

LEGAL AND LEGISLATIVE COMMITTEE

July 16, 2002

3:00 P.M.

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

Others present included Mayor Corker, Todd Womack, John Bridger, Mike Compton, Amy Walker Cherry, Gene Hyde, Lee Norris, Doug Fritts, and Jerry Jeansonne. Daisy Madison and Jerry Pace joined the meeting later.

ELECTRIC POWER BOARD—INTERNET SERVICES

Chairman Benson turned the meeting over to Mayor Corker.

Mayor Corker thanked the Council for the opportunity to be present and started out by saying that everyone had ran in an election 15 months ago and had focused on economic development as an issue. One of the things we were aware of was the huge abundance of fiber optic connections in Chattanooga. (At this point Mayor Corker was interrupted by people arriving at the meeting late and Councilman Littlefield explained that the Council had made a survey, and we should have all nine members present tonight and had decided to put this on tonight's agenda, as we knew its importance to the whole Council.)

Mayor Corker continued, stating that Chattanooga was blessed with an abundance of fiber optics and is known as the "Choo Choo" town with an abundance of railroads and along the railroads we have lots of fiber optic connections. He mentioned that two local companies had invested a lot and that K&C out of New Jersey and the Electric Power Board were ready; that this was a tremendous opportunity for telecommunication and phone business; that early on we embarked on a digital vision to allow us to participate in the great advances being made in technology; that we had tremendous assets; that in any event, we began early to embark on a digital vision for higher paying jobs. He mentioned that Oak Ridge was building the fastest computer in the world and that he and Amy Walker Cherry had begun working with Oak Ridge to take advantage of this tying in to this computer; that this would go "live" around August 12th with tremendous capabilities for UTC. He also mentioned involvement with Mississippi State as a result of Oak Ridge's computer. He emphasized that we had been working together to create research here in Chattanooga.

Mayor Corker noted that on May 16th we invited all of the carriers, including BellSouth, Comcast, and others to figure out a way to use our resources and to create jobs; that the assets are here and EPB had committed to give us the “dark” fiber, and we can utilize this for data transmission. He stated that we had a telecommunications entrepreneur present at this meeting; that equipment could be put together and donations made; that we got together with UTC and others to work on the capital to make this happen; that EPB gave the fiber and contributed a Plan to enter into the Internet business; that the EPB Board had allowed them to move into this venture.

Mayor Corker went on to explain that it was not the City’s intention to underwrite a Plan other than to permit EPB to enter into this business. He explained that when EPB enters into a new line they have to get permission from the City Council; that we are a contributor as a partner, along with Henry Luken, who has given of his personal assets, as well as UTC and others who are putting up capital; that we are taking an asset that the taxpayers already “own”, which is the “dark” fiber, and using this to create jobs. He likened it to vacant land, which we would make available for a business, explaining that we are allowing EPB to be a partner in Metro Net, using an asset in the ground that is already owned by taxpayers and which will make jobs more available.

Mayor Corker went on to say that there had been some criticism about municipal government getting into business but stated that he did not look at it like that at all; that we will be able to have access to this “dark” fiber and EPB can sell it to their customers. He stated that comments had been made that this business already exists here, but he noted that this is a network, and we have bought access. He went on to explain that big regional companies make business decisions in much larger communities than Chattanooga, and they are the “winners” and cities of our size are the “losers”; that big cities have an advantage over cities the size of Chattanooga; that Metro Net will allow us to have connectivity in making these assets available to our community. He stated that he was just asking the Council to permit this to occur through the Electric Power Board.

At this point Mayor Corker recognized the presence of Bill Chapman, Harold DePriest and Jay Garner and noted that Mike Harrison had signed on and highly endorsed this. He stated that some of these people might like to make brief comments.

Chairman Benson stated that he was pleased that the Mayor and EPB had taken this initiative.

Mayor Corker noted that Harold DePriest was the CEO of the Electric Power Board; that they were in the power business and the phone business and that they had a great Board.

