

COMMENT ON THE PROPOSED KNOX COUNTY UDO

I have spent considerable time reviewing the proposed Knox County Unified Development Ordinance, including its zoning provisions, development standards, infrastructure requirements, subdivision provisions, storm water requirements, administration and enforcement provisions, proposed zoning map, and comments submitted by other Knox County residents.

The more I have reviewed, the more convinced I have become that Knox County should **not move this ordinance toward adoption on the present timetable**. My first and most urgent request is:

EXTEND MEANINGFUL PUBLIC REVIEW FOR A MINIMUM OF 60 ADDITIONAL DAYS BEFORE THE UDO ADVANCES TOWARD ADOPTION.

This is not a minor amendment to an existing ordinance. It is a comprehensive restructuring of the rules governing the use and development of property throughout unincorporated Knox County. The consequences will last for decades. At least 60 additional days is a very small price to pay for getting something this important right.

RECENT PUBLIC COMMENTS SHOW THAT MANY PEOPLE ARE JUST DISCOVERING WHAT IS BEING PROPOSED

The concentration of comments appearing immediately before the present deadline should concern County officials. Residents are suddenly asking questions about agricultural property, backyard chickens, hobby farming, existing property rights, proposed zoning classifications, residential density, roads, schools, storm water, emergency services and the ability of existing infrastructure to support additional development.

One August 11 commenter states that although the proposal has been underway for some time, he first learned about it through a neighbor's Facebook post only the previous week. That is not evidence that public participation has run its course.

It is evidence that meaningful public participation may only now be beginning.

Whatever notification and public-engagement efforts have previously occurred, they clearly did not result in timely awareness by a substantial number of property owners.

Before adoption, Knox County should notify affected property owners, explain the proposed changes in understandable language, conduct additional public meetings throughout the County, continue accepting written comments, and give citizens enough time to determine what the UDO actually means for their property and community.

GROWTH AND INFRASTRUCTURE MUST OCCUR TOGETHER.

I support responsible economic growth and the construction of housing needed by the community. But development capacity should not be increased independently of the infrastructure required to support it.

Roads, intersections, schools, storm water systems, water and sewer systems, law enforcement, fire protection and emergency medical services all have finite capacities. Every additional development places some additional demand upon those systems.

The question therefore cannot merely be: **Can this individual development be approved?** The question must also be: **Can the infrastructure serving this area safely and economically support this development, plus existing development, plus development already approved, plus the additional development capacity created by the proposed zoning?**

A series of developments can each appear acceptable when considered individually while their combined effect overwhelms the same two-lane road, intersection, school, drainage system or emergency-service network.

The UDO should therefore contain a meaningful and enforceable **infrastructure-concurrency or adequate-public-facilities requirement.**

Before additional development intensity is approved, Knox County should objectively determine whether adequate capacity exists for roads and intersections, schools, storm water and drainage, water and sewer where applicable, fire and EMS response, law enforcement, and other public facilities materially affected by the development.

Where adequate capacity does not exist, necessary improvements should be funded, scheduled and completed before or concurrently with the development that requires them.

Developers should contribute an appropriate and legally supportable share of infrastructure costs attributable to their developments.

Existing residents and taxpayers should not repeatedly inherit the cost and safety consequences of approving development first and attempting to repair inadequate infrastructure afterward.

CUMULATIVE IMPACTS MUST BE MEASURED

Traffic and infrastructure studies should reflect actual conditions, not merely theoretical capacity or the incremental effect of one application. Evaluation should include:

- existing traffic;
- previously approved but not yet completed development;
- pending developments;
- realistic build-out potential under the proposed zoning;

- peak-hour traffic while schools are in session;
- actual queues and delays at intersections and neighborhood exits;
- crash history and sight-distance limitations;
- road width and shoulders;
- school capacity;
- fire and EMS access and response capability; and
- existing and projected storm water capacity.

If the proposed zoning map materially increases the number of dwelling units that could ultimately be constructed in an area, Knox County should calculate and publicly disclose that additional build-out potential before adopting the map. Citizens cannot intelligently evaluate a zoning map without knowing how much additional development it could permit.

THE CANTON HOLLOW ROAD CASE DEMONSTRATES WHY CONCURRENCY PROTECTS DEVELOPERS AS WELL AS RESIDENTS

One of the comments already submitted provides an unusually useful real-world example.

A 3.7-acre Canton Hollow Road property was rezoned in 2017 from Agricultural to Planned Residential. The applicant ultimately received legislative approval for density of up to eight dwelling units per acre. The applicant has submitted documentation indicating that the requested density was connected to anticipated improvements to Canton Hollow Road and that County Engineering was involved in discussions concerning those improvements during the rezoning process. The road project was subsequently redesigned and repeatedly delayed.

According to the property owner's submission, development of the property has consequently remained on hold for years.

