

**City Council Building
Chattanooga, Tennessee
April 13, 2004**

Chairman Franklin called the meeting of the Chattanooga Council to order with Councilmen Benson, Hakeem, Littlefield, Lively, Page, Pierce, Robinson and Taylor present. 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, Atty. John Anderson gave invocation.

CLOSE AND ABANDON

MR-2004-039: Bright Beginnings

On motion of Councilman Lively, seconded by Councilman Taylor,
**AN ORDINANCE CLOSING AND ABANDONING SANITARY SEWER
LINES AND EASEMENT ON TRACTS OF LAND LOCATED AT 5010 ALPHA
LANE AND 2150 NORTH POINT BOULEVARD, MORE PARTICULARLY
DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE**

passed second reading. On motion of Councilwoman Robinson, seconded by Councilman Pierce, the Ordinance passed third and final reading and was signed in open meeting.

REZONING

2004-006: W. J. Stewart

Pursuant to notice of public hearing, the request of W. J. Stewart to rezone a tract of land located at 3515 W Road came on to be heard.

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

REZONING (Continued)

Barry Bennett, Executive Director of the Regional Planning Agency (RPA), explained that Jerry Pace, who normally reviewed each rezoning request, is absent tonight due to a death in his family. He stated the request from Dr. Stewart is for an animal hospital on a site that is 1.69 acres. He stated that Planning and Staff recommend the request for C-2 for denial because it is thought to be an extension of a commercial zone at the intersection of W Road and Mountain Creek Road. He stated that both Staff and Planning recommend approval of R-4, which is more of a transitional zone between the commercial intersection and the residential pockets to the north and west. He stated R-4 will permit an animal hospital but Staff and Planning recommend approval subject to conditions that the property be used as a small animal hospital or office only and no outdoor runs or boarding or animals because of the nuisance created by noise to the adjacent properties.

Atty. John Anderson of Grant, Konvalinka and Harrison, was present representing the applicant. He stated Dr. Stewart requested the zoning change to operate an animal clinic along Signal Mountain Boulevard. He stated many remember the old Hy's Deli, which was impacted by the widening of Signal Mountain Boulevard. He stated Dr. Stewart is interested in moving his practice from that location to the property that is the subject of this request. He stated the change to R-4 is something Dr. Stewart is comfortable with, but would like clarification on one of the conditions. He stated boarding is going to be a part of any small animal hospital as there will be times when animals are required to stay overnight as a result of surgeries; that they will be boarded and will need to be taken outside to run, whether they are cats or dogs. He stated it is something that is necessary for any animal hospital to be able to board overnight. He respectfully requested that the Council approve the request subject to clarification of the condition that would provide that animals could be taken outside so they can do what they need to do when they are outside!

Councilman Hakeem asked for clarification with regard to the animals that are taken out to "take care of their business"; that they will do so on Dr. Stewart's property.

Atty. Anderson responded, "yes", on the property that is requested for rezoning.

Councilman Lively stated that he understands the boarding part, and asked if this will be like the animal hospital located of 23rd Street where there is no space outside; that they board overnight but do not have any outside activities. At this point he **made the motion to approve the request with the amendment to include overnight boarding; Councilman Page seconded the motion.**

REZONING (Continued)

Mr. Bennett stated the conditions that are reflected in the ordinance do not restrict boarding of animals and is permitted under the conditions. He clarified that the ordinance states “*no outdoor runs or boarding . . .*”, however, indoor boarding is permitted.

Councilman Littlefield asked if R-4 is going to accommodate what Dr. Stewart wants to do.

Atty. Anderson responded “yes”; that R-4 would certainly accommodate this; that it is the condition imposed by Staff and Planning that gave concern because it says no outdoor runs.

Councilman Littlefield stated this location is at the foot of Signal Mountain where Mayor Althaus and Commissioner Casavant are opposing something similar in a similar location. He stated this request seems appropriate to him and he has no problem with it.

City Attorney Nelson stated that he wanted to make sure he has the clarification correct for condition number two that says “*no outdoor runs . . .*”, indicating that he will delete “outdoor runs”.

Councilman Benson stated that he has to make this clear as he recalls a debate at the Planning Commission concerning dogs spending the night outside and barking all the time. He asked for clarification that that will not occur and asked that part of the condition be kept in.

Atty. Anderson stated that the condition would say, “*no outdoor boarding of animals . . .*”; that as it is written it says “*no outdoor runs or boarding . . .*,” which are two different things.

Councilman Benson stated everyone understands a dog does need to go outside at times and wanted to make it clear if they are barking all night they are in violation.

On motion of Councilman Lively, seconded by Councilman Page,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 3515 W ROAD, MORE PARTICULARLY DESCRIBED
HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-4 SPECIAL ZONE, SUBJECT
TO CERTAIN CONDITIONS**

passed first reading.

CLOSE AND ABANDON

MR-2004-006: City of Chattanooga

There was no opposition in attendance.

