



MEMORANDUM

TO: Sparta Municipal Planning Commission Members

FROM: Tommy Lee, Staff Planner

DATE: February 2, 2023

SUBJECT: February 7, 2023 Planning Commission Meeting

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The Sparta Municipal Planning Commission will hold its regularly scheduled meeting on Tuesday, February 7, 2023 at 4:00 PM in the Sparta City Hall. The agenda for the planning commission meeting is as follows:

1. Call to order.
2. Roll Call.
3. Approval of the November 29, 2022 minutes.
4. Introduction of new staff planner.
5. Consideration of preliminary subdivision plat for property located near North Spring Street (Young Division)\*
6. Consideration of final lot line adjustment plat for property located on Mt View Drive (Huddleston Adjustment).\*
7. Training—Powers and Duties of the Municipal Planning Commission.
8. Other Business as Necessary.
9. Adjourn.

CTL

**\*See Agenda Review**

Chairman David Vidrine \_\_\_\_\_ Secretary Karen Benningfield \_\_\_\_\_ Mayor Jerry Lowery \_\_\_\_\_ Robert Officer \_\_\_\_\_

John Farris \_\_\_\_\_ Jason Del Toro \_\_\_\_\_ Robert Oakes \_\_\_\_\_ Hoyt Jones \_\_\_\_\_ James Leftwich \_\_\_\_\_ Emilee Roberts \_\_\_\_\_

Building Inspector Mike O'Neal \_\_\_\_\_

Others: \_\_\_\_\_

**Agenda Review**

**Young Division—Preliminary**

Bob Young presented a preliminary subdivision plat for the purpose of creating one (1) proposed new lot from property larger than five (5) acres located near North Spring Street. The proposed new lot would consist of 1.403 acres and is currently vacant. The proposed new lot would be created from the Robert Young parcel (Map 49, Parcel 036.00) and the property is currently zoned R-A (Single Family Residential). Young requests that the proposed new lot be added to the Gillen Farms, Phase II subdivision plat which has already been granted preliminary approval. The proposed new lot would have access to North Spring Street via a proposed city street named East Breeding Drive. The proposed new lot would be served by an existing twelve (12) inch water line, an existing sewer line and would comply with all subdivision regulations and all zoning ordinance requirements. Final approval cannot be granted until all infrastructure is installed.

**Huddleston Adjustment—Final**

Earl Huddleston presented a final lot line adjustment plat for the purpose of adjusting the common boundary line for two (2) existing lots located on Mt View Drive. After the adjustment, Lot 1 would consist of 0.288 acres and is currently vacant. Lot 2 would consist of 0.339 acres, an existing residential structure and two (2) existing accessory structures. The proposed new lots are zoned R-A (Single Family Residential) and are served by an existing six (6) inch water line and an existing eight (8) inch sewer line.

Chairman David Vidrine \_\_\_\_\_ Secretary Karen Benningfield \_\_\_\_\_ Mayor Jerry Lowery \_\_\_\_\_ Robert Officer \_\_\_\_\_

John Farris \_\_\_\_\_ Jason Del Toro \_\_\_\_\_ Robert Oakes \_\_\_\_\_ Hoyt Jones \_\_\_\_\_ James Leftwich \_\_\_\_\_ Emilee Roberts \_\_\_\_\_

Building Inspector Mike O’Neal \_\_\_\_\_

Others: \_\_\_\_\_

**MINUTES**  
**SPARTA MUNICIPAL PLANNING COMMISSION**  
**December 13, 2022**

The Sparta Municipal Planning Commission met on Tuesday, December 13, 2022, in Sparta City Hall. Attending the meeting were planning commission members David Vidrine, John Farris, Hoyt Jones, James Leftwich, Robert Oakes, Robert Officer, Emilie Roberts, Jason Del Toro, Mayor Jerry Lowery, and Karen Benningfield in addition to Planning Director Kevin Rush, Interim City Administrator Tonya Tindle, Codes Officer Mike O’Neal, and guests Dale and Brenda Sims, Allen Maples, Frank Del Toro, and Eddie Diaz.

Following a meeting of the Board of Zoning Appeals, Chairman David Vidrine called the meeting to order at approximately 4:15 P.M. The meeting agenda was approved as presented.

Mayor Jerry Lowery moved to approve as written the minutes of the September 8, 2022, meeting. Karen Benningfield seconded the motion which then carried with a unanimous vote.

Allen Maples presented a plat for Heartland Estates. This proposal is for a four-lot subdivision located on South Young Street (Tax Map 059, Parcel 089.00) in the Residential-A zone. Sewer is not available in this area. Karen Benningfield made a motion to approve the subdivision plat subject to TDEC approval of soils on each lot along with verification or installation of fire hydrant within 500 feet as required by subdivision regulations. (Developer will be responsible for costs associated with installation of fire hydrant if required to conform with regulations.) Discussion focused on how this development might impact access to Cullom Cemetery. Maples noted that this subdivision does not affect cemetery access. He further explained that by law, access to a cemetery cannot be denied, and he added that access would have to come from the owner of the “parent” parcel. Codes Officer Mike O’Neal stated that a drive exists on a nearby parcel and that access is at the mercy of the property owner because this arrangement predates planning regulations. James Leftwich seconded the motion to approve the plat, and members voted unanimous approval.

A plat was presented by REBO Properties to create three lots on Roosevelt Drive (Tax Map 048, Parcel 019.01). This property is located in the Industrial M-1 district. Jason Del Toro inquired regarding how the creation of additional lots will affect parking. Planning Director Kevin Rush explained that the factory which is located on one of the three proposed lots does not require all available parking spaces. Parking will be part of the development plans. Codes Officer Mike O’Neal questioned if anyone had checked with TDOT regarding this proposal. O’Neal stated that any driveway within 200 feet of an intersection with a state highway requires TDOT approval. Mayor Jerry Lowery moved to approve the subdivision plat subject to TDOT approval. Following a second by Robert Officer, the motion carried with a unanimous vote.

With no other business to consider, Karen Benningfield made a motion to adjourn. Following a second by Mayor Jerry Lowery, the meeting was adjourned at approximately 4:35 P.M.

