

Comments on November 8 MPC agenda items, received through November 8

Item 2: 2008SP-025-005 – Park at Ewing Creek SP (Periodic Review)

From: Berenis Machal [mailto:berenismachal@icloud.com]

Sent: Wednesday, November 07, 2018 10:05 PM

To: Planning Commissioners

Subject: REMOVE industrial zoning in 2008SP-025U-03 The Park at Ewing Creek

The SP directly borders the 900 home community of Haynes Manor. Many older and newer residential communities are nearby in every direction. The community doesn't want ANYMORE industrial development! We want to participate in the renewal of the Haynes-Trinity area, and we need homes, shops, grocery stores, not industrial plants!

Please DO NOT allow the grease plant!

Thank you,

Berenis Mullaney

From: Jennifer Hagan-Dier [mailto:jhagandier@gmail.com]

Sent: Wednesday, November 07, 2018 10:28 PM

To: Planning Commissioners

Cc: Haywood, Brenda (Council Member); Hurt, Sharon (Council Member); Winnie Forrester; zdier@hotmail.com

Subject: Comments on Park at Ewing Creek SP 2008SP-025-005

Please see comments in attached document for the Park at Ewing Creek SP review.

I apologize that I cannot make the meeting due to day job work, but my husband Zach Dier will be there and we respectfully request 5 minutes to speak on behalf of the Friends of Whites Creek.

Sincerely,

Jennifer Hagan-Dier & Zach Dier

Friends of Whites Creek

Please see attachment on following page.

Dear Planning Commissioners,

Thank you for your time, dedication and energy to our city, our communities and more importantly, our families. We appreciate you and all you do.

You know as well as anyone that so many things have changed since 2009. Nashville has changed. Communities have changed. The world has changed.

So many things are different, but one thing remains the same - the Planning Commission's role as our "guide to growth and development as Nashville and Davidson County evolves into a more socially, economically and environmentally sustainable community, with a commitment to preservation of important assets, efficient use of public infrastructure, distinctive and diverse neighborhood character, free and open civic life, and choices in housing and transportation."

On behalf of the Friends of Whites Creek and our neighbors, the Haynes-Trinity Neighborhood Coalition, we respectfully request that you review the facts per the standard of review and find the "Park at Ewing Creek SP" (2008SP-025-005) INACTIVE. We also request that you then adopt the Staff's Alternative recommendation that the Council rezone the property as set forth in the staff report.

We also request 5 minutes for Zach Dier to speak on behalf of the Friends of Whites Creek at the Planning Commission Hearing on November 8, 2018 on this matter.

The SP you are currently reviewing was first approved 9 years ago. You all know that the SP is a tool for development. It is meant for "shovel ready" projects. The SP is not and was never meant to be an unlimited right or an everlasting weapon to be wielded by developers against communities. An SP passed in 2009 and reviewed in 2018 must face some serious analysis and consideration.

It is clear from the Commission's Legal Council that the only question before the Planning Commission is whether the SP is ACTIVE or INACTIVE.

A. Planning Commission Standard of Review is Not Deference

The standard of review is also without question:

The Commission determines whether the SP is "inactive" by examining whether development activity has occurred within four years from the date of the initial enactment, subsequent amendment, or re-approval by the Metro Council.

There should be no question that the Commission would make the three findings to find it INACTIVE under Section 17.40.10.I.3.a.:

- i. It has been more than 4 years;
- ii. **There has been no construction on the portion – it cannot be grading or clearing**
 - **The work on the buffer is NOT construction, but even if it was considered construction, it was several years ago. Sign off was over a year ago and sign off by a metro department is NOT construction.**
- iii. No right of way acquisition or off-site improvements have been made

Accordingly, the only way the Commission can find the SP ACTIVE is to find that the AGGREGATE OF ACTIONS taken within the prior 12 months to develop the portion of the SP under review is enough to mean it is active.

Planning staff analysis and recommendation to find the portion of SP under review ACTIVE is based only on Section 17.40.105 I.3.a.

Note that it states that the Commission:

- "may also take into consideration the aggregate of actions, if any, taken within the prior 12 months to develop the portion of the SP under review."

B. There is No Question that Spending Money is Not Enough

First, you don't have to take the aggregate of actions into consideration, but if you do, the first question you must consider is:

**** WHAT DOES IT MEAN "TO DEVELOP"?**

What exactly is this Commission ready to say is considered "development activity"?

The Merriam-Webster dictionary defines "develop" as "to make suitable for commercial or residential purposes."

- Is spending money on services that are necessary to prepare to develop or to initiate development at some point down the road enough "to develop" land or is that simply "to prepare to develop"?
- Is spending money on services an "action"?

