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Long, Ragsdale & Waters, P.C.

ATTORNEYS AT LAW

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Christopher A. Hall†

John B. Waters, Jr. (1929-2018)
R. Louis Crossley, Jr. (1953-2019)

April 17, 2025

Hon. Steve Harrelson
Circuit Court Clerk
Post Office Box 280
Loudon, TN 37774

Re: *State of Tennessee, on the Relation of LC Town Creek 1, LLC v. City of Lenoir City, Tennessee, and Greg Buckner*, Circuit Court for Loudon County, Tennessee

Dear Mr. Harrelson:

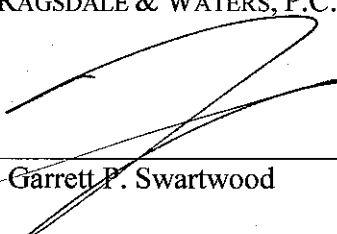
This firm represents LC Town Creek 1, LLC, in connection with the above-referenced matter. Please find enclosed for filing a Verified Complaint for Writ of Mandamus, requesting the issuance of a Writ of Mandamus to the Defendants, Lenoir City and Greg Buckner. The complaint is accompanied by summonses for issuance to the Defendants and service by a private process server. In accordance with mandamus procedures, we have also included a draft Fiat for an Alternative Mandamus for issuance by the Court, and an Alternative Writ of Mandamus for issuance and service upon the Defendants. After filing the complaint, we would appreciate it if you would tender the complaint to the Court for consideration of the issuance of the Fiat for the Alternative Writ of Mandamus. Please note that if the Writ of Mandamus is issued in accordance with the Court's Fiat, the date for a show cause hearing should be included in the Writ.

Thank you for your attention to this matter and if you have any questions, please do not hesitate to give me a call.

Sincerely,

LONG, RAGSDALE & WATERS, P.C.

By:


Garrett P. Swartwood

Enclosures

cc: G. Chance Harrison, Esq. (w/enc.)
Greg Buckner (w/enc.)
LC Town Creek 1, LLC (w/enc.)

1111 N. Northshore Drive, Suite S-700 Knoxville, Tennessee 37919-4074
865 584 4040 865 584 6084 fax www.lrwlaw.com

† Of Counsel *Also admitted in New York **Also admitted in Florida

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

**THE STATE OF TENNESSEE,
ON THE RELATION OF
LC TOWN CREEK 1, LLC,**

Plaintiff,

vs.

No: _____

**CITY OF LENOIR CITY,
TENNESSEE and GREG BUCKNER,
IN HIS CAPACITY AS BUILDING
OFFICIAL FOR CITY OF LENOIR
CITY, TENNESSEE,**

Defendants.

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

Comes the State of Tennessee, suing on the relation of LC Town Creek 1, LLC ("Plaintiff"), by and through counsel, pursuant to Tennessee Code Annotated § 29-25-101, *et seq.*, and respectfully shows to the Court:

1. LC Town Creek 1, LLC ("LC Town Creek"), is a Tennessee limited liability company, with an address of 315 Trane Drive, Knoxville, Tennessee 37919.

2. City of Lenoir City, Tennessee (the "City ") is a subdivision of the State of Tennessee and may be served with process by and through its attorney, G. Chance Harrison, City Attorney, at 800 South Gay Street, Suite 1650, Knoxville, Tennessee 37929.

3. Greg Buckner is the Operations Manager of Codes, Planning and Stormwater for the City and may be served with process at 530 Highway 321 N, Lenoir City, Tennessee 37771.

4. Pursuant to Tenn. Code Ann. § 29-25-101, *et seq.*, the Circuit Court has jurisdiction to hear this Verified Complaint for Writ of Mandamus (“Complaint”).

4. Venue is proper as the City is situated within Loudon County, Tennessee.

5. LC Town Creek owns the fee simple interest of the real property located on Town Creek Boulevard in Lenoir City, Tennessee, identified as Tax Parcel No. 015 200.20 (“Subject Property”).

6. LC Town Creek acquired the Subject Property for the purpose of constructing a multi-family development (“Project”).

7. At all times material to the instant action, Subject Property has been zoned “R-3, High Density Residential District” under the Zoning Ordinance of the City of Lenoir City, Tennessee (“Zoning Ordinance”).

8. Multi-family dwellings and developments are a permitted use in the R-3 Zoning District.

9. Section 11-312 (Site Plan Review) of the Zoning Ordinance requires that all commercial developments, residential complexes of more than four (4) units, and industrial developments are required to submit a Site Plan to be reviewed and approved by the Lenoir City Regional Planning Commission (“Planning Commission”) before the City’s Building Official can issue a permit.

10. LC Town Creek submitted a Site Plan for the Project to the Planning Commission. The Planning Commission approved the Site Plan for the Project on or about December 6, 2022 (“Site Plan Approval”).

11. Following the Site Plan Approval, LC Town Creek commenced with preparing

formal building, design and development plans required for permitting from the Defendant and securing the necessary financing for the Project.

12. On or about May 7, 2024, the Planning Commission made a recommendation to the City Council for Lenoir City, Tennessee (“City Council”) that it adopt an ordinance imposing a moratorium prohibiting the building of apartments/multi-family housing for a period of one (1) year within the corporate limits of the City, however if the site met one (1) of the five (5) expressly stated exceptions then said site would be exempt from the prohibition in moratorium (“Recommended Moratorium Ordinance”).

13. The City Council approved the Recommended Moratorium Ordinance on first reading on June 10, 2024 and then on second reading at its meeting on June 26, 2024 (“Moratorium Ordinance”).

14. The five (5) exceptions that exempted a site from the prohibition of the Moratorium Ordinance included:

1. Any site approved for site plan by the Planning Commission prior to the passage of the Moratorium Ordinance.
2. Any site approved for rezoning by City Council prior to the passage of the Moratorium Ordinance.
3. Any site approved for annexation by City Council prior to the passage of the Moratorium Ordinance.
4. Any site granted a permit for construction prior to the passage of the Moratorium Ordinance.
5. Lenoir City Housing Authority shall be exempt from the Moratorium

Ordinance.

15. In accordance with the Moratorium Ordinance, if a proposed multi-family development met one (1) of the five (5) exceptions in the Moratorium, then it could proceed with the development.

16. On November 25, 2024, a proposed amendment to the Moratorium Ordinance was considered by the City Council.

17. The proposed amendment to the Moratorium Ordinance required a site to meet two (2) of the five (5) exceptions instead of one (1) of the five (5) exceptions in order to be exempt from the prohibition against the building of apartments/multi-family housing. A true and correct copy of the proposed amendment is attached hereto as Exhibit A.

18. The City Council unanimously approved the proposed amendment to the Moratorium Ordinance requiring a site to meet two (2) of the five (5) exceptions on first reading on November 25, 2024.

19. On December 9, 2024, the City Council considered the amendment to the Moratorium Ordinance on second reading.

20. After discussion by the City Council, an additional modification was made to the proposed amendment to the Moratorium Ordinance to require a site to meet three (3) of the five (5) exceptions in order to be exempt from the prohibition against the building of apartments/multi-family housing.

21. Upon concluding its discussion, the City Council unanimously approved the amendment to the Moratorium Ordinance (“Amended Moratorium Ordinance”). A true and correct copy of the Amended Moratorium Ordinance is attached hereto as Exhibit B.

22. The Moratorium Ordinance and the Amended Moratorium Ordinance are collectively referred to at times hereinafter as the “Moratorium Ordinance.”