Mr. Bennett stated this request came in as a mandatory referral from the City Engineer as a request of CNE for a park side brownstones development and a park. He stated there was a last minute change to the ordinance, as the City Traffic Engineer required a turnaround be added to enforce the main portion of Wall Street. He stated the amendment could be made prior to second and third reading.

Councilman Pierce stated that he talked with Bill McDonald prior to the meeting about this and is a little concerned. He stated the community supports this, however they have not been informed a portion of the road would be closing that provides access from M. L. King. He stated Mr. McNutt wanted to be present this evening and he called to inform him (Pierce) he would not be present and the matter could be tabled one week if necessary. He stated he indicated that he has no problem passing the matter on first reading and if there is some amendment the community is concerned about it could be addressed prior to second and third reading.

Councilman Hakeem stated that the mater was discussed in today's Public Works Committee meeting and approval is recommended.

Councilman Pierce inquired as to the responsible party for the turnaround, the applicant or the City. City Attorney Nelson responded that the applicant is the City.

Admin. McDonald clarified that it should be for CNE as part of the project they are building and not the City.

City Attorney Nelson amended the ordinance in open meeting to read, “. . . *there being a turnaround constructed at the end of Wall Street by CNE*”.

On motion of Councilman Hakeem, seconded by Councilman Taylor,
**AN ORDINANCE CLOSING AND ABANDONING A PORTION OF THE
OPENED UNIT BLOCK OF WALL STREET, MORE PARTICULARLY
DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN
CONDITIONS**

passed first reading.

AMEND CONDITIONS

2004-026: George B. Harless, Jr.

Pursuant to notice of public hearing, the request of George B. Harless, Jr. to amend conditions imposed in Ordinance no. 11224 on property located in the 1900 block of Kelly Street and the 2200 block of East 21st Street came on to be heard.

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

Mr. Bennett stated the property for this request is located between the Ridgedale and East Lake communities. He stated the property is currently zoned C-2 and when it was zoned C-2 a condition imposed made the zoning “*subject to flea market only*”. He stated the proposed development is for an apartment complex and they are asking that the condition making the property subject to use for “*commercial flea market only*” be lifted. He stated both the Planning Commission and Staff reviewed the request and are recommending approval of lifting the condition as the proposal is in keeping with the Oak Grove Neighborhood Plan.

Councilman Taylor asked for a point of clarification with regard to the condition lifting “*flea market only*”, whether it is being modified to say it can be subject to a flea market or lifting the condition totally.

Mr. Bennett stated the amended condition adds the language “*or apartments only*” and the intent is still to restrict other commercial uses, which would not be appropriate for that area.

Louise Hammond stated the applicant was nice enough to meet with the neighborhood residents and answer their questions for a two-hour duration. She stated the community is in total agreement with this.

Jim Fitzpatrick was present representing Mr. Harless and stated that it is their hope this is the culmination of a process that started in August of 2001. He stated he has been involved in the rezoning and meeting with the Oak Grove community on a number of occasions, which culminated in the Oak Grove Plan approved by Planning and the Council in February. He distributed a schematic drawing of the proposed development, which consists of 112 units of one, two and three bedrooms including a clubhouse, gazebo accessed by plastic cards and a gate.

AMEND CONDITIONS (Continued)

Councilman Hakeem stated in relationship to the neighborhood, he asked if a relationship has been established with the community to project what they will have going on in a year that fits in with this development.

Mr. Fitzpatrick stated that this process will require approval of tax credit housing funding; that they will not know about the outcome of that probably until September. He stated at that time they will start the architectural drawings and detailed work on a number of items. He stated the answer is "yes".

Councilman Pierce asked if the C-2 zone is the only zone to do this.

Mr. Bennett responded "no"; that it is permitted in C-2. He stated it is normally the R-3 zone that is requested for apartments, but since the property is already zoned C-2 apartments are permitted; that a condition is being lifted rather than a rezone.

Mr. Pierce asked if the neighborhood is aware if this project does not go through, what else could be located in the C-2 zone.

Mr. Bennett stated under the conditions only a flea market or apartments would be permitted and no other commercial use could go there.

On motion of Councilman Taylor, seconded by Councilman Lively,

**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO AMEND CERTAIN
CONDITIONS IMPOSED IN ORDINANCE NO. 11224 ON PROPERTY
LOCATED IN THE 1900 BLOCK OF KELLY STREET AND THE 2200 BLOCK
OF EAST 21ST STREET, BEING MORE PARTICULARLY DESCRIBED HEREIN,
SUBJECT TO CERTAIN CONDITIONS**

passed first reading.

REZONING

2004-037: Susan Ballard Beaty

Pursuant to notice of public hearing, the request of Susan Ballard Beaty to rezone a tract of land located at 1145 Shady Rest Road came on to be heard.

The applicant was not present.

