

City Council Building
Chattanooga, Tennessee
October 13, 2009
6:00 p.m.

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

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman Rico gave invocation.

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.

ANNEXATION AND PLAN OF SERVICES: AREA 10A

City Attorney McMahan stated 10A is the small area, the current city limits out to Lee Highway.

On motion of Councilman Rico, seconded by Councilwoman Scott,

AN ORDINANCE ADOPTING A PLAN OF SERVICES AND EXTENDING THE CORPORATE LIMITS OF THE CITY OF CHATTANOOGA, TENNESSEE, TO ANNEX CERTAIN TERRITORY CONTIGUOUS TO THE PRESENT CORPORATE LIMITS OF THE CITY OF CHATTANOOGA KNOWN AS AREA 10A, BEING CERTAIN PARCELS ADJACENT TO OLD LEE HIGHWAY, GREEN SHANTY ROAD, REXWAY LANE, RANCO CIRCLE AND MAYWATER ROAD WITHIN THE URBAN GROWTH BOUNDARY OF THE CITY OF CHATTANOOGA, IN HAMILTON COUNTY, TENNESSEE, AS SHOWN BY THE ATTACHED MAP

passed second and final reading and was signed in open meeting; **Councilman Gilbert voted "no"**.

ANNEXATION AND PLAN OF SERVICES: AREA 10B

City Attorney McMahan stated the Mayor suggested a revision to the map which was printed last week. When the map was displayed by PowerPoint, he stated basically, the bottom of the map, the red line, stands for sewer lines. He stated the red line is Sanders Road, the last area of this annexation. He stated the Mayor plans to cut out all areas to the south of Sanders Road, all the way to the street that went into the landfill.

Lee Norris stated the map has been revised emphasizing the red line stands for sanitary sewer lines running the length of Sanders Road back up to Pattentown Road and back to the force main along Apison Pike; that we picked up parcels along Apison Pike.

Councilmen Rico and Robinson made the motion and second to accept the amendments to this ordinance; the motion carried.

On motion of Councilman Rico, seconded by Councilman McGary,
AN ORDINANCE ADOPTING A PLAN OF SERVICES AND EXTENDING THE CORPORATE LIMITS OF THE CITY OF CHATTANOOGA, TENNESSEE, TO ANNEX CERTAIN TERRITORY CONTIGUOUS TO THE PRESENT CORPORATE LIMITS OF THE CITY OF CHATTANOOGA KNOWN AS AREA 10B, BEING CERTAIN PARCELS ADJACENT TO OLD LEE HIGHWAY, APISON PIKE, PATTENTOWN ROAD, AND WOODLAND DRIVE WITHIN THE URBAN GROWTH BOUNDARY OF THE CITY OF CHATTANOOGA, IN HAMILTON COUNTY, TENNESSEE, AS SHOWN BY THE ATTACHED MAP

passed second and final reading and was signed in open meeting; **Councilman Gilbert voted "no"**.

AMEND CITY CODE/ZONING ORDINANCE

Chairman Benson stated this matter was discussed in Committee today.

On motion of Councilwoman Robinson, seconded by Councilman Rico,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, TO INCLUDE MODIFICATIONS TO CHAPTER 38, DIVISION 14, UGC URBAN GENERAL COMMERCIAL ZONE
passed first reading; **Councilwoman Scott voted "no"**.

AMEND CITY CODE/ZONING ORDINANCE

On motion of Councilman Rico, seconded by Councilwoman Ladd,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SECTIONS 38-288 AND 38-289,
AND BY ADDING A NEW SECTION 38-288 TO PROVIDE FOR
PROHIBITED USES IN THE C-7 NORTH SHORE COMMERCIAL/MIXED USE
ZONE AND NEW SECTION 38-289 FOR USES THAT REQUIRE A SPECIAL
PERMIT**

passed first reading.

REZONING

2009-119: George V. Morgan

The applicant was present.

Greg Haynes, Director of Development Services with the Regional Planning Agency, stated the request is for rezoning of property at 603 Tunnel Boulevard for C-2 for a vehicle repair facility. He stated Planning recommends approval of the request with a couple conditions with the front main portion of the property as C-2 and the rear to be kept as R-2 as a buffer between this facility and the residential property (to the rear). He stated the two conditions for this are from Planning with the first subject to vehicle repair only and the second that the area must be screened by a sight obscuring fence with a minimum of eight feet. The site plan was displayed by PowerPoint wherein it was noted other zones within the area are R-1, C-5, and R-2. He again reiterated that the R-2 would be kept to the rear so as to maintain a buffer and to prevent any expansion of this use into the area. He stated the Eastdale Plan supports commercial development; however, a precedent for C-2 should not be set for this area.

Attorney Arvin Reingold was present representing the applicant and stated this request is not in any way a downgrading; that it is hoped it is an upgrade. He stated they met with some of the community members in a diplomatic, productive meeting that was enjoyable. He stated in addition to the site fence, Mr. Morgan plans to put in planters and it is hoped he will get something started for the rest of the merchants all the way to Shallowford; that upgrading could be used along that way; that it is a restricted use for a repair shop only. He stated the question arose that once he gets the C-2 something else would be put in clarifying that is absolutely not true; that this is conditional zoning. He stated it is zoned on the condition to be a repair shop only and there will not be junk; that he repairs vehicles he uses in his business. He stated it is hopeful it could work into something the neighborhood would want to do for public use for others.

REZONING (Continued)

Atty. Reingold stated that he really thinks after the meeting with the neighborhood this would enhance the area.

Cynthia Stanley-Cash, President of the North Brainerd Neighborhood Association, stated she was not present to object and complimented Beverly Johnson for suggesting to the applicant that they meet with the community association. She stated they did have a great meeting last night; that Mr. Morgan's plan was presented along with landscaping photos of how they want to beautify. She stated they have no problem with the request; that she would like to get with Planning on what was said tonight with reference to the zoning section.

Councilman Gilbert expressed appreciation to Cynthia and Mr. Morgan for improving the area; that they are in the process of coming together with the community and businesses to see what they want in the area. He stated that he talked with Greg and his colleagues who said they would be happy to sit down and talk with us at a time to be designated in November.

Councilman Murphy asked Atty. Reingold when the applicant took ownership of the property.

Atty. Reingold responded that it was purchased after more than 100 days, which is the required time to be grandfathered-in. He stated that Mr. Morgan thought he was buying C-2.

Councilman Murphy asked when it was purchased.

Atty. Reingold stated about a year-and-a-half ago.

Councilman Murphy stated the owner had a lot of vehicles on that lot with several having had the "jaws of life" used expressing hope they would not be repaired as there are too many. He stated the owner did not have proper screening of a fence and he (Murphy) received complaints about it. He stated he would like for the applicant to address what is intended; that it looked more like a junk yard than auto repair shop, again asking Atty. Reingold to address the plan with regard to that.

Atty. Reingold stated that was ironed out and specifically addressed with the neighborhood. He stated Mr. Morgan has limited use as a repair shop, not for storage of junked cars or inoperable cars; that he will be repairing autos and that is it.

REZONING (Continued)

Atty. Reingold stated as far as what is required he wants to go beyond the screening and put in shrubbery along that strip which was made abundantly clear to the neighborhood that it would be restricted only for automobile repair. He stated he is aware that he would have to stop bringing junked cars and cluttering up the area will be cited.

Councilman Murphy expressed appreciation for that and expressed appreciation also for Atty. Reingold's advocacy on behalf of his client. He stated that he (Morgan) did operate presumably under the same intent and what he saw was storage of vehicles that could not be repaired; that the only thing they were good for were parts. He stated if he is going to get parts he needs to get them from a salvage yard and leave the carcass at the salvage yard, asking if the owner understood. Mr. Morgan responded "yes".

Councilman McGary stated that it was mentioned that Mr. Morgan has been there four years, asking if he were correct; that in the event the business was not a success, God forbid, what would happen to that lot, asking if it would have to be rezoned.

Atty. Reingold stated the Council would have to answer that as it has a restricted use. He stated if he does not use it as mentioned, another use would have to go before the Planning Commission. He stated Mr. Morgan has this restricted condition for use as a repair shop only.

Councilman McGary inquired as to how this use for vehicle repairs only would be enforced, noting, God forbid, someone in the community was to observe some other activity, what recourse would they have.

