

## **LEGAL AND LEGISLATIVE COMMITTEE**

**May 21, 2002**

**3:00 P.M.**

The meeting of the Legal and Legislative Committee was called to order by Councilman Benson, Chairman, with Councilmen Page, Robinson, Lively and Franklin present. City Attorney Randall Nelson and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Barry Bennett, Adm. McDonald, Don Young, Beverly Johnson, Jerry Pace, Mike Compton, Phillip Lynn, and Jeff Pfitzer. John Bridger, Chief Coppinger, and Jerry Green joined the meeting later.

### **ZONING REGULATIONS AND ENFORCEMENT**

Chairman Benson called the meeting to order and explained that last Tuesday the Council passed a resolution, and the motion was made to review the Zoning Ordinance in regards to controlling the use of land to protect the general good of the community. He stated that we needed to look where our Ordinances are now and see what needs to be updated and the changes that need to be made. Chairman Benson went on to explain that this arose out of the rezoning request on Concord Rd. He passed out an article from USA Today showing where the Supreme Court backed the government in a land-use case. (This is made part of the minute material). He went on to explain that the property in question had been put in moratorium as far as permits are concerned. He explained that the organization in opposition was under Concord and now it has spread over to Gunbarrel on the other side and is now called the Audubon Neighborhood Association.

Chairman Benson went on to say that the question arose last week, and he had asked that Adm. McDonald and Mr. Bennett be present tonight to speak to these issues. The first thing he wanted discussed was clear-cutting land and stripping it. He stated that people would clear-cut land and then the Council would have to add the condition of a buffer, and they would plant 3 ft. saplings, that might die, and we encountered problems. He went on to say that this impacted the cost of roads and also there was a stormwater problem. He questioned if any kind of license could be required for clear-cutting and removing trees and if the license could be taken away when they violated ethical procedures.

Chairman Benson continued with the permitting procedure, noting the problems that the building inspectors have and mentioning the avenue of the Board of Zoning Appeals where people can ask forgiveness rather than permission. He questioned if we should require site plans to prevent speculation on rezoning. He stated that he would like for Mr. Bennett and Mr. McDonald to tell us what recourse we have from their professional standpoint and the things we can do right away to improve this situation without being counterproductive to the community.

Councilman Page stated that he would like to hear Mr. Bennett's and Mr. McDonald's thoughts, as they deal with this everyday.

Chairman Benson asked Mr. Bennett to speak to clear-cutting and ravaging the land.

Mr. Bennett stated that at the present time we don't have anything in the Ordinance or Code that prevents anyone from clearing their own property; that it is a fine line to walk in terms of legal issues; that there is a question on how much control we can have that does not infringe on the personal rights of what people do with their property. He stated that one of the primary problems is steep slopes and erosion control; that the problem they dealt with daily was drainage problems; that we have no clear legislative control over significant drainage problems—that this is a civil issue; that if there is something on your property that creates a water flow and causes damage, then you are liable. He reiterated that the problem is a civil issue, and we don't have legislative control to keep this from happening.

Mr. Bennett went on to say that Chairman Benson had mentioned what they would do if they had a magic wand to wave—that he would remove some of the people with repeat problems and move them to Houston. He stated that the only recourse we have is to look at the current Ordinance and regulations and identify specific problems and see which vehicle we need to amend. He stated that they would need a lot of counsel from the City Attorney on issues to see how much discretion we have. He mentioned that the Board of Zoning Appeals tried to handle repeat offenders with “three strikes and you're out” when you come back asking for forgiveness rather than permission in the first place—that some of these people know what should be done and continue to “skirt” the regulations; that the Board tried to say after three times, you have no other chance. He explained that this effort failed because of legal discretion to do this.

Mr. Bennett stated that we would need to look at the regulations we have and at subdivision regulations and the Zoning Ordinance and City Code to see if there are legal changes we can make to address these problems.

