



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

**Minutes
of the
Metropolitan Planning Commission**

August 27, 2009

4:00 PM

***Metro Southeast at Genesco Park
1417 Murfreesboro Road***

PLANNING COMMISSION:

James McLean, Chairman
Phil Ponder, Vice Chairman
Stewart Clifton
Judy Cummings
Tonya Jones
Hunter Gee
Councilmember Jim Gotto
Andrée LeQuire, representing Mayor Karl Dean

Staff Present:

Rick Bernhardt, Executive Director
Ann Hammond, Asst. Executive Director
Doug Sloan, Legal Counsel
Bob Leeman, Planning Mgr. II
Trish Brooks, Admin. Svcs Officer 3
Craig Owensby, Public Information Officer
Brenda Bernards, Planner III
Brian Sexton, Planner I
Jason Swaggart, Planner II
Anita McCaig, Planner III
Greg Johnson, Planner II
Steve Mishu, Metro Water
Jonathon Honeycutt, Public Works

Commission Members Absent:

Victor Tyler
Derrick Dalton

Mission Statement: The Planning Commission guides growth and development as Nashville and Davidson County evolve 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.

I. CALL TO ORDER

The meeting was called to order at 4:05 p.m.

II. ADOPTION OF AGENDA

Ms. Hammond explained that there were three additional items added to both the agenda and consent agenda. They were: Item #9 – Amendment #2 to the contract (L-2008) between the MPC on behalf of the MPO and LandDesign for professional services related to the Tri-County Transportation & Land Use Study; Item #10 – Amendment #1 to the contract (L-2187) between the MPC on behalf of the MPO and the Nashville MTA for funding related to short and long-range transit planning activities; and Item #11 – Grant contract between TDOT and the MPC on behalf of the MPO for Federal Highway Administration State Planning & Research funds for FYs 2010 and 2011.

Mr. Ponder moved and Mr. Gotto seconded the motion, which passed unanimously, to approve the agenda as presented. (7-0)

III. APPROVAL OF AUGUST 13, 2009, MINUTES

Mr. Ponder moved and Mr. Gotto seconded the motion, which passed unanimously, to approve the August 13, 2009, minutes as presented. (7-0)

IV. RECOGNITION OF COUNCILMEMBERS

Councilmember Burch addressed the Commission on Items #6 and #7, 2009Z-015TX-001 and 2009Z-033TX-001. He gave a brief explanation on the origin of his text amendment (Item #6) and his intent to clear up the ambiguity contained in the Metro Zoning Code that referenced a domesticated farm animal. He further explained that Councilmembers Holleman and LaLonde then prepared Item #7 in an attempt to broaden the definitions of domesticated farm animals and to modify the regulations and standards for keeping these animals in Nashville and Davidson County. He then stated that if Item #7, 2009Z-033TX-001 was well received by the residents, he would withdraw 2009Z-015TX-001, prior to third reading at Council.

Mr. Clifton arrived at 4:07 p.m.

Councilmember Jameson addressed the Commission on Items #4 and #5, 2009CP-005-001 and 2009SP-012-001. He mentioned that he was in favor of this development, but due to the lack of support shown by the area's neighborhood association, he may disapprove the request at its third reading in Council. He briefly explained the issues associated with the development as expressed by his constituents at the neighborhood meetings. He spoke of approvals the project received from MDHA, the Urban Design Committee of Rediscover East, and the Planning Department. He then stated that he would be conducting one final survey via US Mail to determine whether the project will move forward, or not, in Council.

Councilmember Holleman addressed the Commission on Items #6 and #7, 2009Z-015TX-001 and 2009Z-033TX-001. He briefly explained that his bill would, in fact, further clarify the definition of domesticated farm animals while at the same time provide regulations and standards for keeping such animals in the County, as well as the number allowed. He spoke of similar cities comparable in size that also allow domesticated farm animals as a way to support urban agriculture. Councilmember Holleman briefly explained several of the restrictions contained in the bill that addressed those issues initially expressed by concerned citizens. As he closed, he asked that the Commission approve both Items #6 and 7, and stated that ultimately, a substitute bill will be presented at Council that will address domesticated farm animals in Nashville/Davidson County.

Councilmember LaLonde spoke in favor of Items #6 and #7, 2009Z-015TX-001 and 2009Z-033TX-001. She offered clarification on any health related issues that may be construed with keeping chickens in the Urban Services District. She explained also that the only food source that would result with keeping chickens would be the eggs that they produce. She spoke of the educational value of raising chickens and requested the Commission's approval.

V. PUBLIC HEARING: ITEMS REQUESTED TO BE DEFERRED OR WITHDRAWN

1. 2009Z-015PR-001 A request to amend a previously approved Council Bill (BL2005-543) to modify a condition restricting access to Moss Road for property located at 5109 Moss Road – deferred to December 10, 2009, at the request of the applicant
2. 2009SP-013-001 A request to change from R10 to SP-MU zoning for property located at 2518 Old Smith Springs Road, east of Ned Shelton Road, to permit a single-family residence, guest house, detached garage and office building – deferred to September 10, 2009, meeting at the request of the applicant.

Mr. Ponder moved and Mr. Clifton seconded the motion, which passed unanimously, to approve the Deferred and Withdrawn items as presented. (8-0)

Ms. Hammond announced, "As information for our audience, if you are not satisfied with a decision made by the Planning Commission today, you may appeal the decision by petitioning for a writ of cert with the Davidson County Chancery or Circuit Court. Your appeal must be filed within 60 days of the date of the entry of the Planning Commission's decision. To ensure that your appeal is filed in a timely manner, and that all procedural requirements have been met, please be advised that you should contact independent legal counsel."

VI. PUBLIC HEARING: CONSENT AGENDA

FINAL PLANS

8. 2009S-072-001 A request for final plat approval to create three lots on property located at 563 Moore Avenue. -Approve w/condition

OTHER BUSINESS

9. Amendment #2 to the contract (L-2008) between the MPC on behalf of the MPO and LandDesign for professional services related to the Tri-County Transportation & Land Use Study. -Approve
10. Amendment #1 to the contract (L-2187) between the MPC on behalf of the MPO and the Nashville MTA for funding related to short and long-range transit planning activities. -Approve
11. Grant contract between TDOT and the MPC on behalf of the MPO for Federal Highway Administration State Planning & Research funds for FYs 2010 and 2011. -Approve

Mr. Ponder moved and Mr. Gee seconded the motion, which passed unanimously, to approve the Consent Agenda as presented. (8-0)

VII. PUBLIC HEARING: PREVIOUSLY DEFERRED ITEMS

1. **2009Z-015PR-001**
Map: 155-00 Parcel: 122
Bellevue Community Plan
Council District 35 – Bo Mitchell
Staff Reviewer: Jason Swaggart

A request to amend a previously approved Council Bill (BL2005-543) to modify a condition restricting access to Moss Road for property located at 5109 Moss Road, approximately 775 feet south of Collins Road (6.03 acres), zoned RM9, requested by Councilmember Bo Mitchell, applicant, Betty French and Mary and James Johnson, owners.

