

LEGAL, LEGISLATIVE AND SAFETY COMMITTEE
AUGUST 23, 2011
4:30 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative/Safety Committee to order with Councilmen Rico, Scott, Ladd, Benson, Robinson, Berz, Gilbert, and McGary present. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Larry Zehnder, Gary Hilbert, Richard Beeland, Greg Haynes, John Bridger, Bryan Shults, Johnny Feagans, Dickie Hutsell, Karen Rennich and Daisy Madison.

On motion of Councilman McGary, seconded by Councilman Rico, the minutes of the previous meeting were approved as published and signed in open meeting.

SPECIAL EXCEPTIONS PERMIT/ETHANOL

Chairman Murphy stated that the discussion today would deal with Special Exceptions Permits in the M-2 Zone; that ethanol is not a defined use in any zone. He turned the meeting over to John Bridger.

Mr. Bridger stated that we would take a look at M-1 and M-2 Permits and would proceed based on the Council's feedback or direction.

Chairman Murphy added that the Special Permit would be looked at in a broad outline as a planning tool.

Greg Haynes stated that he would give a general overview of the M-1 and M-2 Zones and then Bryan Shults would cover a Peer Review concerning Special Permits as relates to ethanol. Mr. Haynes noted that there is nothing that addresses ethanol by name in either the M-1 or M-2 Zone; that M-1 is typically heavy industrial use or manufacturing; that the M-1 Zone has two Special Exceptions Permits—one granted by the Board of Zoning Appeals and the other by the City Council. He went on to say that M-2 is light industrial uses such as packaging, assembly and warehouses, and there is no provision for a Special Permit under M-2 zoning. He noted that tanks for petroleum and related products is prohibited in the M-2 Zone, noting that this is closely related to ethanol—however nothing specifically lists ethanol, but they determined this as a similar use. The property in question is seeking a rezoning from M-2 to M-1. Mr. Haynes stated that this is the basic outline for Special Permits.

Bryan Shults stated that he had done a Peer Review of other cities in this region to see how other municipalities handle ethanol; that most regulate but don't permit or prohibit. The cities that he looked at were Charlotte, Memphis, Murfreesboro and Nashville. Charlotte does not address ethanol—petroleum is allowed in the M-1 Zone. Knoxville does not address ethanol but has tank storage and a General Industrial Zone similar to our M-1. Memphis does not address ethanol but has Petroleum Permit by use in the heavy industrial zone; Murfreesboro does not address ethanol and operates similar to Memphis with a Special Exceptions Permit for petroleum in the heavy industrial zone. Nashville did not address ethanol but handles petroleum in two different ways. He mentioned a Tank Farm similar to our M-1 Zone. A secondary use is permitted by Special Exceptions Permit if it is deemed a hazardous use.

Mr. Bridger explained that Special Permits are granted for uses by right and Special Permits to deal with uses that are beneficial to the community but may have an impact on a use by right. He stated that we are talking about an ethanol facility that could be in an M-2 Zone with a Special Permit. The process would be similar to other Special Permits—application would be made to RPA and reviewed by RPA; then it would go to the Planning Commission and then either to the Board of Zoning Appeals or the City Council. He stated that there were options to consider if the Council is amenable to going this route—Special Permit Proposal. He stated that there were things that needed to be considered—that they could look at the site issue but were not qualified to look at it from a safety issue—that some say this is a safe operating plant. He reiterated that they were not equipped to look at safety, and this would have to be done by some other vehicle to come up with a good safety plan.

Councilman McGary stated that he had a question for Mr. Bridger concerning his statement that a Special Permit deals with uses that are beneficial to the community. He wanted to know what level of input the community has? Mr. Bridger responded that there would be public hearings and this should say “may” be beneficial. He reiterated that they were not qualified to make the decision of this being safe from a community perspective.

Councilman McGary had a question for Councilman Benson concerning the Special Permit process. He asked why Councilman Benson wanted the Council, as a body, to address this?

Councilman Benson stated that he could see what the Special Permit process might lead to—that he was not a proponent of Special Permits; however this could be justified, mentioning a case on Holly Street that he felt was justified for a Special Permit. As to how it would be beneficial—he stated that it puts us out of a monopoly business; that we would be over a barrel without competition.

Chairman Murphy stated that a Special Exceptions Permit, in general, allows the preservation of a prevailing zone.