Councilwoman Robinson stated that we may not be able to prohibit people from clearing their own property, but they can be held liable for run-off water and damage. She asked if we were enforcing this.

Adm. McDonald answered that these people, at the present time, were not in violation of any city permits; that the City was taking a close look at this and would issue any citation to correct this; that at the present time, they are not in violation.

Adm. McDonald spoke next on clear-cutting, stating that the only way we can have any control over what a person can cut on their property is with a Tree Ordinance, where the person would have to get a permit to cut trees. He stated that many cities and states have this requirement; however there is usually significant opposition to that type of Ordinance, but it does exist in a lot of cities; that Florida has a Tree Ordinance that says certain species can't be cut without a permit. He went on to say that at present there is no way to control cutting trees on one's own property but mentioned a "Land Disturbing Permit" under certain circumstances.

Chairman Benson asked about parameters. Adm. McDonald answered that an Ordinance could state that a person has to leave a certain buffer; that all R-1 houses in the midst of a residential area are not required to have a certain buffer zone; that in a wooded site if the Council saw fit, they could have an Ordinance that would require that trees not be cut a certain distance from a property line in any zone.

Councilman Page stated that he knew great cities had good ordinances, he was just not sure what they were; that a city does not want to be a "Gestapo"; however when this type of thing is occurring aggressively, we need to use some logic to look at this and deal with it successfully.

Adm. McDonald stated that something needs to be done, and we need to decide to what degree to enforce this; that a Tree Ordinance could be written according to species and sizes and could become very technical. He noted that Charleston, South Carolina and resort areas in large cities in Florida have such ordinances. He stated that he thought the only city in Tennessee to have such an Ordinance was Franklin, Tennessee.

Mr. Bennett stated that they had a number of contacts in major cities in Tennessee and other states, and they could ask them what they are doing now, particularly in cities in Tennessee because they already have to conform to State laws.

Councilman Lively stated that this could get really “sticky”; that he believed in property owners’ rights but when people are “butchering land” it looks like we need some type of Ordinance regarding clear-cutting. He suggested that they be required to get a Permit and let Planning look at this; that most builders and contractors try to make the property look decent.

Councilwoman Robinson stated that she liked the idea of breaking the issue up into different pieces; that as far as clear-cutting in a large area, we could have some sort of Review Process to keep this from happening again and to prevent people from wiping out the landscape just because they don’t get the zoning they want. She stated that with regards to repeat offenders, we need an Ordinance to deal with repeat offenders with some teeth in it.

Attorney Nelson responded that we could not enact something with more “teeth” in it until the Legislature increases our ability to fine; that we could enact something similar to strip mining laws where one has to have restoration in place in (x) amount of time. He stated that this was a good area to look for equivalency.

Councilman Lively asked how long it takes to grow a tree. Attorney Nelson responded that it depends on the type of tree.

Chairman Benson stated that this was something to look into and mentioned a certain tree that the public did not want cut and a vigorous maintenance man did something and the tree had a heart attack and died! He stated that this seemed so silly, mentioning that Legacy Park was stripped—that the stipulation is a person just has to plant trees—not that they have to live.

Mr. Bennett mentioned the Landscaping Ordinance. Adm. McDonald added that we need to strengthen the Landscape Ordinance.

Councilman Franklin suggested that when we update the Landscaping Ordinance that we put in not to disturb certain trees and require a certain footage for developers and plant seedlings in front of where trees are already in place; that when the seedlings grow up, you would still have the base.

Councilman Lively suggested bringing the homebuilders and contractors in to be a part of this, stating that self-government works better than anything. Mr. Bennett agreed, stating that they are concerned about the integrity of their organization and don’t want it ruined because of a few unscrupulous people. Councilwoman Robinson also agreed, stating they might know what to do with repeat offenders.

Chairman Benson stated that we could invite representatives to come in next Tuesday at 3:00 P.M.

