

LEGAL AND LEGISLATIVE COMMITTEE

May 14, 2002

3:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Benson, Chairman, with Councilmen Littlefield, Robinson, Page, and Franklin being present. City Attorney Randall Nelson, Management Analyst Randy Burns, and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Mike Compton, Amy Walker Cherry, and Jerry Pace. John Bridger joined the meeting later.

PLANNING ISSUES

Chairman Benson called the meeting to order and asked Mr. Pace to go over Reginald Ruff's Preliminary PUD, known as the Spencer J. McCallie Homes Planned Unit Development on a tract of land located at 3500 Kirkland Ave.

Mr. Pace explained that this was a Preliminary Residential PUD for the McCallie Homes and comes with a recommendation for approval from the Subdivision Review Board. The north part and the north 120 ft. along 38th St. will be removed. Mr. Pace explained that this is more suited for a commercial-residential mix and a PUD does not allow commercial; that this will allow mixed use of commercial along 38th Street. He stated that Mr. Ruff had met the requirements of the Subdivision Review process and that Planning had no problem with this; that the area is in desperate need of revitalization, and they were hoping for an institutional type use such as a school on the site—that this was a great opportunity.

Councilman Page asked if there was any opposition at the Planning Commission meeting, and the answer was "no".

On motion of Councilwoman Robinson, seconded by Councilman Page, this will be recommended to the full Council.

CONCORD NEIGHBORHOOD CONCERNS

Chairman Benson stated that he had talked to Councilman Littlefield about the Legal and Legislative Committee's function down the road and that he had something to throw in the Council's face this evening; that the community of Concord was upset and were united in their opposition to develop on the side of the hill going toward Knoxville; that the developer was hauling pine trees down a narrow road, and there were trucks full of logs going up and down the road that was narrow with ditches on each side and was dangerous to school children; that the people were emotional and upset and would be here tonight.

Chairman Benson explained that they were not blaming the City for their lack of effort but were asking the City to be able to tighten the code and to enforce the code to prevent neighborhoods from having a negative impact; that this developer had maximized to the very limit the use of his land at a cost to the neighborhood's property.

Councilwoman Robinson asked what the developer was doing. Chairman Benson explained that he had planned to put 120 townhouses here and Planning did not approve this; that Mr. Stephens was now planning to put duplexes here, which are allowed. Chairman Benson went on to say that people were coming from Tyner, where Mr. Stephens had a similar development. He stated that this would be terrible looking from the freeway; that these people were coming down to ask the City what they could do, knowing that they could not keep business off the roads.

Attorney Nelson stated that something could be done if it were disturbing the area.

Chairman Benson stated that it was tearing up the whole community.

Mr. Pace noted that Mr. Stephens had asked that this rezoning case be withdrawn.

Chairman Benson acknowledged that the case had been withdrawn but because of his previous history, the neighbors felt like they were being punished.

Mr. Pace noted that Mr. Stephens could put duplexes on this property, and he was clearing his land.

John Bridger stated that the big question was the carrying capacity of the road. Mr. Pace reiterated that Mr. Stephens had withdrawn his case. Mr. Bridger asked if through the permitting process the Planning Staff had the legal authority to limit the number of units being built because of a safety issue. Attorney Nelson responded that they would have to make an awfully compelling case.

Councilman Page asked if it were a feasible thing to look at the policy regarding the trucks. Attorney Nelson explained that our Code is designed to prevent small roads being used as thoroughfares but not for occasional use where the area is being served by trucks going through. He used as an example, moving vans, which have to use the roads, explaining that this is the same type of thing.

Mr. Pace pointed out that other developers had had to use large trucks in this area to clear the land where these people are now living.

Chairman Benson noted that so many people were involved and so many houses and that this developer was maximizing his profits and these peoples' property values would drop.

Mr. Pace pointed out that the developer would have to contain the water on this property. Attorney Nelson noted that if he changed the drainage patterns and caused damage that he would be held liable.

Councilman Littlefield stated that a certain nearby State had an enabling bond for clearing, and if there was any destruction of a road, they had to repair the road or forfeit their bond.

Attorney Nelson explained that we would have to show that they are causing the damage; that this had been addressed with the State making Graysville Rd. a two-axle road when there was an attempt to put a hazardous waste facility there.

