

LEGAL AND LEGISLATIVE COMMITTEE

July 13, 2010

3:30 P.M.

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

Others present included Larry Zehnder, Vickie Haley, Dan Johnson, Daisy Madison, Randy Ray, Fredia Kitchen, Simone White and Chief Parker.

On motion of Councilwoman Ladd, seconded by Councilman McGary, the minutes of the previous meeting were approved as published.

Chairman Murphy noted that a request for a change in Planning Staff recommendation for rezonings had arisen. He asked Attorney McMahan to explain.

Attorney McMahan stated that typically the Planning Commission recommendation for zoning matters is included in the agenda; also the version of what the applicant has requested; that there used to be three versions, including one that the Planning Staff recommended, which was not official. He went on to say that since Greg Haynes was not present that he would attempt to speak for him; that Mr. Haynes would prefer that the Planning Commission recommendation and the applicant's request be included on the Agenda and if the Council wants to question Mr. Haynes as to why the Staff's recommendation is different then they can ask questions in public meeting.

Councilman Benson stated that he sat on the Planning Commission and had seen people appointed by the County come to the meetings and contest a vote on something that really related to the City. He stated that he did not want to get into specifics, but he liked to know what the Professional Staff thinks—that it was important to have the Staff's recommendation.

Attorney McMahan stated that he thought Mr. Haynes did not want to step on the toes of the Planning Commission.

Councilman Benson thought the policy was fine the way it is.

Attorney McMahan stated that the Staff recommendation usually wins out—that on Hunter Rd. there is a difference between the Staff's recommendation and the Commission's recommendation. He went on to say that his office could do three versions of the Ordinance—that sometimes there is only one version; however most of the time the Planning Commission puts conditions on rezonings.

Councilwoman Berz stated that we needed to make sure; that the Planning Staff reports to the Commission and does not answer to the Council; that the Council only gets part of the information, and we get what the Planning Commission goes with; that we get the Staff information only if it is in conflict with the Commission; that when the Council hears verbally, they can agree or disagree with Greg Haynes, but the only time we hear it is when there is diversity, and this is only one more piece of information and is not given equal status as the Planning Commission.

Councilman Rico felt that the Planning Commission's information represents a lot of conflict of interest; that he was more willing to listen to Greg Haynes because they are fair; that if there is a conflict of interest he would like to know what the Staff has told the Commission and then make his own decision.

Councilman McGary stated that if he understood, the Staff makes a recommendation to the Planning Commission, and they pass it on; that the Council is not beholden to the recommendation of the Planning Commission; that if the Staff makes a recommendation, the Council should receive it the same as the Planning Commission's recommendation; that the Council should also have the applicant's request or version, and we are not beholden to the Planning Commission's decision.

Councilman Benson explained that often a County Commissioner will come to the meeting if he has a special interest—that he will vote on this matter and then leave; that the County Commissioners rotate as to their special interests; that the Professional Staff is trained in smart growth and the Planning Commission is not trained in smart growth; that three members on the Planning Commission are appointed by the County Mayor, and their sole purpose could be to stop annexation, but we need to see what the professionals have to say—that for Greg Haynes to defect was wrong, and he did not approve of this.

Councilwoman Robinson stated that she was concerned about the two processes—that one is political and the other professional, and we have to read “tea leaves”. She questioned what the rationale was for replacing a member and wanted to know why Vance Travis is being replaced—that he is an architect and highly educated and is being replaced by someone whom we have questions about in this area.

Councilman Benson stated that he appreciated Councilwoman Robinson's remarks—that he wanted to see the credentials of the person who was replacing Mr. Travis; that Vance Travis has so much to offer and stated to Mr. Johnson that he did not understand.

Mr. Johnson responded that it was not his call.

Councilwoman Robinson stated that she did not think the Council had enough information.

Councilman Gilbert asked if John Van Winkle had any involvement with the Planning Commission's decision? Attorney McMahan responded "to determine the impact, normally "no", there is no direct involvement.

Councilman Benson added that both the City and County Traffic Engineers will speak.

Councilman McGary asked if there were any qualification to serve on the Planning Commission? Councilman Benson responded that it is a cross-section of the neighborhood; that they did have one architect and one engineer and there had to be caution concerning conflict of interest; also bankers were on the Commission. Councilman McGary stated that he would like to see if there is anything in writing, and Attorney McMahan responded that there was nothing in writing. Councilman Benson continued, stating that it was political; that they did not have to have an architect, but he was valuable.

