

Think Quality - Think Future

Blount County Planning Department

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TO: Members of the Blount County Planning Commission

FROM: John Lamb

DATE: September 15, 2011

SUBJECT: Long range agenda items for the September 22, 2011 regular meeting.

1. Proposed regulations of Campgrounds and Recreation Vehicle Parks.

See minutes for summary of comments received at the Public Hearing on August 25, 2011, and separately bound comments handed in by speakers and audience.

2. Discussion on cell tower regulations.

See separate memo from Roger Fields.

3. Report of Ad Hoc Committee on ridge-top and hillside regulations.

At the last regular meeting, the Planning Commission requested staff review and comment on the report of the second ad hoc committee. The following presents staff review and comments.

Planning is about alternatives and choices, especially in the light of probable effects of action, or lack of action, on the future of the County. There are two basic alternatives to consider: do nothing, or do something. The following assumes a government decision making context.

Five Criteria.

In studying alternatives related to a specific issue or problem, decision makers should consider five criteria.

(1) One criterion would be whether a problem actually exists or is sufficiently serious. If no problem exists, then no response is warranted. Related to the determination of a problem is determination of whether a problem is serious enough to warrant action. Mere personal feeling or speculation that something is a problem may not reach the level of seriousness for policy deliberation. The determination of problem and seriousness should be made early in study and deliberation. If a problem exists and is of sufficient seriousness, then further consideration of response is warranted.

(2) Another criterion would be necessity of action to benefit the public good. More precisely for regulations, the criterion should be protection of the public health, safety and welfare. If no necessity is found then a response would not be warranted. This principle is enshrined in our Policies Plan as a basic guiding policy as follows: “The guiding policy in any government actions in relation to the use and development of land should be to limit regulations to specific public health, safety and welfare objectives balanced with responsible freedom in the use of land.” If a basis is found in protecting the public health, safety and welfare, then further consideration of response is warranted.

(3) Another criterion, especially for regulations, is whether or not action is allowed under governing statutes. The County is a subservient part of the State of Tennessee, and any action by the County to regulate the use or development of land is governed by state statutes. If authority to act or adopt particular types of regulation does not exist under state enabling legislation, then no response is warranted. Often, the reach of enabling legislation is determined by legal precedent through the Courts, particularly as provisions of the State and U.S. Constitutions are applied to specific cases, so major Court decisions can be a guide for considering authority for actions or regulations. If there is authority in state statutes, often more particularly defined or validated by the Courts, then further consideration of response is warranted.

(4) Another criterion would be the level of burden placed on individuals in pursuit of protecting the public health, safety and welfare, and if such burden would be undue or excessive. If the burden is found to be undue or excessive, then a response may not be appropriate. The determination of “undue or excessive” can be a judgment call in policy deliberations based on local values, and consideration of legal implications may also be appropriate. Note that some burden or effect on individuals is acceptable under the law when considering regulations, so long as

the regulations are based on protecting the public health, safety and welfare. If the benefit from protecting the public health, safety and welfare is sufficient and determined to be in proportion to any burden on individuals, then further consideration of response is warranted.

(5) Another criterion is efficacy of response, or could the desired outcome or result actually be achieved from action or regulation given the realities of implementation or enforcement. Determination of efficacy may also consider cost to the public coffers in relation to benefit. Put another way, would the cost to the public coffers of achieving a result be prohibitive, or so far out of proportion to public benefit as to be unreasonable? Considerations of public budget and finance, along with consideration of personnel and expertise, may be appropriate.

Do Nothing and Do Something Alternatives.

If consideration of any one of the above five criteria warrants no action, then decision makers may choose the do nothing alternative. In a planning context, the consideration of the criteria and alternatives should be objective. For regulations, the planning function is most often limited to recommendation. Determination to choose the do nothing alternative for regulations usually halts any further consideration. If the planning function chooses the do something alternative as a recommendation, then the consideration of alternatives usually transfers to the legislative function.

(Note that for decisions on Subdivision Regulations, the Planning Commission has final authority under State Statutes for both consideration and adoption of regulations, with exception of regulations that apply to private roads and easements.)

For most decisions to adopt regulations, the final authority usually is the legislative branch of government. In a legislative context, politics will probably play a much greater role. The legislative body may revisit the five criteria and make their own determination to do nothing or do something.

