

5-SE-16-E-Cor-Allen

REC

AUG 10 2016

Planning Commission

August 8, 2016

Knoxville-Knox County Metropolitan Planning Commission
City-County Building, Suite 403
400 Main Street
Knoxville, Tennessee 37902

Dear Members of the Metropolitan Planning Commission,

I've written each of you individually, but I also wanted to share my thoughts with the group in the hopes that this letter can be included as part of the Meeting Agenda Package.

I'm writing regarding Bentley Estates, the proposed development off of Broome Road that will be presented at this week's MPC meeting. As a resident of Cavet Station neighborhood, I have many concerns about the developer's proposal. While I completely understand that it's inevitable that the property will be developed, and I'm not opposed to any development, I believe the current proposal is inappropriate and potentially dangerous.

It is my understanding that AKP Properties wants to build 30 homes in the 11.67-acre plot. There are two major issues with this plan, in my opinion.

- (1) A Historic Cemetery: To build that many homes under the current plan would require developing the portion of the property that borders the Mars Hill cemetery with either homes or a road. Due to the fact that the actual boundaries of this incredibly historic cemetery (which dates back to the 1700s) have never been set, all indications point to the fact that there are likely graves well outside the current borders. A formal independent ground-penetrating radar study of the area must be conducted of the entire plot of land before construction begins to be 100% sure that there will be no digging over gravesites.
- (2) Safety: I understand that under the current plan there would be an increase of 353 average daily vehicle trips along Broome Road. I don't know if you've ever driven along Broome Road, but it's very narrow and very dangerous. My family has nicknamed the sharp turn near Gallaher View "Dead Man's Curve." If that many new homes are added along Broome Road, I believe it absolutely should be a requirement to widen the road prior to completion of the development, a change that has been long needed, but which will become a necessity with the increased traffic. A further safety concern is the location of the proposed entrance to the new subdivision, which is currently plotted to be just north of the top of the hill on Broome Road, a location that will be incredibly dangerous to those pulling out into traffic from the subdivision. Further, children making their way to the bus stop will have to cross this already dangerous road at the top of a hill, where drivers won't have time to see them ahead of time to slow down and stop.

I just ask that you please take these points into consideration as you review the Bentley Estates plan that will be presented at your upcoming meeting. I'd be happy to discuss further if you'd like to arrange a meeting or phone call.

Sincerely,



Deborah Allen
(865) 406-9036

5-SE-16-C-cor-Angel

August 6, 2016

MPC Commissioner

RE: MPC File No. 5-SE-16-C

Bentley Fields Estates

August 11, 2016 Hearing Agenda #8



Dear Commissioners

I am writing this letter today to express my concerns regarding the Bentley Fields Estates project connecting to Broome Road in West Hills.

As a resident of Cavett Station, I am extremely concerned about the safety aspects of Broome Road. As you may be aware, Broome Rd is a very narrow road with an extremely dangerous curve and blind hills. This project will enter near the top of one such blind hill. It has been explained that a deceleration lane will be added on the northbound lane at the entrance of the project. This, however will not address safety issues for southbound school buses allowing children to cross the road a short distance from the blind hill. It also seems to be a short distance from the blind hill for residents pulling in and out of the Bentley Fields neighborhood.

This project will add some 300 additional trips on Broome Road daily. We, in the West Hills area have experienced near misses on this narrow street, especially on the curve. It would be my hope that consideration for corrections to this road would take place before this additional traffic as well as two years of construction vehicles contribute to the risks of traveling this road.

Another area of concern regarding this project is the historical aspect of the area where this project is planned. This area is a historical Revolutionary War site with pertinent history to the city of Knoxville. The Cavett Station block house was in this area, which has already been

lost. The Mars Hill cemetery is adjacent to the project, dating back to 1792. The grave sites of early Knoxville pioneers as well as the mass grave of the Alexander Covell family who were massacred in a battle with Indian tribes lead by Chief Doublehead. While there is a designated area for the cemetery, there has been discussion that there may be graves beyond these indicated boundaries. It has been reported that, through the years, headstones and markers have been removed and discarded. It is my hope that consideration for a planned, scientific study will be conducted to be absolutely sure that every grave is preserved in this sacred historical cemetery. It is so important to preserve our history and respect the resting place of all.