Councilwoman Berz noted that if Greg Haynes was asked to be adversarial and called on to deliver a conflicting report as to the Commission, that it did not obviate his responsibility—that he was just put in the position of going against his superiors. Councilman Benson quickly said that the Commission was not his superiors—that Mr. Haynes does not work for the Planning Commission.

Councilman Rico stated that he thought Mr. Haynes did not want to be seen as a proponent or an opponent.

Councilman McGary stated that he wanted to make sure he understood the tools for decision making—that it seemed we needed to lean heavily on the Staff.

Councilwoman Robinson noted that we were going to have a big Public Hearing.

Councilman McGary stated that anyone other than the Staff, who were professional, he would like to have their equal information so that the Council could make their own decision and not lean so heavily on the Planning Commission.

Councilwoman Robinson felt that we were structured in the way we need to be, and this is the best way to do this.

Attorney McMahan added that the body was created as a Regional Planning Agency.

Councilwoman Robinson stated that she liked the idea of a metro approach; that Councilman Benson was talking about the aura of political process rather than the planning process and an agenda for a developer rather than an overall plan that fits in with some decision-making process that reflects what we as elected leaders see as a growing community.

Chairman Murphy asked about enabling legislation for the Regional Planning Commission, wanting to know how they got built? Attorney McMahan responded that it was by State Statute.

Mr. Johnson pointed out that the City has more members on the Planning Commission than the County has. Councilman Benson stated that it did not seem like that.

Councilwoman Robinson wanted to know how the Planning Commission was constituted in regards to the eleven municipalities in Hamilton County; that affected townships should be represented.

Councilwoman Scott stated that we were talking about a lot of different issues—that there were ten municipalities and one municipality that covers 51% and some as small as a few hundred people. She questioned how we could put together a Board with people represented by population or just one person; that the original idea was regional but funding and population causes it to become a County/City Board—that only two players were funding.

Councilman Benson noted that East Ridge, Red Bank and Signal Mountain opted out.

Councilwoman Berz wanted to talk about the qualifying issue; that it looks like unless someone is qualified that it is political, and we had grown to the point that we can't afford it to be political; that there needs to be true planning, and the motive should be healthy growth with some reason; that we have reached the point that we are past a narrow small town mentality, and we need to look at qualifications and re-tool; that we might have to go by State Law, but we can do more than State Law.

Councilman Benson agreed that we could and still questioned resigning an architect.

Councilwoman Robinson stated that she had some experience in this with the North Shore Design Committee—that this was a high growth area where they wanted planned growth and wanted scientific and professional people; that this Committee was created by the City Council and given the power to make recommendations, and a different zone was created (C-7) because the old way of doing things was not working, and the new way has worked great, and it really has not been willy-nilly—they had architects, city planners, and landscaping people who had specific knowledge. She stated that this was smart growth.

Councilman Gilbert spoke to regulating Boards—that if we do one Board, then we need to do all; that we need professionals on all Boards, and if we do one, we need to do it for all.

Councilman Benson stated that on the Planning Commission we have a developer, architect and a council member; that he would like to suggest trying to keep who the Mayor wants replaced—that the Commission needs the experience of an architect and also an engineer.

Councilman Gilbert questioned why we just needed experts on this particular Board?

Councilman Benson responded that we could not get by without them; that we had Don Moon and also Mike Price, who both knew conditions and codes, and had to use the architect last month regarding the incubator—that there was a big fight, and the architect gave his opinion.

Councilman Gilbert stated that we might have to take off professionals because of conflicts of interest with an architect and engineer.

Councilman Benson noted that Mike Price did have to resign because he had too many conflicts, prompting Councilman Gilbert to say “then he was honest”. Councilman Benson added that they would call anyone’s hand if they saw a conflict of interest and asked Councilman Gilbert who he would want on the Commission. Councilman Gilbert responded that he just wanted all Boards to abide by the same law. This prompted Chairman Murphy to ask him if he wanted bar owners on the Beer Board?