Councilman Page asked if there was any type of policy that says a developer has to keep the road clear as they develop a subdivision; that says they can't tear up roads in the process of building; also if anything was addressed as to the roads being big enough to carry the traffic and the cost if they had to be widened.

Attorney Nelson explained that there is a minimum square footage required for a duplex, which is 9,500 sq. ft. per lot.

Mr. Pace explained that there would be 142 units of duplexes depending on the topography; that 101 units of townhouses would have been built, which brought down the number of units, and the people were still against this, where townhouses would be sold and duplexes would be rented; that when the people were against townhouses and so many conditions were placed on the case, Mr. Stephens said that he would just build duplexes.

Mr. Bridger asked if there could be a moratorium placed on this area until a Zoning Study could be done to study the number of units and the possibility of making this R-1 and limiting the number of units. Attorney Nelson responded that if the developer was spending a lot of money, relying on this being zoned R-2, that we could not say the rules have changed.

Chairman Benson stated that he did not see how he could build anything here. Mr. Pace agreed that he might not be able to build because of erosion control.

Chairman Benson again stated that these people would be coming down here tonight; that their appearance was not to be critical but just to say that we don't have stringent enough codes and code enforcement. He questioned if the Legal and Legislative Committee should discuss this issue in more detail and also posed the question as to how our codes and code enforcement compares to other cities to ensure quality development. Mr. Pace responded that we are behind some of them; that enforcement comes under Public Works' administration.

Mr. Bridger stated that he was concerned that our base minimum code requirements are sub-par.

Councilman Littlefield stated that he thought the Legal and Legislative Committee was the proper place to look at this.

Councilman Page stated that he believed we have stipulations in Subdivision and R-1 Zoning for landscaping requirements. Attorney Nelson explained that there are no landscaping requirements in R-1 zone, only in manufacturing and some in R-T/Z. Councilman Page questioned if we should look at landscaping requirements in R-1 Zone. Councilman Franklin stated that he thought this would be a stretch. Councilman Page explained that he was thinking in terms of new development. Mr. Pace noted that we would have to increase manpower to do this; that he would like to see a Design Review Process for any kind of development to enhance rather than hinder. Councilman Page suggested that RPA could come back to the Council with some recommendations.

Chairman Benson noted that another problem was Legacy Park and the cutting down of trees. Mr. Pace noted that a new \$300 fee had been placed on subdivisions and suggested that developers get points and reductions on the fees if he leaves the trees. He suggested giving them a "carrot", noting that this would entail a new Ordinance.

Councilman Franklin agreed that we could make some adjustment on the \$300 fee such as homes being built on dedicated streets would not apply; that there could be a \$100 fee for up to ten lots; that before bringing the package back to us, the landscaping fee could be looked at to allow for trees. He stated that this was kind of a "gray" area; that there could be further reductions or adjusted fees.

Mr. Pace stated that there should be a Review Fee for this if they were asking for amenities such as sidewalks, etc. Councilman Franklin added that if a developer would include such infrastructure, then the fee could be further reduced.

Chairman Benson stated that we would ask that RPA be here, along with Bill McDonald and the Legal Staff, when this is discussed in Legal and Legislative Committee.

Councilman Franklin noted that revision of subdivision fees would be coming up soon.

Mr. Pace stated that Carol Sivley reviews subdivisions and developments in regards to the Landscaping requirements and looks at existing vegetation and trees and can make adjustments.

Chairman Benson mentioned a complaint in his district where a builder wanted to come across a yard for a sewer connection and was told by the owner that he could not. He came across anyway and when the owner approached him about it he replied "sue me". He stated that the owner of the property was upset because the City would not be a party to this; that he felt the City should become involved.

Mr. Bridger asked that we set up an agenda for code revision.

Councilwoman Robinson stated that she liked the concept of putting a carrot before developers to get them to build sidewalks and put up street lights and get credit for this.

Chairman Benson agreed that it would be an investment for the builder and mutually beneficial to all of us.

RIVERCITY RESORT, INC.

Mr. Pace questioned where we were on Mr. Casey's case (2002-073 RiverCity Resort, Inc.); that at the last committee meeting, the motion was made to defer, and he wanted to know how the Council stood on this.

