

**City Council Building
Chattanooga, Tennessee
March 9, 2003
6:00 p.m.**

Vice Chairman Benson called the meeting of the Chattanooga Council to order with Councilmen Hakeem, Littlefield, Lively, Page, Pierce, Robinson and Taylor present; Chairman Franklin was out of the City on business. City Attorney Randall Nelson, Management Analyst Randy Burns and Council Clerk Carol O'Neal, CMC, were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilwoman Robinson gave invocation.

MINUTE APPROVAL

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

REZONING

2004-009: Martin McNabb

Mr. Pace stated that the residents of the neighborhood have not met with Mr. McNabb and requested that the matter be tabled an additional two weeks.

On motion of Councilman Pierce, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE PART OF A
TRACT OF LAND LOCATED AT 5008 HIGHWAY 58, MORE
PARTICULARLY DESCRIBED HEREIN, FROM R -1 RESIDENTIAL ZONE TO C-
2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN
CONDITIONS**

was tabled two weeks.

AMEND CITY CODE

On motion of Councilman Lively, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND PART II, CHATTANOOGA CITY CODE,
CHAPTER 24, ARTICLE XIV, SECTION 24-504, RELATIVE TO ONE-WAY
STREETS**
passed first reading.

REZONING

2003-196: William H. Ring d/b/a/ WHR Properties

Pursuant to notice of public hearing, the request of William H. Ring, d/b/a/ WHR Properties to rezone tracts of land located at 1011 and 1013 Dallas Road came on to be heard.

The applicant was present; there was no opposition in attendance.

Jerry Pace, Director of Operations with the Regional Planning Agency (RPA), stated that this request is located in the North Chattanooga area along Dallas Road and displayed photos of the plan for the proposed development and indicated that there are residential uses at the lower end of Dallas Road. He stated both Planning and Staff recommend approval.

City Attorney Nelson stated this request was advertised for C-2 rather than R-4. He stated since R-4 is a less intensive use, the matter has been brought before the Council in the event there is anyone in attendance who may have come thinking it was to be rezoned to C-2. He clarified the rezoning request is for R-4.

On motion of Councilman Taylor, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 1011 AND 1013 DALLAS ROAD, MORE
PARTICULARLY DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO R-
4 SPECIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**
passed first reading.

REZONING

2004-010: Dwight Aaron Smith

Pursuant to notice of public hearing, the request of Dwight Aaron Smith to rezone a tract of land located at 2300 Ohio Avenue came on to be heard.

REZONING (Continued)

The applicant was present; there was no opposition in attendance.

Mr. Pace stated that the site plan submitted reflects a building that is to be constructed on the lot for industrial use. He stated all property on the north side of Crutchfield is M-2 except one R-1 lot that is part of the project. He stated there is a subdivision south of Crutchfield that is all R-1 and displayed photos of Ohio Avenue north to Latta Street that has been closed halfway; that the request is to close the remainder which will come at a later time. He stated the request tonight is to rezone the property and both Planning and Staff recommend approval.

On motion of Councilman Hakeem, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 2300 OHIO AVENUE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE AND R-1
RESIDENTIAL ZONE TO M-2 LIGHT INDUSTRIAL ZONE, SUBJECT TO
CERTAIN CONDITIONS**
passed first reading.

CLOSE AND ABANDON

MR-2004-013: Thomas A. Austin

Mr. Pace stated that this matter was deferred from last month and indicated that he was not certain a meeting had occurred.

Bill Matthews stated that he had a lot of opposition that he is now withdrawing. He stated that he and Mr. Austin have come to terms on how to work out the situation.

On motion of Councilman Lively, seconded by Councilwoman Robinson,
**AN ORDINANCE CLOSING AND ABANDONING TWO UNOPENED
ALLEYS LOCATED BETWEEN THE 100 BLOCKS OF BAKER STREET AND
TAMPA STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS
SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF
BY REFERENCE, SUBJECT TO COMCAST CABLE COMMUNICATIONS,
INC. AND THE CHATTANOOGA GAS COMPANY RETAINING THEIR
RESPECTIVE EASEMENTS IN THE FULL WIDTH OF THE EXISTING RIGHT-
OF-WAY**
passed first reading.

AMEND CONDITIONS

2004-015: Jeff Carmack

Pursuant to notice of public hearing the request of Jeff Carmack to amend conditions imposed in Ordinance No. 11405 on property located at 5809 Winding Lane came on to be heard.

The applicant was not present; opposition was in attendance.

Mr. Pace stated that he received a telephone call this afternoon asking that this matter be withdrawn. He explained that the matter was on the agenda and would be discussed this evening. He stated that he and Councilman Page had meetings with the neighborhood about this location and tried to explain to them the situation of the request and does not know how to proceed, whether to discuss the matter or a motion for withdrawal.

Councilman Page stated that he would like for the people here to have clarity in terms of discussion or withdrawal or if the Council is prepared to deny it due to the longevity and history of the problem. He stated there are a lot of aspects to this and asked Mr. Pace to succinctly layout the choices so that a rational decision could be made.

Mr. Pace stated that this matter has been before the Council many times and the property is zoned O-1 for office. He stated the applicant is requesting that the 50-foot buffer to the rear facing Sutton be amended to allow him to grade the buffer and replant it with Cyprus and shrubbery as a landscaping plan for the property. He stated when this occurs, it will give the applicant the ability to lower the property so the building would be lower and less visible to the neighborhood facing Sutton, as well as have a nice landscaped buffer. He displayed a diagram showing the building and the home located on the far left of the property line, again indicating that the building would be lower than the houses. He stated if he does not grade and re-landscape the 50-foot buffer, the building would be higher with a line running through it, reiterating that trees would be planted in place of the buffer. He displayed the site plan if landscaping is allowed and indicated that Mrs. Millard has many concerns regarding the development that would be near her house. He stated if the matter is denied, the applicant could choose not to do buffering or landscaping. He displayed a configuration of the property with regard to Mrs. Millard's home, the office building and separate building with parking to the rear, which would almost come up to Mrs. Millard's property line. He displayed a photo of the undisturbed buffer and other photos of the area, showing that the hill becomes quite steep.