23. On or about February 27, 2025, LC Town Creek submitted its building and development plans for the Project (“Building Plans”) to the Building Official for permitting. A true and correct copy of this submittal is attached hereto as Exhibit C.

24. In this submittal, LC Town Creek expressed that the Project was exempt from the Moratorium Ordinance because it met three (3) of the five (5) exceptions, because the Subject Property was (i) a site approved for site plan by the Planning Commission prior to the passage of the Moratorium Ordinance; (ii) a site approved for rezoning by the City Council prior to the passage of the Moratorium Ordinance; and (iii) a site approved for annexation by the City Council prior to the passage of the Moratorium Ordinance.

25. On or about March 3, 2025, LC Town Creek received a response from the Building Official stating that the City will not review the Building Plans because the Project is prohibited under the Moratorium Ordinance. A true and correct copy of the Building Official’s response is attached hereto as Exhibit D.

26. In this response, the Building Official stated that the Site Plan approved on or about December 6, 2022 had expired because construction had not commenced within twelve (12) months pursuant to Section 11-312 (Site Plan Review) of the Zoning Ordinance.

27. The Site Plan, however, has not expired as it is within the vesting period prescribed in the Tennessee Vested Property Rights Act of 2014, codified at Tenn. Code Ann. § 13-4-310 (the “VPRA”). A true and correct copy of the VPRA [Tenn. Code Ann. § 13-4-310] is attached hereto as Exhibit E.

28. The VPRA provides, in part, that “a vested property right shall be established with respect to any property upon the approval, by the local government in which the property is situated, of a . . . development plan . . .” *See* Tenn. Code Ann. § 13-4-310(b).

29. The VPRA further provides that the vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided, that the applicant obtains local government approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. *See* Tenn. Code Ann. § 13-4-310(d)(1).

30. Here, the Site Plan Approval for the Property is considered a “development plan” under the VPRA. *See* Tenn. Code Ann. § 13-4-310(k).

31. Pursuant to the VPRA, the Site Plan Approval remains active and valid during the three (3) vesting period and will not expire prior to on or about December 6, 2025.

32. LC Town Creek has vested rights during the three (3) year vesting period to secure any necessary permits and commence site preparation.

33. The Building Official's reliance on Section 11-312 (Site Plan Review) of the Zoning Ordinance to refuse to accept and consider the Building Plans for the purpose of issuing necessary permits is misplaced.

34. LC Town Creek avers that the twelve (12) month time limitation in Section 11-312 (Site Plan Review) of the Zoning Ordinance for submission of the Building Plans for the issuance of permits is not legally valid because it is in conflict with Tennessee law.

35. The power of local governments to enact ordinances regulating the use of private property is derived from the State and is delegated to them by the legislature. *See* 421

Corp. v. Metro. Govt. of Nashville and Davidson Cnty., 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000).

36. While local governments have broad discretion in enacting such regulations within the power delegated to them, such ordinances cannot contravene or conflict with applicable state laws. *B.F. Nashville, Inc. v. City of Franklin*, 2005 WL 127082, at *15 (Tenn. Ct. App. 2005); see *421 Corporation*, 36 S.W.3d at 475 (stating that local governments cannot enact ordinances that “ignore applicable state laws, that grant rights that state law denies, or that deny rights that state law grants”); *Family Golf of Nashville, Inc. v. Metropolitan Government*, 964 S.W.2d 254, 257 (Tenn.Ct.App.1997) (holding that although the zoning power is broad, it cannot be exercised in a manner that conflicts with state law).

37. When there appears to be a conflict between a statute and an ordinance, courts should read them *in pari materia* to avoid conflict and to enable them, whenever possible, to operate concurrently. *421 Corporation*, 36 S.W.3d at 478. When a statute and an ordinance are in irreconcilable conflict, however, the ordinance must give way to the imperatives of the statute. *Manning v. City of Lebanon*, 124 S.W.3d 562, 565 (Tenn. Ct. App. 2003).

38. Demand has been made on the City and the Building Official to review and consider the Building Plans for the purpose of issuing the necessary permits for the Project, including written correspondence through counsel on March 5, 2025 and March 20, 2025. A true and correct copy of the written correspondence is attached hereto collectively as Exhibit F.

39. However, the Defendants have refused and continue to refuse to act on (i) the submitted Building Plans and LC Town Creek’s request for permitting, most recently through written correspondence from the City Attorney on April 1, 2025, a true and correct copy of which is attached hereto as Exhibit G.

40. LC Town Creek is a small business as defined by Tenn. Code Ann. § 29-37-101, *et seq.*; therefore, is entitled to recover its attorney's fees from the City pursuant to the Equal Access to Justice Act.

41. LC Town Creek has no adequate remedy for the wrongs complained of herein except the writ of *mandamus*, and therefore demands:

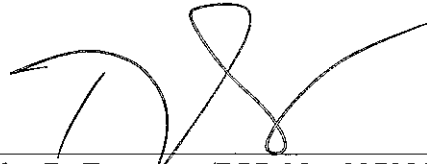
A. That an alternative writ of mandamus issue requiring the Defendants to accept, review and act upon the Building Plans, and upon adherence to the applicable codes related to the issuance of such permits, issue the necessary permits for the development of the Project because the Project is exempt from the prohibition under the Moratorium Ordinance or show cause why Defendants have not done so, and upon Defendants failure to do so, or upon a decision against Defendants at the hearing, that a peremptory writ of mandamus issue.

B. That LC Town Creek recover damages for the Defendants wrongfully refusing to accept and review the Building Plans for the purpose of issuing the necessary permits for the development of the Project thereby resulting in unnecessary delays and monetary damages.

C. This Court grant LC Town Creek's reasonable attorney's fees and costs, pursuant to Tenn. Code Ann § 29-37-101, *et seq.* and other applicable law against the defendant City for the Building Official's arbitrary, capricious, and/or illegal actions set forth hereinabove; and

D. This Court grant such other, further and general relief which the LC Town Creek may be entitled.

THIS IS THE FIRST APPLICATION FOR A WRIT OF MANDAMUS, JUDICIAL REVIEW, OR OTHER EXTRAORDINARY RELIEF IN THE CAUSE. NO OTHER COURT HAS REFUSED TO GRANT SUCH RELIEF.

A handwritten signature in black ink, appearing to be 'TDF', written over a horizontal line.

Taylor D. Forrester (BPR No. 027228)

Garrett P. Swartwood (BPR No. 021803)

LONG, RAGSDALE & WATERS, P.C.

1111 Northshore Drive; Suite S-700

Knoxville, Tennessee 37919

(865) 584-4040

Attorneys for Plaintiff

VERIFICATION

I, **James Daniel Smith**, as President of LC Town Creek 1, LLC, being first duly sworn, make oath that the foregoing statements, averments and allegations in the Complaint are true and correct to the best of my information, knowledge and belief.



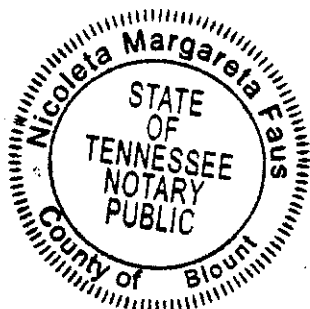
James Daniel Smith

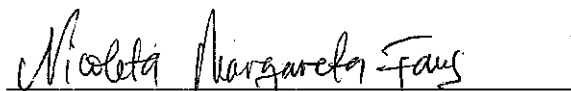
STATE OF TENNESSEE)

COUNTY OF KNOX)

Before me, the undersigned, a Notary Public in and for said County and State, the personally appeared **James Daniel Smith**, with whom I am personally acquainted (or upon the basis of satisfactory evidence present to me), and who, upon oath, swore to and acknowledged himself to be President of LC Town Creek 1, LLC, the within-named bargainor, a Tennessee limited liability company, and that he as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by himself as President.