Staff Recommendation: Defer to the December 10, 2009, Planning Commission meeting.

The Metropolitan Planning Commission DEFERRED Zone Change 2009Z-015PR-001 to December 10, 2009, at the request of the applicant. (8-0)

2. **2009SP-013-001**
Universal Robotics
Map: 135-00 Parcel: 334
Antioch/Priest Lake Community Plan
Council District 29 – Vivian Wilhoite
Staff Reviewer: Jason Swaggart

A request to change from R10 to SP-MU zoning for property located at 2518 Old Smith Springs Road, approximately 1,090 feet east of Ned Shelton Road (2.29 acres), to permit a single-family residence, guest house, detached garage and a two story, 7,600 square foot office building, requested by Looney Ricks Kiss Architects, applicant, for Benno Von Hopffgarten, owner.

Staff Recommendation: Disapprove

The Metropolitan Planning Commission DEFERRED Zone Change 2009SP-013-001 to December 10, 2009, at the request of the applicant. (8-0)

3. **78-81-U-13**
Brighton Valley Apartments (T-Mobile Tower Revision)
Map: 135-00 Parcel: 360
Antioch/Priest Lake Community Plan
Council District 29 – Vivian Wilhoite
Staff Reviewer: Carrie Logan

A request for a revision to the preliminary and for final approval for the Brighton Valley Apartments Planned Unit Development located at 500 Brooksboro Terrace, approximately 400 feet east of Murfreesboro Pike, zoned R10 (31.36 acres), to permit the construction of a 150-foot monopine cell tower, requested by Bradley Arant Boult Cummings, LLP, applicant, for MM Family Partnership, II and Overhill Apartment Partners, owners.

Staff Recommendation: Approve with conditions

APPLICANT REQUEST - Revise Preliminary & PUD Final Site Plan

To permit a monopine cell tower within an exiting apartment complex. A request for a revision to the preliminary and for final approval for the Brighton Valley Apartments Planned Unit Development located at 500 Brooksboro Terrace, approximately 400 feet east of Murfreesboro Pike, zoned One and Two-Family Residential (R10) (31.36 acres), to permit the construction of a 150-foot monopine cell tower.

CRITICAL PLANNING GOALS N/A

PLAN DETAILS The proposed tower is located between two existing apartment buildings, near the top of a hill. This area is currently wooded and not used as active open space for the PUD.

This request was deferred by the applicant at the July 24, 2008, Planning Commission meeting. Since that meeting, the applicant has worked with the community on this proposal. At the request of the community, the proposed tower is a monopine, which looks like a large pine tree, instead of a monopole.

Zoning Ordinance requirements Substitute Ordinance No. BL2009-462, as amended, was adopted by Metro Council on August 6, 2009, and became effective on August 13, 2009. This ordinance updated the requirements for a cell tower.

Section 17.16.080.C of the Metro Zoning Ordinance, recently adopted by Metro Council and copied below, details the requirements for a cell tower. A summary of how the application meets the requirements has been inserted in italics.

C. Telephone Service.

1. An applicant for a telephone service tower, including a new microwave or cellular tower, shall provide the codes department with the following information at the time of application for the final site plan or building permit:

a. A schematic site plan, including schematic landscape plan with an elevation view of the type of facility to be placed on the site. The site plan shall depict where the tower is to be located on the site and where additional co-located communication equipment, shelters or vaults can be placed.

The site plan shows the locations for future cabinets, shelters or vault.

b. A statement justifying why co-location is not feasible. Such statement shall include:

(i) Such structure and technical information and other justifications as are necessary to document the reasons why co-location is not a viable option; and

(ii) The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial alternatives.

The applicant submitted an affidavit from a T-Mobile engineer stating that T-Mobile currently has a gap in services in this area and that the construction of this tower will close a significant portion of this gap. Additionally, the affidavit states that there are no existing towers or other structures within one mile of this location that could be utilized as an antenna attachment. T-Mobile did consider co-locating on the TVA towers to the east of the Brighton Valley Apartments, however, the TVA towers are only 60-70 feet and a tower of 150 feet is needed to close the gap in service.

c. Identification of the intended user(s) of the tower.

As stated on the site plan, the intended user is T-Mobile.

d. The applicant shall demonstrate that through location, construction, or camouflage, the proposed facility will have minimum visual impact upon the appearance of adjacent properties and the views and vistas from adjacent residential neighborhoods while remaining viable opportunities for future co-location.

The proposed tower is a monopine, which looks like a large pine tree. Additionally, it is located behind existing trees, which will also minimize the visual impact.

e. Documentation of the number of other users that can be accommodated within the design parameters of the tower as proposed.

The proposed monopine can accommodate three personal communication system carriers and three single antennas.

f. A statement indicating the owner's commitment to allow feasible shared use of the tower within its design capacity for co-location.

The applicant submitted an affidavit from the Interim Area Director of T-Mobile stating T-Mobile's willingness to sublease portions of the monopine for co-location.

2. Landscape Requirements: Along all residential zone districts and districts permitting residential use, screening in the form of Landscape Buffer Yard Standard A shall be applied.

a. The following plants are prohibited from being used in any District, to buffer a telephone service tower, including a new microwave or cellular tower due to problems with hardiness, maintenance, or nuisance: Kudzu Vine, Purple Loosestrife, Japanese Honeysuckle, Shrub Honeysuckle, Autumn Olive, Common Privet, Tree of Heaven, Lespedeza, Garlic Mustard, Paulownia, Multiflora Rose, Siberian Elm, Silver Poplar, Mimosa, Mulberry and Silver Maple.

T-Mobile will screen the site with plantings that satisfy the Landscape Buffer Yard Standard A, as evidenced by the site plan.

b. The maintenance standards set forth in Section 17.24.080 shall be applicable to all required landscaping.

