

City Council Building
Chattanooga, Tennessee
March 13, 2012
6:00 p.m.

Chairman Ladd called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, McGary, Murphy, Rico, Robinson and Scott present. City Attorney Mike McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was given by all in attendance.

MINUTE APPROVAL

On motion of Councilman McGary, seconded by Councilman Murphy, the minutes of the previous meeting were approved as published and signed in open meeting.

AMEND CITY CODE: SPEED ON THROUGH STREETS

On motion of Councilwoman Scott, seconded by Councilman McGary
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
ARTICLE XIV, CHAPTER 24, SECTION 502, SCHEDULE II, SPEED ON
THROUGH STREETS**
passed second and final reading and was signed in open meeting.

AMEND CITY CODE: INJURY ON DUTY PROGRAM

On motion of Councilwoman Scott, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND SECTIONS 2-438, 2-445, AND 2-449 OF
ORDINANCE NO. 12413 ENTITLED "AN ORDINANCE AMENDING
CHATTANOOGA CITY CODE, PART II, CHAPTER 2, ARTICLE III,
SECTIONS 2-151 THROUGH 2-153 BY DELETING THESE SECTIONS IN
THEIR ENTIRETY AND INSERTING A NEW DIVISION 19 ENTITLED 'INJURY
ON DUTY PROGRAM'"**
passed second and final reading and was signed in open meeting.

REZONING

2012-015: Denis & Joy Dobosh/Mathew Hullander

Councilman Rico made the motion to move ordinance (e) forward on the agenda; Councilman McGary seconded the motion; the motion carried.

Pursuant to notice of public hearing, the request of Denis & Joy Dobosh/Mathew Hullander to rezone property located at 7120 and 7148 East Brainerd Road came on to be heard.

The applicant was present; opposition was in attendance.

Greg Haynes, Director of Development with the Regional Planning Agency (RPA), stated the purpose for the C-2 request is to build commercial retail development noting that the property is adjacent to R-1, C-2, R-3 and O-1; that there are two properties located west of the new apartment complex to the east across from Panorama and a retail store to the west. Aerial photos were shown of the property and it was noted there is no adopted land use plan for this area, however it was included in the 2002 Concord Zoning Study which recommended all properties zoned R-2 and R-5 be rezoned R-1 residential. He stated since then a 28 acre parcel to the southeast corner of Panorama in the East Brainerd intersection that was also in the Study was rezoned R-3; that the two properties are located between the new apartment complex to the east, across the street of Panorama Drive and a retail store to the west and are the only properties fronting on the south side of East Brainerd Road from I-75 to Graysville Road, three miles to the east that are not zoned for commercial or non-residential use. He stated these are the only remaining properties not zoned commercial or multi-family residential. A photo was shown of the residence behind the site to the south that abuts the site; that the site plan showed the proposed uses, access, parking, landscaping and building locations as presented to the Planning Commission last month. An artist's rendering of the proposed building was shown, as well; that the predominant properties fronting are non-residential and have a depth of 290 feet to accommodate the use, required parking and the necessary landscaping and buffering. He stated the applicants are taking advantage of the traffic light at Panorama Drive which helps address some of the access issues for the site and as a result Planning recommends approval of the C-2 zone subject to six conditions contained within the ordinance which were read at this time.

Councilwoman Berz stated that she received something with 16 conditions and asked where that came from.

REZONING (Continued)

Mr. Haynes stated at the meeting the applicant had with the neighborhood it was distributed; that it was not part of the Staff's recommendation.

Councilwoman Berz stated she knows the neighborhood has met with the proponents and they seem to be in accord and asked if Mr. Haynes might not be aware of the additional conditions.

Mr. Haynes stated he is aware as RPA was sent a copy of the conditions yesterday or Friday and looked at them and is aware of the longer list of conditions. He stated he read the ones recommended by Staff and Planning; that the 16 conditions Councilwoman Berz has includes the six conditions and others from the neighborhood.

Councilwoman Berz stated she would like to hear from the proponent to see if this is the result of further meetings.

Councilwoman Robinson expressed if there are any requirements for any stormwater storage on this facility and requirements for landscaping in the parking lot.

Mike Price of MAP Engineers responded "yes" to both inquiries; that there is an underground retention facility that was not shown on the PowerPoint photos to go along the front of the parking area aligning East Brainerd Road; that at the middle portion of the site plan that was shown in a trapezoidal shape is a detention pond in the rear. He stated they have addressed stormwater and added it; that they exceed the landscaping requirements, especially along the rear to the south where it abuts neighbors.

Matt Hullander, applicant, addressed Councilwoman Berz' concern with reference to the conditions and explained after meeting with the neighbors in different community meetings they did add additional conditions over and beyond what the Staff recommended and actually had three different revisions; that the one she has is the final one. He stated there are two applicants, he and his neighbor, Mr. Dobosh, are showing this as one comprehensive master plan; that he has owned the property for four years and bought two homes there before he re-platted it, one of which has not been lived in for over ten years. He stated he spent a lot for time trying to find the best plan and after working with Mr. Dobosh they have come up with the comprehensive plan; that his portion of it is an approximately 20,000 square foot building that will be a mixed use commercial development and has a partner in this, the builder, Mr. Cronan.

REZONING (Continued)

Mr. Hullander stated he is working with an architect, Andy Smith, and wants to match the architectural style of Mr. Dobosh's house and his (Hullander's) office; that they have incorporated a brick and stone mixture along with a bronze roof and will put the gutters underground; that they have put a lot of time and effort to make sure it will complement the whole block. He stated Mr. Dobosh's house will remain a home as it is and again noted they have had community meetings with the first held at the end of January with approximately 80 people present with a lot of good feedback and started to add to the conditions. He stated out of the meetings, the most recent being this past Thursday evening, they came up with additional items that are over and above what the Staff recommended to address the concerns of the neighbors. He stated this adjoins his office which is currently C-2 and has been for several years and one of the other maps shows an exit ramp onto East Brainerd Road that is approximately 1,000 feet of C-2 commercial that is not in the land use plan. He stated he has not reached out to try to solicit businesses to lease this space but has had several contacts showing interest and feel it will be successful due to the location and the new traffic signal close to I-75 will be an asset to the community. He stated he has a history there, his business is there and does not plan to leave; that he does care about the community and neighborhood and expressed hope the neighbors have recognized that with the other meetings he has attended. He admitted he did not want to do what he is about to do, noting there has been a lot of concern about a restaurant and clarified he will withdraw the restaurant in his building. He stated he has a restaurant owner that wanted to take 4,500 feet and some of the closer neighbors had a problem with a restaurant. He noted he had planned a coffee or sandwich place with limited hours and no alcohol, again reiterating he is withdrawing that.

Denis Dobosh stated he and his wife are the owners and occupants of the 7120 property for over 40 years and the property, itself, has been in the family for 50 years and in the 50 years circumstances have really changed dramatically in reference to East Brainerd to where it is today. He stated the home is a beautiful English Tudor custom built home and they are very attached to the house for obvious reasons, however time has passed them and it is no longer a residence and is no longer even marketable as such. He stated they have 45,000 automobiles passing their bedroom daily, signage and spot lights 24/7! He stated they thought it would be their last home but they are now in the process of looking for some other place; that as far as the house is concerned because of the attachments they have no plans to raze it whatsoever; that he is in the carpet industry. He stated the house will let the market determine what the best use is as he has no idea, but they plan to be residents of the facility until they find someone suitable to lease it.

REZONING (Continued)

Councilman McGary asked Mr. Hullander about the first meeting with 80 people wanting to know how many total meetings were held between him and the residents. Hr. Hullander stated he personally organized two of them.

Councilman McGary asked if the other meetings were organized by the residents themselves. Mr. Hullander responded "yes"; that residents have approached him and said they had a meeting, reiterating he had two meetings himself.

Councilman McGary asked if Mr. Hullander was not invited to the meeting. Mr. Hullander responded "no". Councilman McGary continued by asking if the two meetings Mr. Hullander held, the first had 80 people and asked how many were at the second. Mr. Hullander stated there were approximately 15 people last Thursday night. He stated the first meeting was January 26.

