

**LOUDON COUNTY
PLANNING
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ENFORCEMENT OFFICE**

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MINUTES

LOUDON REGIONAL PLANNING COMMISSION

May 1, 2013

The May meeting of the Loudon Regional Planning Commission was called to order at 12:30 p.m. Present were Mr. Carey, Mr. Brennan, Mr. McEachern, Mr. Cardwell, Mr. Brewster, Mr. Gammons, Ms. Hines, Ms. Roberts, and Ms. Jones.

A motion to approve the minutes for the April 3, 2013 meeting was made by Mr. Brewster, second was made by Mr. Gammons. Motion carried 9-0.

Agenda Item A: Discussion and consideration of Amendments to the City of Loudon Zoning Ordinance for crematories.

Mr. Newman reviewed the items included in the agenda packet. He stated that all the information that Mr. Click had provided had been put on the website for the public. He explained the reason for postponing the decision for the Special Exception request for Mr. Click at last month's meeting was for the Commission to review the material. He summarized the issues that were raised at last month's meeting for the proposed crematory. The issues were: (1) a general negative perception of a crematory; (2) odor, pollution, and visible smoke; and (3) the close proximity to residential uses. He stated that he scaled the distance to the closest residence from property line to property line, and it was 720'. He said any other residential properties are well over 1000'.

He stated that the City of Knoxville had proposed a zoning ordinance amendment for funeral establishments as well as crematories and had included that proposal in the agenda packet. He stated that after talking with the Planning Director in the City of Knoxville, this was probably what they would adopt. He said they had spent 8 months to a year reviewing the proposal. He stated that in our zoning Ordinance, funeral establishments are not addressed at all. He said that the only way that the use could be considered would be through the special exception application process. He stated that the City of Knoxville proposal had created some definitions that were related to the industry. He said that City of Knoxville proposed that under the funeral establishments uses to be considered permitted on a review basis, similar to the special exception review the Board of Zoning does. He stated that the City of Knoxville proposed that the uses could be permitted on review in the C-3, C-4, and C-6 districts, which are the general commercial districts. He said that the City of Knoxville proposed that crematories use were to be permitted on review in the I-4 (Heavy Industry) district. He stated that the City of Knoxville

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had established a definition for a funeral establishment in this proposal. He said this was a very important definition, and he read the definition to the Commission. He stated that the definition for crematories was different from the definition of funeral establishments which allow a cremation piece of equipment. He read the rest of the proposed amendments to the City of Knoxville zoning ordinance. He read the State of Tennessee definition of funeral establishment. He said that local communities have to follow this definition to their standard. He stated that local communities could have more restrictions. He stated there have been some court cases that the court has interpreted the definition of funeral establishments to include a cremation service. He said this would have some bearing on how the Commission does.

He said that he also included some supplemental information about some environmental concerns about the mercury content in the vapor from having a crematory. He referred to the 2010 letter written to the EPA from the Committee on Oversight and Government Reform about the issue of mercury vapor and crematories. He stated that their belief from testimony they received at a hearing that indicated that the model EPA is currently using to estimate the amount of mercury vapor that is generated from a crematory far underestimates what the actual situation is. He said that they were asking EPA to reevaluate that model. He stated that as far as he knew that EPA had not done that yet. He said that the second item of information was the actual testimony from one of the individuals who was an EPA scientist. He stated that the scientist did testify that based on other models that he was familiar with and had worked with, that the EPA model had underestimated the impact or the magnitude of mercury vapor by about 10 times. He said that the other item was information about the affects of mercury poisoning. He stated that what he had read that it could damage the brain, lungs, and kidneys. He said it all depended on the amount of exposure that a person had. He stated that mercury poisoning was hazardous particularly to infants, young children, and pregnant women. He said that the mercury vapor comes from the dental work from the people being cremated. He stated that the last item of information was an article of a Planning Commission proposal in California where an apartment complex was being considered for a location that was adjacent to a crematory. He said that the Planning Commission required an air quality study be done before they would consider approving the complex. He stated that the air quality study was done by the developer of the property. He said that the study came back and indicated that the mercury emissions were 22 times higher than the permissible level that had been established by their air quality district in California. He stated that California probably had higher standards than some communities. He said that because of this number in this case, the Planning Commission turned down that request for the apartment development.