T-Mobile has stated that it will comply with the maintenance standards set forth in Section 17.24.080 of the Zoning Ordinance.

3. Co-location requirements: New telephone service towers of a height of more than one hundred (150) feet and less than two hundred (200) feet must be designed and built to accommodate three (3) or more personal communication system carrier applications and must be made available upon reasonable terms for co-location to at least three (3) additional single antenna applications such as 911 and emergency management communications. Additionally, the site must be sufficiently large enough to accommodate at least three (3) telecommunication equipment shelters, cabinets or additions to existing structures. New telephone service towers of a height of two hundred feet (200) or more must be designed and built to accommodate at least three (3) personal communication system applications and at least three (3) additional single antenna applications plus at least one (1) additional personal communication system application and at least one additional single antenna application for each additional fifty (50) feet of height, to a maximum of six (6) personal service communication system carriers and six (6) single antenna applications, to be made available upon reasonable terms for co-location.

The proposed 150 foot monopine can accommodate three personal communication system carriers and three single antennas. The site will accommodate at least three telecommunication equipment shelters, cabinets or additions to existing structures.

4. Setbacks. Telephone service towers shall be set back from all property lines on which the tower is located by the distance equal to the height of the lowest engineered failure point on the proposed structure or the height of the tower. *As shown on the Site Plan, the nearest property line to the proposed monopine is the right-of-way of Rychen Drive which is 125 feet from the proposed monopine. The applicant also submitted a letter from Stephen Yeo, P.E., with Sabre Towers & Poles stating in the unlikely event of a collapse of the monopine, the monopine would fall within a radius of 120 feet from the base of the monopine.*

5. Height. The maximum height of telephone facilities shall be determined by the height control provisions of Chapter 17.12. Guy wire anchors, if used, shall be set back a minimum of five feet from all property lines. Where a proposed tower cannot comply with maximum height provisions, the applicant shall be required to submit for a special exception permit per Section 17.16.180(B)(1).

The proposed monopine complies with the height control provisions of Section 17.12 of the Metropolitan Code. Guy anchors will not be used.

6. Lights. No lights shall be permitted on the tower except such lighting that is required by state or federal law.

The proposed monopine will not be lighted, unless lighting is required by state or federal law.

7. Notification. Prior to the issuance of a zoning permit, and immediately after receiving an application for a new tower, the zoning administrator shall notify the district councilmember that an application for a new tower has been submitted. Such notification shall only be required when a tower is proposed within a residential district, a district permitting residential uses (excluding the MUI, ORI, CF, CC, and SCR districts), or within 1,000 feet of the zoning boundary line of a residential district or a district permitting residential uses. Within thirty days from the date on which the tower application was filed, the district councilmember may hold a community meeting on the proposed tower. If a meeting is held, the applicant shall attend and provide information about the tower's safety, technical necessity, visual aspects, and alternative tower sites and designs considered.

The affidavit from the Interim Area Director of T-Mobile states that T-Mobile met on two (2) separate occasions with Councilmember Vivian Wilhoite and members of the Edge-O-Lake Neighbors Association to answer questions and address concerns regarding the proposed structure. T-Mobile provided information about the tower's safety, technical necessity, visual aspects, and alternative tower sites and designs considered.

8. Other requirements:

a. Design standards: The proposed site plan and tower design plans meet or exceed all applicable standards, including without limitation those of the Federal Communications Commission (FCC), American National Standards Institute (ANSI), and Institute of Electrical and Electronics Engineers (IEEE) standards for power density levels and structural integrity, American Concrete Institute (ACI), American Standards Testing and Materials Institute (ASTM), the National Electrical Code, and the American Steel Institute.

The applicant has stated that the proposed site plan and tower design plans meets or exceeds all applicable local, state and federal guidelines for cellular communications towers.

b. Final Site Plans: Final Site Plans shall be accompanied by a certification from a qualified structural engineer that the tower has sufficient structural integrity and equipment space to accommodate multiple users [and] shall be required at the time of applying for a building permit.

The affidavit from the Interim Area Director of T-Mobile states that T-Mobile will submit at the time of applying for a building permit a letter from a registered engineer certifying the structural integrity of the tower and the ability for the tower to accommodate additional telecommunications equipment.

c. Landscape plans: Landscape plans that comply with the landscaping requirements of this ordinance shall be required at the time of applying for a building permit or final site plan.

T-Mobile will submit at the time of applying for a building permit landscaping plans that comply with the landscape requirements of Ordinance 2009-462. The Urban Forester has approved the landscape plan included in this request.

d. Removal of Abandoned Antennas and Towers: Any tower permitted under this chapter that is not operated as a personal communication system carrier application for a continuous period of twelve (12) months shall be considered abandoned and the owner of such antenna or tower shall remove same within ninety (90) days of receipt of notice from the department of codes administration. Failure to do so shall be deemed to be a violation of these regulations. The owner of the antenna or tower may appeal the decision of the department of codes administration to the board of zoning appeals, but at such hearing shall be required to show just cause why the antenna or tower should not be considered abandoned and subject to removal.

This provision will not be applicable until the proposed tower is constructed.

e. The telephone service tower must comply with building codes and other federal, state, and local regulations.

The applicant has stated that the proposed site plan and tower design plans meets or exceeds all applicable local, state and federal guidelines for cellular communications towers.

9. Exemptions: Notwithstanding any other provision of this Title to the contrary, the following circumstances shall be permitted by right:

a. Concealed Devices - Communication equipment or any new structure that is integrated as an architectural feature of a structure so that the purpose of the facility for providing wireless services is not readily apparent to a casual observer or which is concealed within a building or structure so that it is architecturally indiscernible may be permitted in all zoning districts subject to building permit procedures and standards. Architecturally indiscernible shall mean that the addition or feature containing the antenna is architecturally harmonious in such aspects as material, height, bulk, scale and design with the building or structure to which it is to be a part.

The purpose of T-Mobile's proposed monopine for providing wireless services is not readily apparent to a casual observer.

b. Additions To Existing Structures In Any Zoning District- An antenna, a dish or transmitter may be placed inside or on an existing structure, including but not limited to telephone service towers, steeples, silos, spires, utility water tanks or towers, athletic field lighting poles, utility poles and similar structures, subject to building permit procedures and standards and provided the addition of the antenna and any supporting structure shall not exceed the height control provisions of Chapter 17.12 without obtaining a special exception permit.