Councilman McGary asked for a show of hands how many people in attendance tonight attended either of the two meetings; several raised their hands. He then asked those who attended the meeting that was a residents' only meeting were asked to raise their hands; a few raised their hands.

Councilwoman Berz stated Mr. Hullander was clear to say there would be no restaurant on his property and asked Mr. Dobosh if he would have a restaurant; that Mr. Hullander was clear to say he has given it careful thought and kept saying on his part of the property there would be no restaurant. She asked if Mr. Dobosh is planning on selling to a restaurant.

Mr. Dobosh stated as indicated before he has no idea what that property's best use would be in a C-2 commercial; that he really has not been thinking about who would be in it, be it a bank branch, a corporate office, restaurant, whatever!

Councilwoman Berz stated that she understands people are saying that they understand at some point commercial or O-1 may happen, but one thing they do not want is a restaurant. Mr. Dobosh stated no one has approached him.

Mr. Hullander stated originally he was proposing one on the east end of the building and that is where the only resident touches it; that they met several times to address this and he called the restaurant that wanted to come and said "no" three weeks ago. He stated he would love a restaurant there as they are tired of Subway and Kangaroo coffee; that the neighbors do not want it and that is why there are 16 conditions.

REZONING (Continued)

Mr. Hullander continued by stating that he wants to do whatever is best for the neighborhood as he wants to be a good neighbor; that as far as Mr. Dobosh goes he has never been asked about his building and pointed out he (Dobosh) owns 6.5 acres and there is a huge buffer behind his property and no other residents that touch him.

Councilman Gilbert asked Mr. Dobosh if the Council says yes or no, his house is part of this proposal. Mr. Dobosh responded his property stands alone.

Councilman Gilbert stated Mr. Dobosh is not part of this proposal and asked Mr. Haynes if his house is part of the zoning. Mr. Haynes responded "yes".

Councilman Gilbert stated if Mr. Dobosh's house is part of the zoning it is his thought the concern is if Mr. Dobosh is going to put in a restaurant or not because if he says he does not know that shows something totally different.

Mr. Dobosh stated the question of the restaurant has never been approached on his facility because of its location and the type of house it is; that no one ever raised that issue with him. He stated the only time the restaurant issue was raised was in the portion that is going to be built reiterating his house is not going to be razed and in his opinion the best use of the property is going to probably be some type of a professional building or dental office by its very nature. He stated he does not have a photo of it but he does not have any preconceived ideas of what the use would be under the zoning and no one has contacted him; that he has not done anything to market it and does know it is not marketable as a residence anymore.

Councilman Gilbert stated asked if Mr. Dobosh would fall under the same conditions the Council would agree to.

(Councilman Rico excused himself from the meeting at this point.)

Mr. Price stated the Staff recommendations indicate no restaurant and that is for the entire property; that what passed at Planning Commission also was the same condition. He stated what Mr. Hullander was wanting to do was some sort of coffee shop as it relates to his property and is willing to drop it; that from Mr. Dobosh's standpoint the one thing that sets it apart as it relates to this one issue is his house is to retain the architectural outside elements and is not to be changed or bulldozed and has to stay with whatever goes in.

REZONING (Continued)

Mr. Price stated given there are any number of multiple uses that can go in, Mr. Dobosh feels a restaurant not a suitable and appropriate use due to the other conditions taking place on his property as a result of this condition; that the other thing that would occur is there is a 500 foot rule door-to-door and Concord Baptist is right across the street and (he) is not certain if a restaurant is approved he did not know if it fits the 500 foot rule to even serve alcohol.

Councilman Gilbert asked the city attorney if the Council okays this and under the conditions proposed will that house be under the same conditions.

City Attorney McMahan stated the recommendation from Planning Commission says "no restaurant" and it covers both parcels. He stated he hears what Mr. Dobosh is saying but the way it is written he will have to come back and ask that the exception be waived at some future in time but under this ordinance he would not be allowed to have a restaurant.

Mr. Price stated Mr. Dobosh is fine with that but if a restaurant owner approaches him he can bring that back to the community and Council and will take the restaurant off the table on both pieces.

Councilman Benson stated it seems we should have heard the opinions of the opponents before we got too much into this.

Chairman Ladd stated the questions have been for the applicant.

Councilman Benson stated he is glad we got into it as it gives the people here in objection a new insight into it; that he is going to make it clear all agree and expressed appreciation to Mr. Hullander for doing it - that there will be no restaurants on this zoning issue. Mr. Hullander responded "right". Councilman Benson stated he wanted to make it clear to those in attendance.

Chairman Ladd stated the lights reflected Council members wished to address the applicant.

Councilwoman Scott stated she needs clarification because she did not think she is clear on how many conditions we are talking about; that it seems there has been some discussion subsequent to the conditions originally arrived at the time it went through the RPA. She stated the other thing is she cannot tell if this discussion is for all those conditions as she has not received them and is not sure how many people on the Council have received the conditions.

REZONING (Continued)

Councilwoman Scott stated she would like clarification that she knows one of the conditions is the lack of late night facilities but she is not sure with the discussion of alcohol are we talking about whether a liquor store could go there; that she does not think we have enough information for a decision thus far and was hoping all could have a copy of the conditions.

Mr. Price stated the conditions go above and beyond what the Staff's recommendations were and were developed as a result of meetings with the community; that condition 17 could be added, "no alcoholic beverages" and that could be another condition that could be added and something they talked about as one of the conditions, as well.

Once the conditions were distributed to everyone, City Attorney McMahan read the conditions at this time which has been spread upon the minutes:

Proposed Zoning Conditions 3/9/2012

- 1) No restaurant.
- 2) No gasoline station or car servicing facility (oil change operation or similar uses) allowed as part of the development.
- 3) The existing stone house, presently located at 7120 East Brainerd Road shall be retained and the exterior of the structure be essentially retained for the new use intended.
- 4) No dumpster service between 9:00pm and 7:00am.
- 5) The proposed neighborhood commercial center shall be a one story building, with a height not to exceed 15 feet (not including roof). Building to retain similar architectural features as those presented to Planning Commission.
- 6) Heating and cooling mechanical equipment is to be ground mounted and it shall be screened from appearance as viewed from the residents along Panorama Drive.

REZONING (Continued)

- 7) A 30' Type "A" City of Chattanooga standard landscape buffer shall be installed where this development abuts the property located @ 1303 Panorama Drive. The remaining rear landscape buffer shall conform to the City of Chattanooga Type B landscape buffer to be located along the rear perimeter of this development or a portion of the adjoining lot of 1223 King Arthur Road.
- 8) The development will have no more than two means of ingress / egress onto East Brainerd Road, one of which to be a right-in right-out only with an approved design as determined by the City Traffic Engineer to discourage left turn movements into or out of the development. No more than one ingress / egress to be located onto Panorama Drive.
- 9) Panorama Drive to be widened to 3 lanes from the entrance to this development off Panorama Drive to the intersection of Panorama Drive and East Brainerd Road as indicated on the submitted site plan. In addition, a sidewalk is to be installed along the right of way frontage of Panorama Drive.
- 10) Grading to be generally executed as shown on the conceptual grading plan that has been provided to the Regional Planning Agency.
- 11) One connecting driveway shall be allowed between the two buildings depicted on the site plan occurring between the two buildings and East Brainerd Road.
- 12) Minimum 4 foot high vinyl coated chain link fence to be located about the perimeter of the detention pond located to the rear of the development.
- 13) Pylon sign to be located adjacent to the right of way of East Brainerd Road. No stand alone signage to be located off Panorama Drive right of way.
- 14) All signage, located on the building, for the individual tenants shall be of a similar look.
- 15) No pawn shops or tattoo parlors to be allowed as part of the development.

REZONING (Continued)

16)Lighting to be directed away from all residential areas.

17)No alcoholic beverage stores.

Councilwoman Scott stated she would like to get clarification on the alcohol issue when the other side has had an opportunity to speak.

Councilman McGary stated he is curious to know whether the 16 conditions arose from the meeting Mr. Hullander held.

Mr. Hullander responded "yes"; that the first six are the original conditions recommended by Staff and of the remaining 7-17 a few came from the first meeting when there were somewhere between 11-14 from the meeting last Thursday night, and the signage, fence, the pylon and pawn shops came as a result of that meeting and that is how they arrived at 16, now 17.