WITNESS my hand and seal this 16 day of APRIL, 2025.




NOTARY PUBLIC

My Commission Expires: June 22, 2027

COST BOND

Pursuant to Tennessee Code Annotated § 20-12-120, we acknowledge ourselves as surety for the payment of court costs taxed against the Petitioner in this action.

LONG, RAGSDALE & WATERS, P.C.

By: 

Taylor D. Forrester, BPR# 027228

Candidate's post

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ORDINANCE NO. _____

#2

AN ORDINANCE AMENDING ORDINANCE NUMBER 2024-06-24-2400-O-D WHICH ESTABLISHED A MORATORIUM PROHIBITING THE BUILDING OF APARTMENTS/MULTI-FAMILY HOUSING WITHIN THE CORPORATE LIMITS OF LENOIR CITY FOR A PERIOD OF ONE (1) YEAR.

WHEREAS, the Mayor and City Council of Lenoir City have been advised by the Lenoir City Regional Planning Commission of its intent to review certain requirements for building apartments/multi-family housing within the Corporate Limits of Lenoir City;

WHEREAS, the Lenoir City Regional Planning Commission requested the City of Lenoir City to impose a moratorium for a period of one (1) year on the building of apartments/multi-family housing prior to the regulations being reviewed which was adopted as Ordinance Number 2024-06-24-2400-O-D; and

WHEREAS, the City of Lenoir City is hereby amending Ordinance Number 2024-06-24-2400-O-D by amending the language as follows:

WHEREAS, the Lenoir City Regional Planning Commission does hereby establish such exceptions to the moratorium and it shall not apply to any site as follows (note: two (2) of the five (5) listed exceptions below must be met in order to meet the requirements for exception to the moratorium):

SECTION 1: Any site approved for site plan by the Lenoir City Regional Planning Commission prior to the passage of this Ordinance.

SECTION 2: Any site approved for rezoning by Lenoir City Council prior to the passage of this Ordinance.

SECTION 3: Any site approved for annexation by Lenoir City Council prior to the passage of this Ordinance.

SECTION 4: Any site granted a permit for construction prior to the passage of this Ordinance.

SECTION 5: Lenoir City Housing Authority shall be exempt from this Ordinance.

WHEREAS, the City of Lenoir City has determined that this moratorium will protect the Lenoir City Regional Planning Commission's planning process and will protect the health, safety, and welfare of the citizens of Lenoir City.

NOW, THEREFORE BE IT ORDAINED by the Mayor and City Council of Lenoir City that:

SECTION 1: A moratorium prohibiting the building of apartments/multi-family housing within the Corporate Limits of Lenoir City for a period of one (1) year, with exceptions as explicitly enumerated in Sections 1 - 5 above herein.

SECTION 2: Said moratorium may be extended up to an additional six (6) months by Resolution of the Lenoir City Council.

SECTION 3: This Ordinance shall be effective immediately upon its passage.

First Reading: _____ Public Hearing: _____ Second & Final Reading: _____

MAYOR

RECORDER

City Attorney - Axel Egan

SECRETARY, LCRPC: _____ APPROVED: _____ DISAPPROVED: _____

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*Amended /
Clarified
Page/section

SECTION 3

EXHIBIT A

ORDINANCE NO. 2024-12-09-2419

AN ORDINANCE AMENDING ORDINANCE NUMBER 2024-06-24-2400-O-D WHICH
ESTABLISHED A MORATORIUM PROHIBITING THE BUILDING OF
APARTMENTS/MULT-FAMILY HOUSING
WITHIN THE CORPORATE LIMITS OF LENOIR CITY
FOR A PERIOD OF ONE (1) YEAR.

WHEREAS, the Mayor and City Council of Lenoir City have been advised by the Lenoir City Regional Planning Commission of its intent to review certain requirements for building apartments/multi-family housing within the Corporate Limits of Lenoir City.

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WHEREAS, the City of Lenoir City is hereby amending Ordinance Number 2024-06-24-2400-O-D by amending the language as follows:

WHEREAS, the Lenoir City Regional Planning Commission does hereby establish such exceptions to the moratorium and it shall not apply to any site as follows (**note: three (3) of the five (5) listed exceptions below must be met in order to meet the requirements for exception to the moratorium**):

SECTION 1: Any site approved for site plan by the Lenoir City Regional Planning Commission prior to the passage of this Ordinance.

SECTION 2: Any site approved for rezoning by Lenoir City Council prior to the passage of this Ordinance.

SECTION 3: Any site approved for annexation by Lenoir City Council prior to the passage of this Ordinance.

SECTION 4: Any site granted a permit for construction prior to the passage of this Ordinance.

SECTION 5: Lenoir City Housing Authority shall be exempt from this Ordinance.

WHEREAS, the City of Lenoir City has determined that this moratorium will protect the Lenoir City Regional Planning Commission's planning process and will protect the health, safety, and welfare of the citizens of Lenoir City.

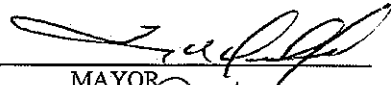

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SECTION 2: Said moratorium may be extended up to an additional six (6) months by Resolution of the Lenoir City Council.

SECTION 3: This Ordinance shall be effective immediately upon its passage.

First Reading: 11-25-2024 Public Hearing: 12-9-2024 Second & Final Reading: 12-9-2024


MAYOR

City Attorney - As to form


RECORDER

EXHIBIT B

Taylor Forrester

To: Daniel Smith
Subject: RE: Fw: Submission for Building Permits on Parcel # 015 200.20

From: Daniel Smith <daniel@fourthcreekcapital.com>
Sent: Thursday, February 27, 2025 10:32 AM
To: Beth Collins <bcollins@lenoircitytn.gov>; Greg Buckner <gbuckner@lenoircitytn.gov>
Subject: Submission for Building Permits on Parcel # 015 200.20

Greg and Beth:

Please find below a link to the permit set of plans for Parcel # 015 200.20, which were designed in accordance with the site plan approved by the Lenoir City Regional Planning Commission ("Planning Commission") in December of 2022 ("Site Plan"): https://www.dropbox.com/scl/fo/j5sp8p6a3rqms8e268nct/AM_D-UFu2wqkWPlox42pj08?rlkey=ly58qiecel4xlrfr74z3mr06&dl=0 <https://urldefense.proofpoint.com/v2/url?u=https-3A_www.dropbox.com_scl_fo_j5sp8p6a3rqms8e268nct_AM-5FD-2DUFu2wqkWPlox42pj08-3Frlkey-3Dly58qiecel4xlrfr74z3mr06-26dl-3D0&d=DwMFAw&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=DoP6z_4_ndliFrNvwkNVXf0BpfUpAf8CaEkaVPvIm2w&m=X7hF9KlhxtaHljTPQwRq0-vkX4WxW2d1Hw0Xo84uZA5v7tq-eL9PYGRlxthu5mo&s=dJ5nqvTdhx1-MsLzjA_rC_B07XCcy2LJYTa2_HgC9M&e=>

Additionally, in accordance with Chapter 7 of the Zoning Ordinance of the City of Lenoir City, Tennessee ("Zoning Ordinance") (Section 11-703); we will submit a dimensioned set of plans directly to the Building Inspector. Please let us know if there is any other method of delivery that is preferred, and what fees are necessary to be paid.

