

LEGAL AND LEGISLATIVE COMMITTEE

May 12, 2009

3:30 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order with Councilmen Benson, Berz, Scott, Ladd, Gilbert, McGary, Robinson, and Rico present. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Daisy Madison, Vicki Haley, Dan Johnson, Richard Beeland, Greg Haynes, Barry Bennett, Karen Rennich and Larry Zehnder.

Ordinance (a) First Reading amends the City Code, relative to the regulation of nightclubs. Chairman Murphy noted that the property line of any such use shall be located more than 1,000 ft. away from the nearest boundary of any residential zone. Attorney McMahan noted that those that were already in existence would be grandfathered in.

Councilwoman Robinson wanted to know if this affected our Urban District, which is much tighter?

Councilwoman Berz stated that she was a proponent of this—that it was written so that it would not affect downtown.

Councilman Rico stated that he thought the purpose was to cut down noise and questioned if this could not be accomplished some other way than the 1,000 ft. distance requirement.

Councilwoman Berz stated that she wished the zoning people were here to explain how this was written—that C-2 zone is for nightclubs; that this is for nightclubs with an occupancy capacity of more than 50 people in C-2. She stated that she thought the zone downtown was C-3, and this would not affect C-3. Councilwoman Robinson stated that she thought it was C-7. Councilwoman Berz reiterated that this was just for C-2. Councilman Rico noted that this would include Rossville Blvd.

Barry Bennett was present and confirmed that this is only for C-2.

Councilman Rico expressed a concern that it would eliminate any new businesses coming in.

Chairman Murphy read the Ordinance involved: “*WHEREAS, it has been determined that there is a need to further define requirements within the Chattanooga Zoning Ordinance in relation to nightclubs, and WHEREAS, concerns have been expressed regarding the excessive noise and disruption that can accompany these uses; and WHEREAS, nearby residents are often most impacted by these type uses, particularly, during evening and nighttime hours; and WHEREAS, greater review for compatibility may be given through the process described and through the information provided on the site plan; and WHEREAS, the Chattanooga-Hamilton County Planning Agency has recommended certain clarifications relative to nightclub uses.* **SECTION 2** reads, “*BE IT FUTHER ORDAINED, That Chattanooga City Code, Part II, Chapter 38, Article V, Division 13, Section 38-185, C-2 Convenience Commercial Zone, Special Exceptions by City Council be and hereby is amended to include a new subsection (3), as follows: (3) Nightclubs under the terms specified in Article VIII, Section 38-527.* **SECTION 3 (b)** reads, “*The following are permitted only within this zone. The property line of any such use (if permitted by approval of a Special Exception Permit) shall be located more than one thousand (1,000’) feet away from the nearest boundary of any residential zone: Cabarets, Dance Clubs, Entertainment Restaurants, Music Clubs, Sports Clubs, and Nightclubs.* Or any other indoor/outdoor commercial use, which in the judgment of the Chief Building Official is similar in character and impact to the above uses.

Mr. Bennett explained that the 1000 ft. issue is the most discussed, and most areas impacted by this are major thoroughfares such as Brainerd Rd., Rossville Blvd. and Hixson Pike, with commercially zoned frontage that backs up and abuts to residentially zoned property. He explained that the 1,000 ft. is from the boundary of the property line to the nearest residential zone boundary—that most will be property behind commercial uses. He noted that one legal concern that might arise is that this is totally exclusive—that under these regulations, these uses are still permitted.

Chairman Murphy verified that this is 1000 ft. from the property line. Mr. Bennett confirmed that this is the language in this Ordinance.

Councilman Benson was concerned about the exclusivity and questioned this not being from portal to portal. He stated that this was not consistent with our Ordinance, and we have to be consistent; that portal to portal versus property line to property line is a big problem. He stated that Deep Blue needs to be completely clear. He added that if he were a hard-drinking man he would go to his favorite club at 11:00 p.m. and then go to a place that had been grandfathered in, such as Deep Blue, to drink all night.

