

MUNICIPAL PLANNING COMMISSION MINUTES

WORK SESSION

November 27, 2023, Meeting at 6 p.m.

Chris McDonald, Chairman
Salvatore Cali
Shonda Schilling

Emilee Senyard, Vice Chairman
Stuart L. Johnson
Hayley Schulist

Brandon Butler
David Magner
LaRhonda Williams

Staff Present: Tom Daugherty, Rachel Jones, Ethan Greer, Josh Hogan, Curtis Broadbent, Will Owen, Bree Bailey

PC MEMBERS	PRESENT	ABSENT
Mr. McDonald	X	
Ms. Senyard	X	
Ms. Schulist		X
Ms. Anderson	X	
Mr. Butler	X	
Mr. Cali		X
Mr. Magner	X	
Ms. Williams		X
Ms. Schilling		X

- **Mr. McDonald called the meeting to order at 6:10 p.m.**

Items for Discussion:

1. **PC Resolution PC-40-23, Development Plan, Bellehaven Ragan Smith Associates – 0 HWY 96, Map: 021, Parcel: 021.01. Current Zoning: RM-8 PUD, 484 homes on 251.16 Acres. Property Owner: WUSF 4 Bellehaven LLC.**

Will Owen- For those of you who don't know me I'm Will Owen with Griggs and Maloney the city's consultant for engineering and planning. My background is in engineering, and I have done a lot of the leg work in trying to understand and help staff understand where we are, how we got to this point, and the process that should take place forward. I'll go over a brief history to kind of get a solid foundation on where we are. I'm only going to go back to 2008, I think that's the most relevant history and in July of 2008 a master development plan in conjunction with a planned unit development zoning designation was approved by the Board of Commissioners for what is currently known as Bellehaven. That master development plan as is the case with all preliminary master development plans in Fairview. When that plan was adopted and then subsequently recorded in the county registrar's that plan becomes the controlling document to proceed for applicants to proceed developing the land in conjunction with the layout and details that are shown on that master development plan. Probably tonight you'll hear a lot of references to the controlling document and that is the 2008 preliminary master development plan. It was again adopted by the Board of Commissioners of the City of Fairview and subsequently recorded in the county registrar's office of Williamson County. It's a public document has been recorded ever since 2008 and your regulations after a master development plan, again the controlling document, is recorded the next steps that an applicant are to take is outlined in the sub regs and for this particular development there are no non-residential components meaning there's not any commercial or industrial components of this planned development. The entirety of the progression of the development after the 2008 plan would follow the sub regs. There would be no site plan as would commonly come with a commercial site to be developed. The sub regs call out in article 2-102.4 and it defines the approval procedure for major subdivisions, this is clearly a major subdivision and then in that same article right above that in 2-102.1 it talks about specifically for developments that are planned developments that have an improved master development plan such as Bellehaven, the 2008 controlling document, that that controlling document takes the place of a conceptual plan so in a traditional subdivision in which you would not have a plan overlay the first steps would be a conceptual plan would be submitted to staff for reviewing and then would come to you for to provide guidance to the applicant on what you see, what you like, what you don't like, and then they would go back take that feedback and they would submit a development plan. With a planned development the process starts with the development plan. It states in the sub regs that the master plan as part of the plan development provides sufficient information to meet the needs for conceptual plan approval, no separate submission of a conceptual plan should be required. So, what is before you for

consideration at your December meeting is a development plan following the process of approving a major subdivision. It's important to note that differentiates from what was previously turned down by the Board of Commissioners earlier this year. Earlier this year the application that was turned down for the Bellehaven development was an application to revise or modify the 2008 controlling document. The applicant at that time based on some staff feedback they were moving forward with the application to modify the 2008 controlling document according to what they had submitted. It came to the Planning Commission for their consideration I believe in March of this year. The Planning Commission sent that forward to the Board of Commissioners with positive recommendation. The Board of Commissioners ultimately voted the amendment that proposed modification to the 2008 plan, they voted that down and it was rejected. The applicant then reached out to staff to get some feedback on the next steps, what would be appropriate. They expressed the desire to move forward under the 2008 document as the controlling document and submit a development plan in accordance with the sub regs that would be in substantial compliance to the 2008 controlling document. So, they're saying the 08 document is in full force in effect, was adopted that's not a question, the sought to amend that document or modify it that and that was rejected, now they're coming back with a development plan which is the next step if they wanted to follow the outline of the 2008 controlling document. So, what you have before you and what we're discussing tonight is a development plan submittal that will be tested according to the substantial compliance clauses in your sub regs to make sure that what they're proposing, the layout, the more specifics of the design and what's being proposed is in substantial compliance with the 08 plan. That would be true for all planned developments that move to the development plan stage. One of the tests or the major test is to make sure that it is in substantial compliance with the controlling document. This process was previously successfully attempted in 2015, I don't know if the current applicants have any relation to the development plan that submitted in 2015 but that development plan was approved but it has an expiration date on it and there was no formal action taken meaning construction started from the approved 2015 development plan, so it has since expired since no action was taken and now basically you're seeing a new development plan again to compare against the 08 controlling document based on the substantial compliance testing criteria that is listed in your sub regs. That's enough for the boring process and history, I'll be glad to answer more specific questions on anything that you guys have any, otherwise that pretty much summarizes kind of where we're at and how we've got here. Thank you.