Mr. DePriest agreed that they did have a great Board, made up of Joe Ferguson, Chairman, Lamar Partridge, Linda Fletcher of UTC, and Warren Logan of the Urban League. Mr. DePriest stated that they held a meeting yesterday, which was the culmination of their getting into the business of providing internet service; that they had produced a Plan that makes sense and after the State Comptroller reviewed the Plan, it was necessary to have a Public Hearing, which was held on June 6th. He explained that after the Public Hearing they had to wait 14 days before taking any action, and they had waited even two weeks longer. The next step was for the Board to consider comments made at the Public Hearing and then petition the Council to allow them to enter into the business and pass a Resolution for EPB to enter into an internet partnership; that it was the Council's decision that would enable them to move forward; that they wanted to be in the internet business. Mr. DePriest explained that there was a substantial amount of people present at the Public Hearing and a broad range of comments were made; that some felt that this was not the Power Board's business and that they should stop; some felt that it was a great magnet; and others were in the middle on it—that they like the concept but did not like everything about it. He stated that they listened to their comments and tried to improve their Plan; that in effect they would provide a wholesale rate to allow people to take advantage of these services; that this should bring more money in short-term and in the long run it may cost a little bit, but we should be able to break even.

Mr. DePriest went on to say that this was a fairly strange Plan with the business technology community in partnership with the City and the EPB—that it was a strange business arrangement, but it was an opportunity to get into the business in a public/private partnership and Metro Net has this advantage for free. He went on to explain that EPB has the technological know-how to make this work and that they will hit the ground running; that the City will put up some money and UTC will put up some money so that they will have a little bit of capital to cover any operating losses.

Mr. DePriest said that the Board members had asked him what would be unique about this; that he thought political leadership's interest in using digital highways was unique because not a lot of cities were doing this; that this was of value to economic development; that the City had an asset and EPB knows how to make it work, and this is fairly unique. He stated that he sent guys to Jacksonville, Florida to attend seminars where this issue was talked about—that they came back with two ideas—that a lot of people were saying that cities should not be in competitive businesses, but we compete with other cities all the time for good jobs and economic growth, and secondly that a lot of companies do what we are talking about doing, and we are a little company compared to them.

Councilman Page stated that he was glad the City Council was not passing on a Business Plan and that this responsibility was the Electric Power Board's, and he questioned whether this was a good business to get into. He stated that there were two things that he would like for Mr. DePriest to briefly address: (1) Anti-competitiveness—Were we taking business from anyone else? and (2) The telecommunication business is in shambles and do we have the ability to keep up with changing technology—that short term this might be good, but he was concerned about long-term.

Mr. DePriest first addressed anti-competitiveness, stating that “yes”, it will take business from someone else; initially, not a lot, however—that it will be a relatively small amount of business. He explained that this would not put anyone **out** of business; that the tendency towards competitiveness would be good. He stated that the community cannot lose; that they will be getting electricity, fiber, and people who know how to use it; that he thought having these people mastering the technology will be worth it to all of us; that you have to buy equipment to change out computers ever so often in the workplace; that buying the technology is not hard to do but having people who can master this is an asset.

Councilman Page confirmed that this would be located downtown and asked why not city-wide?

Mr. DePriest explained that downtown is where the fiber is and also the business.

Councilman Page asked if this was technologically prohibited or policy prohibited, and Mr. DePriest responded “both”.

Councilman Hakeem stated that he would like to make a comment—that in the current economical environment we do one-half of business, we expect it to pay for itself. He questioned as equipment changes if we would be able to keep up. Mr. DePriest noted that the equipment usually lasts 5-7 years; that we would change equipment when it makes economical sense. Councilman Hakeem stated that we were defining ourselves through partnerships; that what we are doing now is not uncommon nor unlike what we have done with the aquarium and CNE; that we have given ourselves the edge for a number of years and need to take advantage of this opportunity; that just because it had not been done before was no reason we should not do it now; that we needed to move forward.

Chairman Benson agreed that we needed to move while we have the edge.

Councilwoman Robinson stated that she was intrigued with this opportunity and making Chattanooga competitive; that we had no incentives in the State to make us more attractive; that this is all about competitiveness and putting us on the playing field, and we can distinguish ourselves in a growing market and private investments will follow.

