

Planning Commission, City of Forest Hills

January 21, 2016

6:00 p.m., at the City Hall

Chairman Winston Evans Presiding

1. Approval of the minutes of the December 17, 2015 meeting.
2. Introduction of Chad White, City Attorney.
3. **Concept plan** approval of subdivision of his property. The approximate 7.78 acre, irregular, rectangular shaped lot is located on Otter Creek Road with access to Sherwood Drive. Mr. Chapman requests subdivision into three lots: This would provide Lot One 2.13 acres, Lot Two 2.40 acres and Lot Three 3.30 acres respectively. Lots One and Two would have access off the corner of Sherwood Drive/Court and Lot Three would have access off of Otter Creek Road. The zoning is Residential EB and requires a minimum of 2 acre lots. Portions of this parcel are located in the floodway and floodplain.
4. **Public Hearing** regarding the Comprehensive Plan Update.
5. **2016 Comprehensive Plan Update.**
6. **Public Hearing:** Ordinance 2016-223 to amend Title 14, Chapter 2 of the Municipal Code relating to the Zoning Ordinance, subdivision in the hillside protection overlay, fencing, and prohibited uses.
7. **Review and Certification: Ordinance 2016-223** to amend Title 14, Chapter 2 of the Municipal Code relating to the Zoning Ordinance, subdivision in the hillside protection overlay, fencing, and prohibited uses.

Adjourn meeting

**MINUTES OF A MEETING OF
THE PLANNING COMMISSION
THE CITY OF FOREST HILLS**

January 21, 2016

The Forest Hills Planning Commission (herein also the "Commission") held its regular monthly meeting on January 21, 2015 at the office of the City of Forest Hills, Nashville, Tennessee, beginning at 6:00 p.m. Chairman Winston Evans presided. Also present were Mr. Em Ghianni, Mr. Blair Myers, Mr. Clay Jackson, Mr. Brian Dougherty, Mayor John Lovell, Vice-Mayor Lanson Hyde, and Commissioner Henry Trost. Mr. Jim Gardner came later in the meeting to discuss items 4-7. Others present are shown on the attached sign-in sheet. A copy of the agenda is also attached to these minutes

1. **Approval of the Minutes** of the December 17, 2015 Meeting. Mr. Clay Jackson motioned to approve the minutes as submitted. Commissioner Trost seconded the motion, and the Commission voted unanimously to approve the minutes of the December 17, 2015 meeting.

2. **Concept plan** for approval of subdivision of property. The approximate 7.78 acre, irregular, rectangular shaped lot was located on Otter Creek Road with access to Sherwood Drive. Mr. Chapman requested subdivision into three lots: This would provide Lot One 2.13 acres, Lot Two 2.40 acres and Lot Three 3.30 acres respectively. Lots One and Two would have access off the corner of Sherwood Drive/Court and Lot Three would have access off of Otter Creek Road. The zoning is Residential EB and requires a minimum of 2 acre lots. Portions of this parcel are located in the floodway and floodplain.

Mr. Chapman explained his property and proposal stating he was taking one lot and dividing it into three lots. He said that it was possible for one person to buy all three lots and still only have one home on the property. The three-lot plan allowed him flexibility. Mr. Chapman had originally bought the lot with the intention of building one home. He was commuting to Florida weekly at the time. The Chapmans have now moved back to Florida full time. Mr. Chapman addressed the dilapidated cabin on the property, indicating that the initial intention was a major renovation/restoration of the cabin. It was later decided that the best course of action would be to build a different home on the property. The renovation project was abandoned, but portions of the cabin remained in case someone would be interested in restoration.

Chairman Evans asked if any members of the Commission had any questions for the applicant. Vice-Mayor Hyde asked Mr. Chapman about his reason for the subdivision. Mr. Chapman responded that he paid too much for the property --it was an emotional buy—and he wanted to maximize his investment. It would be challenging to do so unless this subdivision took place. In the long run, he said that he and his wife would probably build their own house on Lot Three and sell Lots One and Two.