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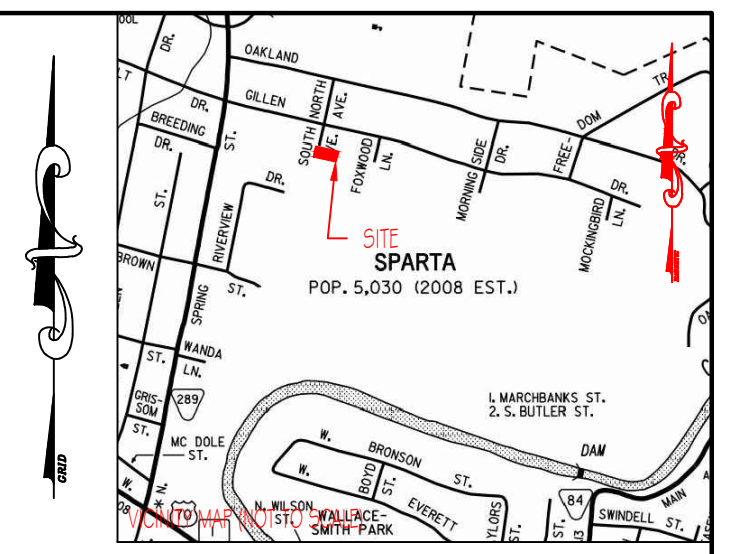
David Vidrine, Chairman

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Karen Benningfield, Secretary

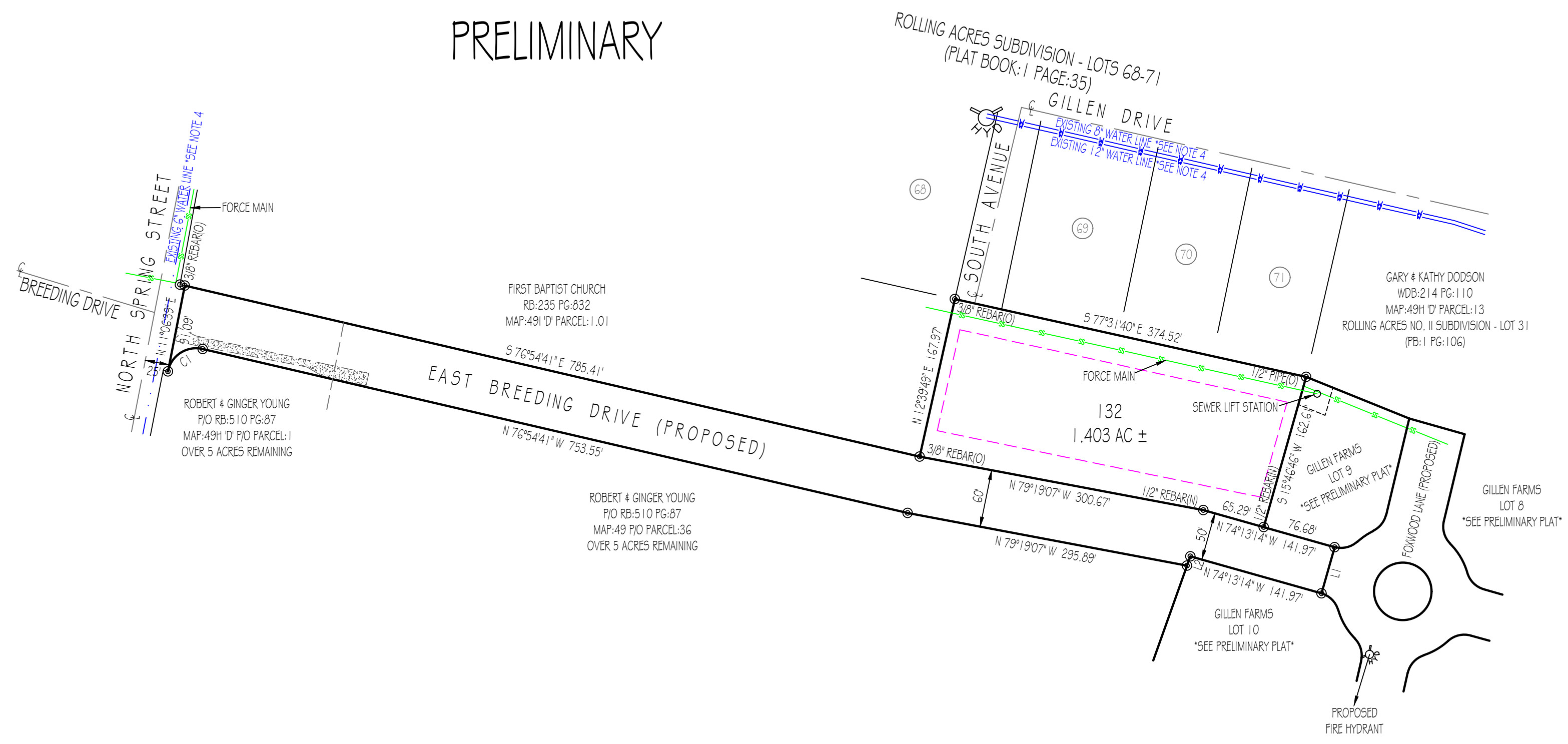
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	30.00'	48.16'	43.15'	S 57°05'59" W	91°58'40"

LINE	BEARING	DISTANCE
L1	S 15°46'46" W	50.00'
L2	S 19°33'56" W	10.32'



- NOTES:
1. THIS SURVEY WAS CONDUCTED FROM THE CURRENT DEED OF RECORD AND IS SUBJECT TO ANY INFORMATION WHICH A TITLE SEARCH WOULD REVEAL.
  2. THIS SURVEY IS SUBJECT TO ANY EASEMENTS, RIGHTS OF WAYS, AND/OR LEASES WHICH COULD AFFECT THE PROPERTY.
  3. THIS PROPERTY IS NOT IN A FLOOD ZONE, TO THE BEST OF MY KNOWLEDGE, ACCORDING TO FIRM MAP #47185CO1550, EFFECTIVE SEPTEMBER 28, 2007.
  4. INFORMATION FROM UTILITY COMPANY WILL BE COMBINED WITH OBSERVED EVIDENCE OF UTILITIES TO DEVELOP A VIEW OF THOSE UNDERGROUND UTILITIES. HOWEVER, LACKING EXCAVATION, THE EXACT LOCATION OF UNDERGROUND FEATURES CANNOT BE ACCURATELY, COMPLETELY AND RELIABLY DEPICTED. WHERE ADDITIONAL OR MORE DETAILED INFORMATION IS REQUIRED, THE CLIENT IS ADVISED TO CONTACT THE UTILITY COMPANY OR DIAL 811.
  5. PROPERTY IS LOCATED IN ZONE R-A WITHIN SPARTA CITY LIMITS AND IS SUBJECT TO ALL ZONING REGULATIONS FOR ZONES R-A.
  6. MINIMUM BUILDING SETBACKS ARE AS FOLLOWS:  
FRONT: 30'  
SIDE: 12'  
REAR: 30'