REZONING (Continued)

Mr. Bennett stated this site is 1.5 acres and the request is for C-2 for a dog kennel. He stated both the Staff and Planning recommend denial on the basis that this is a spot commercial zone; that the property is entirely surrounded by R-1 with no other commercial within the immediate area at all. He stated the request does not meet any of the criteria for commercial zoning.

On motion of Councilman Littlefield, seconded by Councilman Taylor,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 1145 SHADY REST ROAD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO C-2
CONVENIENCE COMMERCIAL ZONE**
was denied.

REZONING

2004-038: Harold Stewart

Pursuant to notice of public hearing, the request of Harold Stewart to rezone a tract of land located at 7312 Noah Reid Road came on to be heard.

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

Mr. Bennett stated this request is for a duplex development and as with previous requests both the Staff and Planning recommend against the zoning change on the basis it is a spot zone and entirely surrounded by R-1 zoning and single-family residential development.

Harold Stewart stated that the property is adjacent to the Reach Out Ministry and they had to get zoned to whatever it is now. He stated all over Chattanooga he sees property that is R-1 and then R-2 and then something else. He stated he has owned this property for several years; that he has two children and would like to build a duplex for them. He stated the City would get more tax money for it.

Councilman Benson stated there was much opposition at the Planning hearing.

Mr. Stewart indicated there was no one at planning other than himself.

Councilman Benson asked if anyone was present from the Reach Out ranch.

REZONING (Continued)

Mr. Bennett stated that he did not recall any of them being present at the meeting, however there was a petition.

Councilman Littlefield stated that he had been contacted by a number of people by letter.

Mr. Bennett stated the Staff recommended denial because this is a spot zone as there is no other R-2 zoning or developments, only single-family within the area.

Councilman Littlefield expressed surprise that there is no one present in opposition; that the request failed at Planning and Staff recommended denial, also. He stated that he received very anxious calls from people throughout the area not wanting to see the beginning of a proliferation of duplexes on vacant property that exists in the area, no new duplexes. He stated that has been a problem in neighborhoods throughout Chattanooga as many neighborhoods have gone through the process of painfully rezoning the entire neighborhood from R-2 to R-1 just to prevent that from happening. He stated that he is certain no one wishes Mr. Stewart ill will as far as building a place for his children and indicated that the site looks large enough to make two lots.

Mr. Stewart stated that there could be four houses built on it, however that is not his plan.

Councilman Littlefield stated that the property could be used very adequately by subdividing it in the way the rest of the neighborhood is developed. He stated that he is familiar with Reach Out and remembers when it was rezoned as there was a lot of discussion regarding it years ago. He stated that it has a very unique use, serves as a religious retreat and does not fall within any particular zoning category we have; that it was a very special type zoning devised to permit it to develop. He stated when Reach Out has events it brings in thousands to Chattanooga and exists quietly in the neighborhood. He stated he does not see any option, as this is a spot zone in the middle of R-1. He **made the motion to deny the request; Councilman Benson seconded the motion.**

Councilman Lively stated even if there is no opposition it definitely is spot zoning. He stated in reference to the duplexes that are there now they were probably grandfathered in before the area was part of the City.

Mr. Stewart responded "not particularly"; that there are older homes on Pine Ridge and there are duplexes and quadraplexes within a three-block area.

REZONING (Continued)

Councilman Lively stated those were probably there from when they were part of the county. He indicated his support of the motion to deny.

Mr. Stewart stated when he went to Planning he was told he could take the matter to court and would probably lose; that this does not "sound" right to him.

Councilman Littlefield expressed that it didn't sound right to him, either; that he cannot believe a building inspector would ignore the fact that duplexes were built in R-1.

At this point Councilman Lively "called for the question" on the motion to deny.

On motion of Councilman Littlefield, seconded by Councilman Benson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, KNOWN AS THE
ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED
AT 7312 NOAH REID ROAD, MORE PARTICULARLY DESCRIBED HEREIN,
FROM R-1 RESIDENTIAL ZONE TO R-2 RESIDENTIAL ZONE**
was denied.

REZONING

2004-045: Matthew T. Hamilton

Pursuant to notice of public hearing, the request of Matthew T. Hamilton to rezone a tract of land located at 6522 Middle Valley Road came on to be heard.

The applicant was present; opposition was in attendance.

Mr. Bennett stated that the applicant has requested deferral of this matter but did not indicate how long.

Councilwoman Robinson asked if the applicant is present and indicated that persons from the neighborhood were in attendance.

Matthew Hamilton stated that he is basically asking for more time; that he has hired an engineer to help with plans and would like to meet with the neighborhood and work it out to get this approved. He stated that he is asking for continuance and time to get with those from the neighborhood that are in opposition.

REZONING (Continued)

Chairman Franklin inquired as to the amount of time needed.

Mr. Hamilton stated that it is hard to set a number of days; that the engineer was to start this week, however with weather conditions he does not know.

Chairman Franklin asked if four weeks would be long enough.

Councilman Lively suggested that during the four-week interim that Mr. Hamilton look at another zone; that his request for C-2 in a residential area "will not fly".