Chairman Evans asked if there were any comments from the public. Mrs. Deaton-Moyer drew the Commission's attention to a letter they had received from Mr. Jim Gardner, adjacent neighbor. Explaining the letter, she said he was opposed to the subdivision and reasons were given for his position. One of those key reasons for his objection was the protection of natural resources that included wetlands, wildlife, and tree lines. She also discussed Mr. Gardner's comments on the cabin located on the property. The cabin had been a historic home and the second oldest structure on Otter Creek. The cabin was destroyed as a result of Mr. Chapman's discontinued restoration efforts. Mrs. Deaton-Moyer confirmed the dilapidated and unsafe nature of the structure and stated that no number of "No Trespassing" signs would deter a child from entering and getting hurt. The remains of the cabin needed to be immediately demolished or sealed to prevent entry.

In discussing the portion of Mr. Gardner's letter related to his concern for the wet-weather conveyances, Mrs. Deaton-Moyer stated that a plan would need to be developed that would ensure those resources were preserved. If the applicants chose to use the pond for drainage, then some alterations to the pond would also be necessary. Mr. Evans asked Mr. Bivens to explain. Mr. Bivens said that the berm at the end of the pond was overgrown with cane and trees and a plan was needed to make sure it was safe for additional water deposited there. If the pond were to be the primary drainage facility, a few issues would need to be addressed. Chairman Evans asked if the berm would have to be raised. Mr. Bivens said that while there appeared to be enough freeboard, the pond would have to be modeled. He added that it would be up to the applicant to determine how the storm water would be managed: regionally, with the pond, or locally on each lot. All runoff would have to be modeled hydraulically.

Chairman Evans asked what our subdivision regulations stated about natural resources. Mrs. Deaton-Moyer stated that he was referring to the suitability of land clause in the regulations that tasked the Commission with protecting natural resources including wet weather conveyances, tree lines, and other special assets that cannot be replaced. Mr. White said that Mr. Gardner's letter cites the very resources that the City is tasked to protect. Mr. White advised the Commissioners that the suitability of land items were not "cannot do's" but rather "keep in minds" as they continued their review of the plan. The goal was to maximize the protection of these resources through this process.

Chairperson Evans asked for information regarding the flood plain and floodway on the plan. Mr. Bivens addressed the floodplain and way shown on the plan. He added that staff recommended that the applicant make the floodplain designation on the plan clearer and extend the limits to run across the whole plan. There was discussion regarding the location of the creeks and the base flood elevations of the existing homes.

Michael Taylor of 1805 Otter Creek spoke. His lot had the most frontage on Otter

Creek Road. He indicated the location of the flood plain on his lot. He discussed his home's spatial relationship to the flood plain. He said that he did not have an issue with Mr. Chapman's proposal, mainly because it would not increase the traffic on the drive. He was concerned whether or not this subdivision would preclude him from buying a portion of the land that fronted on Otter Creek. This portion of land appeared to be a part of his yard, but was not. He worried that future owners may not take care of the land, or in a worse-case scenario, erect a fence. Vice-Mayor Hyde said he thought the plan may prevent Mr. Taylor's purchase, because it would reduce the required street frontage for Lot 3. Staff concurred. Mr. Taylor asked some hypothetical questions to better understand the issue. EB Zoning requires 100 foot street frontage.

Dianne Gray of 7 Annandale. She said her house would be affected by Lots One and Two. She had lived in her home for over 25 years, and she loved the natural environment of her home. She had over 100 trees on her property. She discussed the sunroom on the back of her home that overlooked this property. She could see the derelict cabin from her home. A home that blended with the environment would be fine in the spring and summer because her trees would shield her. In the winter, however, a large home would be very visible. Mrs. Gray wanted to make sure her trees were protected. She was concerned that natural resources would be damaged.

Mr. Myers asked Mr. Bivens to describe the existing setbacks on the property. Mr. Bivens indicated that the area closest to Mrs. Gray's home was regarded as a side and would have a 50 foot setback. The proposed plan regarded that same side as a rear (front facing on Sherwood) and would have 75 foot setback from Mrs. Gray's property line.

Mr. Dougherty asked Mrs. Deaton-Moyer if the lot was labeled as a critical lot. Mrs. Deaton-Moyer stated that these lots were not labeled as critical because of their proximity to hillsides, steep sloped, or floodplains. There were, however, requirements such as water buffers that helped protect these resources. Mr. Dougherty asked whether the notation of critical lot would be helpful in this case. Mrs. Deaton-Moyer stated that there would need to be a full drainage plan in connection with the preliminary plat. This plan would need to show the Commission that the resources could be protected. The preliminary numbers for concept plan were not sufficient to determine if the hydrology would work. Mr. Bivens said that only Lot 3 would be a critical lot. Lots One and Two were protected by the storm water ordinance.