# PRELIMINARY



ROBERT & GINGER YOUNG  
P/O RB:510 PG:87  
MAP:49H 'D' P/O PARCEL:1  
OVER 5 ACRES REMAINING

FIRST BAPTIST CHURCH  
RB:235 PG:832  
MAP:49I 'D' PARCEL:1.01

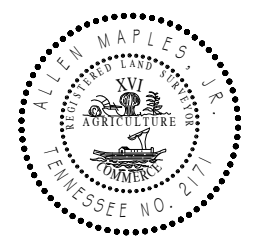
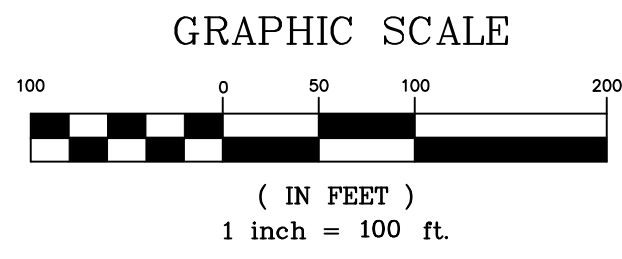
ROBERT & GINGER YOUNG  
P/O RB:510 PG:87  
MAP:49 P/O PARCEL:36  
OVER 5 ACRES REMAINING

GARY & KATHY DODSON  
WDB:214 PG:110  
MAP:49H 'D' PARCEL:13  
ROLLING ACRES NO. II SUBDIVISION - LOT 31  
(PB:1 PG:106)

GILLEN FARMS  
LOT 8  
\*SEE PRELIMINARY PLAT\*

GILLEN FARMS  
LOT 10  
\*SEE PRELIMINARY PLAT\*

- LEGEND
- (N) (NEW)
  - (O) (OLD)
  - ⊥ CENTERLINE



GPS CERTIFICATION  
I, ALLEN MAPLES, JR., HEREBY CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:  
A. POSITIONAL ACCURACY - 0.05 FEET  
B. TYPE OF GPS FIELD PROCEDURE - REAL TIME KINEMATIC  
C. DATES OF SURVEY - 05/20/24  
D. DATUM/EPOCH - NAD83(2011) / EPOCH:2010.0000  
E. PUBLISHED/FIELD CONTROL USE - ASSUMED (AS SHOWN ON PLAT)  
F. GRID MODEL - GSD0 2010  
G. COMBINED GRID/EPOCH OFFSET - 0.98990913  
H. CONVERGENCE ANGLE - 0'16.52"

PRELIMINARY PLAT FOR GILLEN FARMS, PHASE II PRESENTED TO CITY OF SPARTA PLANNING COMMISSION	
DEVELOPER: BOB YOUNG	SURVEYOR: ALLEN MAPLES LAND SURVEYING
ADDRESS: 405 OAKLAND DRIVE SPARTA, TN 38583	ADDRESS: 38 MAYBERRY STREET SPARTA, TN 38583
TELEPHONE: (931) 212-3308	TELEPHONE: (931) 837-5446
P/O RB:510 PG:87	TAX MAP:49 P/O PARCEL:36
1ST C.D. - WHITE COUNTY, TN	TAX MAP:49H 'D' P/O PARCEL:1
SCALE: 1" = 100' - DATE: 06/16/2022	ACREAGE SUBDIVIDED: 1.403 AC ±
DRAWING #21-180 C	NUMBER OF LOTS: 1

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY (OUR) FREE CONSENT, ESTABLISHED THE MINIMUM BUILDING RESTRICTIONS LINES, AND DEDICATED ALL STREET, ALLEYS, WALKS, PARKS, AND OTHER OPEN SPACES TO PUBLIC OR PRIVATE USE AS NOTED.

DATE \_\_\_\_\_ OWNER \_\_\_\_\_  
 DATE \_\_\_\_\_ OWNER \_\_\_\_\_

CERTIFICATE OF ACCURACY

I HEREBY CERTIFY THAT THE PLAN SHOWN AND DESCRIBED HEREON TRUE AND CORRECT SURVEY TO THE ACCURACY REQUIRED BY THE CITY OF SPARTA PLANNING COMMISSION AND THAT THE MONUMENTS HAVE BEEN PLACED AS SHOWN HEREON TO THE SPECIFICATIONS OF THE CITY OF SPARTA SUBDIVISION REGULATIONS.

DATE \_\_\_\_\_ REGISTERED ENGINEER OR SURVEYOR  
 RLS #2171

CERTIFICATION OF EXISTING WATER LINES AND/OR UTILITIES

I HEREBY CERTIFY THAT THE WATER LINES AND/OR OTHER UTILITIES SHOWN HEREON ARE IN PLACE.

DATE \_\_\_\_\_ SPARTA SEWER DEPT. SUPERVISOR

CERTIFICATION OF EXISTING STREET(S)

I HEREBY CERTIFY THAT THE STREET(S) SHOWN ON THIS PLAT HAS (HAVE) THE STATUS OF AN ACCEPTED PUBLIC STREET(S) REGARDLESS OF CURRENT CONDITION.

DATE \_\_\_\_\_ SPARTA STREET DEPARTMENT SUPERVISOR

CERTIFICATE OF APPROVAL FOR RECORDING

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS OF THE SPARTA PLANNING COMMISSION WITH THE EXCEPTION OF SUCH VARIANCES, IF ANY, AS ARE NOTED IN THE OFFICIAL MINUTES OF THE SPARTA PLANNING COMMISSION, AND THAT SAID PLAT HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE REGISTER OF WHITE COUNTY, TENNESSEE.

