

**City Council Building
Chattanooga, Tennessee
September 13, 2005
6:00 p.m.**

Vice Chairman Pierce called the meeting of the Chattanooga Council to order with Councilmen Bennett, Benson, Franklin, Hakeem, Page, Rico and Rutherford present; Chairman Robinson was out of the country on official 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, Councilman Rico gave invocation.

MINUTE APPROVAL

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

PRELIMINARY PUD

Councilman Page asked that Resolution 7(c) be moved forward on the agenda; Councilman Franklin seconded the motion; the motion carried.

2005-121: Ten Tex Investments, LLC

There was no opposition in attendance.

Councilman Page stated there has been difficulty with this PUD for some of the neighborhood residents regarding Dalemont Lane. He stated the representatives of the neighborhood met with the developer and agreed to include in the approval of the PUD there would be *no access to Dalemont Lane except for equipment to complete grading and site preparation or six (6) months, which ever occurs first*. He asked that this condition be included in the development of the PUD.

PRELIMINARY PUD (Continued)

Councilwoman Rutherford asked if there were any other plans and inquired as to the exterior and other aspects of the development. When she did not receive a response, she guessed that the answer was "no".

Councilman Hakeem noted that a gentleman representing the applicant was present.

Councilwoman Rutherford again asked if there is a drawing that reflects what the exterior will look like.

The gentlemen responded "no, just the plat".

Jerry Pace, Director of Development Services with the Regional Planning Agency (RPA), stated that this is the preliminary PUD request which reflects the lots and location of structures.

On motion of Councilman Page, seconded by Councilman Hakeem,

A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PROPOSED PLANNED UNIT DEVELOPMENT, KNOWN AS DREAM OAKS TOWNHOMES PLANNED UNIT DEVELOPMENT, ON TRACTS OF LAND LOCATED AT 6620, 6634 AND 6644 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.

CLOSE AND ABANDON

MR-2005-108: Robmer Partners

On motion of Councilman Hakeem, seconded by Councilman Franklin,

AN ORDINANCE CLOSING AND ABANDONING AN UNOPENED ALLEY LOCATED BETWEEN THE 500 BLOCKS OF WEST 20TH AND WEST 21ST STREETS, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITION

passed second and final reading and was signed in open meeting.

CLOSE AND ABANDON

MR-2005-127: NL Ventures V Mercer, LP

Adm. Leach stated that a representative for the applicant is present and has requested that this matter be postponed one week so that the other case discussed earlier in Public Works Committee can "catch up" with it.

City Attorney Nelson stated that the other would be presented for first reading on the twentieth and if the matter is postponed a week it would have to be amended to make it effective immediately so they both can be finished by the September 30 deadline.

Vice Chairman Pierce suggested that the matter be tabled two weeks so the other can "catch up" and both passed at the same time.

Phillip Whitaker, representative for the applicant, responded "that would be fine".

On motion of Councilman Hakeem, seconded by Councilman Franklin,
AN ORDINANCE CLOSING AND ABANDONING OF APPROXIMATELY SIX FEET (6') OF CITY RIGHT-OF-WAY ALONG DIXIE CIRCLE, ADJACENT TO MERCER STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP AND DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was tabled two weeks (September 27).

CLOSE AND ABANDON

MR-2005-129: McCallie School c/o Tara L. Maner, P.E.

On motion of Councilwoman Rutherford, seconded by Councilman Hakeem,
AN ORDINANCE CLOSING AND ABANDONING PUBLIC SANITARY SEWER LINE MF #563 LOCATED IN THE ABANDONED 2900 BLOCK OF KIRBY STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE
passed second and final reading and was signed in open meeting.

AMEND CITY CODE

Councilman Hakeem stated Ordinances (a) and (b), as well as Resolution (a) were discussed in Public Works Committee and approval is recommended. He stated adoption of the National Electrical Code as the official Electrical Code of the City of Chattanooga is something that is done every three years in regard to regulation changes as they apply to the industry and safety.