As a homeowner adjacent to the project, I have concerns regarding how will be affected by the changing landscape of the area. I have been told by the engineer of the project that existing lots will not be affected. The project will be higher than our existing Cabot station properties and I would like a written guarantee that run off and drainage will not affect our lots.

As the landscape changes there are many rodents, snakes, possums, raccoons, coyotes and Hawks in the area. Can we also be assured that we will not be overrun by these animals on our properties.

Sincerely yours;
Rick Angel
8303 Alexander Covell Dr.
Knoxville TN 37909
Chattlor@aol.com

5-SE-16-C - cor - Horner

Ryan and Becky Horner
8324 Chadwick Drive
Knoxville, Tennessee 37909

August 17, 2016

Mr. Anders, Ms. Bustin, Mr. Clancy, Ms. Cole, Mr. Cravens,
Ms. Eason, Mr. Goodwin, Mr. Johnson, Rev. Lomax,
Ms. Longmire, Mr. Phillips, Mr. Roth, Mr. Smith,
Mr. Thomas, and Ms. Tochet

Metropolitan Planning Commission
400 Main Street Suite 403
Knoxville, Tennessee 37902

Re: Proposed Bentley Fields Subdivision on MPC Agenda
for August 11, 2016

Dear Commissioners,

My wife and I bought our home in West Hills during the housing recession and felt like we had won the lottery. We wanted a bit of privacy but also access to major roads, shopping and a central location to our places of work. West Hills is an established neighborhood with

large trees and larger lots, which is what we were^{II} seeking. We have a relatively private backyard that adjoins a large parcel that is mostly wooded. Even though we moved into the city and are probably one mile from the interstate, the topography lends itself to a quiet and relaxed atmosphere. We assume the responsibility of paying city taxes and certainly enjoy the benefit of services like fire protection, trash/recycling collection and brush pickup.

Unfortunately, the proposed Bentley Fields development will not fit the characteristics of our neighborhood. Most of the homes in West Hills have at least a half-acre lot size and some decent set back from the road. I don't think thirty houses on an eleven acre tract fit with West Hills to the north or Carver Station to the south. It looks as though there will be three houses that back up to my lot alone. If you as Commissioners of the MPC allow this development to start as is, there is no one to say what type of house is to be built. The developer may tell us what type of house the contractors may build; however, once approved, how can we be sure what will actually transpire? This over development will be a

detriment to the resale value of existing homes ^{III}
like ours. This over development behind my house
significantly alters the appeal of West Hills and our
street in particular.

A greater issue is the safety of driving on Broome Road,
which leaves Gallaher View, making an immediate sharp 90°
left with a steep grade that is narrow with deep
ditches on both sides. The parcel of the proposed
development is on the right at the top of the hill,
which is already dangerous enough to drive on as it is,
without adding thirty more families with probably two
vehicles each to use it. I have a son who will be
driving in six months, and it concerns my wife and me
for his safety as a new driver. I am told the city has
Broome down pretty far on its list of priorities but
recognizes the safety issue that exists there.

Finally, the proposed development slights the history
of the Cavet Station massacre and the old cemetery
that is located there. Perhaps a monument could be
built and the history preserved. This parcel might be
better utilized as green space for families, as there
is plenty of development in the city of Knoxville but

less and less green space.

IV

In closing I am not against progress or development. I am certainly glad the developer is not proposing an apartment complex to be built behind us. Nevertheless, I would feel much better if there were fewer houses with larger lots keeping more in line with the two subdivisions that bound the subject property. I would prefer something be done to consider the safety issues on Broome Road, and the history of the Cavet Station massacre to be considered by you before you allow thirty lots to be put on this last piece of urban wilderness in West Hills.

Sincerely,

Ryan Horner and Becky Horner

Ryan Horner and Becky Horner

Jay M. Lewallen



9 Chester Downs • San Antonio, TX 78257 • 210/698-1129 • jlewa@satx.rr.com

August 4, 2016

Knoxville-Knox County Metropolitan Planning Commission
City-County Building, Suite 403
400 Main Street
Knoxville, TN 37902

To the MPC Staff:

It has come to my attention that the land near Cavett Cemetery (Mars Hill Cemetery) may be threatened by further development in the area and that the Commission is exploring appropriate ways to insure no unmarked graves are covered or destroyed.