Councilman Page stated that we needed to have a definite agenda, including a discussion on clear-cutting and the Landscape Ordinance.

Chairman Benson stated that we would be discussing other things today that might need to be on the agenda, and they could be alerted to be here next Tuesday.

Adm. McDonald suggested giving them two weeks, as they are volunteer organizations. Mr. Bennett added that they have an Executive Committee and good contact people would be Don Moon or David Dalton. Chairman Benson stated that we would ask Barry Bennett to contact these people for a meeting in two weeks at 3:00 P.M.

Councilman Franklin agreed with Councilman Page that we needed a specific agenda and to just address two issues; that the other issues could be dealt with at a future date.

Councilman Page verified that this meeting would be on June 4<sup>th</sup> at 3:00 P.M.

Adm. McDonald suggested that AGC also be contacted to have a representative here. Mr. Bennett agreed to contact them also.

Chairman Benson next brought up the question of Chattanooga getting to the point of requiring a Site Use Plan with the zoning application.

Mr. Bennett responded that they were in the process of looking at this; that many don't have a Site Plan submitted at the time of rezoning; that the Planning Commission defers action until the Site Plan is in; that requiring a Site Use Plan at the time of the zoning application would curtail speculative zoning and would allow the Planning Staff to make informed recommendations to the Council. He mentioned a funded position through the Mayor's office, which would be a Design Review Specialist; that we were hoping to have a position of a specialist that would do nothing but review site plans that come in and make recommendations to the Planning Staff. He went on to say that that person would also have other duties in dealing with overlay and special zones. Beyond that, he stated that they thought it was a good idea to have a mandated Site Plan. He stated that we were one of the few major cities that don't have this in place already; that they were in the process of developing this and hoped the Council would support it.

Attorney Nelson cautioned that we needed to be careful, using as an example a C-3 Zone where Adult-Oriented Establishments are allowed and the people will not accept this, and the Law clearly states that they are legal; that we have to have some areas where they can go; that we need to be careful that this requirement is not a subterfuge such as we know they have to go somewhere but "not in my backyard". He suggested a Study be done to show that the request for rezoning is in character with the area.

Mr. Pace noted that they have a committee studying the feasibility of zones abutting residential neighborhoods to see if certain uses can co-exist with one another.

Mr. Bennett stated that they needed a Site Plan to make an informed decision; that they need a specific use in mind along with landscaping, access, and parking arrangement. He went on to say that Planning defers until they submit a Site Plan, and they would like to have it at the beginning so that the cases would not have to be deferred. He stated that he was talking about RPA, the staff from Bill McDonald's office, Don Young, and Traffic Engineering—that all these people need to know what is being proposed so that they can come up with a recommendation.

Councilman Page asked in regards to the Design Center, that the North River Project was referred to them to look at. He asked how the Design Center was organized and how it functioned; that he did not understand this.

Mr. Bennett explained that the Design Center is a public/private partnership between RPA, RiverCity, and the University of Tennessee; that it consists of several staff members from RPA and several staff funded by RiverCity; that two on the Staff, including Christian Rushing, are funded through General Government, and their primary focus is downtown development. He stated that they were also charged with Riverfront development and RiverWalk development; that their primary concern is downtown related issues. He explained that RiverCity funding is through the Lyndhurst Foundation; that their staff worked in partnership with RiverCity and the University of Tennessee with Stroud Watson.

Councilman Page asked if the Design Center had the authorization to recommend on zoning issues just like the Planning Staff and the Planning Commission. Mr. Bennett explained that recommendations come through the Planning Commission and through RPA and then they come back to the City Council for action; that RPA is in partnership with the Design Center, which is a non-profit organization whose main function is dealing with downtown issues. Councilman Page asked if the North River Development, which is going to the Design Center, would also go to RPA. Mr. Bennett responded that the Design Center is part of RPA; that they had their executive offices and John Bridger heads up Comprehensive Planning and Jerry Pace deals with current zoning matters; that the third entity is the Design Center, and it has its own autonomy but still functions through RPA.