Mr. Newman asked the Planning Commission what they felt they should do as a Planning Commission concerning addressing the void that exists in the ordinance concerning crematories and funeral establishments. He asked the Commission if this was something that should be addressed by drafting an amendment and recommending that to City Council. He stated that whether the Special Exception request for Mr. Click was approved or denied, this would have a bearing on whether to address this so the Commission could adequately address a similar request in the future. He reminded the Commission of the speech Mr. Click made at the previous meeting about the significant increase in cremations in this country.

Mr. McEachern asked if there would be a limit on the cremations done outside of the area. He asked Mr. Click where the 50% of outside cremations came from.

Mr. Click stated that Knox County had given the Gentry-Griffey Funeral Chapel that figure.

Mr. McEachern said that this was an issue.

Mr. Brennan asked Mr. Newman if his question was if the City needed an ordinance.

Mr. Newman stated that was his question.

Mr. Brennan said that he thought that there needed to be an ordinance. He stated that he understood that no matter what occurs with the Special Exception request from Mr. Click, the Commission needed to deal with the future.

Mr. Carey stated that he remembered several years ago that the City of Knoxville was having a problem with adult bookstores. He said that right after that the Planning Commission had the City of Loudon pass an ordinance that only adult establishments would be in industrial or manufacturing zoning districts. He stated that they took care of something before it happened. He said something needed to be done to regulate crematoriums for future requests.

Mr. Brennan made the motion to make a recommendation to the City for an amendment to the zoning ordinance, second was made by Mr. Brewster.

Mr. Cardwell suggested doing the amendment along the same lines the Commission did the temporary use. He made the motion to form a sub-committee to put together a draft.

Mr. Brennan added to his motion that a sub-committee work on the draft for the amendment to the zoning ordinance, second was made by Mr. Brewster.

Mr. J. E. Hughes said that he was the closest residence to this property. He stated that he had lived on the property for 60 years and had raised 2 sons there. He said they come back home with their families. He said they have cookouts on his property. He asked the Commission if they had their family back on their property, would they like to see smoke come out of the smoke stack. He asked since he lived that close to the crematorium with the mercury vapor, would it not build up. He asked if there would be a better place in Loudon to locate this crematorium. He stated that he was not against crematories, but he thought that was not the place to have one.

Mr. Brewster stated to Mr. Hughes that is what the motion was to establish regulations as to where crematoriums would be allowed. He said that the motion was not to approve that location for the Special Exception request of Mr. Click. He stated that this motion had nothing to do with Mr. Click's request. He said that Special Exception request would be heard at the BZA meeting.

Dr. Bud Guider asked if what was being talked about was establishing an ordinance in regard to a crematory. He asked if that ordinance would apply to this request of Mr. Click.

Ms. Hines asked since Mr. Click had already filed a request, didn't the Board have to act on it.

Mr. Newman stated the BZA would have to act but could consider some of the items mentioned to accept or deny the request.

Mr. Brennan asked Mr. Newman to summarize what was being voted on.

Mr. Newman said the purpose of the meeting and the discussion was to draft an amendment to the zoning ordinance. He stated that due to the zoning ordinance not having funeral homes, funeral establishments, and crematories as a use in any of the zoning districts, the Commission needed to address this. He said once the Planning Commission has an amendment, there would be a recommendation that would go to City Council for approval.

Mr. Carey stated that he understood that the amendment that would be written would be similar to what the City of Knoxville was proposing.

Mr. Newman said it would be very similar to the City of Knoxville's proposal.