On motion of Councilman Hakeem, seconded by Councilman Benson,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, SECTION 14-2, IN ORDER TO ADOPT THE NATIONAL ELECTRICAL CODE OF 2005 AS THE OFFICIAL ELECTRICAL CODE OF THE CITY OF CHATTANOOGA AND TO AMEND SECTION 14-3, REGARDING CERTAIN AMENDMENTS TO THE NATIONAL ELECTRICAL CODE AND TO REVISE CERTAIN LANGUAGE UNDER SECTION 14-15 REGARDING NON-REFUNDABLE FEES

passed first reading.

AMEND ZONING ORDINANCE

On motion of Councilman Hakeem, seconded by Councilman Franklin,
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, BY AMENDING ARTICLE V, SECTION 603(11), RELATIVE TO WORKSHOP TYPE USES IN THE C-2 CONVENIENCE COMMERCIAL ZONE

passed first reading.

REZONING

2005-092: DL Enterprises

Pursuant to notice of public hearing, the request of DL Enterprises to rezone a tract of land located at 5540 Highway 153 came on to be heard.

The applicant was present; there was no opposition.

Mr. Pace stated that the Clerk read Planning's version of this request which indicates only the front portion of the property would be rezoned. He stated that he wanted to make sure everyone understands only the front 20 feet of the northern portion is being rezoned.

REZONING (Continued)

Councilman Page stated that he has been advised this was deferred a week due to a site plan, which has now been submitted. He stated there was a question regarding a billboard which was opposed by the neighborhood.

On motion of Councilman Benson, seconded by Councilwoman Rutherford,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A PORTION
OF A TRACT OF LAND LOCATED AT 5540 HIGHWAY 153, MORE
PARTICULARLY DESCRIBED HEREIN, FROM R-4 SPECIAL ZONE TO C-2
CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN
CONDITIONS**

passed first reading.

REZONING

2005-132: Kimberly E. & William T. Wade, Jr.

Pursuant to notice of public hearing, the request of Kimberly E. & William T. Wade, Jr. to rezone a tract of land located t 2322 Center Street came on to be heard.

The applicant was present; there was no opposition.

Councilman Benson asked if there is a site plan for this request.

A representative for the applicant stated that they have a preliminary site plan and it was recommended by the City Traffic Engineer to include a cul-de-sac on Center Street.

Councilman Benson stated that takes this out of the speculative area.

Mr. Pace responded "yes".

On motion of Councilman Benson, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 2322 CENTER STREET, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO C-2
CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN
CONDITIONS**

passed first reading.

REZONING

2005-134: City of Chattanooga c/o Regional Planning Agency

Pursuant to notice of public hearing, the request of the City of Chattanooga c/o Regional Planning Agency to rezone a tract of land located at 3821 Brainerd Road came on to be heard.

There was no opposition in attendance.

Councilwoman Rutherford stated that she wanted to make sure the record reflected that the applicant is willing to specify in the zoning that this would only apply to offices and day care centers, noting that property owners agreed to this.

City Attorney Nelson stated that we do not want to get the property owner's permission because that becomes contract zoning, which is illegal. He stated we need to know if there is any objection by the owners.

Councilwoman Rutherford stated there is no objection to simply allowing offices and day care centers.

On motion of Councilwoman Rutherford, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 3821 BRAINERD ROAD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-4 SPECIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**

passed first reading.

REZONING

2005-136: Michael J. Steward, Agent for owner Martin Shofner, et. al.

Pursuant to notice of public hearing, the request of Michael J. Steward, Agent for owner Martin Shofner, et. al., to rezone a tract of land located at 6390 Lee Highway came on to be heard.

The applicant was present; there was no opposition.

Michael Steward of Chambliss, Bahner and Stophel was present representing the owners Martin Shofner as well as Lou Conner. He distributed information relating to the T-Mobile site and the neighborhood along Highway 153.

REZONING (Continued)

Mr. Steward stated his client, Lou Conner, owns property located on the left side of the street, basically the exit along Highway 153. He stated what was proposed in order to allow the T-Mobile Call Center to locate was that he would swap property; that property on the left would be swapped for the property on the front located along Lee Highway. He stated the Shofners, who own property, would seek the rezoning application to allow Mr. Conner to realize the value of his property to allow commercial uses in front along Lee Highway. He stated at this time, his client does not know what uses will be on the property other than he knows it will be commercial and it would be a first class facility and not be any offensive use. He stated his client is in discussion now with T-Mobile and the others to determine the exact use of the property, but wanted to have the property rezoned as part of the deal. He stated in considering this he has talked with people within the City and got assurances from the former and current Mayor and Planning staff they would be supportive of the land swap and have the front property rezoned. He stated the packet distributed shows letters from the Mayor, as well as former Mayor, County Mayor and Public Works relating to the issue regarding the entrance and ingress and egress.