Chairman Benson asked Adm. McDonald, whom he said had had 13 months to improve upon things, if in his experience there was anything else we needed to look at.

Adm. McDonald noted that we had mentioned stormwater; that these developments create a lot of problems concerning stormwater; that they throw water on each other and expect the City to mitigate. He stated that a Stormwater Policy would address this; that they had been gathering proposals in from consultants and would be interviewing consultants in the next two weeks. Another thing that creates a problem for them, he said and something that would benefit the City from being behind the “power curve” is that we get control in planning before something is developed; that we are “reactive” in development and have people screaming for infrastructure. He stated that North Concord Rd. needs to be improved, and it is something that is not budgeted. He stated that it takes long-range planning to do this.

Councilman Page responded that he believed this strongly; that Adm. McDonald was right on target; that this was paramount. He questioned how to do this—that it was multi-dimensional.

Attorney Nelson stated that there were several ways to approach this; that we could take a look at density to prevent people from saying if you don't give me this, I will build that—which is the worst scenario. He stated that density criteria could control this. He stated that in terms of minimum lot sizes for duplexes or apartments, that this was developed in the 60's and only 9,500 sq. ft. is required for a duplex. He stated that we could also take a look at setback requirements. Attorney Nelson stated that we also needed to look at traffic control; that a street may be inadequate, but we need to determine what is adequate; that John VanWinkle has standards as to how much traffic certain roads can handle; that we could only permit R-1 usage on roads that were over capacity; that we can't take away all usage, but we can limit usage. He stated that we could look at alternatives such as developers signing up for neighborhood improvements that they would pay the cost for a number of years.

Chairman Benson asked about flag lots, stating that they “scar” up neighborhoods.

Adm. McDonald stated that he would like to eliminate them or put restrictions on them. Councilman Lively disagreed, noting that there were special situations where they were needed—that “country boys” differ from “high density” areas. Mr. Bennett added that now you can only have three contiguous flag lots where it used to be unlimited. He explained that a flag lot is access by easement. He stated that they create some problems and are of benefit in other areas such as rural areas of the county. He stated that we had to be careful about this that in dealing with a specific problem that we do not over-regulate.

Councilwoman Robinson asked, concerning the recent Ordinance we adopted offering a tax deferral incentive in the downtown area, do we have an overlay zone that permits this to happen quickly and easily.

Chairman Benson asked about an incentive plan that would reduce permit costs and give an incentive to do what is right. Attorney Nelson clarified that incentive plans would be for permits and not taxes. Adm. McDonald did not think this would be very effective since all we have are building permits and Plan Review fees. Chairman Benson explained that he was talking about if a developer came in with a Site Plan to improve the value of the entire community that we offer an incentive plan to rebate some of the fees. Adm. McDonald stated that we have Impact Fees in place—that we do not have enough fees involved to get much. Attorney Nelson explained that we don't collect fees as a revenue measure—that we would be eating our own costs. Chairman Benson stated that if we build a bad product, it will cost us.

Mr. Pace noted that the Zoning Ordinance was drafted 40 years ago before we had fax machines, computers, and cell phones.

**2002-071 Volunteer Behavioral Health Care Systems/413 Spring Street**

Mr. Pace stated that he would like to touch on this case. He stated that the developer was going to ask to defer this until he could get with the neighborhood and work out the problems; that when they had a definite use, they would come back.

Councilman Lively pointed out that this is actually down zoning.

Mr. Pace stated that the neighbors were concerned about the usage and were agreeable to the deferral.

Attorney Nelson stated that he had had a call from Volunteer; that the neighborhood is in accord with the deferral.

Mr. Pace added that they were in favor of rezoning to R-4 but wanted their minds at ease regarding the safety of the usage.

The meeting adjourned at 4:00 P.M.