We understand that the City Council for Lenoir City ("City Council") adopted an Ordinance on June 24, 2024 related to a moratorium prohibiting the building of apartments/multi-family housing in Lenoir City, Tennessee ("Initial Moratorium"). The Initial Moratorium provided five exceptions thereto whereby if one of the five exceptions was met then the Moratorium was not applicable. On or about December 9, 2024, the City Council adopted an amendment to the Initial Moratorium that, in part, required three of the five exceptions to be met in order to be exempt ("Moratorium Amendment") (The Initial Moratorium and Moratorium Amendment being collectively referred to as the "Moratorium Ordinance"). In support of this request and application for the issuance of a building permit on Parcel # 015 200.20, we submit that the instant request is exempt from the Moratorium Ordinance as it meets three of the five exceptions that are set forth hereinbelow:

Section 1 of the Moratorium Ordinance states that "[a]ny site approved for site plan by the Lenoir City Regional Planning Commission prior to the passage of this Ordinance" meets a condition of exemption.

* Parcel # 015 200.20 received site plan approval from the Planning Commission in December 2022, which was prior to the passage of the Initial Moratorium and the Moratorium Amendment, therefore it meets the exception in Section 1.

Section 2 of the Moratorium Ordinance states that “[a]ny site approved for rezoning by Lenoir City Council prior to the passage of this Ordinance” meets a condition of exemption.

* The City Council rezoned Parcel # 015 200.20 to R-3, High Density Residential District, on April 11, 2022, therefore it meets the exception in Section 2.

Section 3 of the Moratorium Ordinance states that “[a]ny site approved for annexation by Lenoir City Council prior to the passage of this Ordinance” meets a condition of exemption.

* Parcel No. 015 200.20 was subdivided from Parcel No. 015 200 in 2022. Parcel No. 015 200 was previously annexed by the City Council; therefore, it meets the exception in Section 3.

Accordingly, Parcel No. 015 200.20 meets three of the required exceptions for exemption from the Moratorium Ordinance; and the provided building plans should be reviewed by Lenoir City for issuance of a building permit.

While the property is exempt from the Moratorium Ordinance; the position of the planning staff has been that, pursuant Section 11-312 of the Zoning Ordinance, the Site Plan approved by the Planning Commission expired 12 months from the date of the approval because construction has not commenced. This seemingly would require the approved Site Plan to go back through Planning Commission to be reapproved.

However, the 12-month approval period for a Site Plan as provided in Section 11-312 of the Zoning Ordinance is contrary to Tennessee state law and therefore not a legally valid legislation. Specifically, Tenn. Code Ann. § 13-4-310, which is known as the Tennessee Vested Property Rights Acts of 2014 (the “Act”), governs the “power of municipal planning commissions to promulgate provisions for development”. The Act mandates that preliminary and/or final development plans (i.e. a site plan that is approved by a planning commission prior to submitting for a permit) are vested for a period of three (3) years.

In particular, the Act provides that:

[a]A vested property right shall be established with respect to any property upon the approval, by the local government in which the property is situated, of a preliminary development plan or a final development plan where no preliminary development plan is required by ordinance or regulation or a building permit allowing construction of a building where there was no need for prior approval of a preliminary development plan for the property on which that building will be constructed. During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the date of approval of a building permit, as described by this subsection (b), shall remain the development standards applicable to that property or building during the vesting period. (See Tenn. Code Ann. § 13-4-310(b)).

The vesting period is described under Tenn. Code Ann. § 13-4-310 (d) as follows:

[t]he vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided, that the applicant obtains local government approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains local government

approval of a final development plan, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year period. During the two-year period, the applicant shall commence construction and maintain any necessary permits to remain vested.”

Here, the Site Plan approved by the Planning Commission in December 2022 for Parcel No. 015 200.20 is considered a “development plan” under the Act. (See Tenn. Code Ann. § 13-4-310(k)(3)). Accordingly, because the Site Plan is within the vesting period as provided in the Act, the site development and building plans and application for building permits that have been submitted [or being submitted herewith] should be reviewed in accordance with Lenoir City’s procedures for reviewing building permits.

In a separate matter, on December 3, 2024, I submitted a traffic study (a request from City staff) and an application to amend the approved Site Plan to reduce the number of units on the Site Plan and convert the entrance to the property into a boulevard; and I never received a response. Under the Act, specifically Tenn. Code Ann. § 13-4-310(h), a developer can request the Planning Commission to approve an amendment to an approved development plan (i.e. site plan) and retain the protection of the vested property right. An approved development plan (site plan) may only be denied “by a written finding by the local government” if it “(A) Alters the proposed use; (B) Increases the overall area of the development; (C) Alters the size of any nonresidential structures included in the development plan; (D) Increases the density of the development so as to affect traffic, noise or other environmental impacts; or (E) Increases any local government expenditure necessary to implement or sustain the proposed use. We also respectfully request a written finding regarding the proposed amendment to the Site Plan, which was submitted on December 3, 2024.

Following the consideration of the information and Tennessee law set forth herein, please advise as to the City’s position in regards to (i) whether it agrees that we are exempt from the Moratorium Ordinance (based on meeting three of the five exceptions) and (ii) the request related to the proposed amendment to the Site Plan that was submitted on December 3, 2024.

Daniel Smith
President

[cid:image001.png@01DB8C31.9B084C20]

6513 Kingston Pike, Suite 201
Knoxville, TN 37919

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Taylor Forrester

To: Daniel Smith
Subject: RE: Fw: Submission for Building Permits on Parcel # 015 200.20

From: Greg Buckner <gbuckner@lenoircitytn.gov>
Sent: Monday, March 3, 2025 11:44 AM
To: Daniel Smith <daniel@fourthcreekcapital.com>; Beth Collins <bcollins@lenoircitytn.gov>
Subject: RE: Submission for Building Permits on Parcel # 015 200.20

While the City maintains that the development in question is not vested as neither Permits, Stormwater Approval, Building Plan Approval or Utility Plan Approval had been accomplished or stated Plans had not been Submitted, or Work began in 12 Months, and would have to come back to planning commission for approval after the 12 Months stated in the Lenoir City Municipal Code 11-312. TCA 13- Vested or Not, we can discuss later. The City of Lenoir City has passed a Moratorium which would by TCA 13-4-310, means that the development would be tolled until the Moratorium is allowed to expire. TCA 13-4-310 G (4) In the event the local government enacts a moratorium on development or construction, the vesting period authorized pursuant to this section shall be tolled during the moratorium period. The City will not be reviewing the plans for now as the plans would have to meet any changes which may occur during that time frame. TCA (K) (4) (B) Does not include standards required by federal or state law; or building construction safety standards which are adopted pursuant to authority granted under § 68-120-101<

Greg Buckner
Operations Manager Codes/Planning/Stormwater
City of Lenoir City
865-986-9876

EXHIBIT D

West's Tennessee Code Annotated

Title 13. Public Planning and Housing

Chapter 4. Municipal Planning (Refs & Annos)

Part 3. Municipal Planning Regulations

T. C. A. § 13-4-310

§ 13-4-310. Municipal planning commission; powers; vested property rights

Currentness

(a) A municipal planning commission shall have the power to promulgate provisions in its subdivision regulations and recommend amendments to the zoning ordinance for the establishment of review and approval powers for site plans and the establishment under the zoning provisions for review and approval of planned unit developments, overlay districts, mixed use developments, condominiums and other types of sustainable design and development of property. The provision of well-designed and properly constructed infrastructure within such development is vital to the health, safety and welfare of the public utilizing said development and the community as a whole. These types of developments typically contain infrastructure that may be dedicated to a governmental entity or may be controlled by other types of bodies or nongovernmental entities including, but not limited to, property owner associations. These infrastructure and internal development improvements such as, but not limited to, public and nonpublic roads, water and sewer lines, landscaping, green space, sustainable design features and other improvements as required by the planning commission, either through its subdivision regulation or through the local government's zoning ordinance, shall be subject to bonding or other methods of guaranteeing their installation. The planning commission may set and hold these guaranteeing instruments or may designate to another governmental body that duty and function.

