

**LEGAL AND LEGISLATIVE COMMITTEE**  
**September 8, 2009**  
**4:30 P.M.**

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order, with Councilmen Rico, Benson, Berz, Ladd, Scott, Gilbert, McGary, and Robinson present. City Attorneys Phil Noblett and Crystal Freiberg and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Richard Beeland, Mayor Littlefield, Gary Hilbert, Lee Norris, Steve Leach, Dennis Malone, Daisy Madison, Chief Cooper, Donna Kelley, Larry Zehnder, Stan Sewell, Chief Parker, David Johnson, Mark Keil, Jim Templeton, Barry Bennett, Jerry Stewart. Officer Dunn and Greg Haynes.

**On motion of Councilwoman Berz, seconded by Councilwoman Robinson, the minutes of the September 1, 2009 Legal and Legislative Committee were approved as published.**

**RE-OPENING OF TRIPLEX**

Chairman Murphy asked Greg Haynes of RPA to speak to the re-opening of a triplex located in North Brainerd on Rock Way Drive. Mr. Haynes explained that the zoning request was denied in January with the previous Council. The applicant did not feel this was adequately reviewed and had contacted several people, including Chairman Murphy. He explained that they had to wait nine months to bring this up again, which would be October of this year. He stated that he met with the applicant last week and one option discussed was having the grandfather status reinstated with the Council. He noted that this was unfamiliar territory to him.

Chairman Murphy noted that this property had lost its status (grandfather); that the community wants this re-hab to take place, and the only instrument is to change the zoning. Councilwoman Berz asked if this would not be spot zoning? Chairman Murphy agreed that this would set a precedent, but it has the support of the community; that we presently don't have this tool in our tool box and asked if the Council would wish this sent back to Planning. Councilman Benson noted that the Council had already wrestled with this.

Mr. Haynes stated that it had four units at one time and was rezoned to R-3 and used as three units, which was not that detrimental; that this would be spot zoning; that grandfathering might could be reinstated as long as the neighborhood understood. Chairman Murphy added that there was community support as they did not want a vacant building.

Councilwoman Berz noted that the Council had spent a lot of time on this; that when people buy at foreclosures and opt not to have any insurance to cover losses, that she has a real problem with the City making it okay; that neighborhoods worked hard to get downzoning and she questioned getting into spot zoning, even though the neighborhood may not mind. She noted that it was hard to get zoning changed, and she felt it would be unwise to accommodate this.

Chairman Murphy stated that he did not want this issue to get confused with general zoning; that unless we do something different, we will have a boarded-up building.

Councilman Benson stated that the Council had originally deferred this and everyone had looked at it to see if there was any justification; that it was a hilly area with nice houses, and there was not room for four residences in one house as there would be no room for cars and the road was narrow; that it was spot zoning that would take down the rest of the properties; that if a boarded-up house was the problem, they should call Neighborhood Services; that if we succumbed to this, others would ask.

Councilwoman Ladd suggested making it single-family, with Mr. Haynes stating that they could wait until October and try again.

Chairman Murphy emphasized that he was talking about a general problem; that they don't want the neighborhood rezoned R-2 or R-3 but did not want to live next door to this.

Mr. Haynes explained that there was a tool for R-2, which is a Special Permit but only if the neighborhood is supportive—that quite a few requests for Special Permits had been turned down.

Chairman Murphy explained that they wanted three units rather than two and trying to get it rezoned seemed to be the only tool; that he was asking that RPA look at this “beyond our tools”.

Councilwoman Robinson stated that this worried her; that it could be a “slippery slope”; that we need to be careful, even though the neighborhood thinks it is okay.

**MOU WITH HAMILTON COUNTY (POLICE DEPT.)**

**Officer Randy Dunn** was present and explained that the County was the primary transporter of mentally ill patients, but they could designate a secondary; that this Resolution would not change the policy a lot but would allow the City not to have to wait on the County, which could be up to four hours, and would allow them to do what they do. He noted that it could be a wait of 15 minutes up to six hours in order to transport legally.

Attorney Freiberg explained that State Law requires the County to do this and authorizes them to designate a second party, which makes the City the authorized agency. Officer Dunn added that a Certificate of Need is issued, and the City would be legally allowed. Attorney Freiberg mentioned the creation of a Crisis Intervention Team, and Officer Dunn stated that they were in the process now and training starts next week and that grant money is involved.

