

LEGAL AND LEGISLATIVE COMMITTEE

August 21, 2001

3:00 P.M.

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

Others present included Jeff Pfitzer, John Bridger, Grey Haynes, and Adm. Mitchell. Paul Miller joined the meeting later.

NOISE ORDINANCE REVIEW

Chairman Littlefield called on Attorney Randy Nelson to go over the Noise Ordinance.

Attorney Nelson stated that we currently have a Noise Ordinance, noting that it could possibly be better enforced. He passed out copies of the Ordinance and directed attention to **Section 25-66** that states *“the creation of any unreasonably loud, disturbing or unnecessary noise in the city or noise of such kind, intensity or duration as to be detrimental to the life or health of any individual or disturb the public peace or welfare of the city shall be unlawful”*. **Section 25-67** enumerates the prohibited acts which include *horns or other signal devices on vehicles; musical instruments; yelling, hawking, etc. in streets; dogs; operation of vehicles; steam whistles; exhausts without mufflers; construction work; noise near schools, courts, churches or hospitals; loading and unloading, opening bales, etc.; barking or similar advertising; and loudspeakers and amplifiers.*

The problem that Chairman Littlefield has encountered on Brainerd Rd. involves musical instruments. Attorney Nelson read *“The playing of any radio, phonograph or any musical instrument in such a manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the quiet, comfort or repose of persons in any hospital or in any dwelling, hotel or other type of residence or of any persons in the vicinity.*

Councilman Pierce questioned the wording *“particularly during”*. (Chairman Littlefield noted that this must mean they can disturb between other hours.) Attorney Nelson directed attention to (12) which states *“Loudspeakers and amplifiers. The use of mechanical loudspeakers or amplifiers on buildings, trucks or other moving or standing vehicles for advertising or other purposes.”* Chairman Littlefield asked if this language would suffice to handle his problem or do we have to have decibel levels. Attorney Nelson stated that he “frowned on this”—that we can’t afford decibels. At this point he handed out an amendment to the Ordinance that was a suggestion and stated that if the Council wanted more, he could prepare it.

Councilman Taylor asked what the specific problem was that Chairman Littlefield was referring to. Chairman Littlefield responded that there were noisy clubs and restaurants on Brainerd Rd. and also noisy automobiles riding through all neighborhoods with their doors open at 1:30 a.m.

Attorney Nelson noted that **Section 25-68** relates to vehicles and read *“any person who operates or causes to be operated upon the public sidewalks, streets, alleys or highways of the City (including, but not limited to streets in public parks or on public property) any mechanical loudspeaker, sound amplifier or sound-amplifying device (hereinafter collectively referred to as a “device”) shall comply with limitations and requirements”*. **Subsection (l)** goes on to say *“any such device which is within two hundred fifty (250) feet of any residential zone, as defined in the Chattanooga Zoning Ordinance, shall not be operated between 11:00 p.m. and 7:00 a.m.”*

Councilman Page told of an Ice Cream Truck in another city that was given a ticket and the City Council had to re-write their noise ordinance.

Councilwoman Robinson questioned the word “phonograph”, which she called an interesting word. Attorney Nelson stated that this word was an anachronism. She asked what would happen if someone was found in violation. Chairman Littlefield responded that they would be given a citation. Attorney Nelson stated that if the Council wanted to put distance locations on this that they needed to give him the directions to draw this up.

Councilman Franklin asked about block parties. Chairman Littlefield noted that block parties should not be going on after 11:00 p.m., prompting Councilman Taylor to ask if they could be loud between 7:00 a.m. and 10:59 p.m. Attorney Nelson noted that the language was that it was a violation “particularly” during night hours. Councilman Page asked what “particularly” meant legally. Chairman Littlefield responded that this was up to the Judge. Councilman Pierce asked if the Ordinance would be enforced.

Chairman Littlefield stated that Attorney Nelson had given us some thoughts and noted that there would be another Legal and Legislative Committee meeting on September 4th, and this could be taken up again.

Councilwoman Robinson pointed out that cars are a “moving target” and questioned how this could be enforced. Chairman Littlefield explained that at younger age he had been pulled over for loud mufflers—that if the police are offended by noise, you get a citation. Attorney Nelson added that it is probably the same people at the same time every night and that neighbors could get license numbers, and the police could be in the neighborhood at that time. Councilman Pierce added “that was if the officers were available”.

Councilman Taylor asked if the law we had on the books would cover this problem.