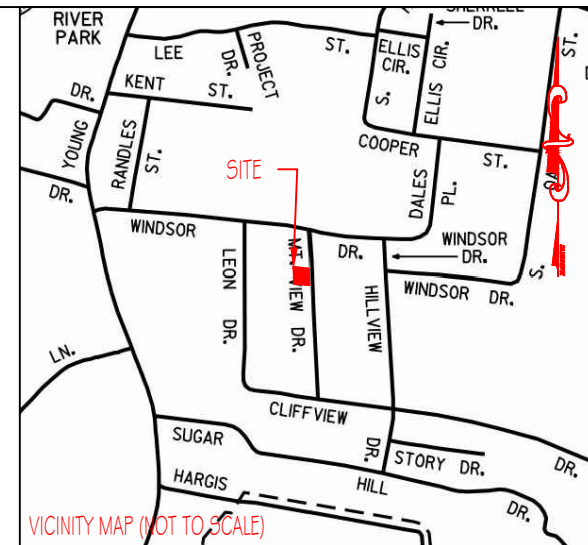
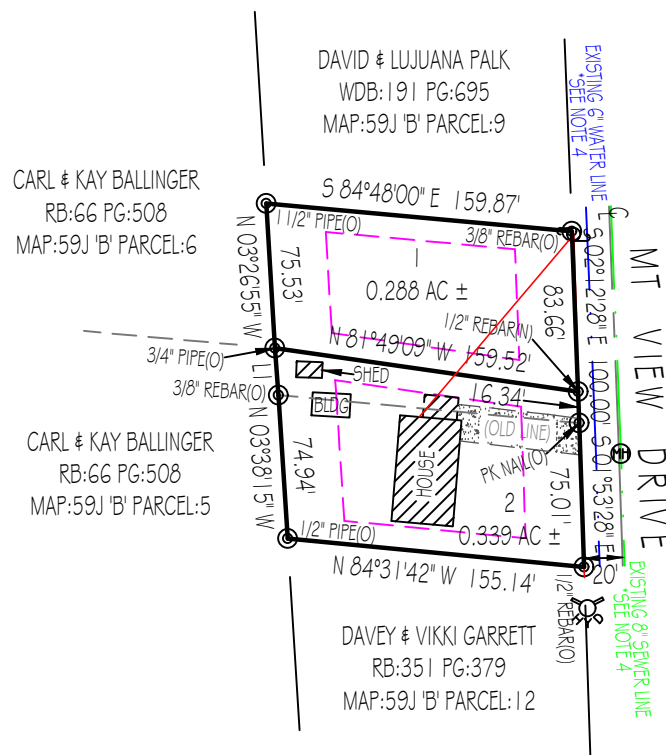
DATE \_\_\_\_\_ SECRETARY  
 SPARTA MUNICIPAL PLANNING COMMISSION



I HEREBY CERTIFY THAT THIS IS A CATEGORY 1 SURVEY AND THE RATIO OF PRECISION OF THE UNADJUSTED SURVEY IS AT LEAST 1:10,000.

ALLEN MAPLES, JR.  
 RLS#2171

LINE	BEARING	DISTANCE
L1	N 04°15'14" W	24.47'



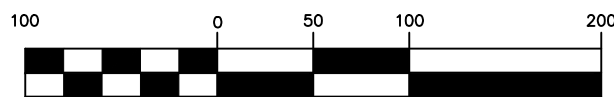
NOTES:

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2. THIS SURVEY IS SUBJECT TO ANY EASEMENTS, RIGHTS OF WAYS, AND/OR LEASES WHICH COULD AFFECT THE PROPERTY.
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 FRONT: 30'  
 SIDE: 12'  
 REAR: 30'

LEGEND

- (N) (NEW)
- (O) (OLD)
- ⊥ CENTERLINE
- ⊕ POWER POLE
- w— WATER LINE
- ss— SANITARY SEWER
- ⊕ MANHOLE
- ⊕ FIRE HYDRANT

GRAPHIC SCALE



( IN FEET )  
 1 inch = 100 ft.

FINAL PLAT FOR	
HUDDLESTON & HUDGENS RE-DIVISION	
PRESENTED TO	
CITY OF SPARTA PLANNING COMMISSION	
DEVELOPER: TAYS REALTY & AUCTION	SURVEYOR: ALLEN MAPLES LAND SURVEYING
ADDRESS: 620 MAXWELL STREET	ADDRESS: 38 MAYBERRY STREET
COOKEVILLE, TN 38501	SPARTA, TN 38583
TELEPHONE: (615) 489-5765	TELEPHONE: (931) 837-5446
P/L RB: 187 PG: 283 & P/L WDB: 189 PG: 195	TAX MAP: 59J 'B' PARCEL: 10 & 11
DATE: 12/02/2022	1ST C.D. - WHITE COUNTY, TN
SCALE: 1" = 100'	ACREAGE SUBDIVIDED: 0.627 AC ±
DRAWING #22-303 A3	NUMBER OF LOTS: 2

# **The Powers and Functions of the Local Planning Commission in Tennessee**

A paper prepared for the citizen planning commission member to be used as a general guide in the performance of his/her duties.

Prepared by Bill Terry, AICP

Original Draft 1985, Updated 2005 and 2013.  
This document is not copyrighted and is available free of charge.

## Introduction

Local governments in Tennessee have a long history of local planning. Brought about through programs initiated during the late 1920s and early 1930s, most states adopted local planning legislation in that period. Tennessee's first planning commissions were: Memphis in 1921, Knoxville and Chattanooga in 1922, Nashville in 1925, and Johnson City in 1927. The first county planning commission was Shelby County, created by private act of the General Assembly. The state's planning enabling legislation was passed by the General Assembly in 1935 being heavily influenced by the Tennessee Valley Commission and the Tennessee Valley Authority.

The State and Regional Planning Act created the Tennessee State Planning Commission. Also passed that year were four other acts that established the structure for local planning in Tennessee: County Zoning Act, Municipal Planning Act, Municipal Subdivision Act, and the Municipal Zoning Act.

Primarily through the efforts of the Tennessee State Planning Commission (the agency no longer exists) and TVA, during the 40s and 50s, local planning in Tennessee has continued and grown. Further stimulation was provided in the 1960s by the federal government through various grant and loan programs. Thus, today most cities over 1,000 in population, as well as many under that size, and many counties have a local planning commission.

## Why Plan?

Before discussing what a planning commission may do, one question should be addressed. Why Plan? Why should a city or county spend money for a planning program? The impetus for appointing or revitalizing a planning commission and starting a continuing planning program may come from a variety of circumstances. Growth in an area always raises issues that only a planning program can address. What about public services? Are the water lines adequate? Who builds the streets and to what standard? How should commercial services be provided? Should prime industrial land be reserved? How will the local tax rate be impacted? All of these questions and more arise in a growing community.