(b) A vested property right shall be established with respect to any property upon the approval, by the local government in which the property is situated, of a preliminary development plan or a final development plan where no preliminary development plan is required by ordinance or regulation or a building permit allowing construction of a building where there was no need for prior approval of a preliminary development plan for the property on which that building will be constructed. During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the date of approval of a building permit, as described by this subsection (b), shall remain the development standards applicable to that property or building during the vesting period.

(c) Unless an extension is granted by the local government, the vesting period applicable to an approved construction project for which a building permit has been issued shall begin on the date of issuance of the building permit by the local government and shall remain in effect for the time period authorized by the approved building permit, including any approved renewal obtained by the applicant prior to the expiration or termination of the permit to be renewed; provided, that the applicant pursues with reasonable diligence site preparation, if applicable, and construction.

(d)(1) The vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided, that the applicant obtains local government

approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains local government approval of a final development plan, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year period. During the two-year period, the applicant shall commence construction and maintain any necessary permits to remain vested.

(2) If construction commences during the vesting period, the development standards applicable during the vesting period shall remain in effect until the local government has certified final completion of the development or project; provided, the total vesting period for the project shall not exceed ten (10) years from the date of the approval of the preliminary development plan, excluding any vesting period provided for in subdivision (1)(2), unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the ten-year period.

(3) In the case of developments which proceed in two (2) or more sections or phases as described in the development plan, there shall be a separate vesting period applicable to each section or phase. The development standards which are in effect on the date of approval of the preliminary development plan for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases of the development; provided, that the total vesting period for all phases shall not exceed fifteen (15) years from the date of the approval of the preliminary development plan for the first section or phase, excluding any vesting period provided for in subdivision (1)(2), unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the fifteen-year period.

(e) A local government may, by ordinance or resolution, specifically identify the type or types of development plans within the local government's jurisdiction that will cause property rights to vest; provided, that regardless of nomenclature used in the ordinance or resolution to describe a development plan, a plan which contains any of the information described in subdivision (k)(5) or (k)(6) shall be considered a development plan that will cause property rights to vest according to this section. Any such ordinance or resolution shall also specify what constitutes approval of a development plan within its jurisdiction. If a local government has not adopted an ordinance or resolution pursuant to this section specifying what constitutes a development plan that would trigger a vested property right, then rights shall vest upon the approval of any plan, plat, drawing, or sketch, however denominated, that is substantially similar to any plan, plat, drawing, or sketch described in subdivision (k)(5) or (k)(6).

(f)(1) During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the issuance of a building permit, whichever applies, shall remain the development standards applicable to the property described in such preliminary development plan or permit, except such rights shall terminate upon a written determination by the local government under the following circumstances pursuant to subdivision (f)(2):

(A) When the applicant violates the terms and conditions specified in the approved development plan or building permit; provided, that the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the local government may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;

(B) When the applicant violates any of the terms and conditions specified in the local ordinance or resolution; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the local government may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;

(C) Upon a finding by the local government that the applicant intentionally supplied inaccurate information or knowingly made misrepresentations material to the issuance of a building permit or the approval of a development plan or intentionally and knowingly did not construct the development in accordance with the issued building permit or the approved development plan or an approved amendment for the building permit or the development plan; or

(D) Upon the enactment or promulgation of a state or federal law, regulation, rule, policy, corrective action or other governance, regardless of nomenclature, that is required to be enforced by the local government and that precludes development as contemplated in the approved development plan or building permit, unless modifications to the development plan or building permit can be made by the applicant, within ninety (90) days of notification of the new requirement, which will allow the applicant to comply with the new requirement.

(2) A written determination by the local government of the occurrence of any of the circumstances provided in subdivision (f)(1) shall cause the vested property rights to terminate; provided, however, that a local government may allow a property right to remain vested despite such a determined occurrence when a written determination is made that such continuation is in the best interest of the community.

(g)(1) A vested development standard shall not preclude local government enforcement of any development standard when:

(A) The local government obtains the written consent of the applicant or owner;

(B) The local government determines, in writing, that a compelling, countervailing interest exists relating specifically to the development plan or property which is the subject of the building permit that seriously threatens the public health, safety or welfare of the community and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the local government, by the applicant using vested property rights;

(C) Upon the written determination by the local government of the existence of a natural or man-made hazard on or in the immediate vicinity of the subject property, not identified in the development plan or building permit, and which hazard, if uncorrected, would pose a serious threat to the public health, safety, or welfare and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the local government, by the applicant using vested property rights;

(D) A development standard is required by federal or state law, rule, regulation, policy, corrective action, order or other type of governance that is required to be enforced by local governments, regardless of nomenclature; or

(E) A local government is undertaking an action initiated or measure instituted in order to comply with a newly enacted federal or state law, rule, regulation, policy, corrective action, permit, order or other type of governance, regardless of nomenclature.

(2) A vested property right does not preclude, change, amend, alter or impair the authority of a local government to exercise its eminent domain powers as provided by law.

(3) This section shall not preclude, change, amend, alter or impair the authority of a local government to exercise its zoning authority, except a vested property right, once established as provided for in this section, precludes the effect of any zoning action by a local government which would change, alter, impair, prevent, diminish, or otherwise delay the development of the property, while vested, as described in an approved development plan or building permit.

(4) In the event the local government enacts a moratorium on development or construction, the vesting period authorized pursuant to this section shall be tolled during the moratorium period.

(h)(1) An amendment to an approved development plan by the developer must be approved by the local government to retain the protections of the vested property right. An amendment may be denied based upon a written finding by the local government that the amendment:

(A) Alters the proposed use;

(B) Increases the overall area of the development;

(C) Alters the size of any nonresidential structures included in the development plan;

(D) Increases the density of the development so as to affect traffic, noise or other environmental impacts; or

(E) Increases any local government expenditure necessary to implement or sustain the proposed use.

(2) If an amendment is denied by the local government based upon such a written finding, then the applicant may either proceed under the prior approved plan with the associated vested property right or, alternatively, allow the vested property right to terminate and submit a new application under this section. Notwithstanding this subsection (h), a vested property right shall not terminate if the local government determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property right.

(i) A local government shall not require an applicant to waive the applicant's vested rights as a condition of approval or as a consideration of approval of a development plan or the issuance of a building permit.

(j) A vested property right shall attach to and run with the applicable property and shall confer upon the applicant the right to undertake and complete the development and use such property under the terms and conditions of a development plan, including any amendments thereto or under the terms and conditions of any building permit that has been issued with respect to the property.