Councilman Hakeem stated setting aside all Mr. Steward has said, he inquired as to whether there are a series of conditions associated with this. He clarified that he is not asking Mr. Steward if he agrees with them but whether he is knowledgeable of them.

Councilman Benson stated before we vote on this we have to recognize this is speculative zoning and this Council, in recent years, has denied all speculative requests. He stated he does not know who assured Mr. Steward this would go through; that it has to go through the Council. He stated that Mr. Steward mentioned some people, but they are not the ones who make the decision; that it is a matter of principle as well as precedence. He stated speculative zoning is very risky and contrary to the principle of smart growth and it is his thought RPA would have told him that. He stated speculative zoning exposes adjacent property owners to predatory developments and activities which can destroy surrounding property values.

Councilman Benson stated to zone this property from R-4 to C-2 without any specifying uses or qualifying conditions would be irresponsible action and one he does not believe this Council would approve, even though some might say a change to most C-2 activity is appropriate in this area. He stated adjacent property owners would be exposed to an unknown development which could diminish or literally destroy the value of their properties.

REZONING (Continued)

Councilman Benson stated we need the Call Center, we want economic growth and we want to make it work, but not this back door approach. He stated that he wants to put it through the front door and that he has a solution to it. He stated it is his thought the solution would provide needed protection to adjacent land owners that would give some protection from the "pig in the poke" zoning problems. He proposed that conditions be attached to this rezoning, noting that way it would be removed pretty much from speculative. He stated it is his thought the Council expects developers to show site plans as it qualifies what will be done and takes into consideration how they will affect adjacent areas.

At this point, **Councilman Benson** read the proposed conditions: *(1) All points of ingress and egress shall be reviewed and approved by the City Traffic Engineer; (2) All lighting is to be directed away from any abutting residential zones (excluding R-4) and be designed to reflect downward so as not to create or add to light pollution; (3) The following uses shall be prohibited: convenience stores, service stations, adult-oriented establishments or teen clubs; restaurants with drive-thru facilities; car washes; automobile dealerships, used car lots or any use with outdoor storage or display; outdoor amusements, billboards; mini-warehouses; and travel trailer camps.* At this point he **made the motion to approve the request on first reading contingent upon the three major conditions.**

Councilwoman Rutherford stated that this request is located in her district and noted that she is familiar with much of what her colleague (Benson) has said; that the Council does try to protect neighborhoods. She stated that she has some concerns with some of the prohibited businesses as this is in the "heart" of Lee Highway and 153 and there is no residential anywhere around here. She stated to prohibit convenience stores, service stations, restaurants with drive-thru facilities, carwashes and automobile dealerships is going a tad too far. She stated adjacent to this is already a carwash. She stated it is not like we are going into a neighborhood as this sits on Lee Highway; that businesses of this type are all the way up and down the street. She stated she would like to limit the adult entertainment, outdoor storage and that type thing, but feel C-2 is designed to take care of some of the issues brought up tonight. She stated she could easily second Councilman Benson's motion if we could remove some of the prohibited businesses from this.

Councilman Benson stated he would find no fault in voting with all those removed; that he has trouble with someone coming with no site plan. He stated nothing would keep the applicant from coming back asking for removal of the conditions, but he would need a site plan.

REZONING (Continued)

Councilwoman Rutherford stated that she understood if this were anywhere near residential property and it is not.

Councilman Benson stated the closest commercial is not a carwash and it is down the street about four football fields' length; that R-4 is all around except where the call center is going.

Councilwoman Rutherford again stated no one lives in the R-4 as they are purely offices.

Vice Chairman Pierce suggested that the matter be referred to committee.

Councilman Benson stated they have been given so much assurance that they have started grading land and everything.

Vice Chairman Pierce suggested that the motion move forward on first reading and noted that the matter should go to committee prior to second reading.

At this point Councilman Page seconded Councilman Benson's motion to pass the matter on first reading with the three conditions mentioned.