As each new development occurs, whether it is a five-lot subdivision or a major shopping center, the community of the future takes shape. The population density, the use to which the land is put, and the physical arrangement of the developed area will determine the need for services and the cost to provide those services. This also has a very real and significant impact upon the local property tax. Attractive, carefully developed, and orderly communities have a sound economic foundation. Haphazard, disorganized, and unattractive developments can destroy the very essence of functional and efficient community life.

Another situation that calls for a planning solution may be the crisis of the loss of a major industry or overall economic depression. A planning program may help provide the environment for economic development. Overcrowded schools, overloaded sewers, or environmental concerns that divide the citizenry represent other situations that might call for a planning solution. However, perhaps the most direct answer to the question of why plan is that it is necessary to support the enforcement of land use controls, and most communities exercise some form of land use control. Across the country, the courts have increasingly recognized the inter-relationship between planning and zoning and the public regulation of private land.



## What is Planning?

Another question that may confront a community and, more specifically, the members of the planning commission is “what is planning”? Planning means different things to different people, but here a rather general definition is offered that will apply to most any problem or situation that may be encountered by local governments.

Planning is a continuous approach to problem solving, a process for making informed decisions about the future. Every community plans, although the lack of a formalized plan and process means that planning is done on a day-to-day, crisis-to-crisis basis. A better approach is to try to anticipate the consequences of possible courses of action and select what appears to be the best course based upon a prescriptive method of problem analysis and solution selection. Planning gives decision-makers a rational basis for making decisions.

Formal planning is usually characterized by such activities as follows:

- Identifying the problems or issues
- Analyzing them
- Formulating goals
- Development and evaluation of alternative courses of action
- Selecting a preferred alternative
- Implementing the preferred alternative and
- Monitoring implementation and making adjustments based upon results and /or changing policies

In practice, these activities are rarely discrete, sequential steps. They often overlap in a cyclical process in which experience provides the impetus for continuous course corrections. Like budgeting, governmental planning is also a political process for allocating scarce resources among competing demands.

In summary, the purpose of planning is not to prepare plans but to produce intelligent, informed decisions.

## What is a Plan?

Two words are frequently used interchangeably to describe the plan. These are general or comprehensive. They mean the same thing. It is not the purpose here to describe in detail such a plan. However, it is generally concluded in all planning literature that a general or comprehensive or master plan should include the following elements:

- **Land use** – An investigation of existing land utilization within the city that analyzes and depicts the current situation.
- **Physical Characteristics** – An analysis of all natural and physical characteristics that may affect the development of the area, including such factors as soils, topography, bedrock, geology, and surface drainage.
- **Economy** – An investigation of employment and economic foundations and trends in the community.
- **Population** – An analysis of population trends, distribution, and characteristics, including projections of future growth.
- **Transportation** – An analysis of the existing systems for the movement of people and goods.
- **Community Facilities** – A survey of existing public facilities such as schools, parks, sewers, water, libraries, and fire and police protection, and an analysis of their adequacy for the present and future.
- **The Long Range Plan** – A plan, including maps and text, for future land use, transportation, and public facilities.
- **Capital Improvements Program and Budget** – A prioritized program of projected public facilities along with a budget for the financing thereof.
- **Land Use Controls** – Legal tools for the enforcement of certain standards of development including a zoning ordinance and subdivision regulations.

Planning commissions may also prepare and adopt a land use and transportation plan. These are more limited in scope since they only address land use and transportation issues. The other elements listed above are not included.

## Legal Basis for Local Planning

Local planning and land use regulation rest on powers granted to cities and counties by the state constitution, but state legislation shapes the manner in which these powers are exercised. Basically, cities and counties draw upon two broad categories of legal powers in their planning programs: corporate powers and police powers. Corporate power is the authority to collect money through bonds, taxes, fees, and assessments, and to spend it to provide services and facilities, such as streets, water, sewage disposal facilities, parks, recreation, and libraries.

Police power, reserved to the states by the Federal Constitution and delegated to cities and counties by the state, is the authority to regulate a citizen's behavior—including the use of private property—to promote the health, safety, and welfare of the public. The police power is elastic, evolving to accommodate changing community values, but its use is constrained by constitutional principles of equal protection and due process, including unlawful taking or damaging of property. Land use planning, zoning, subdivision regulation, and building regulation are all exercises of the police power.

Title 13, Chapters 3, 4, and 7, Tennessee Code Annotated, contain all of the authority delegated to local governments to develop planning and land use regulatory programs. A more recent addition to the body of planning laws is known as the Tennessee Growth Policy Act, Public Chapter 1101, adopted in 1998. It is codified as Title 6, Chapter 58; however, it is a subject on its own and is beyond the scope of this paper.

Charts I and II, at the end of this paper, list the powers of municipal and regional planning commissions as authorized by Title 13 of the Tennessee Code. Chart I lists the "Powers of a Municipal Planning Commission" and Chart II lists the "Powers of a Regional Planning Commission". The regional powers are somewhat different in some areas.

## Powers of a Municipal Planning Commission

### **1) Prepare and adopt an official General Plan.**

Tennessee Code Annotated § 13-4-201 states that it shall be the function and duty of the commission to make and adopt an official General Plan for the physical development of the municipality including any area outside its boundaries that bears a relationship to the planning of the municipality. The legislation further stipulates what may be included in such a plan and is very broad in nature.

The plan, as described in the legislation, is to show the planning commission's recommendations for the physical development of the area. The plan "...may include, among other things, the general location, character and extent of streets, bridges, viaducts, parks, parkways, waterways, waterfronts, playgrounds, airports and other public ways, grounds, places and spaces, the general location of public buildings and other public property, the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, light, power, sanitation, transportation, communication, and other purposes; ...". The legislation continues a general listing of other items that may be included, as well.

In short, it may be said that the General Plan may cover any service that the municipality might provide, as well as direction for many private activities.

Under current law, the plan is not a legal instrument but is advisory only. A recent amendment to the law provided that the legislative body could adopt the plan upon the planning commission's recommendation. If the legislative body adopts the plan, then it becomes a legal instrument, and all land use decisions made by the community must be consistent with the plan. Without this action of the legislative body, the plan remains advisory.