City Attorney McMahan stated a use out of zone would be subject to a restraining order from court; that action could be by the city or a neighbor who would be offended by this.

At this point, Councilman Rico called for the question.

On motion of Councilman Rico, seconded by Councilwoman Ladd,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 603 TUNNEL BOULEVARD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM C-5 NEIGHBORHOOD COMMERCIAL ZONE
TO C-2 CONVENIENCE COMMERCIAL ZONE AND R-2 RESIDENTIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**
passed first reading; **Councilman Murphy voted "no"**.

REZONING

2009-129: Finella Pinewood, LLC

The applicant was present.

Mr. Haynes stated this request is located at the corner of Pinewood Drive and Gunbarrel in East Brainerd. A copy of the site plan that submitted at the Planning meeting was shown by PowerPoint wherein it was noted there would be ten units on the lower level and two more at an outer edge adjacent to the existing residential zone. A photo was shown of what was rezoned several years ago and it was noted this former development will go away in place of what is planned. He stated current the property is adjacent to Twin Brook Drive; that Planning recommends approval.

Ken Liem of California stated he was here to work with the neighborhood; that it is his belief they have come with the conclusion the neighborhood agrees with what they will do as they will be high end apartments, which is appropriate for the area.

Kenneth Branson stated that he lives adjacent to the property in question and is actually for the complex; that he communicated with several people in Remington Court, the area across the street, and they are in support. He stated the only issue that is being brought up is the traffic; that this is going to be on the corner where there is a downhill slope and he does not know whether anyone has looked at the plot as "Pinewood 500" begins at 5 a.m.! He stated people use this street for a cut through and fortunately no one has been killed, yet; that it is just a matter of time. He stated there was a petition before the Council January 3, 2007 and this Council voted to have speed bumps on the road; that he knows budgets and knows money is tight and in order to put in this development this issue needs to be addressed; that somebody will come down that road, according to the public works department, at an average speed of 44 miles per hour on a 30 mile per hour zone. He stated yesterday at 4 p.m., if any of the Council members were listening to the radio, around the corner on Gunbarrel in a 20 mile per hour zone where an SUV took out a power pole, asking how at 20 miles per hour could that happen; that there could have been a kid involved because across the street is where they stop to get on and off the school buses. He stated his concern is the traffic and the children; that he used to jog on Pinewood but does not any more as he has been run off the road three times. He stated it is a two lane road with a double yellow stripe that is passed by travelers doing 60 miles per hour! He stated if anyone wants to have coffee with him at 5 a.m. he will open his garage door and they can stand there together! He stated the cars and school buses can be counted that speed on this road.

REZONING (Continued)

Chairman Benson stated that he knows what Mr. Branson is saying is true; that the Mayor says it is over engineered.

Mayor Littlefield stated if the road was done again today it would probably be a narrower, rougher road and that will slow it down; then there would be complaints about it being too narrow and too rough!

A resident of Pinewood stated they have a problem with traffic, also, but are in favor of doing this in the residential area and are in support.

Kevin Ayers stated Twin Brook has had several meeting with the developer and it his belief the Council has a copy of the conditions as a result. He stated with the conditions they are in support of this development.

City Attorney McMahan stated there are no conditions attached to the ordinance on his copy or Mrs. O'Neal's (Council Clerk). He stated a copy of the ten conditions are needed.

The applicant stated a copy of the conditions were included with the booklets. Chairman Benson stated that is not the official resolution.

City Attorney McMahan stated the Council should know what the conditions are and read them at this point.

Councilman McGary stated that it is his thought it would be a travesty if the road conditions are not addressed. He asked the Mayor if public works plans to address the speed concerns.

Chairman Benson stated that he talked with someone and it is his hope the possibility of building a little speed curve at the entrance would come true.

Adm. Steve Leach stated a traffic circle at the end is a possibility and having the right-of-way widened can settle this. He stated he does not want to put speed bumps in as this is a major collector and certainly can get the cameras out there and do some enforcement that way. He stated tonight is the first time he has heard about high rates of speed; that part of the issue is what are the traffic concerns versus broader traffic concerns in the area. He stated he would relay the concerns to John VanWinkle and come up with proposed solutions.

REZONING (Continued)

On motion of Councilman Rico, seconded by Councilwoman Robinson
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE TRACTS OF LAND LOCATED AT 7417, 7421, 7423, 7425 AND 7427 PINWOOD DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE AND R-T/Z RESIDENTIAL TOWNHOUSE/ZERO LOT LINE ZONE TO R-3 RESIDENTIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
passed first reading.

REZONING

2009-130: William Lewin

Mr. Haynes stated the request is for R-2 to bring existing duplexes into compliance. After photos of the site and surrounding areas were shown by PowerPoint he indicated that the request is recommended for approval by Planning.

On motion of Councilman Rico, seconded by Councilman McGary,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 4519 BALCOMB STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-2 RESIDENTIAL ZONE
passed first reading.

REZONING

2009-131: Chattanooga Outreach, Inc.

The applicant was present; opposition was in attendance.

Mr. Haynes stated the request is to bring back into use four-unit housing located off Signal Mountain Boulevard on Signal Hills Drive. As photos were shown of the site by PowerPoint, he stated the request is located adjacent to railroad tracks and surrounded by a mixture of zones, is adjacent to R-2 to the north and R-5 to the west which is mostly single family residential. He stated between this property and Signal Mountain Boulevard is C-2 with a few duplexes throughout the neighborhood; that on the side of the tract is mostly commercial. He stated Planning recommends denial of this request.

REZONING (Continued)

Attorney Robin Flores was present representing the Union Gospel Mission. He stated the intent of this property is to house individuals who wind up being homeless and do not have somewhere to stay. He stated the lease agreement signed with the landlord, Volunteer Behavioral Health, is for use of the property for a residence not a group home as he has heard rumblings about; that whatever that definition of group home is remains to be seen. He stated it is no different than having duplexes or apartments for more than one individual to live in is the intent; that the benefit to the community is laid out in just the expenses from the individuals that would reside here – food stamps for 17 out of 21 men to spend approximately over a twelve month period averages about \$48,000 in the community, having two cars at one tank per week at the local gas station at \$60 per week multiplied by 52 (weeks) is an increase in consumerism there. He stated in talking about meals individuals buying locally is approximately \$4,000 per year, miscellaneous stuff with 60 men buying cigarettes and sodas would spend approximately \$20,000 a year and for the hundred households in the area to reach that goal of the influx of expenses for spending in that area, households would have to spend approximately \$754 per year. He stated he hates to state the obvious and sound crude but we have individuals among us that are the least among us who would wind up being under the overpass on Walnut Street or out on Eleventh Street; that the Union Gospel Mission's mission is meritorious to provide housing for individuals to live like they would live in an apartment complex if that analogy can be used. In reference to the opposition, he stated that it appears to be so far of having the individuals in this community suggesting that the homeless are people that are least threatening in any community; that members that actually practice law, noting Councilman Murphy who is on the Council, knows most of the individuals who commit crime are not the homeless. He suggested that the Council think about that in making a decision; that maybe the opposition is geared toward fear of the homeless rather than anything else.

Jon Rector, Director of Chattanooga Outreach, stated the Council just passed a similar case by reinstating a zoning issue to allow for a duplex; that this building has been an existing building. He stated folks from the Volunteer Behavioral Health are present and have used the apartment as a complex; that they are asking for consideration of the zoning law based on what is normal and regulatory based on zoning.

Dawn Pearl, Director of Finance with Volunteer Behavioral Health stated for 20 years they had four apartments and due to funding shifts with the state of Tennessee they had to close this down. She stated when it was boarded up they had to do so because they had unregulated homeless people coming in setting fires and found drug paraphernalia.

REZONING (Continued)

Ms. Pearl stated that they met the police at least eight times while it was unoccupied. She stated they are thrilled that the Union Gospel Mission and Chattanooga Outreach saw this as an opportunity to take a vacant building and do something worthwhile with it. She stated they have replaced the windows, painted, done renovation they could not do due to lack of funding which was mostly done by volunteers who are supportive of their mission. She stated they take mostly private funds; that while the city was passing out funds for mission projects on one hand, here is someone not asking for that from the city and are attempting to do this on their own. She expressed appreciation to the Council for their support.