A jurisdiction may choose the alternative of doing something, and this opens up an array of possibilities that could range from a minimal response with little or no effect, to a response limited in proportion to desired effect, to a response that strives for a perfect ideal.

The option of minimal response with little or no effect is sometimes used to side-step a thorny issue, and claim victory when actually the goal is to do nothing. In such instances, particularly when associated with regulations, it would be a more

appropriate and direct approach to take the do nothing option. Trivial or ineffectual regulations do not add substantially to the protection of public health, safety and welfare.

At the other end of the spectrum, response may strive for a perfect ideal. In some instances, a jurisdiction may consider very stringent regulations to be a sign of seriousness in addressing a problem or issue, particularly if comparisons are made to what other jurisdictions are doing. However, stringency is not an appropriate goal in and of itself, and the resulting response may not be proportional to outcome or seriousness of the problem, nor in keeping with local values. While consideration of an ideal may be appropriate in guiding deliberations and crafting a response to a problem, considerations of local values and proportionality would also be appropriate.

A middle ground is often the approach that results from detailed study and serious deliberation on an issue or problem. The result may be a response forged from compromise. The response would be balanced in proportion to desired effect, with desired effect clearly defined, and proportionality clearly linked to protection of public health, safety and welfare. Appropriate consideration of all five criteria, with appropriate findings to all, would be part of the deliberations.

Short history of ridge-top and hillside deliberations.

Deliberations to date on possible ridge-top and hillside regulations have considered the five criteria and have spanned the range of possible responses. This has been accomplished over a period of about four years, beginning with consideration of issues in the context of Policies Plan review in the Fall of 2007.

Early deliberations first looked at the existing Policies Plan to define and validate a problem of ridge-top and hillside development in relation to protecting the rural character of the county. Problem validation continued with evaluation of the existing situation on the north face of Chilhowee Mountain and other mountainous parts of the county, and consideration of what has occurred in Sevier County and what could occur in Blount County.

Consideration of public health, safety and welfare was guided by the Sevier County “Preferred Directions” report, along with consideration of the “Blount County Land Use Plan: A Plan for Mountain Areas” and the “Blount County Policies Plan”.

After initial discussions within the full Planning Commission, the first ad hoc committee was formed to conduct detailed study of the problem and develop

possible response. From February to June of 2008, the ad hoc committee deliberated alternatives to address the problem of ridge-top and hillside development. Citizens participated in the ad hoc committee deliberations and expressed concerns of how regulations may adversely affect individuals and their property. Other jurisdictions were used as examples to develop a set of regulations. The first ad hoc committee produced a report in June of 2008.

The Planning Commission considered the first ad hoc committee report for about one year. Initial impressions were that the proposed regulations were an ideal and would pose undue impact on individuals. The Planning Commission determined several changes to bring the proposed regulations more in line with what would be more locally acceptable. The Planning Commission referred a set of regulations to the Attorney for the County Mayor for legal review in June of 2009.

The Attorney for the County Mayor produced a report in September of 2009, which was delayed in delivery to the Planning Commission until February of 2010. The Planning Commission reviewed the report at the April 2010 meeting. The report of the Attorney generally supported the proposed regulations, noting that esthetics could be considered in such regulations, and noting that there should be a clear link to protecting the public health, safety and welfare. The Attorney also noted that legal challenge could be mounted, but that such challenge would usually be in the context of a specific permit, and that outcome would be contingent on proper consideration of applicable regulations and variances within the permit approval process. The report of the Attorney for the County Mayor can be found at www.blounttn.org/planning under the Planning Commission meeting heading for June of 2010, along with the report of the first ad hoc committee and other supporting information used in crafting the first set of recommended regulations.

The Planning Commission studied the proposed regulations further in the next few months without reaching consensus, leading to a workshop in November 2010. There were members who were opposed to the recommendations of the first ad hoc committee as revised by the Planning Commission to that date. At the workshop, the Chairman formed a second ad hoc committee headed by Commissioner Gordon Wright to come up with an alternative report with recommendations.

Findings and recommendations of the second ad hoc committee.

Commissioner Wright presented the report of the second ad hoc committee at the August 2011 regular meeting, report reproduced at the end of this section. The Planning Commission asked staff to review and comment on the report and recommendations.

The second ad hoc committee rejected the proposed regulations from the first ad hoc committee as revised by the Planning Commission and reviewed by the Attorney for the County Mayor. Gone were any regulations related to zoning. Proposed were a minimal set of amendments to the Subdivision Regulations.

