

**Minutes - Regular Meeting - Fayette County Regional Planning Commission**

Tuesday, February 4, 2013 – 6:30 P.M. – Bill G. Kelley Criminal Justice Center – Somerville, TN.

The meeting was called to order at 6:30 P.M. by Chairman Harris Armour, who gave the invocation and led the Pledge of Allegiance.

Members Present:

Joann Allen  
Harris Armour  
Buck Clark  
Annette Cutliff  
Will Gresham  
Eugene McFerren  
Gordon Tomlin

Members Absent:

Dwain Beydler  
Antoine Logan

Staff Present:

John Pitner, Planning Director  
Jaclyn Smalley, Office Manager

**APPROVAL OF AGENDA**

On a motion by Gresham, seconded by McFerren, the regional planning commission voted unanimously to approve the printed agenda.

**APPROVAL OF MINUTES**

On a motion by Allen, seconded by Gresham, the RPC voted unanimous approval of the September minutes.

**PUBLIC HEARING – ZONING AMENDMENT RELATIVE TO ROADS AND DETENTION BASINS**

Pitner described the content and purpose of each of the four provisions of the subject amendment (copy appended) and answered questions from Mr. Clark about side yard setbacks adjacent to right-of-way reservations. No citizens were present to voice either support or opposition at the public hearing, and without further discussion a motion was made by Tomlin, seconded by Gresham, and approved unanimously to favorably recommend the amendment to the Board of Commissioners.

**NEW BUSINESS – CORRECTIVE COMBINATION**

On a motion by Allen, seconded by Cutliff, the planning commission voted unanimously to approve the requests of Harold Evans and John Turek in Civil District #7 that each of their lots in Woodmont Subdivision be combined with their respective portions of the unneeded road reservation recently conveyed to them by the county (copies appended).

**OLD BUSINESS – BELLE FARMS PAVING**

Pitner informed the RPC that Bancorp South, foreclosure owner, had installed final paving in both phases of the Belle Farms RPED subdivision on the north side of Wade Drive north of Rossville, and he gave a recitation of the background issues and litigation relating to that final surfacing.

**OLD BUSINESS – BUILDING PERMIT AND REINSPECTION FEES**

Mrs. Smalley outlined her proposal that there should be increased the fees for commercial building permits and for construction reinspections under the building code. She informed the commission about the cost of commercial building permits in neighboring jurisdictions, all of which were higher than Fayette County, and in advocating an increase in reinspection fees she pointed out that gasoline was much higher now than when the current fee of \$25.00 was

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established. Pitner advocated the increase in reinspection fees as well, noting that the building inspector often was called-in just to provide a “punch list” for completion of some phase of a project and not because the builder thought he was actually finished and ready for an inspection. Mr. Clark questioned whether it might be to Fayette County’s advantage to have lower fees for commercial construction, and there ensued some discussion between he and Mrs. Smalley on that point. Eventually, a motion was made by Allen, seconded by Tomlin, and approved unanimously by the RPC to initiate an amendment of the zoning resolution to increase the commercial building permit fee from \$3.00 to \$5.00 for every \$1,000.00 of contract price and to increase the reinspection fee from \$25.00 to \$50.00.

**OTHER BUSINESS – GIS**

Mrs. Smalley described recent endeavors in the planning department’s GIS function, advising of technical and mapping assistance to Gallaway and mapping services to the county fire department, as well as the mastery in-house of certain reformatting processes to reduce the cost of high relief elevation data to be purchased with part of a \$40,000 FEMA grant, which data she said will enable the planning department to perform flood modeling (once she teaches herself the operating software, already acquired from the Corps of Engineers at no cost to the county).

**OTHER BUSINESS – LAND USE PLAN**

Pitner briefed the RPC on TCA Sections 13-3-301 through 13-3-304, which elaborate the scope, purposes, and adoption procedures of a regional land use plan, pointing up especially that the plan may address areas within the towns as well as without, that the plan may be adopted in parts and with differing degrees of detail for different areas, and that adoption of the plan was a function of the planning commission and not the legislative body. Allen and Cutliff inquired the status of the I-40/Highway 196 interchange (right-of-way acquisition pending) and about the extent of Gallaway’s jurisdiction in that area.