Councilman McGary asked if Messrs. Hullander and Dobosh agree with the conditions.

Mr. Hullander responded "yes"; that he would like to add at the request of Paul, the only resident that touches on the south side, to leave the hours the same -- 7 a.m. – 9 p.m.

Councilman McGary asked if a traffic study was done or if one was one necessary.

Mr. Price responded actually there was a traffic study performed when the apartments went in on Panorama Drive; that he talked with the Traffic Engineer with regard to whether or not the signal could handle the traffic generated and he stated it could.

Councilman McGary asked when the study was performed. Mr. Price stated it would have been about three-and-a-half years ago; that they are adding a lane on Panorama Drive to accommodate left turns when presently there is only a single exit out.

Councilman McGary stated the traffic study was performed three-and-a-half years upon the erection of the apartments and asked if there have been any other significant changes in the community during that time. Mr. Price responded "not in that area, no sir".

REZONING (Continued)

Councilwoman Robinson stated since we are singling out pawn shops and tattoo parlors, another type enterprise on Brainerd Road people have expressed hope we do not have a proliferation of are the payday, check-into-cash kind of operation.

Mr. Price stated there has to be some language that talks about a predatory lending and they certainly do not want that; that they do have financial institutions that may want to be a part. He stated he does not know how that language can be crafted but is certain the City Attorney or others could come up with something as it relates to that.

Mr. Haynes stated there seems to be a little bit of confusion of what Planning Commission conditions are and the ones from the neighborhood and applicant; that depending on what happens tonight if there is a first reading action we could work on the language to where it is consistent and flows so we can make sure the conditions from Planning are still there and can work on it between now and final reading. He stated as far as the liquor store question, a liquor store is not allowed in C-2, by right it has to come through the special permit approved by the City Council, which is another layer of protection for liquor stores; that he understands Councilwoman Scott's question about alcohol sales coming through another use.

Mr. Hullander stated they are trying to make this a nice building and will cost a lot of money and the tenants they want to attract and is fine with all of that being in that; that they are not going to find a check advance, pawn shop or tattoo parlor that will want to be there, anyway.

Annette Craig was the first to speak in opposition and stated she has lived on Concord Road for 30 years; that the traffic study was brought up and indicated she is not sure the Council is aware of the traffic out there noting that the traffic light at Panorama has made things worse from the interstate; that all believe a traffic study needs to be done. She stated they were told the conditions would apply to both properties; that the property was purchased while zoned R-1 and they have been told time and again and at Planning Commission also that a man should be able to do what he wants with their property, but they are property owners with investments in their property and a lot of them have lived there 20-40 years and it is their home. She stated they would like to do what is best for the entire neighborhood; that the existing structures are a combination of historic and fine architecture and ideally would like to see it zoned O-1 for office structures which would decrease the amount of traffic by not placing too much commercial business in a small space.

REZONING (Continued)

Ms. Craig stated they would like to see law offices and doctor's offices, those type offices; that there is concern about traffic being routed onto their neighborhood up Panorama and back around to Concord. She stated they are concerned the current economic climate could mean failure to follow the prescribed conditions and that is something they would want to make sure the conditions would "stick" if they are agreeable to whatever went in; that ultimately the decision is the Council's and expressed hope consideration would be given to the preferences of the neighbors. She asked if it were the Council's neighborhood how would they vote on it!

Councilman McGary stated Ms. Craig raised the traffic concerns in regard t rush hour and followed it with a concern it should be O-1 only and asked if the property was zoned O-1 would it address the traffic issue.

Ms. Craig stated the traffic is bad and does not know when they do the traffic studies, but three-and-a-half years ago was before 300 apartments went in; that they cannot move out there as traffic is bumper-to-bumper. She stated to get out of her neighborhood a lot of people go to the light at Fields Drive; that she had to wait three times before she could get out to come here this evening. She stated the traffic is backed up on the interstate all the way to the first light, then when the second light goes it is backed up to that light and then there is the light at Gunbarrel; that she does not know who does the studies but they obviously do not come out at times when it is heaviest; that they cannot move. She presented a petition with 145 signatures.

At this point there was a distraction with those waiting to speak and Chairman Ladd clarified there could only three people with up to three minutes each to speak and asked if in the line if there anyone who represents more than one person at a household. It was made clear that a couple was not a separate household and the Chairman recommend that the couple decide who wants the three minutes. The gentleman in the couple attempted to speak out of turn and Chairman Ladd would not allow him to speak.

David Nelson, an attorney, stated he lives within a long block across the street and is present on his own and the neighborhood and asked to be treated as anti-curious as far as this Council is concerned. He stated the reason for that is Ms. Craig started out with the traffic and in looking at the map there are eight entrances from Fields Drive to Panorama Drive and what is needed is a deceleration lane so people can slow down.

REZONING (Continued)

Mr. Nelson stated the curve in the road is almost as steep as parts of Monteagle Mountain and people cannot see the signal light until half way up the hill to it; that they were represented the other day that this was going to be an office complex with six or seven offices when they met at the East Brainerd Church of Christ and somehow it has changed; that he has not been able to go to the other meetings due to other commitments. He stated they were told by the engineers the complex would be six feet above the level of East Brainerd Road at Panorama Drive; that it would be 16 feet above East Brainerd Road at the lower end of Mr. Hullander's property which is a ten foot drop. He asked if there is going to be a barrier of some kind to keep this built up; that there is a drive down from the two different properties which is a ten foot drop and is one of the things he wonders about. He stated if the lower property is going to be built up also that will be roughly 25 feet at the lower end of Mr. Dobosh's property and again asked if there will be a wall or barrier between it and Mr. Hullander's business. He stated the engineering on this needs to be revised; that the 300 apartments have been built on top of the hill and have not been there three-and-a-half years as there were two-or-three different plans before finally being built. He stated he does not know if the city bus company uses that as a stop as the traffic study does not show the number of people who use that intersection as a U-turn.

Councilman McGary asked Ms. Craig about the petition and stated he is confused chronologically as to when it originated and asked if it was signed by all the signees prior to the 16 conditions or after. Ms. Craig stated it was prior to.

Councilman McGary clarified all the signatures were gathered prior to the 16 conditions being collected and asked if she knows if any of the individuals on the list are agreeable to the 16 conditions; that of the 145 signatures he is curious if some of them are in the audience and agreeable to the conditions that have been put before the Council. Ms. Craig responded "we do not know".

Mr. Nelson stated a lot of the signatures were gathered after the first meeting at the Church; that his wife and other ladies canvassed the neighborhood and got other signatures and (he) does not know where the cut off is.

Councilman McGary asked if some of the signatures were gathered after the 16 conditions or prior to. Mr. Nelson stated prior to as far as he knows.

REZONING (Continued)

Lana Sutton of 7201 Sylvia Trail spoke next and expressed concern there are a lot of secret meetings, lots of situations in the past where she has heard about meetings; that she has not seen signage for development and it is like there is a secret group of people that bring this rezoning down on them. She stated Mr. Benson is at the meetings but somehow none of the neighbors find out and stated she was one of the people who signed the sheet and signed it before the meeting even happened; that it was passed around and she has never seen the 16 condition. She stated when she went to the first meeting with 80 people was a situation where they talked about it would only be 9 a.m. - 5 p.m. businesses, family wholesome and no mention of a restaurant which seems to be a "red herring" brought up at the last City Council meeting by someone pretending to be an opponent who "burned up time" talking about this fictional restaurant which is a device she sees used a lot at these meeting rather than talking about not wanting smoke shops, liquor stores, adult toy shops or adult book stores which is what the neighbors really do not want. She stated they do not want adult smoke shops, girlie lingerie shops; that someone comes up and talks about a restaurant to distract them and "burn up" their time. She stated this is R-1 and they have a beautiful established neighborhood; that some of the people have lived there 30-something years or more and they want to raze the beautiful hill and put in a strip mall; that she has never, ever walked away from a strip mall and said it was a nice strip mall! She stated this is residential zoning and across the street is O-1; that even Bill Hullander, our County Trustee's business, right there at the end of this R-1 zoning is a converted home and should be R-1. She stated Mr. Dobosh's property should be O-1 and asked why does it need to be C-2; that if Mr. Dobosh's property is made O-1 and the rest O-1 they would not have to worry about a restaurant and girlie lingerie shops and all that the neighbors are really worried about. She stated the restaurant came up as the result of something else and noted she wanted to talk about the secret meetings because she is tired of seeing vote stacking, tired of seeing people being asked to speak; that we have such a thing as a robo call system and it is possible for Mr. Benson to automatically call the 500 or so people in her neighborhood with a robo caller; that he can call all of them as say we have a meeting but he chooses not to and nobody hears about these things.

