

Municipal Building
Chattanooga, Tennessee
September 29, 1998

The meeting of the Chattanooga City Council was called to order by Chairman Crockett, with Councilmen Eaves, Hakeem, Hurley, Lively, Pierce, Rutherford, Shockley, and Taylor present. City Attorney Randall Nelson, Management Analyst Randy Burns, and Shirley Crownover, Assistant Clerk to the Council, were also present.

INVOCATION

Councilman John Taylor delivered the invocation for the evening.

MINUTE APPROVAL

On motion of Councilman Lively, seconded by Councilman Taylor, the minutes of the previous meeting were approved as published and signed in open meeting.

RYAN CRIMMINS
GREATER CHATT. SPORTS & EVENTS COMM.

Chairman Crockett called on Mr. Ryan Crimmins who is Chairman of the Greater Chattanooga Sports & Events Committee and who was present along with Merrill Eckstein, President, and Gerald Mason, Board member. Mr. Crimmins expressed his appreciation for the opportunity to come before the Council, along with Mr. Eckstein and Mr. Mason. He stated he thought when there was a change in leadership that it was proper and courteous to come before the Council. He stated that they attempted to bring first class sporting events to Chattanooga to improve the economy and quality of life here. He mentioned a five-year report card on the Sports Committee and directed the Council's attention to a hand-out, which is made a part of the minute material. He stated that they had been in business since 1993 and at first did not know what to expect; that the first year they brought in \$7.2 million and in 1997 they brought in \$23 million dollars to our community. He noted that this was an outstanding track record even though he deserved no credit; that some of the credit goes to the Council and Vision 2000. He thanked the Council for allowing them to bring these events to Chattanooga. He stated they could be better; that he was only one phone call away and that he would work hard to earn the Council's trust and that they would spend the taxpayers' money wisely. He stated they were trying to do the job they were hired to do; that he had only been on board two weeks. He asked if Gerald Mason could be allowed to say a few words--that open communication makes for good business.

RYAN CRIMMINS (CONT'D.)

Mr. Mason stated that it was good to be here on a non-controversial issue; that he was very fortunate to serve on this committee and was part of the selection committee for the chairmanship; that some of their events were scheduled even before the Stadium was completed. Mr. Mason stated that he had also been on the side of being a recipient, mentioning the inaugural game at Finley Stadium. He stated he was very glad of what they had been able to do--that this was the best kept secret in Chattanooga; that they were doing a great job and spending money wisely. He thanked the Council for supporting this, stating he hoped it would continue.

Chairman Crockett asked Mr. Eckstein if he would like to add a few words.

Mr. Eckstein noted that he had been with the Sports Committee from the start; that he was the first staff person in 1992, and their track record spoke for itself. He stated he would like to express his gratitude to the citizens of this community for their support; that the people here had treated our visitors well and made it a memorial experience for them, enabling us to bring events back to Chattanooga, mentioning basketball and softball events. He reiterated that the people of Chattanooga had welcomed them and made people want to come back here.

Chairman Crockett thanked those who had spoken tonight, stating that we got the highest returns from this than on any investment we made.

REZONING

#1998-148 (LEE BOWMAN)

On motion of Councilman Pierce, seconded by Councilman Shockley, AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 1803 COWART STREET AND 308 EAST 18TH STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE passed second reading. On motion of Councilman Pierce, seconded by Councilman Taylor, the ordinance passed third and final reading and was signed in open meeting.

AMENDING BUDGET ORDINANCE
INTERCEPTOR SEWER SYSTEM BUDGET

Councilman Taylor stated that both this Ordinance and the Ordinance following came with a recommendation from committee.

On motion of Councilman Lively, seconded by Councilman Taylor,

AN ORDINANCE TO AMEND ORDINANCE NO. 10718, ENTITLED "AN ORDINANCE TO PROVIDE REVENUE FOR THE FISCAL YEAR BEGINNING JULY 1, 1998, AND ENDING JUNE 30, 1999 AND APPROPRIATING SAME TO THE PAYMENT OF EXPENSES OF THE MUNICIPAL GOVERNMENT; FIXING THE RATE OF TAXATION ON ALL TAXABLE PROPERTY IN THE CITY, AND THE TIME TAXES AND PRIVILEGES ARE DUE, HOW THEY SHALL BE PAID, WHEN THEY SHALL BECOME DELINQUENT; AND PROVIDING FOR INTEREST AND PENALTY ON DELINQUENT TAXES AND PRIVILEGES, " SO AS TO PROVIDE FOR CERTAIN CHANGES IN THE PERSONNEL POSITIONS SET OUT IN SECTION 7(c); ADD SECTION 7(a)(4); AND TO SET FORTH THE BUDGET OF THE INTERCEPTOR SEWER SYSTEM

passed first reading.