Councilman Franklin stated that he concurred with what had been said; that in addition we had all had the opportunity to visit other cities such as Richmond, Virginia, where they are technologically advanced, and we want to “spin off” in education to bring our workforce up to meet this challenge and to be able to retain a lot of our young people who are being educated here to live and stay in Chattanooga so that we will not lose our best talent. He stated that he was really concerned about this and was also concerned about economic growth; that we had been doing little things that we can do to keep on the cutting edge, and he was concerned about jobs and work for our people so that we will not lose them to other cities.

Councilman Littlefield stated that he knew the job that Jay Garner with the Chamber had to do to market Chattanooga; that we had attempted to make this happen without competitiveness with other cities and private enterprise; that in the past we had not provided any kind of tax incentive; that it is very rare that we have the opportunity to do something like this, which is totally unique, and he could not imagine us not doing this.

On motion of Councilman Page, seconded by Councilwoman Robinson, this Resolution will be recommended for adoption by the entire Council.

Mr. Jay Garner stated that he would be brief; that Councilman Littlefield had said it correctly; that we need another tool in our arsenal; that there will be an international campaign to tell the world about Chattanooga this fall; that we want people to be looking for every reason why they should locate here, and he commended the political leadership and EPB for taking this courageous step and initiative. He thanked everyone again.

Chairman Benson stated that this was well said.

Mayor Corker again thanked the Council for letting him be here. He also thanked Amy Walker Cherry, who had worked tirelessly to make this happen, stating that this was a detailed issue to deal with.

KENCO GROUP, INC. & LJT OF TENNESSEE

Daisy Madison addressed this part of the meeting, noting that this concerned economic development; that a representative from Kenco was present and also LJT of Tennessee; that they would enter into an agreement with us and Hamilton County for payments in lieu of ad valorem taxes.

Attorney Alfred Smith was present, noting that we had two matters, the first dealing with Kenco Group, Inc. He stated that he had been working with Mr. Glasgow, and they would retain about 45 jobs and add about 50 more jobs, and the property tax abatement is 50% for six years.

Councilman Page asked if this required General Obligations Bonds for the City to stand behind. Attorney Smith explained that no bonds were involved in this transaction. Ms. Madison added that it was in lieu of taxes and involved only new property. Chairman Benson asked if by new property she meant “newly developed property”. Ms. Madison explained that it was when a new building would be built and new equipment was purchased. Attorney Smith noted that the Attorney General had ruled that this was appropriate; if you delegate that their payments are in lieu of ad valorem taxes it is okay without bonds.

Councilwoman Robinson stated that 80% of our jobs are from existing businesses, and we are ahead, and she was glad we were doing this and that they were expanding their businesses in our city.

Councilman Littlefield pointed out that this is exactly what we used to refuse to do, and he was glad we were finally doing more of this.

Chairman Benson stated that it increases the value of new property, and we still get 50% of taxes, prompting Councilwoman Robinson to note that this was a win-win proposition. Ms. Madison added that there was also a “sunset” clause.

Attorney Smith added that the County Executive and the Mayor were both adamant about not taking these off the taxrolls; that only those with new equipment would be getting this break.

On motion of Councilman Franklin, seconded by Councilman Page, this will be recommended to the full Council for approval.

The second issue related to LJT of Tennessee. Attorney Smith stated that initially Rick Quinn with LJT purchase the site and in addition to buying the land had invested \$5 million dollars in new equipment, which would create 50 jobs and the tax abatement is for seven years at 50%.

Councilman Page questioned why seven years as opposed to six. Attorney Smith responded that this was negotiated with the Mayor and County Executive.

On motion of Councilman Page, seconded by Councilwoman Robinson, this also will be recommended to the full Council for approval.

GENERAL OBLIGATION REFUNDING BONDS

Ms. Madison asked to also include in this meeting a brief discussion concerning a Resolution authorizing the issuance and sale of an amount not to exceed \$50,000,000.00 principal amount of the City of Chattanooga, General Obligation Refunding Bonds, Series 2002 A. Ms. Madison mentioned an interest rate of 5.2% to 5.7%, which would save us \$240,000 in debt service. **On motion of Councilman Littlefield, seconded by Councilwoman Robinson, this Resolution will be recommended for approval before the full Council.**

LAND CLEARING ISSUES

Chairman Benson called on Gene Hyde, Chairman of the Task Force, who had met with John Bridger, Jerry Jeansonne and Doug Fritts.