Robert Spilko of 160 Signal Hills Drive distributed information and read from a prepared statement which has been spread upon the minutes:

*“I represent 91% of the families in the Signal Hills Community. We are against the application made by Mr. Rector for Chattanooga Outreach to rezone from R2 to R4. Mr. Rector runs group homes for men. This rezoning application is not the usual request to rezone an apartment complex. It is an assisted living group home, a halfway house. They are also using buildings located at 124 and 126 Signal Hills Dr. If you will refer to Exhibit A in the handout, these two locations were on the Regional Planning Agency’s August agenda for rezoning and the staff recommendation (on page 2) was to **deny**. The reason for denial (located on page 3) states: the “introduction of such a dissimilar use with the proposed number of residents is less likely to be well absorbed in terms of impact from car trips, activity, and intensity.” This application was withdrawn by Mr. Rector on the day of the zoning meeting; however, they are currently occupying our community having the same impact the RPA sought to avoid. Mr. Rector is operating a campus environment, with one main building and two accessory buildings. **We ask that he be required to apply for zoning at all three buildings as they are being used for the same purpose. Furthermore, we also request as required by city code, and shown in exhibit B, on pages 1 and 2, that Mr. Rector be required to apply for a special permit.** They have applied for R4 as “Assisted Living”, but have no SPECIAL PERMIT. It is my understanding that Assisted Living, Group Homes and Halfway Houses are required to obtain a special permit to operate in Chattanooga. Their locations at 107, 124, and 126 have dramatically altered the character and population density of our neighborhood. The purpose of the special permit process is to foster protection and minimize impact to neighborhoods. We have not been afforded that protection. In the zoning application the RPA stated that the railroad tracks act as a natural buffer between the 107 location and the community. As shown in exhibit C, page 1, the railroad tracks are low lying and do not prevent line of sight from the neighborhood. As shown on page 2, there is only 75 feet from 107 to the neighborhood. The other two locations at 124 and 126 are WELL inside our community, on the other side of the railroad tracks where additional housing, communal meals, program and leisure activities occur. The men travel back and forth between the locations.”*

REZONING (Continued)

*“In addition, there is only one way in and one way out of our community which requires all of the adults and children to travel past the 107 location to get to and from their homes. For these reasons, the railroad tracks are not a buffer. Exhibit D, page 1, shows City code requires 13,500 square feet of lot space for a quad-plex. Page 2 shows the 107 property has approximately 6,300 square feet, less than half the requirement. On page 3, the small lot size does not support adequate off-street parking to accommodate the needs of the total adult male population as there are only 5 spaces. Despite the fact that the application says to comply with “existing usage building,” his intended use does not meet the City Code definition of multi-family dwellings. They do not live independently of each other. They live in a group campus setting, sharing facilities, meals and other institutional resources. Our neighborhood strongly opposes this rezoning request. There are 52 children in our 2 block neighborhood. Exhibit E shows where the school bus picks up and drops the children off. It is 140 feet away from the 107 location. Our children must walk by all three locations twice a day, 5 days a week. The history of these men and the behaviors we have observed place our kids at an unreasonable risk level. For all these reasons and more, 91% of the neighborhood signed a petition in opposition to the rezoning which I have included in exhibit F. **We respectfully request the City Council deny the R4 request. The site does not meet land, parking, or “intended use requirements” as defined by city code. We also request, that Mr. Rector’s business not be allowed to occupy or operate in our community until such time as they obtain the group home special permits that other group homes have been required to obtain.**”*

Teresa Spilko of 160 Signal Hills Drive also spoke in opposition to the request and read from a prepared statement which has been spread upon the minutes:

*“I speak for the Mothers and children in our community. I will explain why you should **deny this zoning request** and require Mr. Rector to **obtain “special permits”** for all the group homes in our neighborhood. Chattanooga’s special permit ordinance was created to protect neighborhoods from organizations that negatively impact people. Our community lost faith in Mr. Rector not long after the first neighborhood meeting in June. It has been very hard on all of us, especially for mothers and the children that can no longer play freely in the neighborhood.*

Mr. Rector made promises to our neighborhood that have not been kept. For example:

- *He said the men would NOT wander throughout the neighborhood but they have.*
- *He told us he has a strict 10:00 p.m. curfew, yet we have seen them out at all hours of the night.*
- *He promised he wouldn’t house anyone with a violent criminal background, but he does.*

Currently Mr. Rector houses two repeat sexual offenders who are classified by law as violent. Their convictions include Sexual Battery, Especially Aggravated Sexual Assault, and the Solicitation of a Minor. Our children have started back to school. One of the offenders lives at the group home you are being asked to rezone tonight. He sits on the steps in the mornings watching our children as they walk by him to the bus. This behavior, while not illegal, is not acceptable to Mothers.

REZONING (Continued)

- *Mr. Rector says he does not house men at his original location, being 124 Signal Hills Drive. If this is the case, then why is one of the sexual offenders registered at 124 Signal Hills Drive as of October 6th. In addition, there is continuous activity in and outside of the building as late as 2:00 in the morning.*

Other men in Mr. Rector's group homes have criminal backgrounds. They need supervision, but that is severely lacking. He is inadequately staffed to provide the help desperately needed for these men at the 3 buildings they frequent.

- *When we invited Mr. Rector to our first neighborhood meeting, he told us the alcoholics in his program had chosen a new path. Mr. Rector stated at a zoning meeting the he does regular drug and alcohol testing. When men were seen with alcohol we asked him about this. He said it was ok for them to drink. Our neighborhood doesn't understand the logic behind this program.*

*Most of these men have made serious mistakes and we wish them no ill will. However, our children are innocent and none of them have chosen a wrong path. They rely on us to safeguard them from strangers who make poor decisions and we must rely on local government to help safeguard our community. This organization does not belong in a residential subdivision. In the beginning, Mr. Rector told us he wanted to partner with the neighborhood. He said "Get to know us." We have watched and waited. We now know Mr. Rector and frankly the peace and trust is gone. **We humbly request that you FIRST vote to deny this rezoning and SECOND Vote to mandate enforcement of the PERMIT APPLICATION requirements as described in City Code.**"*

Mr. Rector rebutted by stating it is one thing to allow accusations to be made and understands that; that he has asked for proof of some of the things that have been said and no one has given it to them; that the Council heard the humor that erupted when it was said he has said it is okay for the residents to drink which is not true. He asked those in attendance in support of the Union Gospel Mission to stand and several stood at this time. He stated they are a part of what the community is asking the city to do and what they are in opposition of are two completely different things. He stated they are asking the city to consider a rezoning for this which is typical and normal as the case the Council just heard where zoning was approved for a duplex that was not grandfathered-in. He stated the opposition's points are not valid; that when this zoning was changed the building already existed and when it was built met all zoning requirements. He stated he does not know if anyone ever used the building as a four-unit and the fact is it has dramatically altered the neighborhood. He stated he could personally speak of five of the closest neighbors, some of which are here in opposition and all five have said they have had no impact from the men being there; that they have seen no negatives other than property value and he did not think that is an issue.

REZONING (Continued)

Mr. Rector stated the other four they talked to said they have no problem and noted they were glad they were there and that came from four of the six closest neighbors. He stated it was also said behavior was observed wherein he again asked for proof; that they go quite a way to staff their guys to give them a curfew but human nature says people will occasionally go against the rules. He stated they do take very good care of their guys as far as trying their best to keep an eye on them; that if behaviors are observed they have asked for people to tell them that. He stated the lady said that he said they did not have anybody with a violent criminal background and that is not what he said; that he said they do not house anybody with a history of violent behavior; that there are some laws that require that violent tag, although the behavior itself was not violent.

At this point, **David Kell**, Pastor of Signal Hills Church for nine years, attempted to speak, however the time for those to speak had expired and Chairman Benson asked the Council for a motion to allow him to speak; no motion was made.

Councilman Murphy stated that he sees the Staff's recommendation on the screen but the Planning Commission recommended denial. He stated he was not there and does not know if any member of the Council was there and asked if there is articulation or rationale for the denial; that he does know we delegate expertise to certain boards and had discussion about one today in committee regarding the transportation board and relied very highly on those recommendations of that board. He asked if there is someone present that could synopsise what the discussion was at Planning and if it was a unanimous vote to deny.