The first three points of the report addressed the first criterion – is there a problem? The report found the following:

1. Most of the ridge-tops from Walland Gap (highway 321) South is taken up by the Foothills Parkway of which no access can be granted, except “Top of The World” access, which is not visible. Most tracts of property below and facing the Maryville side of the Foothills Parkway has already been developed or does not have infrastructure to support any large scale development. Access to these areas would be questionable.
2. The area to the North side of Walland Gap (mostly the “three sisters tract” is deed-restricted. A variance from the BZA supports this, as housing has been approved on the Walland side and not visible from highway 321.
3. Most of the properties on both sides of highway 321 from Walland to Townsend already subdivided or protected as no access can be granted from the other section of the Foothills Parkway (under construction) to the Sevier Co. boundary.

The findings are in some instances similar to findings of the first ad hoc committee, but in other instances are very different. For points 1 and 2, initial analysis by the Planning Commission and the first ad hoc committee found similarly that the north face of Chilhowee Mountain around Walland Gap was probably not of immediate concern since much of the land at the time was reportedly being considered for conservancy (later confirmed for the land to the north of Walland Gap), under protection of the Foothills Parkway right-of-way on the ridge-top to the south of Walland Gap, or of such steep slope and difficult access on the hillsides as to make it undesirable for intensive development.

While the north face of Chilhowee Mountain was the first geographical area of concern for the Planning Commission and first ad hoc committee, the area of concern was expanded by the Planning Commission to cover the length of Highway 321 from approximately the city limits of Maryville, through Walland Gap, on into and through Townsend and Tuckaleechee Cove, and on to the county line with Sevier County.

Deliberations prior to formation of the second ad hoc committee were premised on findings of problem different than those found in the report of the second ad hoc committee. The difference may be based in part on consideration of the term “development”, and focus on Highway 321 and not the Foothills Parkway as the defining access.

Just because a parcel has been divided does not mean that it cannot be further divided, and just because a parcel has been divided does not mean that all potential housing or other structures are already built on the property. Focus only on the present subdivided nature of the land, as with the second ad hoc committee, discounts the potential effect new construction on already divided land, and potential further division of large parcels. Both subdivision and construction should be considered as development. Still, the second ad hoc committee makes or implies some good points, that substantial development already exists, both subdivision and construction, within the area of concern, and any proposed regulations would not be retroactive to old construction.

The Foothills Parkway is and will probably remain a limited access road. This begs the question of how the area is presently accessed, which is by feeder roads leading to the main arterial of Highway 321. There is still potential for developing access, subdividing new parcels, and adding more construction off of the present road system, and there may be potential for extension of new roads as the area develops.

Point 4 of the second ad hoc committee addresses efficacy of regulations indirectly in the following statement:

After discussions with the Building Codes Dept., things such as shiny roofs, downlighting, color of building, height of building, should not be addressed at this time.

There is no basis stated of why the Building Codes Department would come to such a conclusion. In general, building codes issues are not issues of zoning, and the Planning Commission should ask for more detail on why the second ad hoc committee relied on this information.

Continuing with point 4, the second ad hoc committee found the following:

TCA 13-7-102 states that “all such regulations shall be uniform for class or kind of buildings throughout any such district, but the regulations in one district may differ from those in other districts.” The reasons for having different regulations would have to meet the requirement of being for the

health, safety and welfare of the affected area. “visually-subordinate” is not tied to any of the reasons for different regulations. It is questionable as to it’s standing if tested in a court of law.

This finding runs counter to the findings of the first ad hoc committee, and review by the Attorney for the County Mayor. The visual impact on Scenic Landscape Resources of Significance (SLRS) was found to be tied through adopted plans and other studies to protecting the public health, safety and welfare. Please refer to the report of the first ad hoc committee at www.blounttn.org/planning under the meetings button for the June 2010 meeting. The report went into much detail in establishing the link between public health, safety and welfare and the proposal to insure visually subordinate development through regulation.

The report of the Attorney for the County Mayor addressed the basis for defining a different class of use or building within the present R-2 zone based on visibility from SLRS, and came to conclusion that a different class could be justified if the basis was established in public health, safety and welfare. The Attorney noted that visual or esthetic concerns are valid in considering different regulations for different classes of use or building. The Attorney noted that outcome of court challenge would be determined by the particular facts of a case, and that most legal challenge would not be ripe until all regulatory processes were complete, particularly if there was a lack of reasonable accommodation, such as variance, for relief of undue hardship on individual property owners. The report of the Attorney for the County Mayor can also be found at www.blounttn.org/planning under the meetings button for the June 2010 meeting.