Councilman McGary noted that political was being used in a negative way as to our role via the Planning Commission’s; that the Staff has no vote, but they make recommendations and then the Planning Commission votes, and the Council is the checks and balance; that if the Council was not the one to do this, then who would? He asked if the Council is not this body, then who would it be?

Councilwoman Ladd stated that first, this Board needs the right discipline for professional growth on long-term issues that affect neighborhoods and infrastructure; that she was supportive of the discipline being represented to bring information for long-term range improvements.

Secondly, Councilwoman Ladd continued, she was hearing Councilman Benson's concern, and she echoed it; that we did not want a group with no one making sure it was functioning properly; that Councilman Benson had mentioned they were supposed to obtain in-service hours to get a base knowledge, and she wanted to know who was responsible to see that they did this. She wanted to know who this Board answered to; that we needed to clean up term limits because we have a vast amount of talent and do not need to lock in a Board and never remove people; that this was an opportunity to learn—that the Board needs to be answerable and cleaned up.

Attorney McMahan noted that there were two Mayor appointees, and the Council confirms these appointees.

Councilwoman Ladd asked if the Mayors were responsible for seeing if members report.

Councilman Benson noted that he had been on the Planning Commission for ten years and had not missed a meeting. Mr. Johnson agreed that there were no limits to terms.

Attorney McMahan stated that the City representative was Councilman Benson; that the County rotates their commissioners.

Councilman Benson added that rotating gets political, and we see this occurring; that one or two commissioners hate the Planning Commission and just come in for their specific interests.

Councilman Gilbert mentioned Don Walker being here and going to the Planning Commission, and the Staff recommended that he should not build and the Planning Commission said that it was fine, and then he would threaten to build shacks if he did not get his way. He stated that he would like the rationale of why the Staff says what they say—that why one says “yes” and the other “no”; that there would be more city members than county if they all appeared.

Councilman Benson agreed that we have had some absentees, but it is better now.

Councilman Benson noted that the two Mayors and two Chairmen will decide who will replace Barry Bennett.

Chairman Murphy stated that we needed to decide how to handle the Staff's recommendation if it is a conflict—if it needs to be revealed or the Council ask for it?

Attorney McMahan asked if the Council wanted a third Ordinance? Councilman Benson felt that was not necessary—that the Staff could just verbally tell the Council their recommendation. Councilwoman Robinson agreed that no “big” document was needed.

Chairman Murphy also questioned if we needed it to be by Ordinance what we can do in so far as appointments coming from certain fields?

Attorney McMahan reminded that the City only regulates one-half of this—that there are two Mayors and two members from the Council and the Commission. Councilman Benson stated that there were about 12 members

Councilwoman Berz questioned if we wanted to get looser or tighter?

Attorney McMahan stated that State Law does allow a Municipal Planning Agency.

Councilman Benson stated that the City is funding more than the County, with Councilwoman Berz stating that it is a match. Ms. Kitchen agreed that traditionally it had been a match—that the County has not made their budget yet for this year.

Chairman Murphy asked if there was agreement to research this and see how the State Statute compares with an Ordinance that we could create to say that we want people with the following background to be represented as City appointees; that this would be vested with the Mayor, and he can appoint who he wants to.

Councilman Benson stated that it could just be an understood goal.

Chairman Murphy felt we needed a fairly broad participation.

Councilman McGary made the motion to have participants described and classified. This was seconded by Councilwoman Ladd.

Chairman Murphy mentioned restricting Executive Privilege—that our Executive (Mayor) might like to be heard on this mater.

Councilwoman Robinson stated that this matter was to be continued.

Chairman Murphy stated that we would ask the Mayor to appear; that we did not have enough information one way or the other to defer until we hear from the Mayor.

The second issue to be discussed was an issue that Councilman Rico wished to be re-visited. It concerned the Ethics Code. He stated that some of the new members of the Council were not included in the former discussions when we went over this regarding what Councilmembers could or should do.

Councilman Gilbert stated that he had heard the discussions.

Councilman Rico asked that this be re-visited as to what Councilmembers can and cannot do.

Councilwoman Berz suggested that the Council do a session on this.

Chairman Murphy stated that we could bring this out to see if it needs to be updated or revised.

Attorney McMahan noted that Ms. Freiberg had handled this in the past.

The meeting adjourned at 4:20 P.M.-