Councilman McGary asked how many in the audience had seen the 16 conditions; a few raised their hands.

REZONING (Continued)

Councilman Benson stated he does not know why Ms. Sutton thinks he has anything to do with secret meetings; that the secret is so good he did not know about it and has not been to any of the meeting except the one at the Church of Christ. He stated if there have been secret meetings they should have told Ms. Sutton and him!

Ms. Sutton stated Mr. Benson does hold the meetings and does not tell anybody but . . . that she has not been invited or heard about them.

Councilman Benson stated he has not been invited, either!

Ms. Sutton stated Mr. Benson is the one doing the inviting. At this time Chairman Ladd halted the back and forth conversation between Councilman Benson and Ms. Sutton.

Councilman Benson stated he does not know what Ms. Sutton is talking about in reference to "robot" calls. He complimented Mr. Hullander on some of the concessions made this evening, noting he was in the open meeting at the Church of Christ and has never been to another meeting about this since, and at that meeting real changes have been made since then and then all of a sudden we saw the restaurant with a deck on the side of Panorama which "threw" him, too. He expressed concern about certain things but complimented Mr. Hullander for making real concessions and getting close to something that is acceptable; that this is not in the East Brainerd Land Use Plan, but across the street is in the East Brainerd Plan which does not call for commercial. He stated he has had one request to make one of the office buildings into commercial and it is going to be difficult for him to be able to not give strong consideration across the street commercial if this goes; that there is a traffic jam coming off I-75 at 5 p.m. in the afternoon and it is dangerous. He stated if we go any commercial we will have a longer traffic jam and does not like the idea; that we fought for the Panorama traffic light so people can come out of Concord Highland as well as Camelot and Panorama with ease which was paid for by the apartment people and now there will be a curb cut taking out cars from this light commercial.

Councilman Benson continued by stating this is the entrance to East Brainerd and the commercial already there close to the ramp was in many years before it was grandfathered-in, but from Hullco on down is a pretty pleasant aesthetic view coming into East Brainerd and there is no commercial between Hullco and Gunbarrel. He stated he has a request from someone who wants commercial on the northern side of the hill and it is going to be a little more difficult to tell them "no" for commercial if this goes commercial.

REZONING (Continued)

Councilman Benson stated he would prefer and thinks it is best if this is office; that this land has to be used as it is not a place for residential, it could be for apartments, but that would be maybe worse than office which would mean office hours and traffic; that he does not see with the concessions Mr. Hullander has made that he could not go for anything other than office but is not doing it because Ms. Sutton imagines he had secret meetings!

Councilman Murphy advised Ms. Sutton that on zoning cases outside his district he does not take any information outside of public meetings other than those submitted in writing that can be entered into the record that people can review afterward. He stated he did it precisely because he did not want people thinking he is taking private meetings and people are saying things in private that they would not say in front of God and everyone; that this is a zoning case and we all need to hear what it is. Ms. Sutton stated Councilman Murphy is welcome to enter her letter into the record.

Councilman Murphy addressed Mr. Dobosh and stated he has a beautiful house noting he is not going to sell it to anybody to live there; that if he bought it with plans and designs 45 years ago with the idea someday he would cash in on C-2 zoning he is a very brilliant and foresightful man as he does not know how he could have seen this coming. He stated leaving the structure in tact does not maximize the zoning if he does get the zoning change; that as beautiful as the house is if it were commercial zoning, knocking it down and building something new would be more profitable, but Mr. Dobosh would not want to see that happen nor would the community. He stated his heart goes out to Mr. Dobosh noting that his (Murphy's) office is on the other side of the interstate and he is in Mr. Dobosh's neighborhood frequently and he is right, the traffic is horrible! He stated if it is thought the light stacking up between the interstate and Panorama is bad, try making the right hand turn to go back to the interstate down Gunbarrel – it is ridiculous, possibly eight light cycles sometimes! He stated something has to happen by way of light timing and traffic engineering; that he does not know what the solution is; that people keep talking about office for this space noting the city is blessed as we had Home Serve come to Chattanooga and moved their call center here with hundreds of new jobs and an office building. He stated a dress shop or tuxedo rental store would be less impactful on the neighborhood and traffic flow than if it were an office space that goes call center, which could happen. He stated he does not know what the answer is in the long run and does not know exactly how he is going to vote, but it seems there are a lot of unattractive situations here; that we have a homeowner who cannot sell a house as a house without a part of the world suffering chronic gridlock which is something this city should do something about.

REZONING (Continued)

Councilwoman Berz asked Mr. Haynes if it is understood if there are conditions placed on the property it applies to the whole property even though it is owned by two different owners.

Mr. Haynes responded "correct"; that it applies to everything rezoned C-2 with conditions unless one of the conditions says the use can only be in an existing building; that a condition is as good as it can be enforced.

Councilwoman Berz clarified that Mr. Haynes' response was "yes". To the people in the neighborhood present she asked if they understand change is coming, however, if it does come they want it to be in the form offices. The response was "yes".

Councilwoman Berz stated she needs straight answers as the Council has a petition with a lot of names which apparently occurred before meeting with the developers and came up with the 16 conditions; that she needs someone to tell her what the neighborhood wants now.

A gentleman responded from the audience indicating they want offices; that when the petition was signed they did not have a clue and now they do.

Councilwoman Berz stated the people are now saying forget the petition they are willing for it to go office. The response was "yes"; that there was general consent for O-1.

Councilman McGary stated in looking at the 17 conditions, based on a show of hands only a small portion were aware of the conditions prior to tonight; that he is now hearing the group is desirous or maybe unanimously want O-1. He stated the question is if that was the desire why was it not part of the original 16. He stated there seems to be a little way to go in regard to this zoning; that a lot of progress has been made thus far but suggests a little needs to be said between the two parties. At this point he **made the motion to defer two weeks; Councilwoman Scott seconded the motion.**

Chairman Ladd asked if Councilman McGary wanted to make the motion prior to hearing the rebuttal; Councilman McGary responded "yes".

Councilman Benson asked the purpose of the delay as he does not want to be accused of going to secret meetings during the two weeks.

REZONING (Continued)

Councilman McGary expressed hope there would be one additional meeting called by Mr. Hullander that would be public; that all persons concerned would be invited; that the O-1 issue needs to be sorted out at the meeting as well as any other conditions. He stated his concern is all residents should have adequate knowledge and understand all of the conditions as he is aware two conditions were added tonight and if this process is still ongoing there should be an adequate place and timeframe for further conversation.

Councilman Benson asked if the conditions could get "pinned down" and printed out and asked for the response from the applicant and then he could vote for it.

Mr. Price stated they made application and the whole discussion has been C-2 and was never offered up as O-1; that Staff and Planning recommended commercial and they came in tonight with commercial. He stated the only issue that has been a "hot button topic" during all the discussion has been the restaurant and that has been taken "off the table". He stated in reference to Councilman Murphy's comments as it relates to office and traffic, he understands what traffic is like as he lives in East Brainerd and goes by this route daily multiple times; that one point that has not been brought up on traffic is the reason it backs up the degree it is, is it eventually gets down to two lanes at Graysville Road and is bumper-to-bumper from the interstate to Graysville Road. He stated the State is in the process of widening it which will alleviate the conditions as it relates to backing up. He stated office hours occur during the day when the traffic is at its heaviest; that commercial is an operation that typically runs 10 a.m. – 8 p.m. or 10 a.m. – 9 p.m. which means people are getting in-and-out during the day and traffic is not an issue. He stated traffic from 7:15 a.m. – 8:15 a.m. is when it is heaviest and then again at 4:30 p.m. – 5:30 p.m. He stated they have made the case as it relates to commercial; that with reference to the request to defer they have met multiple times and does not know if they could come up with any more conditions; that surely during the next week they could meet if they want to talk about more of these.