The purpose of my letter is to strongly support your efforts to consider the historical meaning of this cemetery, as one of the most significant remaining icons of the American Revolution era. This site is representative of many others in eastern TN and one that was instrumental in the early development of Knoxville, as a growing and thriving city. Moreover, the cemetery has family significance to many in the area AND to those early settlers moving on to Arkansas, Louisiana and Texas.

It has great meaning to my family here in Texas, as Alexander Cavett was my 6th great granduncle and Moses Alexander, who occupied the 640-acre tract after the massacre, was my 6th great grandfather. There is strong evidence that both are buried there. One of the highlights of my family's life was the discovery of this cemetery and our trip to Knoxville just to stand in this sacred place of our ancestors.

It is our most humble request that you, at least, require the developer to conduct a ground-penetrating radar study of the surrounding area to make sure that these early Americans (and possibly slaves and Indians) are not forgotten in our rush to develop. This kind of a radar study is a well-developed technology, well within the capabilities of several institutions nearby – certainly the University of Tennessee.

After six generations, thousands of citizens in our country have lineage connection to Alexander Cavett and his family. In behalf of these Americans, I plead for your most diligent efforts to consider the legacy of these families.

A handwritten signature in black ink, appearing to read "Jay M. Lewallen".

Jay M. Lewallen

FRANTZ, MCCONNELL & SEYMOUR, LLP
MEMORANDUM

TO: Arthur Seymour
FROM: McKeehanon Rue
SUBJECT: Proposed Subdivision - Broome Road
FILE NUMBER: 1393.0008801
DATE: June 16, 2016
RE: Discovery and Removal of Human Remains

Discovery of human remains

Tenn. Code Ann. § 11-6-107 states as follows:

(b) Where any sites or artifacts may be found or discovered on property owned or controlled by the state or by any county or municipality, the agency, bureau, commission, governmental subdivision, or county or municipality having control over or owning such property and which is preparing to initiate construction or other earth-moving activities upon such property, or is currently performing work of this type upon such property, the public body having custody of the land shall comply with subsection (d) and is directed to urge supervisors of such works to notify the division of the discovery and location of such sites or artifacts immediately, and to cooperate to the fullest extent practicable with the division, either to prevent the destruction of such sites and artifacts or to allow the division to obtain maximum information and artifacts before these locations are disturbed or destroyed.

In this situation it appears that the preservation of the land and human remains is most likely going to be the situation. Since it is believed that there are unmarked human remains present the property owner must comply with Tenn. Code Ann § 11-6-107 (d) which states as follows:

(d) (1) Any person who encounters or accidentally disturbs or disinters human remains on either publicly or privately owned land, except during excavations authorized under this chapter, shall:(A) Immediately cease disturbing the ground in the area of the human remains; and
(B) Notify either the coroner or the medical examiner, and a local law enforcement agency.(2) Either the coroner or the medical examiner shall, within five (5) working

days, determine whether the site merits further investigation within the scope of such official's duties.

(3) If the coroner or the medical examiner, and law enforcement personnel, have no forensic or criminal concerns with regard to the site, then the coroner or the medical examiner shall notify the department.

(4) Human remains and burial objects reported to the division shall be treated as provided in §§ 11-6-104 and 11-6-119, and/or title 46, chapter 4, if applicable.

(5) A person who violates subdivision (d)(1)(A) or (d)(1)(B) commits a Class A misdemeanor;

(6) This section does not apply to:(A) Normal farming activity, including, but not limited to, plowing, disking, harvesting and grazing; provided, that if human remains are discovered or disturbed, a report should be made to the officials specified in subdivision (d)(1)(B); or

(B) Surface collecting.

(7) Nothing in this chapter shall be construed to grant a right of access or occupation to the public without the landowner's permission.

Therefore upon discovery it is best protocol to ensure no criminal punishment to notify the coroner or the medical examiner. The medical examiner or coroner are required to visit the site within 5 working days. Once they determine that there is no need for further investigation then there they need to notify the Department of Environment and Conservation. State ex rel. Comm'r of Transp. v. Eagle, 63 S.W.3d 734, 768 (Tenn. Ct. App. 2001). Notification of the Division of Archeology is required upon the discovery human remains presumed to be Native American. Id.

Protection of Gravesite within a deed

Tenn. Code Ann. 46-8-103(b)(1) states that real property that has a deed that reflects the presence of human remains on the property is protected from disturbance or development as follows.