Mr. Bridger reiterated that they could take into consideration what makes for a good site.

Chairman Murphy added that a Special Exceptions Permit for a Group Home, or a Home for the Handicapped does not change an R-1 Zone and leaves this zone intact, and it is not spot zoning; that this would not change the M-2 Zone to M-1 if we go through the Special Exceptions Permit route.

Councilman Gilbert stated that he had community people with concerns; that they would want an inspection to reassure them of safety; that Councilman Benson said something about a monopoly, and if we remembered, Mike Price said they would be the only one doing ethanol, and they would never build this if there was another one—that if they were the only one, and the first company, would it not then also be a monopoly and would we be alright in that case? He reiterated that the community wanted to make this safe, and his concern was that it would open up the door for other M-1 uses.

Councilwoman Berz stated that she had just a couple of questions, stating that this is not an economic decision but a land use decision, and a monopoly should not enter in to our discussion. She wanted to know if we now had the authority to grant a Special Exceptions Permit in a manufacturing zone, stating that she thought the Special Permits only related to neighborhoods. Mr. Bridger responded that we do have some Special Permits in the M-1 Zone, and Special Permits could be created for the M-2 Zone. Councilwoman Berz stated that we don't have a carte blanche on Special Exception Permits. She continued, stating that she was trying to understand why we would go more into Special Exception Permits when we had tried to stay away from them—that we had had problems. She questioned why Mr. Shults called it a Special Permit versus a Special Exceptions Permit? Mr. Shults explained that they were one and the same.

Councilwoman Scott asked if Special Exceptions went with the land or the owner and were they reversible? She wanted to know if a company was being run irresponsibly and were given a permit, can we take it away? Mr. Bridger responded that Special Permits for Nightclubs were revocable—that they were not tied to the business but to the owner. Councilwoman Berz asked if they did not run with the land? Someone said it was whoever owns the property. Mr. Hilbert noted that in the case of Nightclubs, it goes with the business. This prompted Councilwoman Scott to say, then we could essentially issue a Special Permit and make conditions, and it could be taken away if there is a safety issue. Mr. Bridger stated “yes”—that this could be written into this. Councilwoman Scott confirmed that he was talking about only this particular owner and not the land. Mr. Bridger responded that they could make it that way—that it is however the Council wants it written.

Councilman McGary asked what would happen if it changes hands? Mr. Bridger responded that it would be tied to the property owner, and if it changed hands, the new owner would have to re-apply. It was noted that the Special Permit for Nightclubs is tied to the one that holds the liquor license. Councilman McGary asked what would happen in this case if it changed hands?

Mr. Hilbert responded that if the property is sold but the lease continues, then they are okay. Mr. Bridger added that we could establish that it is the owner or the business operator. Councilwoman Berz stated that it is land usage and not lease usage, and asked if the Special Permit would flow with the land. She reiterated that we were not talking about a lease but land. Mr. Bridger asked if she was saying it could become something else and not ethanol? Councilwoman Berz stated that if it ceases to be used for this, does it revert back—that we need to look at this if the Special Permit runs with the land. Mr. Bridger stated that they would be sure of the will of the Council before they wrote this.

Chairman Murphy stated that if we changed this to an M-1 Zone, and they cease the ethanol use in twenty years, they could put in another heavy use, but if we leave it M-2, with a Special Permit, it could only be M-2 uses if they ceased the ethanol use.

Mr. Bridger stated that it could be zoned to M-1 and allow this use—that the Council makes these calls; that if the Council wanted them to develop a proposal for a Special Permit in an M-2 Zone, they could do this.

Councilman McGary pointed out that various individuals had requested Special Permits for Homes for the Aged in residential areas, and we had more or less told them “thanks but no thanks”. He questioned why we would want a Special Permit for this when we have taken the other stand for residential areas?

Councilman Benson stated that we don’t need to do anything; that we need to wait on the County and see what they will do; that he was just throwing this out there; that he would like to see the whole Special Exceptions Permits thrown out.