Mr. Hamilton stated this is on the main road and in this area the only development in the past has been commercial; that there is no residential except multi-housing. He stated no one builds houses in this area; that duplexes, townhouses, modular homes and various shops surround it. He stated this would be a low-density development and not an eyesore; that it would be less of an eyesore than residential. He stated there is no traffic on Shelby Circle and indicated that he has more signatures in support of this request than those in opposition have on their petition.

A person with those in opposition stated that they had given Mr. Hamilton a month to work this out.

Councilman Pierce asked if this request would be heard tonight or is there a motion to table.

Chairman Franklin indicated that no motion had been made to table the matter.

Councilman Benson stated that he did not think the opposition would want to come back in four weeks; that the matter should be heard and then vote it down or defer.

Charles Knight of 1609 Shelby Circle stated that he delivered a copy of the petition to each Council member on Monday morning which describes the residents' concerns and was signed by 18 homeowners on Shelby Circle. He stated that they specifically oppose this, as it is pure spot zoning; that it would be a C-2 plot of land surrounded by R-1 and R-2 property, is in the 100-year flood plain and there is a problem with drainage. He stated this property is a drainage basin for the entire Shelby Circle area and there are severe water problems. He stated the entry into the property would be off Shelby Circle and would be a problem; that if this is rezoned C-2 the property could be sold and go into any one's hands. He requested that the Council deny this.

REZONING (Continued)

Dorothy Davis of 6512 Middle Valley Road stated that she lives right next door to this; that the land is so much more drenched with water than 30 years ago due to the buildup of property around them. She stated drainage is terrible and is worse than ever and feels the same way as the previous speaker. She stated that she and her husband had a stormwater engineer come out five years ago about the drainage problem and the City issued a work permit on it and they are five years behind on drainage ditches and still have not gotten it done, indicating just how bad it is. She stated when it rains there is water in their front yard; that they removed four trees five years ago in an effort to help the situation however that did not alleviate the problem. She stated the drainage problem is due to the buildup of property around them and water comes onto her lot. She stated there is nowhere for the water to go and it will be an even worse drainage problem if more building occurs.

Mr. Hamilton stated that the issue is water runoff and indicated that he is going to improve the conditions with an engineer. He stated if business goes in there he would need to grade the property and would bring in enough soil to divert it back there; that if houses were built he would have to raise it up more. He stated R-1 would cause a major problem for drainage; that with an engineer he proposes to put in ditches to collect water that runs off from the houses. He stated the water problem has been addressed and for them to say water will cause flooding is an untrue statement and should not be recognized.

Councilman Page pointed out that he has been in communication with Mr. Hamilton and the neighborhood and was really hoping Mr. Hamilton would come in and give a different perspective of what might happen. He stated it is his thought this is an example of how not to develop. He stated that this is one that does not "fit" with the neighborhood and it is a spot zone, would create flooding, increase traffic, there is inadequate design and this is not way the way to develop in Chattanooga. He stated he would have to recommend that this request be denied.

Mr. Hamilton inquired as to whether it would be possible to bring this up again in the future. The response to his question was that he could reapply in nine months.

On motion of Councilman Page, 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 AT 6522 MIDDLE VALLEY ROAD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE AND R-2
RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE**
was denied.

REZONING

2004-046: Ken DeFoor

Pursuant to notice of public hearing, the request of Ken DeFoor to rezone a tracts of land located at 7503 and 7507 Shallowford Road came on to be heard.

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

Mr. Bennett stated that the request is for RT/Z for a town home development; that there is other similar zoning within the area including R-4, RT-1, as well as RT/Z. He stated the pattern of development has been well established in this area and both Staff and Planning recommend approval subject to conditions to ensure a 20-foot buffer along the northern property line.

Councilman Benson stated this is a good example of how maximum use of land can be worked out so it does not harm or diminish adjacent land. He expressed thanks to Mr. DeFoor for taking the parcel of land, the "triangle" as it has been called, indicating his remembrance of how the neighborhood had been "screaming" and arguing over this. He stated the landowners came out very well and so have the neighbors; that this was done only by what Councilman Page had mentioned previously by working with the neighborhood. He commended Mr. DeFoor for making accommodations and putting this property back on the tax rolls without harming the property of the adjacent land.

On motion of Councilman Benson, 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 7503 AND 7507 SHALLOWFORD ROAD, MORE
PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-
T/Z RESIDENTIAL TOWNHOUSE/ZERO LOT LINE ZONE, SUBJECT TO
CERTAIN CONDITIONS**

passed first reading.

REZONING

2004-052: Joseph Ryan Cooke

Pursuant to notice of public hearing, the request of Joseph Ryan Cooke to rezone a tract of land located at 1401 Dodson Avenue came on to be heard.

The applicant was present; opposition was in attendance.