Now the proposed UDO map reportedly places the property in NR-1, potentially reducing its development capacity substantially below the eight dwelling units per acre previously approved.

Whether every detail of that particular dispute is ultimately resolved in the property owner's favor is not my point. The case illustrates the larger problem.

Residents lose when development is approved without adequate infrastructure.

Developers and property owners lose when development rights are granted in reliance upon infrastructure improvements that do not materialize.

Taxpayers lose when government must later correct the mismatch.

An enforceable concurrency system provides greater predictability for everyone.

EXISTING PROPERTY RIGHTS AND LAWFUL USES REQUIRE CLEAR PROTECTION

The UDO should clearly explain what happens to existing lawful uses, previously approved development rights, previously approved zoning, permits, plans and projects during conversion to the new ordinance and zoning map.

Property owners should not have to discover after adoption that a right or reasonable expectation created under the previous system has been materially altered.

Where existing zoning is being replaced with a new district, Knox County should provide an understandable comparison identifying:

- the existing zoning;
- the proposed zoning;
- uses presently permitted;
- uses that would be permitted after adoption;
- meaningful changes in density or dimensional standards; and
- any existing use that could become nonconforming or otherwise restricted.

The burden should not rest entirely upon thousands of individual property owners to become zoning experts before they can determine what government is doing to their property.

AGRICULTURAL AND SMALL-SCALE FOOD-PRODUCTION RIGHTS SHOULD BE EXPRESSLY PROTECTED AND PROMOTED

The recent public comments demonstrate substantial concern about agriculture, hobby farming, gardens, poultry and small-acreage properties. Those concerns should not be dismissed simply because some of the properties involved are too small to constitute large commercial farms.

Knox County residents should retain the reasonable ability, subject to legitimate health and nuisance protections, to grow food for themselves and their families, maintain gardens, keep customary backyard poultry and engage in reasonable small-scale agricultural activities appropriate to their property.

The UDO should say so clearly.

Agricultural definitions should also be checked carefully against applicable Tennessee law so that forestry, nursery stock, livestock, poultry, bees and other legitimate agricultural activities are not inadvertently excluded because of an unnecessarily narrow local definition.

INTERNAL CONFLICTS AND AMBIGUITIES SHOULD BE CORRECTED BEFORE ADOPTION

Comments concerning the proposed Rural Preservation district illustrate another problem deserving careful review.

If agriculture, agri-tourism and rural lodging are individually contemplated within a rural district, other provisions should not inadvertently make those compatible activities mutually exclusive through definitions or limitations on principal uses. That principle extends throughout the ordinance.

Before adoption, the UDO should undergo a complete cross-reference and consistency review so that one article does not permit what another article unintentionally prohibits. Ambiguous regulations eventually become administrative interpretations, disputes, appeals and litigation.

Clear language protects citizens, developers and County employees alike.

ADMINISTRATIVE DISCRETION SHOULD BE LIMITED BY CLEAR, OBJECTIVE STANDARDS

A modern ordinance certainly requires professional judgment. But wherever the UDO gives an administrator, director, reviewing agency or other official authority to require additional information, impose conditions, determine equivalency, waive requirements, interpret ambiguous language or decide whether a standard has been satisfied, the ordinance should provide objective criteria governing that discretion.

Citizens and developers should be able to read the ordinance and reasonably predict the result.

Similar applications should receive similar treatment regardless of the applicant, neighborhood, administrator or political environment. That requires written standards, documented findings and meaningful appeal procedures.

STORM WATER MUST BE TREATED AS LONG-TERM PUBLIC INFRASTRUCTURE, NOT MERELY A SITE-DEVELOPMENT CALCULATION

Storm water does not respect parcel boundaries. Development that removes trees, alters grading, increases impervious surface, changes natural drainage channels or redirects runoff can affect downstream properties, roads, streams and drainage systems far beyond the development site.

I have a particular concern about this because I am presently surrounded on two sides by development.

Approximately 36 acres immediately south of my property were formerly heavily wooded and provided substantial wildlife habitat. Following acquisition for development, the trees were cleared and the land extensively graded. Whatever storm water characteristics existed when that acreage was wooded have necessarily been altered

by development of the property.

A separate development immediately west of my property contains a storm water detention/retention facility whose overflow is directed toward the general area of the property line between my property and my neighbor's property, with much of the apparent overflow path directed toward mine.

Drainage from the western development ultimately connects with drainage associated with the substantially larger southern development.

I have personally observed rapid storm water movement, sediment accumulation and the movement of substantial rocks and debris downslope during relatively short thunderstorms. Material can accumulate near drainage structures and potentially interfere with the movement of water.