Motion carried 11-0.

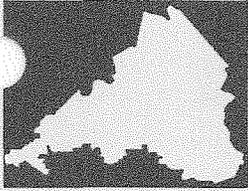
Additional Public Comment: There were none.

Announcements and/or Comments from the Board/Commission: There were none.

Meeting was adjourned at approximately 1:00 p.m.


Signed


Date



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MINUTES

LOUDON BOARD OF ZONING APPEALS

May 1, 2013

The May meeting of the Loudon Board of Zoning Appeals was called to order at 1:05 p.m. Present were Mr. Carey, Mr. Brennan, Mr. McEachern, Mr. Gammons, Mr. Brewster, Mr. Cardwell, Ms. Hines, Ms. Roberts, and Ms. Jones.

Motion to approve the minutes for April 3, 2013 was made by Ms. Hines, second was made by Ms. Jones. Motion carried 9-0.

Agenda Item A: Consideration of request for special exception approval to operate a crematory in conjunction with a funeral home/mortuary at 1366 Hwy. 72 N., Loudon (former United Community Bank). Tax Map 48, Parcel 56.00, Zoned C-2. Owner: Larry Click

Mr. Click was present.

Mr. Brewster made a motion to table the request for 60-90 days until the Loudon County Air Quality Task Force has a chance to review. He stated that the Air Quality Task Force did not have a quorum at their last meeting. He said it was only fair for the City of Loudon to get their opinion before the Board makes a decision. He stated that the Board's decision should not be based entirely on their review, but allows the Task Force's input. He changed his motion to 90 days. Mr. Cardwell seconded the motion.

Ms. Hines stated the Board that she understood that the ordinance that will be drafted to recommend to City Council would not be done in 90 days. She asked that since Mr. Click's request came before the ordinance was approved, would the ordinance apply.

Mr. Newman said that Mr. Click's request would be addressed at some point on how it was filed.

Mr. Brennan stated that the Board could utilize any additional knowledge in their decision.

Mr. Carey said that he understood that the way the ordinance is now, there was nothing to prohibit Mr. Click to have a funeral establishment in that zoning district whether he had a retort or not. He stated that crematorium was not mentioned in the zoning ordinance.

Mr. Newman stated that was correct.

Mr. Branam, City Code Enforcer, said that "funeral home" was not mentioned in the zoning ordinance. He stated that it was not specifically a permitted use in the commercial zoning district.

Mr. Click said he had received a letter from Mr. Newman that it was permitted at that location.

Mr. Newman stated that he did write the letter to Mr. Click stating that.

Mr. Cartwright, City Councilman, asked how it was permitted if it was not specifically permitted. He said he thought that was the use was on review for.

Mr. Newman stated that a use on review was related to the crematory component. He said that obviously there were funeral home operations in the City that were in the commercial zone.

Mr. Cartwright asked if the ordinance didn't specifically allow a funeral home in that zoning, then how it could be permitted before the use on review permits it.

Mr. Newman said Mr. Cartwright had a point.

Mr. Gammons suggested that Mr. Click speak if he had any additional information that he had found.

Mr. Click stated that there were many things on the internet. He said that one of things people will find out is that every industry in Loudon emitted mercury. He stated that one of the top 200 industries listed was here in Loudon. He said that the State of Tennessee had done a study on mercury by using fish in that area. He stated fish was a good indicator of how mercury was being collected in the environment. He said that a crematory is not mentioned in this report. He stated he had already given the Board the insect report done by California standards. He said he was disappointed that a news article was used for information. He stated

that the media was unfair to crematories. He said that he was also dissatisfied with the report was done through the EPA 3 years ago. He stated that 3 years has gone by, and nothing has been done on the report. He said he thought a lot of this was politically motivated. He stated that if this crematory operated 24/7, that it would still be a low risk.

Mr. Brewster asked Mr. Click why he did not pursue the crematory in Lenoir City that the residents did not want.