Mr. Haynes stated he does not recall the number of the vote; that there was a difference between Staff and Planning's recommendation. He stated the Staff recommended on a previous request stating that the church was more to the interior of the neighborhood and Staff recommended denial for that. He stated when the new application was made Staff made the recommendation for approval looking at the simple request made for the four-unit residential use at this location and given the surrounding zones the Staff looked at that. He stated when the matter got to the Planning meeting, Planning had the benefit of hearing more input from the residents which the Staff did not; that the Staff looked at it as a simple request for intended use.

Chairman Benson stated that he sat on the Planning Commission and had a lot of sympathy and appreciation for what the Union Gospel Mission has done and when the Staff made the recommendation originally there was some time of about 20-30 days before they met.

REZONING (Continued)

Chairman Benson during that time there was practically a community uprising over what was happening at the other place which made a great deal of difference. He stated at the end of the meeting Mr. Rector said something to him that really was really disturbing because he voted against it that day; that he thought he may have made a mistake but came back and checked on what was said and it was totally in error.

Mr. Rector expressed agreement; that he checked on that, too.

Chairman Benson stated he was glad Mr. Rector said that because somebody's feelings were hurt on that. At this point Mr. Rector expressed apology.

Chairman Benson stated that was the reason for the previous experience; that everyone wants Mr. Rector to succeed in what he is doing, expressing that all appreciate the money that people are pouring from their hearts into it. He stated the Planning Commission decided this is not the appropriate place and it is up to a different body here today.

Councilwoman Scott stated although this building has operated in the past as an apartment complex it has been vacant for a long period of time and during that time, and after when she met with the neighborhood and met with Mr. Rector; that she met with different members of the community, had neighborhood meetings and has had quite a bit of time to examine this issue and look into the zoning on R-2 and R-4. She stated if you look at the lot requirements and building structure requirements for construction today she does not think this building would be approved; it is small, there is not a lot of land to go with it and it actually could function as a duplex, which is exactly how it functioning now. She stated this rezoning of this apartment complex is not going to improve this neighborhood. She stated when you look at why we attempt to rezone an area, she likes to look at what it will do for the neighborhood, will it improve the neighborhood, will it have no effect on the neighborhood and she can not see how it is going to improve the neighborhood as 91 percent of the people who live in the neighborhood oppose it. She stated it is not a big area but when you take 22-25 men and add to it, it does impact and it impacts in many ways. She stated Mr. Rector and the Union Gospel Mission or Chattanooga Outreach arrived in the neighborhood in June and it is not as if we have not had an opportunity to have an experience with the neighborhood; that the neighborhood invited Mr. Rector's group to come to their neighborhood meeting.

REZONING (Continued)

Councilwoman Scott stated they talked and many of the things the Spilkos have said are accurate and, in fact, she could not think a thing they said that was not accurate, even though there were discrepancies one side said and the other, she was present and heard many of the comments they referred to.

Councilwoman Scott stated the other thing is it has been said this particular building will function as just an apartment complex and it really is not an assisted living facility, but if you look at the application which she had a copy of, it talks about a special zoning, request for R-4 special zoning from R-2 residential zone, and the proposed development is an assisted living facility to house a residential men's program. She stated by *Code*, zoned R-2, zoned R-4 special zone and the very one we approved for C-7 tonight requires a special permit to operate an assisted living facility. She stated that she takes opposition to the idea this is not a group home or assisted living and would tell why, because if you look at Chapter 38 on page 3, she read the definition of an assisted living facility, "*Any building establishment, complex which accepts persons for domiciliary care and provides room and board and non-medical living assistance to residents*" -- that is an assisted living facility and what the Council has just heard in representation by Chattanooga Outreach is assisted living. She **made the motion to deny this request for zoning and requested enforcement of the special code permits on every single one of the facilities operating as such in this area.**

Chairman Benson stated the motion should be separated. At this point **Councilwoman Scott restated her motion to deny; Councilman Rico seconded the motion.**

Councilman McGary stated that he heard two issues and wanted clarification; that one was in regard to zoning as he heard tonight one professional representing the Staff say it is actually adequate to be zoned R-4 and his respected colleague, Councilwoman Scott, says she has toured the facility and says it is not. He asked for clarification as to whether or not the parcel of property is actually appropriate to be zoned R-4; that his second issue is a little more nebulous as to the whole notion of safety, and is certainly not an issue he wished to take lightly, as there is something to be said for founded and unfounded fears and wanted to speak to the notion of founded fears. He asked Mr. Rector how many men have been taken into the program, whether they are adequately screened, is this a shelter or a permanent situation and if so how long does a person stay in this situation and if he could speak briefly to the notion of criminal activity. He asked Mr. Haynes to speak first in regard to zoning, specifically "yes or no" if this property is properly zoned for R-4 and then Mr. Rector to speak to the other concerns.

REZONING (Continued)

Mr. Haynes stated the Staff felt it is appropriate to be rezoned R-4 and Planning disagreed with that; that he does not know how much more to expand on that other than the reason already given. He stated it was felt the location was appropriate for R-4 as they were looking at the existing zoning that is there, the location proximity to the neighborhood being at the edge of the neighborhood. He stated activity to and from this site and to the church is another issue, although that is an issue that has to be taken into consideration when reviewing this case. He stated the Staff felt the location and the context with how it sits in the neighborhood was appropriate.

Mr. Rector stated they currently have 20 men who were part of the program at the Church through the Union Gospel Mission; that those men are housed separately with one set in a duplex and one set in the apartment complex based on what the law says they can be. He stated they are not an assisted living facility; that they are required to pay rent or work off the rent by doing work details or accomplishing certain tasks in the program they offer at the church building at 124.

Councilman McGary asked for clarification that they are not homeless.

Mr. Rector stated that is part of the program; that when they come to the program they commit to a minimum of six months of changing their lives going into the program they offer at the church building, whatever their background was whether drugs, alcohol, criminal behavior, whatever the background was they are making their commitment to not be that anymore.

Councilman McGary inquired as to the provision of supervision received.

Mr. Rector stated there are two full time staff people who are on site just about 24 hours a day overseeing them.

Councilman McGary stated to back track to what was said the men stay at Mr. Rector's location for an average of six months, to which Mr. Rector responded "yes". He then inquired as to the screening for eligibility.

Mr. Rector stated when they apply to the program there is an application process that they have gone through in the past, and after meeting with the community, for anybody new they would take in they would do a full background check; that he is not taking anyone new in as they are at the limit of what they can take.

REZONING (Continued)

Mr. Rector stated they would do a full criminal background check on those men to make sure; that they can not force them to register if they need to register and cannot force them to abide by certain things, but they do strenuously require they take care of all their legal issues as they will not harbor anyone from the law; that if they find out one of the guys has a warrant they make them go and take care of that. He stated they will not harbor known criminals or fugitives, and will try to work close to law enforcement on those issues and always have.

Mr. Haynes clarified that R-4 allows residential use; that an assisted living facility does require a special permit which is another application through his office that follows the same process as rezoning. He stated he did not want anyone to be confused to think that assisted living is allowed by right in R-4 and is pretty sure that is correct; that he will double check special permits within R-4.

Councilman McGary stated many know he represents a district that currently houses the homeless off East Eleventh Street; that he stays off Main Street, himself, and has the Chattanooga Rescue Mission next door to his neighborhood and knows what it is like to live in a neighborhood where you have individuals who are homeless, which is why he asked the question. He stated they currently have a program there and also operate akin to a shelter and that is where his concern is about safety being a key issue and a lot of that centers around not our supposed fears or what we think a program is, but in listening to that program and hearing what it is from its own mouth. He stated it is his thought with that being said the issue on the table is what we have heard; he asked Mr. Rector if he is being truthful to his statements or if his statements are actually something being unverified. He stated if, indeed, he (Rector) is a truthful landlord he envisioned if this was to pass the Council Mr. Rector supposedly would not have as many problems as we are hearing tonight, and, if indeed, he is being untruthful he will have more problems than he would want to have on his hands.

Mr. Rector expressed agreement; that when they filled out the zoning application, there is nothing on there about assisted living; that that was placed on "this" (held up the document) piece of paper that the Staff puts out. He stated for the proposed development the staff of RPA put assisted living; that when they changed their direction because of their meetings with the city, the inspectors and the zoning folks, even with. . .