Ethan Greer - So all of you were provided a document that's three pages that was with your agenda tonight. This is from our zoning ordinance Article 10 section 203.4 subsequent site development plan. As you read through that document it starts off with the controlling document that Will just spoke about, the 2008 approved document. Then item 2 goes into action by Planning Commission on site development plans, you read right past that paragraph the Planning Commission may approve the site development plan or subdivision plat if it finds two items, that the final plan meets the provisions for substantial compliance with the preliminary plan set forth in subsection 10-203.5, which is on the second page and that the plan complies with all other standards for review which were not considered when the master development plan and application for the planned overlay district was approved. Flip to the second page the second item, the test that Will talking about for the determination of substantial compliance is 10-203.5. There are eight items. A site development plan shall be deemed in substantial compliance with the master development plan and other controlling factors as outlined in the approved application for the planned overlay district provided modifications by the applicant do not involve any of the changes outlined below. 1) They do not violate any provisions of the of this article unless specifically noted on the previously approved controlling documents of the planned overlay district. 2) Reduce the minimum lot sizes, minimum building setbacks, or minimum lot widths. 3) Involve a reduction of more than 5% of the area shown on the master development plan as reserved for open space. 4) Increase the total square footage of four area proposed in the master development plan for non-residential use by more than 2%. 5) Increase the overall density nor an increase in the density of any specific phase of the development. 6) Changes to roadway alignments or lot layouts that significantly deviate from the approved master development plan. 7) Include any land area that is outside the boundaries of the approved land overlay district. 8) Involve any land use not specified in the approved controlling documents. So, between now and December 12th staff is asking the Planning Commission to determine if the plan that is presented to you and the Bellehaven group tonight has a presentation that they will give if this development plan is in substantial compliance with the controlling document of the 2008 planned unit development. You may hear planned unit development and planned overlay district interchanged oftentimes those are interchanged you have a pud or pod, that terminology changed in our documents in 2019 from a planned unit development to a planned overlay district, so if you hear pud or pod those are the exact same thing just the terminology changed in our zoning ordinance. With that I welcome the Bellehaven team.

Scotty Bernick – Good evening Chairman, Mayor, members of the commission, my name is Scotty Bernick, I am a landscape architect with Ragan Smith here on behalf of our client DR Horton. We have some handouts if you allow us to pass those out and have the exact same thing on the screen. Out of respect for everyone's time knowing that there's a lot of history and you've seen the plan now a few times my goal tonight is really to highlight and focus on the development plan we are presenting against the 2008 pud that was referenced earlier this evening. I want to highlight those key elements. I really appreciate the commission's time tonight; the work session environment is really helpful to us. We also appreciate staff's collaboration on projects, not just collaboration on the approved pud but with all the things that are new and current to regulations. Bellehaven is a really well-designed residential neighborhood. It's extremely sensitive to natural resources. It's sensitive to the improved 2008 pud, it follows those as you will hear tonight and see its completely

