

**City Council Building
Chattanooga, Tennessee
July 13, 2010
6:00 p.m.**

Chairman Rico called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, Ladd, McGary, Murphy, Robinson and Scott present. City Attorney Michael McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman McGary gave the invocation for the evening.

MINUTE APPROVAL

On motion of Councilwoman Robinson, seconded by Councilwoman Ladd, the minutes of the previous meeting were approved as published and signed in open meeting.

AMEND CITY CODE

On motion of Councilwoman Ladd, seconded by Councilman Murphy,
**AN ORDINANCE TO AMEND PART II, CHATTANOOGA CITY CODE,
CHAPTER 35, SECTIONS 22, 26, 36, 45, 46, 47, 49, 52, 53, 54, 55 AND
ADDING SECTIONS 62 THROUGH 67 RELATIVE TO VEHICLES FOR HIRE**
Passed second and final reading and was signed in open meeting.

AMEND CITY CODE

On motion of Councilwoman Berz, seconded by Councilman Gilbert,
**AN ORDINANCE AMENDING CHATTANOOGA CITY CODE, PART II,
CHAPTER 2, ARTICLE III, SECTIONS 2-151 THROUGH 2-153 BY DELETING
THESE SECTIONS IN THEIR ENTIRETY AND INSERTING A NEW DIVISION
19 ENTITLED "INJURY ON DUTY PROGRAM"**
Passed second and final reading and was signed in open meeting.

REZONING

2010-060: Arvin H. Reingold, Attorney

On motion of Councilman McGary, seconded by Councilwoman Scott,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 1109 FAIRVIEW AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-3 RESIDENTIAL ZONE TO UGC URGAN GENERAL COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
Was deferred two weeks (July 27, 2010).

REZONING

Councilmen McGary and Ladd made the motion and second to move the Hunter Road rezoning request forward on the agenda; the motion carried.

2010-088: City of Chattanooga

Pursuant to notice of public hearing the request of the City of Chattanooga to rezone tracts of land located at 5050, 5336 and 5344 Hunter Road came on to be heard.

The applicant was present; considerable opposition was in attendance.

City Attorney McMahan stated the normal procedure for handling zoning matters with respect to annexed areas has been for the city to request the Planning Commission to conduct a study of the zoning in that annexed area. He stated the Planning Commission then comes back with a recommendation to the City Council, or City Commission as it used to be, about what the recommendations should be. He stated during the process landowners have always been free to request that the Planning Commission consider a specific zone for their particular properties; that he suspects in this case the process normally is that the Planning Commission gives the City Council an overview of the zoning request, then the applicant is asked to speak and then the spokesman or the opposition are asked to speak and then the applicant is given a chance for rebuttal. He stated although set in motion by the City Council there has not been a predetermination by the City Council as an appropriate zone for this property; that they did not ask that it be zoned any specific thing, just asked it to be studied by the Planning Commission and the Staff made a recommendation to the Planning Commission.

REZONING (Continued)

Greg Haynes, Director of Development Services for the Regional Planning Agency (RPA), stated the map reflects the general location of the property and addresses three parcels: 5336, 5344 and 5050 Hunter Road. He stated the property is in the Ooltewah area and noted the landmarks in the area as the Hunter Woods Subdivision to the west of this across the street, Country Village to the west of that, and adjacent to the south in the corner is the Windhaven subdivision the subdivision most directly affected by this proposal. He quoted from the Zoning Ordinance stating, "it shall be the duty of the Planning Commission within 90 days of the effective date of the annexation to recommend a zoning plan for the newly annexed areas to the City Council". He stated the annexation effective date for this property is May 21, 2010; that the zoning plan is due to the City Council on August 19 which is what we have today on July 13 which falls within the 90 day deadline.

Mr. Haynes continued by showing the current zoning of the property by PowerPoint noting the temporary R-1 and C-2, as well as the current Chattanooga city limit line, the contiguous small section location, as well as the area in litigation, Area AA. He pointed out the Chattanooga Urban Growth Boundary, the area the city could annex in the future if there is a desire to do so. In describing the time line, he stated in December of 2009 a request was made to rezone the property to R-3 for apartments; in January of 2010 the Planning Commission recommended denial of R-3; in February 2010 the County Commission, as the property was in the county at this point, chose not to act and deferred action; in March 2010 a petition by the property owner was filed to be annexed into the city of Chattanooga; in April 2010 Chattanooga did annex the property and when it was annexed the zoning became temporary R-1 and C-2. He stated at this time when it was requested to be annexed the request was also that the R-3 be considered for the permanent zoning; that when the request was made they kept the apartment plan submitted back in December 2009 and asked that the same plan and request for R-3 be considered as part of this required zoning plan. He stated as the City Attorney stated this is not a request by a property owner or applicant for R-3, it is a zoning plan and when RPA created the zoning plan to present to the Planning Commission they reviewed the development plan for apartments by the property owner and developer as part of the zoning plan. He stated in May the annexation was effective noting there is a 30 day waiting period until it becomes effective should there be any questions or any move for litigation.

REZONING (Continued)

Mr. Haynes stated on June 3 the RPA sent the zoning plan to the Regional Planning Commission and made the recommendation for permanent zoning; that RPA recommended permanent R-3 for the temporary R-1 and kept the permanent C-2 for the temporary C-2. He concluded his comments by stating this was the presentation made to the Planning Commission in June of last month and after a lengthy meeting and discussion about this a large delegation of residents similar to the number tonight present were given an opportunity to speak and many did; that after hearing the comments by neighborhood representatives and after hearing the Staff's recommendations, the Planning Commission made a recommendation for the zoning plan to be permanent to keep the temporary R-1 and make that a permanent R-1 and make the C-2 a permanent C-2 which is Planning's recommendation to the City Council.

Councilman Murphy asked RPA's recommendation when the proposal was first proposed. Mr. Haynes stated the Staff's recommendation was to approve the R-3. Councilman Murphy stated it has been Staff's recommendation for approval twice. Mr. Haynes responded "yes".

(Dr.) Tim Ballard owner of the property in question on Hunter Road spoke at this time. He stated that it has been his desire to see this property developed in a responsible, high quality and aesthetically pleasing way since becoming its owner. He stated he and his engineer, Mike Price, met in the home of an adjoining property owner in the Windhaven subdivision in the spring of 2009 where approximately 10-12 members of the neighboring community accepted the invitation; that he wanted to hear their ideas and tell his hopes for the property. He stated they had a frank and open dialogue and in the summer of 2009 began grading operations; that he needed the dirt for commercial property he had in an area on Mountain View Road nearby. He stated he voluntarily left a 30 foot undisturbed and heavily wooded buffer adjacent to the land owners in the Windhaven subdivision in an effort to be a good neighbor; that all that is required is a ten foot landscape buffer. He stated he spoke with many potential buyers for this property and at the end of the process entered into a contract with Integra because he felt they were high quality, experienced developers and would bring what he was looking for in Ooltewah. He stated this site was scheduled to come before the County Commission in February of this year and he opted to seek annexation of the property by the city because he felt the City Council had more experience in dealing with mixed use developments.

REZONING (Continued)

Dr. Ballard stated at no time during this process was he promised nor was anyone ever promised that the property would be automatically rezoned, and no “back room deals” were ever cut. He stated this required going back through a public process which ended in coming back to the City Council tonight and the public has commented and welcomed to comment every step of the way. He stated he has heard the concerns of the county residents in the neighborhood and made every effort to address their number one concern and theirs which is safety; that there has been dialogue with the opposition throughout this process and he has been kept apprised of this. He stated he has stayed in the background for the most part but has received periodic updates all along the way. He stated that he wants the Council to know what he only wanted from the very beginning is a quality development because he lives and works here also. He stated if the Council passes this application they are committed to continue to be available to discuss the concerns and to address them to the best of their abilities.

David McDaniel, owner of Integra land Company, thanked the Council for allowing them to present their project. He distributed copies of what will be shown by PowerPoint of what they anticipate developing on the property if they are approved. He stated he has been developing multi-family in the southeast United States for 25 years and during the 25 years has built over 19,000 units all in various communities and neighborhoods that they have become good neighbors to all around. He stated it was never their intention in Ooltewah to create the volatility that apparently is out there; that their objective all along was to create a quality development that the city and county could be proud of and the residents living in the area would be able to enjoy. He stated when they look to find a site no matter what the neighborhood, community or city they go into there are three primary things they look for and in Chattanooga they started looking a year ago for those opportunities due to VW’s announcement of the plant coming in and the jobs that would be created. He stated residential housing focuses on job creation because a lot of times those people that live and work in those industries are renters first before buying houses. He stated the other thing they look for is proximity to the interstate and also quality shopping nearby; that as noted on the aerial the location of the site and its proximity to Volkswagen is about a five minute drive and about a mile-and-a-half from the interchange and one exit up is the Volkswagen interchange and people can be at work in no time. He stated they felt this was a very high quality location for the employment opportunities that are now being developed in Chattanooga.

REZONING (Continued)

Mr. McDaniel continued by stating throughout this process they have gone through numerous site plans and the plan shown is a representation of the current and, hopefully, final site plan; that they have made many modifications to it and tried to listen to all the recommendations and considerations of the residents in the neighborhood and Staff. He stated this project used to contain 254 units and is now 230 units with 12 buildings containing apartments and one club house that is going to be about 6,000 square feet with a resort-style pool. At this point photos were shown of the clubhouse they anticipate building, as well as property they built near Orlando, Florida; that they anticipate it containing a 1,000 foot exercise facility, a cyber cafe, a game room, a resort-style pool in the rear and with this site location sitting up on the hill will be quite attractive with very prominent views for the residents.

Another aerial photo was shown by PowerPoint depicting the proximity of the site itself and the interchange, as well as the commercial zoning and other commercial zoning behind it. An artist's rendering of the building they anticipate building was shown reflecting hearty plank siding with either brick or stone accents with Mr. McDaniel noting they have built numerous projects like this in the past that have been well received and quite attractive. A slide was shown that Mr. McDaniel felt was important reflecting the economic impact to the city and county; that they anticipate the project being \$20 million and should generate \$220,000 in taxes per year for the county and about \$175,000 for the city. He stated the jobs created would be roughly 600 temporary construction jobs for about the 16-18 months it will take to build it and somewhere between eight-ten permanent jobs located on site. He stated in addition they will be paying \$200,000 in water and sewer fees to the water and sewer company. A photo of a project in Florida was shown again reflecting the front and back of a carriage house with ground floor garages and the upper floor as residential living units with Mr. McDaniel noting these are the buildings that are going to be the closest proximity to the Windhaven subdivision. He stated they have moved the larger buildings 100 feet away from the property line creating a much more attractive view. A photo from the back of the clubhouse was shown reflecting the pool and size of the clubhouse and the quality of project they are anticipating; also shown were the inside decorations of the project showing the main entry into the community where most leasing activity will take place, as well as the amenities in the facility which speaks to the quality they hope to bring into the city.