Mr. Hyde asked Mr. Bivens if the pond did not work, where a retention system might be placed. Mr. Bivens said there were a couple of options: local and regional solutions. The applicant could produce a study indicating that the pond would work or present plans for individual lot systems. Examples of such individual lot systems were smaller detention ponds, rain gardens, soil amendments, and a number of other mechanisms. No matter the approach, a study would be required to prove any proposed system would be sufficient. The study must show timing (peak drainage

points), velocity, and volume of the water as it relates to the flood plain. There was discussion regarding flood plain levels and impervious surface. Mr. Bivens said that the effect on the floodplain must be taken into account for every development action. Chairperson Evans said that he felt that Lots One & Two made sense, but Lot Three seemed troublesome because of the flood plain.

Chairperson Evans asked about note “e” in the staff recommendations. Mrs. Deaton-Moyer stated that the applicant would need to meet all requirements of the preliminary plat checklist before coming before the Commission again. The preliminary plat checklist included a hydraulic analysis. There were also two items that needed to be clarified from the concept plan checklist.

Mr. Jackson asked about the existing cabin. The cabin would have to be removed, relocated, or the property line would have to be moved for the lot to be made conforming. The cabin was currently within setbacks, but this subdivision would make it a nonconforming structure. Mr. Bivens said that the Commission should not intentionally create nonconforming lots or structures, if it could be avoided. The lot lines could be rearranged.

Chairman Evans main concern was drainage and the riparian environment on Lot Three. Mr. Bivens said the applicant would have to run calculations, but the last several individual lot designs that came in for review showed that water can be managed on site through underground detention, raingardens, and other infiltration.

Terry Jo Bichell 1510 Old Hickory asked about the age of the cabin on the site. The Commission responded that it was built between 1931 and 1935. She said this was an example of a nice piece of property with a historic cabin that the City would want to preserve. This was the type of situation where if the City allowed more mixed use zoning such as short term rentals or as an office, Mr. Chapman would have other options of achieving return on his investment. She said such a solution would be a benefit to all of the adjacent neighbors.

Mr. Chapman commented that when he had the cabin assessed, he discovered that it was not an original and had been moved to the property from another location. There was discussion regarding the historic nature of the home.

Vice-Mayor Hyde said he felt the proposed concept plan was too much in a very sensitive area. He did not want this development to be a mistake that the City regretted in the future. He said he was conflicted with three lots. He said the ideal situation would be one house, but he could get comfortable with two lots. Commissioner Trost agreed with Vice-Mayor Hyde that three lots seemed too much for the land.

Mr. Jackson asked if the Commission decided to approve with conditions, if the applicant would have to provide other studies including a hydraulic analysis. Chairman Evans responded that the studies would be needed and that if the

hydraulics did not work out, it would be unfortunate because of the money spent on undesired outcome. Mr. Dougherty also said he was in favor of two-lot approach.

Mr. White told the Commission that if it desired two lots, it could alter the conditions to require the same. There was discussion about changing staff recommendation Condition 2(a) from “may consider reducing” lots from three to two to “shall reduce.” Mr. Ghianni said he was in favor of approving three lots with conditions or disapproving the application all together.

Mr. Chapman said that much of the Commission’s analysis was based on “what-if’s” regarding water. He clarified that was not asking for two lots; his application requested three lots. He felt that he had complied with code and should be allowed to prove whether the resources could be preserved. He thanked the Commission for the two lot condition but stated that was not his desire. Barry Cleveland, surveyor for the project, said that the wetlands were restricted by the EPA and TDEC, so he felt impairment of natural resources was already regulated and would be followed accordingly. He hoped they would allow them to move forward to study how they could protect those resources. He felt the storm water could be managed on an individual basis. He detailed mechanisms for that management.