Mr. Hyde indicated that their presentation would take at least 30 minutes, and it looked like they only had 10 minutes left in the meeting. It was noted that Parks and Recreation had cancelled their committee meeting.

Mr. Hyde stated that after the last session they got their heads together to study the issues before them; the team consisting of John Bridger, Doug Fritts, Jerry Jeansonne, and himself. He stated that it became clear that this was a large issue, involving Storm Water, the permitting process, zoning laws, and forestry. He stated that he struggled putting all these pieces into a good clear picture; that they sought solutions from other communities and made the analogy between them being the mechanics working on a car and the councilmembers being the drivers; that the Council had to tell them what they like about their suggestions and what they don't like; that they wanted to be sure all the pieces fit together without a gap. He called on Doug Fritts to make the presentation.

Mr. Fritts presented a power point presentation, along with a handout, which is made a part of the minute material. He prefaced his remarks stating that he was “lousy” with a car and that this was a quagmire. He first went over their items of concern, which were perceived loopholes for Agricultural Practices from the Permit Process; Steep Slope Development; Tree preservation on parcel perimeter; and borrow pits. He explained that if we maintain the status quo and take no action regarding land clearing that agricultural practices remain exempt from land disturbance permit process and a land disturbance permit will be required before site development begins; the result being that the entire parcel can be harvested for timber.

Attorney Nelson pointed out that as the Council could recall, Georgia law says that when someone harvests, they will not be permitted to do so again for three years. He asked if they had given any consideration to that, and the answer was “yes”.

The proposed action would be to eliminate agricultural exemption through modification of the storm water ordinance, requiring agricultural practices to get land disturbance permits, requiring an erosion control plan to be filed with the permit application and a second land disturbance permit may be required before development begins; the result being the entire parcel can be harvested for timber.

The first part of the Staff Recommendation was to pass a land clearing/forestry harvest ordinance to regulate land clearing operations, which would require all land clearing practices over a certain number of acres to get a permit; the result being that tree harvest would be modified.

Councilman Page asked if the slope size could be quantified. Mr. Fritts responded that it could be quantified; that this would be harvest methods.

Attorney Nelson asked if they looked at the percentage of trees being harvested. Mr. Hyde responded that they looked at the acreage rather than the percentage of trees being harvested.

Councilman Page asked the cost of implementing this and if we had the technology and skills to do it. Mr. Fritts responded that they were concerned about the ability to do the work. Attorney Nelson asked about the cost and permit fees. Mr. Hyde responded that they had not gone this far ahead; that it would depend on how much this is “tweaked”; that they were not at the stage to address this issue. Mr. Fritts agreed that they were not far enough yet with the permits.

Councilman Franklin asked if this would vary based on residential property and commercial property as to permits and their cost. Mr. Fritts explained that they would separate the developers and non-developers.

Mr. Fritts went over the South Carolina Forestry Association's recommendation to local governments to exempt commercial harvest from permitting but deny development requests for three years if the agricultural exemption was taken. He also went over the Select State Forestry BMP's, which were to establish Streamside Management Zones to protect water quality; avoid mechanical harvest methods of sites where slopes exceed 30%; avoid operating heavy equipment during wet periods; and provide revegetation for disturbed areas.

Part 2 of the Staff's recommendations dealt with modifying the zoning ordinances to restrict land clearing. Mr. Fritts pointed out that this does not address grand trees, slope protection, borrow pits, and clear cutting.

In regards to slope protection, Councilwoman Robinson asked if on smaller slopes where the hill has been cut away, if it has anything to do with the view. Mr. Fritts went over the clearing restrictions of La Habra Heights, California, which is a subsection of Los Angeles. He also mentioned slope protection ordinances in Namaimo, British Columbia, where buildings can be restricted on certain slopes. He noted that our Whitehall Rd. is greater than 30%.

Councilman Page stated that this could be very, very sensitive in a city surrounded by slopes and asked if Mr. Fritts was recommending these slopes. Mr. Fritts noted that these were just examples.

Councilman Franklin asked about parcels above five acres. Mr. Fritts went over the Concord Rd. area, which has a 20% to 30% slope range.