This provision is not applicable to T-Mobile's application.

c. The Councilperson of a district in which the new telephone service tower is proposed may request that applicants for new telephone service towers accommodate tornado sirens and their associated equipment to further the public interest. The applicant will make good faith efforts to comply with this request, provided that if such use shall materially increase the cost of the tower, require utilization of land otherwise reserved for additional wireless carriers on the tower or would otherwise delay permitting of the proposed tower, the applicant shall not be required to consider such request. Because tornado sirens require additional tower space and have varying design qualities, applicants will be allowed a 50% increase in height over the otherwise applicable height limitation and will not be required to utilize camouflaged designs. This section applies to tornado sirens only and is not applicable for other public safety tower uses.

The applicant has stated that "In response to neighborhood opposition to the original design of the proposed tower as a monopole, T-Mobile agreed to modify the design on the proposed tower to use a camouflaged monopine design. Utilizing the proposed monopine almost doubles the cost of the proposed tower. At the request of Councilmember Wilhoite, T-Mobile met with Metro's Office of Emergency Management to explore locating a tornado warning siren on the monopine. T-Mobile was advised by a representative of Metro's Office of Emergency Management that the tall trees around the proposed monopine would significantly reduce the effectiveness of any tornado warning siren placed on the proposed monopine. Increasing the height of the proposed monopine to allow the tornado warning siren to be placed above these tall trees would materially increase the cost of the proposed tower. In order to increase the height of the tower without materially increasing the total cost, T-Mobile would have to utilize a monopole design for the tower instead of the monopine. Therefore T-Mobile has complied with the requirements of Section 17.16.080 C 9(c) by making a good faith efforts to comply with the request to locate a tornado warning siren on the proposed monopine."

PUBLIC WORKS RECOMMENDATION No Exception Taken

STORMWATER RECOMMENDATION No Stormwater Permit Required.

URBAN FORESTER RECOMMENDATION This application meets the current buffer requirements.

STAFF RECOMMENDATION Staff recommends approval with conditions.

CONDITIONS

1. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Stormwater Management division of Water Services.
2. Prior to the issuance of any permits, confirmation of PUD final site plan approval of this proposal shall be forwarded to the Planning Commission by the Traffic Engineering Sections of the Metro Department of Public Works for all improvements within public rights of way.

3. This approval does not include any signs. Signs in planned unit developments must be approved by the Metro Department of Codes Administration except in specific instances when the Metro Council directs the Metro Planning Commission to review such signs.
4. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.
5. Authorization for the issuance of permit applications will not be forwarded to the Department of Codes Administration until four additional copies of the approved plans have been submitted to the Metro Planning Commission.
6. The PUD final site plan as approved by the Planning Commission will be used by the Department of Codes Administration to determine compliance, both in the issuance of permits for construction and field inspection. Significant deviation from these plans may require reapproval by the Planning Commission and/or Metro Council.
7. A corrected copy of the PUD final site plan incorporating the conditions of approval by the Planning Commission shall be provided to the Planning Department prior to the issuance of any permit for this property, and in any event no later than 120 days after the date of conditional approval by the Planning Commission. Failure to submit a corrected copy of the final PUD site plan within 120 days will void the Commission's approval and require resubmission of the plan to the Planning Commission.



MEMORANDUM

TO: RICK BERNHARDT, EXECUTIVE DIRECTOR, PLANNING DEPARTMENT
FROM: TED MORRISSEY, ASSISTANT METROPOLITAN ATTORNEY
SUBJECT: CELL TOWER REGULATION
DATE: APRIL 10, 2009

QUESTION: You asked whether the Planning Commission has the authority to deny a request to build a cell tower.

ANSWER: Yes, the Commission has the authority to deny a request, but any such denial must be supported by substantial and material evidence contained within the written administrative record.

DISCUSSION:

Federal law governs the Commission's review of cell towers. 47 U.S.C.A. § 332(c)(7) regarding limitations on local regulation of cell towers states:

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into

account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by *substantial evidence contained in a written record*.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(47 U.S.C.A. § 332(c)(7). Emphasis added.)

Thus, the federal law makes it clear that any decision by a “local government or instrumentality thereof” to deny a request to place, construct, or modify personal wireless service facilities (*i.e.*, cell tower) shall be in writing and supported by *substantial evidence contained in a written record*.

Mr. Leeman presented and stated that staff is recommending approval with conditions on the request to revise Planned Unit Development 78-81-U-13.

Mr. Jim Murphy, 1600 Division Street, spoke in favor of the proposed development.

Ms. Vicky Tataryn, 2510 Sleepy Hollow Drive, spoke in favor of the proposed development.

Ms. Jan Ray Suk, 2428 Rychen Drive, spoke in opposition to the proposed development.

Mr. Gotto questioned whether the Commission could legally disapprove the requested revision.

Mr. Sloan explained there was no substantial or material evidence that was shown during the Public Hearing that would support a disapproved recommendation.

Mr. Ponder briefly explained his support for the monopine cell tower and stated he was in favor of its approval.

Mr. Ponder moved and Mr. Gotto seconded the motion, which passed unanimously, to approve with conditions the request to revised Planned Unit Development 78-81-U-13. **(8-0)**

Resolution No. RS2009-110

“BE IT RESOLVED by The Metropolitan Planning Commission that 78-81-U-13 is **APPROVED WITH CONDITIONS. (8-0)**”

4. **2009CP-005-001**
16th & Ordway
Map: 083-10 Parcel: 010
East Nashville Community Plan
Council District 6 – Mike Jameson
Staff Reviewer: Anita McCaig

A request to amend the East Nashville Community Plan by changing from Neighborhood General to Neighborhood Center Policy for 0.12 acres located at 1516 Ordway Place, requested by the Metro Planning Department, for Evolve Developers LLC, owner. (See also Proposal No. 2009SP-012-001).

Staff Recommendation: Approve

APPLICANT REQUEST - Amend the Community Plan

Amend the policy to permit a mixed use building. A request to amend the *East Nashville Community Plan: 2006 Update* changing the land use policy from Neighborhood General (NG) to Neighborhood Center (NC) on approximately 0.12 acres fronting Ordway Place and N. 16th Street.

Deferral This item was previously deferred from the July 23, 2009, meeting.

