

LEGAL AND LEGISLATIVE COMMITTEE
February 19, 2002
3:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Littlefield, Chairman, with Councilmen Benson, Page, and Pierce present. Councilmen Franklin, Robinson, Lively, and Hakeem joined the meeting later. City Attorneys Randall Nelson and Mike McMahan, Management Analyst Randy Burns, and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Daisy Madison, Jerry Pace, and Joe Shaw. Adm. Boney, Phillip Lynn, Beverly Johnson, Adm. McDonald, and Jerry Green joined the meeting later.

CELL TOWER REGULATIONS

Chairman Littlefield called the meeting to order, stating that we would try to get this over with. He mentioned that Councilwoman Robinson had called him to let him know that she would be late getting to the meeting as she was on her way back from Florida. He went on to say that we were trying to dispense with action on the Cell Tower Ordinance; that industry groups were present today and might have additional points. He explained that we have to have a Public Hearing and first reading will be on March 12th; that we would have a more extensive hearing before then; that revisions could be made if they were not substantive enough to cause this to have to go back to Planning.

Mr. Tom Eddy asked for clarification of the draft on page 5, **Article VIII, Section 107** beginning with "site justification statement".

Councilman Page interjected that he had not seen this version of the draft as of yet and copies were made and distributed.

Attorney McMahan went over this section, explaining that a site justification statement would need to be prepared by the applicant that considers other alternatives to the proposed site and the environmental impact of the proposed tower. This statement shall include adequate documentation that no suitable existing facilities within the coverage area are available for the proposed use including existing communication towers, other sites for which communication tower applications are pending, and utilization of existing structures that are suitable for mounting antennae. The applicant shall justify the selection of the proposed site over other available alternative sites within the identified coverage area weighing the relative environmental impacts of the proposed site to other available sites with particular consideration of the impact of the tower upon adjacent properties, historic areas, scenic vistas and residential neighborhoods. The applicant shall demonstrate to the satisfaction of the Board that through location, construction, or camouflage, the proposed facility will have minimum visual impact upon the appearance of adjacent properties, views and vistas of historic areas, scenic assets, and the integrity of residential neighborhoods.

Mr. Eddy questioned Line 3 of Section (3) containing the terminology “environmental impact”. He stated that this may invite problems that are not necessary; that he felt this should be written without using the term “environmental impact” as this connotes “putting out emissions”, which can’t be considered.

Chairman Littlefield stated that he was hard pressed to come up with another term in drafting this from his perspective; that it was the intent to give the industry people an opportunity to state their case with as much, or as little, technical justification as they wished; that the findings have to be made in writing; that they were trying to give the industry the opportunity to state their reasons; that “environmental impact” was meant in the generic sense and not the EPA sense.

Attorney Cindy Hall suggested that something specific be put in the Ordinance to state that we were not talking about emission standards. Mr. Eddy added that they were required to do this anyway and spending a lot of money to do it. Chairman Littlefield noted that the industry kept using “aesthetics”, and the Council was not. Attorney Hall reminded that “minimum visual impact” means the way something looks.

Chairman Littlefield stated that we have Zoning laws, and we know what we can and can’t do; that it seemed that we were playing with terminology now. He reiterated that we were trying to give the industry an opportunity to state their case without a great deal of technological detail; to look at surrounding sites and decide what is there. He stated that we could add additional verbiage but were trying to say it in as few words as possible.

Mr. Eddy stated that “environmental impact” was a big word for them; that it is not so simple; that “environmental impact” can be interpreted many ways.

Councilman Benson agreed that he did not know what “environmental impact” meant either. He asked if the tower on McCallie Ave. would pass “muster” in this respect.

Mr. Eddy went on to explain that they had to get federal approval from EPA and questioned at what point they needed to address “environmental impact”; that it would be expensive for them to have to prove this to the Board and spend that kind of money and using “environmental impact” would be asking them to do this.

Councilman Page asked that the intent of this Section be defined as such.

Mr. Eddy also expressed a wish to know exactly what this means. Attorney Hall suggested using the terminology of “site justification” only. Chairman Littlefield stated that he would be willing to scratch the word “environmental”. Councilman Benson stated that it was agreed at the Planning Commission Meeting that the Council could have some input.

Attorney Hall noted that further down in the body of the text “environmental impact” is used again. Chairman Littlefield answered that the terminology could be “scratched” again.

Councilman Benson questioned if this was putting a burden on the industry. Attorney McMahan stated that they could give their statement and could ask the consultant (MESA) to do anything further; that MESA was primarily technical.