REZONING (Continued)

Mr. Bennett stated this request is for a gas station on over 1.5 acres; that both Staff and Planning recommend approval of the C-2 for the M-2 portion of the property but not for the R-2 section; that he does not believe the applicant has a specific proposal for the R-2 portion at this point. He stated the City Traffic Engineer is requesting an additional setback on Dodson Avenue, as well as a turning lane.

Joe Cooke was present representing the owner of the property and stated that there is no specific use for the rear of the property as they are waiting to hear from the railroad as to what they want to do. He stated there is an easement through the property and are dealing with them currently, after which time they will have a more specific use for the back and left sides of the property.

Perry Underwood stated that he owns property to the east of this property at 1400 Bradt and was unable to make the Planning Commission meeting. He stated that he received a letter in the mail and would like to bring up concerns. He stated he has a very simple issue anyone would have when there is convenience commercial at the end of a corner; that it is his belief there would be a lot more traffic, parking on the sidewalk, a concern regarding lighting, noise, security and debris. He stated there are children on this property on the corner from Wilcox and Bradt; that there would be an increase in traffic along that property line. He stated something would need to be done about lighting and noise and there will be more debris at that corner. He asked if he could get some help with some type of fencing that could be placed there.

Chairman Franklin indicated his uncertainty with regard to landscaping as the railroad is still there.

James Moore stated that Mr. Cooke has worked with the neighborhood and they are in total agreement with this; that the area is deprived of any type of grocery/convenience store and really thinks this would be an asset to the neighborhood. He stated they support this 100%; that they are in agreement with Planning as to when the decision is made as to what the other property would be used for, however for the current plan they are in agreement.

Councilman Pierce asked the applicant and owner if they were aware they would not be able to sell alcoholic beverages due to the playground nearby.

Mr. Cooke responded "no"; that that was not brought to their attention.

Councilman Pierce stated that alcoholic beverages are normally sold at convenience stores, however it will not be allowed within 200 feet of this property line due to the adjacent playground.

REZONING (Continued)

City Attorney Nelson clarified the footage requirements for businesses that sell alcoholic beverages for on-premise and off-premise consumption.

Mr. Cooke stated that they would have to deal with the requirements of the City's ordinance. He stated as far as traffic is concerned, they indicated a month ago that they are amenable to a cut-in. He stated they initially contested it but agreed to it.

Councilman Taylor inquired as to the request from Mr. Underwood regarding the buffer. He asked if the applicant would be able to look at some type of noise buffer.

Mr. Cook stated they are really at the beginning of the process; that the specific uses of the property upon purchase is not only for a gas station but a larger development that would include a Save-A-Lot coming in. He stated if the railroad easement cannot be settled the owner would have no use for the property whatsoever, not even a gas station. He stated their attorney is working with the railroad currently and if it is not resolved there would be no development of the property.

Mr. Underwood asked if a wooden fence could be a point of division as there will still be a certain amount of traffic and noise.

Mr. Cooke stated they would consider anything they have to do; that it is a bit premature, now, and they are not sure it will work but will take every precaution that noise and traffic would not be an issue for the neighborhood. He stated the abandoned road on the backside is being used as a dumping ground for garbage and they plan to take care of it. He stated if the back area can be utilized they plan to block it off so traffic cannot go through to leave trash.

Councilman Pierce stated what he is hearing is being laid out in words and the proposal is conditioned on whether they get the railroad easement; that the whole property is conditioned on that and he knows it is not an easy task to get an easement from the railroad. He asked if it would be better to table the matter until they get the easement and by that time something else may come up.

Councilman Hakeem asked City Attorney Nelson if C-2 would be more restrictive than M-2. City Attorney Nelson responded M-2 is pretty much wide open.

Councilman Hakeem asked if the applicant would be "tightening their option" if they go ahead with the C-2. City Attorney Nelson responded "yes".

REZONING (Continued)

Councilman Hakeem asked if C-2 would be more compatible than M-2 in a residential area.

Mr. Bennett responded "not necessarily"; that M-2 does not abut residential. He stated all abutting properties in all directions are already C-2; that this would not be extending the C-2 zone further into the residential area as it is already there.

Councilman Taylor again expressed concern regarding the buffer and asked if it would be added later.

Mr. Cooke stated that they are not at a point to begin developing. He stated that they would like to continue with the gas station even if the railroad issue is not resolved. He stated initially when they came in the suggestion was only to rezone the front and side to C-2. He stated they would like to go ahead and move forward with the C-2 and allow the engineer to continue.

Councilman Taylor stated in order to do that, that solves the rezoning piece and again inquired as to the buffer.

City Attorney Nelson stated that it would have to be put up on the railroad side.

Councilman Taylor stated that he has concern that if there is a gas station there will be noise and wants to make sure the buffer is part of this so it can address the noise problem.

Mr. Underwood asked if there is the possibility that a buffer would be put up possibly on his side of the property line.

Mr. Bennett stated they would not be able to make that a condition on someone else's property line; that conditions could only be placed on the property that is being considered for zoning.