CRITICAL PLANNING GOALS

- Creates Walkable Neighborhoods
- Fosters Distinctive, Attractive

The proposed Neighborhood Center (NC) policy contributes to the East Nashville Community Plan’s Mixed-Use Communities development goals of sustaining and encouraging the diversity of people and housing, as well as supporting well-designed, conveniently located commercial services within walking distance of residential areas. Neighborhood Center areas also provide centers of activity for the surrounding area. In addition, the proposed NC policy encourages mixed-use developments that create attractive places to live, work and recreate, within neighborhoods, adding to sustainable development patterns.

EXISTING POLICY

Neighborhood General (NG) NG is intended to meet a spectrum of housing needs with a variety of housing that is carefully arranged, not randomly located. An accompanying Urban Design or Planned Unit Development overlay district or site plan should accompany proposals in these policy areas, to assure appropriate design and that the type of development conforms to the intent of the policy.

PROPOSED POLICY

Neighborhood Center (NC) NC policy is intended for small, intense areas that may contain multiple functions, and are intended to act as local centers of activity. Ideally, areas containing NC land use policy are “walk – to” areas within a five minute walk of the surrounding neighborhood it serves.

The types of uses appropriate in NC land use policy include single-use or mixed-use “neighborhood-scaled commercial,” generally situated at an intersection or on prominent corners within the neighborhood. Examples of uses include a small grocery store, barber shop, or buildings with ground level commercial and residential above.

Residential uses within NC land use policy are generally at medium to high density single- and multi-family housing. This allows for additional “eyes on the street,” to protect the activity center it surrounds.

Since this request concerns only one property across from NC policy that exists on N. 16th St., staff has deemed it prudent to extend the NC policy, instead of applying a new policy category from the Community Character Manual (CCM) to apply to only this parcel.

BACKGROUND The applicant began working with the community, the Councilmember, and Metro Departments, including Metro Historical Commission, Metropolitan Development and Housing Agency (MDHA), and Metro Planning, several months before submitting a request for a SP rezoning for this property. The requested SP would permit a two-story mixed use building that allows 5 residential units and 2 or 3 commercial spaces on approximately 0.12 acres fronting Ordway Place and N 16th Street.

This East Nashville property is zoned Commercial Neighborhood (CN) and is located within the Lockeland Springs-East End Neighborhood Conservation Zoning Overlay district. Any new construction in this district requires review by the Metro Historic Zoning Commission. In addition, the property also falls within the Metropolitan Development and Housing Agency’s (MDHA) Five Points Redevelopment District, which calls for mixed use at this location, classified as a “Corner Commercial” district. MDHA also reviews projects located within its Redevelopment Districts.

During initial discussions with Metro Historical Commission and MDHA, the applicant found that the East Nashville Community Plan’s land use policy conflicted with the mixed use designation of MDHA’s Five Points Redevelopment District and that a plan amendment to the East Nashville Community Plan was also needed. Staff worked with the applicant

to improve the site design and amend the land use policy to support the proposed mixed use of the associated SP rezoning.

COMMUNITY PARTICIPATION Notification of the amendment request and the Planning Commission public hearing was posted on the Planning Department website, posted in newspapers, and mailed to surrounding property owners and known neighborhood organizations within 1,300 feet of the subject site.

A community meeting hosted by Metro Planning was held on July 9, 2009, at the East Branch Library to discuss the plan amendment and associated SP rezoning request. At the meeting 26 people signed in, including the district councilmember. Some of those who attended expressed concerns about the impacts of the proposed development, including concerns regarding the site's small size, the density on such a small site, the scale (building height and massing) and parking needs. Other attendees endorsed the plan amendment and proposed project. Hearing these concerns, the applicant deferred the application to work with Rediscover East's Urban Design Committee and the community.

The applicant has met with Rediscover East's Urban Design Committee. In addition, another community meeting, hosted by the district Councilmember, was held on July 30, 2009. Several people expressed support of the project while some remained concerned about the development's scale and parking needs.

An additional community meeting has been scheduled for August 25, 2009, to discuss refinements to the project.

PHYSICAL SITE CONDITIONS The site does not contain any environmentally sensitive features, such as steep topography or areas subject to flooding that would pose a constraint to development.

Land Use Surrounding land uses on Ordway Place are single-family residential. Across N. 16th Street, to the east, are neighborhood-scale businesses, including a bakery.

Access The site, currently vacant, is a corner lot that fronts on Ordway Place and N. 16th Street. The lot also has alley access.

Development Pattern East Nashville has several small "walk-to" neighborhood centers throughout the community. This amendment request and accompanying rezoning proposal continue that development pattern by providing a small-scale mixed use building oriented toward both N. 16th Street and Ordway Place.

Historic Features The subject site is located within the Lockeland Springs-East End Neighborhood Conservation Zoning Overlay district. However, the site does not currently have a structure on it. Older maps show a small commercial building on this site. Sensitivity to the area's historic features is an important consideration for any development proposed on the subject site and surrounding area.

Conclusion The requested amendment is in keeping with the goals and objectives of the *East Nashville Community Plan: 2006 Update*.

The East Nashville Plan promotes the preservation and enhancement of neighborhood retail nodes. The extension of NC land use policy to this site will enhance the existing neighborhood center. It will provide a residential component while creating a more defined edge between the existing neighborhood center and the surrounding residential.

STAFF RECOMMENDATION Staff recommends approval.

[Note: Item #4 and #5 were discussed by The Metro Planning Commission together. Please see Item #5 for actions and resolutions.]

VIII. PUBLIC HEARING: SPECIFIC PLANS AND TEXT AMENDMENTS

5. **2009SP-012-001**
16th & Ordway
Map: 083-10 Parcel: 010
East Nashville Community Plan
Council District 6 – Mike Jameson
Staff Reviewer: Jason Swaggart

A request to rezone from CN to SP-MU zoning property located at 1516 Ordway Place, at the southwest corner of Ordway Place and N. 16th Street (0.12 acres), to permit a 2-story mixed-use building with five residential dwelling units and 2,000 sq. ft. of commercial/office spaces, located within the Five Points Redevelopment District and the Lockeland Springs Neighborhood Conservation Overlay, requested by Ragan-Smith & Associates, applicant, for Evolve Developers LLC, owner (See also Proposal No. 2009CP-005-001).

Staff Recommendation: Approve with conditions, subject to approval of the associated Community Plan amendment.