AMEND CITY CODE
SEWER SERVICE CHARGES AND FEES

On motion of Councilman Lively, seconded by Councilwoman Hurley,

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 31, SECTIONS 31-36, 31-41 AND 31-43, RELATIVE TO SEWER SERVICE CHARGES AND FEES

passed first reading.

ALLOCATING CD BLOCK GRANT FUNDS

Councilman Hakeem asked how much in funds and where would they go. Councilwoman Hurley noted that Adm. Traugher was not present tonight and perhaps this should be deferred for one week.

On motion of Councilman Pierce, seconded by Councilman Lively,

A RESOLUTION ALLOCATING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND HOME INVESTMENT PARTNERSHIP FUNDS FROM VARIOUS FUNDING YEARS AS SET FORTH MORE FULLY HEREINBELOW, AND AUTHORIZING THE USE OF URBAN DEVELOPMENT ACTION GRANT PROGRAM INCOME TO PROVIDE FUNDING FOR THE CITY'S COMMERCIAL FACADE PROGRAM

was deferred for one week.

AGREEMENT (ARCADIS, GERAGHTY &
MILLER)

On motion of Councilman Pierce, seconded by Councilwoman Hurley,
A RESOLUTION AUTHORIZING THE DEPARTMENT OF GENERAL
SERVICES ADMINISTRATOR TO ENTER INTO AN AGREEMENT
FOR ENGINEERING SERVICES WITH ARCADIS GERAGHTY &
MILLER, INC., RELATIVE TO A FIVE-PHASE INFRA-
STRUCTURE PROJECT FOR 10TH AND 11TH STREETS, FOR
A TOTAL AMOUNT NOT TO EXCEED FIFTY-TWO THOUSAND,
FIVE HUNDRED DOLLARS (\$52,500.00)
was deferred for one week.

Councilman Taylor stated that Resolutions (c) thru (n), with the
exception of (e), which will be taken off the agenda, come with
recommendation from the committee.

AGREEMENT
(HAMILTON COUNTY)

On motion of Councilman Taylor, seconded by Councilman Pierce,
A RESOLUTION AUTHORIZING THE PUBLIC WORKS ADMINISTRATOR
TO EXECUTE AN AGREEMENT WITH HAMILTON COUNTY WHEREBY THE
COUNTY'S GIS SUPPORT UNIT IS TO PROVIDE TOPOGRAPHIC MAPS
FOR A PORTION OF THE CITY OF CHATTANOOGA FOR A COST OF
FIFTY-ONE THOUSAND, FIVE HUNDRED FORTY-FIVE AND 75/100
DOLLARS (\$51,545.75)
was adopted.

AGREEMENT (UTC)

On motion of Councilwoman Rutherford, seconded by Councilman Taylor,
A RESOLUTION AUTHORIZING THE PUBLIC WORKS ADMINISTRATOR
TO EXECUTE AN AGREEMENT WITH THE UNIVERSITY OF TENNESSEE
AT CHATTANOOGA FOR FISCAL YEAR 1998-99, RELATIVE TO PER-
FORMING STORMWATER TESTING, MONITORING, AND LOCATION
SERVICES, FOR A TOTAL COST NOT TO EXCEED ONE HUNDRED
THIRTY-FIVE THOUSAND, FIVE HUNDRED FORTY-EIGHT DOLLARS
(\$135,548.00)
was adopted.

ADOPTION OF INTERCEPTOR SEWER SYSTEM
BUDGET

On motion of Councilwoman Hurley, seconded by Councilman Pierce,
A RESOLUTION AUTHORIZING THE ADOPTION OF THE
1998-99 OPERATING BUDGET FOR THE INTERCEPTOR
SEWER SYSTEM
was tabled.

CONTRACT CHANGE ORDER

On motion of Councilwoman Rutherford, seconded by Councilman Lively,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER
NO. 2, CONTRACT NO. BL-1-97, BIRCHWOOD LANDFILL, CON-
STRUCTION OF PHASE I AND II LINER, WITH HARDWAY CON-
STRUCTION CORPORATION OF TENNESSEE, WHICH CHANGE ORDER
DECREASES THE CONTRACT AMOUNT BY TWENTY-NINE THOUSAND,
NINE HUNDRED TWENTY-FOUR DOLLARS (\$29,924.00) FOR A
REVISED CONTRACT TOTAL OF TWO MILLION, FIVE HUNDRED
FIFTY-SIX THOUSAND, FIVE HUNDRED SIXTY-SEVEN DOLLARS
(\$2,556,567.00), AND WHICH CHANGE ORDER INCREASES THE
CONTRACT TIME BY ONE HUNDRED TWENTY (120) CALENDAR
DAYS
was adopted.