in compliance. I also wanted to note, and it was referenced earlier this application does not request a modification from the approved pud. I'm really excited to share some of the details of planning process and design process as it relates to the improved pud. You'll see that we're maintaining 6 points of ingress/egress around the site, 1 off Hwy 96, 1 off Northwest Hwy, 1 off Dice Lampley, 2 off Anderson Rd, and 1 off Elrod Rd. 1 of the 2 points on Anderson road will be gated and only be utilized for utility service and/or emergency only service. So internally into the development you'll see that the road alignment really needs to be ? of the development plan. We worked with staff to make sure that we're reading the right geometry and following good engineering practice. We've met with the Fire Marshal and Fire Chief to be sure that will provide the required connectivity points within phases, equally we brought in some of the natural resources onto the site which you gave for us as we're looking at the layout dictates where and how to provide for the network and essentially avoid impacting some of these natural resources. We are proposing 484 lots, this is 241 lots or approximately 33% less lots than the 2008 plan which allows 725 lots so obviously with that is a significant decrease in density. Also, I want to note that one of the regulating guidelines of development plan of the pud we talked about was lot sizes, we're maintaining the exact same lot sizes as the approved plan, no reduction. More specifically I'd like to point out with lot of sizes there's a sheet C 5.0, it was probably the 4th or 5th sheet in your document. It's a comparison graphic from the approved 2008 pud as well as the proposed development plan that's before you. One part I wanted to point out is that different color-coded lots signify the different lot sizes of the layout. You'll see by design we're showing similar consistent lot sizes in the same exact proximity as of improved planning. That's sort of an important key point not just as a plus lots but their same lot size specifically that was approved on that 2008 plan. As I mentioned to we're well under density right, we're not exceeding density but another point of the development plan talked about density as it relates to the phases, and this is a key component that we make sure that was still consistent with the proposed plan before you the density is less than that of the approved plan. Also, I wanted to note that on the original plan there are 16 conditions of approval. We are meeting all of those conditions entitled site notes. Obviously we are increasing the open space significantly. You'll see some of that is happening on the bottom left corner where those were originally smaller lots it being utilized as a drip field. What's also exciting as part of this process is planning out the amenities and places that really give the neighborhood character. We're showing on the bottom right corner some inspirational images at high levels beyond the clubhouse amenity that is centrally located we are proposing some items such as the dog park, a significant amount of trails, trails not just being natural and primitive which we see but also trails and sidewalks along the east side of the road so we combined that amount of proposed sidewalks essentially your streetscape is an entire amenity in itself so when you figure out what's the exercise or where I'm going you have options to stay on pavement. Also, as I mentioned identifying all of the potential wetlands and the streams as well as all of the regulatory buffers that come with those features. This is sort of the key point because the original approved 2008 plan didn't identify these features so again bringing these into the site it will be able to 1) protect them and 2) use them as an amenity which I say is common sense and leads to some of the reduction in lots and the placement of where and why we would avoid a wetland. Lastly, just a couple more points I wanted to note we are maintain the 30-foot buffer along the perimeter, that was part of the original 2008 approve plan and the tree canopy retention in accordance with current code. As I promised, trying to keep it short think there's a lot of probably detailed questions and dialogue, we have the design team and everyone here to have some of these conversations so I'm going to step down and open it up for questions. Thank you.

Mr. McDonald opened the work session up to the Planning Commission for questions.

Mr. Magner – I see that closest mailbox amenity for phase 1 is actually in phase 2.

Jay Easter – The amenity area can't be built with phase one due to the phasing and requirement to balance the phasing and the acreage it is listed in phase two right now so it's not built with phase one, we would have a temporary mail kiosk for phase 1.

Mr. Magner – Where is the sand filtration for the step system located on the site?

Jay Easter - The sand filtration location I would have to default to Dickson. I'm not sure if the design has got that far along to locate those.

Mr. Magner – That is a significant size filtration system for this number of units with a flow rate of over 146 gallons per day so that's a pretty big sand filtration system.

Michael Rogers – The size of the sand filter really doesn't play into this it's really the drip filed. The size of the drip field plays into that 130 or 140 thousand gallons per day but the location of them would be centrally located near the drip field.

Mr. Magner – I think that that probably needs to be represented somehow on the plans. If I take into account lets say Cumberland Estates that development is a little bit smaller but that filtration system is in most likely someone's back yard or within sight of the neighbor so I think we would really want to know how that plays in, is it buffered.

Jay Easter – We can look at that and get it located before our Planning Commission meeting.

Mr. Magner – Lastly, if we are going through the list of compliance to me it looks like there is probably 3 of the 8 that has some questionable items. Let's just start with the wastewater treatment. Technically I think back when this original plan was approved one of the stipulation of the 16 mentioned was that water and sewer would be provided through Dickson Water Authority. I don't know that, unless someone can correct me don't think that it was understood that it would be a step system with an onsite wastewater treatment unless the Mayor can recall from back then.

Mayor Anderson – I was on the Planning Commission at that time, it was just regular sewer. There was no mention of a step system at all.

Mr. Mager – That is a pretty big change in the use of this property, and I don't know that the applicant is necessarily at the understanding that when the previous plan was approved so to me I think that's one point, one compliance issue that we should discuss going forward.

Jay Easter - The step system was on 2015 plan that the Planning Commission approved that eventually expired.

Mr. Magner – But that's expired and now we are going back to the 2008 documents.

Jay Easter – That is correct I just wanted to make the commission aware the step system has been approved on this property.

Mr. McDonald – Just so everyone is clear any expired any expired approval is null and void correct.

Ethan Greer – That's correct.

Josh Hogan - With the exception of pud itself, the 2008 document is still valid.

Ethan Greer – Mr. Magner if I can speak to your point about the wastewater facility, it does note in the site notes on the controlling document that water and sewer service to be provided by the water authority in Dickson County. You made one point in question towards Mr. Rogers, but I believe it is that at this time for Water Authority of Dickson to serve this property to utilize a decentralized wastewater treatment facility.

Mr. Magner – Back when we were approving plans in 2008 do you recall having step systems in our community at that time.

Michael Rogers – That predates me, I can't speak to anything prior to 2015.

Mr. Magner – Let's talk about the drip field because this is a little bit different use of property now than it was. The drip field is in a high topographical area, the slopes of that area do slope to the neighbor's properties. Can you speak just a little bit, 146 thousand gallons per day at its peak would be pretty significant. How do we ensure none of that flows to a neighbor's property and if it does if they are on a well or I know it's been filtered through the sand but it's still a wastewater treatment process.