Councilwoman Rutherford asked the City Attorney if it is illegal to prohibit these types of businesses if they already exist up and down the road from the tunnel, all the way to Bonny Oaks Drive.

City Attorney Nelson stated the Council could turn it down if that is what they want to do and leave it R-4, then whatever we do in addition to that would be beneficial to the applicant.

Vice Chairman Pierce stated that it is his thought that the matter needs to go back to committee next week prior to second reading.

Councilwoman Rutherford stated that it must (go to committee) as she can not vote for this with all the conditions.

Councilman Benson stated next week would be final reading and it would not be harming anything to give thinking time. He stated he is trying to get it out of the speculative area as is required of all other citizens, regardless of what type (zoning).

Mr. Steward asked if he could respond to some of the points mentioned.

REZONING (Continued)

Vice Chairman Pierce responded that he would rather not have Mr. Steward respond.

At this point, Councilwoman Rutherford "called for the question".

Councilman Hakeem stated that the matter would be "tagged" onto the Public Works Committee at 4:30 p.m.

Councilman Benson stated that he does not want it heard in Legal and Legislative Committee, noting that he feels pretty strongly about the approach.

On motion of Councilman Benson, seconded by Councilwoman Rutherford,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 6390 LEE HIGHWAY, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-4 SPECIAL ZONE TO C-2 CONVENIENCE
COMMERCIAL ZONE**

passed first reading with conditions added per Councilman Benson;
Councilwoman Rutherford voted "no".

REZONING

2005-139: 84 Lumber

Pursuant to notice of public hearing, the request of 84 Lumber to rezone a tract of land located at 2845 Eblen Drive came on to be heard.

The applicant was present; there was no opposition.

Mr. Pace stated language should be added prior to second reading next week to reflect "*related merchandise sales*" as 84 Lumber sells bulk nails and other related building items, not just lumber. He stated he wanted to make that understood prior to second reading. The applicant expressed agreement with the addition.

On motion of Councilwoman Rutherford, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 2846 EBLEN DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO M-2 LIGHT
INDUSTRIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**

passed first reading.

REZONING

2005-140: Paul Reyher, Jr.

Pursuant to notice of public hearing, the request of Paul Reyher, Jr. to rezone a tract of land located in the 4200 block of Benton Drive came on to be heard.

The applicant was present; there was no opposition.

Mr. Pace stated this request is located in the Highway 58 area off South Access Road near Chickamauga Creek; that there is R-4, C-2 and M-1 in the area. The site was displayed by PowerPoint which reflected the large property where the development will occur for R-3 for apartments. He stated approval is recommended with conditions that there be a maximum of 34 units and type B landscaping facing Benton Drive with one row of evergreen trees planted along the east line of the entrance.

John Jewell was present representing Paul Reyher and the property owner. He stated Mr. Reyher is the potential developer for the property. He stated throughout the process they have been more than willing to accommodate any requests and want to make sure the impact would not be detrimental to the property owners in the area. He stated some of the issues that have come up include the buffers to adjoining property owners; that there is a 62 foot easement into the property and they are trying to negotiate additional access off Harrison Pike to potentially eliminate any traffic issues. He stated the current R-1 would allow for a slightly more dense development; that they have asked for R-3 for a town home-type development with curbs and gutters as was submitted in the site plan. He stated there is C-2 property next door and access to the wedding chapel in the area is less than 100 feet from their proposed access to South Access Road which would not create any additional impact. He stated there is an R-4 zone next door and R-3 in the rear across Harrison Pike with 500-700 feet entrance to the property. He stated with new construction it is felt this would be an asset to the community and not a detriment.

Mr. Pace stated that Staff recommends approval and the Planning Commission recommended denial.

Dr. Beth McGee stated that she owns the property adjacent to what is proposed, noting that she has 4 and 5/8 acres where she operates a free standing clinic and has lived there 15 years. She stated the homes behind this property are not rental property as she has lived there and one of her relatives lives there. She stated this development will go directly beside her parking lot and the house next to her.