The information provided by the developer and relied upon by the Planning Staff review includes mostly expenses to "prepare the site for development" not to actually "develop" the portion of the SP under review. There is no evidence of infrastructure work or construction on the site.

In fact, the Staff Report on page 71 specifically says:

- That the activities that are noted in the past 12 months are "**in anticipation of development**" or as a "requirement of development."

Note that there is no evidence of any infrastructure improvements, construction or anything that could legitimately be counted toward the aggregate of actions.

C. The Commission Must Find SP Inactive to be Consistent with Prior Matters

In the October hearing where the Planning Commission voted to defer this matter, several Commissioners made statements or observations that must be addressed before you make a decision:

1) In light of recent situations and determinations that have been questioned, **it is important that this Commission be CONSISTENT** in analyzing matters before it and making determinations and conclusions,

Response: The Commission is faced here with the same standard of review as necessary to declare a PUD active or inactive and the Commission has consistently found in PUD reviews that spending money to get permits or otherwise PREPARE the land for development is NOT enough to constitute an aggregate of actions necessary to find the PUD active.

In fact, in 2015, this Commission reviewed the Nashville Highlands PUD (Planned Unit Development 73-85-P) under the same standard of review and similar facts and found the PUD to be inactive.

In the Nashville Highlands PUD review the owner/developer indicated that they had:

- (1) Contracted with a civil engineer to conduct engineering studies for the site; and
- (2) Prepared conceptual layout plans and grading plans as well as environmental plans, had them approved, and
- (3) paid for those developments.

This Commission found that there **was no evidence of "any infrastructure or other construction"** on the site within the last 12 months and the activity on the site could not be *counted toward the aggregate of actions*.

The Commission then stated that **there had not been an aggregate of actions that constituted activity**.

The Nashville Highlands PUD was found to be INACTIVE on similar facts under the same standard of review and supports the Commission's determination that this SP be found INACTIVE.

D. The Commission is Not Bound by Staff's Report or Recommendation, but Should Make Its Own Determination Based on Facts

2) This Commission's review of the facts and the SP are not limited to the staff's interpretation of the facts and the Commission is not BOUND by the Staff's recommendation. The Commission does not have to agree with the staff report's recommendation.

Response: Note that the Commission, not the staff, is the body charged with reviewing the SP and making the determination BASED ON THE FACTS and the standard if the SP is active or inactive. The Staff makes a recommendation, but if this Commission were to find that spending money on things that had to be done "to prepare the site for development and to initiate development" is alone enough to be an AGGREGATE OF ACTIONS" then you would never need the other three factors.

Approval of the Staff's analysis that the SP is ACTIVE opens the door for all developers and land owners to hold SPs for years and keep them active regardless of the number of years or changes to the community or plans as long as they spend money on services related to the site and include Metro departments.

E. The SP is INACTIVE and the Staff's Alternative Recommendation to Council Regarding Zoning Should Be Approved

Based on the facts that:

- (1) finding this SP active would be inconsistent with Planning Commission analysis and decisions in the past;**
- (2) it has been over 10 years since the initial SP was approved by Metro Council (not the Planning Commission) and arguably, 8 years since any activity on the site;**
- (3) the facts before this Commission that there has been no CONSTRUCTION on the parcel under review in the past 12 months;**
- (4) and the clear lack of any "aggregate of actions" that constituted development activity on the parcel under review**

The Community respectfully requests that the Commission find this SP INACTIVE and proceed with the Planning Staff's Alternative Recommendation that the Council rezone the property as set forth in the staff report.

Sincerely,

Jennifer Hagan-Dier & Zach Dier
Friends of Whites Creek
681 Brick Church Lane
Whites Creek, TN 37189

From: Bill Farmer [<mailto:bfarmer@fpwlegal.com>]
Sent: Wednesday, November 07, 2018 4:34 PM
To: Kempf, Lucy (Planning)
Cc: Thomas V. White; Roy; Hurt, Sharon (Council Member); Hastings, DeCosta (Council Member)
Subject: RE: 11/8/meeting #2008SP-025-005

All,
My apologies for the typo. The last inspection on the property was done on August 25th, 2017, not 2018.
Bill Farmer

-----Original Message-----
From: Bill Farmer
Sent: Wednesday, November 07, 2018 4:12 PM
To: lucy.kempf@nashville.gov
Cc: Thomas V. White <tvwhite@tevwlawfirm.com>; Roy <roy@daleandassociates.net>; sharon.hurt@nashville.gov; decosta.hastings@nashville.gov
Subject: 11/8/meeting #2008SP-025-005

Director Kempf,

On behalf of the Haynes- Trinity Neighborhood Association, please distribute this email to all members of the Planning Commission for their consideration at the meeting tomorrow, November 8th.

