the proposed ordinance defines **"MANUFACTURED HOME PARK"** as ***"A parcel of land with single control or unified ownership that has been planned and improved for the placement of manufactured homes for residential use."***

Manufactured Home Parks (Mobile Home Parks in the existing ordinance) are proposed as a Special Use in the Open Space zoning district, as shown in **Article 9, 9.2, Use Matrix.** The existing ordinance requires Use on Review approval for a Mobile Home Park in the R-2 residential zoning district.

Both the existing and proposed zoning ordinances have development standards for Manufactured Home Parks (Mobile Home Parks) and the standards are quite similar. **(See: Existing zoning ordinance, Article V, Section 3. D. Proposed zoning ordinance, Article 9, 9.3, T. page 9-10.)**

NONCONFORMING SINGLE-WIDE MANUFACTURED HOMES

Article 16, 16.3, E, page 16-3, Nonconforming Single-wide Manufactured Homes, states: ***"Existing nonconforming single-wide manufactured homes may be replaced with a new single-wide manufactured home. If a single-wide manufactured home is replaced with a multi-sectional manufactured home, it may not be replaced with a single-wide manufactured home."***

An ***"EDITORS NOTE:"*** follows **E.** and states: ***"Please note the policy change here to allow all existing single-wide manufactured homes to be replaced in kind. This is intended to encourage the upgrade of***

these manufactured homes, rather than allow existing ones to continue to fall into blight because replacement is prohibited."

COMMENT: The Knoxville Code of Ordinances, **Chapter 25, 25-1 (a),** states, ***"It shall be unlawful and a misdemeanor for any person to park, locate or occupy any trailer or mobile home on any lot or parcel of land within the city outside a duly permitted trailer camp, mobile home park or mobile home subdivision."*** It appears that trailers and mobile homes (single-wide manufactured homes) are permitted in mobile home parks.

QUESTION: 1. Does this mean that single-wide manufactured homes in mobile home parks are "conforming" uses and, therefore, can be replaced at any time?

Chapter 25, 25-1, requires that trailers or mobile homes outside of mobile home parks, (single-wide manufactured homes) on individually owned lots, be registered within 30 days following July 20, 1971. Single-wide mobile homes outside of mobile home parks are restricted. They are prohibited from being repaired or expanded unless destroyed by fire or some catastrophic event, ***"or where the council of the city shall, upon petition by the owner or occupant, determine it is not contrary to the best interest of the community and that it is in keeping with the surrounding dwellings to allow replacement, addition or enlargement of any trailer or mobile home."***

QUESTIONS: 2. Before establishing a policy change that would ***"allow all existing single-wide manufactured homes to be replaced in kind."***, **Chapter 25, 25-1**, should be fully reviewed.

3. How many single-wide manufactured homes exist in Knoxville outside of Manufactured Home Parks?

4. What is the advantage of allowing Single-Wide Manufactured Homes that are outside of Manufactured Home Parks, to continue forever?

5. Will there be a need for another filing date, as in **Chapter 25, 25-1**, to certify the existence of all single-wide mobile homes outside the mobile home parks, as of the adoption date of this proposed ordinance?

REQUEST: Determine if there really is a need for a policy change allowing all single-wide manufactured homes to be replaced in kind.

EXHIBIT A

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:

- 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);

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."

- 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. 4

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.

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.

2 At page 31.
3 At page 33.
4 At page 33