

GILBERT & FOX

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Charles W. Swanson, Esq.
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Re: Kasey Swanson, Bart Brady, David S. Hamilton, Esq.; John Marshall, Bob McCullough

Charles:

Please be advised that the persons listed above own real property within the city limits of Knoxville. For various reasons, they oppose the current Rascals Knoxville initiative. They contacted with me about their concerns and the impact that Rascals Knoxville would have on them. At least one expressed concern, inter alia, over the permitted use of group homes in traditionally residential residential zones with the exception of the Segments B1/B2 areas. Some expressed concern over changes to the zoning of their business realty, which would impact the future sale value of their land.

Regarding the individuals who are concerned about their business property, they are currently zoned C-4, and under Rascals Knoxville would be rezoned to I-MU. The consequence of this rezoning is that their current, permitted use would become a nonconforming use. These individuals have sought to communicate their concerns to the city, mostly to no avail. Those who have had some communication have been provided a grandfathering for their current use. But, the value of their real property in the market nonetheless will be affected, because the rezoning on the properties are conducive to the currently permitted use and will have diminished value if a potential future buyer, under the potential buyer can continue with the current use. The city has given no assurances to these individuals that the grandfathering of their current permitted use would be passed on to a potential future buyer.

During my discussions with these individuals, I advised them of possible remedies. It is my opinion that the Knoxville Mayor and City Council will be acting ultra vires if the City Council continues with the adoption of the Rascals Knoxville ordinance, and that the ordinance would be declared void. Consequently, a remedy that they can undertake upon adoption of Rascals is a discretionary action, asking that the ordinance be declared void.

The basis for my opinion arises out of the procedure for amendment of the Open Year Term requirement, detailed in Article VII, §801 of the City of Knoxville Charter. As you know, the Charter requires the Mayor to direct the planning commission to develop Effort, Flow, and use