Michael Rogers - We've not gotten in the weeds of reviewing any kind of plans on the stem or decentralized system but its approved technology through the state of Tennessee, so the developer is responsible for designed and complying with Water Authority requirements as well the state of Tennessee. There are slope restrictions they have to adhere to as well as soil requirements as well as disturbed soil so there is a lot of stuff to factor into this and that will all be sifted though I guess at a later date.

Josh Hogan - Mr. Rogers from the Water Authority's perspective is that something that's typically done after the development plan has already been in place and then inspections or does that typically happen after the the plans are approved.

Michael Rogers – I'm not sure where it comes into play.

Will Owen - Yes so in accordance with the process outlined in the sub regs full blown engineered construction plans are not required at this stage. What is being submitted is the development plan and the requirements for the development plan. So, what would take place if this plan were to be approved, the next step for the applicant would be to submit a

detailed engineered design plans for not only the step system but also the roads the entire drainage component all the drainage components all the grading that would be associated with it excuse me any landscaping that would be associated and all the other utilities water, sewer, gas, electric. The next step and the approval process of the development after the development plan approval is full blown construction documents.

Mr. Wagner - Thank you for clarifying that. It's interesting cause I think a feasibility for the step system was included in the application so there's already something I believe started on that.

Will Owen – I believe that's correct Mr. Wagner, I think the applicant has conducted some due diligence to perform some preliminary soils analysis to determine that it has the potential feasibility to support the number of units in the flow that they're projecting.

Ms. Senyard - Just going back can staff talk us through that list of what was a minor vs major change cause I felt like some of the major changes are still mainly the roads, so do you have that list of changes or can yall tell me if there are clearly no major changes as staff's opinion.

Ethan Greer – So our opinion as a staff is that there are no minor or major modifications to this plan. What we are seeking for the Planning Commission to establish is substantial compliance. I know previously this group as Mr. McDonald spoke has submitted several different items before those items have all gone in the past and now from this point forward we would be looking at this from a development plan, does this match close enough or does it significantly deviate from the controlling document of 2008.

Ms. Senyard – That list I believe had something about streets being deleted or added and I would say the streets do not match. There are street names that would have to be reconfigured so that is what I was looking for in that list.

Mr. Hogan – I think you're referring to 10-203.8 modifications to the adopted planned overlay district. It largely mirrors the factors from 10-203.5 that you have in front of you for substantial compliance and specifically with regard to in the modification factors it is the street it's number 8 in the modification factors and it says changes to the roadway alignments or lot layouts as significantly deviate from the approved master development plan and I believe that's verbatim.

Will Owen - That is correct those two statements are mirrored identically both in the modifications and in the substantial compliance text. There is the modifications under the modifications paragraph, item 5, if the amendment modifies the location and or number of the developments primary access points, the submittal that is before you currently the total number of access points and their location is in close proximity if not identical to the 2008 controlling document. I think the prior submittal that was rejected, and I wasn't part of that, we weren't on board yet, they was seeking to modify the controlling document had omitted or eliminated the connection to Hwy 96 is that accurate.

Ms. Senyard – Yeah, it sounded like it was a staff request last time they were trying to follow. I think the interior streets are still, I don't think you can take the same names and slap them on the same streets, so I was trying to see if it was just the access points.

Jay Easter – No, you're correct. Some of the streets have been adjusted to accommodate the stormwater requirements and the stream buffers that were not taken into account with 2008 plan. In general, we maintained the major spine through the neighborhood and a connection all the way to Dice Lampley. We maintained a roundabout central feature in the center of the neighborhood and all the points of access that was on the 2008 plan.

Mr. McDonald – Just for clarification so everyone can be working off the same mind set, I know the phrase significantly deviate is kind of open to interpretation, is there anything you can point to too give us a better idea if someone is looking into that how much deviation has to take place before its considered significant.

Ethan Greer - That is within our zoning ordinance it states significantly deviate; we do not have a defined term for significantly deviate. That is a matter of opinion. If this significantly deviates there are other references like Ms. Senyard spoke to in the modifications area that speak to specific deviations triggering other items such as location of primary access points, however in the determination of substantial compliance significantly deviate is not defined.

Josh Hogan – I might just add, it's probably more a matter of interpretation. You are interpreting the code as it's written and so when a term is not defined or that particular section may be considered ambiguous then you start first with the word right. Words matter, it doesn't say any deviation it says significant. So, obviously it means more than just something has changed and whenever something's ambiguous it's usually going to be construed one of two ways either narrowly or broadly. When it's an ordinance it's normally construed narrowly so that people are on notice its construed kind of against

the city and in favor of the citizens so that would be the advice I would give on interpreting an ambiguous term. Unfortunately, it's maybe not the code we want but it's the code we have and that is what we have to base our decision on.

Ms. Senyard – What was the last community that would have come through with this development plan that we could try to like to look at and see the master plan verses the development.