The Haynes-Trinity Neighborhood Association's representatives met with the Planning Commission staff yesterday, November 6, regarding their recommendation that this SP should be declared "Active" thus permitting the grease recycling center to be built.

It is undisputed that the four year period from when the SP was adopted (2008) has long since passed. Thus, we are looking at activity within a year from the date of Councilman Hurt's request for review (August 31, 2018).

The last inspection was done on this property on August 25, 2018, more than a year before the request. This inspection was incorrectly counted as activity within a year to buttress the recommendation. There has been no construction approved within the past year since the filing of the request for review.

There is no indication the "owner" has expended any funds, only the prospective purchaser. Risks taken by prospective purchasers should have no bearing on whether an SP is active. It is not the function of our government to shield real estate investors from risks in purchasing property.

Staff concluded that work on the buffer was related to the development of Section B. However, work in that section has not occurred within the past year. Further, there is no connection to buffering the property in Section C and the permitted use of a landfill in Section B.

Finally, the State (TDEC) takes the position that the grease recycling facility is, in fact, a landfill. Apparently, the owner(s) agreed as they sought and got approval from Metro Council under the "Jackson Law". The SP specifically excludes landfills. Any time or expense spent on this process should be disregarded as the SP has never been amended to include landfills. A letter from Mr. Herbert indicating the grease recycling center is a permitted use under the SP cannot override the clear exception in the SP that landfills are not permitted. Only an amendment to the SP can do that. None has been attempted.

The SP should be declared inactive.

Respectfully submitted,
William H. Farmer
Attorney for the Haynes Trinity Neighborhood Association.

See attachment on following page.

Dale and Associates, Inc.
516 Heather Place
Nashville, Tn 37204

November 8, 2018

Metropolitan Nashville/Davidson County Planning Department
800 Second Avenue South, PO Box 196300
Nashville, TN 37219-6300

Re: The Park at Ewing Creek SP

Dear Planning Commissioners,

Upon and since the purchase of the 92 acres now known as the Park at Ewing Creek SP, the property owners have expended over \$9,000,000 of work and effort. All of this work can not be isolated to one phase or section as it was and is all integral to the entire project. For instance, the Park at Ewing Creek SP within the last 12 months have deed restricted and dedicated over \$1,200,000 worth of property that can not be recovered that was placed as a 300 foot wide buffer for the benefit of the community. This buffer allowed a higher use on the remainder of the Park at Ewing Creek SP that has been requested to be deemed inactive by the very neighbors that agreed to the dedication of the buffer and the uses presently allowed today.

Within the last 12 months a portion of the Park At Ewing Creek was sold to UPS for approximately \$5,000,000 leaving the current property owners \$4,000,000 in debt but in addition that that debt thousands of hours have been spent by the owners of the property.

Within the last 12 months UPS has almost completed a major transportation hub within The Park of Ewing Creek spending well over \$6,000,000 in construction and with that construction road improvements and utility improvements have been completed to and across portions of the remaining Park at Ewing Creek SP to provide service to what remains. Those improvements are clearly activities by both the current owners of the Park At Ewing Creek SP and agents acting on behalf of UPS and said owners to the benefit of what remains. In addition to the roadway and utility work, hundreds of trees were planted in the dedicated buffer to the sole benefit of the adjacent community and integral to the integrity of the remaining SP all at estimated cost of over \$330,000.00

Within the last year major sewer renovation has occurred within the remaining portion of the SP through permission of the owners as evidence of additional levels of activity exceeding \$500,000.

Within the last year the entire property has been surveyed as required by the owners of the remainder of the Park at Ewing Creek. The cost of this work paid for and completed by the

current owner. Per the contract to sell the remaining portion it was required that the owner and the purchaser work in concert to complete engineering, surveys, site plans, and legal work to obtain approvals for the sale. The approximate costs to achieve and complete this work over the last 8 months is approximately \$240,000 alone.

During the last 12 months the property owners have actively engaged the community in an effort to provide benefits and partnerships for this remaining portion of the Park At Ewing Creek. This effort has included extensively preparing for and conducting at least 10 community meetings hiring the expertise of Engineers, Planners, Community Organizers, and Attorneys with many hours of follow up, all at cost to the owners of the property exceeding \$80,000. These efforts were integral to the remaining Park at Ewing Creek regardless of any future use.

For the benefit of the community a meeting was held last Saturday with monetary partnerships committed by the owners to in excess of \$200,000 that are integral to the remaining portion of the Park at Ewing Creek.