Ms. McCaig presented and stated that staff is recommending approval on Item #4, 2009CP-005-001, 16th & Ordway.

Mr. Swaggart presented and stated that staff is recommending approval with conditions on Item #5, 2009SP-012-001, 16th & Ordway.

Mr. Richard Amond, 325 Deepwood Circle, spoke in favor of the proposed development.

Mr. Alan Thompson, 6428 Holly Trace Court, spoke in favor of the proposed development.

Mr. Mark West, 217 Gifford Place, spoke in favor of the proposed development.

Ms. Lenny Barber, 402 N. 16th Street, spoke in opposition to the proposed development.

Mr. Bill Blackman, 1623 Ordway Place, spoke in opposition to the proposed development.

Ms. Kaelin Cramer, 1423 Ordway Place, spoke in opposition to the proposed development.

Mr. Clifton briefly spoke on the importance of sustainability in urban settings, as well as infill development. He then acknowledged that the current zoning on the parcel would support all commercial if the proposed development were denied which would cause different traffic patterns than the requested mixed use. He stated he would support the proposed development.

Ms. Cummings too acknowledged and spoke in support of this mixed use development. She then questioned whether the scale of the building would be too large for this neighborhood.

Mr. Bernhardt explained that the proposed development was within the height of the residential zoning that was adjacent to this property. He further explained that the building height was reviewed and approved by both MDHA and the Historic Commission.

Mr. Gee briefly explained the history of land uses that surrounded this vacant parcel over the years. He spoke of the challenges that are associated with infill development. He acknowledged the concerns expressed by the constituents but stated he would support this development as it is compatible with other mixed use developments in East Nashville.

Mr. Gotto requested clarification on the parking component contained in the development.

Mr. Swaggart explained the parking requirements for this proposal as outlined in the Metro Zoning Code.

Mr. Gotto then requested clarification on whether the parking spaces provided were strictly for residents and if so, questioned where the parking would be located for those who either worked or visited the complex.

Mr. Swaggart explained that there was on-street parking located on 16th Street.

Mr. Gotto then questioned whether there was adequate room for on-street parking on 16th Street.

Mr. Honeycutt explained the parking capabilities along 16th Street.

Mr. Gotto questioned the total square footage of both the retail and residential components included in the proposal.

Mr. Swaggart explained these numbers to the Commission.

Mr. Gotto too explained the importance of infill development. He acknowledged the difficulties with obtaining support for infill developments at both the Planning Commission level and at the Council level. He expressed his support for the development and acknowledged that Councilmember Jameson would only support this development if the majority of residents were in favor of its approval.

Ms. LeQuire expressed her support for this development and mentioned that other mixed scale developments have shown their compatibility with neighborhoods in other areas of town.

Mr. Ponder questioned whether the total residential square footage changed after reducing the residential units from six units to five units.

Mr. Swaggart explained the changed square footage of the residential units.

Mr. Ponder moved and Ms. Cummings seconded the motion, which passed unanimously, to approve the request to amend the East Nashville Community Plan, 2009CP-005-001, 16th & Ordway, as well as approve with conditions Zone Change, 2009SP-012-001. **(8-0)**

Resolution No. RS2009-111

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009CP-005-001 is **APPROVED. (8-0)**”

Resolution No. RS2009-112

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009SP-012-001 is **APPROVED WITH CONDITIONS. (8-0)**

The proposed SP to permit a mixed-use development is consistent with the East Nashville Community Plan’s Neighborhood Center policy.”

- 6. 2009Z-015TX-001**
Common Domestic Farm and Exotic Animals
Staff Reviewer: Jennifer Regen

A request to amend the Metro Zoning Code, Section 17.04.060 to add definitions for "Common Domestic Farm Animals" and "Exotic Animals", requested by Councilmembers Carl Burch and Jim Gotto.

Staff Recommendation: Approve with amendment

[Note: Item #6 and #7 were discussed by The Metropolitan Planning Commission together. Please see Item #7 for staff report, actions, and resolutions.]

- 7. 2009Z-033TX-001**
Domestic Animals / Exotic Animals
Staff Reviewer: Jennifer Regen

A request to modify regulations and standards to keeping domestic and exotic animals in Nashville and Davidson County, requested by Councilmembers Jason Holleman and Kristine LaLonde.

Staff Recommendation: Approve with amendment

APPLICANT REQUEST - Create several definitions to classify animals and allow up to a maximum of six (6) chickens, ducks, turkeys, quail or pheasants on R/RS zoned property based on the property’s size.

ANALYSIS

Existing Law Section 17.04.060 (Definitions) of the Zoning Code does not include definitions for domestic farm animal or

exotic animals. Instead, the accessory land use “Domestic Animals/Wildlife” defines them by referencing state law. State law does not spell out what is considered a “common domestic farm animal”. Within the urban services district (USD) and general services district (GSD), farm animals may be kept, if the property is zoned for agricultural use (AG/AR2a). If the property is zoned a residential zoning district such as “R” or “RS” (e.g. RS40), then farm animals are prohibited in the USD, and only allowed in the GSD provided the property contains 5 acres or more.

Substitute Bill The proposed substitute bill merges two text amendments that address domestic/exotic animals, one sponsored by Councilmembers Carl Burch and Jim Gotto (2009Z-015TX-001 (BL2009-499) and a second sponsored by Councilmembers Jason Holleman and Kristine LaLonde (2009Z-033TX-001 (BL2009-510)). The sponsors merged these bills since each contained similar definitions of animals. Another provision of the substitute bill, allows certain kinds of poultry to be kept by residents in the Urban Services District (USD) and General Services District (GSD). The substitute bill addresses three areas:

- Animal definitions
- Zoning land use table
- Accessory use standards

Definition of Animals The proposed substitute bill adds four definitions to classify animals in Section 17.04.060 (Definitions) of the Zoning Code, as noted below. These definitions are needed to clarify that farm animals are “farm animals” and not “pets”. By providing classifications for animals, these definitions ensure the existing Zoning Code standards are not interpreted to permit a horse, cow, goat, llama, pig, sheep, etc. as a “pet” in Davidson County.