Mr. Benson expressed that he is very familiar with this property as it was the former Bill Penney Marine Center and there were more houses then than now. He stated he cannot see how this could be a noise factor to Mr. Underwood as this is a big lot from where he lives.

Mr. Cooke stated it is 300 feet on Wilcox and 260 feet on Dodson Avenue.

Councilman Benson asked how far from this building is Mr. Underwood's home.

Mr. Cooke stated that they are as close to Dodson as the ordinance allows; that once the easement drops it is 65 feet from Dodson and an 80-foot storefront.

REZONING (Continued)

Mr. Benson stated this has always been commercial property even when it was solid residential. He wanted to make sure the applicant and owner understood they would not be able to sell beer.

Mr. Cook responded "yes, sir".

At this point Councilman Benson made the motion to approve the request.

Councilman Pierce expressed that he was still leery about the development and the issue of the railroad easement. He stated he does not know if the community knows that if this C-2 development is not utilized something else could come in. He stated that it is his thought a project of some kind needs to be here; that he supports this but wants to make sure the community understands what happens if this person does not come through. He asked Mr. Watson if he is satisfied with the C-2 and no conditions.

Mr. Watson stated that the condition was that the neighborhood discussed the issue of beer and liquor and talked with the owner; that they agreed they would go with what he said he would build, which is a gas station.

Councilman Pierce stated if the applicant does not build they would still be the zoning and someone else can come and do what they want in C-2.

Mr. Moore stated when the neighborhood residents discussed this issue with the owner they were under the impression the gas station would be built; that they were not aware of the "if"; that what they talked about was going to be more business like a Dollar General if he got the railroad property. He stated as of today it was their understanding that the gas station was going in.

Councilman Hakeem asked for clarification with regard to the rezoning and inquired as to the "if's".

Mr. Cooke stated when they originally approached the Planning Commission they made reference to the issue of not zoning the back side because they were waiting for all the drawings and later suggested an alternate method of only rezoning the M-2 to C-2; that they are not sure at this point whether the development would be built if they are not able to obtain the railroad easement. He stated engineering is a big factor; that there is still enough room to develop to the owner's desire.

Chairman Franklin asked if the scenario is that of the appearance of a strip mall.

REZONING (Continued)

Mr. Cooke responded that that is a possibility for the back side; that the Save-A-Lot was to be one of them.

Chairman Franklin asked if this would be in addition to the gas station. Mr. Cooke responded "yes".

Councilman Page stated that he did not see any other solution other than deferral indefinitely until the applicant and owner work through the resolution alternatives. He stated in looking at the buffer zones and what will be done, the desire of the Council is that the project be developed; that any one in development would recognize the propensity for doing business. He stated in deferring the matter it would allow the applicant to come back at any time after a decision has been received from the railroad. At this point he **made the motion to defer indefinitely; Councilman Taylor seconded the motion.**

Councilman Taylor stated that he is in favor of the development and does not think the Council is against it. He stated that there is more work that needs to be done and it is hopeful Mr. Cooke could work with the railroad and come back with the agreement of the neighborhood for a more definite plan.

Mr. Cooke stated that the landowner might purchase the easement for \$100,000.

Councilman Pierce stated that Mr. Cooke has the support of the neighborhood; that this is a matter of getting the plans together, finalizing them and moving on.

Councilman Hakeem stated that the Council in general supports the development; that one of the concerns the Council has is that this takes on the tone of being speculative and clarity is needed as to what is planned. He stated in regard to the easement it is his thought the applicant could get some type of letter of intent or something of that nature to purchase if the zoning goes through. He stated at that juncture, there would be no problem with the zoning and obtaining it.

City Attorney Nelson stated that a specific date is needed rather than deferring the matter indefinitely; that the neighborhood would need to know when to come back.

Mr. Cooke stated that it is hoped thirty days would be long enough or he could appear in thirty days and have another date set at that time.

REZONING (Continued)

On motion of Councilman Page, seconded by Councilman Taylor,

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 1401 DODSON AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-2 LIGHT INDUSTRIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS

was deferred until May 18, 2004.

REZONING

2004-056: Tony Cobble

Pursuant to notice of public hearing, the request of Tony Cobble to rezone a tract of land located at 1906 Gunbarrel Road came on to be heard.

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

Mr. Bennett stated that the applicant has requested withdrawal.

On motion of Councilman Pierce, seconded by Councilman Taylor,

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 1906 GUNBARREL ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-4 SPECIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE

was withdrawn at the request of the applicant.

PRELIMINARY PUD

2004-023: Regency Development, Inc.

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

Mr. Bennett stated that a preliminary planned unit development (PUD) has to come back for review to the Planning Staff and then to this body. He stated the applicant is requesting an R-1 PUD on thirteen acres for a proposed townhouse dwelling for a density of 48 units, which is in keeping with the character of the area. He stated the traffic generated would be significantly less than a similar size for a single-family home.