(k) As used in this section:

(1) "Applicant" means a landowner or developer who is responsible for filing with the local government an application for a building permit, a development plan or application for a permit requisite to a development plan, or the representatives, assigns, successors, transferees, heirs or agents of such landowner or developer;

(2) "Construction" means the erection of construction materials in a permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition or removal shall be deemed to be construction; provided, that work shall be carried on diligently and complies with all applicable requirements;

(3) "Development plan" means both a preliminary development plan and a final development plan;

(4) "Development standards":

(A) Means all locally adopted or enforced standards, regulations or guidelines applicable to the development of property, including, but not limited to, planning; local storm water requirements, layout, design; local construction standards for buildings, streets, alleys, curbs, sidewalks; zoning as provided for in subsection (g); lot size; lot configuration; yard dimensions; and off-site improvements, including public or private infrastructure, in which an applicant may acquire vested rights or vested property rights according to this section; and

(B) Does not include standards required by federal or state law; or building construction safety standards which are adopted pursuant to authority granted under § 68-120-101;

(5) "Energy siting agreement" means a voluntary energy siting agreement approved by a local government pursuant to § 5-6-119 or § 6-54-148;

(6)(A) "Final development plan" means a plan which has been submitted by an applicant and approved by a local government describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals:

- (i) A planned unit development plan;
- (ii) A subdivision plat;
- (iii) General development plan;
- (iv) Subdivision infrastructure construction plan;
- (v) Final engineered site plan; or
- (vi) Any other land-use approval designation as may be utilized by a local government;

(B) Unless otherwise expressly provided by the local government, such a plan shall include the boundaries of the site; significant topographical and other natural features affecting development of the site; the location on the site of the proposed buildings, structures, and other improvements; the dimensions, including height, of the proposed buildings and other structures or a building envelope; and the location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. A variance shall not constitute a final development plan, and approval of a final development plan with the condition that a variance be obtained shall not confer a vested property right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type of use, the intensity of use, and the ability to be served with essential utilities and road infrastructure for a specified parcel or parcels of property may constitute a final development plan;

(7) "Preliminary development plan" means a plan which has been submitted by an applicant and that depicts a single-phased or multi-phased planned development typically used to facilitate initial public feedback and secure preliminary approvals from local governments. Examples of information found on development plans include proposed land uses, density and intensity of development, public utilities, road networks, general location of off-street parking, building location, number of buildable lots, emergency access, open space, and other environmentally sensitive areas such as lakes, streams, hillsides, and view sheds. An approved preliminary development plan serves as a guide for all future improvements within defined boundaries; and

(8) "Site preparation" means excavating, grading, demolition, removing excess debris to allow for proper grading, or providing a surface for a proper foundation, drainage, and settling for a development project, and physical improvements including, but not limited to, water and sanitary sewer lines, footings, or foundations installed on the site for which construction permits are required.

(1)(1) A vested property right is also established with respect to property upon the approval of an energy siting agreement by the legislative body of the local government in which the property is situated. During the vesting period described in subdivision (1)(2), the locally adopted development standards that are in effect on the date of approval of an energy siting agreement, including any modifications to such standards pursuant to the terms of the energy siting agreement, remain the development standards applicable to that property or building during the vesting period.

(2) The vesting period applicable to an energy siting agreement precedes the vesting periods described in subsections (c) and (d) and shall be for the following period, unless the energy siting agreement expires or is validly terminated by the local government in accordance with its terms during the vesting period:

(A) Ten (10) years where no preliminary or final development plan is required by ordinance;

(B) Seven (7) years where no preliminary development plan is required by ordinance; or

(C) Five (5) years where a preliminary development plan is required by ordinance.

Credits

2010 Pub.Acts, c. 634, § 2, eff. March 17, 2010; 2014 Pub.Acts, c. 686, § 2; 2024 Pub.Acts, c. 814, §§ 1 to 4, eff. June 1, 2024.

T. C. A. § 13-4-310, TN ST § 13-4-310

Current with effective legislation through Chapter 25 of the 2025 First Regular Session of the 114th Tennessee General Assembly. Some sections may be more current; see credits for details. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

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March 5, 2025

Walter B. Johnson, II
City Attorney for Lenoir City
136 Bussell Ferry Rd.
Lenoir City, TN 37771-3064

VIA EMAIL
pdbutch@gmail.com

Re: Town Creek Multi-Family Development on Parcel No. 015 200.20 and Moratorium Ordinance No. 2024-12-09-2419

Dear Mr. Johnson,

Please be advised that this firm represents LC Town Creek 1, LLC ("LC Town Creek"). As you may be aware, LC Town Creek owns the property located on Town Creek Parkway identified as Parcel No. 015 200.20 ("Subject Property"). LC Town Creek acquired the Subject Property for the purpose of constructing a multi-family development ("Development").

LC Town Creek received Site Plan approval from the Lenoir City Regional Planning Commission ("Planning Commission") for the Development in December 2022 ("Site Plan" or "Site Plan Approval"). Since receiving Site Plan Approval, LC Town Creek has had building and development plans prepared in accordance with the Site Plan Approval and secured the financing for the Development.

As you are aware, on or about June 24, 2024, the City Council for Lenoir City ("City Council") adopted a moratorium that prohibited multi-family development for a period of 12 months, unless the proposed development met one of five exceptions listed therein ("Moratorium"). Then on or about December 9, 2024, the City Council adopted an amendment to the moratorium ordinance that prohibited multi-family development unless the proposed development met three (3) of the five (5) listed exceptions ("Moratorium Amendment"). The Moratorium and Moratorium Amendment being referred to collectively hereinafter as the "Moratorium."

On or about February 27, 2025, LC Town Creek submitted its building and development plans for permitting to the Lenoir City Staff. In this submittal, LC Town Creek identified three (3) of the five (5) exceptions of the Moratorium exemptions, which are (i) a site approved for site plan by the Planning Commission; (ii) a site approved for rezoning by the City Council; and (iii) a site approved for annexation by the City Council. On or about March 3, 2025, Greg Buckner ("Mr.

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EXHIBIT F
collective

Buckner”) with Lenoir City Staff informed LC Town Creek that its Site Plan Approval was expired because construction had not commenced within twelve (12) months following the approval in December 2022 pursuant to Section 11-312 of the Lenoir City Zoning Ordinance (“Zoning Ordinance”).

I do not believe there is any dispute that the Subject Property was previously approved for rezoning and annexation by the City Council as contemplated by the Moratorium. Therefore, the dispute seems to be centered on whether the Site Plan Approval is expired. LC Town Creek contends that the Site Plan Approval is not expired as it is within the vesting period prescribed in the Tennessee Vested Property Rights Act of 2014, which is codified at Tenn. Code Ann. § 13-4-310 (the “Act”).

The Act governs the “power of municipal planning commissions to promulgate provisions for development.” The Act mandates that preliminary and/or final development plans (*i.e.* a site plan that is approved by a planning commission prior to submitting for a permit) are vested for a period of three (3) years. In particular, the Act provides that:

[a] vested property right shall be established with respect to any property upon the approval, by the local government in which the property is situated, of a preliminary development plan or a final development plan where no preliminary development plan is required by ordinance or regulation or a building permit allowing construction of a building where there was no need for prior approval of a preliminary development plan for the property on which that building will be constructed. During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the date of approval of a building permit, as described by this subsection (b), shall remain the development standards applicable to that property or building during the vesting period.

See Tenn. Code Ann. § 13-4-310(b).

The vesting period is described in the Act under Tenn. Code Ann. § 13-4-310(d) is as follows:

[t]he vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided, that the applicant obtains local government approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains local government approval of a final development plan, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year period. During the two-year period, the applicant shall

commence construction and maintain any necessary permits to remain vested.”

Here, the Site Plan Approval for the Subject Property is considered a “development plan” under the Act. (See Tenn. Code Ann. § 13-4-310(k)).