Ethan Greer - We would have to do a little bit of digging on that. Cumberland Estates would have come through in a similar process. Richvale is a planned development. Both of those would have come through with this similar process. To speak back to your previous point of significantly deviate I would again like to stress 10-203.4 item 2 A and B, specifically B the plan complies with all other standards for review which were not considered when the master development plan and application for the planned overlay district was approved. When this was approved there was no stormwater taken into consideration, no wet weather conveyances taken into consideration, all of those are now being taken into consideration and have changed some of the road layouts to avoid building within areas that they're not allowed to build in. So, with that looking through the lens of 2023 those are items that were not considered when the original controlling document was approved.

Mr. McDonald – Thank you all for that clarification. I really just want to make sure for others asking just for more information on that phrasing. I appreciate it.

Ms. Senyard – I have a couple of questions on the C5 plan. So, you were talking about trying to put the same lots in the same areas as its previous and I for the most part agree with you. I'm a little concerned about the ones toward 96 where the light-yellow touches now but you did have a massive orange kind of mixed in over there that really not.

Jay Easter - We had the large lots along the spine which we followed and then it transitions down through here your referring to these four lots right here.

Ms. Senyard – Well that kind of stretch that is about the cross of the T you didn't really have any light yellow that stretched above that T in the previous plan and now we've got it all up in there.

Jay Easter – We did, and we also tried to match as closely the percentages between the two plans. Those are the smaller lots right there along that section of the of the road, we tried our best effort to maintain the large lots along the main spine as previously done on this plan. We lost a large lots up here due to the wetlands and stream in that area that is why the cul-de-sacs were eliminated. We have wet weather conveyances here that's why this large concentration of lots disappeared and now dead ends into a cul-de-sac so that we don't disturb those. We transition into the orange lots as we come through this way very similar to down here but again there were weather conveyances and a pond right here. The large wetland in the center affected this layout but we've tried to concentrate lots in similar areas. If that is deemed significant change we will revisit it, we've done our best to honor the plan that we have put forward remembering that there was 241 lots lost throughout the whole development.

Mayor Anderson - Could you tell me how much usable open space there is minus the treatment area one and two which is not usable and minus the stormwater ponds.

Jay Easter - Yes ma'am. There is a required open space of 10% which is 25 acres. We have 19.21 acres of improved usable open space. That is improved with trails, playgrounds, dog park, wetland overlook and parks within the neighborhood. We have a total of 79.16 acres of unimproved open space and that does not include the drip field.

Will Owen - For some clarity, at last month's meeting there was discussion on open space and particularly as it pertains to 10% requirement. I wanted to make sure you understood the differentiation under standard subdivisions that are under standard zones within your in your zoning ordinance there is not a mandatory 10%, it's a recommended 10%, but not mandatory. When you transfer over to a planned development it does become mandatory at that point. So, the 10% is a minimum mandatory for planned subdivisions. I just wanted to make sure if there was any confusion on you know maybe a couple of applications you saw last month there was not a hard and fast adherence to the 10% and that's why. Those two applications that were before you were under standard zone, I think RS-15 so that's why when now we're talking about plan development then there is the language is different and the regulations and it does mandate a minimum of 10% and it also goes further to mandate half of that 10% has to be improved open space.

Mr. McDonald – Looking at C 5.0 on the 2008 approved plan there is D lots which is 175 lot size I'm assuming since everything else is matching that that too is.

Jay Easter - On the 2008 plan the D lots were not illustrated. It was just an area, and it showed the sewer network and road stubs. On our plan before you we locate all the town homes and street network within in and we are proposing 146 which is a reduction of 29 town homes.

Mr. Magner – On that same note, technically phase 1 had an increase in number of dwelling units.

Jay Easter – The number of dwelling units did increase but the density did not. We worked with the Fire Chief and Fire Marshal to make sure phase 1 had the appropriate number of points of access to meet the fire code so that the rest of the project could develop and that it could develop. Phase 1 as illustrated here would not be allowed to develop more than 30 homes on the old plan without a second point of access because of the fire code that Fairview has since adopted. That's one of those items not taken into account in 2008 when this plan was approved. So, with phase 1 we will be building the 96 entrance and the road all the way back to Northwest Highway so that the development will be maintaining 2 points of access to meet the fire code.

Mr. McDonald – So, on the 2008 approved plan as you previously stated there are no town homes but yet D has 175 so was that approved with not having them on there or why is it without.

Jay Easter – Let me go back to the recorded document it calls them out in the planned data and they are labeled there. It's labeled as phase 4, 175 lots, it's also called out in the planned data right here lot type D, town homes or cottages, 175.

Mr. McDonald – So, for clarification it was approved that 175 town homes could be built but there was not an identifying marking on the plan it was just a general location.

Ethan Greer – That is correct.