TEMPORARY ROW USAGE

On motion of Councilwoman Hurley, seconded by Councilwoman Rutherford,
A RESOLUTION AUTHORIZING K.Z.'S WINGS AND THINGS TO
USE TEMPORARILY THE CITY'S RIGHT-OF-WAY AT 1407
MARKET STREET FOR THE PURPOSE OF REPAINTING AND
RENOVATING AN EXISTING BUSINESS SIGN AT SAID
LOCATION, SUBJECT TO CERTAIN CONDITIONS
was adopted.

TEMPORARY ROW USAGE

On motion of Councilman Taylor, seconded by Councilwoman Rutherford,
A RESOLUTION AUTHORIZING MARKET STREET CURATOR TO
USE TEMPORARILY THE CITY'S RIGHT-OF-WAY AT 1265
MARKET STREET FOR THE PURPOSE OF ERECTING A BUSI-
NESS SIGN AT SAID LOCATION, MORE PARTICULARLY
DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS
was adopted.

TEMPORARY ROW USAGE

On motion of Councilwoman Rutherford, seconded by Councilman Lively, A RESOLUTION AUTHORIZING TAQUERIA LA ALTEÑA TO USE TEMPORARILY THE CITY'S RIGHT-OF-WAY AT 314 WEST MAIN STREET FOR THE PURPOSE OF PLACING UP TO FIVE (5) TABLES AND NEEDED CHAIRS ON THE MAIN STREET SIDEWALK AT SAID LOCATION, SUBJECT TO CERTAIN CONDITIONS was adopted.

SEWER EASEMENT PURCHASE

On motion of Councilwoman Rutherford, seconded by Councilwoman Hurley, A RESOLUTION AUTHORIZING THE PURCHASE OF A SEWER EASEMENT FROM GORDON S. DRIGGANS AND GERALDINE W. DRIGGANS, RELATIVE TO CONTRACT NO. 52E, SANITARY SEWER RELOCATION, INTERSTATE I-75 WIDENING, EAST BRAINERD ROAD TO STATE ROUTE 153, TRACT NO. 2, FOR A CONSIDERATION OF NINE HUNDRED DOLLARS (\$900.00) was adopted.

SEWER EASEMENT PURCHASE

On motion of Councilman Lively, seconded by Councilwoman Rutherford, A RESOLUTION AUTHORIZING THE PURCHASE OF A SEWER EASEMENT FROM HOWARD G. SAWYER AND JO ANN C. SAWYER, RELATIVE TO CONTRACT NO. 52E, SANITARY SEWER RELOCATION, INTERSTATE I-75 WIDENING, EAST BRAINERD ROAD TO STATE ROUTE 153, TRACT NO. 3, FOR A CONSIDERATION OF ONE THOUSAND, FOUR HUNDRED DOLLARS (\$1,400.00) was adopted.

SEWER EASEMENT PURCHASE

On motion of Councilman Taylor, seconded by Councilman Shockley, A RESOLUTION AUTHORIZING THE PURCHASE OF A SEWER EASEMENT FROM FORREST R. LINER, JR., ALICE LINER NORRIS AND FREDRICK M. LINER, RELATIVE TO CONTRACT NO. 52E, SANITARY SEWER RELOCATION, INTERSTATE I-75 WIDENING, EAST BRAINERD ROAD TO STATE ROUTE 153, TRACT NO. 10, FOR A CONSIDERATION OF SIX HUNDRED FIFTY DOLLARS (\$650.00) was adopted.

SEWER EASEMENT PURCHASE

Adm. Marcellis stated that in the committee meeting he lumped this Resolution with the above three; that this was a different location which was the Williams Street CSO Facility and was at the rate of \$.75 a square foot.

On motion of Councilman Taylor, seconded by Councilwoman Rutherford, A RESOLUTION AUTHORIZING THE PURCHASE OF A SEWER EASEMENT FROM BOBBY J. THOMPSON AND BETTYE M. THOMPSON, RELATIVE TO CONTRACT NO. CSO-3-98, WILLIAMS STREET COMBINED SEWER OVERFLOW FACILITY, TRACT NO. 1 FOR A CONSIDERATION OF THREE THOUSAND, SIX HUNDRED SEVENTY-FIVE DOLLARS (\$3,675.00) was adopted.

EPB PAYMENT

On motion of Councilman Lively, seconded by Councilwoman Rutherford, A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT OF THIRTEEN THOUSAND, NINETY DOLLARS (\$13,090.00) TO THE ELECTRIC POWER BOARD OF CHATTANOOGA FOR EXTENDING THE OVERHEAD LINES ON NORTH TERRACE was adopted.

WITNESS FEES ACCEPTANCE

Attorney Nelson explained that there was a provision in the City Charter that prohibits firemen from accepting anything other than what the City pays them; that this resolution will allow them to accept witness fees for testifying.