AMEND CONDITIONS (Continued)

Mr. Pace stated that if the applicant does not have the ability to landscape, the buffer would be left in a natural state and the building rated to a height even with Mrs. Millard's. He stated there are two options, one, on the right hand side of the PowerPoint screen that would allow for landscaping and reconfiguration of the 50-foot buffer and landscaped differently; or, two, the photo on the left which would leave the buffer undisturbed and the parking lot behind with no landscaping other than that required along the fenced road between Mrs. Millard's house.

Councilman Benson stated if the applicant is not permitted to withdraw or the matter denied the photo on the left would be in effect.

Councilman Lively stated that one thing was still "eating" at him; that he knows everyone on this Council thought the intent was that there would be a 50-foot buffer all the way around the residential area that goes to Sutton. He stated that the question he has is whether we could go back and amend that because that is the problem now. He stated that he wanted the buffer to go against the house there and apologized to Mrs. Millard because he thought the 50-foot went all the way around the residential area; that everyone he talked to thought the same.

City Attorney Nelson stated the Council would have to sent this back through Planning to get that done and by that time it will probably be too late.

Noleeka Millard of 908 Sutton Drive stated that her house "touches" this and up until six months ago she thought they did have the 50-foot buffer on that side of the house and in the back. She asked why would she want it in the back and not on the side, which is the side against the building! At this point she read from the Council minutes of May 13, 2003:

"Councilman Lively made reference to the fifty-foot buffer against all residential property that is usually attached to other similar rezoning requests. City Attorney Nelson indicated that there is no adjacent residential property. Councilman Lively indicated that there is in the rear and then realized that the fifty-foot buffer had been taken care of and everything is okay".

Mrs. Millard asked if this means her house is not against the 50-foot buffer.

Councilman Lively stated that she has the buffer behind it but not on the side next to 153. He stated what he was speaking of when the buffer was approved was the understanding that it included the side next to 153 also; that he requested that the 50-foot buffer go around the entire residential area.

AMEND CONDITIONS (Continued)

Mrs. Millard stated that the minutes reflect, "*There is no adjacent residential property*" and asked if her residence does not count! City Attorney Nelson stated that he did not remember (the statement in the minutes).

Councilman Benson stated that the Council has spent more time on this issue and expressed appreciation to Mrs. Millard and others for their patience, assuring them that the Council was trying to help.

Mrs. Millard expressed appreciation to the Council, as well, and indicated that they have been wonderful! She stated that Councilmen Lively and Page have worked hard, too. She stated she really doesn't know what to do; that if they build, they will not be able to sell their house and would just be sitting there. She stated they really and truly do not know what to do!

Councilman Benson inquired as to whether the Council would have to go with the plan on the left with the way things are right now.

Councilman Taylor expressed concern; that it seems if they go back and pull up the minutes, the comment Councilman Lively made does that. He stated that it seems the intent of the Council was to do that; that it was the Council's intention to make sure the residential piece was very well protected with the 50-foot buffer. He stated that the minutes should stand for themselves regardless of what is on this paper (rezoning request) at this point. He stated there was a motion made where we made sure we protected the residents; that they have been here several times and our intent was to make sure we protected them on all sides as it relates to the residential piece. He stated that it legally looks as if the minutes should "stand" and asked why it should go back to Planning; that he calls this (request) a misprint!

Councilman Benson stated there is no question that it was the Council's intent to buffer.

Mrs. Millard stated everyone on her street thought the same thing.

Councilman Littlefield stated that he does not know how far back this is from the property line since the owner of the property did ask for an amendment to the restrictions, we can be very specific in amending those to add protection on that side and that Mr. Pace would have a landscaping plan that shows trees that would completely block the view of the building if it is amended.

Mr. Pace stated that the ordinance is what is legal at this time; that the side yard has a 20-foot sewer on Mr. Carmack's side of the fence.

AMEND CONDITIONS (Continued)

Councilman Littlefield stated with the 20-foot setback behind the building they could put the parking lot there.

Mr. Pace stated that Mr. Carmack indicated to him last week that that would be his preference to do, leaving the building separate and putting it further away from Mrs. Millard's property. He stated the parking in the rear would come up to the property line within two-to-three or four feet and a row of Cyprus trees would be planted along the fence of his property.

Councilman Littlefield asked if Mr. Carmack agreed to put up a sight-obscuring fence.

Mr. Pace stated that the fence is six feet high and after visiting Mrs. Millard's home, the elevation of her house is at such height when the fence is up it will be lower than her house. He stated that the fence would not do that much unless her property is at a higher point to give some protection.

Councilman Hakeem asked for clarification that Mr. Pace indicated that what is before the Council today is legal and that what Councilman Taylor brought up in regard to the minutes, the minutes indicated that the residential property would have a 50-foot buffer. He asked how a change took place from what was intended and what is perceived legal, when our minutes are considered legal.

Councilman Benson stated that Councilman Hakeem asked a good question.

Councilman Page made reference to a "catch 22" situation and stated that the Council and neighborhood have one understanding of what we did and the developer and language of the covenant is different. He stated that he was trying to think of a way and indicated if the matter is deferred tonight the City Attorney could be asked to once again look at the minutes of the Council meeting and see if there were any mistakes that were transferred from the minutes to the actual ordinance with regard to this property.