Chairman Benson stated Mr. Rector is saying they are not in violation of any zoning requirements. Mr. Rector responded "yes".

REZONING (Continued)

Councilman Murphy thanked Mr. Rector for being clear in this forum about the social pathologies that many of the chronically homeless have; that too many homeless service providers in Chattanooga try to soft pedal those very strongly. He stated he is a homeless service provider representing them in legal matters not infrequently and he will sit across from them and ask about their criminal background and looking at it on the computer screen to see if they are going to be honest with their lawyer. He stated having said that he is a little bit concerned about two things: (1) the neighborhood's opposition, although extremely ably stated, was very professionally presented and really boils down to not wanting this use in the neighborhood, which he understands. He stated he does not want to say he does not understand that, however, at the same time Mr. McGary has this use in his neighborhood and so it raises the issue of no one goes out and applies to have the homeless service center put in their own neighborhood but it does go somewhere; it has to go somewhere. He stated with respect to Mr. Rector there is a motion and a second on the table to deny and asked if it is denied and it is already zoned R-2 is he going to put the money into renovating this and turning it into a duplex which is very little that can be done to stop him from doing it, assuming he raises the funds to do that.

Mr. Rector stated they are already using it as a duplex; that they are currently using the bottom two apartments out of the four units as an existing duplex because that is what it is zoned as currently.

Councilman Murphy stated so the vote essentially appears to deal with the capacity of Mr. Rector's service.

Mr. Rector stated it deals with ease of use for them; that if they can not use the other two units it will make life a little more difficult for them. He stated should they decide to expand he does not know what their options will be at that point. He stated they are currently using it and is not something that will keep them from using it necessarily.

Atty. Flores stated for clarification the lease for the premises occupied are to just apartments A and B.

Councilwoman Scott stated this is a homeless campus and is not a one structure, it is a campus. She stated it is three separate buildings that are occupied in the middle of a subdivision with one of them on the side. She stated every single child in this neighborhood has to walk by all three of these structures, every single neighborhood child.

REZONING (Continued)

Councilwoman Scott stated there has been an impact to the neighborhood; that they have been there five months and she has had experience with listening to people, has been to this neighborhood, has gone into the neighborhood and parked her car and watched and what she heard today from Mr. Rector is different on many things; that when he spoke to the neighborhood group he explained the staffing and she guessed it has doubled in size since the last time, asking if he said it was two people almost 24 hours a day monitoring three facilities; is that what he is telling her.

Mr. Rector stated to clear up any confusion he has a total of four staff: himself, Wayne Hamill, Director of Program Services and two volunteer staff -- Tim Operaman and the other is James Lawrence. He stated there are four of them total, with James and Tim as volunteer staff who live on the site; that one of the two are always there. He stated if he confused with his answer he apologized.

Councilwoman Scott stated so it is not true there are not two people 24 hours a day.

Mr. Rector responded "no"; that that was misstated and apologized noting that was not his intent. He stated they have two people who live there; that basically 24 hours a day there are two people there but it is not scheduled that way.

Councilwoman Scott stated that is sort of a good example of what we have seen for the last five weeks!

Councilwoman Berz stated that she needed clarification that this is zoning and the first time the Council looked at this matter it was a church that was wrongly occupied for zoning safety, etc., with people living in it, asking if this is the same piece.

Mr. Haynes indicated that was a different site.

Councilwoman Berz asked for help in understanding how this expanded into a campus.

Mr. Haynes stated he was not sure about the campus part and can not answer it.

Councilwoman Berz stated that she remembered when Mr. Rector talked about the church building and there were some problems with that with reference to health standards and now all of a sudden it is a campus.

REZONING (Continued)

Councilwoman Berz stated she is not making this a judgment call and asked if he is wrongly occupying other places.

Mr. Rector responded "no". He stated their initial intent with the program was to house their program men in the basement of the church. He stated due to the outcry of the neighborhood, city inspectors came in and were not satisfied with the facility and they were told they would have to house these men somewhere else. He stated they have access to a duplex that is beside the church that is currently being used as a duplex with a signed lease which he did not have with him. He stated the other option was an apartment building that they lease from Volunteer Behavioral Health and used until they could get it rezoned; that they are using the bottom two apartment units. He stated the term campus is one the opposition is using and not one they are using.

Councilwoman Berz stated in these four units there are two in each place and asked if they are housing five men per unit.

Mr. Rector stated two units have four men and one unit has a little more; that they are following the guidelines of the law that says a unit can have one family unit and up to three unrelated guests and they are in compliance with that.

Councilwoman Berz stated one family and three unrelated guests ...

Mr. Rector stated that is the city's definition.

Councilwoman Berz stated that she is trying to figure out the compliance and asked who the "family" is.

Mr. Rector stated any family unit, if it is one person that is a unit; that all this was their move from housing in the church to making a move based on our conversations with city inspectors and City Attorney Mike McMahan and all agreed this was a good option for us to use.

Councilwoman Berz asked all the persons **opposed** to the request that **live** in the neighborhood to raise their hands; several raised their hands at this time. She stated that she noticed a big group of **people who were for it** and other than the people who are already living there in their homes she and asked how many of them **live** in the neighborhood; not anyone raised their hands or stood.

At this point, Councilman Rico called for the question on the motion to deny.

REZONING (Continued)

Councilwoman Ladd stated during the time this organization has been in the neighborhood she has received numerous calls and letters from residents concerned and repeating the safety issues they are concerned about and activities they have been observed. She stated as Dr. Berz brought up, we first began hearing of this organization in this neighborhood while occupying the church and were told by Chief Parker there were numerous violations he had repeatedly told them needed to be corrected and they needed to move out of the structure. She stated it is her belief they operated in an irresponsible manner to this point and does not believe this is a good safe fit for this neighborhood. She stated she is for neighborhoods and does not think this is a good idea for the neighborhood.

Councilman McGary stated much has been made with reference to the safety of children. He asked Mr. Rector has he or if he would ever house pedophiles on his campus.

Mr. Rector responded "yes" to Councilman McGary's question. He stated in response to what Councilwoman Ladd said, neither the Chief of Police nor anyone ever came out to tell them they had to stop doing what they were doing until this Council voted to file a law suit against them which was incredibly an overblown step. He stated if at any time an inspector or police said they had to stop that now they would have stopped then.

Councilman Rico called for the question.

At this point the vote was taken on the motion to deny; the request was denied.

Councilwoman Scott then made the motion that they be required to file a permit for all residential homes.

Chairman Benson asked if they are required to have a permit.

City Attorney McMahan stated that is really, very strictly an administrative function and not legislative; that the Council can not tell them as it is up to the Mayor and staff to do that.

Chairman Benson stated the staff will have to see if it is applicable to the *Code* if they make a permit request.

Mayor Littlefield acknowledged "we will do that".

REZONING (Continued)

On motion of Councilwoman Scott, seconded by Councilman Rico,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 107 SIGNAL HILLS DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO R-4 SPECIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
was denied; Councilman McGary voted "no".

AMEND BUDGET ORDINANCE NO. 12251

On motion of Councilman Murphy, seconded by Councilwoman Berz,
AN ORDINANCE TO AMEND ORDINANCE NO. 12251, "PROVIDING FOR AN INTERIM BUDGET AND APPROPRIATING FUNDS FOR THE USUAL AND ORDINARY EXPENSES OF THE CITY GOVERNMENT FOR THE MONTHS OF JULY, AUGUST AND SEPTEMBER 2009," TO EXTEND THE INTERIM PERIOD FOR THE INTERCEPTOR SEWER SYSTEM THROUGH DECEMBER 2009, PENDING THE ADOPTION OF THE 2009-2010 ANNUAL BUDGET
was adopted.

SPECIAL POLICEMAN

On motion of Councilman Rico, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING THE APPOINTMENT OF GUY SATTERFIELD AS SPECIAL POLICE OFFICER (UNARMED) FOR THE CITY OF CHATTANOOGA TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS
was adopted.