Jeff Pape – I'll keep this as brief as I can. I sent you all an email a couple days ago just kind of summarizing and a lot of that was already said tonight, the process I completely agree with everything said about the process and everything. I absolutely appreciate a lot of the questions that have been asked relative to design the septic system and go to step system and things of that nature, I just think that's getting a little bit ahead of things. You know when you look at it section 10-203.5 the specific criteria that that's what this is all about before you get into that detail design. It's not required at this point; you know what is required is again an interpretation of the code and significantly deviate part I'll get to in a second but I'm going to work backwards starting with number eight because to me that's the most clear you know involving any land use not specified in the approved controlling documents. It's pretty clear when you read the code Fairview code that a sewage treatment facility anything that treats sewer is falls into the category of extensive use facility, extensive impact facility, clearly listed sewage treatment in there. It's very clear that how it works and then the sewage treatment system is defined as water collection or treatment system owned and operated by public organization. That's exactly what's happening here. That is a use that was not in the controlling document, everyone has been very clear that this is based on controlling documents. The controlling documents very clearly listed uses as single family, town home, patio homes, homeowner owned, city and county owned, roads dedicated, and open space. So, they did not include an extensive impact facility and so it's very clear that that is black and white as it can get in my personal opinion so that's pretty straightforward but then if then you go back to item six the significantly deviate. Ethan's right on the money with the fact that there's no definition of that but you look at item four and they use 2% if you look at other spots of the code were percentages we used because a lot of codes throughout the country and everywhere they look at percentages you know usually it's 2% or percent 3%, in our code there's other triggers in different parts of the code that use things that we don't get over 3%. In this case I tried to put some percentages on it things like changed in lot size, the average lot size changes by 13%. You look at the road deviation, they we lost like 14 cul -de-sacs that's 26% reduction. We've got changes of 42%, 26%, 58%, and 13% on different types of percentages. To me that's pretty clear significant deviation but forget the numbers for second we heard the applicant tonight literally state that it's a significant reduction and that's an important point. Item six doesn't say that it has to be an increase, doesn't say it has to be more dense, all it says is a significant deviation and they admitted tonight that they have significantly deviated from the previously layout in their own words tonight. Then the last thing that I didn't even put in my memo but item number one violating provisions of this article unless specifically noted in the previous plan and their plan state right on the cover sheet that they satisfy all the zoning ordinance and I just disagree with that. Section 13-102 steep still requires that any subdivision if there's greater than 15% slopes in those particular areas have to have a minimum lot size of three acres, I don't see a three-acre lot up there but in all the documents they've submitted before there were several areas that had a 15% slope, and I don't think that slope has changed. Haven't seen anybody out there grading so that would require a variance by the Board of Zoning Appeals so it does not satisfy the current ordinance that triggers number one and anything over 20 acres would be a 5-acre minimum lot, so you'd have to have but I think in my previous stuff I noted that there were 17 different locations on this site per the plans that they previously submitted that are 15% or greater. In those areas would require that every one of those areas would require at least one 3-acre lot or one 5-acre because there is some areas over 15.

So, there's just so many things that clearly make this not in substantial compliance and so all those great questions you guys are asking are stuff that we shouldn't even be getting to at this point. I feel like it's Groundhog Day, it was about this time of year two years ago we were in a planning a work session joint work session having this exact same conversation and they continue to come back with plans trying to convince everyone here in Fairview that they are in substantial compliance and it's just never going to happen. I mean this the septic system alone; the sewage treatment system alone is clear. Until they have public sewer they cannot be in substantial compliance with the original plan so that's to me again it's you all have to make that interpretation, but it seems pretty clear to me. I appreciate you guys doing this, great discussion tonight and appreciate you guys letting us speak. Thank you.

Shawn Henry – Mr. Chairman, Madam Mayor, members of the Planning Commission thank you for being here tonight. My name is Shawn Henry, I'm a land use attorney representing DR Horton, the applicant. Sewer service is not a land use no more than electric service, water service, gas, or any other utility. The drip field that we talked about on this site would not be there but for the fact that there is residential homes being constructed within the boundary of the development. That drip field is not serving any other piece of property than property in question. It's not serving off-site facilities. It's a necessary utility and it's serving those on the property. It's being suggested to you that sewer is something more than just serving individual homes that it's an extensive impact facility. If you look at your zoning code on page 7 article 3 where water and sewage treatment plan is referenced in context with airports, air cargo terminals, heliports, helistops, electricity generating facilities, marine terminals, railroad bus and transit terminals, railroad yards and other transportation equipment. All of those things are serving off site customers, that is not the case here. It's an essential service you can't have a home without that service and so it's not a land use and therefore there can be no change in land use. To further emphasize that point if this sewage drip field was an extensive impact facility there's supplemental use regulations that are triggered that apply to all those things, we just talked about like a plant, a sewage plant and the things that have to be addressed as traffic generated by such facility. There's no traffic being generated by such facility. There is no traffic being generated to and from the off-street parking requirements there's no reason to park at this drip field, that's not what we're talking about. So, the context of what's being suggested to you that somehow the methodology and technology for handling domestic sewage because that has now been improved and changed that there's a change in use, that there's a substantial deviation in land use again that is not a land use activity. That was the only point I wanted to address. Thank you very much.