Mr. Dougherty made a motion to approve with the staff recommended conditions, except for letter 2(a), where was to state “shall reduce” instead of “may consider reducing” the lot number from three to two. Vice-Mayor Hyde seconded it. Discussing the motions, Mr. Jackson asked Mrs. Deaton-Moyer if the applicant had met the requirements of the City for subdivision into three lots. She said yes, but the planning commission had final say, especially in connection with suitability of land. Mr. White stated that if the applicant were show that the concerns discussed did not have factual basis and that a denial was based on inaccurate presumptions, we could be in a tough position. The preliminary plat phase required the applicant to prove much of the concerns raised today. During that phase, if the applicant failed to prove that the resources could be properly protected, then the subdivision could be denied. The motion failed to pass 2 to 8 with Vice-Mayor Hyde and Mr. Dougherty voting for the motion.

Mr. Myers stated that the applicant had met all the requirements of the City. He continued that while the Commission had a preference for consolidation and preservation of open space, the applicant had met the letter of the ordinance. Chairman Evans stated that in the application process an applicant first follows regulations and staff’s recommendations, then the next step is compliance with decisions by the Planning Commissions. Vice-Mayor Hyde stated that meeting all the requirements does not guarantee approval. Mr. Chapman said he wanted to be a good neighbor and if the will of the Commission was not to proceed with the application, then he would respect that. Mr. Chapman stated that felt that he was being treated unfairly because Jim Gardner was on the Commission. He understood that Mr. Gardner was not participating, but he felt the group was already against him. Mr. Chapman would not have gone through the process, if he knew this would have

been the outcome. Chairman Evans said there were no vested rights based on compliance with staff requirements.

Chairman Evans asked Mr. White to read the suitability of land phrasing from the Subdivision Regulations. The passage said that adequate measures to address the natural resources must be proved to and approved by the Planning Commission. Mr. White said that the preliminary plat phase would be the appropriate stage to prove that adequate measures could be taken to protect the natural resources. Compliance with the regulations at this stage should allow him to proceed. The burden of proof and compliance would be on the applicant at the next stage. Chairman Evans said that the protection of resources needed to be addressed to the Commission's satisfaction at the preliminary phase. Vice-Mayor Hyde said he did not think it was an inalienable right to subdivide and maximize property in this manner. Once there is a lot of record, there are certain rights, one of which was to come before the Commission to be heard. He reiterated that this was a sensitive area that should not have three houses jammed on it. He was not sure if a hydraulic analysis would change his mind. His fear was not Mr. Chapman, but the other spec builders that could come and leave the land in a mess. Mr. Jackson asked Mr. White if there was anything the Commission had not thought of or discussed. Mr. White responded that he thought the Commission was anticipating problems that would be addressed in preliminary plat phase. The applicant may decide based on his analysis that he needs to have two lots instead of three, but that is an unknown at this time. Chairman Evans clarified that when the all the information is present, it will have be at the discretion of the Commission to determine whether it adequately protects those resources. Mr. White agreed and said it would be a subjective decision that would require a reasoned basis either way on that decision.

Commissioner Trost made a motion to disapprove the application. Vice-Mayor Hyde seconded the motion, the motion carried with Mr. Myers, Mr. Jackson, and Chairman Evans voting against the motion. The application was denied.

3. **Public Hearing Regarding the Comprehensive Plan Update.** Mr. Jim Gardner joined the group. Chairperson Evans gave a brief history of how the existing Comprehensive Plan came to be. The document being discussed was an update to that original 2010 plan. The update addresses recurring concerns.

Mr. Don Swain of 2013 Earlington Drive spoke. He was appreciative of the update. He addressed the section regarding the unbalanced context of new "McMansion homes" in existing older neighborhoods. He knew that the Commission had heard this concern from many residents. Across from him a McMansion had been built that conformed to regulations in every way - ratios, setbacks, height etc. The house was absolutely not context sensitive. Approval was not necessary, because they were in compliance. However, his neighbors behind him had to jump through hoops to add on and renovate their more neighborhood sensitive home. In effort to stop the McMansions, he did not want the Commission to make standards too difficult for those that sought to work with existing homes.

Chairman Evans and others agreed that he raised a good point.

There was discussion regarding the home going up on the corner of Timothy Drive and Otter Creek. The home had kept the existing footprint, but added a story. This was an example of where a resident was keeping to the character of the neighborhood, but was making the home more suitable for his family.

Mr. Gardner asked if there was a way an ordinance could say that a new construction could be no larger than neighboring structures. Chairman Evans said that a committee was working on transitional standards that could help with context in neighborhoods.