BROWNFIELDS CLEANUP GRANT

On motion of Councilman Rico, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND, IF AWARDED, ACCEPT A 2010 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BROWNFIELDS CLEANUP GRANT FOR CLEAN UP OF PROPERTY ON TENNESSEE AVENUE, IN AN AMOUNT UP TO TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), AND FURTHER AUTHORIZING MATCHING FUNDS OF TWENTY PERCENT (20%) OF THE GRANT, OR AN AMOUNT UP TO FORTY THOUSAND DOLLARS (\$40,000.00)
was adopted.

EXTENSION OF LEASE

On motion of Councilman Rico, seconded by Councilwoman Berz,
A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO EXECUTE A ONE-YEAR EXTENSION OF THE EASTGATE LIBRARY PROPERTY LEASE, BEGINNING NOVEMBER 1, 2009 THROUGH OCTOBER 31, 2010, FOR THE AMOUNT OF FIFTY-NINE THOUSAND FORTY-SIX DOLLARS (\$59,046.00) ANNUALLY
was adopted.

EXCHANGE OF CITY-OWNED PROPERTY

On motion of Councilman Rico, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE EXCHANGE OF CITY-OWNED PROPERTY LOCATED ON MERCER STREET AND SHOLAR AVENUE TO JOHN MCDONALD FOR PROPERTY LOCATED AT 628 OLIVER STREET, ALL OF WHICH ARE MORE PARTICULARLY DESCRIBED HEREIN, AND AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY FOR SAID EXCHANGE
was adopted.

AGREEMENT

On motion of councilman Rico, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE CHIEF OF THE CHATTANOOGA POLICE DEPARTMENT TO ENTER INTO A FIVE (5) YEAR AGREEMENT WITH THE U.S. NUCLEAR REGULATORY COMMISSION ("NRC") FOR THE NRC TO USE CHATTANOOGA POLICE DEPARTMENT FACILITIES TO PROVIDE TRAINING COURSES FOR NRC PERSONNEL AND CONTRACTORS, FOR AN AMOUNT PAYABLE TO THE CITY OF CHATTANOOGA OF FORTY THOUSAND FOUR HUNDRED AND FIFTY DOLLARS (\$40,450.00) ANNUALLY, THE AGREEMENT BEING ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE
was adopted.

CHANGE ORDER

On motion of councilman Rico, seconded by Councilwoman Ladd,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1 RELATIVE TO CONTRACT NO. W-07-003-101, IMPROVEMENTS TO OXYGEN GENERATION SYSTEM AT MOCCASIN BEND WASTEWATER TREATMENT PLANT, WITH CONSOLIDATED TECHNOLOGIES, INC., WHICH CHANGE ORDER INCREASES THE CONTRACT AMOUNT BY SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED ONE HUNDRED TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$125,500.00)
was adopted; Councilwoman Scott voted "no".

CHANGE ORDER

Councilmen Rico and Ladd made the motion and second to adopt this resolution.

Councilwoman Berz inquired as to why the Council is getting this after the fact.

Adm. Leach explained this was done under the contract amount; that the contingency allowed them to apply and get funds from the state's revolving fund; that they are going to be reimbursed for expenses on the project as the project is complete. He stated they are trying to close that portion of the project and get their revenue, money back from the state's revolving fund, and the only way to do that is with this resolution stating the exact amount of money on the contract.

Councilwoman Berz stated that she knows all that and understands and is not disagreeing; that she is trying to get to when we knew there was a change order, as soon as we knew even though it fell within the guidelines, asking why the Council was not given that to approve at that time.

Adm. Leach stated when the original contract was approved they did have this within the contingency, that this is within that contingency, which is what they have as they go through that process.

Councilwoman Berz clarified she is not arguing with them.

Lee Norris stated that it is very simple; that in the contracting world the most perfect state is if we have a change order, before we execute the change order we would come before the Council and say would you please approve this change order, this is why we need it and by the way we need the money, also.

Councilwoman Berz inquired as to whether it falls within what the Council approved earlier.

Mr. Norris responded "no"; that was the way it was when he came to the city seven years ago; that in his experience in dealing with some other construction programs, he talked to the "then" administrator of public works who suggested we go to a manner of contingencies. He stated to get a change order approved by Council they have to get the information into the City Attorney's office by a certain time; then they have a time to get it to the Council before it can be approved. He stated the contractor cannot move forward with that project because we had no money.

CHANGE ORDER (Continued)

Mr. Norris stated what they did was they went in and started the contingency portion of it and approved the change order on site as there was no doubt it was needed and they knew they had the money. He stated they did not have to shut down the project for the time period it would take to get it to the Council and approved and admitted that the process is cumbersome and time consuming. He stated rather than delaying the contract because they wanted all the work done they got a change order with the contractor and completed it and for those reasons they did not need more money than asked for up front.

Councilwoman Berz asked when they were completed.

Mr. Norris stated there were 18 changes with 18 different things in this one change order.

Councilwoman Berz stated she is trusting they did the right thing; that she wonders how far after the fact was it the Council found out about it.

Mr. Norris stated that they might have executed each one individually; that it may have been that they do them as they came and then sit down and write up one change order. He stated this one was on December 30 when 660 linear feet of copper tubing was replaced for a total of \$39,359, of which \$35,668 was paid for under \$50,000 on schedule two. He stated they could have come back and done that with the Council and the fact of the matter is the engineer had negotiated this with the contractors and it was reviewed by staff; that they already had the contingency up front for that and did not waste the time.

Councilwoman Berz stated she is not arguing all that; that she was wondering about resolutions "f" and "g" as the total contract for "g" was not to exceed \$5,027,544.59 and asked when that was completed.

Alice Canella stated it was completed about a week ago; that were some final completion items that included 18 change requests.

Councilwoman Berz asked if "f" goes along with that, as well; whether it is part of the same project.

Adm. Leach stated that was the engineer's part.

Councilwoman Berz asked when was their "stuff" finished.

Ms. Canella responded "at the same time"; that they keep a representative on site.

CHANGE ORDER (Continued)

Councilwoman Berz stated this came to the Council a week after it was completed. Ms. Canella responded "with a final total, yes".

Mr. Norris stated the earlier one was December 2008; that it ran from December 2008 up to and including August 6.

Councilwoman Berz expressed thanks; that she was trying to "get her arms around" how we are approving all this after the fact; that she "has the picture".

Councilwoman Scott asked if the project started in 2008 or 2007.

Mr. Norris stated the earliest change order was December 13, noting that he did not have the contract with him; that it was mid-December 2008 and would have been seven-to-eight months.

At this point Councilman Rico called for the question.

On motion of Councilman Rico, seconded by Councilwoman Ladd,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1 RELATIVE TO CONTRACT NO. W-07-003-201 (28J1), IMPROVEMENTS TO OXYGEN GENERATION SYSTEM AT MOCCASIN BEND WASTEWATER TREATMENT PLANT, WITH H & H BROWN, INC., FROM THE CONTINGENCY FUNDS PREVIOUSLY AUTHORIZED, WHICH CHANGE ORDER INCREASES THE CONTRACT AMOUNT BY FOUR HUNDRED EIGHTY-ONE THOUSAND SIX HUNDRED FORTY-FOUR AND 59/100 DOLLARS (\$481,644.59), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED FIVE MILLION TWENTY-SEVEN THOUSAND FIVE HUNDRED FORTY-FOUR AND 59/100 DOLLARS (\$5,027,544.59)

was adopted; Councilwoman Scott voted "no".

CHANGE ORDER

On motion of Councilman McGary, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1 RELATIVE TO CONTRACT NO. E-08-024-101, TRAFFIC IMPACT STUDY FOR 36 INTERSECTIONS AND 4 RAIL CROSSINGS NEAR THE VOLKSWAGEN FACILITY AT ENTERPRISE SOUTH INDUSTRIAL PARK, WITH VOLKERT & ASSOCIATES, INC., WHICH CHANGE ORDER INCREASES THE CONTRACT AMOUNT BY FORTY-NINE THOUSAND SEVEN HUNDRED DOLLARS (\$49,700.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED TWO HUNDRED SIXTEEN THOUSAND DOLLARS (\$216,000.00)

was adopted; Councilwoman Scott voted "no".

CHANGE ORDER

Adm. Leach stated this resulted in retention on the contract to build a CSO facility in Warner Park and that project lasted longer than intended. He stated this allowed them to have engineering presence on the site based on the state's revolving fund project and they stayed on the site longer than originally intended. He stated they have the ability to go back to the contractor to extend the contract to get some liquidated damages.