On motion of Councilman Pierce, seconded by Councilwoman Hurley, A RESOLUTION AUTHORIZING LUCIUS V. MILLER, JR., ROBERT LACKEY, RICHARD PHILLIPS, AND DAVID THOMPSON TO ACCEPT WITNESS FEES OF FORTY DOLLARS (\$40.00) APICE TO TESTIFY IN THE CASE OF HICKSON CORPORATION VS. NORFOLK SOUTHERN RAILWAY COMPANY VS. UNION TANK CAR COMPANY, ET AL., UNITED STATES DISTRICT COURT, NO. 1:95-CV-266 was adopted.

CONFIRMING CITY ENGINEER
PHILLIP W. LYNN

On motion of Councilwoman Hurley, seconded by Councilwoman Rutherford,
A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF
PHILLIP W. LYNN AS CITY ENGINEER EFFECTIVE JANUARY
1, 1999
was adopted.

Chairman Crockett asked Mr. Lynn if he would like to say a few words.

Mr. Lynn stated that he appreciated the opportunity to appear before
the Council; that Chattanooga was involved in a lot of good things,
and he was excited about coming to work here and looking forward to
working with everyone in the future.

OVERTIME

There was no overtime report presented this week.

PURCHASE

On motion of Councilman Lively, seconded by Councilwoman Rutherford,
the following purchase was approved for use by the Public Works Dept.:

SPECIALTY CHEMICAL CO. (Lower and Better bid):
Requisition No. 0035118

Twelve Months Requirements Contract for Inhibited Hydrochloric Acid
for Moccasin Bend
\$.0940 per lb.

PERSONNEL

The following personnel matter was reported for the Fire Dept.:

JAMES D. BERRY--Family Medical Leave for Laborer II, effective 10/2/98
through 12/24/98.

PERSONNEL

The following personnel matters were reported for the Police Dept.:

OLIVIA KAREN GLENN--Return from Family and Medical Leave, effective 9/21/98.

DIANA D. HALLETT--Hire as School Patrol Officer, effective 9/25/98, at a daily rate of \$21.92.

SHELIA EASTERLY--Resignation as School Patrol Office, effective 9/23/98.

JOHN GREGORY--Resignation of Patrol Officer, effective 9/22/98.

BETTER HOUSING APPEAL

Attorney Nelson stated that **Mr. Jonathan Rogers of 1715 Mitchell Avenue** had requested to appeal a decision of the Better Housing Commission concerning the demolition of his house at **1715 Mitchell Ave.** This hearing was scheduled **immediately following the Council meeting on October 6th.**

ORDINANCE NO. 10763
CREATING M-4 ZONE

Councilman Eaves stated he would like to put this matter forth under Other Busingess; that the Council passed an Ordinance last week concerning M-1 and M-4 Zoning; that he had received a number of calls and would like for Ordinance No.10763 to be rescinded; that this rescinding could be temporary until we get some things squared away; that we had taken certain M-1 zoning all over the city, and he wished to rescind this on a temporary basis until we can get where we are going squared away. He stated that Attorney John Anderson had brought his attention to a case; that his client had a large piece of M-1 zoned property and had spent several million dollars on it, and it was already zoned M-1; that they had obtained an Air Pollution application and worked with Mr. Marcellis with expenditures of several hundred thousand dollars and then were told in the middle of this process that the City had changed their mind on the zoning. Councilman Eaves stated he considered this a hardship, and he did not know how many others would be affected in this same way. He stated he would like to make a motion on this; that we have people who have the proper zoning being told that they no longer have this zoning, and it is working a hardship on these people. He reiterated that he would like to get this rescinded until we get this worked out, whether it be grandfathering projects in or changing the Ordinance.

ORDINANCE 10763 (CONT'D.)

Councilman Eaves moved to rescind this Ordinance. This was seconded by Councilman Pierce.

Attorney Nelson stated that he did not bring his Roberts Rules of Order with him, but he thought any action to rescind had to be at the same meeting that the action was taken; that this issue could be sent back to Planning and be brought back in the regular course.

Councilman Eaves stated that he did remember the Council having rescinded Ordinances in the past; that he did not know how we did it; that two weeks have to pass after its passage before this Ordinance can take effect; that the Council needs to pass an Ordinance overriding this one; that those people who have an M-1 Zone and were expecting to go forward with their project were not told about this and in the middle of their process they are told they no longer have the proper zoning and will have to start all over again; that he did not think we should work this hardship on a person.

Councilman Hakeem stated he would like to hear from Mr. Anderson. He questioned if the Council goes the route being suggested by Attorney Nelson, what impact that would have on people who now have M-1 Zone and will have to apply for M-4.