**OTHER BUSINESS – FINANCIAL REPORT**

Mrs. Smalley discussed current year revenues received by the planning department, which were considerably higher than for the past several years.

Finally, there was discussion about a proposed bill in the general assembly regarding the use of private roads in land development. A copy of recent correspondence regarding the matter is appended.

Thereupon the meeting was adjourned.

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Will Gresham, Secretary

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Date Approved

**RESOLUTION**

A RESOLUTION TO AMEND THE FAYETTE COUNTY ZONING RESOLUTION TO ALLOW LANDOWNER CONSTRUCTION OF TURN-AROUNDS AT THE END OF PUBLIC DEAD-END ROADS IN THE R-1 DISTRICT, TO ALLOW COMBINED ACCESS DRIVES IN THE R-1 DISTRICT NOT INITIATED BY THE REGIONAL PLANNING COMMISSION, TO PROHIBIT BUILDINGS WITHIN THE CONSTRUCTION OR SLOPE EASEMENT OF A FUTURE ROAD, AND TO PROHIBIT ISSUANCE OF ANY VARIANCE FROM THE DETENTION BASIN PROVISIONS

WHEREAS, pursuant to Tennessee Code Annotated Sections 13-7-101 and 13-7-102 the Fayette County Board of Commissioners has adopted a Zoning Resolution and Zoning Map for Fayette County; and

WHEREAS, pursuant to Tennessee Code Annotated Section 13-7-105 the Fayette County Board of Commissioners is empowered to amend the number, shape, boundary, area, or any regulation of or within any district or districts or any other provision of the zoning resolution; and

WHEREAS, pursuant to Article IV of the Fayette County Zoning Resolution a public hearing was held on the proposed Amendment by the Fayette County Regional Planning Commission on February 4, 2013, the time and place of which was published with at least five (5) days advance notice in the Fayette Falcon newspaper of general circulation in Fayette County; and

WHEREAS, pursuant to Tennessee Code Annotated Section 13-7-105 and Article IV of the Fayette County Zoning Resolution a public hearing was held before the Fayette County Board of Commissioners on February 26, 2013, the time and place of which was published with at least fifteen (15) days advance notice in the Fayette Falcon newspaper of general circulation in Fayette County;

NOW, THEREFORE, BE IT RESOLVED BY THE FAYETTE COUNTY BOARD OF COMMISSIONERS, IN REGULAR SESSION ASSEMBLED THIS 26th DAY OF FEBRUARY, 2013:

SECTION 1. That there be added to "Article X – Exceptions and Modifications" the following Section 6: "Roads. In an R-1 district where a dead-end public road does not terminate in a turn-around of at least forty (40) feet radius (paved or gravel), such turn-around may be constructed to the specifications of the Fayette County Subdivision Regulations where authorized by both the Fayette County Regional Planning Commission and the Fayette County Board of Public Works, provided that no building permit shall be issued to any lot having any frontage on such turn-around until the turn-around has been accepted for public maintenance in accordance with established county procedure."

and

SECTION 2. That there be revised the second clause of Section 2.1.1 of "Article VII – Provisions For Land Use Districts," which reads: "Provided that no road shall be constructed by any nongovernmental entity except a combined access drive where required by the regional planning commission under Article IV of the Fayette County Subdivision Regulations, which drive shall not result in the creation of more lots of record than could be obtained without the combined access drive" to read: "Provided that no road shall be constructed by any nongovernmental entity except a combined access drive where required or authorized by the regional planning commission under Article IV of the Fayette County Subdivision Regulations, which drive shall not result in the creation of more lots of record than could be obtained without the combined access drive."