- **“Animal”** means all nonhuman members of the animal kingdom including household, domestic, and exotic animals.
- **“Animal, Domestic”** means all species of the Genera *Equus*, *Gallus*, and *Pavo*; the Families of *Anatidae*, *Bovidae*, and *Suidae* as well. Common names of animals defined above include but are not limited to: chickens, cows, dogs, donkeys, ducks, geese, goats, horses, mules, peafowl, pigs, and sheep. Some domestic animals are also considered “Household Pets”, as defined in this section.
- **Animal, Exotic”** means animals defined as Class I by Tennessee Code Annotated § 7-4-403 (1) and animals defined in Tennessee Code Annotated § 70-4-403 (3)(E), (F), (J), (M), (N), (O), (P).
- **“Animal, Household Pet”** means animals bred or raised to live in or about humans for companionship and are dependent on humans for food and shelter (e.g. birds, dogs, cats, guinea pigs, hamsters, mice, rabbits).

Land Uses The proposed substitute bill deletes the land use “Domestic Animals/Wildlife” and creates two new land uses in the Zoning Land Use Table, Section 17.08.030 under Residential Uses: *Animals, Domestic/Exotic* and *Animals, Domestic (poultry)*. Today, all animals are permitted by right (P) in the AG/AR2a district. This substitute bill does not change that status. Within the R/RS districts, however, poultry would be allowed as an accessory use (A) to a single-family home.

Accessory Use Standards The substitute bill does not amend the current regulations concerning allowing animals, regardless of whether they are exotic or domestic, as an accessory use to a residential dwelling with the exception of certain poultry. The proposed expanded standards for permitting poultry as an accessory uses are noted below:

Poultry

| | Existing | Proposed Substitute |
|------------------|-----------------|---|
| Zoning | R/RS80 - R/RS20 | R/RS (any district) |
| Land Use | no stds. | single-family only |
| Lot Size Minimum | 5 + acres | 3,750 s.f. |
| Tax District | GSD | USD or GSD |
| # of Poultry | unlimited | 2, 4 or 6 poultry (depending on lot size) |
| Type of Poultry | no stds. | chickens, ducks, turkeys, quails, pheasants |

| | | |
|----------------------|----------|--|
| Poultry Location | no stds. | side or rear yard only |
| Enclosure Required | no stds. | Yes (covered and uncovered) |
| Poultry Run At-Large | no stds. | No |
| Setbacks | no stds. | 10' property line; 25' any residential structure |
| Roosters | no stds. | No |
| Slaughtering | no stds. | No |
| Breeding | no stds. | No |
| Final site plan | no stds. | Yes |

Executive Order 33 The current Metro Zoning Code requires poultry to be located in the GSD on a lot of at least five acres in size. These requirements do not support a livable and sustainable city as articulated by Mayor Karl Dean in Executive Order 33 which created the Green Ribbon Committee. By modifying the Zoning Code to permit residents to have poultry for personal consumption of eggs only (no meat), this ordinance supports a locally-based food system, a goal of the Green Ribbon Committee.

Countywide Effect While this bill increases the number of eligible properties on which poultry can be kept, deed restrictions and homeowner's association rules prohibiting the keeping animals would still apply. The standards in this bill were written to be enforceable by both the Metro Codes and Health Departments.

STAFF RECOMMENDATION Staff recommends approval of this substitute bill. This substitute bill increases the number of properties eligible to keep poultry while protecting adjoining properties from potential nuisance effects. Further, the bill provides the needed animal definitions and promotes a green strategy as envisioned in Executive Order 33. By permitting poultry, particularly chickens, on properties less than five acres in size and within the USD, more residents can reduce their reliance on the existing regional and national food network.

Ms. Regen presented and stated that staff is recommending approval of the substitute ordinance.

Mr. Chris Ferrell, 700 Prescott Court, expressed concerns with the proposed text amendments.

Mr. John Brittle, 5474 Franklin Pike, spoke in favor of the proposed text amendments.

Ms. Anastasia Holdren, 513 Jocelyn Hollow Court, spoke in favor of the proposed text amendments.

Mr. Jason Adkins, 1217 1st Avenue South, spoke in favor of the proposed text amendments.

Mr. Nicholas Nguyen, and his son, 3519 Park Avenue, spoke in favor of the proposed text amendments.

Ms. Pippa Holloway spoke in favor of the proposed text amendments.

Ms. Julie Simpson spoke in favor of the proposed text amendments.

Ms. Cassie Johnson spoke in favor of the proposed text amendments.

Ms. Amanda Burt, 1114 2nd Avenue South, spoke in favor of the proposed text amendments.

Ms. Mary Pat Boatfield, 1314 Cardinal Avenue, spoke in favor of the proposed text amendments.

Ms. Susan Meece, 348 Rayon Drive, spoke in opposition to the proposed text amendments.

Mr. Richard Shellhardt, 4760 Apollo Drive, spoke in opposition to the proposed text amendments.

Mr. Brian Talbott, 2501 Essex Place, spoke in favor of the proposed text amendments.

Mr. Peter Anderson, 1102 2nd Avenue South, spoke in favor of the proposed text amendments. He requested additional

information on the site plan review and whether there were fees associated with the review.

Ms. Regen explained the site plan review and the fees.

Mr. Andy Malone expressed issues with the proposed text amendment.

Mr. Ponder briefly spoke of his experience in raising chickens and expressed his support for the text amendments.

Ms. Jones expressed her support for the text amendments. She briefly explained an instance in which chickens were used at an elementary school for educational purposes.

Ms. LeQuire explained she was in favor of the proposed text amendments and suggested that additional review be given to the number of quail allowed for each parcel as they are very small animals. She then asked that the setback requirements also be reviewed due to the small urban settings located throughout the city.

Ms. Regen explained that there were some parcels that would not qualify due to lot sizes, however, she explained there were thousands of parcels that would meet the setback requirements. Ms. Regen displayed a map of the entire city that depicted qualifying parcels.

Ms. LeQuire expressed concern with the method used to determine setbacks, in particular, parcels located within the UZO.

Ms. Regen offered additional explanation on the setback requirements to the Commission.

Ms. LeQuire requested clarification on the regulations that explained the housing of the chickens and whether they could run free in a yard, outside of their coops.

Ms. Regen explained the regulations for housing chickens to the Commission.

Ms. LeQuire then questioned the \$25.00 fee associated with the site plan review.

Ms. Regen explained the fee to the Commission.

Ms. Jones expressed her concerns with this bill conflicting with Home Owner Associations in the city.

Mr. Bernhardt explained that this bill would not override any restrictive covenants currently in place.

Mr. Clifton commended the work of the Councilmembers on this bill. He acknowledged that the bill could be refined further as it moved through Council.