At this point, Councilman Page made the motion to table the matter; Councilman Pierce seconded the motion.

Councilwoman Robinson asked if it would be necessary for the matter to go back through the Planning process under these circumstances. She stated if the developer is able to, there is already a 20-foot easement; that his plan can be "tweaked" to accomplish his goals and ours and avoid going all the way back to the beginning.

AMEND CONDITIONS (Continued)

City Attorney Nelson stated anything could be done by agreement, however, Mr. Pace has indicated that the developer is no longer in agreement.

Councilwoman Robinson stated maybe he would be under the circumstances.

Mr. Pace stated in Mr. Carmack's option "b", or the one on the left, it was moved back more than 50 feet and did have a parking lot in that area. He stated he knows the property in front on R-4 for the bank branch only is a parcel and he cannot move any further or would be into that parcel. He stated that Mr. Carmack hopes to sell the separate parcel and is not sure he would be in agreement to do that unless there is a ruling from the City. He stated if the minutes "hold any weight" he would have to go back and listen to see what the motion was; that the minutes can reflect discussion of what was talked about, but it is what the motion was and what was voted upon. He stated he would also have to look at the tape, as well, to see what was voted on. He inquired as to the legal ramifications if the applicant chooses to withdraw from going through the planning process.

City Attorney Nelson stated if the matter is brought before the Council the position taken is that the Council can send it back and Planning; that it does not depend upon the applicant agreeing; that there would still have to be a recommendation to Planning before rezoning something.

Mr. Pace stated that the question is if there was a mistake in drawing the ordinance from what was recommended in the motion, he could see where that could be sent back for review and changed, but if the motion was to approve a 50-foot buffer to the rear of the property and it was voted on, he does not see where we have the authority.

City Attorney Nelson stated that the Council could rezone anything on its own volition after a recommendation from Planning. He stated the Council can defer to Planning, Planning would make a recommendation and the Council can do what they want.

Mr. Pace stated that he and the City Attorney could look at the matter together.

At this point Councilman Pierce "called for the question" on Councilman Page's motion to table the matter.

AMEND CONDITIONS (Continued)

Councilman Page stated the motion is to defer the matter and in the period of deferral, the City Attorney will take another review of the covenants put on the passing of this zoning and advise the Council which direction we may or may not go.

City Attorney Nelson stated the matter should be deferred a week or two weeks, depending upon what we find; that the Planning Commission meets on the second Monday.

Councilman Benson stated if we do nothing they can start building according to the option displayed on the left.

Mr. Pace stated that the applicant could pull the building permit tomorrow.

Councilman Lively stated Mr. Carmack has made the request for withdrawal, however, he has not been granted anything.

Mr. Pace stated the request for withdrawal is outside the area; that the request only involved the 50-foot area he could not disturb.

Councilman Benson stated that the only one the applicant could deal with is the one on the left.

Councilman Taylor asked if the building permit has been pulled. Mr. Pace stated that he did not know.

Councilman Taylor asked if there could be a two-week moratorium put into effect on any permits pulled.

City Attorney Nelson suggested a week at the most.

Councilman Pierce expressed his opposition and indicated that it would be totally unfair to place a moratorium for one week, as he does not know what signal that sends. He stated he could not support the motion and **withdrew his second**.

Councilman Hakeem seconded Councilman Page's motion to table the matter one week with a one-week moratorium on permits.

AMEND CONDITIONS (Continued)

On motion of Councilman Page, seconded by Councilman Hakeem,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO AMEND CERTAIN
CONDITIONS IMPOSED IN ORDINANCE NO. 11405, ON PROPERTY
LOCATED AT 5809 WINDING LANE, BEING MORE PARTICULARLY
DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS**
was tabled one week; Councilman Pierce voted "no".

REZONING

2004-019: Hoyt and Leticia Deal

Pursuant to notice of public hearing, the request of Hoyt and Leticia Deal to rezone a tract of land located at 5106 North Moore Lane came on to be heard.

The applicant was present; there was no opposition in attendance.

Mr. Pace stated this request is located in Brainerd along North Moore Road. He stated the site is surrounded by R-2 zoning (duplexes) and backs up to Chickamauga Creek; that all the duplexes in this area are very nice with single family housing nearby. He stated Planning and Staff recommend approval.

On motion of Councilman Pierce, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 5106 NORTH MOORE LANE, FROM R-1 RESIDENTIAL
ZONE TO R-2 RESIDENTIAL ZONE**
passed first reading.

REZONING

2004-020: Surat Wongmanee

Pursuant to notice of public hearing the request of Surat Wongmanee to rezone tracts of land located at 511, 513 and 515 Tunnel Boulevard came on to be heard.

The applicant was not present; opposition was in attendance.

REZONING (Continued)

Mr. Pace stated that he had received a letter from the applicant requesting withdrawal of the request. He stated there are persons present in opposition who may wish to speak since the matter is listed on tonight's agenda.

Joe Rowe was present representing the Brainerd community. He gave an overview of the North Brainerd Council whose mission through unity of purpose is to improve the quality of life for residents and business owners. He stated in 1998 the RPA, with input from the community, adopted the Eastdale Plan; that item one from the Plan with regard to neighborhood issues and concerns speaks to the maintenance of the Eastdale residential character and limiting new businesses to the existing commercial cluster as the primary concern voiced by the Eastdale business owners and residents during public meetings. He stated the Plan states, "*Commercial business should be concentrated around major intersections*". He stated a few hundred yards from the address to the north is an available service station, further down on the same street are two other former service stations available for commercial use. He stated there is an abundance of commercial property that is mostly run down and residents in the area would like to see people utilize the existing property consistent with the approved Plan. He stated it is felt the recommendation made by the community and approved by the RPA and the Council should be enforced.

