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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

year comprehensive development plans, which in turn are to be submitted to the City Council for approval. Upon the council's adoption of the one year plan, the plan can be changed only as provided by §801(B)(2).

I reviewed Ordinance No. O-54-2019, approved on second reading on April 23, 2019, which is the One Year Plan for 2019. The document entitled, "2019 One Year Plan," prepared by the planning commission and submitted to the City Council, states on page 151 of the April 23, 2019 agenda: "a major purpose of the One Year Plan is defining the city's land use pattern for a 12 month period following the plan's adoption." This document also states on page 141, "[t]he One Year Plan is the basis for all zoning within the city. Future zoning changes must conform to the plan. In addition, the plan may propose amendments to the zoning ordinance text and zoning map to bring them into conformance." The statements by the planning commission, which are repeated in essence by the ordinance itself, are consistent with the mandate placed upon the Mayor and City Council by §801(A)-(B)(1).

Ordinance No. O-54-2019 and its attachments mention nothing about the change in land use regulations proposed by Recode Knoxville, although the One Year Plan is intended to control all land use regulations for 12 months following adoption. The Recode Knoxville ordinance is an amendment to the 2019 One Year Plan, as it seeks to change – substantially – the land use regulations for Knoxville in 2019.

As stated above, the city can amend the One Year Plan, but any amendments must first be submitted to the planning commission, which then must act upon the amendments. The word "Amendments" in §801(B)(2) is the passive voice subject of the verb "may be made". The word "thereon" is defined as "on that" or "on the thing that has been mentioned." The "thing that has been mentioned" in subparagraph (B)(2) is the word "Amendments;" amendments are what the sentence is discussing. Therefore the phrase, "following the submission to and action thereon by the metropolitan planning commission," is describing the condition under which amendments can be considered by the City Council, after the approval of the One Year Plan. The planning commission must share this conclusion, otherwise it would not have taken up consideration of Recode Knoxville draft update on June 13, 2019, and recommended approval.

Because the last time the planning commission considered Recode Knoxville was on June 13, 2019, none of the changes made to the proposed Recode Knoxville ordinance at the July 16, 2019 City Council meeting have been submitted to the planning commission for "action thereon." The City Council cannot adopt the Recode Knoxville ordinance on July 30, 2019, without violating §801(B)(2) of the Charter. "The provisions of the charter are mandatory, and must be obeyed by the city and its agents . . ." Barnes v. Ingram, 397 S.W.2d 821, 825 (1965).

I think the Mayor and the City Council have additional problems, because there have been no fifteen-year or five-year comprehensive development plans prepared and maintained, at least in 2019 based upon my research. The planning commission lists on page 137 and 138 of the April 23 agenda the plans upon which the planning commission relied in developing the 2019 One Year Plan. Some of the sector plans are approximately 12 years old. Furthermore, a sector plan is by definition not comprehensive. The charter contemplates that a one year plan be the implementation of the vision established in the five-year comprehensive development plan, as related in §801(A). If there is no five-year comprehensive development plan, how can there be a lawful one year plan?

Regardless, if the Mayor and City Council proceed with the Recode Knoxville ordinance consideration on July 30, 2019, and it is adopted, I expect one or more of the individuals I have identified to file a suit in Knox County Chancery Court, seeking a declaration that the Mayor and the City Council acted ultra vires with respect to adoption of the ordinance, and that Recode Knoxville is void.

With kind regards,



W. Andrew Fox

cc: Kenny Boatman; Bart Brody; David B. Hamilton, Esq.; John Marshall, Bob McCollough