

LEGAL AND LEGISLATIVE COMMITTEE

July 2, 2002

3:00 P.M.

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

Others present included Beverly Johnson, Adm. McDonald, Daisy Madison, Gene Hyde, Jerry Jeansonne, Jerry Pace, Lee Norris and Doug Fritz. Todd Womack, John Bridger, and Phillip Lynn joined the meeting later.

CLEAR-CUTTING AND FORESTRY ORDINANCE

Chairman Benson stated that the purpose of this meeting was to further discuss the Ordinance as it affects development and clear-cutting problems. He stated that he had met with Adm. McDonald and Gene Hyde, and we need to see what the attorney has to offer, and if he has nothing, allow Adm. McDonald to review the three items that they had gone over in their meeting.

Attorney Nelson stated that he had no more than he had last week; that he had received an e-mail from Mr. Hyde saying that they would get together after the 4th of July, and he had suspended efforts for the time being. He asked for any concrete suggestions from the Council.

Chairman Benson indicated that he had studied some material, and we needed to look at the issue about farming land and using agricultural provisions as a way to circumvent the intent of the process. This involves the farming and harvesting of trees and permits for developers. He questioned how this was addressed in other States and Cities and how it should be addressed here in Chattanooga and asked if anyone had any thoughts on this.

Councilwoman Robinson asked if we had discussed a time-limit—(x) amount of time?

Chairman Benson indicated that he had been sent something in the way of a forestry farm concerning replacing vegetation or ground cover with some sort of time limitation and asked Adm. McDonald to address this.

Adm. McDonald responded that he thought it had to be replaced within three years, after clear-cutting to perform agricultural activities; that he thought that there was a certain period of time before development, and he called on Mr. Hyde.

Mr. Hyde mentioned a situation in Georgia where they require, after a timber harvest, a “stay” for three years before any development.

Councilwoman indicated that she thought it would be a dis-incentive to use that ploy.

Councilman Littlefield indicated that there would be nothing of a significant disadvantage in following what the counties across the state line have done; that something that mirrors what they have done should not be something they could not live with. He stated that we have no “true” tree farms, and a “true” tree farm would not be bothered by the three-year restriction and other should just go by the rules.

Mr. Fritz of the Stormwater Division explained that if one does not take the agricultural exemption that they would not have a complete set of plans.

Councilman Littlefield added that if a developer pursues his development in the way that it should be that there should not be a problem.

Councilman Hakeem questioned if there was not some sort of mechanism to require subdivision developers to come in first to get a permit.

Mr. Fritz mentioned the Concord problem and the Stringer’s Ridge problem, stating that neither had the proper zoning and applied for the zoning after the cutting of trees. (Mr. Pace interjected that Concord had the right zoning).

Chairman Benson noted that they were clear-cutting under the agricultural exemption. Mr. Fritz added that they just cleared the trees before they got the zoning.

Councilman Hakeem questioned if a developer waited for 3-5 years to accomplish their development after clear-cutting, then what would happen. Chairman Littlefield responded that they would have re-plant with something. Chairman Benson asked about a provision that they could not cut around the perimeter. Mr. Hyde questioned the wisdom in such a provision, using as an example the pine beetles and their damage where one has to remove all the pine trees. He stated that he did not think this would be a sound thing to do. Attorney Nelson mentioned a problem with topography, noting that taking the trees out of the middle leaves an ugly scar.

Councilman Hakeem still questioned why we could not have some sort of an approval process and stipulation before clear-cutting occurs. Attorney Nelson explained that if we take out the agricultural exemption, then developers would have to come in for a permit. He went on to say that they would still have to follow Best Management Practices and replace vegetation within a certain period of time; that they could be required to minimize the damage. Councilman Hakeem asked about restrictions on the front end locally and if someone violates the restrictions, could they not be fined \$1,000. Attorney Nelson responded negatively—not unless the City could prove they had caused \$1,000 in damages. Councilwoman Robinson asked about a \$50.00 fine per tree.

Mr. Hyde questioned the direction that the Council wants to go and mentioned a separate Ordinance for logging and timber harvest and requiring developers to follow Best Management Practices. He stated that he did not know if this was possible or not. Attorney Nelson stated that they were given a list last week. Councilman Hakeem still maintained that something needed to be done on the front end in not allowing developers to cut.

Mr. Jeansonne mentioned a Regeneration Plan; that those truly cultivating forestry land would not allow it to lay fallow. He mentioned a Regeneration Plan that would be required with certain species such as Christmas trees or a pecan grove; that we could see if the use if allowed in a certain zone. He stated that he thought the Council was trying to solve the wrong problem; that it was the high intensity and infrastructure that had upset the community. Chairman Benson agreed that we might need a Forestry Ordinance in addition.