Richard Dietzen and Billy Cooper were also present in opposition to this request.

Councilman Littlefield stated the option to allow withdrawal is a prerogative of the Council. At this point he **made the motion to deny** the request to preclude the applicant from coming back another time.

On motion of Councilman Littlefield, seconded by Councilman Lively,

**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 511, 513 AND 515 TUNNEL BOULEVARD, MORE
PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE AND
C-5 NEIGHBORHOOD COMMERCIAL ZONE TO C-2 CONVENIENCE
COMMERCIAL ZONE**

was denied.

REZONING

2004-025: Terry Parks

Pursuant to notice of public hearing the request of Terry Parks to rezone a tract of land located at 2161 West Shepherd Road came on to be heard.

The applicant was present; there was no opposition in attendance.

Mr. Pace stated that this property is located in the Shepherd area; that the request is for development of apartments. He stated there are singlewide mobile homes to the south in an R-2 area and the old Masonic Lodge building and residences to the north. He stated the applicant's sister passed today and indicated that he wanted to continue with the request for rezoning. He stated someone is present representing the applicant. He stated both Staff and Planning recommend denial.

A representative for the applicant stated that Terry would like to place three triplex units on the property, as the property is large enough to support that. A photo was displayed showing the floor plan for the units. She stated on one side is a trailer park and half-mile down the road are the Waterford Apartments on Shallowford. She stated this would provide for better use of the land and more property taxes.

Councilwoman Robinson asked if this is located in Councilman Franklin's district. The response was affirmative.

Councilman Hakeem asked for Staff and Planning's reason for denial.

Mr. Pace stated that the residential area is single-family; that the R-2 in the area backs up to M-1, with the Olan Mills development facing 153. He stated this is a spot zone and apartments would be mixed in with single-family housing; that the area is more single family in character than apartments.

Councilman Lively stated that he looked at this and realizes this could be conceived as a spot zoning. He stated in looking at the plan, it looks as if it would be an improvement; that there are singlewide mobile homes and duplexes and somewhere along the line it seems common sense should come into play.

Mr. Parks' representative stated there are several duplexes on Arlena Circle.

REZONING (Continued)

Councilman Taylor asked if the applicant has contacted the neighborhood association regarding this.

Mr. Pace responded that the neighborhood association has not been contacted.

On motion of Councilman Hakeem, seconded by Councilman Littlefield,

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 2161 WEST SHEPHERD ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO R-3 RESIDENTIAL ZONE

was denied; Councilman Pierce abstained; Councilman Lively voted "no".

AMEND CERTAIN CONDITIONS

2004-027: Ken DeFoor

Pursuant to notice of public hearing, the request of Ken DeFoor to amend certain conditions imposed in Ordinance No. 10856, on property located at 6121 and 6151 Shallowford Road came on to be heard.

The applicant was not present; there was no opposition in attendance.

Mr. Pace stated that this request is located in the Shallowford Road area near 153. He stated the applicant is requesting that the 50-foot buffer that backs up to vacant property be reduced to 25 feet; that Staff and Planning recommend approval.

On motion of Councilwoman Robinson, seconded by Councilman Taylor,

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO AMEND CERTAIN CONDITIONS IMPOSED IN ORDINANCE NO. 10856, ON PROPERTY LOCATED AT 6121 AND 6151 SHALLOWFORD ROAD, BEING MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS

passed first reading.

REZONING

2004-028: BMJ, LLC

Pursuant to notice of public hearing, the request of BMJ, LLC to rezone a tract of land located at 7244 Tyner Road came on to be heard.

The applicant was present; opposition was in attendance.

Mr. Pace stated this request is located in the Tyner community near Tyner Road. He stated there is R-1, R-3, M-1, R-4 and C-2 in the area; that the site plan for the property showed a concept for townhouses. A photo of the vacant property and uses along Lee Highway was shown and referenced that a veterinary clinic located in a residential-type structure in the area transitions between a higher intensity commercial/industrial and residential use to RT/Z. He stated both Planning and Staff recommend approval.

Bill Hullender and James Shipley were present representing BMJ. Mr. Hullender stated the request is for upscale townhouses with 27 total units.

Kurt Johnson spoke in opposition to the request and stated that he lives on the upper side and has fifteen acres. He stated that it is his thought this request sets the wrong tone for the community; that there were other R-T/Z use requests on Tyner Road for patio homes, which was a low scale development, yet R-1 was built instead, and the second request was for R-T/Z. He stated the area is losing economic viability for young people; that one of the things Planning was to do was to limit the area to townhouses rather than patio houses. He stated there is an R-1 development to the west and Joe McCrosky put up a privacy fence between the two properties. He stated that he wants a buffer between the townhouses and the R-1 properties.

Mr. Hullender stated that he could not speak for what other people did and clarified that he will do what is being asked for. He stated this would be for young people who want to start a home or older persons wanting to downsize. He stated they would have to do major landscaping on one side and indicated that the townhouses would be for sale and would not be rented.

Councilman Hakeem inquired as to the proposed range of pricing for the townhouses.

Mr. Hullender responded that the townhouses would sell for \$159,000.

Councilman Hakeem stated as it stands now without the zoning change, what would the applicant be able to put on the property.

REZONING (Continued)

Mr. Pace stated the applicant could put single family on the front and on the back apartments or duplexes. He stated the major portion would be single-family homes. He stated the property has a total of 3.88 acres and four single family houses per acre could be built for a total of 18 homes.

Mr. Hullender stated that he was told he could put 18 homes on the property as it is now.