Attorney Nelson responded that it would come back to the Council, and they could do what they wanted to do; that any amendment of the Zoning Ordinance goes before the Planning Commission for a recommendation; that it needs to go back to Planning since the Council has already taken action one way; that the Planning Commission's recommendation is non-binding. He stated this was the appropriate way to approach this.

Councilman Taylor stated he thought the Council had spoken of a grandfather clause; that we did not address those who would be grandfathered in. Attorney Nelson responded that if the property is currently being used that it can be grandfathered in as a legal non-conforming use. Councilman Taylor continued, stating that for clarity concerning digging grounds--do we have any regulations governing excavation of different types of land. Attorney Nelson responded that the Stormwater Ordinance governs that; that we are in the process of looking at a "cut and fill" Ordinance. Councilman Taylor noted that the Council had already moved on the Ordinance being discussed and voted on it and there is a grandfather clause for those already in the process of digging at this time. He suggested that the Council stand with what we have since without this Ordinance we have no guidance at all right now.

ORDINANCE NO. 10763 (CONT'D.)

Councilwoman Rutherford stated it was her understanding that the Planning Commission addressed this one day, and the next night the Council voted on this for first reading. She questioned the time element involved.

Attorney Nelson explained that this was pre-advertised as we have done several times in the past; that there is a provision in the Zoning Ordinance that states the time element should be two weeks after a recommendation by the Planning Commission; that each Ordinance holds equal dignity; that the Charter sets forth what we have to do to pass an Ordinance and the Charter and State Law have been complied with. Attorney Nelson explained that the purpose of the two weeks after passage before it becomes effective is in the event that it has an effect on any interested citizen that they can put a petition together and attempt to get it rescinded.

Councilwoman Rutherford stated that interested parties did not have two weeks. She questioned if we could not take action in the next few weeks without anyone having to go through the whole process again. Attorney Nelson explained to amend the Zoning Ordinance you have to have an advertisement two weeks before the Council meeting. Councilwoman Rutherford stated that Planning could not get it on their agenda before October 12th, and the cut-off date is Friday. She stated she felt badly about this one.

Councilman Pierce stated that he was for sure that we have made decisions and rescinded them. Attorney Nelson stated not at a later date. Councilman Pierce stated he was sure the Council had acted and then rescinded and mentioned a case where we had rescinded a decision made by Administration. He also questioned how we could pre-advertise, questioning how we could assume what the recommendation from Planning would be. He questioned if the law gave us this latitude. Attorney Nelson responded that he thought it did.

Councilman Pierce continued, stating that when this was passed on first reading there were only five members present; that if he knew what he knew now, his vote might have gone another way. He questioned not being able to do something one week and rescinding it the next; that there are two weeks before it goes into effect and that is the latitude we have. He stated he would like to see it in writing that we have to rescind when action is taken. Attorney Nelson stated that he would get this information to Councilman Pierce.

ORDINANCE NO. 10763 (CONT'D.)

Councilman Eaves stated he would like to know more about uses in M-1; that he would like to know the definition of "use" and whether a person spending several hundred thousand dollars was not already "using" the property; that he would like a definition of that. Attorney Nelson responded that it was his understanding that the property had to be in the process of being used for a specific purpose.

Councilman Eaves asked what was the procedure the Council needed to take right now to stop this from taking effect a week from today in order to give us some time to work this over.

Attorney Nelson stated that we would need to get a petition signed by a certain percentage of registered voters to the Election Commission by next Tuesday. Councilman Eaves responded that that was impossible; that he wanted to know if there was a possible way to make a so-called "loop hole" for this one particular case. Attorney Nelson still maintained that this would have to go back before the Planning Commission in order to amend this Ordinance; that the present Ordinance 10763 takes effect next Tuesday. Councilman Eaves continued, asking if there was not some way to keep this thing from taking effect a week from today; if only a Judge's Order would do it?

Councilman Taylor stated that he did understand and Administration stressed that they would be working with this Ordinance and do some further study and get with the contractors and bring back an amendment to the Council.

Attorney Nelson stated that they had a meeting set for tomorrow afternoon (September 30th) in his office to talk about this.

Councilman Taylor stated this would be addressed in further meetings; that Mr. Stein was here last week and was satisfied with this; that procedures are in place to sit down with all interested parties to work this problem out; that he thought the major problem was excavation.

Chairman Crockett stated that he received a letter from Mr. Stein, and he responded to that letter this afternoon and to the AGC; that he promised to keep both of them involved in the process of meetings.

Attorney Nelson stated that Mr. Stein and his attorney would be at the meeting tomorrow; that AGC would also be represented--that they had called him about this Ordinance.

ORDINANCE NO. 10763

Chairman Crockett stated that he wanted all interested parties there. Attorney Nelson stated that he thought Attorney Anderson's interest may be different from Mr. Stein's.