Councilwoman Scott called for the question at this point.

Councilman Gilbert stated we will have a second reading; that we can vote on it now rather putting it off any further as it will be the same scenario.

On roll call vote on Councilmen McGary and Scott's motion and second to defer two weeks:

REZONING (Continued)

GILBERT	NO
BERZ	NO
MCGARY	YES
MURPHY	YES
SCOTT	YES
ROBINSON	NO
BENSON	NO
LADD	NO

The motion failed: 3 Yes; 5 No.

Councilwoman Berz stated at some point there has to be two readings; that if we go ahead with the first reading tonight she wanted it very clear prior to the second reading the confusion cleared up and would like to know Mike Price will sit down with everyone one more time; that she was under the impression the 17 conditions were the result of a meeting on the ninth and given all of those plus the additional couple everybody was in agreement on that.

Mr. Price stated the majority that was at that meeting, "yes".

Councilwoman Berz stated she would like the peace of mind knowing between now and the next meeting that not only Mr. Price and all the people who have a vested interest, but also the Planning Commission would be present or part of that to fashion a way to meet everyone's needs; that we are a little bit fractioned now.

Mr. Price stated so we are not in a rush and stumble through this, if it does pass tonight it could be heard in two weeks to give sufficient time to make sure everyone understands it.

Councilman McGary stated the purpose of the original motion was there be adequate time for the neighbors to meet, and wondered if the word could get out adequately and if people could meet in that timeframe; that if we were to come back next week and, based upon what we hear put it off two weeks, if we are complicating it from what it needs to be.

REZONING (Continued)

Councilwoman Robinson stated she wanted to go back to the notion our attorney would take the list of conditions and put them into the language we are accustomed to seeing.

City Attorneys McMahan stated he and Mr. Haynes would do that.

Mr. Price stated there are people present in support tonight and asked that they raise their hands; a few raised their hands at this point. He stated the subject has been thoroughly vetted and does not want to take any more Council time.

Paul Pelletier, owner of the property at 1303 Panorama which abuts what used to be Mr. Johnson's property, spoke at this time. He stated this is not the first time they have gone through a rezoning process for the area and have met several times with Mr. Hullander and his partner to discuss the conditions and concerns and restaurants was a big one. He stated in looking at the architectural drawings and the type of businesses they are trying to attract in the area offices sound as if it is a little bit less intrusive, but in all reality it is not any less intrusive than a commercial property; that traffic concerns are always there and any addition is going to add some type of traffic concern. He stated the big thing is the bottle neck at Ace Hardware when it goes down to two lanes which needs to be pushed more from the city toward the State in prompting them to work more quickly and look at the area in general and the traffic on East Brainerd Road; that as the conditions go and the amendments made tonight he and his wife are fine with what is proposed.

Councilman Berz made the motion to approve with Councilman Murphy seconding the motion.

Chairman Ladd asked that the total motion be clarified.

Councilwoman Berz then clarified the motion to approve with the understanding that the first reading is tonight and the second reading in two weeks during which time the proponents will meet with the neighborhood and "iron out" the final details and the city attorney and RPA will get them to the Council members ahead of time so everyone is "on the same page"; Councilman Murphy seconded the motion.

REZONING (Continued)

On motion of Councilwoman Berz, seconded by Councilman Gilbert,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY LOCATED AT 7120 AND 7148 EAST BRAINERD ROAD, MORE PARTICULARLY DESCRIBED HERIEN, FROM R-1 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS

passed first reading with second reading in two weeks (March 27, 2012); on roll call vote:

BERZ	YES
MCGARY	NO
MURPHY	YES
SCOTT	NO
ROBINSON	YES
BENSON	NO
GILBERT	YES
LADD	YES

AMEND ZONING ORDINANCE

On motion of Councilman Murphy, seconded by Councilman McGary,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, CHAPTER 38, ZONING ORDINANCE, ARTICLE VIII, SECTION 38-564(1), APPLICATIONS TO THE BOARD

passed first reading.

AMEND CITY CODE: MOBILE FOOD UNITS

Councilman Murphy made the motion to amend this request by adding a sunset provision of one year at which time the Council will take the matter back up to consider expanding it to C-2 and R-4 zones; Councilman Gilbert seconded the motion.

AMEND CITY CODE: MOBILE FOOD UNITS

On motion of Councilman Murphy, seconded by Councilman Gilbert,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, CHAPTER 20, ARTICLE VII, BY ADDING A NEW DIVISION 3 TITLED "MOBILE FOOD UNITS", SECTIONS 20-146 THROUGH 150, AND CHATTANOOGA CITY CODE, CHAPTER 38, SECTION 2-203 AND 222 RELATIVE TO ZONING FOR MOBILE FOOD UNITS
passed first reading.

REZONING

2010-015: City of Chattanooga

Pursuant to notice of public hearing, the request of the City of Chattanooga to rezone a tract of land located at 1165 Fairmount Avenue came on to be heard.

Councilwoman Scott and Robinson made the initial motion and second to approve this request.

Councilman McGary made the motion to defer the matter; that he has received a request from a resident to defer due to the question of zoning that is to be taken up at a school board meeting in the future; **Councilman Gilbert seconded the motion.** He asked if the resident could be given a few minutes to address the issue.

Chairman Ladd stated the matter is out of the Council's jurisdiction and there is nothing we can do anything about it; that anything the School Board does regarding zoning is totally out of our jurisdiction.

Councilman Robinson stated this is a situation that is out of the Council's control and called for the question.

Councilman McGary reiterated his motion to defer the matter 30 days.

Councilwoman Scott stated this zoning has been a long time coming and it was discussed both ways; that individuals that will be involved in this property the school issues do not enter in at all and we cannot do anything about it as we have no control. She stated if she knew for sure it would stay that way six months to a year from now because our mission is to assess those things when we have no control over; that she is not sure she can agree with the idea of the school zone; whether it is in or out is germane to this question.

REZONING (Continued)

Councilwoman Scott stated she cannot support deferring this any longer than it already has been as it has been for the entire duration of the construction.

Councilman Benson stated he could not see what the school zone has to do with this.

Councilman McGary retracted his motion for deferral noting that he misspoke as this is not the issue and is one further down on tonight's agenda.

On motion of Councilwoman Scott, seconded by Councilwoman Robinson,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 1165 FAIRMOUNT AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-3 RESIDENTIAL ZONE TO R-T/Z RESIDENTIAL TOWNHOUSE/ZERO LOT LINE ZONE, SUBJECT TO CERTAIN CONDITIONS

passed first reading.

REZONING

2012-008: Barton E. & Elizabeth B. Woodham

Pursuant to notice of public hearing, the request of Barton E. & Elizabeth B. Woodham to rezone property located at 1910 East 31st Street came on to be heard.

The applicant was not present; there was no opposition.

On motion of Councilman McGary, seconded by Councilwoman Scott,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY LOCATED AT 1910 EAST 31ST STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO M-1 MANUFACTURING ZONE, SUBJECT TO CERTAIN CONDITIONS

passed first reading.

AGREEMENT

The Clerk of Council read the resolution as it appeared on the agenda:

A RESOLUTION AUTHORIZING AN AGREEMENT WITH GLOBAL GREEN LIGHTING TO PROVIDE OUTDOOR LIGHTING FIXTURES FOR AN ESTIMATED FIVE MILLION DOLLARS (\$5,000,000.00) AND FOR ADDITIONAL SPECIALTY LIGHTING AS NEEDED BY THE CITY FOR AN ESTIMATED COST OF ONE MILLION DOLLARS (\$1,000,000.00)

Councilwoman Scott made the motion to defer the matter two weeks; Councilman McGary seconded the motion.

Councilwoman Berz then offered a substitute motion and read from the body of the proposed amended version:

WHEREAS, Global Green Lighting has provided the best proposal for providing energy efficient lighting infrastructure that can be managed and controlled remotely; and WHEREAS, the Electric Power Board will provide installation of this equipment. NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that the Mayor is hereby authorized to enter into an agreement with Global Green Lighting for a purchase of up to 27,000 lights, subject to availability of funding.