On motion of Councilman Lively, seconded by Councilman Littlefield,

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 7244 TYNER ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE AND R-4 SPECIAL ZONE TO R-T/Z RESIDENTIAL TOWNHOUSE/ZERO LOT LINE ZONE

passed first reading.

REZONING

2004-029: V. L. Capital Partners

Pursuant to notice of public hearing, the request of V. L. Capital Partners to rezone a tract of land located in the 900 block of Signal Mountain Road came on to be heard.

The applicant was present; there was no opposition in attendance.

Mr. Pace stated this request is located in the Mountain Creek community for a request of C-2. He stated a site plan has been submitted showing the intention of the first phase of property for a fast lube business. He stated at the Planning hearing there was discussion and it was agreed that Signal Mountain Boulevard is a very busy arterial through downtown and most property along the area is or will become commercial in the very near future. He stated for the portion that is R-2 there was no site plan or any indication of what will be placed on the property and Planning recommended to only approve the portion that was O-1 for the C-2 zone for a fast lube business. He stated the other portion could be considered at a later date if the applicant has a plan and design. He stated that the legal description would need to be amended prior to second and third reading to reflect "108 feet" as opposed to the 114 feet along Russell Avenue.

REZONING (Continued)

On motion of Councilman Littlefield, seconded by Councilman Lively,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED IN THE 900 BLOCK OF SIGNAL MOUNTAIN ROAD,
MORE PARTICULARLY DESCRIBED HEREIN, FROM O-1 OFFICE ZONE
AND R-2 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**
passed first reading.

REZONING

2004-031: Porter Yarbrough

Pursuant to notice of public hearing, the request of Porter Yarbrough to rezone a tract of land located at 2014 Godsey Drive came on to be heard.

The applicant was present; there was no opposition in attendance.

Mr. Pace stated this request is located in the Northgate area. He stated most property along the site is zoned R-1; that there is also R-4 and R-3 uses with Northgate beyond that point. He stated the site plan was received today and one condition would have to be placed on the request prior to second and third reading. He stated the proposed road and cul-de-sacs is a private drive and the Administrator of Public Works would have remarks to make with regard to the road. He stated there has been some discussion connecting this road to another to permit access to the north in the future; that this is a private drive going into private property now. He stated the recommendation is for approval from Planning and Staff and is in compliance with the North River Plan adopted recently. He stated the only concern has to do with access to the property and want to make sure it would be adequate and approved by the Traffic Engineer.

Councilman Page stated this is a very busy area and knows in talking with Admin. McDonald there should be access and egress from the property; that it is hoped the road could be improved and worked on. He stated he does not know what is being proposed for the site, as it looks speculative to him.

Porter Yarbrough stated that he has reserved a 60-foot strip on both sides through the center of the property; that notification was made to the City he would extend the road from Hamill to North Point and could give a 60-foot strip to the City for that.

REZONING (Continued)

Councilman Page stated that his question has to do with the possibility of connecting Godsey directly to Northgate Mall as an interim step. He expressed appreciation to Mr. Yarbrough for his willingness to help with infrastructure in that area; that one of the conditions indicates as long as there is a road parallel to the railroad track the land would be donated. He asked if consideration could be given if there are other parties involved there might be a connector road proposed directly to Northgate. He stated there is a plan to improve Hamill Road and ingress and egress would be significantly improved. He stated there could be a condition to be able to access Northgate directly from the property and his (Yarbrough's) property in that whole infrastructure weighs a great deal.

Mr. Yarbrough stated that he attended six-to-ten meetings and no one was able to get anyone to the table for the right -of-way or money except for Ken DeFoor. He stated the Mall was not interested and Ken DeFoor wanted to build a section from his (Yarbrough's) to this tract to Ring Road. He stated quite frankly, he is giving up 42,000 square feet of his property with no payment and tying into Ring Road does not help his property. He stated he is donating the land and does not intend to install utilities for him (DeFoor) for free. He stated right now no one can come up with the money to build that, yet the Planning Commission and City officials want him (Yarbrough) to not be able to sell the 60 feet, which he has agreed to do, and stated that he thinks that is enough! He stated if there is a road from Hamill through to the Mall all it would do is dump traffic out of the Mall and out of DeFoor's and the Mall is busy enough as it is. He stated the traffic would come through and clog up Hamill even more. He stated to get the zoning he agreed to do the 60-foot strip; that to force him to give up that land when the City has no plan to spend money on build a road and no plan to install utilities would only serve Northgate. He stated that he does not think it is right to take his property and serve the Mall and Mr. DeFoor. He stated all that congestion through his development is unfair.

Councilman Page stated that he had one additional thought; that it is his hope Hamill Road would be improved rather than serve as a dumping ground; that there could be more traffic flow that would make for additional infrastructure there.

On motion of Councilman Lively, seconded by Councilman Littlefield,

**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 2014 GODSEY DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-4 SPECIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**

passed first reading.

REZONING

2004-033: Raymond Hale

Pursuant to notice of public hearing, the request of Raymond Hale to rezone a tract of land located at 7538 East Brainerd Road came on to be heard.

The applicant was present; there was no opposition in attendance.

On motion of Councilman Hakeem, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 7538 EAST BRAINERD ROAD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-4 SPECIAL ZONE TO C-2 CONVENIENCE
COMMERCIAL ZONE, SUBJECT TO C-5 NEIGHBORHOOD
COMMERCIAL ZONE USES, EXCLUDING THE BUILDING SIZE LIMIT**
passed first reading.

REZONING

2004-034: Alan C. Odom and Elizabeth Fuller

Pursuant to notice of public hearing, the request of Alan C. Odom and Elizabeth Fuller to rezone tracts of land located 6026, 6032 and 6040 East Brainerd Road at came on to be heard.