and

SECTION 3. That there be revised Section 9.7 of "Article V – General Provisions," which reads: "No access drive shall be installed or used in nonconformity with any access control provision of the Fayette County Regional Planning Commission as specified on a recorded subdivision plat" to add a semicolon and the following second clause: "and notwithstanding any setback provision of this Resolution no

building shall be erected or placed within any road construction or slope easement specified on a recorded subdivision plat.”

and

SECTION 4. That there be revised Section 16 of “Article V – General Provisions,” which reads: “Drainage Detention Basins. No drainage detention basin required by the Fayette County Regional Planning Commission to be installed in a subdivision and depicted as an easement or similar encumbrance on a recorded plat shall be breached or filled or obstructed or otherwise disrupted in its normal functioning in any way without the prior consent of both the Fayette County Public Works Board and the Fayette County Regional Planning Commission, as documented in the minutes of each board, and any violation of this provision shall be prosecutable against any and/or all person(s) on whose land the drainage detention basin is located as well against any other responsible party” to add the following second sentence: “No variance shall be granted from the provisions of this section.”

and

SECTION 5. That this Resolution shall become effective the day following its adoption, THE PUBLIC WELFARE REQUIRING IT.

December 17, 2012

TO : Fayette County Regional Planning Commission and Fayette County Property Assessor

FROM: Harold W. Evans



RE : Lots Standardization

Pursuant to Section 1-114 of the Fayette County Subdivision Regulations I herewith request that there be combined into one (1) standard lot totaling 1.515 acres my adjoining two (2) lots at the north end of Bent Creek Drive in Woodmont Estates Subdivision. One of the lots (conforming) is identified as Parcel 8.15 on Fayette County Tax Map 84 for 1.395 acres and the other lot (nonconforming) adjoins immediately to the west and is identified as a 0.12 acre parcel recently conveyed to me by Fayette County, Tennessee, and recorded as Instrument # 12007380 in the Office of the Fayette County Property Assessor.

December 17, 2012

TO : Fayette County Regional Planning Commission and Fayette County Property Assessor

FROM: John R. Turek 

RE : Lots Standardization

Pursuant to Section 1-114 of the Fayette County Subdivision Regulations I herewith request that there be combined into one (1) standard lot totaling 2.131 acres my adjoining two (2) lots at the north end of Bent Creek Drive in Woodmont Estates Subdivision. One of the lots (conforming) is identified as Parcel 8.16 on Fayette County Tax Map 84 for 2.011 acres and the other lot (nonconforming) adjoins immediately to the east and is identified as a 0.12 acre parcel recently conveyed to me by Fayette County, Tennessee, and recorded as Instrument # 12007381 in the Office of the Fayette County Property Assessor.

repaving. If the homeowners association refuses to rectify the situation or is abandoned, the road automatically becomes a public road, the escrow account is cashed out, the gates to the subdivision are removed and the roads are repaired. Any cost above the amount of the escrow will be divided evenly among the parcels and filed as a lien on the property. The gated community roads are inspected and built to county standards as well. We took a lot of that from Germantown's regulations.

William Veazey  
Tipton County Planning Department  
220 Highway 51 North, Suite 3  
Covington, TN 38019  
(901) 476-0255

----- Original Message -----

**From:** John Pitner

**To:** 'Bill Terry'

**Cc:** 'Rhea Taylor' ; [fcpw@bellsouth.net](mailto:fcpw@bellsouth.net) ; 'Esther Sykes-Wood' ; 'William Veazey' ; [joannallenhw@bellsouth.net](mailto:joannallenhw@bellsouth.net) ; [Harmouriii@aol.com](mailto:Harmouriii@aol.com) ; 'DWAINE BEYDLER' ; [buck@clarkandclark.com](mailto:buck@clarkandclark.com) ; [annette@rollinghillsangus.com](mailto:annette@rollinghillsangus.com) ; [antoinelgn1@gmail.com](mailto:antoinelgn1@gmail.com) ; [gtmlt@bellsouth.net](mailto:gtmlt@bellsouth.net) ; [permits@fayettetn.us](mailto:permits@fayettetn.us) ; [sen.dolores.gresham@legislature.state.tn.us](mailto:sen.dolores.gresham@legislature.state.tn.us)

**Sent:** Thursday, January 17, 2013 12:13 PM

**Subject:** RE: road question

Bill:

Thanks for your inquiry. I can only speak for my jurisdiction of unincorporated Fayette County, which is where there has been the longest local experience with development regulation.