Councilwoman Rutherford asked what was the most expedient way to handle this; that if it was for this Council to vote to send this back to the Planning Commission for review and then it would come back to the Council a month from now that **she would like to make the motion to ask the Planning Commission to review this.**

Councilman Lively stated one way to deal with this was to adopt another Ordinance to amend this one; that this one was not totally wrong; that if we adopt a Zoning Ordinance to prevent an individual from using his existing resources, we might have overstepped our boundaries; that a Zoning Ordinance needs to be for the entire City and not just to stop or permit one business from operating.

Councilwoman Rutherford stated that Planning had reviewed this; that when this was passed on first reading, she asked questions because she did not thoroughly understand it; that we were restricting some things that it was good to restrict; that she felt it would be of benefit to have another look at this.

Chairman Crockett asked if we sent this back, if the applicant would have to pay again.

Councilman Eaves seconded the motion made by Councilwoman Rutherford to send this back to Planning for review.

Attorney John Anderson spoke at this time expressing appreciation for the opportunity to speak; that he represented American Material Technologies on Jersey Pike. He stated there had been a good discussion on this issue. He questioned if this was sent back to Planning if the effective date for this Ordinance would still be the same; that it would not delay the date. Attorney Nelson responded that the State Law requires that before an amendment can be made to the Zoning Ordinance it has to be advertised and go before the Planning Commission.

Attorney Anderson continued, stating that the business he represents is a Rock Quarry, which is not glamorous but is one of the big "3" in manufacturing. He stated his interest was much different from Mr. Stein and borrow pits; that his client acquired the land when it was M-1 and did permit this use; that his client had spent a substantial amount of money in the permitting process--Stormwater, Business, etc.; that \$20 million dollars would be invested, and it would bring in 150 new jobs--good jobs ranging around \$25,000 per year; that this was a

ORDINANCE NO. 10763 (CONT'D.)

good investment; that they would widen Jersey Pike and do it well; that they were not asking for a tax abatement or infrastructure; that it would not cost the City anything and would add \$100,000 to the tax revenue. He stated that Mr. Nelson was correct--that he did talk to him when he learned this had been passed; that he did not know about the meeting; that the minutes of last week's meeting spoke about "tweaking" the Ordinance; that he could not have asked to be included in the meeting because he did not know about it. As to the grandfather clause, it was Attorney Nelson's opinion that they could not be grandfathered in because they were not digging rock, but they had spent a substantial amount of money--that he and Attorney Nelson differed on this point, as attorneys often do; that they bought this property when it was in the right zone; now it is out of zone for Stormwater's purposes. He questioned why they had not learned about this until Friday; that his clients' plans were well known to City officials; that Air Pollution and Stormwater knew about this; that he had also talked to Mayor Kinsey about this. Attorney Anderson noted that he had discovered that the Chattanooga Times' notice for advertisement was on August 31st; that the Planning Commission had not even met, much less made a recommendation; that following the Zoning Ordinance after the recommendation of Planning there will be 15 days. He stated he was a little concerned about this. He stated he was at the September 14th Planning Commission meeting which is always held the second Monday of the month and the procedure is that matters discussed that day will come before the City Council on the second Tuesday of the following month, which should have been in October, for adequate notification. He asked that the Council either grandfather their use or make this Ordinance not effective; that had they known about this, they would have been here to discuss it.

Chairman Crockett stated that he went back through his correspondence and the only thing he could find that Planning moved on for American Materials Technologies related to an abandonment easement, which was dated September 14th.

Attorney Anderson stated they were at the Planning Commission on September 14th for an abandonment easement; that they had not corresponded with the City Council; that the issue at hand must have been the last item; that he was at the August Planning Commission meeting, as well, and there was no discussion on this; that they had received no notice or they would have been here to discuss this; that he was certainly not looking for a publication on August 31st.

Councilman Taylor asked if the purpose of this Ordinance was to stop any one business from developing.

ORDINANCE NO. 10763 (CONT'D.)

Attorney Nelson responded that it would have an effect on a number of businesses, including the people with the Quarry; that it would also affect general contractors and borrow pits.

Councilman Taylor asked if an applicant could still apply for a borrow pit. Attorney Nelson indicated something would be worked out. Councilman Taylor stated as of now there is no application process to have borrow pits. Attorney Nelson pointed out that they had to comply with the Stormwater Ordinance.

Councilman Eaves stated that he felt like the Council, in general, felt that they had acted hastily; that he would ask specifically, that to stop this Ordinance from taking effect would take a Court Order, and we would have to wait on the Planning Commission to take this up. Attorney Nelson responded this was correct, if you did not get a petition. Councilman Eaves stated that a petition was out; that it would take a temporary restraining order from the Courts.