The applicant was present; considerable opposition was in attendance.

Councilman Littlefield stated that he has requested that the next three rezoning requests be heard together. He stated that he spoke with Mr. Pace and he knows the plan is to give one presentation that would address the whole issue. He stated the effort is to hear all the applicants and those in opposition at one time.

Mr. Pace stated that the three requests are located along East Brainerd Road and have been heard many times. He stated the first request is to go from R-1 to O-1; the second request has three lots facing East Brainerd Road with one facing Old Birdsmill Road to the east and is also requesting O-1; and the third request also has three lots, two facing East Brainerd Road and one facing Chickamauga Road that is requesting O-1, as well. He stated the only difference is the third one, which has to combine all three lots into one, would front on East Brainerd Road with no access to Chickamauga. He stated approval is recommended subject to parking in the rear, a small square foot sign for the front yard and no parking in front.

REZONING (Continued)

Mr. Pace stated the first request is recommended for approval from Planning and Staff with conditions.

Roger Meyer stated that he owns O-1 property on the south; that the property that is behind the O-1 is the one that is up for rezoning. He stated that he wanted to convince the Council that he was in a "vice" and brought a vice along with him to show how one end is stationary and won't budge or move, which he labeled as the "Brainerd Hill Neighborhood Association"; and the other end of the vice labeled "C" for the C-zoning that is all around, all commercial property. He stated there is C-zoning all around them and they are caught in a traffic bind. He distributed photos showing the house, factory and office building and was told this is a wonderful place for a residence. He stated he owns a residence and rented to a long-term resident who left to buy a house. He stated that that person told someone at WNOO Radio this is a good place, the person moved in and now six months later has had a dickens of a time! He stated Dr. Odom tried to sell his property for a year; that no one wants to live there. He stated another problem is that of standing water and mosquitoes, as well as noise from nearby car lots and loud speakers; that there is no privacy. He stated this is not a good place and there is a lot of traffic. He stated he was before the Council previously requesting a turnaround; that he worked with the Brainerd Hills Neighborhood Association to get that and mentioned the screeching noise that is heard all the time. He stated they are looking for something to work out as they have real problems in the neighborhood.

Dr. Billy Allen of 660 Snow Hill Road in Ooltewah stated that he has owned the lot on Chickamauga and East Brainerd since 1968 and has been practicing medicine on Lee Highway at the old Airport Road shopping center. He stated Dee and Anna Coleman have lived in their home 55 years and the Thedford's lived in theirs over 35 years; that the properties are not the same and they are trying to get them all zoned O-1. He stated Dr. Meyer had property for twenty years, has flooded at least three times and is not a buildable place, now. He stated flooding is the biggest problem; that Anna and Dee Coleman will have to move soon and it will be hard to sell their property as residential. He stated that they need to get as much as they can by rezoning.

Maurice Thedford stated that he owns a house on the north side of East Brainerd Road and has no plan to develop it or anything other than what it is used for; that it is not residential property. He stated that it does flood and no one wants to live completely surrounded by offices.

Councilman Hakeem asked if any of those who have spoken live in the houses or whether they are just requesting that the property be rezoned.

REZONING (Continued)

Councilman Hakeem stated from indication Dr. Odom and Mr. and Mrs. Coleman live in the houses. He stated the Council is not in the business of rezoning to get a better price, which is what it sounds as if those speaking have indicated. He stated they do not live there, but to him they are not asking to continue to make an investment in the community; that he has no problem with them making money but should it be at the expense of those who continue to invest in the area's residents.

Councilman Taylor indicated that Councilman Hakeem made a good point. He asked if any of those speaking have businesses there.

Mr. Ledford stated that he has a home office and is there most of the time. Dr. Meyer indicated that he has an office and a rental house.

Alan Odom stated that he lives on the street and has been there a year, yet he is leaving at the end of the month. He stated there is noise from the airport and the aircraft flying directly over all three parcels; that his house is the northern most grouping of three lots and there is an extreme amount of loitering traffic. He stated his wife has called the police on suspected drug traffic and is very uncomfortable being there and does not recommend it to families with children in any of the three northern most pieces. He stated mosquitoes from the past two weeks have come out and this past season he and his wife could not go outdoors until November; that he is talking about mosquitoes the size of a half dollar! He stated they cannot do anything outdoors.

Councilman Hakeem stated before they became businesses, were they homes.

Dr. Meyer stated some still are.

Councilman Hakeem stated all of this sounds like people cannot live there, yet people have lived there 20, 30 and 40 years.

Dr. Meyer stated things have changed; that no longer do they have small businesses along the north side, bigger business is going all the time and one has turned into an automobile dealership. He stated the second business that changed behind them is now Big Lots and 60 years ago it was farmland. He stated the area has changed drastically over the years.

Councilman Hakeem asked how Dr. Meyer perceives the impact of this on the residents who continue to live there.

REZONING (Continued)

Dr. Meyer stated there is only one there and she is a recluse and refuses to be a part of this. He stated after saying she would join in this, she wants to stay there. He stated the Colemans want to stay until they need to sell; that he is elderly and has health problems and if they sell it as a residence it will be almost impossible.

Dan Coleman stated that his parents lived there and on two different occasions they have had break-ins in the home all because this backs up to commercial property. He stated it is very noisy and they have replaced doors and put up bars to protect them; that he does not feel this is residential any more. He stated that he realizes there are a lot of people who live in Brainerd Hills, but clarified this is not in Brainerd Hills.