Councilwoman Robinson stated that we had gotten back the Report of the Riverfront Development; that she was excited about this and the fact that private investors want to participate; that the Aquarium is the catalyst. She noted that this Plan was so new that she had hoped we might allow a little time to talk to Mr. Casey and work with him on his Plan; that she was not sure that we had had time to digest this information, and we may can enhance the development, and she would suggest to put this on the table to allow us time to evaluate what we will be asked to do.

Mr. Pace agreed that it was important to look at the 21st Century Riverfront Study, and the Design Studio is part of this process; that there needs to be conditions placed if we move forward with this rezoning. He also mentioned that the Trail of Tears issue had come up, and he was not sure where we stood on this.

Councilwoman Robinson stated that she would not be comfortable making a decision tonight; that there was little left on the Riverfront that had not been developed, and we needed to be careful.

Mr. Pace mentioned that they would bring up money constraints.

Councilman Page stated that the Legal and Legislative Committee recommended that this be deferred, and he questioned how long it would be deferred and if it needed to go to the Design Studio.

Mr. Pace stated that he wished Mr. Casey would meet with the Design Studio; that what he is planning is exactly what we want and would be an asset.

Councilman Page again asked how long we would defer this and if it needed to go to the Design Studio.

Councilman Franklin stated that this was a good point and noted there was also a problem about the Railroad Right-of-Way piece and JIT. Mr. Pace noted that JIT's attorney was supposed to be here tonight.

Councilwoman Robinson reiterated that she was not comfortable voting on this so soon; that she did not want to impose a hardship on Mr. Casey and suggested a 30-day delay. Mr. Pace agreed that this would give us time to get with the Design Studio.

Councilman Page made the motion to recommend to the full Council that this be deferred for 30 days. Attorney Nelson asked that it be in terms of weeks and the motion was changed to four weeks.

Councilman Franklin noted that existing businesses were involved in the process and asked that we go forward together with them and that those who are already there have some type of exchange; that everyone be brought along at the same time. Councilwoman Robinson agreed, stating that they could help us understand the process. Chairman Benson indicated that he would like to take a tour of the existing business.

A representative of JIT was present and was asked to come to the table. He stated that he was not their attorney. Chairman Benson stated that he had received a letter from this individual and stated that he would like to take a tour to see what he was talking about. Councilman Page added that it was his understanding that this business involved 100 people and it was a concern that this development could interfere with this.

The representative of JIT explained that this new development would bring in residential people and JIT's operation would be a nuisance to them; that they run tractor trailers and are a chemical operation; that anytime anything happened or there was any strange smell, they would be continually calling them; that it would become a nuisance and people

would not enjoy the quietness of their place. He stated that they ran a 24-hour operation with pump barges; that they start early in the summer months because of the heat at at least 5:00 or 6:00 A.M.; that if they put a restaurant in, he could see their phones ringing because of the noise and the smells.

Chairman Benson asked if JIT participated in the Riverfront Study, which promoted commercial. The representative indicated that they would not be interested in expanding to C-3 Zone but would be interested in a C-1 Zone.

Councilwoman Robinson mentioned that we also needed a letter from the Fire Marshall in regards to property lines.

The representative from JIT added that they were the largest propane storage in the State.

Chairman Benson questioned if there was no way to buffer and separate this. The representative responded that it would take a mighty high fence, and they would have to have an evacuation plan.

Councilman Page reiterated that this needs to be deferred and studied and expressed appreciation for the representative from JIT being present tonight, stating that what they were doing was important and that the Council does not want to do anything to keep their business from operating. Attorney Nelson added that the Noise Ordinance might come into play. The representative from JIT stated that Mr. Casey would be calling EPA everyday and that it would be a nuisance. Councilman Franklin added that they would have to hire people just to facilitate their calls. The representative stated that it would impact more than just their company; that people are dependent on what they do. He added that he was afraid that the letter he had sent to the Council was too long.

Councilman Page stated that he thought there was validity in saying to defer this and let the Design Studio review this in context with the JIT issue.

Attorney Nelson added that we also still need to get a report from the Fire Marshall.

Chairman Benson still indicated a desire to go over and visit this site.

Councilwoman Robinson seconded the motion to defer this for four weeks and allow them to get with the Design Studio and allow us time to get a report from the Fire Marshall.

The meeting adjourned at 3:50 P.M.