REZONING (Continued)

Dr. McGee stated her property appraised for \$550,000 two years ago and she knows the wedding chapel on the other end of Benton appraised for a whole lot more than that. She stated there are two small homes in between her place and no one there wants this to occur. She stated the double family dwellings sound like duplexes to her and will lower her property value as well as increase traffic in the area. She stated that she has a lot of elderly patients that come into the area on the very narrow Benton Drive. She stated this past year there was a large sink hole and it closed half the road and there are at least a half dozen more depressed areas in the street, now. She stated the side of the culvert, which is stacked rock, is starting to cave in. She stated she is concerned about the increase in traffic as Benton Drive is in poor shape. She noted that her property is totally surrounded by woods and she selected it because it has a very tranquil and relaxing effect; that she has wild turkeys, deer, foxes and squirrels and it is almost a wildlife refuge, noting that she wished she could convey to the Council how beautiful the area is. She reiterated her concern about the multiple dwellings, as they will have a negative impact on her land, clinic and work.

Mark Grimsley expressed thanks to Mr. Pace for clarifying that, indeed, Planning recommended denial. He stated that he represents the Kingspoint Neighborhood Association, which is a small area just behind where this is. He stated the vast majority of people have negative opinions toward this based on five points: one, they have new development in the neighborhood and houses that are \$150,000; that it is felt this would adversely affect the value of that. He stated if the Council recalls, the master plan for Highway 58, which includes this area, says this area is designated for R-1 only and it does not say duplexes or townhouses. He stated it has been pointed out that there are, indeed, some R-4 in the area just down the road from this and it was mentioned that the townhouses built there were built prior to being incorporated into the City, as Kingspoint was not incorporated until 1981. He stated at the last Planning meeting, two other plans for townhouses were approved and one had a density of less than 3.8 units per acres and the other had a density of 4.75 per acre; that this proposed development has a density of eight (8) units per acre. He reminded the Council that both Planning and this body have voted twice in the last five years to keep this entire area R-1 only and no duplexes. He stated that Perry Mason, who owns property on Benton, was not able to make it tonight and asked that he convey his concerns that this would decrease property values.

REZONING (Continued)

Jim Ward was present representing Ed Rutter, a property owner who owns R-2 property next to the entrance of this proposed development. He stated Mr. Jewell noted that the entrance is 100 feet from the Chapel and clarified that it is 40 feet from the entrance and takes up the driveway by about 62 feet. He stated this area was originally approved as R-1 and they now have an applicant who wants it R-3; that the plan references seventeen duplexes noting that some would be rented out and some would not, but the plan is to treat them as town homes. He stated this developer has no expertise and he (Ward) does not believe he is even licensed as a contractor. He stated this would unload 34 families onto Benton Drive which is not 17.5 feet wide, has deep ditches, no curbs and gutters and is in extremely poor condition with a need for resurfacing and "redoing". He stated the developer is in the excavating business and sees him putting in duplexes under the pretense of putting in townhouses.

Mr. Jewell stated he would love to do anything he could to appease the surrounding property owners; that the first thing is that he does not want to make them angry or negative about the project. He stated that he does have a couple points in rebuttal noting that the lot size is 7.53 per acres and they are proposing 34 units or 34 households. He stated they are planning curbs, gutters, street lights and sidewalks which is detailed on the site plan and would be an improvement over what is there, now. He pointed out that the entire rear property borders a railroad track which is used on a daily basis; that to come in and put in single family homes would be about \$300,000 each and they do not see the desire in the market for that type of development. He stated that they recognized there are some R-1 developments but very little directly around this property; that on the other side the neighborhood is more in the R-3, R-4, C-2 and mixed use, but if the recommendation calls for more tweaking they would work with the neighborhood on that.

Councilman Franklin expressed appreciation for the developer's willingness to try to make something of the land at this point. He stated he is not certain this is the right scenario for this piece of property; that several good points have come out and the residents have done a good job in assuring this complies with the Highway 58 Plan. He stated in order for this plan to be changed there needs to be a process and certainly Kingspoint and Waterhaven was a process in itself. He stated that he has a problem with the difference between a \$300,000 house and a \$100,000 house based on the proximity to the railroad or whatever, but there is a process and this property has not been tweaked as for as the Highway 58 Plan is concerned; that there would have to be a process to change the plan and not just at the whim of what a developer wants to do.