In unincorporated Fayette County private roads are permitted, but they: 1 - may be permanent dead-ends only, never thru roads or coves having reservations for future extension or connection; 2 - may be installed only in those zoning districts where a road intended for public ownership may be installed; and 3 - must be designed and constructed to the same standards, with the same inspection procedures and requirements, as apply to any road intended for public ownership. In short: the county's zoning law and subdivision regulations fully apply, a developer enjoys no relaxed standards by such an arrangement nor is he enabled to evade any bulk standard or any purpose of our land use or growth plan, and the *only reason* for him to make a choice for a private road is to enable his buyers to control access, and that only where the planning commission decides that good traffic circulation and neighborhood connectivity do not forestall such control.

It's important to be clear about exactly what certain terms mean in this jurisdiction. Under Article V, Section 3, and Article X, Section 1, of the Fayette County Zoning Resolution it is required that every lot of record (give our definition of the terms "lot" and "lot of record" some study, as they relate and are not conventional) created since November 20, 1984, must have frontage on a "road," either public or private, and in Article VIII the zoning resolution defines a "road" as "a public or private right-of-way other than an interstate highway that is constructed either *to the specifications of the Fayette County Subdivision Regulations* or by a unit of government with the approval of the Fayette County Regional Planning Commission," with the terms "public road" and "private road" then *sub-numbered* to the definition of "road" and described in the very first clause of each definition as "*a road . . .*" and "*a dead-end road . . .*," respectively. Under this regime Fayette County for a quarter-century has had very satisfactory road development, and there have occurred only two private roads in the unincorporated county, one a very short cove undedicated by the developer and the other once public but later conveyed to the residents of a neighborhood at their request. Put simply, in Fayette County one cannot escape any otherwise applicable zoning provision or subdivision regulation by resort to a "private road."

I've had too much experience with all this, Bill. The lessons have been painful, well-learned, and I beg your indulgence to kick this can a bit further down the road.

Between 1978 and 1984 Tennessee Code defined the term "subdivision" in such a manner as to exclude from the jurisdiction of local subdivision regulations any land divisions creating parcels larger than five (5) acres. The result was a

blizzard of so called “mini-farms” – large lot projects built to no minimum standards of design or infrastructure, especially pertaining to roads. By a separate mechanism this proposed bill has exactly the same aim, and in Fayette County the sum of our last experience with such “liberty” was fraud, litigation, taxpayer-funded bailouts, bogus accusations of racism, wasteful land use, insecure property values, and serious hazardous to public safety. Without standards or inspections, we even had one developer who platted a right-of-way in one location and then actually built the road across an adjoining lot in the subdivision, which lot he then sold to a (purportedly) unaware buyer in Bangkok, and later, after a lawsuit by another of his buyers forced the developer to pave the road as promised, he tried to convey the empty right-of-way to the county falsely representing that it was the location of the actual road as built; and he nearly got away with it. I can’t even imagine all the litigation that might have attached to that case, nevermind the public costs.