Councilwoman Berz thought this was a great idea but added that we would be doing a lot of the County's work and asked if they would help fund this? Officer Dunn responded that there would be no additional cost. Attorney Freiberg added that according to Hamilton County, the City could bill them. Councilwoman Berz stated that we were doing more and more of the County's "stuff"; that this was not a unified police system, and we were doing the work and not being recompensed. Officer Dunn stated that this would alleviate problems for his office and would be cost-effective, with Chairman Murphy noting that City officers would not have to "babysit". Councilwoman Berz still felt like State Law says that the County is responsible for this. Councilwoman Ladd stated that if the training is being provided by Hamilton County that she would show support for this program. Attorney Freiberg confirmed that the County will provide the training for our officers. Councilwoman Scott still felt that this was the County's responsibility. She asked if our officers were doing this without pay? The answer was "no". She felt that Hamilton County should be called, and they should handle this in the appropriate time—that this was their obligation to do by law.

Councilman Benson stated that he thought everyone was beginning to think about "overlapping" and one Metro Police Dept.—that something like this points up the need. Officer Dunn stated that it was a safety issue for our officers.

Chairman Murphy went to the first of the Agenda, starting with **Ordinance 6(a)** amending the City Code regarding the use of the Urban Overlay Zone within R-TZ Lot Line Zone. Mr. Haynes explained that this was the Townhouse Zone and also Patio Home and the Urban Overlay Zone. This would allow less setbacks and smaller lots in order to increase density; this is a request from developers, which would give more flexibility in the Urban Zone. On request of Councilwoman Scott, he read the widths of lots. Councilman Benson wanted to know what motivated this, with Mr. Haynes stating that it came from the Planning Commission and Developers.

**Ordinance (b)** amends the City Code to change a condition for residential planned unit developments, and this corrects a mistake of something that was left out.

**Ordinance (c)** amends the City Code relative to a Special Exceptions Permit for beer sales in neighborhood grocery stores, with Mr. Haynes explaining that C-5 does not permit beer sales and this Special Permit would allow this use. Councilman McGary wanted to know which neighborhood this was for and was told it would cover the whole city. He wanted to know how this came about? Mr. Haynes responded two zoning cases—that some felt beer sales were needed to make businesses viable.

A discussion ensued with Councilwoman Berz questioning the definition of a neighborhood store, stating that we had to look at the bigger picture. She wanted to know if it was the same as a convenience store and both would fall within the same guidelines? Mr. Haynes stated that it was really just scale and size.

**Shaun Daniels** was present, stating that he has a grocery store on Rogers Rd. in C-5 Zone and would like the capability of a Special Permit.

Councilwoman Robinson stated that we had struggled with the need for grocery stores in communities; that this is a good thing, and we should allow them to sell beer; that this would give inner-city people access to fresh foods and vegetables.

Councilman Gilbert stated that they had had several meetings, and the community wants to keep this C-5 and allow this with a Special Permit.

Councilman McGary wanted to know the process and if it could not be consumed on the premises, how we would enforce this? Chief Cooper was present and noted that the police would be called. Councilman McGary stated that this might create a burden and wanted to know if the owner could lose his license if the police were called concerning on premise consumption. Councilman Benson stated that it would be at the Beer Board's discretion.

Attorney Noblett stated that the City can regulate the sale of beer and consumption with reasonable conditions, with Mr. Haynes stating that we can designate a percentage of the floor area.

Councilwoman Berz, even though loving the idea of a neighborhood grocery store, still felt that a definition was needed. Councilman Rico stated that everyone knew the difference between a convenience store and a grocery store. Mr. Bennett felt that they could come up with a specific definition in practical terms.

Chief Cooper indicated that we needed to be cautious in neighborhoods; that if the neighborhood is behind this, they need to consider how it can be regulated; that if the police are to regulate this, it will be way down on their list of priorities; that there is a need for fresh food in neighborhood grocery stores but food and beer bring in two different sets of people; that we don't have these same issues at Bi-Lo; that as long as the neighborhood supports the actions that occur, he had no problem with this.

**Cynthia Cash** stated that businesses in District 9 were against this at first; that once this is approved, the police should not just patrol one store, mentioning Frank's Grocery—that this should be across the board; that if the zoning was changed to C-2, it would allow liquor stores.

Chairman Murphy stated that if Mr. Daniels gets denied, he wanted this on record. Attorney Noblett stated that we could define grocery stores. Councilwoman Berz stated that Mr. Daniels was doing the right thing but without a definition of a grocery store, we could not approve this. Councilwoman Ladd questioned if there were already stores with problems, why would we create another.

The meeting adjourned at 5:30 p.m.