

LEGAL AND LEGISLATIVE COMMITTEE

June 4, 2002

3:00 P.M.

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

Others present included Adm. McDonald, Beverly Johnson, Mike Compton, Don Young, Jerry Pace, Adm. Boney, Barry Bennett, Gene Hyde, Jerry Jeansonne, and Jerry Green. Phillip Lynn, Todd Womack, Greg Haynes, Jeff Bridger, and Adm. Mitchell joined the meeting later.

ZONING AND CODE CHANGES IN REGARDS TO CLEAR CUTTING

Chairman Benson called the meeting to order and acknowledged the presence of two County Commissioners, Curtis Adams and Larry Henry. He went on to explain the purpose of this meeting, noting that a situation had developed and had been brought to the City Council meeting about the problem presented by the Concord Neighborhood Association. The name has now been changed to Audubon and has grown and Chairman Benson stated that the President, Rod Harrison who is with the James Company, was present tonight. He stated that this was a very active association, and we were going to see how we might avert the problem that has happened and keep it from happening again. He went on to say that a representative of the Homebuilders Association was also present; that he was going to let the neighborhood representatives present the problem to the community and then let Gene Hyde, City Forester, talk about the tree situation. Next to speak would be the representative from the Homebuilders Association and any developer. Chairman Benson stated that we were going to try to work in harmony and arrive at something that would be mutually beneficial to all concerned. He noted that Dr. Montrey was present and would present a power point presentation.

The first to speak was **Rod Harrison**. Mr. Harrison explained that he was the Vice-President rather than the President of the Association. He began his remarks by stating that he thought it was fair to judge how this situation impacted five different groups. The first group was the people who already live in the area. The second group would be the people who would be moving into the area—what will their quality of life be? The third group is the environmental, or the furry creatures who reside here. The fourth group is the larger community as a whole and the economic impact. The fifth group is the developers. Mr. Harrison stated that in a perfect world all five of these groups would be winners; that as it stands now, most all are losers and speaking as a local resident of this area, he did not want to be a loser.

Mr. Harrison went on to say that their neighborhood association had gathered a petition that had been signed by 250 people whose back yards had been devastated, and they did not think the plans on the board would work. He stated that theirs was a united voice and there was no question as to how their lives would be impacted. The second group—those that would be moving into the area—Mr. Harrison explained that the latest plans viewed showed 140 homes consisting of 70 duplexes, which would mean ten houses per acre. He stated that this would be rental property and could possibly impact 250 to 300 children with no place to live and play. He stated that there was no question what the impact would be on these people; that there was no green space and play area and there would be traffic congestion on the road. He stated that the impact was clear, and in his view it was a negative impact.

Next Mr. Harrison addressed the environmental aspect, or the third group. He stated that we would have to wait and see the impact on the community; that this was located close to Audubon Acres, and they were in the process of drafting a letter.

The fourth group was the impact on the City as a whole, and Mr. Harrison stated that it was difficult to predict the long-term economic impact; however, he stated, we could be sure that the short-term economic impact would not be good; that the developer felt that if it goes according to their plan that the City will be forced to upgrade the infrastructure. He stated that they had lived with what infrastructure they have now. He stated that he thought this would be an acute problem in building roads and infrastructure and resources would have to be allocated to this, and if this goes through, someone will suffer.

The fifth group was the property developer. Mr. Harrison stated that he felt if this developer runs roughshod over the community, that the community would have a way to make sure that this development would not be too profitable for him.

Mr. Harrison ended by saying that there would be no winners—that everyone would be losers; that this area was not well suited for this development. He stated that he thought the City should demand that when a developer goes in that he has a good chance of making all winners and not everyone losers.

Dr. Montrey next gave her power point presentation. She showed a map of the surrounding area and an aerial view of Concord Rd. that was prepared by Jim Vincent. She stated that there was no place for a child to play; that the tracts behind the homes are narrow; that with 124 units there could be 250 cars, which would make for major congestion.

Dr. Montrey had several suggestions to make, the first being that the City prevent any work from being done prior to a Site Plan approval. Secondly, that a City or County Permit be required for clear cutting; that at the present time the State issues a permit, but they do not monitor this. The third suggestion was tree preservation, and she mentioned Provo, Utah and maintaining a greenbelt. The fourth suggestion dealt with protecting

existing property owners from something that is incompatible with the neighborhood; and lastly, to require that the infrastructure be in place so that the problem will not burden the neighbors and will not burden taxpayers.