I am not an engineer but one is not required to tell that water flows downhill and faster the greater the grade. It has been a relatively dry, two-year period, at least at my location and we only had one incident early in the excavation process where a 20-minute thunderstorm of Knoxville proportions, dumped about 10 tons of red clay dirt on my backyard because erosion cover was not yet in place. The resultant 100 to 150 ft hill upon which some large houses are built is still not particularly stable as grass is sparse and little ditches prevalent. A little fertilizer and the proper seed and maybe some shrubs or small trees would go a long way towards remedying the problem. I hope that soil on which they are built doesn't shift. Still I could use a new house.

The UDO should require engineers, developers and the County to permanently answer hillside runoff and other storm water issues **before my adjoining property is damaged.**

Storm water review should evaluate the **cumulative effect of multiple developments discharging into the same receiving drainage system.**

It is not sufficient to demonstrate that each development independently satisfies a design calculation if their combined discharge ultimately enters the same downstream pipe, channel, culvert, detention system or other drainage facility.

The County should require documentation that the entire receiving system has adequate capacity for the cumulative flow it will receive.

The review should also identify what happens when design capacity is exceeded.

Every detention facility, emergency spillway and overflow route ultimately sends water somewhere.

The approved plan should identify that path and demonstrate that an overflow condition will not simply transfer an unreasonable flooding or erosion hazard onto neighboring or downstream property.

The UDO should therefore require storm water review to answer: Where does the

water go when the system cannot contain it? What properties may be affected? Was the downstream system analyzed for the combined runoff from all developments feeding it?

What happens if an inlet, culvert or other drainage structure becomes obstructed by sediment, vegetation or debris?

Who remains responsible if an approved storm water facility, overflow route, grading plan or drainage feature subsequently causes flooding, erosion or other damage to neighboring property after the developer exits stage right?

Those questions become even more important after development is completed. The developer may construct the drainage system, finish the project, sell the lots and leave Knox County or dissolve the development entity. ***The altered watershed remains.***

A neighboring homeowner did not design the storm water system. A downstream property owner did not approve it. Yet, those people may live with its consequences for decades unless an enforceable long-term maintenance and funding mechanism is established.

The UDO therefore should establish an enforceable system of permanent responsibility, inspection, maintenance and accountability for storm water facilities as long as the development exists.

Before approving such a system, Knox County should identify:

- The party responsible for the facility after development is completed;
- Who must inspect and maintain it;
- How maintenance obligations transfer when property is sold;
- What financial mechanism assures that required maintenance will actually occur;
- Who is responsible when an approved overflow or drainage system damages adjoining or downstream property;
- What enforcement authority the County retains after the developer leaves;
- How affected neighboring property owners obtain corrective action before actual flooding occurs; and
- Whether the approved system remains adequate as surrounding development and watershed conditions change.

Long-term maintenance matters because sediment, vegetation, debris, deterioration and later development elsewhere in the watershed can reduce drainage capacity long after construction is complete.

An approved storm water plan therefore should not merely answer: **“Does the system work when constructed as designed?”**

It should also answer: **“Where does the water go when the system cannot contain it, who may be affected, who remains responsible, and who ensures that the**

system continues to function 10, 20 or 30 years after the developer has left?”

A storm water facility may remain in place for generations after the developer who constructed it has departed.

The responsibility for that facility must last as long as the development does. Knox County should not approve a permanent alteration of drainage while allowing responsibility for its consequences to become temporary.

GROWTH MUST ALSO BE FISCALLY SUSTAINABLE

There is a larger issue deserving explicit consideration. Knox County is attracting residents and businesses because Tennessee offers economic opportunity, relatively affordable government and a quality of life that people find desirable.

I welcome productive growth. But population growth and development are not automatically fiscal benefits.

Additional residents and development generate tax revenue. They also create demand for roads, schools, emergency services, law enforcement, utilities, storm water systems, parks, administrative personnel and other public services.

Before intentionally increasing development capacity, Knox County should evaluate both sides of that equation.

I want to know:

- What additional public revenue is reasonably expected?
- What additional capital expenditure will be required?
- What recurring operating expenses will follow?
- Who pays for the infrastructure?
- What happens when that infrastructure eventually requires replacement?
- And are the jobs and household incomes generated by the expanding economy sufficient to support the resulting tax burden without progressively reducing the affordability that helped make Knox County attractive in the first place?

A community can grow in population while becoming fiscally weaker. The goal therefore should not simply be **more growth**.

The goal should be **productive, infrastructure-supported and fiscally sustainable growth that improves rather than diminishes the quality of life of existing and future Knox County residents.**

WE SHOULD LEARN FROM OTHER FAST-GROWING COMMUNITIES

Knox County has an opportunity to avoid mistakes made elsewhere or we can kick the can down the road to our kids and end up like California or New Jersey or

West Virginia or any place government took the easy money and ran.