REZONING (Continued)

Mike Price of MAP Engineers stated that they wanted the Council to notice the area circled in yellow on the PowerPoint is indicative of the land use plan which calls for a density of ten units per acre which is part of the discussion that is before the Council as to what the land use plan says. He stated land use plans specifically call for ten units per acre noting that the area shaded in yellow matches the ten units per acre.

Councilman Murphy stated the rear in the depiction has been represented as remaining forested is currently zoned C-2 temporary and was zoned C-2 previously when not in the city.

Mr. Price stated the portion of the rear of this development if approved tonight down to the Creek that is actually about eight acres would be left in a conservation easement and would be zoned R-3 or whatever this Council's will.

Councilman Murphy asked if the conservation easement is in place. Mr. Price responded "no"; that it would be in place subject to if this is approved.

Councilman Murphy stated if it were not approved, then this entire property, at least half of it or a good portion of it is C-2 property subject to highly intense commercial development.

Mr. Price stated the Creek is the dividing line between the properties; that everything that is on the Creek toward the interstate side is all zoned commercial; that everything from the Creek back toward Hunt Road is all residential.

Councilman Murphy stated he saw that; that his question is assuming this plan does not go through and we follow the Planning Commission's recommendation there is still a significant portion of land that is subject to C-2 development which is highly intense. Mr. Price responded that is correct, "yes"; that that is located in the portion that has been filled in that is adjacent to Hunter Road and that area.

Councilwoman Berz stated that she was a little unclear; that when Mr. Haynes gave the time line we just annexed in April she asked if there is or is not a land use plan in effect. Mr. Haynes responded that there is a land use plan for this area.

REZONING (Continued)

Councilwoman Berz asked if the Council has seen that. Mr. Haynes responded "no"; that he has not presented that. He stated that he stopped with the Planning Commission's recommendation; that if the Council would like for him to explain the Staff's recommendation which was for R-3 he has slides to go with that and the land use plan is part of that reasoning for the R-3.

Councilwoman Berz stated that she feels as if she is playing with half a deck; that the Regional Planning Commission suggested we deny and Mr. Haynes is saying Staff's recommendation is based on some land use plan on areas we annexed and have not seen it yet; that seeing it might be helpful.

Mr. Haynes explained that the land use plan is the Wolftever Creek Area Plan and there was a lot of discussion and confusion at the January Planning meeting as there is a difference of interpretation between the Staff's interpretation reading the plan; that they know what the intent of the plan was because they wrote it with the help of the neighborhood and community at that time. He stated the problem with the plan is it does not communicate to the average person when it is read as there are large and small maps and text and they could see to this point those maps and the text are not linked very well to communicate clearly what the recommendation is. He gave an example by referencing the large map in the back of the plan, the land use plan concept; that the arrow pointing out the location for this property and legend on the map that goes with the arrow says "low intensity residential" and if someone just looked at the map and map only the person would think the recommendation for the property is low intensity which equals low density. He stated the circles on the plan are supposed to represent focus areas; that there are four focus areas and three is the closest circle to this area and the problem with the circle is it does not include where the arrow is pointing to, so if a person goes to number three focus area it really does not communicate clearly with the map or text what that focus area is and what it means. He stated on the small map out of the plan the red area of the plan recommends medium intensity business or commercial and there is the yellow portion representing medium intensity residential or medium density and below that is low density. He stated the circle on the previous map did not include this portion of Hunter Road; that the larger view of the map where a lot of controversy and difference of opinion comes from this map as there are no labels on the map; that he has told the Council what they represent but if he gave them a copy and they read it they would not know that and that is the problem.

REZONING (Continued)

Councilwoman Berz stated this is from 2007 before VW and the total change in the area. She asked if it implies being updated or now that this is in the city are we going to do it again.

Mr. Haynes stated this is a three year old plan that actually was an update of a previous Wolftever Plan which he does not recall when it was done, early-to-late nineties and that plan actually recommended more general shades and patterns on a map for this area, low density residential. He stated this is an update of that earlier plan which changed this specific area to a medium intensity residential.

Councilwoman Berz asked if there is any attempt now that it is a “whole new world” out there to update again.

Mr. Haynes stated this is the attempt anticipating there would be a “whole new world” out there. He stated three years ago as far as their plans go they were able to get them down in a relatively short period of time between 2007 and now; that this is their attempt at anticipating that growth and that “changing world” out there. The next PowerPoint photo showed the overlay labels that are not printed in the plan with Mr. Haynes noting that the labels represent the intent of the plan. He stated despite all the confusion and the unclarity of the plan, the Staff still holds the position the focus area of the plan does recommend moderate intensity residential use for this area; that the plan does not support northward expansion of this type of land use beyond the site. He stated the plan indicates they intend to hold the line at this property; that there are questions if this is rezoned as the “door is opened” further up Hunter Road which is an argument that can be made; that the plan indicates because it was adopted and is it in writing the plan is trying to communicate clearly the intent of the city, that was in the county at the time, is to hold the line and not let this type of development or zoning go any further.

Councilman McGary stated in regard to the land use plan itself there is no recommendation as to actual zones, only just a suggestion as to how the land should be used categorically. Mr. Haynes responded “that is correct”.

Councilman McGary stated in regard to R-1 and R-3 both classified as residential, however this plan is not making any suggestion one way or the other it is just talking about density. Mr. Haynes responded “correct”.

REZONING (Continued)

Atty. John Anderson of the firm Grant Konvalinka and Harrison was present representing the Ooltewah Citizens for Responsible Growth, a group composed of people within and without the city of Chattanooga. At this point he asked the persons with the group to stand (a huge contingent of those present stood.) He also noted County Commissioner Hullender's presence in reference to the Wolftever Plan which was adopted by Hamilton County in June of 2007. He stated he would like for the record to reflect two things. He stated he would like to clarify for the record the applicant in this case is not Dr. Tim Ballard, it is the City of Chattanooga; that according to the application filed May 20, 2010 the applicant is the city of Chattanooga filed on the city's behalf by RPA. He stated he says that only because between RPA and Dr. Ballard there has been a 30 minute presentation and wanted to see if the opposition would have that kind of luxury. He submitted for the record a book prepared by the Ooltewah Citizens for Responsible Growth which is also a hard copy of an electronic copy of petitions in opposition to this that has been signed by more than 2,000 individuals in and around this area. He stated the booklet presented yesterday the Council has electronically and they wanted to give a hard copy of that.

Atty. Anderson pointed out they were present on a couple of basic points and asked to go back through the time line. He asked Stan Burton with the Ooltewah Citizens and Charlie Miller of Miller and McCoy, Traffic Engineer, to join him at the podium. He stated this is a pretty straight forward situation and respectfully disagreed with Greg Haynes noting that the Wolftever Plan is crystal clear. He stated the map at the end of the plan as at the end of all plans that this Council and County Commission adopted shows the area affected and there is no medium intensity rezoning contemplated by the map which is key at the end of the plan. He stated it would be pretty cumbersome to read the plan, go all the way through, see the key and then have to go back through to find the key to where it goes. He stated the second part of that in Section 4.7.4 of the Plan it talks about medium intensity residential zoning being four-to-ten units per acre; that it talks about townhomes, patio homes, carriage homes, small apartment complexes. He stated the reason he pointed that out the picture used in the plan is a picture of a patio home not of an apartment; that the Council may hear in rebuttal we're taking the gross acres of 23, applying the density of 230 units -- that is ten units per acre. He stated the Council may hear that is the way it has always been done, "always" does not make it right, it just makes it "always"!

REZONING (Continued)

Atty. Anderson stated the reason he makes that point is ten acres of this property is so topographically different from the remaining 13 acres as to be completely unusable for this development; that the Council should not look at this as a 23 acre tract, it should be looked at as a 13 acre tract with 230 apartments units on it that provides high density, not medium density, not what is called for in the plan, not ten units per acre so that there is an "apples to apples" comparison. He made reference to the slide reflecting the total growth site of 23 acres noting the area wooded down is so topographically different, a grade elevation in grade change, unusable for any part of this development which is why it is not being used. He stated if it were useable they would not be putting in a conservation easement and would put more units on it; that this has been turned down three times by RPA -- in 2003 and twice in 2010; that the time line shown in 2010 and 2003 was a project less than half this size and the concerns were traffic, lack of infrastructure was turned down by RPA; that interestingly enough Mr. Price was on the Planning Commission and voted against that apartment project.

Atty. Anderson stated Councilwoman Berz made a good point that in 2007 it is a "different world" in some respects, noting VW made its announcement in the summer of 2008. He asked should the plan be updated and indicated that the answer is "yes"; that the same methodology used to adopt the plan to start with should be used by involving the stakeholders, citizens, the people out there -- do the traffic studies and look at all of the things that go into this; that there should not be annexing in April of 2010, have it effective May 2010, file the application for rezoning by the City of Chattanooga through RPA May 20, 2010 to get to where we are tonight as the methodology is not the same. He stated the attempt to move it forward is to make it appear as if this property owner, Dr. Ballard, is moving this reiterating that the city is moving this for his behalf.

In addressing the issue of traffic, Atty. Anderson stated Charlie Miller is a long time traffic engineer, a 1958 graduate of Mississippi State, works with Wayne McCoy who has done a lot of work for CBL and other developers, has been in 20 states, has 50 years of experience, has done ten regional shopping centers, 50 community centers, a bunch of other projects and locally has worked on I-75 widening at I-75 and Hunter Road modifications around Ooltewah and the Hamilton Place traffic and roadway design. He stated Mr. Miller is prepared to report that a report has been submitted and given to the Council; that the report is an analysis of traffic data and reports done by others.

REZONING (Continued)

Atty. Anderson stated Mr. Miller started with the data everyone else has which shows that this road has 12,000 vehicles a day; that this development of 230 units will generate 16,080 additional trips on Hunter Road, a 14 percent increase in traffic volume just off this development. He stated when this happens there is no left turn lane in, no left turn mechanism out; that we talk about flow, capacity and gap noting Mr. Miller's report is before the Council and his conclusion is this will increase traffic substantially, increase hazards, there will be a problem with no stacking or storage lanes; that the developers talked about putting in a deceleration lane but that is a right turn lane not a left out or in which creates issues. He stated as it relates to this it can be said that is a problem, the gap time is a problem; that the highway capacity manual 2009 says "Hunter Road is below minimum, does not meet minimum capacity . . . only has two foot shoulders, and recommended to have six foot shoulders; should have level terrain, no impediments to through traffic" which is what this left turn will do. He stated the Council should heed the recommendation of RPA which has three times recommended this R-3 twice and this last time recommended it be permanent R-1. He stated the law mandates that there be an RPA staff and Commission as planners and "real world folks" get together and look at these things. He apologized for rushing through this as nine minutes is not very much time for 2,000 people to present their opposition to a plan that is being fostered by the city of Chattanooga whether or not it is said the applicant is Dr. Ballard.