Councilwoman Robinson stated that in looking at the statute involving land disturbance activity that it was unlawful to disturb land without a permit and nine examples were listed. Chairman Benson pointed out that in the case of Concord, they did not “disturb” the land. Councilwoman Robinson stated “then this is the crux of it”; that maybe there should be ten articles rather than nine.

Mr. Jeansonne noted that one could do a lot of land disturbance; that this developer did not follow Best Management Practices; that the City would have to charge that removal of logs from a site can be considered land disturbance. Attorney Nelson noted that it had been suggested that land disturbance be considered removing any more than 75% of the trees on a site. Mr. Jeansonne noted that to practice forestry inside the city of Chattanooga would require a Land Disturbance Permit. Attorney Nelson noted that the percentage required for the permitting process could be 10% or 75%; that replanting and reseeded would not impact the community that much.

Mr. Fritz indicated that he agreed with Mr. Jeansonne; that we need to look at a Forestry Ordinance rather than amending the Stormwater Ordinance. He questioned if 10% or 75% would be something that would be enforceable; that we need to look at minimum acreage, which would be something we could get a grasp on.

Councilwoman Robinson asked how many acres were involved in Concord, and the answer was 15.

Adm. McDonald stated that there were a number of models; that we could have Gene Hyde and Doug Fritz look at the models, along with Attorney Nelson, to see what would meet our needs; that we were trying to “invent the wheel” here, and we needed to look at the total picture.

Chairman Benson asked if this would also involve slope development, bar pits, and defacing the land with clear-cutting.

Councilwoman Robinson asked Mr. Bridger about the area on North Hixson Pike that has been a wetland and filled in. Mr. Bridger responded that there is nothing to prevent from filling in a flood plane. Councilwoman Robinson asked if this was a problem. Mr. Bridger explained that it would depend on whether or not it impacts stormwater. Adm. McDonald explained that this had already been addressed and does not need to be involved in this.

Chairman Benson asked that Mr. Hyde coordinate this and suggested a work-session at 3:00 next Tuesday to talk this out and then it could be brought back to the committee the following week.

Attorney Nelson noted that Atlanta has a Tree Ordinance. Adm. McDonald agreed that there are books and books of Tree Ordinances. Chairman Benson suggested getting examples from other cities to incorporate a broad outline of what we need to do and the language involved and suggested that the work-session be Tuesday week, which would be July 16th.

2002-073 RIVER CITY RESORT, INC.

Chairman Benson stated that we had brought together the two parties on the North River; that he had asked a JIT representative to bring their thoughts to the table before the Council voted on this tonight.

Mr. Bennett of JIT stated that in talking with their principals and Bob Yurjevic, there had not been a chance for their attorney to talk with Attorney Anderson or Mr. Casey; that they were interested in the possibility of an Agreement that the two attorneys could come up with, and they would like for this case to be postponed for a week to allow them the chance to get together.

Councilman Littlefield stated that he was sure this was possible; however this had been heard extensively, but if there were no strong objections from the applicant, then the case could be postponed.

Attorney Anderson stated that Mr. Casey had been here on May 14th, and the case was postponed then; that he had called Fletcher Bright about an agreement concerning frivolous lawsuits; that Fletcher had contacted him, and they had talked again today; that he did not know what difference a week would make; that he had told Fletcher Bright that they would work out an agreement. Attorney Anderson indicated that they should not be required to enter into an Agreement whereby JIT would be absolved from negligence; that if JIT was doing what State and City law requires, then it is River City Resort's tough luck for locating next to them; that they could come to terms with a basic agreement but would not absolve JIT from negligence.

Councilman Hakeem asked if in actuality an agreement or non-agreement was not within the Council's bailiwick. Attorney Nelson agreed that it has nothing to do with zoning, but it is a factor the Council could consider in regards to public safety; that it is something that can be considered but not something the Council can enforce one way or the other. Councilman Hakeem stated that it seemed we would just be dragging this out; that if no agreement is made next week, and we are requested not to move forward with the rezoning, are we putting ourselves in peril. Attorney Nelson responded "no".

Chairman Benson stated that Mr. Casey appeared unannounced at the committee last week, and we let him talk, and he had gotten a call from Mr. Yurjevic asking why he did not get to make an appearance; that he felt there was a lack of equity, and we needed to allow JIT to make their points to have a balance; that we heard Mr. Anderson twice last week and have not heard JIT's objections; that Mr. Casey had told us that it had been settled and that they had reached an agreement.

Mr. Anderson stated that those remarks were made based on his having talked with Fletcher Bright; that no Agreement had been drafted; however he had told his client that it would be in his best interest to enter into an Agreement; that it was not fair to hold this up until an Agreement is reached.

Chairman Benson stated that he felt guilty that JIT was not here last week and wanted to hear them today.

Councilman Hakeem stated that JIT would choose to let their attorney deal with this and asked how long this delay would be.