Mr. Click said that the crematory would have been only 25' from the closest residence.

Mr. Brewster referred to the statement Mr. Click had made at the previous meeting about the residents did not want the crematory, and he wanted to be a good corporate citizen. He asked Mr. Click if the majority of the citizens of Loudon did not want the crematory, would he take that same stance he took in Lenoir City.

Mr. Click asked how the Board would gauge that. He asked how many people lived in the City of Loudon.

Mr. Brewster said approximately 4,800 citizens lived in the City of Loudon.

Mr. Click asked Mr. Brewster how many people had he heard from being in opposition about the crematorium.

Mr. Brewster stated he had received over 30 calls in the last week.

Mr. Click asked Mr. Brewster where a good location would be for a crematorium. He said there were industrial zoning on 2 sides of this property.

Ms. Jones asked Mr. Click how many people protested in Lenoir City.

Mr. Click said that he had approximately 50 people who protested in Lenoir City.

Mr. Brewster asked Mr. Click if he had a petition of 51 people in Loudon, would that be enough for him to reconsider the proposal since Loudon was smaller than Lenoir City.

Mr. Click stated that the issue in Lenoir City was not to do with people, but with the proximity to residential homes.

Mr. Cardwell said that the comment on the motion was that this process was owed to the residents and to Mr. Click. He stated that this was state law. He said that the law states that the Board's decisions would be legally defensible. He read the state law. He stated that if the Board made a hasty decision, it would be considered arbitrary and wouldn't be held up in court.

Mr. Carey stated that the Board of Zoning Appeals needed to be sure to follow the rules that the ordinances say and be sure not to approve something that is not allowable by the City ordinance.

Mr. Cardwell asked if the additional information that Mr. Click had presented could be added to the website with the other information posted.

Mr. Newman said that the additional information could be added to the website.

Mr. Click encouraged the Board to look at all the industry in Loudon and their mercury emissions.

Mr. Park, City Councilman, asked what was positive about mercury.

Mr. Click stated that mercury was a naturally occurring item in the environment. He said they have found it in rocks and coal. He stated he didn't know if there was anything positive about mercury. He said he referred to everything about mercury from crematories was positive, because the emissions were low.

Mr. Park said that Loudon County had to reduce their speed limit on the interstate due to pollution. He stated that the crematory would put more pollution into the air.

Ms. Hines stated that the decision had to be made based on what the rules are the day Mr. Click filed his request. She said that this motion was for the Air Quality Task Force to do their research.

Mr. Cardwell said that the state law states that the Board has to weigh out specific criteria to evaluate Mr. Click's exception. He stated this would be part of the committee's work to lay out that criterion.

Ms. Hines stated that the decision for the Board had to be based on the day Mr. Click filed the request.

Mr. Newman said that the Board could not turn down the request based on an adopted amendment to the ordinance that happened after Mr. Click made application.

Mr. Cardwell stated that the Board did have to enumerate the criteria in which the Board is approving or disapproving. He said according to the state law, there was no deadline to make the decision.

Mr. Newman said that the decision time did need to be reasonable.

Mr. Click asked if his letter to send to the State Board of Funeral Directors to establish a funeral establishment was permissible. He stated that when talking with Mr. Newman that it was decided that the property was properly zoned for a funeral home.

Mr. Newman stated that was his opinion.

Mr. Click said that he was ready to send the letter.

Mr. Newman stated that he had the letter, and they couldn't stop him from sending the letter to the State. He said that it would be questionable, because the ordinance does not define funeral establishments. He stated that it was recognized that they do exist in the City in the commercial zones. He said that was the basis of which he wrote the letter. He stated that was probably incorrect, since he thought about it.

Mr. Click asked if the Board needed to vote if that property was permissible for a funeral home.

Mr. Newman said that wasn't really the issue on the agenda.

Mr. Brewster asked Mr. Click if he was requesting the vote if the property was properly zoned for a funeral home.