Councilwoman Berz stated that this was a result of a number of meetings that included Chief Mike Williams and the City Attorney; that this developed with Deep Blue and also matters in other areas; that all the existing enterprises are grandparented in; that the Police Dept., the City Attorney's Office and Planning were involved with this, and it is not about what exists now but what can exist in the future; that it does not affect Deep Blue because it will be grandparented in; that they all came up with these numbers, and she thought all it spoke to is a certain kind of club that you don't want to become a public nuisance that is close to a neighborhood; that we have a lot of fine old neighborhoods but have no Ordinance to protect them. She emphasized that this was **not** a Deep Blue thing, because Deep Blue is grandparented in; that they had spent hours on this and that the Police Dept. had the statistics; that they had talked with the Zoning people, and we need to fix the laws; that the discussion on Deep Blue got this started; that clubs are moving into neighborhoods, and the neighborhoods are not protected.

Councilman Rico stated that we have to fix the problems we have now—the clubs that are now in existence.

Councilman Gilbert stated that VW is coming to town, and there is a lot of open land that could become clubs; that the particular problem we are having with Deep Blue is the loud music; that he saw the point of trying to prevent future empty areas and empty buildings—that there was a potential for this, and he understood Councilwoman Berz' point.

Councilwoman Berz stated that we can't pass legislation that takes away rights that already exists—that they will be grandparented in; that we don't want to have a proliferation of these clubs along main arteries; that as far as Deep Blue, the only purpose that it served was to heighten our awareness to come up with this legislation.

Mr. Bennett stated that the best way to deal with contentious land uses is to do a Zoning Study on the numerous nightclubs with late night noise and drug traffic in C-2 zones and D/2 to C-5 which prohibit adult-oriented establishments; that through attrition, many clubs will be closed down if they are vacant more than 100 days, and they will lose their non-conforming status. He went on to say that also half-way houses are beginning to proliferate in Highland Park, and this presents significant problems; that he was not recommending we use distance restrictions but establish a Special Permit Requirement within the zone; that they can apply for a Permit to the City Council, and there will be a Public Hearing process—a due process, and it is not exclusive; that when a Special Permit is requested, we look at each case on its own merit, and there can be location specifics, and it gives us the ability to impose conditions to deal with specific problems; that this is the justification to establish the Permit Procedure to effectively deal with these issues.

Chairman Murphy responded that this explanation addresses **(a)** of the Ordinance but not **(b)**.

Mr. Bennett responded that there should not be a distance requirement but a Special Permit process.

Chairman Murphy responded that what we have here does have a distance requirement. Mr. Bennett stated that this could be amended—that distance could be moot. Chairman Murphy added that from door-to-door would be different.

Councilwoman Robinson added that when dealing with Shopping Centers that measuring from property line to property line and from front door to front door is a big difference.

Attorney McMahan noted that there is a leasehold on Liquor Stores; that the Beer Board measures from door to door and that he was very concerned with the 1000 ft. that excludes all C-2 zones.

Councilwoman Robinson asked what we should do? Attorney McMahan responded “take out the 1,000 ft.”. Chairman Murphy stated that we could strike **(b)** in its entirety.

Councilwoman Berz stated that the people that authorized this are not here; that it was Mike Williams and Phil Noblett, and they should be here; that 1,000 ft. was **not** her thing, and the people that suggested this had reasons; that she would like to table this for a week because many had spent hours on this. She stated that she would make the motion at tonight’s meeting to table this.

Ordinance (b) amends the City Code to clarify use regulations for cemetery, cremation, crematory, columbarium, funeral home, mausoleum, mortuary, and undertaking. Chairman Murphy asked if there were any proponents here or opposition or if any Council person wished to be heard.

Councilwoman Scott asked about the attachments on Ordinance (b) and if this involved rezoning?

Mr. Bennett explained that the Ordinance lists the zones where these uses will be permitted; that it defines the uses and is really a housekeeping issue; that it does not involve rezoning.

Attorney McMahan stated that **#4** does relate. Mr. Bennett stated that they had gotten calls from funeral homes and churches asking if they could open a crematory and also about the definition of a columbarium. Councilman Rico said that a columbarium was a mausoleum.

Councilwoman Scott stated that when we are looking at an Ordinance that we are trying to amend, she would like to look at what we are amending from; that this Ordinance refers to **Chapter 38**, and she could not find Chapter 38 on the website. Attorney McMahan responded that the website had not been upgraded; that he would make sure it was on the website.

Ordinance (c) amends the City Code to include “single-family detached dwellings” as a permitted use in the O-1 Office Zone. Chairman Murphy asked if there were any proponents to be heard or any opposition to be heard or if any Council person wished to speak.

Councilwoman Berz stated that she would like to have some background on this.