Mr. Bennett agreed to speak, stating that they felt like their attorney, Don Aho, could speak more eloquently than he could; that the issues that he had mentioned in his previous letter were still open and current; that they felt like the analogy used last week on the Velsicol property and houses surrounding it was not accurate; that times have changed since Velsicol built here; that it would never be allowed to happen now; that this was 50 years ago and today we know things a lot differently. He stated that a big buffer zone was the only appropriate thing; that Velsicol was not a fair and good analogy.

Mr. Bennett next addressed the idea of a nuisance and frivolous lawsuits and used as an example the Airport and Lovell Field, where people moved under the take-off pattern and then complained; that they knew this when they moved under the pattern. He ended by saying the analogy used at the last meeting was not fair; that they liked riverfront development and wanted to stay in this area with an active role.

Councilman Franklin asked about the comparison to Velsicol and questioned what chemicals listed that we should be considering. Mr. Bennett responded that they had the opportunity to handle any product within the law. Councilman Franklin asked if they would come in by barge and truck. Mr. Bennett responded that was correct and also by rail. Councilman Franklin asked what percentage of the chemicals could be harmful to residents and people who stay at the hotel and eat there, that they handle regularly? Mr. Bennett responded that their products are an odor issue—that it includes SO₂, Sodium Bisulfite, and injections for Propane. Councilman Franklin stated that he once lived in Alton Park near Velsicol and mentioned odors and carcinogenics and the possibility of carcinogenic chemicals being airborne. Mr. Bennett stated none that they were handling now were airborne. Councilman Franklin questioned if this was a consideration for us to postpone a week and possibly change what we done last week; that the Council needed to make the best decision they could make.

Mr. Bennett responded that the prudent thing was a buffer zone; that at best the only harm involved with propane tanks was a fire; that they only would affect people around them and not all the people in North Chattanooga and the downtown area. Councilman Franklin asked if anything harmful had ever happened at their site, and the answer was “no”. Mr. Bennett explained that if any portion failed, then everything shuts down automatically.

Councilman Franklin asked Mr. Casey and Mr. Anderson if there was anything in their plans for a buffer scenario and if it were necessary. Mr. Anderson responded that there was a 12' wall and the hotel is adjacent to JIT. He stated that JIT exceeded their regulatory requirements, and they knew their safety system. He questioned if we were talking about buffering the entire property or just a section; that their design meets State and City Fire Codes. He went on to say that another M-1 use would be as equally intensive and there would be no ability to regulate and an M-1 use would not have to negotiate an Agreement; that this is downzoning from intensive manufacturing use down to C-3, which accommodates this.

Chairman Benson noted that the Council was at the point to vote on 2nd and 3rd readings tonight unless this is delayed. He questioned what points a delay would accomplish. Mr. Bennett responded that a delay would allow an opportunity for Attorney Aho and Attorney Anderson to get together and work out an agreement for a clearer understanding. Councilman Benson questioned if this could be accomplished with the past experience. Mr. Bennett responded that Mr. Anderson had called Mr. Aho and said they would put together an agreement.

Councilman Lively questioned what this agreement had to do with zoning; that this could be worked out between the two parties.

Attorney Anderson noted that they had committed to do a lot of things like working with Stroud Watson, and this was made a condition of the rezoning; that they had worked with him and gotten an agreement. He stated that they would not want to have the rezoning delayed yet again.

Attorney Nelson added that JIT could be in compliance with all laws and still create a nuisance with odors; that chemicals are not a pleasant smell; that he could see a scenario where these two uses are incompatible, and they might need an agreement to govern situations like that.

Councilwoman Robinson asked if there had ever been odor problems.

Councilman Littlefield acknowledged that Councilman Lively had made a good point; that John Bennett was his friend and had been for a long time; that we had wrestled with this and questioned if zoning was the big hurdle here; that zoning had never been the issue—that it was the nuisance factor, which he thought was a private issue. He stated that he really did not see anything to be gained by delaying this another week; that if this ends up in court, all the commitments made by the applicant are there and part of the public record, and they could not shirk this. Attorney Anderson stated that he had tried not to equivocate.

Councilwoman Robinson asked Mr. Bennett if they had to report when odors are released; if they have to file this with Air Pollution. Mr. Bennett responded that this was something that was not a real issue; that if you go to a gas station, you smell gas; that the odors are generally kept on site but could move if the wind changes; that this was not a danger to society; that one might get a whiff of it, but it was not a health hazard; that ordinary odors do not have to be reported; that if a spill occurred, it would have to be reported; that smells are not a health hazard or something that has to be reported. Councilwoman Robinson stated that this could be referred to the Council this evening.

Councilman Hakeem thanked Mr. Bennett for coming, and the meeting adjourned at 4:00 P.M.