Councilwoman Berz asked if that ability would be used to which Adm. Leach responded "correct".

On motion of Councilman Murphy, seconded by Councilman McGary,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 4 RELATIVE TO CONTRACT NO. W-05-007-102, WARNER PARK COMBINED SEWER OVERFLOW (CSO) CONTROL FACILITY, WITH CONSOLIDATED TECHNOLOGIES, INC., WHICH CHANGE ORDER INCREASES THE CONTRACT AMOUNT BY FIFTY-SEVEN THOUSAND DOLLARS (\$57,000.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED FIVE HUNDRED TWENTY-EIGHT THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$528,550.00)

was adopted; Councilwoman Scott voted "no".

BROWNFIELDS COALITION

On motion of Councilman Murphy, seconded by Councilwoman Ladd,
A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ANY RELATED DOCUMENTS FOR THE CITY OF CHATTANOOGA TO BE A MEMBER OF A BROWNFIELDS COALITION WITH OTHER REGIONAL AND LOCAL GOVERNMENTAL ENTITIES IN ORDER TO APPLY FOR A BROWNFIELD COALITION GRANT FROM THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, IN THE AMOUNT UP TO ONE MILLION DOLLARS (\$1,000,000.00)

was adopted.

GRANT

On motion of Councilman Rico, seconded by Councilman Murphy,

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND, IF AWARDED, ACCEPT A 2010 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BROWNFIELDS CLEANUP GRANT FOR CLEAN UP OF THE OLD 36TH STREET LANDFILL, IN AN AMOUNT UP TO TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), AND FURTHER AUTHORIZING MATCHING FUNDS OF TWENTY PERCENT (20%) OF THE GRANT, OR AN AMOUNT UP TO FORTY THOUSAND DOLLARS (\$40,000.00)

was adopted.

EXPRESSION OF SUPPORT

On motion of Councilwoman Robinson, seconded by Councilman Murphy,

A RESOLUTION EXPRESSING THE CITY COUNCIL'S SUPPORT OF EFFORTS TO ALLOW PHOTO ENFORCEMENT PROGRAMS TO BE USED TO IMPROVE TRAFFIC SAFETY ON THE STATE'S STREETS AND HIGHWAYS

was adopted.

OVERTIME

Overtime for the week ending October 8, 2009 totaled \$45,682.85.

PERSONNEL

The following personnel matters were reported for the various departments:

GENERAL SERVICES:

- **TOMMY VERHINE** – Suspension (25 days without pay), Equipment Mechanic 3, effective September 28, 2009.

PUBLIC WORKS DEPARTMENT:

- **JEFFREY L. GILBERT** – Suspension (5 days without pay), Crew Worker 3, Traffic Engineering, effective October 8-14, 2009.

PERSONNEL (Continued)

INFORMATION SERVICES:

- **ZAINAB ABDULAMEER** – Hire, Programmer 1, Range 18, \$52,600.00 annually, effective October 8, 2009.

PARKS AND RECREATION:

- **TIMOTHY HILT** – Termination, Crew Worker 1, effective September 30, 2009.
- **DONALD MORRIS** – Hire, Recreation Specialist (Part-time), \$11.38 hourly rate, effective October 9, 2009.

CHATTANOOGA POLICE DEPARTMENT:

- **DEBORAH JOHNSON** – Hire, School Patrol Officer, \$15.08 hourly rate, effective September 25, 2009.

CHATTANOOG FIRE DEPARTMENT:

- **DAVID ANDERSON** – Leave of Absence (30 days), Staff Captain, effective October 12, 2009.
- **SCOTT BAILIFF** – Promotion, Senior Firefighter, Range F2A, \$36,004.00 annually, effective October 9, 2009.
- **JOEL NIX** – Leave of Absence, Firefighter, effective October 3,5,7, 2009.

REJECT ALL BIDS

On motion of Councilwoman Berz, seconded by Councilman Murphy, all bids were rejected on R0120668 for the Police Department for the purchase of a surveillance system. A different plan of action will be pursued that will allow the phase-in of a new system alongside the current system to reduce costs and increase functionality.

PURCHASES

On motion of Councilwoman Berz, seconded by Councilman Murphy, the following purchases were approved for use by the various departments:

CHATTANOOGA POLICE DEPARTMENT:

TRINITY HIGHWAY PRODUCTS LLC
R0126421/B0006364

Guardrails (Only bidder)

\$15,000.00

PUBLIC WORKS DEPARTMENT:

NEWBY TREE FARMS, HIDDEN VALLEY NURSERY, PLEASANT COVE NURSERY,
MOON'S TREE FARM (Multiple contracts, Best bids)
R0127332/B0006369

Blanket Contract for Supply and Delivery of Trees

Newby	\$6,400.00
Hidden Valley	8,245.00
Pleasant Cove	3,956.50
Moon's	2,500.00

CHATTANOOGA FIRE DEPARTMENT:

TENNESSEE FIRE EQUIPMENT (Best proposal)
RFP/R0125861

Urban Search and Rescue Work Boots

\$18,445.00

APPOINTMENT OF DAVID BROOKS AS FIRE MARSHALL

Mayor Littlefield stated some things come as no surprise to members of the Council. He stated David Brooks has been serving in the interim capacity as Fire Marshall for 80 days and has done an excellent job. He stated when we began to make the change he received a call from the former Chief of the Fire Department who wanted to speak with him to about the suggestion of a personnel change not knowing he was going to suggest promoting David Brooks. He stated that he is proud to make him the next Fire Marshall and introduced him to the Council in this new capacity. He stated David has "made" the position and achieved this position in fewer years than anyone as far back as can be tracked as he has only been in the department 13 years and is already at the Chief's level. He congratulated Fire Marshall Brooks and expressed hope the Council would join in celebrating this achievement in his career. At this point Fire Marshall Brooks was given a standing ovation by those in attendance.

Fire Marshall David Brooks expressed thanks to Mayor Littlefield, the Council members, Fire Chief Parker, the firefighter family, friends and citizens of the city for allowing him to serve as Fire Marshall for Chattanooga. He stated he would be remiss if he did not thank his family and wife for their support and understanding for the long hours and weekends he has sacrificed while serving the community as Assistant Fire Marshall for the last ten years. He also thanked those who served before him and allowed him to "stand high on their shoulders" to reach his goal. He noted that roughly 3,000 die in fires each year and as a result of home fires a total 200,000 people are sent to our emergency room for injuries and burns; that he recognizes this is a serious problem and there is a need for everyone to change their attitude and behavior in regard to fire prevention. He assured all in attendance he would try to go far beyond what is expected of him, again noting it is an honor and privilege to serve.

Councilman McGary stated he wanted to be the first on the Council to congratulate Mr. Brooks and congratulated him and his family expressing confidence he would serve well.

Councilman Gilbert stated Mr. Brooks is a dedicated fireman of the department and city and expressed thanks to the Mayor for the decision made in confirming him.

Councilman Murphy clarified to Councilman McGary that he was proud to shake Mr. Brooks' hand first! He again offered congratulations!

**APPOINTMENT OF DAVID BROOKS AS FIRE
MARSHALL (Continued)**

Councilwoman Berz expressed how proud she was of Mr. Brooks; that it was just great! She noted that the Mayor made a wonderful, wonderful choice of her good friend and congratulated him.

HEARING: KENNETH FREEMAN

City Attorney McMahan reminded Council members of the hearing scheduled for Kenneth Freeman on Monday, October 19 beginning at 9:30 a.m. He stated all Council members agreed to serve who would be available; that it is a Committee of the Whole.

COMMITTEES

Councilman Rico reminded Council members of the meeting of the **Public Works Committee** scheduled for **Tuesday, October 20** immediately following the agenda session.

Councilman Murphy stated the **Legal and Legislative Committee** would meet on **Tuesday, October 20** at the end of the Committee schedule.

Councilman McGary stated the **Education, Arts and Culture Committee** would meet on **Tuesday, October 20** to continue discussion regarding alcohol and wine sales at the Memorial Auditorium and Tivoli.