Mr. McDonald – I guess I would like to follow up on that. To me at the end of the day you have a piece of land that was going to have residential homes built on it and now it's going to have a drip field. I understand like you stated its all domestic. However, I feel if they wanted to have a landfill there for all the residential trash that would be a separate land use, so I don't see how sewer is not different. It's just my opinion, I'm not an attorney I'm just not connecting the dots on how that's not considered a different land use.

Josh Hogan – I think we have to go back and look at the bigger picture at least for simple minded people like me. Ethan said in the beginning the requirement is for the wastewater sewage disposal approved by the Water Authority and this is what the Dickson Water Authority has approved for that site, so I think it's very difficult to say that it's not in substantial compliance. The land use verse utility I believe that's a correct discussion legally of how that could be applied, let me just point out that something that I think probably makes a good point anyway is that the Dickson Waters Authority is a Regional Water that's created by state statute and as such we don't have the authority to regulate the Dickson Water Authority and how they do business. They preempt any city ordinance because it's a state statute and there's actually case law on that that a city zoning or municipal zoning ordinance can't regulate so even if they did want to condemn that property and put a wastewater treatment plant a full-on treatment plant, they can do it technically legally so we just don't have the authority to regulate what a Regional Water Authority can do.

Mr. Butler – I guess Mr. Hogan I would just challenge your question. In 2008 when it was approved there was an in-depth discussion about public sewer provided by the Water Authority of Dickson County including a letter from the water authority saying we will provide public sewer access but now that adjustment has changed I would say that probably weighed heavy on the approval knowing they had public sewer, and they wouldn't be able to take that land and condemn it for a treatment plant without the zoning without the high impact zoning in place and so that's kind of where I am and now you have where it was a domestic use it would be in the public right of way as a public sewer you have sewer lines running in the public right of way controlled by the City of Fairview now you have a deeded and recorded separate parcel that is just specific for sewer treatment and so that is kind of what I am hung up on. That area and that land has now changed use from what it was in the controlling document.

Mr. Magner – And if also I could just add it is a working engineered system that has to require regular access so the Dickson County water will have to come on-site to maintain it. I still think the part that I was struggling with most here is I think the original documents were approved thinking that it's a self-contained waste system whereas now we have effluent. I truly trust the engineers and what they're doing, I personally don't want to drink that effluent water that's

produced into the drip field, and I am concerned right now that that could shed potentially on the neighbor. So, what we're talking about is yes, this system serves the residents of this community but if potentially is impacting our neighbors because the slopes of the property as of right now I don't have that justification, I don't have any documents that proves anything likewise. All I see is our topography slopes on both of these large lots at 146,000 gallons per day. That's a lot of runoff that has to be handled and I would be concerned if I'm adjacent neighbors thinking originally that would have been self-contained system.

Shawn Henry - My only follow-up comment is that even if this were a new POD zoning plan which it is not, that your current zoning code that you adopted in 2019 requires the submission of documentation of adequate public facilities and documentation that all relevant utility companies have been consulted and that adequate capacity exists, and that the applicant has to agree to upgrade the facilities as necessary to adequately serve the proposed development. The laws require a POD submission is the location and size of areas to be utilized for sanitary sewer treatment including preliminary analysis of soils showing the approximate total number of residential lots the soil areas can accommodate. So, even if we are starting from scratch and putting the planned unit development in front of you for the first time ever what you have in front of you is permissible.

Mr. Butler – That would be in the application, in the submittal, and in the review process. This was approved not with that.

Shawn Henry - The critical question is whether there's a change land use not previously approved. Sewer is not a land use under your zoning code.

Mr. Butler – Under the zoning ordinance it specifically states it is its own land use.

Shawn Henry – It specifically states that a sewage treatment plant is an extensive impact use. A sewage treatment plant where sewage is sent to a plant for processing. Like in downtown Nashville we've got one sewer treatment plant in Germantown.

Mr. Magner - Sir if I may, this is a sewer treatment plant that is part of the system. It's a self-contained sewage treatment cause it goes nowhere else. The step is a relatively new release for our areas of Tennessee, system that's being employed so that we don't have to pump that with extensive distance as well as processing plants where that same function occurs in another location, so it is a sewer treatment.

Shawn Henry – I don't want to argue with you but its serving only those lots on the site just as any other subdivision that has a similar technology would do, it's not serving off site customers therefore we don't think it qualifies under that extensive impact.

Mr. Butler – I'll just read classic definition. A wastewater collection and/or treatment system owned and operated by a public or quasi-public organization and approved by all appropriate licensing and oversight agencies. This term shall not be construed to include any type of privately owned and operated individual disposal system to include septic or other similar systems.