Dr. Montrey went on to talk about Fairfax, Virginia and their Plan showing how they took care of similar situations with being sure that they knew where the money was coming from. She stated that everyone needed to work together for a solution.

Chairman Benson noted that Dr. Montrey was a M.D. Dr. Montrey added that she was making a living writing these days.

Next Chairman Benson asked Mr. Gene Hyde to speak to the issue of clear cutting and scalping of the land.

Mr. Hyde stated that he had been asked to take a look at this; that he and Jerry Jeansonne went out and walked over the area to take a look; that previous to this, he had had no idea of what had happened, and he was not sure about the situation now. He stated that the developer did not have a Land Disturbance Permit, as one was not needed; that no Land Disturbance Permit is needed for a timber harvesting operation and logging is exempted. Mr. Hyde went on to say that some states mandate that a developer follow Best Practices procedures but that Tennessee does not.

Mr. Hyde stated that he saw two problem solutions in dealing with the current situation, which would be the elected leadership changing the City Code and Zoning Regulations; that it would be up to these guys. He stated that long-term, he agreed with the lady making the presentation that we need to decide what the residents of this City want this City to look like; that we could have a RPA Study and see what other communities have done; that if they recommended positive action, we could go from there. He stated that we could also take a look at Best Management Practices on timber areas; that these practices were aimed at soil erosion and made sense. He stated that he agreed with what had been said and mentioned that Nashville has a Tree Preservation and Replacement Policy, which makes sense. Also, Peachtree City, Georgia, has a mandated buffer zone. He stated that these would be two different situations to look at, but cautioned that we have to tailor our plan to the City of Chattanooga and have to involve the community and developers.

Commissioner Curtis Adams stated that he would like to know how someone cuts 15 acres of trees before anyone knows about it and how this can be corrected. Mr. Hyde responded that we would have to look at this with RPA.

David Dalton, President of the Homebuilders Association, spoke next. He stated that this was the first that he had been made aware of this; that from a developer's standpoint, they try to be overall environmentally-friendly, and he did not think that this was the case here. As far as requirements, he stated that he was not sure about the penalties and planning process that allowed this developer to get to this point. He stated that he was not aware of the regulations in place concerning cutting trees. He stated that he certainly agreed with a lot that had been said, and they would like to be involved in any process and would be as helpful as they could. He stated that they were concerned about the lack of affordable housing and the impact on the community with more regulations. He added that both communities that had been mentioned—Provo, Utah and Fairfax, Virginia—had very high development costs.

Mr. Dalton went on to mention the existing duplexes adjacent to this property, stating that he was not sure what the land looked like when they were built; that the property may have had no trees. He explained that in developing a subdivision you have to look at cost assessment and try to provide affordable housing; that this is a consumer-driven business, and people have to have houses at a price they can afford. He went on to say that trees had to be cleared to build the existing houses, and the trees planted had matured; that this developer might do some planting also; that developers usually go in to improve the property and make a very nice subdivision, and they start off with bare ground to clear. He stated that there was no instant "fix" for this.

He reiterated that they wanted to be involved in this process and would help any way that they could.

Chairman Benson asked **Don Moon** to speak. Mr. Moon cautioned that we have to be careful in dealing with economics; that he was in sympathy with the neighborhood. He stated that he sat on the Planning Commission and had looked at this property. He explained that many times developers have to reshape the land, and it would need major reshaping to get these units here. He went on to say that during the process of reshaping, it does not look pretty—that you are moving dirt but to get to the product you need, you have to do this reshaping; that this will bother neighbors, but it won't when the developer is through.

Mr. Moon went on to say that he did not have the vision to know what this particular developer had in mind; that he presented no Plan to the Planning Commission, and the clear cutting was done through a "loophole". He stated that he always got a Land Disturbance Permit because they had to start with "stumping". He stated that he did not know what this developer was planning on doing. He cautioned the Council to be careful about an Ordinance that would affect all developers and development costs; that they build a product that consumers want, and this requires reshaping to a great extent; that trees have to be cut down and then replaced when they build a product. He mentioned that Oak Park on H/W 153 is a good example of making an area look better. He urged caution as we proceed.