Chairman Littlefield responded that it covers it, but it could be “tweaked” a bit; that Attorney Nelson has given us a product. Councilman Taylor asked if the difference in what we have now and what Attorney Nelson is proposing is that “if I hear a noise, I have the right to complain”.

Chairman Littlefield stated that one example was the City Mix Club on Brainerd Rd.; that they were leaving their doors open and people behind the Food Lion on Provence Street across Brainerd Rd. were being kept awake; that the club’s deck fell in, but it was just a matter of time before the problem starts reoccurring. He stated that this Club needs to be given some guidelines such as the doors have to be closed and there can be no music on the deck. He added that the Sandbar Restaurant at one time was blasting their music across the river and keeping people awake.

Attorney Nelson directed attention to **Section 25-68, Subsection (4)**, which reads “*Any such device shall not be operated in a manner in which a person can discern in a residential zone, from a distance of fifty (50) feet or more from such device, the tune, melody or title of any music played or the spoken words being broadcast through such device. Any such device shall not be operated in a manner in which a person can discern in a commercial or manufacturing zone, from a distance of one hundred fifty (150) feet or more from such device, the tune, melody or title of any music played or the spoken words being broadcast through such device.* Attorney Nelson stated that “tunes and melodies” was also an anachronism.

Councilwoman Robinson stated that it seemed we needed something to get us through the evening hours between 11:00 p.m. and 7:00 a.m. Attorney Nelson stated that the Ordinance could be updated.

HIGHWAY 58 PLAN DEVELOPMENT PROCESS 2001

Chairman Littlefield called on Greg Haynes to cover this process. Mr. Haynes provided a handout, which is made a part of the minute material. The first sheet of the handout is a schedule of meeting dates and places, the first meeting being **August 23, 2001 at 6:00 p.m. at the St. John United Methodist Church**. Mr. Haynes stated that they expected about 100 people to be present with the mailouts; that they had met with all of the neighborhood representatives and everyone was excited about this. The next meeting will be **September 11th at St. John United Methodist Church and then a meeting on September 25th at St. John United Methodist**. Mr. Haynes indicated that he saw no reason why Councilpersons would have to be present at the second two meetings.

The second page of the handout was the **Visioning Workshop Agenda on August 23rd**. The purpose of this meeting is to get public input and then those present will break out into tables and work with maps.

Councilwoman Robinson asked the boundaries of this area. Mr. Haynes responded that it is bounded by Chickamauga Lake, VAAP, the Railroad, and South Chickamauga Creek; that it covers about 4,000 acres.

Mr. Bridger noted that in addition to Councilman Page, that it would be good to have the other involved Councilmen present. Councilman Franklin indicated that he would be present.

Mr. Haynes stated that the Plan would be submitted to Planning in December and to the Council in January. Councilman Page added that it had been ten years since this area had been looked at.

HAMILTON PLACE AREA PLAN

Mr. Jeff Pfitzer presented this plan, stating that he did not have a handout but a map showing the area. He stated that most of what he had was what he had shown last month; that the area is bounded by Gunbarrel Rd., Shallowford Rd., Igou Gap, Jenkins Rd., and the Interstate. Mr. Pfitzer stated that they were interested in three main things: (1) Constraining and strengthening retail, (2) Enhancing residential surroundings, and (3) Improving the Transportation Network. He noted that the Plan recommended a small area of expanded retail; that it does not support the level of intensity of some developers; that we need to look carefully at where we want growth to occur. He mentioned taking surrounding areas for increased office use and a continuation of an office corridor; that single-family residences should stay mostly as they are.

Mr. Pfitzer went on to explain two elements of High Density Residential: (1) Development of mixed-use zoning such as a PUD-type which would allow for neighborhood-friendly mixed use and (2) More intense PUD in the retail core. He explained that we realize that we have dynamics in place working against us as a mixed-use area; that some of the asking prices for property are exorbitant and implementation will be explored in orientation to develop a project which is more than a plan and help assemble land.

Councilwoman Robinson asked for more information about creating mechanisms for assembling parcels. Mr. Pfitzer explained that there was a gap between the market and what the Plan calls for. He compared this to RiverCity looking at a Master Plan and facilitating and helping this occur. He stated that this would take capital budget expenditures and private sector development, but it also needs a non-profit vision.

Councilman Benson stated that this was in the heart of a commercial complex and mentioned more realistic goals on the fringes, which includes the Turner Club. He stated they realized this was not suitable for commercial and were talking of contracting with the YMCA for a multi-complex and the YMCA was enthused. Councilman Benson stated that this might take some city involvement, but it would be a great thing for the City with no cost. Mr. Bridger added that this was two willing partners doing something.