### **2) Make advisory reports and recommendations to all public officials and agencies regarding the plan and development of the area.**

Tennessee Code Annotated § 13-4-103 gives the local planning commission the power to make advisory reports and recommendations that relate to the plan, to any public official or agency, whether local or not, utility companies, civic, educational, or professional organization. In addition, all such public officials are required to furnish the commission with any information that may be needed for its work. There is also a statement that the commission shall have such powers as may be necessary to enable it to perform its purposes and promote municipal planning.

These powers are advisory only. However, it does mean that the commission may advise any body, public or private, whether a project or activity is in agreement with the General Plan and use the power of moral persuasion or information dissemination to affect the course of action. The commission may also request and obtain information from such agencies as a school board, power board, industrial development board, housing authority, etc., to determine whether their activities are in compliance with the plan.

**3) Have advance notification of the location and extent of the construction or authorization of any public street, building, park, open space, or utility, whether publicly or privately owned, for the purpose of commission review and approval.**

This broad power to review and comment on any public project is sometimes referred to as mandatory referral. Tennessee Code Annotated § 13-4-104 states unequivocally that the planning commission shall be consulted **prior** to the construction or authorization of any project, and this includes private utilities. The law provides that all state, county, and local agencies and officials having jurisdiction over such projects must comply with the referral requirement.

The purpose of such referral is to assure that public projects and their locations are in compliance with the General Plan and further, to assure coordination between various agencies of different levels of government. Compliance with the planning commission's recommendations is not mandatory since the legislative or other responsible authority (e.g. a school board) can override the commission. However, it does guarantee that the commission has the opportunity to comment. Failure to comply

with this provision, could, in case of a court challenge, delay a project or even jeopardize some all together.

#### **4) Regulate the development of land through subdivision regulations and site plan review.**

The subdivision of land is the first step in the continuing process of shaping the future land use pattern and adding to the housing stock of a growing community. Prior to the regulation of new subdivisions through planning commission authority, many new subdivisions turned out to be liabilities for the community as a whole and for the individual homebuyer.

Subdivisions were created without adequate water and sewer, in areas subject to frequent flooding, and without streets. Many times land would be subdivided and homes built and sold, and then, the city or county would have to add all improvements.

New lots and streets can alter or intensify traffic on existing streets; they can increase the storm water drainage; they can create more demands for water supply or sewage treatment capacity; and they will enlarge the need for the whole spectrum of public services.

Tennessee law gives local government the necessary authority to adopt and enforce subdivision regulations. The law defines what constitutes a subdivision, provides that no plat may be recorded until it is approved by the planning commission, prohibits a county register from recording a plat until it is duly approved, provides a procedure for the adoption of regulations and on the submission of plats, and provides penalties for the transfer or sale of lots in unapproved subdivisions.

Tennessee Code Annotated § 13-4-303 provides that in exercising its powers the planning commission shall adopt regulations and those regulations may provide for the harmonious development of the municipality and environs, for the coordination of streets with existing or planned streets or with the plan of the area, for adequate open spaces, for traffic, recreation, light, and air, and "...for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, and prosperity." Additionally, the regulations may

"...identify areas where there are inadequate or nonexistent publicly or privately owned and maintained services and facilities when the planning commission has determined the services are necessary in order for development to occur." This enables the community to require that necessary infrastructure be available prior to development occurring, although a comprehensive or land use plan would be needed to identify those areas.

Tennessee Code Annotated § 13-4-307 deals with the acceptance of unapproved streets and re-enforces the mandatory referral provisions mentioned earlier. This section generally states that no municipality or public official shall accept, layout, open, improve, pave, or light any street without planning commission review. No water or sewer mains may be laid in any street that is not public or shown on an approved subdivision plat without planning commission approval. It is further provided that the chief legislative body may open, accept, or pave streets but such matter shall first be submitted to the planning commission. If disapproved by the commission, the legislative body may override the commission by a majority vote of the entire membership. Here again, the planning commission's recommendations may be overridden, however, the law does give the commission the opportunity for prior review.

Tennessee Code Annotated § 13-4-310 gives a planning commission the power to recommend amendments to the zoning ordinance for the establishment of review and approval powers for site plan review. Site plan review is a planning commission power only through the enforcement of a zoning ordinance. Once the zoning ordinance or amendment is adopted, the planning commission may be given the prerogative to review and approve or disapprove a site plan of any proposed use on any lot prior to the issuance of a building permit. Such approval or disapproval must be based on the requirements for development as spelled out in the zoning ordinance, e.g. setbacks, landscaping, driveways, etc. The enforcement of these provisions can result in the improved location, layout, and design of buildings on individual lots.

**5) Prepare and recommend to the chief legislative body a zoning ordinance and map.**

The preparation of a zoning ordinance and map, as well as subsequent amendments thereto, are but two of the powers of a planning commission. However, zoning is at once the most visible and controversial aspect of any planning commission's business. This is because it deals with how an individual may use private property. Questions of private property rights always are involved. However, it should be emphasized that how one uses their property affects the use, enjoyment, and value of other neighboring or nearby property. Citizens and governments decided long ago that zoning, adopted by locally elected officials, was and is a fitting and proper way to balance the rights of all.

The subject of zoning in general is rather complex and requires much more explanation than is the purpose of this paper. There are many multi-volume legal treatises available, and case law as a result of the many lawsuits in zoning abounds. Therefore, this paper will simply summarize the role of the planning commission in the zoning process.

Tennessee Code Annotated § 13-7-201 empowers the chief legislative body of a municipality to adopt a zoning ordinance and also specifies the broad areas that may be regulated by zoning. However, Section 13-7-202 specifies that before the legislative body may exercise these powers, the planning commission must make and certify to the legislative body a zoning plan which includes the full text of a zoning ordinance and zoning maps.

After a public hearing that has had proper public notice, the chief legislative body may enact the zoning ordinance. The public notice need not include publication of the entire ordinance. The ordinance caption and a summary are sufficient. Section 13-7-203 provides that no change in or departure from the text or maps as certified by the planning commission shall be made unless such change is first submitted to the commission for comment. Here again, the legislative body may override the planning commission, but the commission gets its' opportunity. Some ordinances have been successfully challenged in court for failure to comply with this section.



After the ordinance is adopted, the planning commission has a limited role in its administration. This is the responsibility of the staff of the municipality. The role of the planning commission in administration comes through review and approval of site plans, master plans, or overlay plans.