Finally, the owners of the property have themselves expended many thousands of hours over 10 or more years since the purchase of the property, with the majority of that time spent over the last 12 months. It is estimated that the owners have spent approximately 1400 hours in the last 12 months in the efforts to continue to improve and invest in the remaining portions of the Park at Ewing Creek SP.

This level expense (in excess of \$2,300,000 in the last 12 months), tremendous hours of efforts, and other activity, greatly exceed what should be normally expected to insure the Planning Commission that the remaining portion of the SP is active. The fact that the Planning Commission Staff, the Zoning Administrator, and the Director of Codes have reviewed and all concurred that the remaining portions of The Park at Ewing Creek SP are indeed active, should additionally relieve the Planning Commission to find this portion of The Park at Ewing Creek to be active.

Regards,



11/08/18

Roy M. Dale, P.E.

Item 4: 2018SP-050-001 – 6280 New Hope Road SP

Please see the attachment. It includes many pictures... a picture is worth a thousand words.

Thank You.

Vickie

*As a reminder to myself: There is so much good in the worst of us, and so much bad in the best of us, that it ill behooves any of us to find fault with the rest of us.
~ James Truslow Adams*

Please see attachment on following page.

Dear Commissioners,

Thank you so much to the commissioner who drove the area before the hearing in September.

I am contacting you to ask you to re-open discussion on this project. I have two significant concerns regarding this development.

First, this development is supposedly compared to New Hope Meadows and Cobblestone Landing. The comps were cherry picked and lot size is not comparable in the northern part of the proposed development. To be similar to New Hope Meadows and Cobblestone Landing, the lot size of the northern section of the subdivision would need to average at least 5000 square feet size. The new subdivision will not be similar to surrounding subdivisions, including Chesney Glen, which has been used to justify the 2200 square foot lot size.

Second, the latest traffic study appears to have been conducted when Davidson County schools were in session, but not Wilson County. While the traffic study may show a minimal effect of traffic directly onto N New Hope Road, it does not provide an accurate picture of the significant traffic issues we have in Hermitage. If a picture is worth a thousand words....., here are a few examples of my commute in Hermitage traveling from New Hope Meadows to Metro Center taken since the last planning commission meeting.

On 9-20-18 at 7:19am at the intersection of N New Hope Rd and Central Pike.



Where I saw traffic was back up about 1.25 miles from the intersection of Central Pike and Old Hickory Blvd to New Hope Baptist church.



I then went to Bell Road to cross Percy Priest dam, and was in this traffic at 7:24am at going west on Bell Road before the intersection of Dodson Chapel.



On 9-26-18 I went from N. New Hope Rd to Old Lebanon Dirt Road to Jackson Way where I could see from the intersection near Kroger that traffic was backed up on the entrance ramp to I-40 near Summit all the way to Old Hickory Blvd. I decided to take Central Pike to Lebanon Rd where traffic looked like this picture.



On 10-3-18 at 7:23am, traffic once again on Bell Road at the Dodson Chapel intersection.



10-9-28 at 7:32am at the intersection of Bell Road and Old Hickory Blvd.



10-23-18 7:21am at Central Pike and Valley Grove Dr.



11-7-18 7:24am around New Hope Baptist Church on Central Pike.



11-7-18 at 7:30am on Bell Road near Percy Priest dam.



Please take time to visit our neighborhoods, especially during rush hour, and consider the character, lot size, and traffic before making a final decision.

Thank you for your consideration of Metro residents and not just developers.

Item 14: 2018SP-074-001 – 3049 Earhart SP

From: Angela Goins [mailto:aofabcg@comcast.net]

Sent: Thursday, November 08, 2018 11:14 AM

To: Planning Commissioners

Cc: Hill, Levi (Planning); bofabcg@comcast.net; Glover, Steve (Council Member)

Subject: Case #2018SP-074-001 - 3049 Earhart Rd

We have lived on Earhart Road since 1987 and we are opposed to this zoning change. We have received no communication from our council person nor the applicant regarding this matter. Our opposition is based on the following:

1. Environmental - reduction of the Interstate 40 noise barrier provided by existing vegetation/trees (it's already loud during the winter months when the trees lose their leaves), as well as additional water runoff during storms. We already have too much light due to the Providence development in Wilson County and by adding billboards on this property will decrease the natural lighting we currently enjoy; and
2. Spot Zoning & Traffic - there are only residential homes on Earhart Road, so a commercial warehouse would be an eyesore, cause an increase in noise levels in traffic due to tractor trailers and large trucks associated with warehousing in this neighborhood.

To reiterate, we oppose this rezoning and request a community meeting in Hermitage to provide more details to the property owners in this neighborhood.

Sincerely,

William P. Goins, Jr.

Angela Goins

3027 Earhart Road

Hermitage, TN 37076