Chairman Littlefield stated that the question had arisen as to when an applicant had to pay for the consultant fee, and he had been talking to Beverly Johnson about this; that they could go through the Board of Appeals process before paying the \$1,500 fee for site justification; however, in his opinion, he thought it would be better to pay the \$1,500 first and use MESA as justification to the Board.

Mr. Eddy still maintained that it all comes down to how the tower will look; that the justification is talking about other alternative sites; that the Board of Appeals is empowered to utilize collective judgment; that they have to like it or it won't happen. Attorney Hall added that this was all so subjective; that a tower could be badly needed, and the neighborhood would complain loudly. Chairman Littlefield assured them that the Board would have to stick to the technical details.

Councilman Franklin stated that he served on the Board of Appeals at the time when the first moratorium was lifted; that the Board uses the terminology of “in keeping with the character of the neighborhood”; that City High School had put a tower up and attached flood lights and the Unitarian Church's tower looked like a Bell Tower; and sometimes towers look like tree limbs; that cosmetic adjustments like these would cost extra money, but if people yell loudly, sometimes you can fall back on something like this; that there should be creative things that would not be real, real expensive. He explained that sometimes the Council's constituents want them to be against something, but the Board of Appeals will hold fast to what the requirements say; that it has to be within their guidelines. He mentioned that Steve Leach and Attorney Jim Wilson, who is the Chairman of the Board of Appeals, help those on the Board that are less experienced with such things. He stated that the Board of Appeals would be fair. He stated that we wanted to make sure that this is across the board and not discriminatory but still put “teeth” in the Ordinance to see that towers don't start popping up everywhere. He ended by saying that everyone wants a cell phone.

Councilman Benson stated that Councilman Franklin had said this well and taken the subjectivity out of it; that the Council is trying to work in good faith with the industry; that he felt like if we had these regulations in place the negative impact of the tower on McCallie could have been prevented; “that pigs are fine, but not in the parlor!” He stated that we would all try to work together but urged not to push us too far.

Mr. Eddy stated that interpretation of the verbiage is a concern to them; that Zoning will make a subjective case; that this will be put in writing and in a few years there might be a whole new group dealing with this issue, and they may not be as open and friendly as this group is; that they are not just “nitpicking” a couple of words.

Chairman Littlefield stated that the industry should approach this “armed with confidence” that their application is the best thing under the circumstances; that they need to consider the alternatives; that camouflage will be an option. He explained that they had valiantly tried to not have every case come before the Board of Appeals, but the people in the neighborhood did not have the opportunity to speak and some people were very unhappy about this.

Mr. Eddy asked if there could not be some way to reward people in the industry who come in and do something special in commercial areas; companies that do things to make the tower as unobtrusive as possible. He stated that lots of cities were doing this; that they would like to get something good for their efforts and spending their money in ways that the Council would agree with; that if we are working as a team there has to be “give and take” and suggested maybe waiving the \$1,500 fee. Councilman Franklin asked if he was talking about when they did cosmetic changes. Mr. Eddy responded that this was expensive. Councilman Franklin verified that he was talking about waiving fees.

Chairman Littlefield explained that the “win” for Mr. Eddy was that he was getting to put a tower where he wanted to; that it would be a “win” to put a tower where there is a gap and service is lacking. He stated that this would get tougher yet, and we would be back to re-write this again.

Councilman Benson mentioned that in the case of zoning requests the developer sometimes goes throughout the neighborhood and educates people in order to reduce false ideas and emotions; that the neighborhood could be educated that there is a need, and it needs to be corrected. He stated that he knew this placed another burden on the industry, but it may be needed. Mr. Eddy responded that they did this in one district, and the neighbors went out and got a petition against them.

Councilman Page asked if this could be adopted for a trial period, say six months or a year?

Chairman Littlefield stated that this was to be passed on to the Council for first reading on March 12th.

Councilman Benson stated that it needed to be “tinkered with” in this committee to make it effective.

Mr. Eddy stated that he thought the City had done a good job with this; it was just some of the words that bothered him.

Attorney Nelson pointed out that the Council had a draft, and they could feel free to change it.

Mr. Eddy asked that no fees be paid up front until the site is approved. Councilman Pierce stated that if we did this, we would have to do the same for zoning cases and say that if the Council turns them down, they don't pay. Councilman Benson added that the fees for zoning are nothing compared to this. Chairman Littlefield stated that we would have to talk to Administration as this gets into a budget matter. Mr. Eddy noted that he was speaking of the \$1,500 fee. Chairman Littlefield explained that the consultant (MESA) does a Study for a particular site; that the applicant can go through the public process before they pay for this; however he felt it would be better to invest the \$1,500 to get this done and use it as part of the justification before going before the Board of Appeals.