#### **6) Review and make recommendations for any amendment to the zoning ordinance or map.**

The zoning ordinance and map may from time to time be amended as the need may arise. Since such action would change a city ordinance, it must be passed by the chief legislative body, and a public hearing held thereon. Tennessee Code Annotated § 13-7-204 provides that the planning commission shall first review the amendment.

It is this one aspect of the planning commission's power that consumes so much of the commission's time. In many communities, the commission may spend 80-90% of the meeting discussing zoning amendments. As noted, however, this is only one function of the commission, and while it is an important aspect of the zoning process, it should not be allowed to dominate all meetings. This can mean that other important planning commission functions get ignored.

One way to simplify the procedure and speed up discussion of amendments is to correlate all amendments with an adopted general plan and to follow a specific procedure.

#### **A proposed amendment should be able to meet several tests before the planning commission approves it:**

- Is the proposed change in agreement with the general plan?
- Does the change violate the legal purposes of zoning?
- Has it been determined that there will be no adverse impact upon adjoining property or that any adverse impact can be justified by the overwhelming public good or welfare?
- Has it been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public?

- Has it been determined that public services and facilities will not be adversely affected?

If most of these tests are met but the proposed change fails to agree with the general plan, then the commission should examine conditions and changes in the area since the original plan and zoning map were adopted. The commission may find that many changes in physical condition, infrastructure, or policy have occurred that indicate the plan may need altering. In this event, the general plan can be amended and subsequently, the zoning map.

The result of following such a procedure for zoning amendments is that all the necessary questions get asked and the proper kind of information is generated so that the planning commission can make an informed and rational recommendation. This is the purpose of planning commission review of amendments, and the commission should not get involved in just the personal interests of the applicant or how the neighbors feel about it. Such a procedure is also much more able to withstand any legal challenge.

## Powers of a Regional Planning Commission

Regional planning commissions have powers which are similar to municipal planning commissions but with certain differences which are related to the regional nature of the commission. In Tennessee, a regional planning commission is a county planning commission or a municipal planning commission that has been designated as regional for a specified planning region outside of, but contiguous to, the corporate boundaries. Within the planning region, regional planning powers apply as opposed to municipal planning powers. A planning region may also consist of one county, two or more contiguous counties, or parts of counties.

**1) Promote the mutual cooperation of municipal planning commissions within the region, coordinate the plans of the municipalities with the regional plan, and confer with and advise municipal and county legislative bodies and officials to promote the coordinated and adjusted development of the region.**

Tennessee Code Annotated § 13-3-104 seems to contemplate that a regional planning commission will be a county planning commission and gives the commission the power to promote cooperation among city governments as well as county officials. It would not seem to serve the public interest if two or more municipalities had plans that were in conflict with each other's and with the county plans. For example, suppose both communities had plans that called for a new high school, but enrollment figures could only support one such school. Or perhaps, each community had plans for new roads but there was no way to blend them into a total county system. The regional planning commission is thus a logical and necessary body for resolving such issues based on a regional approach and for providing coordination and consistency between municipal and county plans.

**2) Advise county and municipal legislative bodies in the formulation of public improvement programs and the financing thereof.**

The above-cited section also provides that a regional planning commission may advise both the county and any municipal legislative body with respect to the formulation of public improvement programs and the means of financing such programs. This gives the planning commission the authority to have input to capital improvements made by either type of government regarding whether the project is feasible, is in agreement with long-range plans, or perhaps duplicates other services. Here again such reports are advisory not mandatory.

**3) Prepare and adopt a general regional plan for the physical development of the region.**

Tennessee Code Annotated § 13-3-301 gives regional planning commissions the power to plan much as the earlier citation for municipal planning commissions does. However, this section goes even farther and authorizes the planning commission to include in the plan the "general character, location and extent of ... town sites or housing developments; the location and extent of forests, agricultural areas, and open development areas...; a land classification and utilization program...".

Additionally, the plan may include a zoning plan that among other considerations may cover “the distribution of population.”

The purpose of the general plan is further amplified by Section 13-3-302. In addition to the usual health, safety, and welfare purposes of the police power, this section covers efficiency and economy in the process of development and the reduction of waste of financial and human resources that result from excessive congestion or excessive scattering of the population.

Apparently, the planning commission may plan and therefore regulate and time the development of such things as utilities and housing areas. The commission may prevent urban sprawl and help preserve agricultural and open space areas, and it may plan for schools and roads. In short, there may be more power than many counties are willing to exercise.

In summary, it can be said that a regional planning commission has broad powers to plan for the total region.

#### **4) Regulate the development of land through subdivision regulations and site plan review.**

The discussion presented earlier under municipal planning powers applies as well to regional planning powers. The grant of power from the Tennessee Code is under a different section but it is very similar to the municipal section.

There is one important difference. Tennessee Code Annotated § 13-3-403, in addition to basic similarities with the municipal section, states that subdivision regulations may provide for “the avoidance of such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services...”. This section clearly gives a regional planning commission the power to develop growth management strategies that would time the development of land to the availability to public services and facilities. For example, “leap-frog”

development and urban sprawl into rural areas could be prevented if public facilities were lacking.

A planning commission may not exercise this power in an arbitrary manner. Such decisions must be founded upon definite plans, policies, and programs to substantiate them and ultimately provide the necessary services. However, it does give a regional planning commission adequate authority to regulate the time and the location of land development.

Site plan review powers are the same as described in the section of this report regarding municipal powers and are conveyed through the power to zone.

**5) Review and approve the design, opening, grading, paving, or lighting of any road or any utilities to be authorized or placed in any such road prior to any public official's or agency's action.**

This power granted by Tennessee Code Annotate § 13-3-406 is the regional planning commission's claim to mandatory referral as covered under the municipal section. Here the review power of the commission covers only county roads and highways and utilities in county roads, and therefore, is not as broad as the municipal power. Here again, however, the planning commission must be given advance notification of any road project and must review it prior to a road becoming a public road. The chief legislative body of the county may accept, layout, or locate a road but not before the proposal is submitted to the planning commission for a recommendation.

**6) Prepare and certify to the chief of legislative body a zoning ordinance and map.**

The chief legislative body of the county is empowered by Tennessee Code Annotated § 13-7-101 to adopt and enforce county zoning. As in municipalities, the planning commission must first prepare and certify the zoning plan, including text and maps, to the legislative body. Such legislative body can make no change in the zoning plan without first submitting the change to the planning commission for a recommendation.

