From: **Brittany Hoskins** brittanyhoskinslaw@yahoo.com
Subject: Comprehensive Plan Research
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To: Lynn Sebourn lsebourn@tullahomatn.gov, Busch Thoma bthoma@tullahomatn.gov, Jerry Mathis jmathis@tullahomatn.gov, Sernobia McGee smcgee@tullahomatn.gov, Bobbie Wilson bwilson@tullahomatn.gov, Kurt Glick kglick@tullahomatn.gov, Matthew Bird mbird@tullahomatn.gov
Cc: Jeffrey T. Damron jtdamron@tullahomatn.gov, Stephen M Worsham robertsonworsham.lawfirm@gmail.com, Samuel Luthi sluthi@tullahomatn.gov

Good morning all,

Below I have copy/pasted the research results regarding the Comprehensive Plan that I referenced last night that I previously sent to Alderman Thoma. In sum, comprehensive plans are intended to be policy guides, not regulations. The plan guides zoning decisions, but is not zoning itself. Ordinances are binding, whereas resolutions are considered "official endorsements." If the Board adopts the Comprehensive Plan by ordinance, this blurs the line and invites arguments that the plan is binding in ways that it shouldn't be. Developers can argue that the City is legally bound to follow the plan strictly; opponents can claim a deviation is arbitrary or unlawful; and it can be used as evidence in litigation to argue the City tied its own hands. A resolution preserves flexibility to approve projects that differ from the plan with justification. A citizen can challenge an ordinance directly, whereas a resolution is not independently enforceable. Ordinances are harder to change, which is good in certain cases, but not ideal for planning documents (easier updates and amendments, no multiple readings, etc). The Comprehensive Plan should be used to set vision and policy direction, but not to impose rules or penalties, and passing it as a resolution reflects that intent. In my opinion, passing it by ordinance rather than resolution creates unnecessary risk without any benefit. Research results sent to Alderman Thoma (over the course of several emails) are as follows:

I did some research regarding comprehensive plans, and the best way to summarize my research is that a comprehensive plan is a guide, not binding law, but the City is expected to generally follow it so that the public can rely on it.

Comprehensive plans are advisory rather than mandatory, and a city can deviate from a comprehensive plan, but not arbitrarily. The legal requirement from the case law to deviate from a comprehensive plan is that a decision to do so must be "reasonable and consistent with legitimate planning principles." Courts don't ask whether the City perfectly followed the plan, but a Court will question whether the City's decision not to follow the plan was reasonable, non-arbitrary, and grounded in planning rationale. The purpose of a comprehensive plan is to guide long-term growth, land use, and infrastructure decisions, and to allow investors and developers to rely on it. Because developers and investors rely on it, Courts expect cities to follow the guidance in the plan and to only approve something inconsistent with the plan if 1) there is a rational basis and 2) the decision is tied to legitimate planning considerations. Examples from cases of valid reasons to deviate from a plan: changed conditions (growth, traffic, infrastructure), better site-specific date than existed when the plan was adopted, and economic development benefits. The case that Steve referenced in his email is another example where the Court upheld our decision to deviate from the plan. A developer requested to rezone property consistent with the plan, and the Board denied his application to rezone, but in doing so, Alderman Wilson stated on the record that the reason for the denial of application was because of infrastructure decencies within the City. The developer challenged our decision in Court, and the Court upheld our decision because 1) we denied it with a rational basis and 2) the reason was tied to legitimate planning considerations.

While the Board isn't strictly bound by the plan, the Board should follow it generally so that people can rely on it. If the Board departs from the plan, the Board should clearly explain why on the record to create a record of reasoning in case the decision is challenged. If the Board decides to deviate from the plan, the Board should acknowledge the plan, acknowledge the deviation, and state the reason clearly. The key is that we make consist decisions and clearly explain our reasoning when we depart from the plan. ...

A Comprehensive Plan is advisory in nature and serves as a policy guide, but it is not itself a regulatory enactment. While zoning ordinances must be adopted by ordinance because they impose binding land use regulations, the Comprehensive Plan does not function that way. For that reason, many municipalities adopt or acknowledge Comprehensive Plans by resolution rather than ordinance in order to preserve appropriate flexibility and avoid unintentionally creating the impression that the Plan is legally binding in the same manner as zoning. While adoption by ordinance is permissible, it is not required, and there seems to be sound policy reasons to utilize a resolution instead. When a Comprehensive Plan is adopted by ordinance instead of resolution, it can be argued to carry greater legal weight than intended and can be used by developers to claim the City is "bound" to follow it strictly, whereas passing it by resolution shows that the Plan is officially endorsed by the Board, but is still flexible and advisory. Recently, the following cities have adopted their comprehensive plans by resolution: Chattanooga's "Chattanooga 2040" Plan, Franklin's "Envision Franklin" Plan, and Knoxville's "One Knoxville" Plan. The City of Franklin's Plan was adopted and has been repeatedly amended by resolution (See the most recent one at Resolution No. 2024-78, titled "A Resolution to Adopt an Envision Franklin Plan Amendment..." in which the Board formally adopts a plan amendment by resolution).

Please let me know if you have any questions.

Thank you,
Brittany

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Brittany Hoskins, Esq.
Robertson, Worsham, Gregory, Giffin & Hoskins, PLLC
105 West Lincoln Street
Tullahoma, Tennessee
Office: (931) 455-5407

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