Mr. Eddy stated that MESA did a Study just like they did; that he did not understand why the City would have to contract with MESA to help them prior to going before the Board; that this could be cut out of the City's budget. Chairman Littlefield explained that we did not pay them unless they did a study of a particular site.

Attorney Nelson questioned an applicant making a statement that was less than truthful, stating that there needed to be some language that this would be grounds for revocation; that if the City does not hire MESA to check these, then there could be a problem.

Chairman Littlefield agreed that the Council would look at this.

Attorney Hall questioned what would happen when this Council was not here; that down the road if they had to go to Federal Court, they would take a look at the Zoning Ordinance, and it would be hard to tell whether or not they met the requirements and “visual impact” would be hard to define. She stated that sometimes it was impossible to minimize visual impact. Chairman Littlefield pointed out that Federal Court has many cases dealing with this same issue; that he thought there would have to be strong grounds. Attorney Hall questioned if the tower on McCallie would have looked any better with pine branches. Councilman Benson stated that it would have looked better if it were placed on the Boys Club lot. Chairman Littlefield stated that usually they would know the questions that would be asked in advance. Attorney Hall still maintained that sometimes they can’t get the best property.

Mr. Eddy continued to talk about the cost involved in gathering the information needed by the Board of Appeals. Chairman Littlefield indicated that the applicant would be able to get information from Planning that they would need to present to the Board, but it would need to be gathered by them. Mr. Eddy maintained that MESA showed the City this information. Mr. Eddy asked Mr. Pace if Planning would be able to provide this information. Mr. Pace was unsure that they would have this capability. Attorney McMahan pointed out that we maintain GIS information. Chairman Littlefield felt that they would just need to go to Planning and give them their parameters and ask for a print-out.

Councilman Benson noted that the industry had wanted a 50 ft. setback, and the City was good with that. He questioned if they wanted us to hold the moratorium much longer. Mr. Eddy responded that if it were in the best interest of the Industry, then they would like it held further; that he was just trying to get clarification.

Mr. Pace stated that he would need to get an answer from Yuen Lee and GIS; that we don’t have all the information on GIS.

Attorney Tracy Wooden asked a procedural question—if this would come back before the Legal and Legislative Committee. Chairman Littlefield stated that it would not; that we were trying to get it out of committee. Mr. Wooden indicated that he would prefer not to make a presentation at the Council Meeting and asked if it were correct that we were going to strike the word “environmental” and do some work on the fees and asked if he would be able to see any other modifications before it goes to the floor. Chairman Littlefield also noted that the setback had been reduced to 50 ft. Attorney Wooden verified that all applications would have to be brought before the Board of Zoning Appeals and Permits.

Councilman Benson pointed out that the applicant would be responsible for posting notices. Mr. Pace asked where they would get a print out for this, and the answer was Don Young’s office.

Councilman Pierce questioned what the setback was in residential zones. Attorney McMahan responded that it was the height of the tower.

Mr. Eddy asked if these provisions applied to new things and applications that had already been submitted. Chairman Littlefield responded in the affirmative.

Councilman Benson asked the difference between a cell tower and an antennae and what the one at OLPH would be called. Mr. Eddy responded that it was equipment inside of a church steeple. Councilman Benson asked if it would be termed a cell tower. Chairman Littlefield stated that it was an antennae, but it is also a cell tower site.

On motion of Councilman Benson, seconded by Councilman Page, this draft will go on to the Council on March 12th for consideration of first reading.

PERSONNEL REPORTS

Chairman Littlefield stated that Councilman Pierce had raised the question as to the need for all administrators to come to the Council meeting and individually report personnel matters.

Attorney Nelson reported that there was nothing in the Code that requires that; that it just gives the Council opportunity to get input from department heads; that this is not the only way to do this; that department heads could submit lists and if the Council had any questions they could call the department head and ask them to come to the meeting.

Councilman Pierce stated his concern was on personnel matters alone; that councilmembers could get the report and could get in touch with department heads if there was a question; that the Council does not make a decision on personnel matters anyway; that a person who is dismissed will appeal his case to the Council anyway; that he did not see people like Chief Coppinger and Donna Kelley sitting in a meeting for a couple of hours just to hand in a personnel report.

Councilman Benson stated that it does bring department heads to the podium, and they can answer questions about other matters; that he thought all of them should come. In that case, Councilman Pierce suggested having the Council Meeting at 3:00 P.M. so they could come during work hours.

Chairman Littlefield stated that whether they came or not was an administrative decision, but they don't have to submit the reports individually through department heads.

Joe Shaw was present from the Personnel Dept. to ask or answer any questions.

Chairman Littlefield explained that it had been a tradition for Administrators to make personnel reports, but the question was “Do they have to do that?” and Attorney Nelson says “no”.