PRELIMINARY PUD (Continued)

Councilman Page stated that he received a letter from the neighborhood and expressed appreciation to the developer for meeting with the residents of the area. He asked the developer if he had received a copy of the letter from Karen Dale and whether he is in agreement with the things pointed out during the meeting. He stated the letter was sent to him (Page) and outlines numerous agreements that the developer made with the neighborhood of Sandwich Road, Esquire Road and the Branch subdivision.

The developer for the project indicated that he did not receive the letter. At this point, Councilman Page gave the developer a copy of the document.

Later in the meeting, Councilman Page indicated that the developer had an opportunity to peruse the document and is in agreement with most of the things indicated in the letter. He expressed thanks to the developer for meeting with the neighborhood and working out most of the problems and wished him luck with the preliminary PUD.

Councilman Pierce asked if the information should be incorporated as conditions to the PUD.

City Attorney Nelson stated that the information contained within the communication is an understanding between the property owner and the residents and not a part of the Resolution.

Councilman Page stated that there were errors in the minutes of the meeting and it is his thought they would be worked through in the final PUD plan.

City Attorney Nelson suggested that Barry Bennett and Admin. McDonald have copies of the document, as well as the Clerk of the Council for the record.

On motion of Councilman Page, seconded by Councilman Taylor,

A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PROPOSED PLANNED UNIT DEVELOPMENT KNOWN AS IRISH KNOLL PLANNED UNIT DEVELOPMENT, ON A TRACT OF LAND LOCATED IN THE 6600 BLOCK OF SANDSWITCH ROAD, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

was adopted.

EMINENT DOMAIN

Councilman Hakeem stated Resolutions (b), (c) and (d) were discussed in today's Public Works Committee and indicated that each reference the same project; that approval is recommended. He stated that it was the opinion of the Committee that Public Works has attempted every method possible to resolve this and as a last resort had to go to this process of eminent domain.

On motion of Councilman Lively, seconded by Councilman Benson,
A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST GENE E. NIXSON FOR A STORMWATER EASEMENT LOCATED AT 1703 LONG STREET, TRACT NO. 8, MORE PARTICULARLY DESCRIBED HEREIN, RELATIVE TO THE SOUTHSIDE GRAYWATER COLLECTION-17TH STREET TRUNK PROJECT
was adopted.

EMINENT DOMAIN

On motion of Councilman Benson, seconded by Councilman Littlefield,
A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST AMANDA WALKER FOR A STORMWATER EASEMENT LOCATED AT 18TH STREET, TRACT NO. 16, MORE PARTICULARLY DESCRIBED HEREIN, RELATIVE TO THE SOUTHSIDE GRAYWATER COLLECTION-17TH STREET TRUNK PROJECT
was adopted.

EMINENT DOMAIN

On motion of Councilman Hakeem, seconded by Councilman Littlefield,
A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST SHELLEY J. MOORE FOR A STORMWATER EASEMENT LOCATED AT 18TH STREET, TRACT NO. 18, MORE PARTICULARLY DESCRIBED HEREIN, RELATIVE TO THE SOUTHSIDE GRAYWATER COLLECTION-17TH STREET TRUNK PROJECT
was adopted.

TEMPORARY USE

On motion of Councilman Hakeem, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING J. ROBERT MCKENZIE TO USE TEMPORARILY THE CITY'S RIGHT-OF-WAY LOCATED AT 230 FRAZIER AVENUE TO INSTALL BALCONIES, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

GRANT

On motion of Councilman Littlefield, seconded by Councilman Hakeem,
A RESOLUTION AUTHORIZING THE DIRECTOR OF THE OFFICE OF PERFORMANCE REVIEW TO APPLY FOR A GRANT FROM THE TENNESSEE OFFICE OF CRIMINAL JUSTICE PROGRAMS, EDWARD BYRNE MEMORIAL GRANT PROGRAM, IN A TOTAL AMOUNT NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) FOR THE PURPOSES SPECIFIED HEREIN, WHICH, IF AWARDED, WILL REQUIRE LOCAL MATCHING FUNDS OF ONE-THIRD (1/3) OF THE GRANT FUNDS AWARDED
was adopted.

OVERTIME

Overtime for the week ending April 9, 2004 totaled \$8,480.34.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- **CLAYTON E. HARWOOD** – Suspension (one day without pay), Crew Supervisor, Sr., Citywide Services, effective April 8, 2004.
- **WALTER D. YOUNG** – Return from Military Leave, Crew Worker, Sr., Citywide Services, effective April 7, 2004.
- **DAVID E. PARROTT** – Voluntary Demotion and Transfer, Crew Worker, Citywide Services, Pay Grade 3/Step 8, \$22,885.00 annually, effective April 14, 2004.

CHATTANOOGA POLICE DEPARTMENT:

- **PHILLIP WADE HOLMES** – Retirement, Property Service Clerk, effective April 1, 2004.
- **NATHAN BATES** – Resignation, Communications Officer, effective April 14, 2004.
- **RITA CRUTCHER** – Resignation, Communications Officer, effective April 16, 2004.