REZONING (Continued)

Councilman Franklin stated that he has sympathy with the developer as he (Franklin) tries to be a developer himself; however he can not ignore the sentiments of his constituents at this time. He stated there are several conditions and actually the floor plan of the looks more like duplexes than townhouses than any he has seen. He stated at this point he would have to stand with the Planning Commission for denial, however, he allowed Mr. Jewell an opportunity to withdraw the request noting that the property owners would have to come back with something more fitting that this; that the only choice he has is to deny it as it is now.

Mr. Jewell expressed thanks to Councilman Franklin for the explanation and asked that the matter be withdrawn.

Councilman Franklin stated with any future move he strongly recommended that the applicant deal with the neighborhood association to come up with some suitable type of development in keeping with the Highway 58 Plan and they would have a better chance of getting something passed.

Mr. Jewell again expressed thanks.

On motion of Councilman Franklin, seconded by Councilman Benson,
**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 4200 BLOCK OF BENTON DRIVE, MORE
PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-
3 RESIDENTIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**
was withdrawn at the request of the applicant's representative.

REZONING

2005-143: Earl Chandler

Pursuant to notice of public hearing, the request of Earl Chandler to rezone a tract of land located at 2600 Broad Street came on to be heard.

The applicant was present; there was no opposition.

Mr. Pace stated this request is located on South Broad Street and is surrounded by M-1 and commercial properties, as well as R-3 properties.

REZONING (Continued)

A site plan of the request was shown displaying the proposed building. Mr. Pace stated Planning and Staff recommend approval along with several conditions.

On motion of Councilman Hakeem, seconded by Councilman Benson,
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 2600 BROAD STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-3 RESIDENTIAL ZONE AND M-1 MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO CERTAIN CONDITIONS

passed first reading.

TEMPORARY USE

On motion of Councilwoman Rutherford, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING FSG BANK TO USE TEMPORARILY THE CITY RIGHT-OF-WAY ALONG BROAD STREET AND 6TH STREET TO INSTALL A NEW EXTERIOR MASONRY FAÇADE OVER THE EXISTING BRICK FAÇADE WHICH WILL PROJECT A FEW INCHES INTO THE CITY RIGHT-OF-WAY, AS SHOWN ON THE DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

was adopted.

PRELIMINARY PUD

2005-117: David Dalton, Signature Land Company

There was no opposition in attendance.

Councilwoman Rutherford stated she has been hearing all day there would be a one week deferral. She asked for a 30 day or four week deferral stating that she met with people, along with Councilwoman Bennett, and she has a lot of questions that she is not certain could be answered within seven days. She stated instead of one week a one month deferral is requested.

Mr. Pace stated that Ms. Robinson asked for a one week deferral and it is up to the Council; that whatever decision is made RPA will abide by it. He stated that he knows the neighborhood had concerns about the project fitting into the neighborhood; that it is a development in the upper scale with high density but is a little bit denser than what is surrounding this property.

PRELIMINARY PUD (Continued)

Councilman Benson stated he was also told it would be next week; that Councilwoman Robinson talked with Mr. Pace to postpone one week and he (Benson) does not see anything wrong with that. He stated the residents were informed that Mrs. Robinson would not be here tonight.

Mr. Pace stated that he talked with Chairman Robinson before she left; that he knows some are concerned about the site plan which the developer is working on; that the developer has met all the requirements for a preliminary PUD for moving forward. He stated before it is finally approved and recorded a final, more detailed PUD plan and more in concert with what will be done on the site will have to come back to Staff and this body. He stated the preliminary PUD goes to Planning and this body; that there is a process and the developer has gone through it. He stated it is up to the Council to defer a week or 30 days.

Councilman Hakeem asked the City Attorney what happens if there is nothing improper and if the Council does not take action before we actually know what they will do.

City Attorney Nelson responded that it will benefit both sides to know what the other is thinking. He stated it would not do much good if the neighborhood is adamantly opposed and the Council has concerns. He stated the owner of the property ought to take that into consideration and it would benefit both parties to be able to talk up front before the Council approves the preliminary PUD.

At this point Councilman Hakeem made the motion to defer the matter four weeks; Councilwoman Rutherford seconded the motion.

Councilwoman Rutherford stated that the neighborhood really wants to sit down with the developer; that the Council cannot tell people what to do. She strongly recommended that the developer sit down with the neighborhood and do it within the 30 days.