Allison Bickerstaff was in the audience. She addressed the Council and pointed out that we are only talking about a transfer, which is in keeping with the M-2 Zone; that for her, the concept was distribution of ethanol and was related only to distribution within the Park. She stated that she was curious, did all of the other municipalities mentioned have ethanol? Mr. Shults responded “no”—they did not. This prompted Ms. Bickerstaff to note that this was a new concept, and we need parameters to put it in; that she had talked to Mr. Price, and he had mis-spoken concerning Norfolk Southern; that we need to move on and find a resolution. She reiterated that this is an Ethanol Transfer Facility, and a Special Permit would work; that gas stations are allowed in C-2 Zones, that this was like this, only this would go into a finite number of places—that it is on a rail, and there are only a few places that this will work.

Councilman Gilbert noted that the process of how it comes in is through the rails but lines have to be dug. Ms. Bickerstaff stated that it goes straight to the gas terminals. Councilman Gilbert stated that it travels a distance to get to the tankers, and it has to mix and then goes by truck. Ms. Bickerstaff pointed out that all of this is not happening at the facility and wanted to know

what his question was. Councilman Gilbert asked if it spills, what will happen? He stated that he did not feel comfortable with this; that it was underground, and he had a concern.

Chairman Murphy stated that Mr. Bridger needed some sort of direction concerning the Special Exceptions Permit; that the Fire Department could address safety. He asked for an informal vote on the Special Permit process going forward. Councilwomen Scott and Robinson voted “yes”; Councilman Benson voted “yes”; Councilpersons McGary, Gilbert and Berz voted “no”. Councilman Rico was out of the room and Chairman Murphy stated that Mr. Bridger would need to get with himself and Councilman Rico. (I’m not sure how Councilwoman Ladd voted).

VOTING I.D.

Councilman Benson stated that no one was disturbed as much as he was about an article he had read in the Chattanooga Times Free Press concerning a new State law—the New Voter ID Law; that we should be encouraging voter turnout, and this would discourage voters from turning out. He stated that he had a district with a lot of old people, and he had had calls about this; that what we would be doing is making only “qualified” voters—that a Driver’s License with a photo would suffice or if you had a Gun Permit with a photo—or a State-issued ID card; that each of the Council and all city employees have ID cards, which would not work under this law—that this form of ID would be turned down. He reiterated that they also would not honor County ID cards, only State ID cards; that this needed to be checked out—that it concerned him; that we have a lot of people riding buses without drivers’ licenses. He went on to say that if you went to get State ID, you had to give proof of citizenship by a birth certificate or two documents proving residency. He went on to say that if you did not qualify—Provisional Ballot--it could be held up in Court and close elections. He reiterated that only State issued ID’s would work; that the Federal Government ID would work, but not City or County. He reiterated that we need to encourage a good voter turnout; that we have no voter fraud in Chattanooga; that this would be like a Poll Tax and is discrimination against those less sophisticated and those who do not drive a car. He stated that he thought the Legal and Legislative Committee should have someone from the State come to talk to us and see how we can make this easier for a good voter turnout. He reiterated that he would like to see the State come down so that we can understand the purpose of this, again questioning voter fraud. He reiterated that we would not have a good voter turnout.

Chairman Murphy stated that the governor would be in Chattanooga tomorrow, and he could answer for the State.

Councilman Gilbert stated that he agreed with Councilman Benson; that it would be really difficult for the elderly to receive identification; that if anyone has been to get a driver’s license, they know that it takes four hours, and he could not see an 80 year old waiting and trying to get a picture made and then have to produce their birth certificate; that probably with older people trying to meet this responsibility, we could encourage the State Legislature to amend this.

Councilwoman Scott stated that it was her understanding that the City Council only has jurisdiction over city matters, and this is another level of government and anyone protesting this should go to those who have the ability to change it and have something to do with this and end this now. Chairman Murphy pointed out that the City Council does have jurisdiction with other governments.

Councilwoman Ladd stated that she did believe that Councilman Benson said one good thing—that we need to understand why this became law; that identification fraud is so rampant, noting that just to hire someone, you must have this same documentation; that ID's are not easily tampered with—that the change may be to keep folks who are not here legally from trying to vote. She agreed that voting should be easy and convenient, but we also should have integrity; that we needed to find out what is behind this law, reiterating that those who apply for a job must also have this documentation.

Councilwoman Robinson thanked Councilman Benson, stating that she liked this discussion and welcomed it; that she had an inherent problem with requesting voters to furnish certain documents that everyone does not have; that a lot of people don't have drivers licenses; that it is not just a question of a picture; that to get a driver's license you have to take a test and pay a fee—that it is not free; that it could be argued that this is a sort of poll tax; that people will be asked to pay for ID, and they don't have the money, nor a car. She stated that it is not a right to have a Tennessee License, but it is a right to vote; that this bothers her—that it could keep her grandmother from being able to vote, and we did need a discourse; that others are equally concerned.