Nor did all these consequences “wash-out” in a few years after the definition of “subdivision” was revised to its current language in May 1984. Rather, in Fayette County the greatest public cost has occurred in just the past two years, as the double-barrel metal culverts have blown-out at Phase II of Big Bell Subdivision. The Hickory Withe area of western Fayette County is an upscale community, with numerous high-value residential subdivisions built mostly in the past fifteen years. Big Bell Subdivision was the first. Phase I was built in the mid-70s and consists of lots 2-3 acres in size, then came the “mini-farm” era and Phase II was developed in lots all over five acres to gain freedom from local planning oversight. For the developer it was rapture, as it enabled him to cross a 3,000 acre watershed tributary of the Cypress Creek Canal on the cheap. Instead of the site-built box culvert or bridge the regional planning commission would have required into Phase II, along with a second way out, he simply installed two (2) metal culverts of twenty (20) feet arch diameter in the channel and developed the 64 lots of that phase along 2.64 miles of dead-end road. With some effort by the county public works department through the years the crossing endured (tenuously) longer than anyone expected, no one hurt, but one stormy night last winter the inevitable finally happened. The culverts blew-out completely, stranding 54 families, no way in or out by automobile. With commendable celerity and disregard for the formality of consent, county authorities pushed a temporary drive across neighboring property and cured the emergency; and since then, there has been installed a proper bridge having a span of 102 feet, which is probably 30-40 feet longer than would have been necessary prior to channel and bank erosion caused by the culverts. The costs have been substantial – our county mayor’s estimates including the bridge, emergency access, landowner compensation, and interest total to about \$900,000.00, while the public works director says somewhat less.

All of these roads supposedly were to be “private,” especially as it was the county’s determination during the “mini-farm” era that no road would be accepted for public maintenance unless it was built in conformity with the subdivision regulations, but holding to this was impossible, of course. With only one exception to date, every single one of these “mini-farm” roads has become a public responsibility. Government cannot long hold out against demands for road bailouts from citizens howling about the taxes they pay, even when those demands essentially amount to a claim that those who have paid for proper access should subsidize those who have not; and this is even more true when the demands come not from the original purchasers in the subdivision but successor owners, who often truly have been victimized. Always in this matter of “private roads” it must be remembered that citizens cannot waive their political rights, and even more they cannot waive such rights in their successor owners of property, so any suggestion that there may be stipulated some measure(s) to guarantee that a “private road” will never become a public responsibility is to promise what never has been and never will be; and to urge or believe otherwise is simply unserious. More, the only opportunity a jurisdiction will have to assure a reliable functioning of the road net upon which its citizens, current and future, must rely is at the time of construction; and to the exact extent any proposed statute would disregard this fact, it is a prescription for failure.

Finally, my views in this matter are informed by experience not just in government but in the private sector as well. For twelve years I was self-employed in land development, and my first project was the most upscale residential neighborhood ever built in Fayette County to that time, and arguably remains so. It probably no longer generates more property tax per acre than any other subdivision in Fayette County, but it surely remains in the top five. It was all very expensive and risky, and but moderately profitable, but it proved the market and raised the arc of residential development across the county. Over the following 10-12 years the revenue raised by one penny on the property tax soared from perhaps \$20,000.00 to more than \$100,000.00. My point is this – there is no way I or any other land

developer would have undertaken such a project, such risk, facing competition from development like the so-called "mini-farms," where critical infrastructure like roads could be installed without standards or governmental oversight. Nor do I believe any banker with half a brain would ever consent to finance such a project.

This proposed statute is a really bad idea, Bill; we have been down this road before, and in Fayette County we very much would like to be allowed to finish paying for the last journey before we have to endure it again.

I am mailing to you a copy of the Fayette County Zoning Resolution for reference.

Thanks again . . . JRP.

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**From:** Bill Terry [mailto:billterr@comcast.net]  
**Sent:** Wednesday, December 26, 2012 11:25 AM  
**To:** jpitner@fayettetn.us  
**Subject:** road question

Hi John. I am currently a research consultant with the Tennessee Advisory Commission on Intergovernmental Affairs. A number of bills relating to planning and development were sent to TACIR by the legislature this year to be studied. One of these bills deals with private roads and developments that utilize them. In your area how do your communities deal with them? Are they permitted or prohibited? If permitted, are any construction standards required? Are any specific problems encountered?

If you can help with these questions, I will be grateful. I know that the answers vary from place to place but even generalizations would be helpful.

Thank you advance.

*Bill*

Bill Terry, AICP  
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