Mr. Click stated that he had a letter to send to the State Board of Funeral Directors. He said he had painters there painting the building. He stated he was ready to put new carpet down. He said all he had to have were a few chairs and his desk there before the State Board would come to inspect it. He stated that the State Board of Tennessee were the ones who define what a funeral establishment is. He said once he sent the letter, they would come to inspect him, and then give him the license for the funeral establishment.

Mr. Cartwright said that the Planning Commission was forgetting another obligation they have. He stated that the Commission had an obligation under use on review for utilizing this property to the best it can be used. He said that Mr. Click had stated that he probably will only have 1-2 employees at this location, will provide no

significant economic impact at this location, and will have no sales tax at this location. He stated that the Commission should also judge this by if this was the best use for this property.

Ms. Linda McNabb stated that she was told that Mr. Click had been turned down in Farragut. She asked Mr. Click why he had been turned down there.

Mr. Click said that was not true.

Ms. McNabb stated that Mr. Click's family seemed to think that he had been turned down in Farragut.

Mr. McEachern said that if Mr. Click owned the property, he would be paying City taxes and County taxes. He stated that when people own property and pay their taxes, they have a say so on what goes on their property. He said that Mr. Hughes has every right to say what goes on with his property.

Motion carried 8-1, with Mr. McEachern voting no.

Mr. Brewster asked about the letter that was written by Mr. Newman stating that the use of a funeral home was a permitted use.

Mr. Newman stated that the letter he wrote stated that it was his interpretation that a funeral home would be classified under business services which is a permitted general category use in the C-2 district.

Mr. Carey said that was how he saw it also.

Mr. Newman stated that it was similar to crematories, funeral home and funeral establishments were not specifically listed uses in the C-2 zoning or any other zone. He said he would write Mr. Click a letter stating that since it was not a permitted use listed in the ordinance, that it would not be considered a permitted unless the Board of Zoning Appeals addresses it.

Ms. Hines asked Mr. Click if he had purchased the property based on Mr. Newman's letter.

Mr. Click said that he had.

Mr. Brewster asked the date the letter was written.

Mr. Cardwell stated that the date on the letter was March 22, 2013.

Mr. Click said that his vision on this location was to have a small chapel, refrigeration, and maybe a bigger chapel in the future. He stated that to seat 100 people, he would only need 20 parking spaces. He said that he wanted to have more than 20 parking spaces, because he wouldn't want to inconvenience anyone.

Mr. Brewster asked Ms. Schultz (McGill) when they had a funeral, how much tax was generated.

Ms. Schultz stated that each time someone is buried in a casket, the City and County receives approximately \$40 total. She said that professional services in the State of Tennessee are not taxed.

Mr. Carey commented that the Board should not make any decision based on whether the City is going to benefit from taxes or not. He stated that the concern was more for people and not money.

Ms. Pat Hunter referred to the letter from the EPA in regards to the dental fillings. She asked if there had been other studies about replacement parts in the body.

Mr. Newman stated that it was State law that if a funeral home is aware of those components being in the body, they are suppose to remove those parts prior to cremation.

Mr. Brewster asked Mr. Hughes if he would still be against just a funeral home on this property.

Mr. Hughes said he would not be against the location having just a funeral home with no cremations.

Mr. Leonard Clinton stated he had a problem with the location. He said a crematory should be isolated and away from residential and business places.

Mr. Cardwell asked the Board to identify the members on the subcommittee to work on the amendment draft to the zoning ordinance.

Mr. Carey appointed Ms. Hines, Mr. Brewster, and Mr. Cardwell to the subcommittee.

Additional public comments: There were none.

Announcements and/or comments from the Board: There were none.

Loudon BZA Minutes

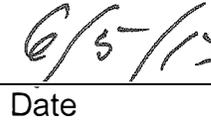
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Meeting was adjourned approximately 1:50 p.m.



Signed



Date