Councilman Benson stated 30 or 60 days would take the matter totally out of the speculative arena. He stated in going back to what came up at Planning Commission, the developers were told they needed to have something more specific and Mr. Pace's answer was that they did not have to with this (preliminary PUD); that the developer said they will not spend money until they get the rezoning. He asked Mr. Pace if he were correct in his statement.

Mr. Pace attempted to respond by stating that they would have to get the preliminary PUD; that there is a lot of work involved.

PRELIMINARY PUD (Continued)

Councilman Benson stated the engineer projected this project would be ten million; that four to five million in relation to ten million may be to ambiguous and maybe we should demand a site plan if there is going to be that much of an emotional and traumatic impact in that community.

Mr. Pace stated he was sure if the developer were here he could argue his point as well as the opposition. He stated if it is deferred until next week the Council could hear from both the developer and opposition and then decide; that 30 days would allow for more discussion; however, it is up to the Council which ever way they want to go.

Councilwoman Bennett stated that she and Councilwoman Rutherford met with two spokespersons from the neighborhood and they were in agreement that 30 days would be sufficient time for the developer to bring a site plan back. She stated there was very little information and very speculative; that she is hopeful within 30 days everyone will be on the same "page".

At this point Councilwoman Rutherford "called for the question".

Councilman Franklin stated it might be good if we defer for next week to have them come and give information and make a decision whether we want to take another three-to-four weeks after that. He stated since it has been advertised at this point and all people are expecting to be here, that it may be good to get as much information in an informal setting and hear the opposition and then still make another deferral.

Councilwoman Rutherford stated that she really did not care; that it is not in her district. She stated from what was presented here today and from what she is hearing from some on the Council, the people do not have anything to really consider. She stated they cannot tell anything; that even the map they showed is not the way it will be; that the developer does not know this is how it is going to be. She stated until they can tell her something . . .

On motion of Councilman Hakeem, seconded by Councilwoman Rutherford

A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PROPOSED PLANNED UNIT DEVELOPMENT ON TRACTS OF LAND LOCATED AT 1112 AND 1154 EAST DALLAS 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 tabled four weeks (October 11).

OVERTIME

Overtime for the week ending September 9, 2006 totaled \$15,359.40.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- **JEROME M. WHITE** – Retirement, Plant Maintenance Mechanic, Waste, effective September 1, 2005.
- **JESSE THORNTON** – Transfer/Promotion, Equipment Operator, Sr., City Wide Services, Pay Grade 9/Step 11, \$35,521.00 annually, effective September 7, 2005.
- **JOHN R. STATEN** – Promotion, Construction Inspector, City Wide Services, Pay Grade 13/Step 10, \$42,642.00 annually, effective September 2, 2005.
- **MICHAEL D. JOHNSON** – Hire/Permanent, Crew Worker, City Wide Services, Pay Grade 3/Step 1, \$18,850.00 annually, effective September 8, 2005.
- **ANITA T. WARE** – Promotion, Personnel Assistant, City Wide Services, Pay Grade 7/Step 4, \$24,788.00 annually, effective September 2, 2005.

CHATTANOOGA POLICE DEPARTMENT:

- **BRENT HARWELL** – Resignation, Police Officer, effective August 31, 2005.
- **CARLOS WOODRUFF** – Family Medical Leave, Police Officer, effective August 9 – November 1, 2005.

CHATTANOOGA FIRE DEPARTMENT:

- **FRED E. MASSENGALE, PETER J. CAMILLERI** – Hire, Building Maintenance Mechanic, Pay Grade 7/Step 1, \$21,624.00 annually, effective September 16, 2005.
- **TYLER HEAD** – Return from Family Medical Leave, Senior Firefighter, effective September 9, 2005.

REFUND

On motion of Councilman Hakeem, seconded by Councilman Franklin, the Administrator of Finance was authorized to issue the following refund of personalty tax.

- **CIGNA - \$112,450.63** *(Based on recent settlement agreement with Hamilton County and City of Chattanooga regarding 2000-2003 Personalty Taxes paid during the period CIGNA should have been in a Payment In Lieu of Tax(PILOT) exempt status per Resolution 22619).*

HEARING: OFFICER DAVID FRYE

City Attorney Nelson reminded Council members of the hearing for Officer David Frye scheduled for Monday, September 19 at 10 a.m. with Councilmen Rico, Rutherford and Franklin serving as the panel and Councilman Page as alternate.