At this point Atty. Anderson requested additional time to present their case. Councilman Murphy made the motion for the time to be doubled. Chairman Rico expressed agreement due to the difficult topic noting each side would be given time. Councilwoman Robinson seconded the motion; the motion carried.

Councilman Benson stated that he has heard Atty. Anderson on a lot of cases and has heard him say volume initiates road development; that he knows it will be terrible volume out there and is concerned about the safety hazard at that entrance and asked Mr. Miller to address that. He stated Hamilton Place would not have been built if we had to wait on the road to fit the need; that Gunbarrel was two lanes when we opened Hamilton Place which brought in income to make the service routes proper. He stated he does not want to be a party to doing anything that will endanger lives of people asking that that be addressed rather than volume as he has heard him argue the other side.

REZONING (Continued)

Atty. Anderson stated that Councilman Benson was right that he has argued not to let volume stop rezoning and has also argued not to let safety stop rezoning; that eleven years ago this Council turned down a zoning where the H. H. Gregg site is for the reason infrastructure was inadequate to handle the traffic and this body has been conscious of that.

Councilman Benson stated they (Gregg) were made to put up a traffic light and pay 100 percent of that; that Panorama was the same way as both are working very well noting one is commercial and the other apartments.

Atty. Anderson stated in this situation the Council does not have the ability to address the safety issue on Hunter Road. Councilman Benson asked that Atty. Anderson not put himself in the Council's spot on that as something might be worked out; that he is talking about traffic safety.

Atty. Anderson stated he is talking about traffic safety, too; that it is a fair point and something that needs to be addressed. He stated right now as it stands tonight the Council cannot address the safety concern before approving this zoning if they choose to do so. He stated it may have to be worked out and it may be appropriate to zone this R-1 permanent, let Dr. Ballard file his own application and come back at that time when the safety concerns can be addressed; that the citizens in this area will find that an acceptable compromise.

Councilman Gilbert stated that he definitely wanted to hear what the other two gentlemen had to say; that he wanted to hear about traffic and safety.

Charlie Miller stated that he has taken the information given to the Ooltewah people collected by the Sheriff's office as far as speed and volume and what we have done is to make an analysis of getting the left turn people out of this development in a safe mode. He stated this project does not generate enough traffic for a traffic signal to be even considered and never will generate enough traffic; that the only way they can get out at this point in time is for gaps in the north and south bound traffic on Hunter Road. He stated the average gap time is about 3.1 seconds and it is very desirable to have a gap of about four-to-six seconds before entering a roadway off a stop sign from a stop position.

REZONING (Continued)

Mr. Miller stated in conjunction with this the 45 mile speed limit out there is actually operating at 45-plus; that it is a little high and the Sheriff's department pointed that out. He stated on opening day when it is 100 percent developed and occupied it will have its maximum gap at that point in time and from that day on as volumes increase on Hunter Road the gaps will become shorter. He stated the safety to enter the roadway will decrease as the traffic on Hunter Road increases in the coming years. He stated so many, many, many times he has had land use plans presented which eventually evolves into a zoning; that never in Chattanooga has he ever seen anybody do a thoroughfare plan in conjunction with a land use plan. He stated all land has to be served by an automobile but there is one big element which is the street system; that a thoroughfare plan goes hand-in-hand with a land use plan and the Council making the decision needs to know there is a network thoroughfare, at least planned, that will handle the traffic that is going to be generated by the land use. He stated after his report was written, he checked with the education department and found there is a school bus stop in the 5000 block of Hunter Road and at 7:25 a.m. that means school kids on the side of the road in the dark. He stated the 230 units will have a number of school children in that age and there is no street lighting in that area which is just another situation of something being unsafe. He stated he did not get into an evaluation of the added noise to the community and indicated his prime point is that the capacity to receive left turners out of this development is going to be at its max on opening day and it will decrease as volumes on Hunter Road increase.

Councilman Gilbert stated that he understands the statistics and asked when Hunter Road was first developed was it developed for this size of traffic.

Mr. Miller stated he does not think Hunter Road was really developed; that Hunter Road happened!

Councilman Gilbert stated if someone had a wreck on this road can anyone pull to the side or go around. Mr. Miller responded "no"; that the shoulders are very narrow, there is no refuge and (drivers) cannot dodge an automobile without going off the road and having a wreck. He stated it has never been designed and as previously said "it happened"; that it does have a lot of curves and hills and numerous T-intersections going into single family homes that are an impediment by making left turns into those existing developments; that that in itself reduces the capacity of Hunter Road.

REZONING (Continued)

Councilman Gilbert stated he goes through that way going to Cleveland and on Fridays I-75 is jammed; that other roads like Summit and Ooltewah Roads going to Highway 58 are jammed as well. He asked if Mr. Miller could estimate how long it would take for a person to go from one point to another or how safe it is.

Mr. Miller stated any time a person is in a detour in unfamiliar territory and everybody is trying to go that way and get home, it is not as a ideal situation as it was coming to this meeting this evening on the interstate; that detours are not that good.

Councilman Gilbert stated with the two schools that means it is 15 miles going in and out, as well as a day care on the street. He inquired as to whether there are a lot of deer up that way! He asked if this is a safety hazard in Mr. Miller's opinion.

Mr. Miller responded "oh yes, very definitely"; that he does not know if it can be appreciated as to how intense it could be entering into gaps like on Hunter Road, making a left turn; that when a cell phone is added it is almost impossible to go out there many times without having some problems. He stated he is talking not only cell phones coming out but the cell phone by the residents that use Hunter Road as it is not a cell phone area as far as driving is concerned when a driver has to spend so much of their attention driving. He stated these are the nuisances we will have about safety as people should not be put in a tight spot when on a cell phone; that this is a hazardous location and there will be "T-bone" accidents. He stated that it cannot be predicted and hates to talk about predictions on accidents because we know they are going to happen.

Councilman McGary stated Volkert, a very respected company in our city, has also produced a traffic analysis study and Mr. Miller's company has produced a similar study with two different findings. He asked from Mr. Miller's perspective what the fundamental flaw with the Volkert report is so that Mr. Miller has two different findings. Mr. Miller indicated he has not seen the Volkert report.

Councilman McGary stated there are two different reports, one performed by Volkert and the other by Mr. Miller's Company, however Mr. Miller's findings are such that he has not seen the Volkert report and has no idea as to what is in it. Mr. Miller again stated he has not seen the Volkert report and does not know what is in it. He stated the Volkert report should have the analysis of the gaps in it and whether it does or not, he does not know.

REZONING (Continued)

Councilman Murphy asked who allowed Hunter Road to continue on as this abomination and inquired as to whose road it is. Mr. Miller stated right now it is the county's.

Councilman Murphy asked if the people in attendance have been calling their County Commissioner about this road. The response was "yes".

Councilman Benson stated Mr. Miller is a respected good traffic engineer and friend and so is Mr. McCoy; that Volkert is involved in this, too; that the Council is beginning to hear reports from Volkert which is contrary to some things said. He stated he did not believe he heard Mr. Miller right as he has heard him argue on thoroughfares at CBL. He stated we would not have ever gotten Hamilton Place built if we waited to do what Mr. Miller said needed to be done about thoroughfares.

Mr. Miller stated CBL "bellied up" somewhere from two-to-four million on offsite infrastructure. Councilman Benson stated they did not build Gunbarrel, to which Mr. Miller countered "they contributed heavily" to Gunbarrel because they got the dirt off Gunbarrel to put it in one of the strip centers.

Councilman Benson stated CBL has been a great thing for us; that he is talking about preceding everything with thoroughfares before we make any development, surely Mr. Miller does not argue that. Mr. Miller stated the Gunbarrel entrance was tertiary; that the first entrance was off the freeway and the second off Shallowford.

Councilman Benson stated that he knows about the traffic and how bad the traffic is; that the traffic is terrible and is the worst in town. He stated what he wants to know is the chance for fatalities; that he knows when volume is increased the fatality rate will be increased; that the chance increases because of this entrance is what he is talking about, not the volume. He asked if the entrance is being designed in a way that will put us in jeopardy out there which is the main reason he would vote against it. Mr. Miller stated he did not think there could be any other design except a T-intersection.

REZONING (Continued)

Stan Burton echoed agreement with the comments from Messrs. Miller and Anderson stating that Hunter Road is not safe and is a hazardous road at best; that adding this development would make it worse. He stated in looking at other issues this project is marginal at best with the land use, marginal at best for the density, marginal at best for spot zoning expressing his belief that he and others believe it is spot zoning. He stated the question is why a marginal project would be approved; that of all the scores they believe this receives a failing grade in all areas. He expressed hope the Council would take that into account in their deliberations.

Atty. Anderson expressed appreciation to the Council for their time, patience and understanding and the respect they have shown individuals who have come and spent their time to make their points of view known to them. He stated in looking at the map Mr. Haynes talked about medium density, he asked that the Council understand that also covers Windhaven and a lot of R-1 property already developed. He stated if they intended for all that to be multi-family it would be clearer. He stated the Council may or may not agree, however it is their (Ooltewah citizens) thought this is a spot zone as described under Tennessee law; that the cases indicated a single piece of property is zoned for a single property owner for the benefit of that property owner when it is different, and this is different in its high density and that makes it spot zoning. He respectfully requested the Council vote to affirm the recommendation of RPA that it be a permanent R-1 zone.

Councilman Murphy stated he has a question for the City Attorney as the issue was raised in reference to spot zoning and noted that the rear of this property is already temporary C-2, was C-2 previously and by his understanding the way that zoning can grow organically is when a less impactful zone touches a more impactful zone. He asked that the issue of spot zoning be addressed.

City Attorney McMahan stated it would be highly inappropriate for him to say it is (a) spot zoning or (b) it is not spot zoning; that the most appropriate thing for him it so to offer observations from Tennessee case law and from treatises on zoning about what is or what is not spot zoning and appropriate for them to make up their minds whether it is or not based the facts heard in these proceedings. He stated Lafferty vs. City of Winchester, a 2000 case from Tennessee, said "*Spot zoning refers to the price of singling out a piece of property for a use classification totally different from that of the surrounding area*".