Councilman Pierce asked, based on the information the Council has heard, if the Ordinance goes into effect next week, what position is the City in as far as liability. Attorney Nelson responded there was nothing compelling one way or the other; that he did not know what the time schedule was for getting the quarry up and going. Councilman Pierce asked if the City would not be financially liable for the extent of investing that Mr. Anderson's client had put into this property. Attorney Nelson indicated there would be no liability because the City had not taken away all of the uses of this property. Councilman Pierce stated that if they had already spent \$2 million dollars that it was pretty much taking away all of the uses! Attorney Nelson explained that the amount of money does not determine this. Councilman Pierce stated this would make him leery about voting on anything from now on.

Councilman Lively noted that this would become an effective Ordinance in one week. He stated he saw nothing from stopping us from sending another Ordinance through the proper procedures to amend this Ordinance.

Councilman Taylor asked when the meeting would be held to discuss this. Attorney Nelson responded "tomorrow". Councilman Taylor asked if the need to "tweak" would be a part of the meeting. Attorney Nelson indicated different meetings could be set up because these are different issues.

ORDINANCE NO. 10763 (CONT'D.)

Attorney Anderson explained to Councilman Taylor that the borrow pit meeting is substantially different in use from them; that he felt this Ordinance was aimed at them and borrow pits was just a "screen"; that he had a difficulty with the grandfather clause and the fact that there was no notice at all and City officials knew their plans; that he did not want to have to go to Court; that the meeting tomorrow would not be discussing rock quarries, but they did have a right for a rock quarry and now they did not.

Councilwoman Rutherford stated that she and another Councilman wanted to know if the Council rescinded the Ordinance tonight, what would happen to us--who would prosecute us?

Councilman Hakeem stated that he was tempted after hearing the comments from Attorney Anderson, but we had to follow process and procedure; that he would not want to set a precedent. Councilman Pierce stated "we would just be testing the law."

Councilman Eaves noted there were frequent votes on this Council saying Ordinance No. "xxxxxx" amending Ordinance No. "xxxxxx", and questioned why this could not be done in this case. He asked Attorney Nelson if the Council was just not asking the right questions.

Attorney Nelson explained that Zoning Ordinances were different from other Ordinances; that State Law mandates a recommendation from Planning first; that we amend Ordinances all the time, but we have to do it in due fashion.

Councilman Lively stated we have to go through the proper process, and he seconded the motion to put this back on the agenda and send another Ordinance back to amend this. Chairman Crockett noted that there was already a motion on the floor, and a second, to send this back to the Planning Commission for review.

Councilman Pierce stated that Councilman Eaves made a motion at the beginning of this discussion to rescind this Ordinance; that he would like to have this motion acted on first; that although it might be illegal, he did support this.

Chairman Crockett responded that it was not a motion for something we can legally do; that this would be capricious on the part of the Council, and we needed a legal motion, and we had that motion to send this back to the Planning Commission. **He asked for a vote, and the motion to send it back to the Planning Commission passed with Councilman Pierce voting "No", stating that he was not in favor of that "particular" motion, questioning if it were not possible to rescind this Ordinance.**

ORDINANCE NO. 10763 (CONT'D.)

Councilman Eaves questioned if Attorney Nelson had not mentioned another approach to this. Attorney Nelson responded the Council could adopt the motion on the floor and then do what they wanted to with it.

Chairman Crockett noted that the Council had spent an ample amount of time on this; that if a separate discussion needed to be held with Attorney Anderson, then another meeting at Attorney Nelson's office needed to be arranged; that he had promised to stay in contact with Mr. Stein and the AGC, and he would afford Mr. Anderson and his client the same privilege.

Attorney Anderson indicated that he would seek an order from the Chancellor; that he appreciated this discussion; that obviously it is important to the Council; that civil proceedings would get underway at 8:45 in the morning (September 30th) with Chancellor Frank Brown.

Chairman Crockett asked Adm. Marcellis where we were on the "cut and fill" and borrow pits and quarries. He wanted to know the work in process.

Adm. Marcellis stated that our existing Ordinance was rescinded when the Stormwater Ordinance was passed in 1993; that there are other issues we are looking at and searching other cities to see what they may have done concerning borrow pits, and they were in discussions with Mr. Stein and other members of the AGC.

Chairman Crockett stated that the Council had not been a part of this and the issues concerning "cut and fill" and borrow pits; that we need to accelerate this as much as possible; that there is a sense of some urgency to get this done.

Adm. Marcellis stated after this goes back to Planning and then comes back to them that they should have something in hand to provide the Council.

COMMITTEES

Councilwoman Hurley stated that a Health, Education, Human Services and Housing Committee had met earlier in the day to discuss employee health insurance; that this would be on the agenda next Tuesday night. She also scheduled another meeting of the **Health, Education, Human Services and Housing Committee to meet at 4:00 P.M. on Tuesday, October 6th** for CNE to give a complete overview of their activities in the context of the new community bank (CDFI) which is separate from CNE but related to it.