1) A gravesite may not be disturbed in the area of a ten foot (10) surrounding of the perimeter of the gravesite; and

2) A crypt may not be disturbed in the area of five feet (5') surrounding the perimeter of the crypt.

(c) The owner of real property that has a deed that reflects the presence of human remains on the property has the option of transferring the remains, at the owner's expense, pursuant to the procedure for termination of use as a cemetery in chapter 4 of this title. However, prior to filing any action in chancery court to transfer the remains located in a gravesite or crypt, the proponent of the action shall first publish a notice in a newspaper of general circulation within the county in which the gravesite or crypt is located. The notice shall include the name of the proponent of the action, the location of the property where the remains are located and any name that can be discerned from the site of any person there interred. Upon complete transfer of all human remains from the property that are properly described on the deed, the buyer has the right to the use of the area previously containing the remains as is consistent for the remainder of the property.

Requirements and process of proper removal

To adhere to Tenn. Code Ann. 46-8-103 to is required that the following criteria and procedures take place to remove human remains and transfer them to a new location.

Human remains can be removed from their final resting place for 3 reasons. 1) The burial ground is abandoned or 2) The burial ground is in a neglected or abandoned condition or 3) The existence of any conditions or activities about or near the burial ground render the further use of the burial ground inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes. Tenn. Code Ann. § 46-4-101.

When removing a body from a burial ground the suit should be brought in the Chancery Court of the county in which the human remains are located. Tenn. Code Ann. § 46-4-103. Notification of the proceedings should be given to an “interested person or persons” as to the human remains.

Tenn. Code Ann. § 46-4-102 states as follows:

As used in this chapter, unless the context otherwise requires, "interested persons" means any and all persons who have any right or easement or other right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, the nearest relative or relatives by consanguinity of any one (1) or more deceased persons whose remains are buried in any burial ground.

Therefore any person with an easement to the property would be subject to notification, as well as the relatives of the people whose remains are being moved. In *Perry v. Unknown Parties* after records investigation the relatives of the people buried could not be identified and it was appropriate to name the defendants as “Unknown Parties having any interest in the property known as the Mathis Cemetery located on Lot 10 Oak Woods, Medina, Tennessee, including but not limited to the heirs of the seven known person buried in the Cemetery” *Perry v. Unknown Parties*, 2010 Tenn. App. LEXIS 797 (Tenn. Ct. App. Dec. 28, 2010). The notification to the “Unknown Defendants” was appropriate through the publication setforth in Tenn. Code Ann. §§ 21-1-203 -204.

Tenn. Code Ann. 46-4-104 states as follows:

Such removal and reinterment, and other relief described in § 46-4-103, including partition or sale for partition if prayed for and if the court finds the conditions for partition exist as provided in § 46-4-103, shall be granted, authorized, decreed and ordered by the court upon the court finding, upon the hearing of the cause upon the entire record, including the pleadings and proof, that any one (1) or more of the reasons specified in § 46-4-101 exist, and that, due to the same, the burial ground is unsuitable for use as a burial ground and as a resting place for the dead whose remains are buried therein, or that the further use thereof for those purposes is inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes; but the removal

and reinterment and such other relief shall be granted, authorized, ordered and decreed only upon it being shown to the satisfaction of the court that definite arrangements have been made, or before the removal will be made, for reinterment of all of the remains in a place found by the court to be suitable for reinterment; that for that purpose there have been obtained, or before the removal there will be obtained, either the fee simple title to the place of reinterment or adequate permanent right and easement to use the place of reinterment for reinterment, and adequate permanent right and easement of access to the place of reinterment for visitation; that the removal and reinterment of all the remains will be done with due care and decency, and that suitable memorial or memorials will be erected at the place of reinterment.

Summary

If human remains that are unknown are discovered the coroner or the medical examiner must be notified to view the discovery site. Once they confirm that there is no reason for forensic to be notified they must notify the Department. Human remains cannot be moved unless one of the three conditions under Tenn. Code Ann. § 46-4-101 are met. If it is determined that one of these are met then a suit would need to be filed in Chancery Court to inform the “interested parties.” If the court rules that the human remains can be moved then the expense is paid by the owner of the property and it must be done in a suitable way following the guidelines of Tenn. Code. Ann. § 46-4-104