REZONING (Continued)

City Attorney McMahan stated the case of Family Golf of Nashville vs. Metro, a 1997 decision, states “*A general land use plan must be subject to reasonable change from time-to-time as conditions in the community change*”. He stated the law of zoning and planning, a noted treatise on zoning, says there are a number of factors to consider with regard to spot zoning: “(1) *whether the rezoning promotes the community welfare; (2) whether the rezoning is consistent with the comprehensive land use or zoning plan; (3) whether the rezoning is compatible with surrounding uses; (4) whether the rezoning will likely result in substantial harm to neighboring properties; (5) characteristics of the rezoned land, including parcel size, and other factors indicating that any reclassification should have embraced a larger area; (6) availability and suitability of other lands already zoned to allow the uses permitted by the rezoning; (7) discriminatory benefit to the owner of the parcel rezoned; and (8) relevant studies or advice generated by the professional planning staff*”.

City Attorney McMahan stated another case out of Chattanooga, Quoc Tac Pham, a case from 2009 appealed from the decision of this City Council says, “*Spot zoning is the process of singling out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of an owner of such property and to the detriment of other owners, and, as such, is the very antithesis of planned zoning*”. He stated the case goes on to say, “*In order to constitute illegal spot zoning, a zoning ordinance (1) must pertain to a single parcel or a limited area, ordinarily for the benefit of a particular property owner or specially interested party; and (2) must be inconsistent with the city’s comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulations, i.e., the public health, safety, and general welfare. In addressing a claim of improper spot zoning, the most important factor is whether the rezoned land is being treated unjustifiably different from the similar surrounding land, thereby creating an island having no relevant differences from its neighboring property*”.

City Attorney McMahan noted one final case, Varner vs. City of Knoxville, a 2001 decision, the similar case in Tennessee regarding the adopting of zoning classification in Fallen vs. Knox County Board of Commissioners noting that body rezoned a 10.6 acre tract of land from agricultural to residential thereby permitting the land owner to build 275 apartment units. He stated “*in the instant case both sides have legitimate arguments for their respective positions. The City points to the rationale of the professional staff of the Metropolitan Planning Commission: Approval of this request will place commercial development adjacent to residences on the southwest and remove the separation that presently exists between these houses and commercial development to the northeast*”. Going on, the case further states, “*The controversy between these parties is not uncommon; it is ‘the stuff’ of zoning disputes presented to legislative bodies in this country every working day. The courts have a limited role in this process. As said in the unreported case of Citizens for a Better Johnson City vs. City of Johnson City, Courts are not ‘super’ legislatures. They do not decide whether a challenged legislative action is wise or unwise.*”

REZONING (Continued)

City Attorney McMahan concluded by stating in order words it is very much a legislative decision based on all the factors which the Council has heard tonight for the Council to determine whether this is spot zoning.

Councilwoman Berz inquired as to the chair of the citizens against this request. When that person was identified Councilwoman Berz stated that she and that person have had several conversations and that she respects the integrity of neighborhoods and very much respects the right of people to gather as they have to stand up for their neighborhood and they are to be commended for that. She stated she wanted them to know that the land use plan is not complete enough for her; that the Planning Commission or Staff has been negligent in bringing that plan up-to-date; that road usage has not been addressed and this is an interesting decision she will have to make. She stated it is also her thought whether or not she agrees with what Dr. Ballard is doing he has the right to do it. She stated she is "put off" by the personal attacks on him and his family; that there was a website and does not know if the chair is responsible for it, as it is inappropriate! (The person who came forward as Chair of the group responded "no" to both statements, indicating he was not responsible for the attacks on Dr. Ballard.)

Councilwoman Berz continued by stating everybody in our country has the right to do what they choose to do with their property, sometimes they win and sometimes they lose. She stated the personal attacks on a man and his family, the things that went up on the website she will not tolerate. She expressed hope no matter how this goes the group will apologize to him for the personal attacks as he is doing what he has a right to do in our country and with that being said she stated she is not ready to vote in favor of the project simply because it is her thought the planning has not kept pace; that the land use plan is loose and there has not been an accompanying road use plan. She expressed respect for the right of each of them to fight for their property; however, she asked that they not think they showed respect by an attack on a fine doctor, a fine person who is only doing what he has the right to do. She stated what happened was wrong.

Mike Wilson of 5323 Hunter Road stated that he met with Mike Price and Dr. Ballard and discussed what Councilwoman Berz just mentioned and noted Dr. Ballard is a great man and Mr. Price will testify for him as to what he did for Dr. Ballard on the website.

REZONING (Continued)

Mike Price stated when he discovered what was on the website as far as what he deemed to be inappropriate information he called Mike Wilson and indicated to him his thought that many of the things stated as far as personal information was out of bounds and went beyond what was ethical. He stated Mr. Wilson stated to him that he would get it removed or he would resign as president of the group and shortly thereafter it was removed. He stated he never felt at any point Mr. Wilson had anything to do with that; that there were other leaders who obviously did and he (Price) talked with them and they felt justified in it, however at no time Mike Wilson ever did.

Councilman Benson stated he talked with Mike Wilson; that he did not want anything to come off on 99+ percent of the people in this audience as they have been the most professional adversaries to a project he has ever had the experience of working with. He stated they have shown good leadership noting that it is hard to keep this many people calm in an emotional situation like that. He expressed appreciation to all in attendance as they set a good example for all protesting groups; that the Council has had some (protesters) in recent weeks they have not enjoyed like this group!

Councilwoman Ladd stated she is hearing the concerns with the volume of units that will be going in on their proposed plan and asked if there are a number of units the group would be comfortable with having on that plan.

Mr. Wilson stated that he did not really think now is the time to really discuss that; that they will have to go over it as a neighborhood and would be reluctant to make a statement. He stated the goal on this is they feel the property is low density, R-1 residential and would like to see it used as that. He stated they do not oppose any developer but would like to see the land use plan carried out and developed R-1.

Councilman McGary asked if someone from the Hamilton County engineering were present; the response was "no". He then asked if John Van Winkle and Bill Payne were present and to come forward.

Councilman McGary stated all are part of one community and have emotional involvement; that his role as a Councilman is to make decisions based on objective fact noting his concern has to do with the density concern as utilized in the land use plan and the other the actual traffic concern that has come up.

REZONING (Continued)

Councilman McGary stated there are two traffic studies, one by Volkert and the other by Mr. Miller; that from Messrs. Van Winkle and Payne's professional perspectives as to Hunter Road's current traffic volume and from the proposed use of the apartments is it their professional opinion it will provide overuse to this road, can the road take any more use. He stated to consider the apartments is one standpoint but also from the perspective that the Council has the job within 90 days of when this area was annexed to provide some sort of permanent zone, whether the apartment comes or goes something will go there and whatever goes there will provide more use on that land and increase the traffic volume. He asked if it is their perspective the road is overused and cannot take any more use and if so how much more can it take.

John Van Winkle stated that is a tough question; that the problem is the street based on the Volkert study, noting he has not seen Mr. Miller's report and cannot comment on his conclusions; that he has looked at and evaluated what the Volkert study determined in their recommendations and adding any more traffic whether one car or whatever is going to add more conflict for travelers trying to enter Hunter Road. He stated the neighborhood feels it is intolerable today to some degree at least and during the peak hours he knows that is true. He stated that he went out and looked at it from the sight distance perspective and met with Mr. Price and looked at what sight distance was available for being able to pull out onto Hunter Road. He stated it is adequate now but their proposal will significantly increase the available sight distance and with additional shifting and grading of the driveway location better sight distance would be provided; that from that perspective adding additional traffic at this intersection would be acceptable, but as everyone knows any amount of development is going to create more conflict, more potential for collisions which happens anywhere any development occurs. He stated he would like to have the opportunity to review Mr. Miller's report and be able to respond to it; that he only has one side of the issue and did evaluate the capacity analysis that was done; that currently the intersection with the additional traffic that would be added to the intersection would be level service "C" which is reasonably good, not great; that level service "A" is like during two in the morning when there is no travel at all; that "C" is an acceptable level for an uncontrolled intersection with stop sign control. He stated as far as the land use that is really not his call.

REZONING (Continued)

Bill Payne stated the city has a traffic engineer for a reason and typically he would defer on those types of comments to Mr. Van Winkle, however he added that the Council and the County Commission have both funded a traffic impact study as a result of Volkswagen coming into the area and there were intersections that were studied along Hunter Road, both in this area and on the Highway 58 end with those intersections all being in Hamilton County those recommendations that came out of that study are currently all in the hands of the Hamilton County Engineering department. He stated he is not certain what steps they may have taken but knows they are aware of it and have been making steps for transportation improvement but does not know what those are; that he does not have anything that would conflict as he has not seen either the Volkert study for this complex or Mr. Miller's and cannot make any comment other than what Mr. Van Winkle has already said.

Councilwoman Ladd stated Mr. Van Winkle has always impressed her with his creativity and ability to see something and come up with a better idea; that she realizes this is not our road and asked if he has ideas for "fixes" we may be able to come up with that may reduce the danger of this area or this particular potential intersection.

Mr. Van Winkler stated as Mr. Miller stated the city is growing up around it and kind of taking over to some degree; that there will be more development and even if this stays R-1 it can be developed as single family and there will be more traffic on it; that there can be other tracts that can be developed in the future inevitably and the Hamilton County engineer would agree that Hunter Road needs to be improved at some point in time; that as to when that will happen is when the volume increases to the point that something has to give, something will have to happen. He stated the residents may have to very well sell some property to provide frontage that live on Hunter Road to widen the road and bring it up to standard; that there really was not any standard as it was just a country road. At this point he asked Councilwoman Ladd to restate her question.

Councilwoman Ladd restated that she wanted to know if Mr. Van Winkle had any creative ideas of things that could be done.

REZONING (Continued)

Mr. Van Winkle stated that he did go out and stand on the side of the road watching the traffic and saw what the sight distance was; that it is his thought the developer has done all he can do as far as improving the safety of the intersection as proposed to provide adequate sight distance; that this development will have about 90 trips coming out in the morning which is about one-and-a-half car a minute trying to get out onto Hunter Road. He stated it is felt that is not the "straw that breaks the camel's back" based on Volkert's report which he happens to agree with; that he did look at it but did not accept it and did scrutinize it. He stated a couple things occurred to him when he first heard about this issue about Hunter Road being dangerous; that one was is there a back door in there and if the grade, as Mr. Price mentioned, is just too steep. He stated the other side was could we do his favorite solution when it is appropriate which is a round-about and that is not a solution either due to the grades, but it does not fit; that by widening the intersection a steeper grade is created for the driveway unless they do a tremendous amount of grading which might be to the detriment of the neighborhood. He stated he does not know as he has not looked at it in great detail, however he has talked to Mr. Price about it, not in detail, but he convinced him that is not feasible so he has not pursued that option of trying to push for that idea.