Shawn Henry – Your reading the definition correctly but what we are looking at is the area of the zoning code that talks about land use classifications and those are the ones Mr. page properly cited under extensive impact and the ones I just read a moment ago. That definition that you just read would fall within water and sewage treatment plant and I know there is a disagreement here as to whether or not a drip field is plant or not, whether you're serving on site lots or serving off site customers including the development but your definition is correct for water and sewage treatment plants and the only thing we're pointing out here under that extensive impact facility description and particularly reading the context of these other listings those are facilities serving off site customers and that's not what we have here. Thank you for your time.

Ms. Senyard – City staff other subdivisions have deeded this out, what is the zoning that carries with that.

Will Owen – Very good question. I will offer some insight. Extensive impact facilities are specifically water and wastewater treatment plants are only a listed approved use as a conditional use and one only one of your zoning designations and that is industrial special districts so while a strict interpretation very strict interpretation might result in one placing a recirculating sand filter, a UV disinfection unit, the associated disposal tanks and dosing tanks and the associated drip fields which are subsurface installed under the ground that by regulation are not allowed to accumulate surface standing water of any sorts. Those could be perceived as falling under the definition of central water wastewater treatment facilities. If that strict interpretation is carried to its completion the current subdivisions that you have would be in violation of your zoning code, so I think that's an important distinction to make. The other item Mr. Magner was kind of what I already alluded was by design and by regulatory authorities through TDEC and Water Authority of Dickson County that those

systems are designed and should operate in such a manner that no effluent that is disposed of and the tubing that is subsurface should rise to the surface of the ground. All of it is designed in such a manner to infiltrate into the ground as the final treatment component. I will tell you that the effluent that is dosed out to the tubing of the drift fields prior to ever going being filtered through the soil is significantly cleaner than anything that comes out of a conventional septic tank serving a single home. It is treated to a standard that could be discharged to a stream if there was a stream nearby that could accept that flow of water so the effluent that comes out of the UV disinfection and into the tubes is by design by engineer design a very clean effluent. It is still effluent, that is nonnegotiable it is still treated wastewater, but it is treated in a very high level compared to what a conventional septic tank and field lines that serve an individual home that most of us are familiar with. It is significantly treated at a higher level than that effluent. Does that answer your question specifically and is there any other.

Ms. Senyard - So effectively whatever the subdivisions zoning is if its R20 or whatever that's what they deed it to Dickson Water Authority as that is what it is carrying is that zoning.

Will Owen - Correct to my knowledge there's no change in zoning designation for the deeded property of the drip field.

Ms. Senyard – So, this one would carry whatever the R-15 pud or whatever designation.

Will Owen – It would carry the RM-8 PUD designation that the remainder of the property carries. Along those lines staff as a whole views our position as providing you with accurate information for you to make proper determinations. There is clearly as has been discussed tonight there is some room for interpretation and item six and eight and I don't think anyone would question that. What we hope to do is provide again accurate information and give you feedback and input to consider for the agenda item that'll be before you December 12th.

Ethan Greer - From a board standpoint if you could if you have anything that you would like to see from the applicant as they work over the next couple weeks prior to the Planning Commission meeting if you would like to see them come in and have more explanation on a certain item or having some more detail idea of the sand filter and decentralized system if there are anything that you feel you would like to see in the next couple weeks please let that be known so we can convey that to the applicant and we can get those things to you as well.

Will Owen - Along those lines I think it's also important to not only talk about the process of how we've gotten here and where we are but what would the future look like. If this were to be approved as the development plan the next step as I mentioned already is construction documents. Per your sub regs the construction documents are not required to come and receive Planning Commission approval so if approved the next time that you would see anything related to this development would be the final plat. So if there are some specifics that you want to include and I'm thinking along the lines of a community building of some sort an amenity center so if there's a say minimum square footage that you want to see on the amenity center I think now would be the time to apply those types of standards that you would want staff to review construction documents against so any kind of more detailed information that you would like to see or require as engineered construction documents are created so that we can have the proper information to test the construction documents against and it's not just well they said there is going to be an amenity center and here it is 20 x 10 prefabricated building. That's probably not what you have in mind, I don't think that's what the applicant has in mind but in the absence of some specific details like that we won't have a lot of guidance I guess to test them against.

Ms. Senyard – Would staff mind pulling those last developments for us to kind of see what we approved previously.

Ethan Greer - Do you have specific developments that you would like to see.

Ms. Senyard – You mentioned Richvale and Cumberland Estates. I was just thinking in this past history between 2008 and now something that maybe this board has been involved in to kind of see ok this was the not significant changes that we thought was not significant as like a measure test.

Will Owen - I think that's very wise. I think we will try to we'll endeavor to dig up we will try to endeavor to find the approved master development plan and then the subsequent development plan so you can see what if any deviations between those two stages of those two prior developments. I think that's a good approach.

Mr. McDonald – I just want to say I appreciate this being put together. Thank you for showing up and thank you to the citizens for coming out and being involved.

- **Adjournment at 7:37 p.m.**