Councilwoman Scott stated her concern with that resolution is we had a fairly intensive complex meeting this afternoon where we had our city finance officer give very good reasons why this particular contract needs to be "beefed up" with performance issues and she is not sure that has been done, noting it will take a little while to do that. She stated she does not think this motion is going to make that happen and it is a terribly important thing that we do not do a commitment without having those additional checks and balances in place.

Councilwoman Berz asked that the city finance officer respond as she did have input into this.

Chairman Ladd asked Ms. Madison to speak, however, Councilman McGary called for a point of order, to which Chairman Ladd noted she thought Councilwoman Scott had completed her comments. Councilwoman Scott noted that she was interrupted is what she thinks happened.

AGREEMENT (Continued)

Councilwoman Scott continued by stating we have not had any opportunity to read the contract in time to be able to vote it; that there was discussion but we have not seen it. She stated none of the things the Council talked about are in that except one thing and expressed her thought it is incredibly presumptuous that we would think all of that has been accomplished. She stated if we have not seen it written and it has not been committed to paper we do not know what it is and \$6 million is a whole lot of money to commit to without having all those things in writing. She stated if that contract has been rewritten since 3 p.m. today she would like to have her hands on it and asked if it has been rewritten. City Attorney McMahan responded "no".

Councilwoman Berz stated Mrs. Madison said earlier it is very problematic and in the interim they had further conversations; that this might meet her problems.

Admin. Madison stated the resolution as written authorizes the Mayor to enter into a contract that would be different than the existing contract with respect to those issues that we discussed in the meeting. She stated it would be subject to the availability of funds and essentially the contract would be subject to the City Attorney's input, her input and as always signed by the Mayor.

Councilwoman Scott stated that takes the Council completely out, totally and completely out. She stated she is sorry as she does not think this is the way to go; that it is \$6 million we do not know what we are exactly committing to and it is her thought that is wrong!

On roll call vote on the motion to defer:

MCGARY	YES
MURPHY	NO
SCOTT	YES
ROBINSON	NO
BENSON	ABSTAIN
GILBERT	NO
BERZ	NO
LADD	YES

AGREEMENT (Continued)

The motion failed: 3 Yes; 4 No; 1 Abstention.

At this point Councilman Murphy made the motion to defer one week; Councilman McGary seconded the motion.

Councilwoman Scott sated if we defer one week essentially what we will be saying is exactly the same thing, we do not get a chance to look at it, it is all outside of Council but is going to happen one week earlier, asking if she is correct.

Councilman Murphy stated he has a lot of faith in the attorneys involved in this and thinks they can reach a contract that is in keeping with the discussion today in short order, leaving us days to review it. He stated it is his thought the problem with the first motion is that it presumed they would not be able to get it turned around and knowing a little something about lawyers, sometimes the work expands to fill the time allotted; that if we are on a short timeline they will get it turned around and we will get to read it, at least it is his thought he would have enough time to read it and if Councilwoman Scott does not agree he is sorry.

Councilman Murphy then made the motion to defer the matter one week; Councilman McGary seconded the motion. On roll call:

MCGARY	YES
MURPHY	YES
SCOTT	NO
ROBINSON	NO
BENSON	ABSTAIN
GILBERT	NO
BERZ	NO
LADD	NO

The motion failed: 2 Yes; 5 No; 1 Abstention.

AGREEMENT (Continued)

On roll call vote on Councilwoman Berz' motion to approve the request on the amended version; Councilman Gilbert seconded the motion:

MURPHY	YES
SCOTT	NO
ROBINSON	YES
BENSON	ABSTAIN
GILBERT	YES
BERZ	YES
MCGARY	NO
LADD	NO

The motion failed: 4 Yes; 3 No; 1 Abstention.

Councilman McGary then made the motion to table the matter one week; Councilman Murphy seconded the motion.

Councilwoman Scott asked for clarification as to what "table" and "defer" in this particular situation means, because we had a contract but we were going to vote on it, we decided we did not like that contract and deferral to get the contract to come back to Council did not work, so now we are tabling. She asked what it means.

Councilman Murphy explained a motion to defer for one week would mean it would come up next week and a motion to table means it will "die" unless it comes up next week and pointed out the Council is a member short.

On roll call vote on the motion and second by Councilmen Murphy and McGary to table one week:

SCOTT	YES
ROBINSON	NO

AGREEMENT (Continued)

BENSON	ABSTAIN
GILBERT	YES
BERZ	NO
MCGARY	YES
MURPHY	YES
LADD	YES

The motion carried: 5 Yes; 2 No; 1 Abstention.

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH GLOBAL GREEN LIGHTING FOR A PURCHASE OF UP TO TWENTY-SEVEN THOUSAND (\$27,000.00) LIGHTS, SUBJECT TO AVAILABILITY OF FUNDING.

Later in the meeting Councilman Gilbert asked if the matter would be placed on the agenda next week.

City Attorney McMahan stated it is his thought the Mayor will have a resolution to present next week if that meets with the Council's approval.

SPECIAL POLICEMAN (UNARMED)

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE APPOINTMENT OF ALLEN JONES AS A SPECIAL POLICE OFFICER (UNARMED) FOR THE CITY OF CHATTANOOGA PUBLIC WORKS DEPARTMENT, TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS
was adopted.

SPECIAL POLICEMAN (UNARMED)

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE APPOINTMENT OF MIKE HAPONSKI AS A SPECIAL POLICE OFFICER (UNARMED) FOR THE CITY OF CHATTANOOGA PUBLIC WORKS DEPARTMENT, TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS
was adopted.

CHANGE ORDER

On motion of Councilman Murphy, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 (FINAL) FOR AMERICAN CONSULTING PROFESSIONALS, LLC, FOR THE DESIGN OF STRUCTURAL REPAIRS TO WILSON ROAD BRIDGE, FOR A DECREASED AMOUNT OF FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED TWENTY-TWO THOUSAND NINETY-FOUR DOLLARS (\$22,094.00)
was adopted.

PAYMENT AUTHORIZATION

On motion of Councilman Gilbert, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING PAYMENT TO BARBARA G. HASSETT, ET. AL. FOR A RIGHT-OF-WAY EASEMENT, RELATIVE TO CONTRACT NO. E-03-044, OAKWOOD DRIVE AT JERSEY PIKE INTERSECTION IMPROVEMENTS, FOR TRACT NO. 4, PROPERTY LOCATED AT 4828 JERSEY PIKE, CHATTANOOGA, TN 37416, TAX MAP NO. 129C-A-002, FOR THE AMOUNT OF ONE THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS (\$1,225.00)
was adopted.

TEMPORARY USE

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING FORT WOOD NEIGHBORHOOD ASSOCIATION TO USE TEMPORARILY THE RIGHT-OF-WAY LOCATED WITH THE FORT WOOD NEIGHBORHOOD BOUNDARY FOR THE INSTALLATION OF BANNERS TO DEFINE THE BOUNDARY AND PROMOTE THE FORT WOOD NEIGHBORHOOD, AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

**ADOPTION OF MTAS RECORDS RETENTION
MANUAL**

On motion of Councilman Murphy, seconded by Councilwoman Scott,
**A RESOLUTION ADOPTING THE CURRENT RECORDS RETENTION
MANUAL APPROVED BY THE MUNICIPAL TECHNICAL ADVISORY
SERVICES AS THE OFFICIAL RECORDS RETENTION SCHEDULE OF THE
CITY OF CHATTANOOGA**
was adopted.

PUD

2012-013: Joseph Ingram

Councilmen Robinson and Murphy made the motion and second to approve this request.

Reannon Maynard of 803 Merriam Street spoke in opposition to this request by stating her concern is the impact it will have on the community nearby; that the development is marketed specifically as being in a certain school zone and right now the School Board is meeting in a very heated discussion about school zones, so marketing based on buyers looking for specific school zones is somewhat unsteady. She stated it also has negative effects for the existing community as there has been plenty of public discussion about this particular school's capacity and enrollment problems and within the school there is an online petition from parents and administrators that want this particular property moved out of that school zone. She stated to be clear and fair to the developer and prospective buyers it is her thought it is only fair to defer to allow the School Board to address this issue so that folks are clear about what school zone they are buying into. She stated there is currently a discussion that has moved outside East Hamilton to include evaluating all school zones and in light of that she expressed personal belief if the school zone changes for this property she does not know if the developer will follow through with the rest of the project and may negate the need for the PUD or variance. She stated she would like to see the matter deferred to have more clarity about what the school zones are going to be for that particular area.