CHARLES SHROPSHIRE

Mr. Shropshire addressed the Council, stating he was present on behalf of his neighborhood; that he lived off of Central Ave., and it was a dead-end street; that Stein Construction Co. had opened up the road to haul dirt; that there were 20 houses on the road and 75% of the people are in the 65-70 year range, and they don't need all these problems; that they need some way to enter without disturbing the elderly people in a residential area. He stated he did not have time to get a petition together; that he was here for his community and asking for Stein to find another way besides using their little street; that it won't stand 30-ton trucks. He asked that the Council do something for them.

ULYSSES NEVILLE

Mr. Neville stated that Mr. Shropshire was telling it right; that their road was already torn up and big trucks are tearing it up even more; that this is a dead-end street that has become a lovers' lane, and they were going to have more trouble; that if they are going to dig up there, they need to have a gate to stop cars at night; that they have a lot of trouble with this being a dead-end street; that if they are going to open this up to regular traffic up there, they need to do something about it. He asked the Council to tell Stein Construction to have a gate to lock up and after they are finished to let the gate stay.

Councilman Taylor stated this was a major problem in that community with excavation of dirt; that we need to really look at this; that this is one of the prime reasons to look at the Ordinance that we have just been discussing. He urged the rest of the Council to take a visit up to that particular area around Sunnyville, Tennessee Ave. and up to 50th Street. He asked the Council to go out and at least look at this and see what kind of detriment we are doing to the community; that we have no regulations over something that is destroying and crippling a neighborhood.

Chairman Crockett asked Adm. Marcellis to get the Council a map to indicate where this is; that this is an example of "cut and fill".

Councilman Taylor asked that when they provide the map, they need to show the different accesses available to that area; that you can't touch that piece of land without disfiguring that community.

Councilman Hakeem noted that 51st Street is a small street. He asked if the problem was with removing the dirt or how they take it away.

Councilman Taylor responded that the issue is you look at the layout of the ridge and the horrendous sight is mind-boggling; that it is disfiguring the whole neighborhood; that this is zoned R-2, and there is nothing in place to say you can't go into a residential area and dig as deep as you prefer to; that he does not want to put people out of business, as he is a businessman himself, but there needs to be some kind of guidelines, and we don't have any; that they are going to take down the whole mountain; that they are going to dig as long as they need the soil in an R-2 Zone.

Councilman Hakeem stated that then it is the way they go about it. He questioned if there was any way for the trucks to get to their property without going through this neighborhood.

Councilman Taylor stated we could look at different routes to access this property; that he thought mouths would fly open when the Council members saw what was happening in this residential community; that we need something in place; that we had found out the hard way.

Chairman Crockett stated he believed you could even do this in an R-1 Zone.

Adm. Marcellis stated that they own the land and have to have access to their property; that residential property is less valuable than commercial and manufacturing and that is the reason why construction companies go into residential areas. He stated he did not know of anyone who could actually see this land; that it is totally out of sight and tucked in; that the contractor had made the road worse and would have to end up doing resurfacing work; that he was going to talk to Mr. Stein tomorrow about that particular site and borrow pits; that they could go through the school property possibly; that he would have to let the City Attorney tell him; that Mr. Stein had a right to use the road.

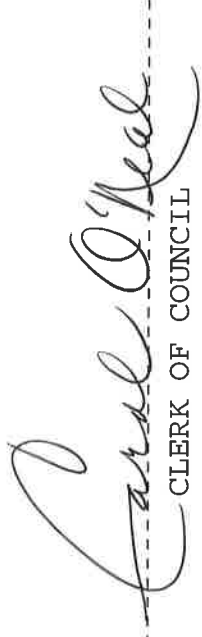
Councilwoman Rutherford asked if no permits were required. Adm. Marcellis responded that they have to adhere to Stormwater regulations and not hurt people on adjacent property; that they have to have a retention pond; that we need to get more restrictive about borrow pits. Councilwoman Rutherford stated then that you could dig away a neighborhood, and you don't even need a permit.

Chairman Crockett noted that borrow pits could be anywhere; that they could come and dig in Gaylon Heights and all over Tennessee; that we did not allow blasting.

Councilwoman Hurley stated that we have some firm regulations that we have passed for the future with the possibility of restrictions on R-1 and R-2 property.

ADJOURNMENT

Chairman Crockett adjourned the meeting until Tuesday, October 6, 1998 at 6:00 P.M.


CLERK OF COUNCIL

CHAIRMAN

(A LIST OF NAMES OF PERSONS IN ATTENDANCE IS FILED
WITH MINUTE MATERIAL OF THIS DATE)