Point 4 concludes with the following, basically choosing a do nothing option:

Since most of these concerns are addressed in the preceding paragraphs and in our recommendations, there is no need for any new or different regulations or codes.

And in Point 5 recommends: “Do not create a separate zone for ridge-tops.” Note that the first ad hoc committee did not recommend a separate zone, but recommended integrating appropriate measures into the existing R-2 zone. The second ad hoc committee went even further in rejecting integration of provisions into the existing R-2 zone.

However, the report recommends some other regulations as follows in Point 6, referring presumably to inclusion in Section 9 of the Subdivision Regulations relating to Hillside Development Standards:

- (a) Prohibit clear cutting of trees (use guidelines as recommended by State of Tennessee's "Firewise" program.
- (b) Require use of low impact roads (explanation attached)
- (c) Minimum of 20 ft. setback on all buildings from property lines and roads
- (d) Require "Buffers" between sub-divisions and public roads, where applicable.

Item 6(a) was discussed briefly by the Planning Commission at the last regular meeting, noting that there are limitations on regulating "clear cutting of trees" since this could be considered as an agricultural (forestry) harvesting activity with protections in State Statutes. The intent seems to be integration of "Firewise" principles into regulations. Firewise principles mainly address the siting or location of buildings in relation to combustible materials such as trees, shrubs and grass, especially in mountainous or sloping areas. Application of Firewise principles is not particularly suited to integration into the Subdivision Regulations which address the division of land and provision of supporting infrastructure. The Firewise principles would be applied better at the time of building permit and construction, and would be integrated more appropriately into the zoning permit system.

Item 6(b) refers to the following as attached in the report of the second ad hoc committee:

Low impact road construction is:

1. Simply following the contours of the terrain where possible.
2. Vertical cuts and 1-1/2 to 1 fills. Vertical cut to be made in stable materials such as rock, soft shale, etc. Unstable areas should be enhanced by rock gabions, landscape boulders, ground cover or vegetation, in addition to other methods used for soil stabilization.
3. Road grades higher than 16% should be allowed for short distances.

All the above will improve the visual impact of the road construction, because it will reduce the disturbed area as much as 75% in some cases. It also increases the stability of the subgrade making the road construction much stronger.

The proposal for low impact road construction mirrors much of what is already required and applied in steep terrain developments through our existing Subdivision Regulations. However, it would be appropriate to review the

Subdivision Regulations to see if there are areas that may be improved to reduce visual impact of road and other construction associated with the division of land. It would be useful if the second ad hoc committee would provide technical references for their recommendations.

Item 6(c) recommends a uniform 20 foot setback from all property lines. This would be consistent with the present 20 foot rear setback requirement, would extend the present 10 foot side setback requirement by 10 more feet, and would reduce by 10 feet the present 30 foot front setback requirement. Given the recommendation on Firewise principles, the setback from property lines may need to be greater than the recommended distance to accommodate fire protection measures, and a 20 foot setback may not be enough. The proposed setback changes would need to be addressed in both Subdivision Regulations and Zoning.

Item 6(d) recommends buffering for subdivisions. This is an item that may have merit, but needs more specificity as to what would constitute buffering.

Summary and Conclusion. The above review and critique may best be summarized by reference to the five criteria presented under the first section heading. The summary below compares and contrasts the approaches of the first and second ad hoc committee reports.

(1) The report of the first ad hoc committee identified and validated a problem of sufficient concern to warrant response, and recommended a set of regulations to be incorporated into the present R-2 zone and the Subdivision Regulations. The report of the second ad hoc committee did not find a problem of sufficient importance to warrant response, and recommended that no new zoning regulations be considered. The second ad hoc committee did recommend a minimal set of changes to the Subdivision Regulations.

(2) The first ad hoc committee found a link between response to the problem of ridge-top and hillside development on the one hand, and protection of public health, safety and welfare on the other. The second ad hoc committee did not find any link to protecting the public health, safety and welfare.