CHARTER CHANGES

Attorney Nelson stated that we needed to reformulate the Charter, and the terminology needs to be substituted to read the Mayor and Council; that when you read the Charter right now it still says Board of Commissioners with footnotes that it means Mayor and City Council. He stated that this would not be binding in any court; that we had ironed out the bugs in the last 12 years and made changes to conform to what we have been doing. He stated that he thought it would be better to put the Court Order into the Charter rather than having it at the end; that the Court Order takes precedence. He stated that it would be two and one-half months before first reading on May 7th and that the Council needed to start meeting to go over two or three chapters at a time; that it could be done in a Legal and Legislative Committee meeting.

Chairman Littlefield questioned if he had this ready to review. Attorney Nelson indicated that you could tell the changes that needed to be made by looking at the footnotes, but he would prepare a “red-line copy”.

Councilman Pierce questioned the Court Order in the Charter body rather than at the end; that he thought to keep it intact, we should leave it as a whole at the end.

Attorney Nelson pointed out that in some cases we have amended the Court Order by vote of the people, and this could be confusing; that there are things within the Court Order that we have changed.

Chairman Littlefield indicated that we needed to go over this “with a fine-toothed comb”.

Councilman Pierce stated that we would wait on Attorney Nelson to get this ready for us.

Chairman Littlefield asked that Attorney Nelson get the Council copies of three chapters so that they could get started.

TRI-STATE CREMATORYSITUATION

Councilman Page stated that he would like the Council to address the traumatic happenings in the community in regards to the problems we are having with the Tri-State Crematory; that he knew people personally that had relatives who were supposed to have been cremated there; that one good friend had a daughter to have been cremated with Tri-State, and they don't know if what they have is their daughter's remains or not. He stated that we were sitting on the State line and our friends and relatives go to Georgia for this function. He stated that he had talked briefly with Councilman Taylor and Councilman Franklin, and it seems an appropriate thing to recognize the problem and do what we can with condolences and also talk to our State Legislative body to be sure that we are responding accordingly; that we might need to lobby this body to see that something be done in our State now. He questioned if there was something we could do in regards to a delegation in the next week or so. He asked for comments.

Councilman Franklin stated that the situation was magnifying daily; that he had attended a short meeting with funeral directors to decide their recourse; that the main emphasis was to express our regrets that this type of thing has happened, and it is beyond all of our control; that Russell Frieberg and other individuals had used Tri-State since they had been in business and all were affected. He went on to say that the National Association of Funeral Directors was asking if delegates from Chattanooga would make a statement on their behalf and John Taylor is President of the Tennessee Association, and he (Duke Franklin) had been a past President. He suggested that this Council make some kind of collaborative statement to acknowledge those individuals who are re-hashing their bereavement because of this situation. He stated that some individuals had given them additional information for identification, and it had been passed on to the Georgia Bureau of Investigation. He explained that the legal requirements in Georgia are different from Tennessee, and in Georgia they are not regulated regularly and that is part of the problem. He stated that a lot of people knew the family involved, and it is hard to believe that any of the family members contributed to this. He reiterated that the Council needed to address this and make a statement from the Council floor. He also stated that we needed to look into investigating further to see if we are in line (Tennessee) and do not have lesser requirements than our bordering State.

Chairman Littlefield stated that as a committee, we are asking Councilman Page to make a motion of condolence and concern at tonight's meeting and over the next couple of hours, we will put some words to that.

Councilman Hakeem asked if we had anything that stated that Tennessee law was different from Georgia; that we needed to have a conversation with people in Tennessee as to what we have on the books.

Chairman Littlefield stated that he did not know if our laws were as strong as they should be; that we benefit from good laws.

Councilman Benson stated that this is a good example of why we should be thankful for regulatory agencies; that he wanted to point out that these agencies exist because of the general good; that they did not have a regulatory industry and people were suffering terribly.

Councilman Franklin reiterated that the Tennessee Commission is different from that of Georgia.

Attorney Nelson pointed out that we have a Chapter in the Tennessee Code that deals with crematories.

Councilman Franklin added that the whole licensing scenario is different. He urged that a statement be made tonight.

Councilman Page still felt that this needed to be discussed with our State Legislature to insure that this does not happen in the future. Attorney Nelson noted that this was not the first time this had happened in the country; that it does happen periodically, and we need to strengthen what we have on the books.

Councilman Pierce asked how many such companies there are in Tennessee, and the answer was several hundred.

On motion of Councilman Page, seconded by Councilman Franklin, a statement will be made at tonight's Council meeting.

The meeting adjourned at 4:15 P.M.