

GILBERT & FOX

An association, not a partnership

Roger L. Gilbert
W. Andrew Fox

TWO CENTRE SQUARE - SUITE 540
625 S. GAY STREET
KNOXVILLE, TENNESSEE 37902
TELEPHONE (865) 525-8800
FACSIMILE (865) 525-8200

Melodyc R. Jester
of Counsel

July 27, 2019

Charles W. Swanson, Esq.
Law Director, City of Knoxville
400 Main Street, Ste. 699
Knoxville, TN 37902
Fax: 865-215-2643

Re: Kenny Boatman; Bart Brody; David B. Hamilton, Esq.; John Marshall, Bob McCollough
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 Recode Knoxville initiative. They consulted with me about their situations and the impact that Recode Knoxville would have on them. At least one expressed concern, inter alia, over the permitted use of group homes in traditionally restricted residential zones with the exception of the Sequoyah Hills area. 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-6, and under Recode 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 promised a grandfathering for their current use. But, the value of their real property in the market nonetheless will be affected, because the structures on the properties are conducive to the currently permitted use and will have diminished value to a potential future buyer, unless 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 Recode Knoxville ordinance, and thus the ordinance would be declared void. Consequently, a remedy that they can undertake upon adoption of Recode is a declaratory action, asking that the ordinance be declared void.

The basis for my opinion arises out of the procedure for amendment of the One Year Plan requirement, detailed in Article VIII, §801 of the City of Knoxville Charter. As you know, the Charter requires the Mayor to direct the planning commission to develop fifteen, five, and one