Section 11-312 of the Zoning Ordinance, specifically the language that provides that an approved Site Plan will expire within twelve (12) months if construction is not underway, clearly conflicts with the three (3) year vesting period provided for in the Act. My understanding is that the Lenoir City Staff takes the position that language in Section 11-312 of the Zoning Ordinance is controlling and therefore LC Town Creek does not meet three (3) of the five (5) exceptions of the Moratorium to be exempt therefrom and able to move forward with the Development.

We submit that the time limitation under Section 11-312 of the Zoning Ordinance (adopted by the City Council on 6/23/2008—prior to the legislature’s adoption of the Act) is not legally valid because it is in conflict with Tennessee law. The power of local governments to enact ordinances regulating the use of private property is derived from the State and is delegated to them by the legislature. See *421 Corp. v. Metro. Govt. of Nashville and Davidson Cnty.*, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). While local governments have broad discretion in enacting such regulation within the power delegated to them, such ordinances cannot contravene or conflict with applicable state laws. *B.F. Nashville, Inc. v. City of Franklin*, 2005 WL 127082, at *15 (Tenn. Ct. App. 2005); see *421 Corporation*, 36 S.W.3d at 475 (stating that local governments cannot enact ordinances that “ignore applicable state laws, that grant rights that state law denies, or that deny rights that state law grants”); *Family Golf of Nashville, Inc. v. Metropolitan Government*, 964 S.W.2d 254, 257 (Tenn.Ct.App.1997) (holding that although the zoning power is broad, it cannot be exercised in a manner that conflicts with state law).

When there appears to be a conflict between a statute and a zoning ordinance, courts should read them *in pari materia* to avoid conflict and to enable them, whenever possible, to operate concurrently. *421 Corporation*, 36 S.W.3d at 478. When a statute and an ordinance are in irreconcilable conflict, however, the ordinance must give way to the imperatives of the statute. *Manning v. City of Lebanon*, 124 S.W.3d 562, 565 (Tenn. Ct. App. 2003).

In a separate matter, on December 3, 2024, LC Town Creek submitted a Traffic Study (a request from Lenoir City Staff) and an application to amend the approved site plan to reduce the number of units on the Site Plan and convert the entrance to the Subject Property into a boulevard. LC Town Creeks informed me that it never received a response.

Under the Act, a developer can request the Planning Commission approve an amendment to an approved development plan (*i.e.* site plan) and retain the protection of the vested rights. See Tenn. Code Ann. § 13-4-310(h). An amendment to an approved development plan (site plan) may only be denied “by a written finding by the local government” if it:

- (A) Alters the proposed use;
- (B) Increases the overall area of the development;

- (C) Alters the size of any nonresidential structures included in the development plan;
- (D) Increases the density of the development so as to affect traffic, noise or other environmental impacts; or
- (E) Increases any local government expenditure necessary to implement or sustain the proposed use.

LC Town Creek respectfully request a written finding regarding the proposed amendment to the Site Plan that was submitted on December 3, 2024.

Accordingly, pursuant to the legal precedent set forth hereinabove, because the Site Plan Approval is within the three (3) year vesting period as provided in the Act (which is controlling over the conflicting language in Section 11-312 of the Zoning Ordinance), the building and development plans submitted to the Lenoir City Staff for permitting should be reviewed in accordance with Lenoir City's procedures for reviewing and issuing building permits.

Following the consideration of the information and Tennessee law set forth herein, please advise as to the City's position in regards to (i) whether it agrees that LC Town Creek is exempt from the Moratorium (based on meeting three (3) of the five (5) exceptions) and (ii) the request related to the proposed amendment to the Site Plan that was submitted on December 3, 2024.

I look forward to hearing from you and should you have any questions please do not hesitate to contact me.

Respectfully yours,

LONG, RAGSDALE & WATERS, P.C.

By: _____

Taylor D. Forrester

cc: Daniel Smith (*via email*)

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March 20, 2025

Walter B. Johnson, II
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VIA EMAIL
pdbutch@gmail.com

Re: Town Creek Multi-Family Development on Parcel No. 015 200.20 and Moratorium Ordinance No. 2024-12-09-2419

Dear Mr. Johnson,

This correspondence is in response to our phone conference on Friday, March 14, 2025 regarding, in part, my previous letter dated March 5, 2025. Based on the discussions you had with your client; you referred me to Tenn. Code Ann. § 13-4-310(g)(4) of the Tennessee Vested Property Rights Act of 2014. As I mentioned during our call, this specific subsection pertains to a vesting period being tolled during a moratorium period that has been enacted by a local government.

We recognize that in certain circumstances a vesting period may be tolled during a moratorium, however that is not at issue in the instant matter. The Moratorium Ordinance prohibits the building of apartments/multi-family housing for a period of one (1) year, unless the proposed development meets certain exceptions. As for these certain exceptions, the Moratorium Ordinance expressly states that it shall not apply to any site that meets three (3) of the five (5) exceptions listed therein. In other words, if a site meets three (3) of the five (5) listed exceptions then the building of apartments/multi-family housing on that site will not be prohibited during the moratorium period of the Moratorium Ordinance.

As I set forth in my correspondence date March 5, 2025, my client does in fact meet three (3) of these five (5) exceptions, and, therefore, is not prohibited from building apartments/multi-family housing on the Subject Property during the moratorium period in the Moratorium Ordinance.

If for example that prior to the adoption of the Moratorium Ordinance the Subject Property had (i) been approved for rezoning by the City Council and (ii) received site plan approval by the Lenoir City Regional Planning Commission, thereby meeting only two (2) of the five (5) exceptions, then I would agree that Tenn. Code Ann. § 13-4-310(g)(4) would be applicable and

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* Of Counsel **Also admitted in New York ***Also admitted in Florida

the vesting period would be tolled during the moratorium period and my client would not be permitted to proceed with the Development on the Subject Property at this time.

Again, since my client satisfies the exception criteria to be exempt from the Moratorium Ordinance we should be permitted to proceed with the Development on the Subject Property at this time.

After you have discussed the above with your client as well as the other information/request in my correspondence dated March 5, 2025, please advise as to the position of the City of Lenoir City.

I understand that you will no longer be serving as the City Attorney for Lenoir City based on your recent appointment as the City Judge for Lenoir City. However, I do request that this instant correspondence be delivered to your client contact (or appropriate person) within the staff administration of Lenoir City.

I look forward to hearing from you or client contact soon.

Respectfully yours,

LONG, RAGSDALE & WATERS, P.C.

By: _____

Taylor D. Forrester

cc: Daniel Smith (*via email*)

CITY COUNCIL

Jennifer Wampler, Vice Mayor

James Brandon

Todd Kennedy

Robin McNabb

Jim Shields

Eddie Simpson



Tony R. Aikens - Mayor

CITY ADMINISTRATOR

Amber Scott Kelso

CITY RECORDER-TREASURER

James W. Wilburn III

CITY ATTORNEY

G. Chance Harrison

FINANCE DIRECTOR

Shawn Bunch

April 1, 2025

Taylor Forrester
Long, Ragsdale, and Waters, P.C.
1111 Northshore Dr. Suite S-700
Knoxville, TN 37919-4074

Via Email
tforrester@lrwlaw.com

Re: Town Creek Multi Family Development

Dear Mr. Forester:

I am sorry for the delay in responding to your recent correspondence. I am now ready to respond.

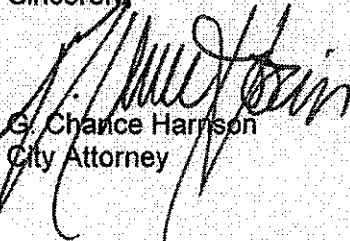
I reviewed your letters of March 5 and March 20, 2025 carefully and the authorities cited therein. In addition, I reviewed the responses of our Code Enforcement and Planning Department, and I spoke with our Planning Department and also my predecessor as City Attorney.