On motion of Councilwoman Robinson, seconded by Councilman Murphy,
**A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT
DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PLANNED UNIT
DEVELOPMENT, KNOWN AS PERRY NORTH RESIDENTIAL PLANNED UNIT
DEVELOPMENT, LOCATED IN THE 1000 BLOCK OF DALLAS ROAD,**

PUD (Continued)

MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE
MAPS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE,
SUBJECT TO CERTAIN CONDITIONS
was adopted; Councilman McGary voted "no".

OVERTIME

Overtime for the week ending March 8, 2012 totaled \$26,936.91.

PERSONNEL

The following personnel matters were reported for the various departments:

NEIGHBORHOOD SERVICES:

- **DONNA DEWEESE** – Resignation, Project Specialist, effective March 8, 2012.

CHATTANOOGA POLICE DEPARTMENT:

- **BEVERLY HARRINGTON** – Return to Duty from family Medical Leave, Administrative Support Assistant 2, effective February 27, 2012.
- **CURTIS MORRIS** – Suspension (3 days without pay), Police Officer 1, effective March 12-14, 2012.
- **PATRICIA JOHNSON** – Transfer, Personnel Assistant, Range 8, \$28,572.00 annually, effective March 23, 2012.

RADIO SHOP:

- **KAREN CANNON** – Hire, Administrative Support Assistant 1, Range 4, \$24,000.00 annually, effective March 9, 2012.

PERSONNEL (Continued)

PUBLIC WORKS DEPARTMENT:

- **ROBERT A. SMITH, JR.** – Suspension (2 days without pay), Equipment Operator 4, City Wide Services, effective March 1-2, 2012.
- **GEORGE KILGORE** – Retirement, Plant Operator 2, Waste Resources, effective March 10, 2012.
- **MARY ANNE GEHRKE** – Hire, Laboratory Technician 1, Waste Resources, Range 12, \$31,021.00 annually, effective February 10, 2012.
- **VALITUS EDWARDS** – Transfer, Plant Operator 1, Waste Resources, Range 9, \$27,333.96.

INFORMATION SYSTEMS:

- **MARK TIMON** – Reinstatement, Network Engineer, Range 20, \$57,680.00 annually, effective September 23, 2011.

PERSONNEL:

- **SERENE SIENER** – Promotion, Personnel Technician, Range 11, \$29,544.00 annually, effective March 9, 2012.

DONATION

Admin. Zehnder duly reported four donations of cash to the Therapeutic Recreation Division from Mr. and Mrs. Jerry Haley, Jim and Jane Saddler, Joyce McCallie and Denise Lane Bennett in a total of \$165.00.

REFUNDS

On motion of Councilman McGary, seconded by Councilwoman Berz, the Administrator of Finance was authorized to issue the following refunds for water quality fees and/or property taxes:

REFUNDS (Continued)

NORTH RIVER VALLEY RETIREMENT	\$6,203.82
MAPCO EXPRESS INC.	\$1,245.60
TITLE GUARANTY AND TRUST	\$5,244.69
NAPIER ASSOCIATES	\$6,652.40
KENCO GROUP INC.	\$2,003.77
CHATTANOOGA CHAMBER FOUNDATION	\$21,248.35
STOWERS PARTNERS LP	\$5,913.60
RILEY H. LUNN	\$1,588.72
JARNIGAN ROAD II LLC	\$6,240.00
YERBEY CONCRETE CONSTRUCTION INC.	\$6,609.60
CHARLES E. TERRELL III	\$1,409.39
BR CREEKSIDE LLC	\$1,440.98
GREG W. SMITH TR	\$1,440.57
DAL INDUSTRIES INC.	\$1,102.20
CHASE PLUMBING & MECHANICAL INC.	\$1,728.63
ALEXIAN VILLAGE OF TENN	\$1,095.62
ALEXIAN GROVE INC.	\$ 652.78
CNL FUNDING	\$10,306.40
MARCHIE EDGMON	\$9,427.40
INDUSTRIAL DEV. BOARD	\$1,248.00

REFUNDS (Continued)

U S XPRESS INC.	\$10,036.80
HIGHLAND PARK BAPTIST CHURCH	\$2,000.00
ANGEL D. LIBBEY	\$3,099.87
JOHN W. HOLDEN, JR.	\$2,284.40
ENKA FOPPIANO	\$1,146.75

PURCHASES

On motion of Councilman McGary, seconded by Councilwoman Robinson, the following purchases were approved for use by the Public Works Department:

TENNESSEE TRACTOR LLC
R54497

Purchase of Four (4) Tractors per State Contract TCA 6-56-304.2

\$170,788.68

CHATTANOOGA GOLF CARTS
R54446

Purchase of Two (2) Electric Utility Carts

\$17,900.00

COMMITTEE MEETING INQUIRY

Councilman McGary stated he was not privy to the meeting today and asked the same question last week wanting to know if there are other future meetings scheduled of the Housing Committee concerning the state of housing, possibly Purpose Built and citizen input; if future meetings are scheduled.

COMMITTEE MEETING INQUIRY (Continued)

Councilwoman Robinson stated a meeting is not scheduled but they are continuing to have a series of informational meetings concerning housing and will be hearing from the RPA at a date to be announced as they are still working on their infill housing report.

HEARINGS FOR SPECIAL PERMITS

Councilwoman Scott asked if there could be conversation about the way we plan to handle hearings for special permits for late night entertainment issues.

Chairman Ladd noted that she had planned to take that up also as other business and thanked Councilwoman Scott for bringing it up.

Councilman Murphy stated he was trying to figure out how this was coming back to the Council; that it is his understanding there is a change in ownership of the business and if everyone recalls the special permit is issued to the operator and the owner and is non-transferable. He stated he wonders if there has been a true change in ownership and asked what are we hearing because if it is not transferable and there has been a change of hands it is his thought we need a new application for a permit, not an appeal.

John Bridger, Executive Director of the Regional Planning Agency (RPA), stated they would need to reapply. He inquired as to the issue at hand.

Councilman Murphy clarified that it involves the special exceptions permit for late night entertainment venues as there is one that had a permit and it is his understanding that there has been a change in ownership or management. He stated the permit was specific to that owner and if a change has happened the correct procedure would be for somebody to apply again rather than to appeal a revocation, because we are not revoking it, the permit just goes away.

City Attorney McMahan stated it is his thought the problem is the place is still in business and presumes it is operating under new management, which could be a question of fact. He stated generally speaking we cannot take away any contract-type right without having some sort of hearing; that what he is hearing Councilman Murphy and Mr. Bridger both say is if the only issue is has there been a change or ownership, then there should be a very short hearing if that is the only issue before the Council.

HEARINGS FOR SPECIAL PERMITS (Continued)

Councilman Murphy stated he understands there are other issues but if it could be resolved on that technical issue alone, we structure it and (we) will be sitting in an ALJ role. He stated we should structure the order of proof to focus in on that fairly definable issue first before we get into whatever misbehavior may have happened. He stated if we can resolve the issue they have changed ownership, we can do that and be out of here in twenty minutes.

Councilwoman Berz expressed agreement noting that she did not want anyone to be left with the impression that it is just about a change of ownership as there are multiple violations. He stated they have been served by Mr. Hutsell and understands that he will have a presentation book of pretty egregious violations.

Councilman Benson stated what Councilman Murphy stated is right; that we have had this occur before and it is not a matter of behavior or terrible actions; that it is just a change of ownership in the permit and it is that simple.

Councilwoman Scott she would like to have clarification from a legal standpoint. She stated we have a process for beer permit violations and then there is a process for liquor license violations and those are very detailed and cumbersome. She stated if we are dealing with a special exemptions permit which, although it may be different from the other special exemption permits, it is granted and it would seem it might be different than both those long drawn out hearings. She asked if the Council could define how the hearings would occur for the special exemptions permit in a much more efficient manner where we actually define the time amount that one side can give "for and against" and conclude that in much the same way we would a zoning issue.