Dr. Meyer stated that his office has been on this corner for 20 years and the building has not changed; that he has kept it up. He stated the building behind him is a house owned by Mr. O'Rear. He stated that he told them he has what he calls a buffer and had to let his shrubbery grow because of the manufacturing plant across the street. He stated that he knows he probably will not sell it for a residence and will have it rezoned for something. He stated that he needs the building behind him as an option for an office so he can rent it. He stated he is willing to accept the limits that have been set with parking in the rear and a small sign in the front. He stated this is not part of Brainerd Hills and never has been. He stated Planning stated in 1992 that this stretch of East Brainerd Road should be O-1, not R-1; that it is no longer reasonable for it to be R-1 zoning, but O-1. He stated in twelve years things have not gotten any better.

Councilman Littlefield stated that he had a lengthy discussion by telephone with Dr. Meyer and they understand each other. He stated that he wishes no ill feelings to anyone requesting rezoning; that we have gone over these issues with the adjacent neighborhood a number of times. He stated most recently he was presented with a piggy bank and Dr. Meyer was one of the presenters. He stated they are interested in getting a road rebuilt and drainage rebuilt and, in fact, have received assurances from Public Works they have it in their plans to do as soon as possible. He stated that the road would not be widened to five lanes; that they may insist it be widened to five lanes, but hope it will be improved to a good three-lane road in this area because of the problem Dr. Meyer is referring to in regard to collisions. He stated there is a lot of traffic in this area that can be resolved and requires substantial engineering and rebuilding of East Brainerd Road, but not widening to five lanes similar to Shallowford.

REBUILDING (Continued)

Councilman Littlefield stated in regard to drainage, Governor Bredesen came last July when this area was heavily impacted and photos reflect that; that some properties have been identified along Chickamauga to be purchased with FEMA money; that those applications are in process and land unused would be City land or park land. He stated he could not assure that people having flooding would not be impacted again in that area.

Councilman Littlefield stated Chickamauga Road was the Toyota and Lexus property and we debated that thoroughly; that the buffers are in place and there is no access to Chickamauga. He stated we have acknowledged what is happening in the area in trying to resolve it to make it a compatible area for residential development; that in process is also a plan for traffic calming on Chickamauga to stop commercial traffic cutting through and going into Brainerd Hills. He stated all these things are in process; that the fact remains what is proposed is primarily a speculative rezoning; that the property might, in fact, once the infrastructure improves and in place in the future, qualify for rezoning to another use; that right now, rezoning would exacerbate the problem. He stated that he told Dr. Meyer and the residents of Brainerd Hills that his heart goes out to everyone who marches in almost every month; that this rezoning should not be changed until the road and drainage are rebuilt. At this point, he **made the motion to deny this request as well as the two subsequent items; Councilman Hakeem seconded the motion.**

On motion of Councilman Littlefield, seconded by Councilman Hakeem,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 6026, 6032 AND 6040 EAST BRAINERD ROAD,
MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL
ZONE TO O-1 OFFICE ZONE, SUBJECT TO CERTAIN CONDITIONS**
was denied; Councilman Taylor voted "no".

REZONING

2004-035: Roger A. and Lynn P. Meyer

Pursuant to notice of public hearing, the request of Roger A. and Lynn P. Meyer to rezone tracts of land located at 107 Birdsmill Road and 6044 and 6064 East Brainerd Road came on to be heard.

The applicant was present; considerable opposition was in attendance.

REZONING (Continued)

On motion of Councilman Littlefield, seconded by Councilman Hakeem,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 107 BIRDSMILL ROAD AND 6044 AND 6064 EAST
BRAINERD ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1
RESIDENTIAL ZONE TO O-1 OFFICE ZONE, SUBJECT TO CERTAIN
CONDITIONS**
was denied; Councilman Taylor voted "no".

REZONING

2004-036: Maurice Thedford

Pursuant to notice of public hearing, the request of Maurice Thedford to rezone tracts of land located in the 6000 block of East Brainerd Road and the 100 block of Chickamauga Road came on to be heard.

The applicant was present; considerable opposition was in attendance.

On motion of Councilman Littlefield, seconded by Councilman Pierce,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED IN THE 6000 BLOCK OF EAST BRAINERD ROAD AND
THE 100 BLOCK OF CHICKAMAUGA ROAD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE AND R-2
RESIDENTIAL ZONE TO O-1 OFFICE ZONE, SUBJECT TO CERTAIN
CONDITIONS**
was denied; Councilman Taylor voted "no".

AGREEMENT: JOINER & ASSOCIATES

Councilman Lively stated this matter was discussed in today's Safety Committee and is recommended for approval.

On motion of Councilman Lively, seconded by Councilman Pierce,
**A RESOLUTION AUTHORIZING THE CITY OF CHATTANOOGA
PERSONNEL DIRECTOR TO EXECUTE AN AGREEMENT WITH JOINER &
ASSOCIATES, A COPY OF WHICH IS ATTACHED HERETO AND MADE A
PART HEREOF BY REFERENCE, RELATIVE TO THE DEVELOPMENT AND
ADMINISTRATION OF EXAMS FOR PROMOTIONAL TESTING FOR THE
POSITIONS OF FIRE LIEUTENANT AND FIRE CAPTAIN, IN AN AMOUNT
NOT TO EXCEED FIFTEEN THOUSAND DOLLARS (\$15,000.00)**
was adopted.

CHANGE ORDER

On motion of Councilman Littlefield, seconded by Councilman Page,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1, RELATIVE TO THE CONTRACT WITH EASTMAN CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF A VEHICLE CANOPY AT THE POLICE SERVICE CENTER, WHICH CHANGE ORDER INCREASES THE CONTRACT IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND SIX HUNDRED DOLLARS (\$5,600.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED ONE HUNDRED TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$125,500.00)
was adopted.