(3) The first ad hoc committee found avenues within State enabling legislation for both zoning and subdivision regulations to address the problems of ridge-top and hillside development. The first ad hoc committee also found that State and U.S. Supreme Court cases supported addressing of esthetic concerns through regulation, later supported also in legal review by the Attorney for the County Mayor. The second ad hoc committee did not find sufficient support for regulatory response in State Statutes. The second ad hoc committee rejected the idea that there was a link

between esthetic concerns (visually subordinate) and the public health, safety and welfare, and raised concern of possible legal challenge for any response that addressed esthetics of ridge-top and hillside development.

(4) The first ad hoc committee proposed an ideal set of regulations that the Planning Commission determined placed too much of a burden on the individual property owner. A compromise set of regulations were then crafted by modifying the original proposal. While the second ad hoc committee did not directly address burden on individual property owners, the underlying arguments made by some on the second ad hoc committee in other venues indicated that there was continuing concern with the issue.

(5) The first ad hoc committee considered some issues of efficacy in discussions of staffing expertise. The second ad hoc committee did not address this criteria.

In conclusion, the Planning Commission has the reports of the first and second ad hoc committees, along with an initial compromise set of regulations that have passed legal review, and now is faced with a decision. Do nothing or do something.

Staff suggests careful consideration of the five criteria in relation to all that has been proposed before. If the findings and sentiment warrant the do nothing option, this will bring closure to deliberations. If findings and sentiment warrant the do something option, there is still potential for considering changes to the compromise set of regulations, and potential for discussing alternative directions for existing regulations.

RECOMMENDATION ON RIDGE-TOP REGULATIONS

INTRODUCTION

With the help of the tax-assessors office the Ad-Hoc Committee on Ridge-Top Regulations was able to identify properties that could have an impact on visibility from lower elevations. By use of large-scale property division maps, we were able to pin-point how much properties would be affected by any type of regulations. These large scale maps of the affected areas are posted on the wall in room 433 for your review.

The next step we took was to see what best approach method to accomplish our task of protecting one of Blount County's assets. Here are our findings and recommendations:

- (1) Most of the ridge-tops from Walland Gap(highway 321) South is taken up by the Foothills Parkway of which no access can be granted, except "Top of The World" access, which is not visible. Most tracts of property below and facing the Maryville side of the Foothills Parkway has already been developed or does not have infrastructure to support any large scale development. Access to these areas would be questionable.
- (2) The area to the North side of Walland Gap(mostly the "three sisters tract" is deed-restricted. A variance from the BZA supports this, as housing has been approved on the Walland side and not visible from highway 321.
- (3) Most of the properties on both sides of highway 321 from Walland to Townsend already subdivided or protected as no access can be granted from the other section of the Foothills Parkway(under construction) to the Sevier Co. boundary.
- (4) After discussions with the Building Codes Dept., things such shiny roofs, downlighting, color of building, height of building, should not be addressed at this time. TCA 13-7-102 states that "all such regulations shall be uniform for class or kind of buildings throughout any such district, but the regulations in one district may differ from those in other districts. The reasons for having different regulations would have to meet the requirement of being for the health, safety and welfare of the affected area. "visually-subordinate" is not tied to any of the reasons for different regulations. It is questionable as to it's standing if tested in a court of law. Since most of these concerns are addressed in the preceeding paragraphs and in our recommendations, there is no need for any new or different regulations or codes. We do, however, recommend the following:
- (5) Do not create a separate zone for Ridge-Tops.
- (6) Include in Section 9
 - (a) Prohibit clear-cutting of trees (use guidelines as recommended by State of Tennessee's "Firewise" program.
 - (b) Require use of low-imp;act roads (explanation attached)
 - (c) Minimum of 20 ft. set-back on all buildings from property lines and roads
 - (d) Require "Buffers" between sub-divisions and public roads, where applicable.

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Jerry Roddy
David Caldwell
Don Headrick
Clifford Walker
Richard Maples

Low Impact Road Construction

Low impact road construction is:

1. Simply following the contours of the terrain where possible.
2. Verticle cuts and 1-1/2 to 1 fills. Verticle cut to be made in stable materials such as rock, soft shale, etc. Unstable areas should be enhanced by rock gabions, landscape boulders, ground cover or vegetation, in addition to other methods used for soil stabilization.
3. Road grades higher than 16% should be allowed for short distances.

All the above will improve the visual impact of the road construction, because it will reduce the disturbed area as much as 75% in some cases. It also increases the stability of the subgrade making the road construction stronger.

4. Staff reports.

Staff may make other reports at the meeting.