Councilman Benson continued, mentioning the park on Jenkins Rd., which is a passive park; that if we tie in the Turner Club and the YMCA we will have more than a passive park, and it will be of real use to the community. He stated that he and Councilman Littlefield met with two large groups, and they listened to them about the tax situation, and they were optimistic about the community.

Councilwoman Robinson went back to Mr. Pfitzer's using RiverCity as a model—that they were involved with under-valued and out of demand property and these parcels he is referring to are under interesting development with inflated prices and the best use would be something far less than what commercial property would bring. She stated that this would put a huge amount of pressure on the Plan and on the City—that this was heads-up time; that if we say we are not considering those prices that demands will be made, and we will have to be committed for this Plan to hold up.

Councilman Benson indicated that he was glad Councilwoman Robinson had said this; that we were on the way to a “throw-away mall”; that it was not pedestrian-friendly and everything was running together; that other town centers and malls had turned this corner. He asked what other cities had accomplished this.

Mr. Pfitzer responded that it had been done in Atlanta, Los Angeles, Dade County, Charlotte, and Baltimore; that some of these were higher-end malls; that we were looking at setting a tone for long-term where we can create a more pedestrian-friendly environment; that developers are not familiar with this mixed-use and will say “show me”.

Councilman Benson stated that we wanted a Town Center that would be pedestrian-friendly. Chairman Littlefield added one where you could walk from one place to another.

Councilman Page brought up Economic Development. Mr. Pfitzer responded with expendable income as well for a 50-mile radius around the mall; that consumer demand only supports about 40 more acres in retail development or spending capacity. He noted that we could wind up over-building. Councilman Benson stated that we would empty out existing businesses and be playing “musical boxes”. Councilman Page noted that this mall draws from as far away as Athens and asked Mr. Pfitzer if they were still convinced that this is the correct answer to this question.

Mr. Bridger added that a new mall was being proposed in Georgia that would cut into our mall; that we need to maintain an edge at Hamilton Place Mall. Mr. Pfitzer added that we need to put our investments into something that will give us higher returns. Councilman Page asked if stormwater was included at all in this. Mr. Pfitzer responded that Stormwater needed to look more closely at better stormwater regulation and this will be a part of a future study.

Chairman Littlefield asked what two Ordinances were needed. Mr. Pfitzer responded a Planned Unit Development Ordinance and an Ordinance to ensure more neighborhood-friendly uses with mixed-use PUD’s. He stated that these Ordinances would be useful in other areas as well. Chairman Littlefield explained to those not familiar with PUD’s that this is another type of development that allows you to do creative things; that it allows for more flexibility in property lines, ownership, and management; that it requires a more sophisticated Zoning Code and would involve some interesting language.

Councilman Taylor asked about the portion to the north of the map. Mr. Pfitzer stated that they would need some help to pull this together and no private developer wanted it unless it was predominantly retail. He expressed appreciation for the Council’s support and stated that he hoped to see them at the meeting on the 27th.

Chairman Littlefield reminded the Council that there would be another meeting of the Legal and Legislative Committee on September 4th to further discuss the Noise Ordinance and also Brush and Trash.

PUBLIC HEARING FOR ANNEXATION

Attorney Nelson noted that there had been an Advertisement for a Public Hearing for the annexation petition of John and Patsy Wilson; that this was not included on the Agenda and the Agenda had to be amended to include this; that this would be a part of the Council meeting tonight.

Councilman Benson asked if the issue of conflict of interest could be brought up at the next meeting of the Legal and Legislative Committee meeting. He stated that he had been thinking about a simple conflict of interest statement. He explained that he had encountered this as a member of the Planning Commission Board; that members with conflicting interest needed to recuse themselves from discussion or voting when there were fiduciary relationships. He mentioned Frank Kinser who was on the University Board and was not able to sell lumber to the UT System.

Attorney Nelson mentioned that the Taxi Board is comprised of people in the industry—that new people coming on are more competition. He stated that “one size fits all” may not work here.

Councilman Benson mentioned that on the Planning Commission that people will enter fully into the discussions and then when it comes time to vote, they say they can't vote. He stated that he felt they needed to recuse themselves from participation at all in the discussions; that Frank Kinser had stated this happened on his Board, and he happened to agree with Mr. Kinser; that he was not talking about just the Planning Commission but about all the boards, which included councilmembers as well.

The meeting adjourned at 4:00 p.m.