

Jeffrey Pape & Tamara Hyler
7114 Elrod Road
Fairview, TN 37062

April 12, 2023

City of Fairview
Attn: Mayor Anderson and Commissioners
7100 City Center Circle
Fairview, TN 37062

Dear Mayor Anderson and Commissioners:

We are an adjacent landowner to the development proposed by Item #1 – PC Resolution PC-10-23, Master Plan Development, Bellehaven Subdivision that was heard by the planning commission at the March 14, 2023. As an adjacent landowner, we have been aggrieved by the action of the Planning Commission in its approval of the resolution and are, therefore, per section 16-105.4 of the Fairview Zoning code, filing an appeal of the action of the Planning Commission to the Board of Commissioners. The action of the Planning Commission was improper due to the following:

1. The Master Plan approval brought before the planning commission was the incorrect action based on the plans submitted. The plans submitted by the applicant require a rezoning application to be filed and the city to follow the procedure of a zoning change or amendment to the PUD zoning. The current zoning on the property is RM-8 PUD per development plan and conditions. That zoning was established with resolution 2006-03-618 and further affirmed with resolution 2008-21-713 which incorporates resolution 2006-03-618 as part of resolution 718. Those two resolutions establish the current zoning of the property as a plan specific PUD. The bulk regulations for the PUD zoning are included on the plan and not in the zoning resolution and therefore a significant change to the plan is a change to the zoning. The current plan changes the bulk regulations and will require a new master plan.. Further, it was determined by the city that, per section 10-203.8 of the City of Fairview Zoning Code, the currently submitted Master Development plan is defined as a major modification. The same code section requires that any major modifications must undergo the same review and approval process as the initial application. The initial application whereby the Master Development Plan was approved was a rezoning application and therefore any major changes to a Master Development plan must be submitted as a zoning change. The language in resolution 618 stating the zoning is per the development plan further supports this requirement. Very simply put, if you change the plan for this particular PUD zoning it changes the official zoning map of the City and is therefore a zoning change, not simply a Master Plan Approval.
2. Notwithstanding the fact that the Master Development Plan approval was the incorrect approval process, the Planning Commission heard and subsequently approved a resolution approving a Master Development plan. Section 10-203.3 (2) of the Fairview Zoning Code provides a list 15 minimum requirements for a Master Development Plan. The plan presented to the Planning Commission on March 14, 2023, did not provide 6 of the 15 requirements, more particularly, items (E), (H), (I), (K), (L) and (O). Because these items were not provided to the

Planning Commission, the Planning Commission acted on an incomplete application and therefore followed unlawful procedure.

3. Notwithstanding the fact that the Master Development Plan approval was the incorrect approval process, the Planning Commission heard and subsequently approved a resolution approving a Master Development plan. The Fairview Zoning code allows the Planning Commission to approve exceptions and deviations from the zoning ordinance, subdivision regulations, and design review manual as part of a PUD, however, it also requires that a detailed list of any exceptions and deviations be provided as part of the application. No list was provided to the Planning Commission addressing the numerous exceptions and variations. At least eight (8) exceptions or variations to the ordinance are evident. During deliberations, one Planning Commission Member asked about a part of the ordinance relative to steep slopes and critical lots, specifically asking if a variance was required. Staff answered that no variance was required. This advice appears to be inaccurate as the plan under consideration does not meet the steep slopes and critical lot requirements of the zoning ordinance. Therefore, both the lack of information provided by staff as well as the statements made by staff and legal counsel unduly influenced and restricted the Planning Commission's discretionary authority to approve exceptions and variations from the zoning ordinance as part of their approval process.
4. Notwithstanding the fact that the Master Development Plan approval was the incorrect approval process, the Planning Commission heard and subsequently approved a resolution approving a Master Development plan. As mentioned earlier, the City determined that the plan under consideration in fact triggered several of the tests listed in the zoning ordinance qualifying the plan as a major modification. Such a determination requires that the Planning Commission review the new plan to assure that it is consistent with all the requirements of the zoning ordinance, essentially starting the review process of the plan over from the beginning. Both Sections 10-206 and 17-103.2 lists numerous requirements for Master Development Plans and the basis for approval of those plans further listing design and development objectives that the Planning Commission must deem to have been satisfied before approving the plan. The standards and objectives include items such as landscaping and buffering, neighborhood relationship, preservation of natural features, vehicular access and sensitivity to adjacent areas. The substantial changes to the development plan, particularly the change in access points as well as the drastic changes to the lot layouts and road configurations warranted extensive discussions. In addition, there was substantially more detail regarding other aspects of the development that were included in the current plan that were never addressed in the previous plan. Items such as specific buffers, lack of tree save areas, much smaller average lot sizes and many more items. Many of these items are not black and white standards in the zoning ordinance and require consideration and debate by the governing body, however, the statement made by legal counsel and staff directed the Planning Commission that the current plan satisfied the zoning ordinance and therefore the planning commission was obligated to approve the plan or subject the city to potential legal peril. Once again, the statements made by staff and legal counsel unduly influenced and restricted the Planning Commission's discretionary authority to the many aspects of the development plan that were never addressed on the previous plan and new to the planning commission as part of this application.

For all the foregoing reasons, we are hereby appealing the decision of the planning commission to recommend approval of PC Resolution PC-10-23. Moving forward without proper consideration will significantly harm us. We request that under Board of Commissioner's discretion as provided by Section 16-105.4 of the zoning ordinance, you invalidate the planning commission decision and direct staff to require the applicant to submit the appropriate application for an amendment to the zoning. Thank you for your consideration in this matter.

Sincerely,



Jeffrey Pape



Tamara Hyler