Ms. Cummings spoke in favor of the proposed text amendments. She did however, express concern with the fee that is associated with this amendment, and suggested that it be waived for hardship cases.

Mr. Gee requested additional clarification on the type of permit that would be pulled for housing chickens.

Ms. Regen explained the type of permit that would be used for the chickens.

Mr. Gee offered additional considerations for the bill. He spoke of reconfiguring setback requirements on older homes with smaller lots, and consider small setbacks at rear property lines where alleys exist. He spoke of grandfathering existing coops. He expressed concern with allowing chicken coops on community garden sites where there is no occupant to provide normal maintenance.

Mr. Gotto moved and Mr. Ponder seconded the motion, which passed unanimously, to approve the application for Zone Change 2009Z-015TX-001, as well as approve the substitute bill; and to approve the application for Zone Change 2009Z-033TX-001, as well as approve the substitute bill. **(8-0)**

Resolution No. RS2009-113

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-015TX-001 is **APPROVED WITH AMENDMENT AS WELL AS APPROVE SUBSTITUE BILL. (8-0)**”

Resolution No. RS2009-114

“BE IT RESOLVED by The Metropolitan Planning Commission that 2009Z-033TX-001 is **APPROVED WITH AMENDMENT AS WELL AS APPROVE SUBSTITUE BILL. (8-0)**”

IX. PUBLIC HEARING: FINAL PLANS

8. 2009S-072-001

Hammond Property on Moore Avenue Final Plat
Map: 105-07 Parcel: 331
South Nashville Community Plan
Council District 17 – Sandra Moore
Staff Reviewer: Greg Johnson

A request for final plat approval to create three lots on property located at 563 Moore Avenue, approximately 50 feet east of Martin Street (0.51 acres), zoned R6, requested by Michael and Carol Hammond, Trustees, owners, Cherry Land Surveying, surveyor.

Staff Recommendation: Approve with condition

APPLICANT REQUEST - Final Plat

Final plat to create three lots. A request for final plat approval to create three lots on property located at 563 Moore Avenue, approximately 50 feet east of Martin Street (0.51 acres), zoned One and Two-Family Residential (R6).

CRITICAL PLANNING GOALS

- Supports Infill Development
- Creates Walkable Neighborhoods

This subdivision will allow compatibility with the surrounding neighborhood through the size and dimensions of proposed lots, the use of existing infrastructure, and the assimilation of an existing dwelling. Infill development through the addition of new structures into established neighborhood provides an opportunity for increased economic vitality and diversity.

PLAN DETAILS Final Plat

The applicant is requesting final plat approval for a three lot subdivision on Moore Avenue. There is an alley that runs behind the properties and Lots 2 and 3 will be accessed from this alley. Lot 1, which contains an existing single-family dwelling, will be accessed from the existing driveway onto Moore Ave.

All three lots meet the lot comparability requirements for both area and frontage. This request is an example of infill development, creating new lots in an area with existing sidewalks and served by transit. This subdivision takes advantage of existing infrastructure and adds to the walkability of this neighborhood.

PUBLIC WORKS RECOMMENDATION

1. Identify sidewalk requirement. Any sidewalk requirements must be built or bonded prior to the recording of the final plat.

WATER SERVICES RECOMMENDATION Approved

STORMWATER RECOMMENDATION Approved

FIRE MARSHAL RECOMMENDATION

- 1. Additional information will be required before a building permit can be issued, adequate information not provided to allow unconditional approval of this project at this time.
- 2. Actual or projected fire hydrant flow data shall be provided showing compliance with the Fire Code before a building permit will be issued.
- 3. Approved based on no construction being done this application. Any new construction will require additional information.

STAFF RECOMMENDATION Staff recommends approval with a condition of the final plat request.

CONDITION

- 1. Show sidewalks on the plat for two of the new lots. All sidewalks shall be constructed per the Department of Public Works' specifications or bonded prior to the recording of the final plat.

Approved with condition, **(8-0) Consent Agenda**

Resolution No. RS2009-115

"BE IT RESOLVED by The Metropolitan Planning Commission that 2009S-072-001 is **APPROVED WITH CONDITION. (8-0)**

Condition of Approval:

- 1. Show sidewalks on the plat for two of the new lots. All sidewalks shall be constructed per the Department of Public Works' specifications or bonded prior to the recording of the final plat.

X. OTHER BUSINESS

- 9. Amendment #2 to the contract (L-2008) between the MPC on behalf of the MPO and LandDesign for professional services related to the Tri-County Transportation & Land Use Study.

Approved, **(8-0) Consent Agenda**

- 10. Amendment #1 to the contract (L-2187) between the MPC on behalf of the MPO and the Nashville MTA for funding related to short and long-range transit planning activities.

Approved, **(8-0) Consent Agenda**

- 11. Grant contract between TDOT and the MPC on behalf of the MPO for Federal Highway Administration State Planning & Research funds for FYs 2010 and 2011.

Approved, **(8-0) Consent Agenda**

- 12. Historical Commission Report
- 13. Board of Parks and Recreation Report
- 14. Executive Director Reports
- 15. Legislative Update

Mr. McLean explained that we had received a letter from Mr. Giarratana resubmitting their request for a rehearing on the Scottsboro/Bells Bend Detailed Design Plan Alternative Development Area Policy and May Town Center Specific Plan Zone Change application.

As previously stated, when this matter was originally set before this Commission, the Director and I can not say that this request is without merit. Therefore, the request will be placed on the October 22, 2009 agenda. However, I want to state that the information supplied by the applicant appears to be more appropriately submitted as a new application rather than a rehearing.


Additionally, I have met with our legal advisor and he has clarified what I believe to be the rules regarding who may move and second a motion for a rehearing. Only members of the Commission who voted with the prevailing side may make the motion and second. Therefore, for the application to amend the Subarea plan, the Commission members that may make the motion and second to rehear this matter are: Andrée LeQuire, Victor Tyler, Hunter Gee, Derrick Dalton and Stewart Clifton. As to the application regarding the SP zone change, all Commissioners except Councilman Gotto may make the motion and second. The Commission will determine whether or not to grant the request for rehearing at the October 22 meeting unless the applicant decides to file a new application. Keep in mind only the five Commissioners on the prevailing side can make a motion or second to grant the request.

XI. ADJOURNMENT

The meeting adjourned 6:00 p.m.

Chairman

Secretary

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