Councilman Gilbert asked Mr. Van Winkle if he said this is a country road versus normal streets. Mr. Van Winkle responded "as are many other streets within the city's limits". Councilman Gilbert added "they do not have complexes that we will have here on this small road". He stated with the schools and day care there and the size of the road there are no off ramps to turn off onto and asked if it is unsafe.

Mr. Van Winkle stated it is a county road and would assume there are children that have to wait for the bus today all along Hunter Road and he does not know how that works, whether there are any issues with safety for that. He stated he would say if this development is approved or if it stays single family and a development is built he would venture to say it would probably be safer for a child to get on and off the bus with an improved road section on the frontage of this development.

REZONING (Continued)

Councilman Benson stated that he knew Councilwoman Ladd would lead Mr. Van Winkle into it and say round-about; that the only thing left for him to say is speed cameras! Mr. Van Winkle stated that is in the county and would be up to them to decide; that if the study results are accurate from the county Sheriff's department, it is his thought there is room for speed enforcement that would make the roadway safer.

Councilman Benson stated he did not know whether there have been responses from the petitioner or not, that it does not seem we are at a point where we can get this decision made about traffic safety. He stated it is his thought to stay on the issue of safety right now or he will not be ready to vote tonight.

Councilwoman Robinson stated that it is her thought there is a need to talk about this a bit; that we have two traffic engineering reports and these engineers have not read each other's reports. She stated the one she is looking at from Volkert has a proposed Hunter Road improvement plan and we have not talked about that at all. She stated right now we are discussing "as is" and yet what she is looking at is a widened road with improvements and does not think we have fully articulated those unless the audience is privy to the Volkert report and has seen this. She stated it represents a significant improvement to the roadway at the entrance to the development and asked that that be discussed noting that the Council does not have all the pieces of the puzzle on the table so that the citizens present can understand what we are talking about.

Mike Price stated John (Anderson) did a good job exacting out another nine minutes from the Council and since that time they have not been able to get back on track to present their information as it relates to traffic. He asked that his information be presented to the Council to understand from a traffic safety standpoint that they do have a plan that is very much in keeping as far as dealing with the issues out there today.

Fritz Brogden stated Volkert and Associates has been in Chattanooga since 1978 noting that they have done many projects with the city of Chattanooga, Hamilton County and TDOT. He stated he has been with Volkert for 15 years, is a professional traffic engineer with Bachelor and Master's Degrees in Civil Engineering from Tennessee Tech University.

REZONING (Continued)

Mr. Brogden stated based on the traffic analysis they prepared they looked at accident analysis prepared by the Hamilton County Department of Engineering in 2009 which covered the years 2007 and 2008. He stated during that time in the 5200 and 5300 blocks of Hunter Road there were 13 accidents and of those accidents two were related to alcohol, not related to road geometrics, folks being irresponsible by drinking. He stated that cuts us down to eleven accidents and of those accidents six were attributed to speeding and following too closely, once again accidents that cannot be attributed to road geometrics or capacity, but poor driver behavior which should be corrected through enforcement which they feel an active campaign of enforcement would definitely help there based on the data that has been presented by the Sheriff's department, expressing his thought there is a problem there.

Mr. Brogden stated the 2009 accident study also indicated of the eleven accidents not alcohol related only one of those happened at a T-intersection, only one of those accidents happened at Hunter Woods Drive, none happened at Ooltewah-Harrison or Windhaven. He stated it goes away from the trend that Mr. Miller would like to report that T-intersections have a high accident rates; that concurrent with what Mr. Van Winkle said they did evaluate the existing conditions at Hunter Road and went out to take traffic counts during a normal day, a normal school day so everything pretty much was what they considered everyday conditions. They did not go out on a Saturday or 2 a.m. on a Wednesday night. He stated from that they evaluated that Hunter Road, using the highway capacity manual as Mr. Miller mentioned, is actually running at about 28-30 percent of its capacity; that part of the problem with Hunter Road is the narrow width which does cause drivers to drive in a more confined fashion and through the no passing areas it does cause capacity to back up somewhat.

Mr. Brogden continued by stating based on the standard that the highway capacity manual presents there are levels of service; that the Council heard Mr. Van Winkle talk about a level of service "C"; that it is similar to the report in school however another level is added, a level "E". He stated Hunter Road operates at a level "D" which is really not an unacceptable level of service for a major thoroughfare to operate; that Hunter Road is, due to growth and natural growth around it, is getting more traffic. He stated the Regional Planning Agency has already looked at that; that Volkert did a study for them (RPA) looking at an east-west connector that would alleviate some of that.

REZONING (Continued)

Mr. Brogden stated they have worked on improvement projects for Hunter Road; that in 1995 they worked on three selected areas along Hunter Road to be improved by Hamilton County for the Hamilton County Department of Engineering. He stated one of the areas was at Mr. Wilson's house where the main drive is; that in 2006 a set of plans for TDOT were prepared for improvement at Ooltewah-Harrison removing some curves and actually adding a traffic signal there. He stated why the projects did not happen had to do with funding, but part of the reason in a couple of the instances is rights-of-way and property owners unwilling to donate rights-of-way to improve this situation.

Mr. Brogden concluded his comments by stating the driveway at their development is located at the top of the hill and as Mr. Van Winkle and the Hamilton County Department of Engineering have said they feel sufficient sight distance is available. He stated the developer has gone to further lengths initially to do additional grading, add a turn lane and provide that additional sight distance to make it a safe driveway for people entering and exiting the road. He stated they did simulations using Synchro, the industry's standard in traffic analysis for intersections, to show the intersection as Mr. VanWinkle stated operates at level "C" which is an acceptable level of service. He stated the hill as they have learned from a lot of people in Hunter Wood and Windhaven in the meetings they have had with them, the hill seems to be the overriding factor that makes this area unsafe. He stated the hill is detrimental to sight for the traveling public, but not for the vehicles entering and exiting; that they are dealing with the road users having a problem. He stated tonight they are making it known they are proposing a vertical alignment; that Mr. Price came to their (Volkert's) office and looked at the information to see if they could make it right. He stated what they have done, along with Mr. Price, are modifications and implemented the safety improvements recommended for Hamilton County in 1995 at a cost of roughly \$200,000 by lowering about a tenth of a mile roughly five feet.

Mike Price distributed information in reference to an electronic mail message from Todd Leamon, County Engineer, who has looked at the plan before we came up with this proposed plan that he took to Mr. Leamon and met with him on yesterday. He stated what they are proposing to do is lower Hunter Road and try to implement the plan that was conducted in 1995 by Volkert by lowering the vertical curve for increased sight distance for the traveling public on Hunter Road. He stated they still have the sufficient sight distance, but now will spend the money to take care of the issue as one of the major issues that has been brought by the public.

REZONING (Continued)

Mr. Price stated when they met with the opposition last week he had his traffic study and offered it to them; that he asked them (opposition) to give theirs, but was told "no". He stated he has tried to be upfront, honest, give the information out as they had it readily available and simply asked for reciprocal information to be provided and it was not done. He stated at the end of the day if both traffic engineers' studies were taken and thrown out, he suggested the Council accept what the county engineer and Mr. Van Winkle have said and throw the other two out. He stated from a safety standpoint they have done it and this is the only development that could afford to spend \$200,000 for road improvement; that a single family development cannot do so as it does not have the financial means. He stated based upon what the Council sees tonight they think they have met the safety responsibility and above and that should go a long way in terms of taking care of the residents' concern in this area.

At this point Robert Fisher, a commercial realtor, attempted to speak however Chairman Rico would not allow him to do so as the time had expired and both parties had spoken.

Councilman Benson stated it is his belief what Mr. Price has stated is this developer is willing to spend \$200,000 lowering the vertical alignment and widening the entrance four-to-five feet.

Mr. Price stated in looking at the drawing before the Council the sight distance for traffic going presently on Hunter Road approaching each other has about 280 feet of sight distance; that once the road is lowered and the sharp vertical curve is taken out it will increase roughly to 320 feet of sight distance for the oncoming traffic in each direction. He stated "yes" the road has to be lowered to gain visibility to see above the rest of the curve.

Councilman Benson stated the property would come off the applicant's property. Mr. Price stated it would come off the applicant's property and they are also shifting the alignment toward their property.

Councilman Benson asked if this stays R-1 can we exercise any conditions to any new development under R-1 that would make them widen that entrance.

City Attorney McMahan stated R-1 is the most restrictive zone and unless it is a PUD or some other enhancement permitted under a normal R-1 zone he did not think a condition could be added.

REZONING (Continued)

Councilman Benson stated it is R-1 as it is; that he wants to know if we make it R-1 is it just carte blanche for them in there.

Mr. Haynes stated it appears additions could be added because the zoning plan is before the Council to make it go from temporary R-1 to permanent R-1 so the zoning is, in effect, being acted on. He asked if it could be a permanent R-1 with conditions because the other plan that Staff has recommended is an R-3 with conditions, so if an R-1 with conditions cannot be done it is his thought an R-3 could not be done with conditions, asking if that made sense. City Attorney McMahan responded "no".

Mr. Haynes stated the zoning plan Staff gave to the Planning Commission is an R-3 with a list of conditions; that those conditions could not be attached and just be an R-3, again asking if he were correct. City Attorney McMahan responded "yes".

Councilman McGary stated he wanted to confirm they were all reading from the same page stating the agenda reflects "from temporary R-1 residential and temporary C-2 convenience to a C-2 convenience commercial zone" there is no mention of R-1 permanent, and on the second it reads "temporary R-1 residential zone, temporary C-2 to a C-2 convenience zone, R-3 residential zone". He stated he sees the R-3 and C-2 but does not see the R-1 before the Council.

City Attorney McMahan stated Mrs. O'Neal noted the error in the caption in the ordinances and there was a corrected version; that they are now going from "temporary R-1 to permanent R-1 in one version" or from "temporary R-3 to permanent R-3 and temporary C-2 to permanent C-2". The Council Clerk clarified that the caption does not reflect nor did she read the word "permanent".

Councilwoman Ladd stated that she heard tonight that the developer is willing to make this adjustment in the hill grade and asked if that in any way affects the concerns of those in opposition to this proposal.

Atty. Anderson stated that the Council heard Mr. Price state they just did this yesterday and it is his thought it would be prudent to evaluate that. He stated they are affecting the vertical grade and widening it; that there is nothing that alleviates the problems presented by left turn in and left turn out; this is a right in, right out only solution.

