

June 29, 2018

Germantown Planning Commission
Germantown, Tennessee

RE: Proposed Rezoning of "The Triangle"

Dear Commissioners:

I have been retained by Missy and Jay Brooks and Cathy and Pat Wilcheck, with reference to the rezoning of the "Owen Tract" portion of the property bounded by Germantown Road, Neshoba Road and Cordova Road (hereafter, "the Triangle"). I have read the application, and I have reviewed the staff report to the Planning Commission dated June 20, 2018. While I understand that the application is filed on behalf of the BMA, I could find no vote to do so in any open meeting of the Board. At any rate, I am, frankly, baffled and confused for a number of reasons, and I would like to share several thoughts with you:

First, the staff report accurately cites Section 23-66 which describes the circumstances under which the Planning Commission is permitted to amend the zoning ordinance:

Whenever the public necessity, convenience, general welfare or good zoning practice justify such action, the regulations, restrictions, districts and boundaries provided for in this chapter may be amended or appealed.

Yet, the staff report does not set forth the first fact which might establish any of the criteria for this dramatic, probably unprecedented down zoning. The proposed down-zoning serves no apparent or legitimate municipal planning purpose. The only "justification" for this down zoning suggested by the City's staff is that someone believes that the T4 zoning for this area is

"unwise."

The "wisdom" of this zoning and of the entire Smart Growth Plan adopted by the City of Germantown was studied, debated, and passed in 2007. The Plan was approved by a unanimous vote of the Planning Commission at that time. Likewise, on each of three readings before the Board of Mayor and Aldermen, the vote was unanimous in favor of the approval of the current zoning of the Owen tract. We have no hint from the Planning Department of why, suddenly, this zoning has become "unwise." Rather, as will be discussed more thoroughly hereafter, the "discussion" portion of the Staff Report provides ample and uncontradicted rationale for the continuation of the current zoning.

The "discussion" portion of the Staff Report begins by stating that:

"... After more than a decade, there has been no formal development project application filed with the City to develop any of the Triangle parcels."

This statement is, at best, disingenuous. In fact, the owners of the Owen tract had recently contracted to sell 10 of the 13.65 acres of the Owen tract (the less valuable portion not fronting on Germantown Road) for the sum of \$5.5 million dollars (this was their second contract – the first was terminated following a "due diligence" review). The proposed purchaser, Kore, LLC, was engaged in the process of providing outline sketches to, and meeting with, the City planning staff in order to "fine tune" their proposed plan. As this was in progress, the Board of Mayor and Aldermen passed a moratorium preventing the construction of any additional apartment buildings. Because the Kore plan contained apartment buildings, their plan was shut down by the City of Germantown before a formal plan could be submitted and the contract was terminated by Kore. For the City to suggest that the failure to receive a formal plan is a basis for rezoning when, in fact, the failure to receive a formal plan was the fault of the City of Germantown, is akin to the Menendez brothers asking the Court for leniency because they were orphans.

The Staff Report continues to describe, with apparent approval, the fact that the Owen tract contains a “mature canopy of trees”. The T-4 zoning has a specific requirement that:

Landscape Preservation: The regulating plan designates areas where a buffer of existing trees shall be preserved to maintain the green transition into the Smart Code zoning districts.

In fact, the Smart Code requires such a landscape buffer along Cordova Road and most of Neshoba Road. The Staff Report fails to mention that, if rezoned to “R” zoning, this tree buffer would disappear and, likely, the subdivision would develop according to the regulations provided for “R” zoning, which would include the construction of curbs, gutters, sidewalks, utilities, and perhaps walls along both roads which would, by necessity, involve the destruction of this natural buffer.

The Staff Report continues to state that the neighborhood to the west of the Triangle has remained pretty much as it was when the Smart Growth Plan was adopted. The Report then discusses the changes in the neighborhood to the east which have recently occurred. Ironically, these changes to the east are exactly what was, and is, contemplated as the best possible scenario by those who envisioned, and approved, the Smart Growth Plan eleven years ago. The Report relates that more than \$175,000,000 in new development has been completed or is under construction. In describing this new development, the Staff Report discusses “... pedestrian, and bicycle traffic, as well as anticipated high levels of citizen participation in the area ...” I may be missing something, but from my review of the Smart Growth Plan, this sounds like precisely the goal of all of the experts, citizens, Planning Commission members, and aldermen who participated in the Smart Growth studies at a cost of hundreds of thousands of dollars paid to experts and thousands of hours spent by city staff and citizens.

At the June 25, 2018, meeting of the Germantown Board of Mayor and Aldermen, Mayor Palazzolo and Cameron Ross presented the developers of Thornwood the “Rebuild Tennessee Award” given by the Tennessee Development District Association and The Memphis Area Association of Governments. This award represents development which, in the opinion of the grantors, "embodies positive quality of life for citizens" while "serving as a symbol of sustainable growth and development in the community." A similar award was bestowed upon the City of Germantown. There is absolutely no reason to believe that an equally award winning development could not be envisioned and replicated on "the Triangle". I would urge each of you to take the time to view the video of this portion of the June 25, 2018, BMA meeting.

The Report continues to conclude that a rezoning to “R” zoning would “protect” the surrounding neighborhoods from the impact occasioned by development of the Triangle. Do these neighborhoods, in fact, need “protection” from Smart Growth development? Absolutely not! One need only to look at the development of the Sommerset Subdivision, mentioned in the Staff Report, to conclude that Smart Growth development has a dramatic, positive impact on surrounding neighborhoods. The lots in the Sommerset Subdivision are generally 6,000 – 7,000 square feet. Yet, directly across Exeter (with no natural buffer, whatsoever) Germantown citizens are enthusiastically buying homes valued between \$600,000 and \$800,000 – hardly a scenario indicative of adjacent neighborhoods needing “protection” from the Smart Growth envisioned and adopted by the leaders of the City of Germantown.