Chairman Benson stated that he knew Mr. Moon held high standards for himself; that we wanted to formulate an Ordinance and tighten codes to make it law that other developers had to adhere to the high standards that Mr. Moon had set for himself and would like his association to make recommendations.

Councilman Hakeem assured those present that this was not a “witch hunt” after the industry; that one developer could make it hard on all developers; that infrastructure costs were of concern to him—that having to build safe roads was not anticipated and the attitude seemed to be “build it and the City will fix the roads”. He stated that this was not a good way to proceed and was an instance of someone imposing their will on the City and community and doing a disservice to the community.

Councilman Littlefield stated that he was more surprised than most about this; that when he first saw it he thought “good grief—they are recreating Copperhill”. He stated that the Homebuilders were a responsible group, and we needed to fashion an effect that would bring this sort of thing under control; that with the input of the Homebuilders Association we had come up with an Erosion Control Ordinance, headed by Julian Bell, Sr.; that Harold Coker was very instrumental in this also. Councilman Littlefield stated that he was surprised this sort of thing happened under the provisions of this Ordinance; that we had to close the “loophole”. He went on to say that he was attuned to what had been said about the cost of houses; that we did not want to make this so onerous and expensive that it puts housing out of reach. Councilman Littlefield went on to say that Georgia law was a little more restrictive than Tennessee law; that their State law requires local mandates that have to be met; that their laws are fairly aggressive as compared to ours; that they are required to have a bond in order to cut timber and tear up roads, and we could do something similar; that there are bonds in place if roads are damaged, and this is good protection; that Best Management Practices require a Soil Disturbance Permit. He stated that the Homebuilders Association needed to be a part of this; that we needed to get a Plan to the Planning Staff as quickly as possible. He added that he did not think any amount of reshaping would allow this many units to go on this property. He ended by saying that we needed to close the “loophole”.

Chairman Benson stated that this clear cutting issue was an exceptional situation. Councilman Littlefield stated that it would be relatively simple to amend the Ordinance.

Councilman Page asked if the Homebuilders’ organization would take a part in making recommendations to close the loophole or if there should be a Study issue. Mr. Moon responded that he would have to defer to Mr. Dalton—that he did not know if there were any recommendations. Mr. Dalton stated that he had no good suggestion for doing this. Councilman Page continued to ask about the process to close this “loophole”.

Attorney Nelson suggested that in clear cutting property and taking all the trees down that there could be some required permit; that we could also deal with this from a setback or buffer standpoint. He stated that Nashville has an Ordinance that we could take a look at. Attorney Nelson noted that this developer in question cut even with the ground rather than taking the stumps out and one is not required to get a permit unless you pull the stumps out.

Mr. Jeansonne noted that the developer had a State Permit but the State does not monitor this. Attorney Nelson asked if he had applied to subdivide the property, and the answer was no.

Mr. Pace added that there were two steps; that rezoning for RT-Z requires a subdivision plat to show the subdivision. He stated that he thought it was doubtful that the developer could get the number of units that he wanted. Attorney Nelson noted that it was a one step process for subdivision. Mr. Pace added that this particular developer withdrew his request for RT-Z zoning, opting to remain in an R-2 Zone.

Mr. Bennett added that a Rezoning Study will be addressed at the June 10th meeting to contemplate downzoning of the subject property.

Councilwoman Robinson stated that there was already a disruption and questioned if it rained, what these people might be in for and how much liability would be on the developer with all of this cutting and no stormwater protection. Attorney Nelson responded that the people would have legal recourse; that it would be a private action between the adjacent landowners if water damage occurred.

Councilman Hakeem verified that this developer had cut the trees to ground level and asked if the law permitted him to build on top of these stumps.

Councilman Pierce noted that a Land Disturbance Permit allows one to remove the stumps and that is when the City comes into the picture. He stated that he thought this developer was bluffing about building duplexes because the community was going against the RT-Z Zone, and he just thought he was trying to scare the community; that he felt he was just bluffing.

Chairman Benson asked about the Permit from the State. Mr. Jeansonne explained that it was an "MPDES Permit"; that the land should have been seeded and strawed in 14 days; that the State gives out the permit, but they do not monitor it and expect local government to police it; that no one in city government would say it was their responsibility.

Adm. McDonald explained that the City monitors this from the point when they get the Land Disturbance Permit.