AGREEMENT AMENDMENT

On motion of Councilwoman Robinson, seconded by Councilman Littlefield,
A RESOLUTION AUTHORIZING THE CHIEF OF THE CHATTANOOGA POLICE DEPARTMENT TO ENTER INTO A SECOND AMENDMENT TO THE LEASE AGREEMENT WITH UNUMPROVIDENT CORPORATION TO EXTEND THE LEASE OF PROPERTY LOCATED AT 224 WALNUT STREET AND USED AS A DOWNTOWN PRECINCT STATION, SUBSTANTIALLY IN THE FORM ATTACHED HERETO
was adopted.

OVERTIME

Overtime for the week ending March 5, 2004 totaled \$95,225.03.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- ✍ **JERRY HICKS** – Suspension (without pay), Concrete Worker, Citywide Services effective March 2, 2004.
- ✍ **HARRY J. BRADLEY** – Suspension (four days without pay), Equipment Operator, Sr., Citywide Services effective March 2-5, 2004.

PERSONNEL (Continued)

- ✍ **ED LECOMPTE – Suspension** (15 days without pay) effective March 8-26, 2004; **Demotion**, Survey Party Chief, Engineering, Pay Grade 13/Step 11, \$44,336.00 annually, effective March 8, 2004.

- ✍ **TERRY CENTER** – Retirement, Information Technician, Engineering, effective March 4, 2004.

- ✍ **MATTHEW TUCKER** – Resignation, Information Technician, Engineering, effective March 4, 2004.

CHATTANOOGA POLICE DEPARTMENT:

- ✍ **DAVID BELL** – Resignation, Police Cadet, effective March 2, 2004.

CHATTANOOGA PERSONNEL DEPARTMENT:

- ✍ **DELORIA HARRIS** – Retirement, Office Assistant, Sr., effective February 27, 2004.

FINANCE DEPARTMENT:

- ✍ **DELORES DRIVER** – Retirement, Office Assistant, Sr., effective February 27, 2004.

- ✍

PURCHASES

On motion of Councilman Lively, seconded by Councilman Littlefield, the following purchases were approved for use by the Chattanooga Fire Department:

SAMSON INDUSTRIAL ((Best bid)
R0054813/B0001340

Three (3) Thermal Imaging Cameras

\$38,250.00

PURCHASES (Continued)

HOLZBERG COMMUNICATIONS, INC. (Lowest and best bid)
R0054814/B0001344

Communication Equipment

\$12,383.75

BOARD APPOINTMENTS

On motion of Councilman Lively, seconded by Councilman Littlefield, the following Board appointments were approved:

TREE ADVISORY COMMISSION:

- ✍ Appointment of **KIM MCCLURKIN** for a term expiring December 1, 2006
- ✍ Appointment of **JOHN SWEET** for a term expiring July 31, 2005
- ✍ Appointment of **ADELE GLASCOCK** for a term expiring July 31, 2007
- ✍ APPOINTMENT OF **JUNE COPPINGER** for a term expiring December 1, 2006.

MECHANICAL CODES BOARD OF ADJUSTMENTS AND APPEALS

- ✍ Appointment of **GEORGE GOERGESON** to fill the un-expired term of B. H. Yerby for a term expiring March 4, 2006.

SWAPTION RESULTS

Admin. Eichenenthal stated the swaption the Council approved recently resulted in a gross payment of \$3,880,000. He stated considerable credit goes to Daisy Madison and the City Attorney for their extraordinary amount of work.

REFUNDS

On motion of Councilman Littlefield, seconded by Councilwoman Robinson, the Administrator of Finance was authorized to issue the following refunds:

- ? Of gross receipts tax due to exemption from business tax/ICC regulated:

LOOMIS, FARGO & COMPANY -- \$1,537.39

REFUNDS (Continued)

? Of stormwater fees and/or property taxes for 2003 due to overpayment:

L B C ASSOCIATES – CHATTANOOGA -- \$8,182.72

CHARLES W. LIND, JR. -- \$1,258.00

RUSSELL W. LLOYD -- \$1,228.00

MEDICAL ASSOCIATES, II, LLC -- \$6,463.97

MANOR HOUSE OF CHATTANOOGA -- \$2,373.55

? For refunds of gross receipts tax due to amended tax return for 1/1/02 – 12/31/02:

NORTHERN TOOL & EQUIPMENT -- \$1,839.47

HEARING: CHRISTOPHER GAYNOR

City Attorney Nelson stated that Mr. Gaynor's trial in Criminal Court resulted in a "hung" jury and would possibly be reset. He stated Counsel for Mr. Gaynor has requested a July reschedule date before the Council.

Mr. Gaynor's hearing was rescheduled for Monday, July 19, 2004 beginning at 1 p.m. before the full Council.

COMMITTEES

Councilman Hakeem reminded Council members of the **Public Works Committee meeting scheduled for Tuesday, March 16 at 4 p.m.**

Councilman Littlefield stated that the **Legal and Legislative Committee would meet on Tuesday, March 16 at 3 p.m.**

NORTHSIDE NEIGHBORHOOD ASSOCIATION

Councilwoman Robinson announced that the Northside Neighborhood Association would meet on Thursday, March 11 at 6:30 p.m. at the community building on Manning and May Streets.

ADJOURNMENT

Vice Chairman Benson adjourned the meeting of the Chattanooga Council until Tuesday, March 16, 2004 at 6:00 p.m.

CHAIRMAN

CLERK OF COUNCIL

**(A LIST OF NAMES OF PERSONS IN ATTENDANCE
IS FILED WITH MINUTE MATERIAL OF THIS DATE)**