Councilwoman Ladd stated the **Safety Committee** is scheduled to meet on **Tuesday, October 27** to discuss the issue of 911. She also added that the new Fire Marshall is a resident of District 3!

Councilman Gilbert stated the **Parks and Recreation Committee** will meet on **Tuesday, October 20** to discuss the contract with the Trust for Public Land, a grant from the Tennessee Department of Education and hear the final report regarding The Summit.

Councilwoman Berz stated the **Budget, Finance and Personnel Committee** will meet at **2 p.m. on Tuesday, October 20** to continue discussion/consideration regarding personnel employment and insurance matters, noting that it is an open meeting.

NEXT WEEK'S AGENDA: OCTOBER 20, 2009

Ordinances - Final Reading:

- a) An ordinance adopting a Plan of Services and extending the corporate limits of the City of Chattanooga, Tennessee, to annex certain territory contiguous to the present corporate limits of the City of Chattanooga known as area 3A, being certain parcels adjacent to Interstate 24 and the Tennessee River within the Urban Growth Boundary of the City of Chattanooga, in Hamilton County, Tennessee, as shown by the attached map. **(Revised.) (Public Hearing.)**

- b) An ordinance adopting a Plan of Services and extending the corporate limits of the City of Chattanooga, Tennessee, to annex certain territory contiguous to the present corporate limits of the City of Chattanooga known as area 4B, being certain parcels adjacent to streets including, but not limited to Stonington, Gold Crest, Dahl Springs, and Fairview Road within the Urban Growth Boundary of the City of Chattanooga, in Hamilton County, Tennessee, as shown by the attached map. **(Recommended for approval by the Mayor.) (Public Hearing.)**

An ordinance adopting a Plan of Services and extending the corporate limits of the City of Chattanooga, Tennessee, to annex certain territory contiguous to the present corporate limits of the City of Chattanooga known as area 4B, being certain parcels adjacent to streets including, but not limited to Stonington, Gold Crest, Dahl Springs, Houser Ridge, Ely Ford, Bullock, Manassas Gap, Dove Field, Jackson Mill, Rapidan River, Orange Plank, Bayonet, Brigade, Musket, Clearwater, Cotter, and Fairview Road within the Urban Growth Boundary of the City of Chattanooga, in Hamilton County, Tennessee, as shown by the attached map. **(Original version.)**

- c) MR-2009-125 Charles L. Harrison (Close & Abandon). An ordinance closing and abandoning two alleys located off of the east line of the 1900 block of Myrtle Street, more particularly described herein. **(Not recommended for approval by Planning or Public Works – see alternate version.)**

NEXT WEEK'S AGENDA: OCTOBER 20, 2009
(Continued)

MR-2009-125 Charles L. Harrison (Close & Abandon). An ordinance closing and abandoning two alleys located off of the east line of the 1900 block of Myrtle Street, more particularly described herein, subject to certain conditions. **(Recommended for approval by Planning and Public Works.)**

Ordinances – First Reading:

- a) An ordinance adopting a Plan of Services and extending the corporate limits of the City of Chattanooga, Tennessee, to annex certain territory contiguous to the present corporate limits of the City of Chattanooga known as area 3C, which includes certain properties adjacent to Ruby Falls and the U.S. Park Service Land Resource Division, on the side of Lookout Mountain, within the Urban Growth Boundary of the City of Chattanooga, in Hamilton County, Tennessee, as shown by the attached map. **(Public Hearing.)**
- b) An ordinance adopting a Plan of Services and extending the corporate limits of the City of Chattanooga, Tennessee, to annex certain territory contiguous to the present corporate limits of the City of Chattanooga known as area 6A, which includes certain properties adjacent to the western right-of-way of Highway 58 and Turkeyfoot Road within the Urban Growth Boundary of the City of Chattanooga, in Hamilton County, Tennessee, as shown by the attached map. **(Public Hearing.)**
- c) An ordinance adopting a Plan of Services and extending the corporate limits of the City of Chattanooga, Tennessee, to annex certain territory contiguous to the present corporate limits of the City of Chattanooga known as area 6B, which includes certain properties adjacent to the western right-of-way of Highway 58 and adjacent to the right-of-way for Hickory Valley Road within the Urban Growth Boundary of the City of Chattanooga, in Hamilton County, Tennessee, as shown by the attached map. **(Public Hearing.)**
- d) An ordinance adopting a Plan of Services and extending the corporate limits of the City of Chattanooga, Tennessee, to annex certain territory contiguous to the present corporate limits of the City of Chattanooga known as area 6C, which includes certain properties adjacent to the eastern and western rights-of-way of

NEXT WEEK'S AGENDA: OCTOBER 20, 2009
(Continued)

Highway 58 up to its intersection with Harrison-Ooltewah Road, including portions of other streets named Bent Pine, Congress, Deerwood, Mahlon, Clark, Church, Tyner, and Easter, within the Urban Growth Boundary of the City of Chattanooga, in Hamilton County, Tennessee, as shown by the attached map. **(Public Hearing.)**

- e) MR-2009-112 Chestnut Properties, LLC (Close & Abandon). An ordinance closing and abandoning the 900 block of East 23rd Street, a portion of the unopened 2000 block of East End Avenue, and a portion of an unopened alley located on the west line of the 2000 block of Central Avenue, more particularly described herein.

MR-2009-112 Chestnut Properties, LLC (Close & Abandon). An ordinance closing and abandoning the 900 block of East 23rd Street, a portion of the unopened 2000 block of East End Avenue, and a portion of an unopened alley located on the west line of the 2000 block of Central Avenue, more particularly described herein. **(Recommended for approval by Public Works.)**

- f) MR-2009-121 Kirti Naik (Close & Abandon). An ordinance closing and abandoning an unopened alley located off of the 2100 block of East 23rd Street, more particularly described herein.

MR-2009-121 Kirti Naik (Close & Abandon). An ordinance closing and abandoning an unopened alley located off of the 2100 block of East 23rd Street, more particularly described herein, and subject to certain conditions. **(Recommended for approval by Public Works.)**

Resolutions:

- a) A resolution authorizing the Director of General Services to execute a lease with the Tennessee Valley Regional Communications System for a tower site located on Cross Mountain in an amount not to exceed \$12,000.00.
- b) A resolution authorizing the Director of General Services to execute a lease with the Tennessee Valley Regional Communications System for a tower site located on Windrock Mountain in an amount not to exceed \$12,000.00.

NEXT WEEK'S AGENDA: OCTOBER 20, 2009
(Continued)

- c) A resolution authorizing the award of Contract No. W-05-007-203, North Warner Park Stormwater Detention Basin, to Thomas Brothers Construction Company, Inc. in the amount of \$1,703,999.00, plus a contingency amount of \$170,000.00, for a total amount not to exceed \$1,873,999.00, subject to SRF Loan Funding approval.

- d) A resolution authorizing the execution of Change Order No. 1 relative to Contract No. W08-005, performance testing with the J-VAP Remedial Action, with Jordan, Jones & Goulding (JJ&G), which change order is for an increase in an amount not to exceed \$4,000.00. This increases the original contract cost from \$143,850.00 to \$147,850.00.

- e) A resolution authorizing the Chattanooga-Hamilton County Regional Planning Agency to develop a Land Use and Redevelopment Plan for the Missionary Ridge Area which includes all of Missionary Ridge as well as parts of the East Lake, Ridgeside, Glenwood, Foxwood Heights, and Avondale Neighborhoods.

RECESS

Chairman Benson recessed the meeting of the Chattanooga Council at this time for the public hearing on the annexation of Area 3A.

Council Building
Chattanooga, Tennessee
October 13, 2009
Annexation Public Hearing: Area 3A
7:00 p.m.

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

PUBLIC HEARING TRANSCRIPT

A complete transcript of the public hearing proceedings is available at http://www.chattanooga.gov/annexation/annexation_info.htm.

ADJOURNMENT

At the close of the public hearing, Chairman Benson adjourned the meeting of the Chattanooga Council until Tuesday, October 20, 2009 at 6:00 p.m.

CHAIRMAN

CLERK OF COUNCIL

A LIST OF NAMES OF PERSONS IN ATTENDANCE AT THE COUNCIL MEETING
AND ANNEXATION PUBLIC HEARING FOR AREA 3A
IS FILED WITH MINUTE MATERIAL OF THIS DATE