Chairman Benson recognized **Roger Tudor with AGT** and asked him to speak.

Mr. Tudor stated that he was president of the association. He acknowledged that the City had a good Landscaping Ordinance in place; however this property in question looked horrible. He went on to say that the Olgiati Bridge looks horrible but in months it will look great. He stated that he thought this individual did “skirt” regulations, but the City still had a lot of opportunities to deal with this—that straw would not hold it; that the City needs to know where they have responsibility; that there would be an opportunity for RPA, Landscaping and Forestry to be involved in a Permit Fee; that the trees are gone, but we could require him to plant more; that Attorney Nelson needed to investigate this. He reiterated that this looked horrible but urged the Council to walk cautiously in covering up loopholes; that there might be a federal battle. He stated that he would love to work with the City as well; that he did not know this developer but that this was an opportunity for all of us; that the City is in good hands and city inspectors have watchful eyes.

Commissioner Curtis Adams stated that he was glad to see this getting attention.

Commissioner Henry asked if there was any Plan submitted. Mr. Moon responded that no Plan was submitted at the Planning Commission meeting with the RT-Z Zone request; that this was recommended to be turned down and they withdrew the request before it got to the City Council. He stated that they did not have a Site Plan submitted to the Planning Commission.

Councilman Page stated that the most logical process seemed to be a Land Clearing Ordinance and the developers, general contractors, and homebuilders could review this.

Mr. Moon stated that his engineers worked out a Best Management Plan before beginning construction; that we could close the loophole of logging under the Land Disturbance Permit; that they got this permit and proceeded with construction.

Chairman Benson suggested moving in that direction at the next Legal and Legislative committee meeting.

Mr. Harrison stated that it appeared that all of the attention was geared to the environmental impact and nothing was being said about the quality of life for the residents and the fact that this was not in character with the rest of the neighborhood. He stated that there were other issues other than the environmental impact. Chairman Benson responded that quality of life was subjective—that that might take divine intervention to solve.

Mr. Jeff Bridger added that the quality of life issue puts a burden on the infrastructure and the current and future residents. He stated that we needed to assess if we have an adequate process to deliver services prior to the development.

Attorney Nelson suggested that John VanWinkle be asked to determine the road capacity and see if this would put it over the top of capacity; that we could have an objective determination, and it could be written into the subdivision law.

Chairman Benson asked if the next step should be discussed at the 3:00 P.M. Legal and Legislative Committee next Tuesday.

Councilman Littlefield suggested first just looking at the definitions that allowed logging to this degree and rewriting this definition; that he thought we could close this “loophole” without affecting good developers like Don Moon.

Chairman Benson asked if perimeter cutting should not be addressed or if we should just take it one step at a time.

Councilman Littlefield stated that we did not want any 15-acre clear cutting; that we would work with Planning and the Homebuilders Association.

Mr. Pace noted that there were a lot of pine trees involved and the problem with pine beetles. Mr. Hyde mentioned the HOP factor—Hickory, Oak, and Pine.

Adm. McDonald stated that we needed to look at this in more detail; that Councilman Littlefield’s suggestion was good in closing the loophole in regards to clear cutting; that another step was perimeter cutting, and it would take some time to look at other ordinances.

Councilman Hakeem asked if it was the will of this Council to slow this development down as we develop a process. Attorney Nelson noted that a moratorium was already in place and a Zoning Study was requested that would slow this down.

Commissioner Adams stated that this was the worst thing he had ever seen since he had served on the County Commission.

Attorney Nelson suggested asking the State to send us a copy of the Permit that they require. Adm. McDonald stated that they had been talking to the State about this and were keeping an eye on it.

Councilman Pierce asked if we could require, as a city, that the State monitor this. Adm. McDonald stated that the State of Tennessee had been out to look at this to see if there was any violation and had not found any.

Mr. Tudor asked how the developer cleared this. Mr. Harrison stated that he used a Timber Removal Company. Mr. Jeansonne added that he severed it with a chain saw; that no dozer was used.

Chairman Benson thanked everyone for coming and stated that we would work toward these answers that affect logging and clear cutting. He thanked the people from Concord for coming out and apologized that this had happened to them, stating that maybe this would bring this to a head to prevent it from happening to others and also reduce the hurt already here.

The meeting adjourned at 4:10 P.M.