Communities can approve development during periods of rapid growth and enjoy the immediate expansion of the tax base while postponing the full cost of roads, schools, drainage, public safety, maintenance and eventual infrastructure replacement.

Those obligations accumulate. Eventually government must increase revenue, reduce services, borrow additional money, postpone maintenance or allow infrastructure to deteriorate.

Knox County should build safeguards into the UDO now rather than discover those consequences after development has occurred and the choices have disappeared.

THIS IS NOT AN ARGUMENT AGAINST GROWTH

I want to emphasize this point. I am not asking Knox County to stop development. I am asking Knox County to establish a system which:

- **Pays reasonable and wise attention to the cost of growth;**
- **Balances infrastructure with growth;**
- **Measures cumulative impacts;**
- **Respects and protects existing property rights.**
- **Protects and even promotes agriculture and reasonable personal food production.**
- **Addresses storm runoff consequences before damage occurs.**
- **Ensures rainwater runoff long-term responsibility for damage.**
- **Ensures administrative authority is governed by clear standards and remains accountable to elected officials.**
- **Ensures developers work under clear, fair rules that protect the public interest rather than favoring any special interest.**
- **Ensure new development bears an appropriate share of infrastructure costs it creates rather than shifting those costs to existing residents.**
- **Ensures future generations do not inherit obligations created by today's transient developers and politicians.**

REQUESTED ACTION. I respectfully request that Knox County:

- 1. Extend meaningful public review of the proposed UDO for a MINIMUM OF 60 ADDITIONAL DAYS before advancing it toward adoption.**
- 2. Continue accepting and publishing public comments throughout that period.**
- 3. Conduct additional geographically distributed public meetings so residents can ask questions directly and receive answers.**

- 4. Undertake additional direct-notification efforts so affected property owners understand that their zoning may be changing and know where to review the proposed regulations.**
- 5. Provide an understandable existing-zoning-to-proposed-zoning comparison identifying material changes in permitted uses, density and development rights.**
- 6. Calculate and publicly disclose material increases or decreases in potential residential and commercial build-out resulting from the proposed zoning map.**
- 7. Establish enforceable infrastructure-concurrency/adequate-public-facilities standards addressing roads, schools, storm water, emergency services and other materially affected public infrastructure.**
- 8. Require infrastructure evaluation to include the cumulative effects of existing, approved, pending and reasonably foreseeable development rather than evaluating projects only in isolation.**
- 9. Establish an equitable mechanism, consistent with Tennessee law, requiring development to bear an appropriate share of infrastructure costs it creates.**
- 10. Clearly protect existing lawful uses and appropriately address previously approved zoning, development rights, plans and permits during transition to the UDO.**
- 11. Protect reasonable agricultural, gardening, backyard-poultry and small-scale food-production activities and ensure agricultural definitions are consistent with Tennessee law.**
- 12. Perform a comprehensive internal consistency review of the entire UDO before adoption so definitions, use tables, district regulations, administrative provisions, infrastructure standards and other articles do not conflict with one another.**
- 13. Replace unnecessary subjective administrative discretion with clear and objective standards wherever reasonably possible, and require written findings where discretionary decisions are made.**
- 14. Require storm water analysis to consider cumulative watershed effects, downstream infrastructure capacity, obstruction and overflow conditions, and the interaction of multiple developments using common receiving drainage systems.**
- 15. Establish permanent and enforceable inspection, maintenance, financial-responsibility and accountability requirements for storm water facilities after the original developer has completed and left the project.**
- 16. Require approved storm water plans to identify emergency overflow paths and demonstrate that failure or exceeded design capacity will not transfer an unreasonable flooding or erosion hazard onto adjoining or downstream property.**

17. Provide a publicly understandable fiscal-impact analysis addressing whether the development capacity contemplated by the UDO can be supported by Knox County's projected tax base, household incomes and long-term infrastructure obligations without imposing unreasonable future burdens on taxpayers.

18. Publish an implementation and staffing analysis identifying the additional County personnel: inspectors, engineers, planners, administrative staff, enforcement resources and annual expenditures reasonably expected to be required to administer and enforce the UDO.

Tennessee, especially East Tennessee is recognized for its scenery, its folksiness, its friendliness, its southern flavor and agricultural roots. The UDO, as is, spends a lot of time trying to make it easier to lose the very things most people come to Knoxville and Knox County for. If you want to lose what we cherish in East Tennessee, make quick money the prime consideration. Then disregard the fact that most folks do not even know this thing is happening. If you want a Knoxville and Knox County that is friendly and family and country and relaxed then relax, give us a minimum of 60 days to let folks know what this thing means and what it can do to improve Knoxville and Knox County. You and I will take nothing with us when we die, but our children will deal with everything we leave behind. I do not want to move. But I also don't want what these people are leaving states because of.

Respectfully submitted,

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