City Attorney McMahan expressed agreement noting by keeping it in a zoning order is as a legislative decision by this body as to whether they have a special exceptions permit and whether they lose it for one reason or another. He stated "yes" we could define the process and could give each ten or twenty minutes to advance their case and then make a decision.

Councilwoman Robinson expressed support of Councilwoman Scott's proposal and what Councilwoman Berz stated and if there are a stack of revocable causes brought forth to take the first one and if that is in fact enough for the Council to make a conclusion we do not have to conduct a one hour hearing if we know at the outset that a gatekeeper ordinance has been violated we can go ahead and act.

HEARINGS FOR SPECIAL PERMITS (Continued)

Chairman Ladd stated there may be a litany of other things but it is best to name the main one cause that is a just and good legal reason and be done with it as it gives less opportunity for argument and it is good to apply that to this case also. She stated the other question is it is her thought we can limit the scope next week and keep the meeting reasonable; however, it will be a meeting that will be held at the end of the regular 6:00 p.m. session. She asked if the Council wants to have the hearing next Tuesday evening after the regularly scheduled meeting or on another day the Council would wish to come in; that all would need to be present as a vote of five will be needed. The consensus was for the hearing to follow the regular Council meeting.

Councilman Murphy offered one more time saving suggestion, noting that we all ask good questions and suggested that we designate our city attorney to handle the questioning in this matter and if there are any questions Council members feel have not been reached by him we would pass a note to him which would seem to take the Council out of the role of trying to out-cross examine everything.

Chairman Ladd asked if that process is okay with everyone and noted the hearing would take place next week following the regular agenda.

COMMITTEES

Councilwoman Berz stated the **Budget and Finance Committee will meet next Tuesday, March 20, from 1:00 p.m. - 2:45 p.m. and the following Tuesday, March 27 from 10:00 a.m. – noon.**

Councilman Murphy stated the **Legal, Legislative and Safety Committee would meet on Tuesday, March 20.**

Councilwoman Robinson stated the Housing and Neighborhood Service Committee had an informational session this afternoon and heard from the Chattanooga Housing Authority in sort of an annual report.

Chairman Ladd acknowledged that it was a great report and that Councilwoman Robinson did a great job with the meeting.

Councilwoman Robinson stated it was Betsy McCright who did all the work and thanked Councilwoman Ladd for requesting the meeting; that any particular questions or issues Council might have Ms. McCright would be more than happy to respond.

COMMITTEES (Continued)

Councilwoman Scott stated the **Personnel, Performance Review and Audit Committee will meet on Tuesday, March 20 following the Agenda Session.**

VICTOR LEFTWICH

Victor Leftwich of 959 Boynton Drive spoke on behalf of the West Side Community Association. He stated earlier today CHA was present and was aware the Council was educated by some of the things she said; that some of the residents can also give their opinion to the Council as well as Ms. McCright in educating them on some of the things that go on in housing. He stated he was asked to speak because they have been denied some of the meetings that have been going on as far as the Mayor is concern; that he wanted the Council to know a lot of things that are going on in the West Side that the residents are not involved in and they want to be a part of the meetings as well as anyone else. He stated in reference to Purpose Built coming in and tearing down housing he is aware they also tore houses down in Atlanta which is irrelevant to Chattanooga; that some of the residents were not given a place to go nor could they get back in their neighborhood. He stated there are a lot of things that should be looked into before someone makes a decision to take their homes or tear them down because a lot of them are not involved in the gang activity or things that are going on in the West Side that is sometimes done by outsiders but they are being blamed for it. He stated he is not affiliated with any gang and does not think his home should be torn down because of their actions as he is not responsible for their actions; that he is for the community and tries to do his best to help in any way possible and knows it will take more than him.

Councilwoman Robinson expressed appreciation for Mr. Leftwich's comments and asked to talk with him following the meeting to answer a couple things he mentioned.

LANA SUTTON

Lana Sutton expressed support for Mr. Leftwich's comments noting every neighborhood association has access to a robo caller which is an automatic messaging machine and lot of them do not know that; that there is a way to program into every neighborhood association a call where every neighbor can be called when there is a meeting about a rezoning. She stated she is puzzled why this system is not utilized; that it seems it is not utilized conveniently!

LANA SUTTON (Continued)

Ms. Sutton stated it is her thought it should be utilized in a way that helps communities and neighbors; that everyone in the West Side should be able to get a call about a meeting that affects them. She stated her solution and recommendation is to install and give the neighborhood association the robo callers, tell them about it, how to use it, make sure it works and get all the neighborhood associations on board and working with their representatives; that it will create a lot of good will toward the Council and develop and strengthen the neighborhood; that there will not be the accusations and perceptions of secret meetings because everyone will know about the meetings. She also recommended that someone tell them what is the definition of a neighbor; that she has been told over-and-over she is not a neighbor and not welcome by Mr. Benson to speak at the meetings on rezonings that affect her 1700 block because she is not a neighbor. She stated she lives in the 1700 block and is a neighbor, yet she has had him tell her people who live on Ridge Top three miles away when it is convenient can speak any time they want on the same rezoning. She again asked what a neighbor is, whether it is someone who lives in the same block; that she is in the neighborhood association. She stated she wanted to speak to the inanity to meet on this rezoning with the developers on East Brainerd Road and work out the conditions that we talked of on the strip mall when the Council has already approved it; that it is like giving them conflicting signals about what to talk about and asked what are they to talk about if the conditions have already been approved.

Chairman Ladd stated the Council is in total puzzlement about a robo call system clarifying there is not one that exists as far as she knows.

Councilman Murphy added some neighborhood associations have e-mail list serves and some have used their Neighborhood Partners Program grant money to buy robo calling software in the past; that he knows that because he represents one of the neighborhoods and unfortunately that software is now out of date and does not work anymore. He asked what she is talking about because he has asked around and nobody knows in city government how this is available to us and if she knows where he needs to go to get that available to him please let him know.

Ms. Sutton looked around for Beverly Johnson and noted she had left the room and stated through a grant or the city could just issue them; that it seems like a brilliant way to engage neighborhoods as there is software that can enable a computer. . .

LANA SUTTON (Continued)

Councilman Murphy asked if it is a suggestion we invest in that; it is not as “we have it and we are selectively using it” as she has been saying we are selectively using it and we do not have it.

Ms. Sutton stated her neighborhood has one and were issued one; that they are in receipt of this robo caller and they are inactive and splintered over political and commercial reasons.

Councilman Murphy stated Ms. Suttons’ neighborhood has one and asked if (she) is recommending we look into getting one for other neighborhoods.

Ms. Sutton stated other neighborhoods should know this can be done; that they do not have to have the robo caller and could actually use free software out there; that the Council has all their addresses and asked why they could not call them or email them.

Councilman Murphy stated the Council does not have all the e-mail and phone numbers, to which Ms. Sutton stated the Council could get the phone numbers!

Councilman Murphy stated many of his constituents have done away with their land line and related the story of the gentleman who came before the Council last week that was not his constituent who made a big show he did not know him and he was his representative and he is not, noting Councilman Gilbert is the gentleman’s representative. He stated he looked the gentleman up two ways and the number was not good as it was disconnected, indicating he had probably gone to a cell number. He stated he could not reach him and went to his home the next day and knocked on his door, however he was not there; that he left a card asking that he call him so he could introduce him to his Councilman!

Councilwoman Berz stated there is never anything wrong with continuing conversation; that in order to capture what she heard all of those in the area want the conversation to continue. She stated it is mistaken to say we have already approved it because we have not; that it is a policy way of keeping the conversation going. She stated it takes two readings and it is her thought since there are two sides, the developer and the people who do not like what is going on, this is the way to keep the conversation going; that until there is a second reading nothing is a fait accompli. She stated she believes in order for people to work together, they cannot do positional bargaining; they have to work together at the same table.

LANA SUTTON (Continued)

Councilwoman Berz stated she did make that motion for the conversation to keep going and in no way has she approved anything and wanted to make that really clear; that there needs to be a second reading before anything can be a fait accompli and wanted to clear that up.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, March 20, 2012 at 6:00 p.m.

CHAIRMAN

CLERK OF COUNCIL

**(A LIST OF NAMES OF PERSONS IN ATTENDANCE IS
FILED WITH MINUTE MATERIAL OF THIS DATE)**