Councilman Gilbert pointed out that the State had looked at this—that they would pay for the ID—that there would be no cost—but the problem was that older people would have to be there for so long and then show who they are.

Councilman McGary mentioned Obama's birth certificate while he was campaigning and wanted to get back to the vote on the Special Exceptions Permit. He stated that we already have laws on the book that we don't abide by and are talking about authorizing John Bridger to establish a new set of laws—that he had a real problem with this, questioning what we do with the laws we already have on the books. He reiterated that he had a real concern, especially with Special Exceptions Permits for the commercial class and not allowing them for residential; that we were not sending a uniform message, and he was confused. He stated that he wanted to be a team player and have a uniform voice, and this further complicated the issue.

Chairman Murphy mentioned the Home for the Aged in Avondale—that Mrs. Wright came in, and the Council passed this—that we do grant Special Exceptions Permits in residential zones; that we do it with conditions; that Special Permits protect the prevailing zone and does not change the zone; that we have granted them and don't always tell people "no".

Councilwoman Berz stated that she understood Councilman McGary's concern; that it was the land usage that she was concerned about; that this property was not in her district; that with this discussion on Special Permits—that there was so much discussion and lobbying; that she thought we had to be more thoughtful about Special Exception Permits—that was her only concern; that we needed to stay issue focused and not people focused; that setting a precedent for land use could be a very dangerous precedent; that we were having a great debate about Special Exception Permits and Councilman McGary was right; that we were issuing Special Exception Permits for businesses before she got here; that Special Exceptions for businesses indicates there is something wrong with basic law to begin with, and we get into different territory; that we have a history of not doing good zoning, and this sends a bad message to folks as to where we are coming from; that ethanol is an economic decision.

Councilman Benson stated that he was a good student of zoning and was never a proponent of Special Exceptions; that he was concerned about inequity. He questioned Special Exceptions just for residential areas, asking if it should not be for other categories, too. He stated that he thought we were justified to do what is best in land use, and it should be for all; that we were wasting time and needed to put this to rest.

Councilman Gilbert stated that he wanted to speak, following Councilwoman Berz' line of thinking; that this was more in his area, and he would fight "tooth and nail" about a company coming in that would be detrimental to his people—that this is new area and new land, and he did not want to open up any doors; that other land is open on Bonny Oaks, and he did not want to see a lot of M-1 with a Special Permit. He stated that he saw good things happening in this area; that they wanted growth in his area; that his area and district had the lowest number of people, and they had to encourage people to live here; that he would fight for this, and he might lose.

Councilman McGary wanted clarification of covenants that were passed by this body—that we had told the public that this body shied away from Special Permits and sorry, "we will have to deny this"; that he was concerned about consistency; that the law was on the books, but this body (Council) said the opposite; that this throws this in a new light, and he questioned why the Council was opening this up; that we needed language of consistency in regards to Special Permits.

At this point, Chairman Murphy asked Councilman McGary to preside as chairman so that he could speak. He stated that what was being said about Special Permits was not shared by him; that they were not permanent fixtures; that he had heard it said that spot zoning was illegal and Special Permits will avoid this problem; that zoning is grown organically, and this zone in question happens to be M-2. He stated that he hated to bring up the duplex issue but both he and Councilman McGary had "boarded up" buildings in their districts; that with Special Permits, the zone would not be affected. He stated that this was a unique and rare situation—that allowing Special Permits in R-1 zones does not rezone the area to R-2; that by using Special

Permits and doing professional planning, we do a much better job—that Special Exceptions Permits are a valuable zoning tool; that it gives us as much control as possible. He noted that Nightclubs are a legitimate business, even though people don't like them near their neighborhoods, so there is some degree of control with Special Exceptions Permits. He stated that this was the reality and some of the councilmembers need to get over their discomfort with the verbiage. He urged councilmembers to make an appointment with a professional planner, and he thought they would see why such permits make sense. He stated that Special Exceptions Permits were being painted as bad, and it was wrong to make the blanket statement to say that they were bad—that they could be good for a neighborhood. He asked Councilman McGary to adjourn the meeting.

The meeting was adjourned at 5:30 P.M.