Mr. Bennett explained that under Home Occupations only 25% is allowed for office use and involves only people living on the premises; that he had had a number of calls from Ft. Wood where there is O-1 Office Zone and people want to have a residence and also outside employees and more than 25%; that R-4 allows the designation of residences as well as offices and O-1 is office only.

Councilman Benson stated that the County is experiencing this problem, and it is getting worse; that the more home occupations we have, we are realizing that they are taking advantage of the residential tax rate and 25% of the home is used for business; that the tax assessment should be pro-rated because it is unfair competition to the commercial zone.

Mr. Bennett stated that this amendment addresses some of these problems; that there would be a higher commercial assessment.

Councilman Benson asked if we could raise the assessment? Mr. Bennett responded not on home occupations; that property zoned O-1 for offices would make the primary use an office but people would have the ability to have a residence in an office zone. Councilman Benson confirmed that if they lived there, there would only be a ratio of so much to residence and commercial. Chairman Murphy clarified that someone could choose to live at an office.

Councilwoman Robinson noted that it would work both ways—25% to office and residence; that this is fair and makes sense.

Ordinance (d) amends the City Code by adding a new Article relative to Special Gathering Permits. Chairman Murphy asked if there were any proponents present or opposition present or if any Council person wished to speak.

Councilwoman Robinson asked for a summary.

Chairman Murphy noted that a “*Special Gathering*” means any gathering of 50 or more persons whether held in a building or outdoors that is not regularly scheduled on a weekly or monthly basis and is not for the sole purpose of expressive activity, which allows for the consumption of alcoholic beverages between the hours of 11:00 p.m. and 3:00 a.m.

Councilman Benson questioned a wedding reception?

Chairman Murphy stated that one gathering is for 25 people; that this is for 50 or more not on a regular basis from 11:00 p.m. when alcohol is involved; that he had heard from the Convention and Visitors Bureau and folks wanting to be heard.

Councilman Rico suggested that we defer this also.

Councilwoman Berz stated that we could defer this, as well as Ordinance (a).

Chairman Murphy stated that **Ordinance (e)** concerning the Advisory Board of Multicultural Affairs had already been covered.

He then proceeded to Resolutions, beginning with **Resolution (e)**, which authorizes an easement and license agreement with Cameron Harbor, LLC and Harbor Lodging for Marina Slips 1-37 in reference to the marina expansion. He asked if there were any proponents or opposition present.

Adm. Larry Zehnder spoke, stating that this development existed down river from Ross’ Landing with condos and a hotel; that he would speak to the operation of the marina—that to get a permit from TVA, they looked at the entire area, and the marina is able to expand with this arrangement. This project provides for the construction of the Riverwalk at the Marina and extends the Tennessee Riverwalk. It gives us the opportunity to expand the Marina on the developer’s dollars. He noted that there was a waiting list of spaces on the waterfront, and this provides an easement as well as a License Agreement, and this arrangement will give back to the City.

Councilwoman Robinson stated that her question concerned the Riverwalk—Would it be built to the same standards? The answer was “yes”.

Councilman Benson stated that he would like to commend Councilwoman Scott for her interrogation, and he had read all of the answers; that this was a great thing for the City and some of these slips will belong to the City.

Adm. Zehnder stated that 65 slips are our Plan and 37 slips will go back to the developer for the leased use; the rest are for public use.

Mr. Johnson added that the City has committed to extend the Riverwalk, and this saves us money, and he appreciated Buck Schrimp for doing this.

Councilwoman Robinson stated that it was a grandiose plan, and she had never seen a local developer make this happen—that it speaks volumes.

Councilwoman Ladd added that this is a developer with great projects, and she “tilted” her hat to him; that he had developed Lovemans, which had started downtown living, and he was tried and true.

Councilman McGary stated that this was a long-term investment and would reap economical benefits.

Resolution (g) is for the request of Don Walker for a Special Exceptions Permit for a PUD on tracts of land located the 4600 Block of Heiskell Drive. Councilman Gilbert stated that he had people here who wished to speak to this issue; that people had gone to the Planning meeting and did not have time for a rebuttal, and he would like to give them the opportunity to speak now; that out of 34 people, 33 did not want this to happen.