After reviewing all the materials carefully, I must disagree with your position. The site plan discussed herein was approved by Planning Commission on December 6, 2022. Our Site Plan ordinance 11-312 states that the site plan approval expires after 12 months if construction is not underway. To this date no action has been taken to begin construction.

This means that the site plan approval expired, and therefore your clients do not qualify as an exception to the moratorium ordinance passed on December 9, 2024. We believe that this also means that your clients are not vested under state law, but that is irrelevant since the moratorium would apply even if they are vested.

If you have any other questions or comments, I will be pleased to speak with you.

Sincerely,



G. Chance Harrison
City Attorney

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

**THE STATE OF TENNESSEE,
ON THE RELATION OF
LC TOWN CREEK 1, LLC,**

Plaintiff,

vs.

No: _____

**CITY OF LENOIR CITY,
TENNESSEE and GREG BUCKNER,
IN HIS CAPACITY AS BUILDING
OFFICIAL FOR CITY OF LENOIR
CITY, TENNESSEE,**

Defendants.

SUMMONS

To: **CITY OF LENOIR CITY, TENNESSEE
c/o G. Chance Harrison, Esq.
City Attorney
800 South Gay Street, Suite 1650
Knoxville, Tennessee 37929**

You are hereby summoned and required to serve upon Taylor D. Forrester and LONG, RAGSDALE & WATERS, P.C., Plaintiff's attorneys, whose address is 1111 Northshore Drive; Suite S-700, Knoxville, Tennessee 37919, (865) 584-4040, an answer to the verified complaint herewith served upon you within thirty (30) days after service of this summons and petition, exclusive of the day of service. If you fail to do so, judgment by default can be taken against you for the relief demanded in the petition.

Issued and tested this ____ day of _____, 2025.

Steve Harrelson, Circuit Court Clerk

By: _____
Clerk or Deputy Clerk

NOTICE

To the Defendant:

Tennessee law provides a ten thousand dollar (\$10,000.00) personal property exemption from execution or seizure to justify the judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you should file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, **unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list.** Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

To the process server: Defendant **CITY OF LENOIR CITY, TENNESSEE** may be served with process through **G. Chance Harrison, Esq., City Attorney, at 800 South Gay Street, Suite 1650, Knoxville, Tennessee 37929.**

RETURN

I received this summons on the ____ day of _____, 2025.

I hereby certify and return that on the ____ day of _____, 2025, I:

[] served this summons and a complaint on Defendant **CITY OF LENOIR CITY, TENNESSEE** in the following manner:

[] failed to serve this summons within 90 days after its issuance because:

Process Server

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

**THE STATE OF TENNESSEE,
ON THE RELATION OF
LC TOWN CREEK 1, LLC,**

Plaintiff,

vs.

No: _____

**CITY OF LENOIR CITY,
TENNESSEE and GREG BUCKNER,
IN HIS CAPACITY AS BUILDING
OFFICIAL FOR CITY OF LENOIR
CITY, TENNESSEE,**

Defendants.

SUMMONS

To: **Greg Buckner
Operations Manager of Codes, Planning and Stormwater
530 Highway 321 N
Lenoir City, Tennessee 37771**

You are hereby summoned and required to serve upon Taylor D. Forrester and LONG, RAGSDALE & WATERS, P.C., Plaintiff's attorneys, whose address is 1111 Northshore Drive; Suite S-700, Knoxville, Tennessee 37919, (865) 584-4040, an answer to the verified complaint herewith served upon you within thirty (30) days after service of this summons and petition, exclusive of the day of service. If you fail to do so, judgment by default can be taken against you for the relief demanded in the petition.

Issued and tested this ____ day of _____, 2025.

Steve Harrelson, Circuit Court Clerk

By: _____
Clerk or Deputy Clerk

NOTICE

To the Defendant:

Tennessee law provides a ten thousand dollar (\$10,000.00) personal property exemption from execution or seizure to justify the judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you should file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, **unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list.** Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

To the process server: Defendant, **GREG BUCKNER**, Operations Manager of Codes, Planning and Stormwater for City of Lenoir City, Tennessee, may be served with process at 530 Highway 321 N, Lenoir City, Tennessee 37771.

RETURN

I received this summons on the ____ day of _____, 2025.

I hereby certify and return that on the ____ day of _____, 2025, I:

[] served this summons and a complaint on Defendant **GREG BUCKNER**, Operations Manager of Codes, Planning and Stormwater for City of Lenoir City, Tennessee, in the following manner:

[] failed to serve this summons within 90 days after its issuance because:

Process Server

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

**THE STATE OF TENNESSEE,
ON THE RELATION OF
LC TOWN CREEK 1, LLC,**

Plaintiff

vs.

No: _____

**CITY OF LENOIR CITY,
TENNESSEE and GREG BUCKNER,
IN HIS CAPACITY AS BUILDING
OFFICIAL FOR CITY OF LENOIR
CITY, TENNESSEE,**

Defendants

FIAT FOR AN ALTERNATIVE MANDAMUS

**TO THE CLERK OF THE CIRCUIT COURT
FOR LOUDON COUNTY, TENNESSEE:**

File this Verified Complaint and issue the Writ of Alternative Mandamus as demanded, on the Plaintiff giving bond for costs.

This the ____ day of _____, 2025.

JUDGE

IN THE CIRCUIT COURT FOR LOUDON COUNTY, TENNESSEE

**THE STATE OF TENNESSEE,
ON THE RELATION OF
LC TOWN CREEK 1, LLC,**

Plaintiff,

vs.

No: _____

**CITY OF LENOIR CITY,
TENNESSEE and GREG BUCKNER,
IN HIS CAPACITY AS BUILDING
OFFICIAL FOR CITY OF LENOIR
CITY, TENNESSEE,**

Defendants.

ALTERNATIVE WRIT OF MANDAMUS

To: CITY OF LENOIR CITY, TENNESSEE
GREG BUCKNER
c/o G. Chance Harrison, Esq.
City Attorney
800 South Gay Street, Suite 1650
Knoxville, Tennessee 37929

Whereas, James Daniel Smith, President of LC Town Creek 1, LLC, as relator, on the 17th day of April, 2025, presented the complaint to the Honorable Mike S. Pemberton, Judge, alleging that the City of Lenoir City, Tennessee, by and through its agents and/or employees, have refused to accept and review the plans for the requested issuance of permits for the building, construction and development of related improvements of a multi-family development ("Building Plans") to be constructed on the real property identified as Tax Parcel No. 015 200.20, located within the corporate limits of the City of Lenoir City, Tennessee ("Project"), which is legally permissible under the Zoning Ordinance of the City of Lenoir City, Tennessee and supported by Tennessee law, as will more fully appear by reference to the copy of said complaint herewith served upon you; and whereas the said Judge has ordered an alternative writ of mandamus to issue as demanded in said complaint.

You are therefore commanded to accept and review the Building Plans, and upon adherence to the applicable codes related to the issuance of such permits, issue the necessary permits for the development of the Project because the Project is exempt from the prohibition under the Moratorium Ordinance or appear at the Circuit Court for Loudon

County, Tennessee, to be held on _____, 2025 and show cause why you have not done so; and that you then and there return this writ along with your answer to said complaint.

This the ____ day of _____, 2025.

Steve Harrelson, Circuit Court Clerk