Mr. Fritts next went over the cut and fill restrictions of La Habra Heights, California, which included the vertical height of any finished cut slope shall be limited to the height of the proposed structure or 20-feet, whichever is less; the finish cut shall not exceed 30-feet beyond the maximum width of the house; final slopes may not exceed a final slope of 1 ½ to 1 unless approved by soils engineer to be 1:1; and standards apply for single lot development. Multiple lot development must apply standards to each lot.

Mr. Fritts stated that the Council had to provide input as to where they wanted them to go. Chairman Benson stated that the Task Force was not relieved of their duties.

Councilman Hakeem suggested they take this back and massage it and maybe the Council can buy into it. He noted that this said nothing about penalties; that people will try us; that having to get a permit will get their attention.

Mr. Fritts stated that this concern would need to be directed to the City Attorney.

Attorney Nelson responded that penalties and fees were a developing story; that the vote will be taken this fall to remove the \$50.00 limit from municipalities; that we might could make it \$50.00 a day. Councilwoman Robinson suggested \$50.00 a tree.

Mr. Jeansonne agreed that when you talk about permits that it tends to get peoples' attention.

Chairman Benson stated that a lot of things had been discussed with a wide latitude; that he was asking the Task Force to give the Council direction to go from here.

Councilman Page also asked for input as to what the Council should do; that the Task Force members are the slope size experts, and he wanted to make sure we were doing the right thing; that the Council needs input from those people who deal with this everyday, and they need to look at this and provide some input.

Chairman Benson noted that the Homebuilders Association had been involved to some extent.

Mr. Jeansonne stated that this was a good first step; that they were working with the developers up front and having pre-meetings; that this was a great first step, and we could incorporate other things into this.

Chairman Benson stated that he would ask Gene Hyde, as Chairman, what we needed to do next; that their recommendations were broad and what would be recommended, and we might need to get input from the Homebuilders and others. He stated that the Homebuilders were in support of this.

Attorney Nelson stated that also the General Contractors should be included. Chairman Benson agreed that they needed to get in on the ground floor.

Mr. Hyde stated that he just wanted the Council to understand what they had grappled with; that this issue was widespread and deep; that dealing with trees was a complex and legal issue.

Mr. Jeansonne questioned what size of a forestry area we would want to control, mentioning Potential Land Clearing Permits to prevent other Concord situations. Chairman Benson noted that Mr. Fritts had recommended five acres.

Attorney Nelson brought up a basic concern of what constitutes a forest on land—is it one tree or two trees.

Mr. Fritts pointed out that developers and contractors would not be the ones cutting trees for timber harvesting.

Mr. Bridger agreed that there were a lot of elements and that we needed to start with the key elements and look and explore other options.

Mr. Hyde asked if there was anything the Council had seen today that they could not live with; that they needed feedback from the Council to move forward. He asked if the Council liked what they had done or if they needed time to digest this.

Councilman Page asked that they go over this and then come back with more specific information so that the Council could move forward.

Chairman Benson stated that he knew how Mr. Hyde felt and asked him to bring back something more specific next Tuesday.

Mr. Fritts stated that they were dealing on a complaint basis with the Ordinance that they have now.

Lee Norris stated that he had not had the chance to address this issue; that he had talked with Gene Hyde about the Ordinance. He mentioned the opportunities that Chattanooga would have with Metro Net and the task that the Council had set for Gene Hyde to come back with specifics

Chairman Benson agreed that Metro Net would be a good investment.

Mr. Hyde stated that he was getting feedback from other members of the Task Force that this would take more than a week.

BOARD OF APPEALS PROCEDURES

Chairman Benson stated that he met with Jim Wilson, Chairman of the Board of Appeals, to look at the total picture and things that needed to be changed through the Appeals Board. He proceeded to go over his suggestions, stating that it seemed to him that the Appeals Board members came in 30 minutes to an hour late, and the Board had to wait for a quorum, and this was a concern to him. He stated that these people volunteer to come to the meeting at 10:00 A.M. and break for lunch and then come back at 1:30, and the meeting can go on until 4:00 P.M.; that it is quite a sacrifice to give all this time, and he thought it could work more efficiently.