PERSONNEL (Continued)

- **CHRISTOPHER SMITH** – Resignation, Police Officer, effective April 20, 2004.
- **PAIGE A. KIDWELL, VANESSA D. TAYLOR** – Hire, Communications Officer, Pay Grade 11/Step 1, \$26,402.00 annually, effective April 16, 2004.

PURCHASES

On motion of Councilman Hakeem, seconded by Councilman Taylor, the following purchases were approved for use by the Public Works Department:

OSBURN ASSOCIATES (Lowest and best bid)
R0075517/B0001413

8" Black Pipe

\$14,650.00

KAZMIER & ASSOCIATES (Sole source)
R0065445

Integrated Stormwater Monitoring Equipment per TCA 6-56-304

\$30,355.00

PURCHASES

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

MEDTRONIC PHYSIO-CONTROL (Single source)
R0054822/B0001455

Automated External Defibrillators per TCA 6-56-304-2

\$19,006.00

PURCHASES (Continued)

CHATTANOOGA FIRE PROTECTION (Lower and better use)
R0054816/B0001332

Ansul Purple K. Extinguishers

\$12,479.60

ACKNOWLEDGEMENT OF RETIREMENT

Chief Coppinger acknowledged the retirement of Captain Michael Kennedy after twenty-five years of distinguished service. He stated Captain Kennedy's retirement was reported at last week's Council meeting and he wanted it to be a matter of record that his years of service were recognized and appreciated.

COMMITTEES

Councilwoman Robinson stated that the **Parks and Recreation Committee is scheduled to meet on Tuesday, April 20 at 4 p.m.**

Councilman Littlefield scheduled a meeting of the **Legal and Legislative Committee for Tuesday, April 20 at 3 p.m.**

Councilman Hakeem scheduled a meeting of the **Public Works Committee for Tuesday, April 27 at 4 p.m.**

LISA DIXON

City Attorney Nelson stated that Council members have received a complaint against a police officer that was off duty. He stated the person registering the complaint is asking for a hearing before the Council. He stated that he does not know of any provision for that.

Councilman Benson indicated that he read the communication and that the matter should go to Internal Affairs for an investigation of their reaction.

At this point it Ms. Dixon indicated her presence. She came forward and stated that she lives at 457 Dodson Avenue in the Dodson Avenue Apartments. She stated her son is 19 years old and indicated that she has notified Internal Affairs about the matter and has received a telephone response from them wherein they noted that they needed more information to proceed.

LISA DIXON (Continued)

Ms. Dixon stated her only reason for coming tonight was to let someone else hear her, as she does not have much experience in matters like this; that she is trying to be heard. She stated this incident has been going on for quite awhile, now, which has resulted in her 19 year old son being jailed on stalking, assault, trespassing and burglary charges. She stated the apartment in question is not far from her home and there is a young lady involved that she understands is this officer's niece. She stated this is a personal matter that has turned legal and feels there has been gross misconduct on behalf of this officer. She stated he has abused his authority and this is the situation her son is in. She expressed thanks to the Council for hearing her.

Councilman Taylor asked if Ms. Dixon's son is in prison without bond.

Ms. Dixon stated at the time he did not have a bond set, but has one now that is extremely high and she cannot get him out. She stated that they both work but there is no way to get him out at the high rate of bond.

Chairman Franklin inquired as to the amount of the bond.

Ms. Dixon stated that the four charges have a bond of 50,000 each and she would need \$7,000 to get him out. She stated the officer came to her home in March and practically told her what she needed to do with her son. She stated that the young lady comes to her house every morning and her son has not stalked this girl; that she comes to her house, however, her mother has not contacted her at all to say she does not want her son to see her daughter. She stated it is the uncle that is creating the problem because her son has not stalked this girl.

Councilman Pierce asked Ms. Dixon if she has talked with Internal Affairs.

Ms. Dixon responded "yes"; that she has information to take to them tomorrow. She stated this happened last Thursday evening and she was not been able to do anything due to the Easter weekend. She stated her son has not been in any trouble before, has not been to Juvenile Court and has no record.

Chairman Franklin expressed appreciation to Ms. Dixon for bringing the matter to the Council's attention.

Councilman Benson asked Ms. Dixon if the officer was on duty.

LISA DIXON (Continued)

Ms. Dixon responded "no"; that the officer is at this apartment often. She stated that she is not sure if he coming to visiting with his sister; that the sister was not at home this time. She stated the officer was in his own clothing and in his own vehicle.

Councilman Benson asked if the girl is the officer's niece.

Ms. Dixon stated that she is hearing strange things; that one minute he is an uncle and the next he's a family friend.

Councilman Benson stated Internal Affairs should report to the Council, first.

Chairman Franklin again thanked Ms. Dixon for her presence.

ADJOURNMENT

Chairman Franklin adjourned the meeting of the Chattanooga Council until Tuesday, April 20, 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)**