What is conspicuously absent from the Staff Report? First, as stated previously, the Staff Report is devoid of a single fact which would indicate that the continued T-4 zoning is “unwise”. The Staff Report is devoid of any traffic study evidencing the increase in pedestrian and bicycle traffic, to which reference is made, and the corresponding decrease in required automobile trips

resulting in a positive community and environmental impact as people interact with one another, while putting less carbon dioxide into the atmosphere. Absent is any mention of the Germantown Forward 2030 Study and the degree to which this proposed rezoning completely contradicts Strategic Objective 3 pertaining to Land Use and Transportation (see attached). Also absent from the study is any economic analysis whatsoever, or any input from the Germantown Economic Development Advisory Committee which, from a review of the City's Website, appears to be staffed by some very capable individuals.

Finally, missing from the Staff Report is any indication, whatsoever, that "R" zoning would be appropriate, "wise", or advisable for this 19+ acres. As stated earlier, this zoning would effectively require the destruction of the large trees along Neshoba and Cordova Roads. Likewise, assuming driveways are not permitted on Germantown Road, the northern gateway to "downtown" Germantown would now have a vibrant interactive community on the east side of Germantown Road and a wall along the west side. Those homes backing up to Germantown Road would, by necessity, have a "beautiful" view of a seven lane highway from the upper floors of their homes and, whether they wanted to or not, would enjoy the music generated directly across the street by concerts at The Grove at GPAC. Finally, the "R" zoning would effectively create a "blockade" making it more difficult for west neighbors to access the vibrant, walkable, community east of Germantown Road, as well as the incredible public facilities provided by the City of Germantown for its citizens.

Thus far, I have discussed my thoughts as to why it would be unfair and unreasonable for the Planning Commission to frustrate the Smart Growth Plan and revert to an "R" cul-de-sac development at the entrance to the new "downtown" Germantown. What I have not discussed is the unfairness of this proposed rezoning to the family of Jack Owen. As stated earlier, the Owen

family had a contract in place whereby the purchasers would pay 5.5 million dollars for the ten acres not fronting on Germantown Road. The anticipated value of the entire 13.65 acres is approximately 8.5 million dollars. If zoned "R", the estimated value of the property would be approximately 1.3 million dollars. When Jack died, his estate, because of the value of the T4 zoned Owen Tract, paid approximately 1.4 million dollars in estate taxes attributable to valuation of this parcel. If you do the math, the downzoning of this property, coupled with the estate taxes paid, would have the net effect of reducing the value of the property to something less than zero dollars. One of the principles of the Smart Growth Plan, a copy of which I have appended hereto, is that Smart Growth should ... "make development decisions, fair, predictable and cost effective." I would ask the Commissioners whether they believe that this proposed rezoning serves to effectuate that principle.

In conclusion, I would respectfully suggest to you that the Planning Commission should not "gut" the Smart Growth Plan for development which was put in place eleven years ago at a significant cost to the City of Germantown and with significant input from all of its planning staff, retained experts, and dozens - if not hundreds - of participating citizens. City staff can do better than this. The Germantown Planning Commission can certainly do better than this. It would indeed be ironic and regrettable to find that Smart Growth development is torpedoed by a Staff Report consisting of approximately one-half page of discussion and containing absolutely no facts, whatsoever, supporting the naked conclusions contained therein. I would suggest to you that by both city ordinances and state statute, the Germantown Planning Commission is charged with the long-term planning and development of the City of Germantown, and that this long-term planning, by necessity, should be viewed as extending well beyond Summer and Fall of 2018.

Where do we go from here? My suggestion to the Planning Commission is that the Planning Commission defer any action for a period of at least six (6) months. During that period of time, the Owen family can develop several sketch plans of possible development of the Triangle, which would, hopefully, meet the goals and objectives, of the Smart Growth plan, while accommodating the concerns, which some of the neighbors seem to have. If the Commission is unwilling or unable to agree to such a continuance, then we would most strongly urge the Commission to recommend that the Application be denied.

I would be happy to discuss any of this further if you and Mr. Harris believe that this would be appropriate. I am writing a letter rather than contacting you by phone, in order to respect your privacy. On behalf of myself and the Owen family, I appreciate your careful and honest consideration and attention to this matter.

Many thanks.

Very truly yours,

A handwritten signature in cursive script that reads "Rick Winchester".

Richard L. Winchester, Jr.

Smart Growth Principles

1. Mix land uses.
2. Take advantage of compact building design.
3. Create a range of housing opportunities and choices.
4. Create walkable communities.
5. Foster distinctive, attractive communities with a strong sense of place.
6. Preserve open space, farmland, natural beauty, and critical environmental areas.
7. Strengthen and direct development towards existing communities.
8. Provide a variety of transportation choices
9. make development decisions fair, predictable, and cost effective
10. Encourage community and stakeholder collaboration in development decisions

Smart Growth Network
Getting to Smart Growth II

Goal 7 of the Vision 2020 Plan: REDEVELOPMENT OF THE HEART OF GERMANTOWN

Goal 7's objectives include:

1. Mixed use (residential and nonresidential) development in the heart of the City area.
2. Strong retail businesses and office development for professional services
3. People living in the heart of the City area: lofts, above business condos, townhouses.
4. Pedestrian friendly layout linked to Citywide path/trail system
5. Mid-rise buildings with mixed uses that are attractive and inviting for people
6. Creating a sense of place for the community