Chairman Benson went on to say that there is no Staff Recommendation; that they have stormwater people there and traffic and sometimes they have to stop and make phone calls if they don't have the needed staff there; that he thought the Staff recommendation

should be sent out with the members' agendas, which would give them the time and a chance to hang on to a professional recommendation.

The next thing Chairman Benson recommended was to consider a district grouping of cases; that right now they are "flipped" all over the agenda, and the order is determined by when they make application for an appeal; that if an applicant makes his appeal at the 11th hour, then he will be last on the agenda and those who might be in objection will be worn out by the end of the meeting; the applicant can then ask that the case be deferred. He mentioned that at the last meeting that the Board was unwilling to postpone a case for Councilman Hakeem, but they did postpone a case for a builder; that it could be held for 30 days. He stated that he was not being critical; that these practices had developed over the years; that a smart builder would file at the last moment and if he arrived at the meeting, he would leave if he saw those in objection and would then come back and ask that the case be held over and over until the objectors would wear out, and it could even be held over for as many as three times. He stated that right now the cases were all lumped together.

The next point he made was that people try to work the Appeals Process to their advantage by not showing up or showing up and leaving the meeting; that we needed to attend to this problem.

Councilman Littlefield noted that the Board feels like they should follow past practices; that they do not feel they have the authority to deny a case if the applicant is not present, and the Council needs to make sure they have this right if they chose to do so.

Attorney Nelson noted that once a case is denied, they can't come back for nine months. Councilman Littlefield noted that in the case of the Board of Appeals, if it is denied they have to wait a year.

Councilman Franklin stated that when he served on this Board that Steve Leach went to all of the locations to get a feel; that he always did this with the former Chairman, T. D. Harden; that a lot of the Board members could not get to all of the locations; that he did not know whether this would be considered a Staff recommendation or not; that it was more informal than formal.

Chairman Benson stated that Steve Leach "whispers" to the members; that he did not feel this carried the force of a staff statement.

Councilman Franklin noted that Chairman Benson's suggestions had some legitimate credence.

Councilman Hakeem stated that in spite of the fact that these were Chairman Benson's suggestions, he thought they were pretty good! He asked if it was feasible to get the Attorney for the Board and the Chairman to come to a Legal and Legislative or Public Works committee meeting and sit down with the Council; that he was sensing an "air of independence" on their part, and he did not know if there was an air of cooperation with the Council. He questioned if they understood how the Council operated.

Councilman Franklin stated that when he was on the Board and a Councilperson was present, they could get their case moved up and could get some special consideration; that they may not have the sensitivity they need; that we need to invite the attorney and Chairman of the Board of Appeals to a meeting so that we can get some understanding of how to make these things happen.

Councilman Page asked for some clarification with regards to things that come before the Appeals Board. He noted that often the Council would pass on a rezoning with the condition that it would have to go to the Board of Appeals; that this did not seem logical to him; that he, too, would recommend that the Chairman of the Board of Appeals meet with a committee.

Councilwoman Robinson stated that this puzzled her, too; that the Council can pass on something and then the Board of Appeals could override it.

Chairman Benson explained to them that this Board is mandated by the State.

Attorney Nelson explained that they could only act under certain circumstances and had to follow the letter of the law; that there is a series of criteria they have to consider on each case, using as an example when the Council licenses an Adult-Oriented Establishment in a certain zone, it still has to go to the Board of Appeals; that they are granted powers that other Boards do not have.

Chairman Benson also mentioned attendance records.

Attorney Nelson explained that there are certain guidelines for all City boards; that if a member has missed more than 50% of the meetings during a year, then it can be reported to the Mayor, and he can declare the seat vacant. He stated that this was the duty of the Chairman of a Board.

Chairman Benson stated that he felt the Secretary of the Board should call the members and ask them if they are going to be there.

Councilwoman Robinson suggested that maybe an appointee to a Board needed to sign an oath and should recuse themselves if there was a conflict of interest.

Chairman Benson stated that if everyone was in agreement with his memorandum, which is made a part of the minute material, that he would send it on to Bill McDonald.

Councilman Page applauded Chairman Benson for his efforts.

Councilwoman Robinson stated that the list might even need to be longer.

The meeting adjourned at 4:45 P.M.