4. **Public Hearing:** Ordinance 2016-223 to amend Title 14, Chapter 2 of the Municipal Code relating to the Zoning Ordinance, subdivision in the Hillside Protection Overlay, Fencing, and other uses. Mr. Chad White explained the ordinance as he had in the Board of Commissioners public hearing earlier that evening. He also addressed some questions that had arisen during that time.

The Zoning Ordinance already prohibited short term rentals. The uses allowed in residential districts were solely single family dwellings and home occupations. He defined home occupation. Anything beyond those uses is prohibited and has always been so. Ordinance 2016-223 does not change the existing code, rather it clarifies the code for residents doing things with their property that this is a prohibited use. The City seeks to make the prohibited uses clear for residents. A question had arisen about the definition of short-term, which is not specifically defined in the Zoning Ordinance, so in the absence of a specific definition, the common definition applies. A standard definition of short term rental is three months or shorter. Mr. White also addressed the definition of family and caretaker/guest houses.

Chairman Evans reminded the Commission that they had to recommend or not recommend this ordinance to the Board of Commissioners. Mr. Evans opened the floor for the public hearing. Mr. White stated that there were several other people present for the earlier public hearing. The Commission may want to review and consider those comments as well. This could be done through deferring the recommendation until next time. Mr. Jackson stated that he was present for the previous meeting and felt that it would be beneficial for the Commission to hear/read all the comments from the previous meeting. Mr. Trost stated that all the comments were very helpful, but the ordinance was not changing anything that was currently the law. The ordinance included other issues in addition to the clarification. Mr. Ghianni said that many people in the earlier meeting were seeking an understanding of the existing law.

Terry Jo Bichell 1510 Old Hickory Blvd. spoke. She felt that if the Commission recommends passage, it would put a halt to a conversation that may need to occur. It seemed to her that it would be better to appoint some type of committee to review

how similar cities have handled this issue and to suggest an ordinance more appropriate with the times. She felt that the historic cabin on the land on the previous agenda item could have been saved, if short terms rentals were allowed in Forest Hills. She said tourists would have loved to have stayed there.

Chairman Evans discussed how little power the City had in regard to the Cabin on Mr. Chapman's property.

Mrs. Bichell felt that there were ways to encourage preservation of historic property. Disallowing other opportunities results in only having the option to subdivide and build houses. If the goal is to preserve Forest Hills living with big houses on big lots, she felt allowing short term rentals would advance that goal.

Chairman Evans stated that allowing short term rentals was not on the agenda at this time. Should she have ideas on this matter, he asked her to put them in writing and send them to city staff.

Commissioner Trost said in regard to preserving neighborhoods, he felt that one thing that must be preserved was his and others' perceptions that he did not have to worry about strangers and transient boarders staying at homes in the neighborhood. Based on conversations he had had, he felt that there were a number of residents who were very much against short term rentals. He welcomed Mrs. Bichell's input but stated that there were two sides to this issue. Lastly, he stated that nothing was being changed in the ordinance as far as this short terms rentals were concerned. They had never been allowed.

There was discussion of the previous public hearing. Many residents showed that they were unaware that short term rentals were prohibited. It was not as if most were doing so in spite of the law, rather in ignorance of the law. The point of the ordinance was to clarify the state of the law for the avoidance of doubt.

Mayor Lovell said he was sensitive to making sure people felt their voice was heard. He was comfortable with the Commission deferring the decision so that others would have an opportunity to be heard. This would give time for the Commissioners to read comments from the Board of Commissioners' meeting and gather more comments in the interim. He wanted to ensure the transparency of the process. He did not feel an additional month would cause any irreparable damage.

Mark Champion of 1309 Tyne Blvd spoke. He thanked the Planning Commission for allowing this discussion. He said he was in favor of opening discussion about how short term rentals could work in Forest Hills. He asked about how an amendment allowing short term rentals could be written.

Chairman Evans stated that the public hearing process was a key way for residents to get involved. While the public hearing regarding the ordinance was nearly concluded, this does not prohibit people from emailing/calling the Commissioners

to voice their opinions. The next action would be in a month. Commissioner Trost said the Board of Commissioners would hold an extra public hearing at the February 18th meeting.