REZONING (Continued)

Atty. Anderson stated it is actually only a right in solution so a right turn in is the only thing that is affected by this lane being constructed and this improvement; that the stacking of traffic on Hunter Road with the turn lanes is not even addressed. He stated the Council heard the discussion about very narrow shoulders and the discussion that this is a country road; that it would be appropriate to say this is an R-1 zone because it is only 13 acres useable, because the other 10 in there cannot be gotten in because the density is only six units per acre and will take 20 percent for internal infrastructure; that we are talking about 50-something single family homes versus 230 units of apartments. He stated traffic in and out for an R-1 use is significantly different than what it would be for this R-3 use. He stated if the development occurs this is a neighborhood of middle America of \$130,000+ homes and it is not going to be that these folks are afraid there will be some low end development done out there, they just want this property to be maintained in the character in which it is, and that is R-1. He stated the Wolftever Creek area plan says its goal is to protect the residential integrity of the neighborhood that exists out there as single family homes and that is what it talks about. He pointed to the apartment projects up and down Hunter Road noting this is the first domino that begins to fall; that if the line is going to be drawn here it would be a very difficult thing to do.

Councilwoman Ladd addressed Mr. Haynes and expressed surprise there is only one ingress and egress to this property with the number of units that are going to be built there. She stated that it was her thought there would be a regulation we would have to have another way in and about. Mr. Haynes stated someone else might be better prepared to answer that; that he is not aware as far as the number of entrances.

Admin. Leach stated if this were a subdivision the subdivision requirements require two entrances for 200 units or greater; that he does not know if Mr. Price has talked to the Fire Marshall as the *Fire Code* requires that for multi-family also - 200 or more would require a secondary entrance.

Mr. Price stated there has been discussion on left turn lanes; that a quarter mile further away is the entrance to Flagstone subdivision and there is not a left turn lane and probably over 500 homes in there. He stated the opposition agreed in the meeting last week that 85 percent of traffic coming in and out is not making right turns out of the development they are making left turns going back to the interstate.

REZONING (Continued)

Mr. Price stated the same people coming back in are making right turns into the development; that his point is a left turn lane is not warranted just like it is not warranted at Flagstone. He stated in responding to the second question, last year the Council passed on Panorama the exact same scenario where there was a divided median which counted as two entrances as it relates to the Fire Department.

Councilman Benson stated Camelot was counted as one entrance it was not counted as two, which is why they got . . .

Councilwoman Berz expressed interest in the comment made wherein the City Attorney stated that conditions cannot be placed on an R-1. City Attorney McMahan responded "without having an enhanced development such as a PUD or something like that; that R-1 is the most restrictive zone".

Councilwoman Berz then asked if conditions can be put on an R-3. City Attorney McMahan responded "yes". Councilwoman Berz stated that the matter needs to be cleared up to which City Attorney McMahan responded that it is his thought they do not disagree about the R-3.

Mr. Haynes stated he is confused because the resolution for the temporary C-2 to permanent C-2, temporary R-1 to permanent R-3 resolutions lists all the conditions that go with that; that his question was can the same thing be done if the recommendation for R-1 cannot be done for that, which was the question he raised.

Councilman Benson stated this information we are getting is in conflict; that he personally believes the Fire Marshall would not permit that from what he is familiar with in the Code because we had that problem in some other places. He stated he did not think the Council is ready to vote on that as he is not ready to vote on it; that it is like asking him whether the zebra is black or white! He stated he does not know the answer. He **made the motion to delay this** and make the engineers get together and get everything coordinated with the Fire Department; that it might not even be an acceptable development. **Councilwoman Robinson seconded the motion to defer.**

Councilman McGary inquired as to the time line on the motion to defer. Councilman Benson stated it seems it will take quite awhile and suggested a 60 day deferral.

REZONING (Continued)

Councilwoman Robinson stated the only recommendation she would make is that 60 days is a long time and these people have worked hard on it and asked that the time be shortened to 30 days. Councilman Benson suggested 30 days or less.

Atty. Anderson suggested that the matter not be heard during the Council's regularly scheduled zoning night; that it be heard the week following.

Councilwoman Robinson stated this is "taking up all the air in the room" and to do this the week after the Council's regularly scheduled zoning night so these people can come back and not impact all the other zoning cases that the Council would have; that it would be a week and a month as suggested by Atty. Anderson.

Councilman Murphy stated his only concern is whether the Council would have to act with regard to changing temporary zoning before this would come up again.

City Attorney McMahan stated that his recollection is that is the matter of the ordinance which the Council has enacted which says a permanent zone would be made within 90 days; that the property owner under the existing ordinance can develop his commercial property and could develop the temporary R-1 if he gets a building permit so long as it was within the confines of an R-1 zone. He stated he is not sure they would be hurt by delaying although the ordinance does require action within 90 days.

Councilman McGary stated as he understood it we are already at day 53 and with a month-and-a-half we would still be within the time line. He asked the Fire Chief to speak to the matter of the dual entrance.

Chief Parker stated it has been allowed in the past as in Panorama Drive; that if it is a divided road it has been allowed to be counted as two entrances. He stated the main thing is the access to the apartment complex with one road if there is wreck or car on fire they would not be able to get in. He stated even if it is divided by a few feet they have allowed it to be used as two entrances.

Councilman McGary asked Chief Parker in his professional opinion whether he sees a problem with the proposed site drawings.

REZONING (Continued)

Chief Parker stated he has not seen the distance on it; but has worked with Mr. Price before and had meetings to discuss this; that the problem is if there is only one entrance in if something happens at that entrance they cannot get access to the apartments.

Councilman McGary stated Atty. Anderson mentioned that Mr. Price submitted this proposed \$200,000 addition to decrease the road within a day ago; that he has had the Volkert study for some time and is curious to when the other study was performed. Atty. Anderson stated the study was prepared last week.

Councilman McGary stated it was last week in the issue of time, Mr. Price talked about the same thing in regard to the traffic report. He expressed concern about the 30 day time line; that the traffic engineer, John Van Winkle, has asked to look at the document just to confirm whether or not what he has read in the Volkert study is true or not. He stated he does not see why it is a 30 day window and is something John Van Winkle can do in a week or two weeks; that we can get this done a lot sooner.

Atty. Anderson stated the ordinance stated it is the duty of the Planning Commission within 90 days to recommend a zoning plan for the newly annexed area. He stated they have done that and it fits within that window. He stated postponing it 30 day does not seem to impact the ordinance which is under Article 12, Section 38-653.

Councilwoman Scott asked if two weeks might be more appropriate than five weeks.

Councilwoman Berz stated we are having all these discussions but the citizens deserve the right to sit down and hear what the revised plans are and be able to talk about them as well because they feel they have had no total input. She complimented Mike Price for doing a great job of sitting down and trying to work things out on a number of issues; that she does not want to rush this as everybody deserves a right; that Dr. Ballard deserves the right as well to try and come up with something that meets the needs. She respectfully requested that the matter not be rushed; that there is no rush for two weeks and there might a winning outcome here.

REZONING

Mr. Price stated he does not know what the Council's agenda is, maybe three weeks could give time if that is a number that might be considered; that he does not want to drag the community out any further as it does not need to fester out any longer than absolutely necessary; that in two weeks his traffic engineer could not be present.

Councilwoman Robinson reminded everyone that "National Night Out" will be observed in three weeks.

On motion of Councilman Benson, seconded by Councilwoman Robinson,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE TRACTS OF LAND LOCATED AT 5050, 5336 AND 5344 HUNTER ROAD, MORE PARTICULARLY DSECRIBED HEREIN FROM TEMPORARY R-1 RESIDENTIAL ZONE TO R-1 RESIDENTIAL ZONE AND TEMPORARY C-2 CONVENIENCE COMMERCIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE
Was deferred until August 17, 2010.

AMEND ORDINANCE 12396

Councilman Murphy inquired as to what is being corrected.

Mr. Haynes stated that there was a clerical error in formatting that was placed in the zoning regulations and the City Attorney's office said rather than try to do it administratively, it would have to come back by way of ordinance. He stated there are no regulation or requirements changes, just reformatting the text.

Councilman Murphy again inquired as to the "typo". Mr. Haynes stated there was a Section that was repeated three-or-four times; that the definition of a townhouse was repeated in just about every paragraph.

Councilwoman Scott inquired as to the width of that R-T/Z. Mr. Haynes responded "16 feet in an urban overlay zone".

AMEND ORDINANCE 12396 (Continued)

On motion of Councilwoman Robinson, seconded by Councilwoman Ladd,
**AN ORDINANCE TO AMEND ORDINANCE NO. 12396 ENCAPTIONED,
“AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, ARTICLE II, DEFINITIONS AND
ARTICLE V, DIVISION 3, RT-1 RESIDENTIAL TOWNHOUSE ZONE, AND
DIVISION 5, R-T/Z RESIDENTIAL TOWNHOUSE/ZERO LOT LINE ZONE
REGARDING TOWNHOUSES” IN ORDER TO CORRECT SUBSECTIONS 2,
3, AND 4**

Passed first reading; **Councilmen Scott and Benson voted “no”, however
Councilman Benson retracted his “no” vote later in the meeting.**

REZONING

2010-066: Alan E. Richelson

Pursuant to notice of public hearing, the request of Alan E. Richelson to rezone a tract of land located at 5500 Hixson Pike came on to be heard.

On motion of Councilwoman Robinson, seconded by Councilwoman Ladd,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 5500 HIXSON PIKE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM M-2 LIGHT INDUSTRIAL ZONE TO C-2
CONVENIENCE COMMERCIAL ZONE**

Passed first reading.

REZONING

2010-086: James M. Story d/b/a/ RTB Enterprises

Pursuant to notice of public hearing the request of James M. Storey d/b/a/ RTB Enterprises to rezone tracts of land located at 618, 620 and 622 East 19th Street and 1910 Jefferson Street came on to be heard.

Councilman McGary stated even though this is in District 7 the one immediately following is in District 8; that the applicant is actually working with Mr. Goodwin. He stated he is curious as to the conditions for this request.

REZONING (Continued)

Mr. Haynes stated that the typical C-3 residential conditions that address how the building is situated on the lot is the main thing that is new and added to that list; that the C-3 does not require a specific number of parking spaces which was a concern to the traffic engineer; that the new condition requires two spaces per unit.

Councilman McGary stated he has heard from constituents about two issues, one is the actual access of emergency vehicles to this property and the second in regard to water drainage and asked if Mr. Haynes could speak to that.

Mr. Haynes stated water drainage would not be listed as a condition. At this time he read through the extensive list of conditions for this request.

On motion of Councilman McGary, seconded by Councilwoman Ladd,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
 CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
 LAND LOCATED AT 618, 620 AND 622 EAST 19TH STREET AND 1910
 JEFFERSON STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-
 3 RESIDENTIAL ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO
 CERTAIN CONDITIONS**

Passed first reading.