The first speaker was **John Ballinger**, who lives in the H/W 58 area. He stated that he went to the Planning Commission meeting; that he was a retired military man and some issues had not been addressed; that some of the things that Mr. Walker was saying were not true; that Mr. Walker had not been out at the property and had threatened the City if they did not let him have his way, telling them what he would do. Mr. Ballinger stated that the street he lived on was the proposed entrance, and there is a police station; that when he pulled into his street, he had to move because of the narrowness of the street, which was one issue. The second thing—he said he was all for developers if they developed correctly; that Mr. Walker is using a heavy hand, and he had a huge problem with this. Thirdly, the green area that Mr. Walker talked about was a rocky area and also marshy and had a hill; that he was in the insurance business, and this would be dangerous to this area. He mentioned the rain we had had in the last few days, stating that there was no drainage, and Mr. Walker had not addressed this. He stated that these were his comments.

Councilman Gilbert mentioned an Electric Power Sub-Station that one would have to go around, and they needed access at all times, and this had not been brought out.

Councilman McGary asked that the Planning Staff give them their reasons for denial.

Mr. Bennett stated that the Planning Commission recommended approval; however the Planning Staff was against this for two reasons—the Highway 58 Plan calls for lower density in this area; with a PUD, the overall acreage is a problem and can end up with an undeveloped area where a number of units could go in; that they came up with a different figure; that the density is not in keeping with the surrounding area. Secondly, the configuration of the lot is not consistent with the surrounding area. It is a long, narrow lot and houses would have to be placed long-ways. Thirdly, the primary access to the existing subdivision is low density.

Councilman McGary pointed out that Mr. Walker originally asked for 13 and had upped it up to 19.

Councilman Benson apologized for not speaking up at the Planning Commission meeting, stating that he hoped he was not presiding. He added that Don Walker has the lowest batting average of anyone who appears before Planning and of any developer; that he did not know how the votes came out.

Councilman Gilbert stated that it was a tie vote and the Chairman went the other way.

Chairman Murphy asked if Mr. Walker was present at this meeting? He was not.

Councilwoman Berz stated that we had to be real careful with Special Exceptions Permits; that if people don't like something, they can go to the Variance Board and ask for a Special Exceptions Permit, and this is their way of getting around Planning; that unless there is very compelling evidence, there is no way we should be pall-mall with Special Exceptions.

Councilman Gilbert questioned if he built 13 houses if he would build them in the right manner, noting that it is easier to ask forgiveness than permission. He urged that we not let him intrude on property in order to develop.

Maude Hambright spoke next. She noted that the entrance to the property is Heiskell Drive; that she had lived here since 1985; that there was a lot of water drainage and a woods; that there was a creek and a cave, which she did not know if Mr. Walker had seen; that there is property that he cannot build on; that he had mentioned that houses in the area are ranch houses—that people will buy ranch houses if they can find one because that is what you need as you grow older. She mentioned children playing in the street and a bus stop; that kids are lined up at the bus stop, and there will be increased traffic; that a child had been killed there because there was not a lot of light; that this will cause an increase in traffic, mentioning 13 houses with 26 cars, stating this would be bad.

Mr. Ballinger added that Mr. Walker had guaranteed that the homes would sell; that the only way he could make that statement was if they were sold before he built them; that Mr. Walker is recognized as the “Rental King” of Chattanooga, and he did not think these would be homes, but rental property.

Chairman Murphy reminded the witnesses that they would need to appear at the later Council meeting.

Chairman Murphy asked if **Resolution (j)** needed any discussion. This concerned an agreement with Lose & Associates, Inc. to provide professional design services for expansion of Heritage Park at 1428 Jenkins Road in East Brainerd in an amount not to exceed \$15,000.00.

Councilwoman Berz noted that **Resolutions (h) and (i)** are Special Exceptions Permits. Chairman Murphy asked if there was anyone who wished to be heard on these two. Councilwoman Berz wanted to know where Andover Place is located. Mr. Bennett stated that he believed it was in East Brainerd.

Chairman Murphy asked Councilman Benson if he needed to be heard on **Resolution (j)** concerning the Heritage Park expansion? Councilman Rico jokingly said “let’s defer this for 30 days”. It was explained that an additional four acres of land will be added to the design to complete the rest of the park. There had been three citizen meetings. This has been through the Design and Engineering Selection Process and comes with a recommendation.

Chairman Murphy asked if there was not someone on the City staff who could do this without hiring a design professional? Adm. Zehnder responded that he wished he had someone like this.

Councilman McGary wanted to know where the money was coming from and was told Capital Improvements.

The meeting adjourned at 4:30 p.m.