Mr. Champion asked if he should be prepared at that Public Hearing to present options for short term rentals to be allowed. Vice-Mayor Hyde said he should come to discuss the ordinance.

Mr. Jackson told Mr. Champion to discuss submitting an amendment with Mr. White.

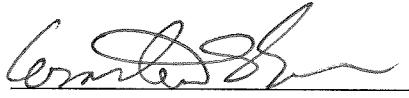
Vice-Mayor Hyde said that one of the qualities he appreciated about Terry Jo Bichell was that she was tenacious and persistent. He cautioned about setting expectations. He had heard great input, but he did not feel like it was a representative sample of the residents. There was no poll on the issue, and this would never be done for something so routine. The people who had spoken tonight were directly connected to the short term rental. Most were conducting short term rentals at their homes. Vice-Mayor Hyde said he had talked to about 9 people who had expressed significant concern over the idea of short term rentals. Specifically, they were worried about the stranger factor. He wanted everyone to be cautious, because his suspicion was that the majority of Forest Hills would not be in favor of allowing short term rentals.

Mr. Dougherty described the situation with his neighbors: the owner bought the property, rented out the bottom floor, and lived on the top floor. His neighbor was in California for business often, so the renters served as caretakers for the upper floor as an AirBnB. He said he told them to check with Forest Hills and make sure this was allowable. The discussion tonight made him realize very few people asked permission. Mr. Dougherty stated that he understood that this ordinance serves as notice to all residents that short term rental is an illegal use and that the trend must cease. This ordinance makes it clear to everyone. As the AirBnB trend becomes hotter and hotter, the City must make a clear statement. This ordinance is that statement. Inquiry was made as to the fairness of not allowing Bed and Breakfasts, but permitting a business to be run out of homes? Rentals are a form of business. There was more discussion about the rental situation beside Mr. Dougherty's home.

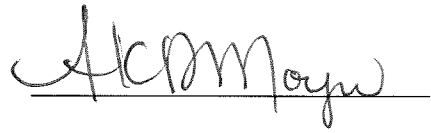
Commissioner Trost stated once again that they were not enacting any new law. Even if the Board chose not to approve the ordinance, it would not change that short term rentals were an illegal residential use in Forest Hills. There was a different process for changing the rules as they stand today.

Mr. Jackson made a motion that the recommendation be deferred to next month and make sure all the comments from the earlier meeting were transcribed and made available to Planning Commission prior to the next meeting. Commissioner Trost seconded the motion and it was approved unanimously.

5. The meeting was adjourned

A handwritten signature in cursive script, appearing to read "Winston Evans", written over a horizontal line.

Chairman Winston Evans

A handwritten signature in cursive script, appearing to read "Amanda K. Deaton-Moyer", written over a horizontal line.

Recorder, Amanda K. Deaton-Moyer

SIGN IN SHEET

**City of Forest Hills
Planning Commission Meeting**

Date: Jan 21, 2014

NAME:

ADDRESS:

Clay Jackson

5819 Hillsboro Pike

Brian Dougherty

5328 General Forest Ct

CHRIS MABERY

315 WOODLAND ST, NASHVILLE

Clayton Sleight

city assistant

Michael Taylor

1805 Otter Creek Rd

Mark Champion

1309 Tyne Blvd.

WINSTON EVANS

1339 Otter Creek

Blair Myers

1621 Lynnwood Blvd.

Allen Brown

1815 Laurel Ridge

Barry Cleveland

95 Whitebridge Road

Steve Chapman

1809 Otter Creek

Catherine Jackson

5819 Hillsboro Pike

MLM

733 Georgetown Dr

[Signature]

6 Breckenridge

HENRY TROST

City

L. H. [Signature]

CITY

SIGN IN SHEET

**City of Forest Hills
Planning Commission Meeting**

Date: Jan 21, 2014

NAME:

ADDRESS:

Dan Swain

2013 Earlington Drive

Angie Henderson

Metro Council - District 34

Tony Jo Bichell

1510 OTTB

Chad White

315 Deaderick

Brian Bivens

Mark Champion

BILL COLE

5612 S. STANFORD CT,

Luey Smith

6 Annandale

Maue Gray

7 Annandale Rd

BROCK BOHART

6132 HILLSBORO PIKE

TIM BARKER

P.C.

Stromayer