REZONING**2010-087: Frank Goodwin**

Pursuant to notice of public hearing the request of Frank Goodwin to rezone tracts of land located at 625 East Main Street and 1402, 1412 and 1430 Jefferson Street came on to be heard.

The applicant was not present.

Councilman McGary inquired as to access by emergency vehicles; that there were concerns by constituents with reference to access to the property

REZONING (Continued)

Chief Parker stated on some of the other plans they have seen a stipulation was included for sign off for approval; that some of them do not design proper parking and park in the narrow streets and cannot have access to the property. He stated as long as their street widths and other definitions are in there they are okay with them.

Councilman McGary asked in regard to this property if the Chief has given the "green light" to this. Chief Parker stated he has not personally seen this but has not heard of any revisions or additions.

John Petree was present along with his wife, Peggy, and stated they own the property on Jefferson directly across the street; that the back of this property drops down 8-10 feet toward the railroad tracks behind it and there is going to be an issue with water. He stated the developer on Adams who did the condos on the back of the property had to put in a retention pond area when improvements were made and they are proposing to raise Jefferson to the back of the property and asked where the water shed goes. He stated the railroad people actually crushed the culvert that controls some of the water; that there is the discussion of street parking and knows it has been said they will be behind the property and it was his guess there would be rear entrance garages. He stated the biggest concern he has is the applicant wants to build fifteen houses on a street with no other access to it that dumps out onto Main Street. He stated he owns from Main and Jefferson back to 300 feet on that side; that they have a commercial building noting that he and his wife are sculptors who live and work in that space. He stated they have land behind them that is zoned C-3 that they could potentially build commercial at some point, however they have no plan to do that right now. He stated there is an old growth of trees on the property, especially along Jefferson that they would like to see saved because they are gorgeous trees. He stated their biggest concern is the fifteen houses on a 35 foot lot on a narrow street and the proposed street they have done leaves virtually no room for a fire truck to turn around if need be.

Councilman McGary asked if Mr. Petree has had a chance to speak with the applicant. Mr. Petree responded "no".

REZONING (Continued)

On motion of Councilman McGary, seconded by Councilwoman Ladd,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE TRACTS OF LAND LOCATED AT 625 EAST MAIN STREET AND 1402, 1412 AND 1430 JEFFERSON STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-3 RESIDENTIAL ZONE AND M-1 MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO CERTAIN CONDITIONS

Was tabled one week; Councilwoman Robinson abstained noting that her son owns a lot across from where their real estate office is located.

CONTRACT

On motion of Councilwoman Ladd, seconded by Councilman Murphy,
A RESOLUTION AWARDDING A CONTRACT TO WEEKS PAVING INC. FOR REAR PARKING LOT REPAIRS AT THE POLICE SERVICE CENTER FOR THE AMOUNT OF \$13,891.00

Was adopted.

GRANT

On motion of Councilman Murphy, seconded by Councilwoman Ladd,
A RESOLUTION AUTHORIZING THE CHIEF OF POLICE TO APPLY FOR AND ACCEPT A GRANT FROM THE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES (COPS) WHICH IS FUNDED UNDER THE COPS HIRING RECOVERY PROGRAM IN THE AMOUNT OF FOUR MILLION FIFTEEN THOUSAND ONE HUNDRED FIFTY-SIX DOLLARS (\$4,015,156.00) WHICH WILL BE USED TO HIRE TWENTY-THREE (23) POLICE OFFICERS AND PAY THEIR SALARIES FOR THREE YEARS. THE CITY OF CHATTANOOGA WILL BE REQUIRED TO FUND THESE POSITIONS ONE YEAR BEYOND THE EXPIRATION OF THE GRANT

Was adopted.

GRANT

On motion of Councilman Murphy, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING THE CHIEF OF POLICE TO APPLY FOR AND, IF AWARDED, ACCEPT A CONGRESSIONALLY SELECTED AWARDS GRANT FROM THE U. S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS' BUREAU OF JUSTICE ASSISTANCE, FOR A TOTAL AMOUNT NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), TO BE USED FOR A REGIONAL TRAINING FACILITY. THIS IS FOR A THREE YEAR PERIOD WITH NO MATCHING FUNDS

Was adopted.

CONTRACT

On motion of Councilwoman Ladd, seconded by Councilman McGary,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF PUBLIC WORKS TO AWARD CONTRACT NO. E-09-020-201, VOLKSWAGEN DRIVE AT DISCOVERY DRIVE INTERSECTION IMPROVEMENTS TO EAST TENNESSEE GRADING, INC., IN THE AMOUNT OF ONE MILLION ONE HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED NINETY-FIVE AND 83/100 DOLLARS (\$1,173,295.83), WITH A CONTINGENCY AMOUNT OF ONE HUNDRED SEVENTEEN THOUSAND THREE HUNDRED FOUR AND 17/100 DOLLARS (\$117,304.17), FOR AN AMOUNT NOT TO EXCEED ONE MILLION TWO HUNDRED NINETY THOUSAND SIX HUNDRED DOLLARS (\$1,290,600.00)

Was adopted.

CONTRACT

Councilman Murphy stated that these are from CDBG funds which cover three Council districts and an "itty bitty" slice of Councilwoman Scott's District. He inquired as to how much is anticipated to be spent from general funds or in capital sidewalks next year. Admin. Leach responded that it is his thought it is \$300,000.

Councilman Murphy stated those three and the "itty bitty" fraction of Councilwoman Scott's district should anticipate an additional construction of about one third of that, that is \$100,000 on top of this CDBG money.

Admin. Leach stated generally they spend the CDBG money for sidewalks in those areas and has the list; that the other ones are spent outside the CDBG under the normal budget.

CONTRACT (Continued)

Councilman Murphy stated that the problem he has is the CDBG monies are federal monies meant to uplift and increase the level of infrastructure for downtrodden areas and are not intended to supplant local dollars and not intended to subsidize construction in wealthier areas. He suggested they be prepared to adjust the budget where the projects should have to happen less they wind up with a federal problem; that CDBG money is very clearly intended to uplift the impoverished areas not to take the place of local dollars.

Admin. Leach stated he does not disagree with that and expressed his wish they add more money for sidewalks all over the community; that years ago the decision was made if we can spend CDBG in certain areas they would spend it and with the limited amount of money they had for sidewalks in other areas they would try to accommodate those; that it could be school areas, and Lookout Valley for example. He stated they have tried to stretch the monies as best they can and be creative with that; that whether there is agreement or not they can discuss that but there are areas outside the core area of the city that need sidewalks, too, and they do not have the money and are doing the best they can.

Councilman Murphy stated that it is not whether he agrees or not; that the federal program is to supplement the infrastructure in these area, not supplant, supplement.

Admin. Leach stated that he understood; that for many years that was the only sidewalk money they had throughout the city; that they really do have to stretch what money they have and try to find appropriate places to put sidewalks or road improvements. He stated they have a limited budget to work with and made the decision years ago, long before he got there how that would be divided. He stated if the Council wants to change the motion they can; that he does not have any specific reason he would not agree to that; however, that that is really the reason over the years how that came about; that Councilman Murphy might not agree with it but that is how they have done it.

Councilwoman Scott stated that her observation is that the other six districts will not be lifted with the remaining funds, anyway.

CONTRACT (Continued)

Councilman Benson stated there is a real history to this and it not only affects Mr. Leach's department; that we did not have neighborhood grants until they got certain grants for certain neighborhoods; that they began to give some grants to the rest of the neighborhoods. He stated it is not only sidewalks as we did not have sidewalk money and when that came through they made money for other districts. He stated it was not a matter of supplanting as it originated and made other districts get something; that this needs to be discussed in committee as it is not only there but in several public works things and others. He stated the ramifications are pretty broad in this.

On motion of Councilwoman Ladd, seconded by Councilwoman Scott,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF PUBLIC WORKS TO APPROVE THE AWARD OF CONTRACT NO. E-09-002-201, CITY SIDEWALK REQUIREMENTS CONTRACT CDBG, TO INTEGRATED PROPERTIES, LLC, IN THE AMOUNT OF TWO HUNDRED THIRTY-NINE THOUSAND NINE HUNDRED FORTY-NINE AND 25/100 DOLLARS (\$239,949.25), WITH A CONTINGENCY AMOUNT OF TWENTY-FOUR THOUSAND DOLLARS (\$24,000.00), FOR AN AMOUNT NOT TO EXCEED TWO HUNDRED SIXTY-THREE THOUSAND NINE HUNDRED FORTY-NINE AND 25/100 DOLLARS (\$263,949.25)

Was adopted.

REIMBURSEMENT

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO REIMBURSE THE CHATTANOOGA GAS COMPANY, INC. FOR THE RELOCATION OF EXISTING FACILITIES WITHIN AN EXISTING PRIVATE EASEMENT, RELATIVE TO CONTRACT NO. E-09-020-801, VOLKSWAGEN DRIVE AT DISCOVERY DRIVE INTERSECTION IMPROVEMENT, IN AN AMOUNT NOT TO EXCEED THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00)

Was adopted.

OVERTIME

Overtime for the week ending July 8, 2010 totaled \$9,315.78.

PERSONNEL

The following personnel matters were reported for the various departments:

FINANCE DEPARTMENT:

- **ULYSTEAN OATES** – Family Medical Leave (Revision of dates previously reported), Management & Budget Analyst 1, effective June 14-July 6, 2010.
- **JANET W. MASSENGALE** – Hire, Payroll Assistant, Range 7, \$24,306.00 annually, effective July 12, 2010.

CHATTANOOGA FIRE DEPARTMENT:

- **BRADFORD RANSOM** – Military Leave, Firefighter, effective July 8 – August 1, 2010

CITY ATTORNEY'S OFFICE:

- **ANGELA DAVIS** – Family Medical Leave, Administrative Support Specialist, effective March 29 – July 1, 2010.
- **ANGELA DAVIS** – Leave of Absence, Administrative Support Specialist, effective July 1, 2010.

PUBLIC WORKS DEPARTMENT:

- **DARREN J. LOGUIDICE** – Resignation, Plant Maintenance Mechanic, Waste Resources, effective July 2, 2010.
- **HAROLD J. MURRAY** – Reinstatement, Equipment Operator 4, City Wide Services, Range 10, \$28,136.99, effective July 2, 2010.
- **BOBBY G. CRUTCHER** – Suspension (2 days without pay), Crew Worker 1, City Wide Services, July 6-7, 2010.