## **7) Review and make recommendations for any amendment to the zoning ordinance or map.**

The chief legislative body is authorized to amend the text or map by Section 13-7-105, and the planning commission must first review the amendment and make a recommendation thereon. Before the amendment can be adopted, a complete summary of it must be published in a newspaper of general circulation and shall include a statement that a complete copy is available and where such copy can be obtained. If the amendment is a rezoning of property, a description of the property must also be included in the statement.

All of the comments made under the previous municipal section apply as well to this section. An additional comment may be justified regarding publication in a newspaper. In 1954, a lawsuit was adjudicated the result of which was that an amendment need not be published in full if the official public notice of the hearing sets out substantially the time and place of the hearing, a description of the property to be rezoned, and the petitioner for rezoning. *Clapp v. Knox County* (1954) 197 Tennessee 422, 273 S. W. 2<sup>nd</sup>. 694.

## Other Issues

### Disclosure

In 2012 the legislature, through Public Chapter 1023, amended Tennessee Code Annotated § 8-50-501 to require that members of municipal and regional planning commissions file disclosure statements of conflicts of interests with the Tennessee Bureau of Ethics Campaign Finance. After the initial filing, the commissioners must either file an amended statement or notify the Bureau in writing that no change has occurred that requires an amendment by January 31 of each year.

In addition to the above requirement, planning commissioners are also covered by Tennessee Code Annotated § 12-4-101, which deals with conflicts of interest. This section describes in some detail the terms “directly interested”, “indirectly interested”, and “abstaining from voting.”

While conflicts may be difficult to determine, any member of a planning commission who feels that some conflict may exist concerning any subject being discussed by the commission should inform the chair of the potential or real conflict and abstain from voting on the matter.

### Tennessee Public Meetings Act

Known as the “Sunshine Law”, the Tennessee Public Meetings Act, Tennessee Code Annotated § 8-44-101 through 111, requires that all meetings of any governing body are public meetings and open to the public at all times. By definition in Section 102, planning commissions are covered by the law and must comply with the public meetings act. This means that all meetings of a planning commission are open to the general public, that adequate notice of such meetings must be given, and that minutes of the meetings must be taken and made available for public review.<sup>1</sup>

### Ex Parte Contact

Black’s Law Dictionary defines ex parte as meaning “on one side only”, by or for one party; done for, in behalf of, or on the application of one party only. Simply stated, a contact is ex parte if all parties involved are not properly notified of the contact.

When faced with dealing with an ex parte contact, members of a planning commission should:

- Refuse to be obligated to a particular side of any issue prior to a formal meeting of the commission
- Insist that any and all information offered to an individual planning commissioner be withdrawn or presented to the whole commission
- On-site reviews of a proposed project should be taken by the full commission or by a committee of commissioners; not by individuals
- Written information concerning an upcoming action of the commission should be made available to all commission members.<sup>2</sup>

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<sup>1</sup> Tennessee Department of Economic and Community Development, Local Planning Assistance Office, *Tennessee Planning Commissioner Handbook*, 2003, page 55.

<sup>2</sup> Ibid, page 57.

## Due Process

Due process protections are based in the U.S. Constitution in the 5<sup>th</sup> and 14<sup>th</sup> amendments.

“...nor be deprived of life, liberty, or property, without due process of law...”

*The Constitution of the United States of America  
Amendment V*

“...nor shall any state deprive any person of life, liberty, or property, without due process of law...”

*The Constitution of the United States of America  
Amendment IV*

Due process in each particular situation means an exercise of the powers of government with adequate safeguards of the rights of individuals. The essential elements of due process are notice and the opportunity to be heard. The courts have noted time and again that fairness, not wisdom, is the key element in decision-making by local governments.

To ensure due process, planning commissions must take the following steps:

- Provide adequate notice of any public hearing. The notice should be easy to read and understand and should be placed so that any interested party will see them. Adequate space and a convenient time for any public hearing should be provided. All interested parties must have the opportunity to be heard.
- Provide staff reports and other information gathered by the planning commission to the public well in advance of the meeting. Persons interested in a subject being considered by the commission should have an opportunity to see, hear, and examine all of the statements and evidence to be presented at the meeting. This includes any staff reports, plans, studies, pictures, drawings and surveys.



- Provide findings of fact to support the commission's decision. Minutes and other written material should be sent to the legislative body explaining the reasoning behind the planning commission's actions on issues going before that body.
- Avoid the appearance of impropriety. The commission's decisions must be fair, impartial, and objective, unbiased by even the appearance of having been privately influenced.<sup>3</sup>

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<sup>3</sup> Ibid, page 58.

## Chart I

### Powers of a Municipal Planning Commission

- Prepare and adopt an official general plan. (TCA 13-4-201).
- Make advisory reports and recommendations to all public officials and agencies regarding the plan and development of the area. (TCA 13-4-103).
- Have advance notification of the location and extent of the construction or authorization of any public street, building, park, open space, or utility, whether publicly or privately owned, for the purpose of commission review and approval. (TCA 13-4-104).
- Regulate the development of land through subdivision regulations and site plan review. (TCA 13-4-302).
- Prepare and recommend to the chief legislative body a zoning ordinance and map. (TCA 13-7-202).
- Review and make recommendations for any amendment to the zoning ordinance and map. (TCA 13-7-204).

## Chart II

### Powers of a Regional Planning Commission

- Promote the mutual cooperation of municipal planning commissions within the region, coordinate the plans of the municipalities with the regional plan, and confer with and advise municipal and county legislative bodies and officials to promote the coordinated and adjusted development of the region. (TCA 13-3-104).
- Advise county and municipal legislative bodies in the formulation of public improvement programs and the financing thereof. (TCA 13-3-104).
- Prepare and adopt a general regional plan for physical development of the region. (TCA 13-3-301).
- Regulate the development of land through subdivision regulations and site plan review. (TCA 13-3-403)
- Review and approve the design, opening, grading, paving, or lighting of any road or any utilities to be authorized or placed in any such road prior to any public officials or agency's action. (TCA 13-3-406).
- Prepare and certify to the chief legislative body a zoning ordinance and map. (TCA 13-7-102).
- Review and make recommendations for any amendment to the zoning ordinance and map. (TCA 13-7-105).