HOTEL PERMITS

On motion of Councilman McGary, seconded by Councilwoman Ladd, the following hotel permits were approved:

GLENDALE COURTS – 930 Signal Mountain Road, Chattanooga, TN

TENNESSEE RIVER PLACE – 3104 Scenic Waters Lane, Chattanooga, TN

TENNESSEEE RIVER PLACE – 3128 Scenic Waters Lane, Chattanooga, TN

BOARD RE-APPOINTMENT

On motion of Councilman Murphy, seconded by Councilwoman Robinson, the following Board re-appointment was approved:

ERLANGER BOARD OF TRUSTEES:

- Re-Appointment of **KIM WHITE** for a term expiring November 11, 2010.

BOARD APPOINTMENT

On motion of Councilman Benson, seconded by Councilwoman Robinson, the appointment of Adam Veron to the Chattanooga–Hamilton County Regional Planning Commission was deferred to see whether the background fulfills the need of the Planning Commission at this point.

Councilman McGary stated that he understands Councilman Benson's concern and wondered if the "cart was being placed before the horse"; that he wondered if there should be some sort of reform of the existing qualifications so that we are fair to everyone prior to asking for some sort of ...

Councilman Benson changed his motion to defer until further notice; Councilwoman Robinson seconded the motion.

Councilman McGary stated that his concern is the Council can defer if we want to do any further evaluative work on the qualification itself and then consider this gentlemen, but to say we will defer to evaluate his record and there is nothing that says there is any formal qualification, he wondered if that is "the cart before the horse".

BOARD APPOINTMENT (Continued)

Councilman Benson stated his point is we are losing an architect and does this person have a casual knowledge of what we need to “bring to the table” on this.

Councilman Murphy stated he would invite the Mayor to Legal and Legislative next week to discuss the matter.

PURCHASE

On motion of Councilman Murphy, seconded by Councilwoman Ladd, the following purchase was approved for use by the Public Works Department:

A TO Z MUNI-DOT CO. (Lowest and best bid)
R28863

Four (4) Traffic Signal Poles

\$22,661.00

TRIATHLON

Councilman Murphy commended our Parks and Recreation Department as everyone should know Outdoor Chattanooga partnered with the Track Club to have another amazingly successful triathlon here in Chattanooga this past Sunday with over 1,400 participants, which is record. He stated the triathlon is a rich person's sport because the bicycles alone start at \$3,000; that there were hundreds and hundreds of people staying in our hotels and eating in our restaurants. He made special mention Councilwoman Berz' daughter was the volunteer coordinator for the triathlon. He stated over 350 volunteers made this happen and he was a lowly volunteer checking people's sweaty gear but it was so nice to see the appreciation as some of the triathlon officials from other areas of the southeast were just gushing about how good Chattanooga does with this triathlon. He pointed out that we use the River, I-27 and Ross' Landing for transition areas, as well as the Riverwalk and other assets that are already built so it is not like softball which costs an “arm and a leg” to maintain; that we can run the triathlon with assets we already have at no additional cost. He stated it is a wonderful benefit to this city and wanted to acknowledge Outdoor Chattanooga, the Parks Department and particularly Jenni Berz.

NFL FOOTBALL CAMP

Councilman Gilbert stated this past weekend the NFL players did come into town and the kids enjoyed it. He stated people in the past have come to the football camps but it was said this was the best one they ever had as the players really engaged with the kids. He stated the camp will be held next year and solicited help and noted that the concert went well, too!

NON-AGENDA SPEAKERS

Councilwoman Ladd stated there has been some confusion with so many speakers recently regarding what the 30 day requirement is for being allowed to come before the Council after non-agenda items. She stated that she asked for clarification from the Clerk of Council and understands that a party may speak to the Council two times within 30 days but after the last time they speak they must wait a 30 day period before they can readdress the Council on an issue and asked if that is correct. The Clerk of Council acknowledged that Councilwoman Ladd was correct.

Councilwoman Ladd stated that it is her thought people believe within a 30 day period they may speak twice and when the month changes they think their 30 days starts back at (day) one because the month starts over at one and they may speak twice during that next 30 day period; that she asked for that clarification and she is not sure that we as a Council understand it thoroughly. She stated there has been confusion by folks wanting to come in here to address the Council and recommended that the Council look at the ordinance regarding Council procedures and rules and look at ways we can make our meetings more productive and constructive when we do have folks that want to address the Council.

COMMITTEES

Councilwoman Berz reminded Council members of the **Budget, Finance and Personnel Committee scheduled for Tuesday, July 20 from 10:30 a.m. until 3:00 p.m.** for a work session to hear a request from SEIU followed by a presentation and beginning discussion of the 2010 Capital Budget.

Councilwoman Ladd scheduled a meeting of the **Public Works Committee for Tuesday, July 20 following the Agenda Session.**

COMMITTEES (Continued)

Councilman McGary reminded Council members of the **Education, Arts and Culture Committee scheduled for Tuesday, July 20 following Economic Development** to discuss the proposed contract for alcohol and wine sales at the Tivoli and Memorial Auditorium.

Councilman Murphy stated the **Legal and Legislative Committee will meet on Tuesday, July 20** to discuss matters within the Committee's jurisdiction. He noted that the Committee would not meet the following week (July 27).

Councilwoman Scott reminded Council members of the meeting of the **Economic Development Committee on Tuesday, July 20 following Public Works** for a summary presentation of the Tourist Development Zone which includes The Chattanooga Hotel.

CANCELLATION OF AUGUST 3 COUNCIL MEETING

Councilman Murphy stated he has been led to believe the Council will not meet on August 3 as that is "National Night Out".

On motion of Councilman Murphy, seconded by Councilwoman Ladd, the Council meeting of August 3, 2010 was cancelled; Councilman Benson voted "no".

CITY ATTORNEY ARRANGEMENT

Councilwoman Robinson made a statement concerning an article in the newspaper this week about the arrangement with the City Attorney. She stated confusion came because we have been operating a certain way for about 45 years and about nine months ago a decision was made to transition into a new arrangement whereby our City Attorney would work exclusively for the city and would be shutting down a private practice, which has been done. She stated her husband shut down a private law practice and it is not like going out of business in a restaurant where you lock doors; that there are fiduciary and ethical responsibility to clients and it takes time to shut down a law firm and our City Attorney has gone through that process and they are now completely transitioned and housed on city property and operating the way he was asked to do and the way he performed in good faith.

CITY ATTORNEY ARRANGEMENT (Continued)

Councilwoman Robinson expressed regret that the headline in our local newspaper "put it up there" and called this transition into question; that it is her thought that was wrong. She stated it was based on a letter that was sent from somebody who was not fully informed in Nashville, who is not here and not a party to any of our proceedings and did not have access to the background on this and it was a most regrettable event and one she wants to go on record saying that she is very disappointed that that "thing" was not handled in the proper way and as the week has played out the facts are now coming in and everyone is calming down and understanding that it was all a big misunderstanding. She stated in the meantime it caused a lot of heartache that was very unnecessary, again reiterating her strong disappointment and wanted to be on record saying that.

Councilman Benson stated this started nine Mayors ago in the 1950's and it was a way of getting legal assistance at below the market price that gave some other things other than salary. He expressed agreement with Councilwoman Robinson's statement; that Mr. McMahan is part of the solution not a part of the problem as he was the first city attorney we had that worked toward solving what became a problem by today's standards but was not back then at all. He stated that Mr. McMahan and this Mayor worked this through; that he resented the headline and could not believe the headlines on this. He stated he not only agrees with Councilwoman Robinson but personally gives his vote of confidence to Mr. McMahan.

Councilwoman Scott stated that she wanted to recall the fact that a potential conflict of interest was brought to the Mayor as a result of a report and evaluation made by the internal auditor and there were issues raised with regard to state law and violations which the internal auditor felt were in violation of state law. She stated she has since found out that it is a requirement that these things be reported to the state which apparently was done and the state attorney with the municipal audit department of the State Treasury has concurred apparently with that. She stated this matter was turned over from that individual from the state to the district attorney to look at and evaluate further; that there are two issues here, one is the issue of whether state law was violated or whether state laws were violated and having said that the district attorney's look at that is going to be whether there was criminal intent.

CITY ATTORNEY ARRANGEMENT (Continued)

Councilwoman Scott stated the very fact that all of this has been changed and altered in the position or location of the office and the individuals that have been made employees indicates there is recognition that there was something wrong and she has yet to hear anyone say there is not a violation. She stated this is a very sensitive issue that City Council has not gotten independent counsel for but we have an internal auditor stating what he believes to be the facts and we have the state attorney saying the same thing. She stated if the district attorney did not think any laws were violated there would be no reason for him to even do an evaluation of criminal intent; that she does not personally think there was however the facts are the law is the law and there are things that have been called into question and to dismiss all this in a quick fashion seems almost inappropriate.

Councilman McGary concurred with Councilwoman Scott's statement noting all the facts are not in; that we have had an internal report and the state comptroller who has had his investigation; that the district attorney deserves the credit of this Council to have an open mind until all the facts are in. He stated to dismiss the professional process for our personal convictions will in many ways cause us to be shortsighted in looking at all the facts and then make a conclusion once all the facts are in.

Councilwoman Ladd stated that we have not had an opportunity to have a discussion among this Council and we are in a role to have to make sure all due process was followed and all the questions were asked and answered. She **made the motion to hire independent counsel to come in and allow us to have a client privilege session** where we can just discuss it, answer all our questions and see if there is anything else we as a Council need to do to be prudent so we can say we "kicked all the tires", we asked all the questions and we know we are on solid ground with what we are doing. **Councilwoman Scott seconded the motion.**

Councilman Murphy stated that the Council has done what it needs to do under even the accountant's interpretation of the law whether we agree with that or not; that the district attorney has the matter for his discretion and his investigation. He reiterated the Council has done what it needs to do and the DA or his designee will have a decision to make; that we are ill suited to look into this matter; that we are not in any superior position to a district attorney or his designee. He stated it is his thought Mr. McMahan was party to a solution to a potential problem and a perceived problem and it seems like he is being the "whipping boy" for doing the right thing.

CITY ATTORNEY ARRANGEMENT (Continued)

Councilman Benson expressed agreement with Councilman Murphy; that as far as the Council is concerned he would not mind hiring our own counsel to advise us on what to do; but this thing started and it was our fault, really. He stated we were waiting until Mr. Nelson retired and as soon as he did, Mr. McMahan knew the situation and like Councilwoman Robinson said it takes some time to clear out a file; that when we consider the time of service we have had from our city attorney we have had fine service. He stated he does not want the Council to be premature on this.

At this time the vote on the motion by Councilwomen Ladd and Scott was taken to hire independent counsel with Councilmen Ladd and Scott voting "yes" and the remainder of the Council voting "no"; the motion failed.

ADJOURNMENT

Chairman Rico adjourned the meeting of the Chattanooga Council until Tuesday, July 20, 2010 at 6:00 p.m.

CHAIRMAN

CLERK OF COUNCIL

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