Councilman Rico indicated that he would not be able to serve due to a conflict and asked if the alternate (Councilman Page) could serve. Councilman Page agreed that he would be available to serve on the panel with Councilmen Rutherford and Franklin.

COMMITTEES

Councilwoman Rutherford scheduled a meeting of the **Safety Committee for Tuesday, September 20 beginning at 4 p.m.** to discuss recruiting of police officers followed by discussion of the zoning issue from tonight, **and for Tuesday, September 27 beginning at 3:30 p.m.** to hear a presentation by Juvenile Judge Suzanne Bailey regarding juvenile issues.

Councilman Hakeem scheduled a meeting of the **Public Works Committee for Tuesday, September 20 at 4:30 p.m.** regarding zoning on Brainerd Road and the closure and abandonment that will be on for next week that is a companion ordinance to NL Ventures, **and for Tuesday, September 27 beginning at 4 p.m.**

KAREN ADAMS

Karen Adams stated that she lives in East Lake and has a problem that she spoke with Councilman Rico about who has not given the answer she likes. She stated she is the youngest on the block and there is rental property in her area, especially across the street from here where there are probably more than 27 people in the household and they are just running amuck over there!

KAREN ADAMS (Continued)

Ms. Adams stated that there is constant chaos and she and others want to know why 27 people can live in a one family dwelling; that she is sure no one has 27 people living in their one family dwelling.

City Attorney Nelson inquired as to the zoning. The response was "R-1".

City Attorney Nelson stated that the matter would be upheld if all were members of the same family; that Neighborhood Services should be called to investigate and if there is a violation of the zoning law they can take them to court.

Vice Chairman Pierce asked how it can be determined whether they are relatives or not.

City Attorney Nelson responded, "ask them"!

Councilman Rico stated Ms. Adams called him and he reported it to Neighborhood Services; that Tom Baggett and others were sent out there and they told him the house was zoned R-2. He clarified that he was informing Ms. Adams what he was told; that if 27 people were there they must have been having a party; that names were taken and it was determined seven-or-eight live in the house. He stated that is what he was told that the property was R-2 and there was no violation and nothing they could do.

Ms. Adams stated that she called Richard Hutsell and he told her it was R-1.

Councilman Rico stated that he has no way to know they are lying to him.

Ms. Adams stated when older people in their seventies ask, what answer is she to give them.

Councilman Rico stated that Mr. Baggett went there and took names.

Councilman Benson asked if Councilman Rico contacted Mr. Yankowski about this.

Councilman Rico responded "no"; that Neighborhood Services directed it to Tom Baggett.

Councilman Benson suggested that Mr. Yankowski be called; that he has a variety of people from electrical to plumbing that could go out; that this is harassment. He asked if they are disorderly.

KAREN ADAMS (Continued)

Ms. Adams responded "yes". Councilman Benson stated that the police should be called and again suggested Mr. Yankowski be contacted to see if all codes are being enforced.

Councilwoman Bennett stated that she has a question about the descriptions in reference to the number of people; that what she is hearing is that there are 27 people living in one house. She stated she is curious if this is another multi-cultural issue for Legal and Legislative.

City Attorney Nelson read from the Zoning Ordinance where a definition of "family" was given as a group of one or two persons with direct descendants and adopted and foster children with no more than three people not so related living together . . . He continued by stating every additional group of five or less living in such a house shall be considered separate family; five in addition to the initial two, plus children.

Ms. Adams asked if there is a health code violation with 27 people living in a house; that she called the law and they made all of them come outside in the afternoon and 27 were counted coming out of the house.

Councilwoman Bennett asked if the document City Attorney Nelson was reading from says anything about a home, rooms or square footage.

City Attorney Nelson responded that the document noted that there would be a minimum square footage requested for residences; that this may have been grand fathered-in, but the zoning law was passed in 1982.

Ms. Adams stated one is a one-or-two bedroom and one is a three bedroom.

Vice Chairman Pierce assigned the matter to Legal and Legislative Committee for further discussion.

Councilman Benson stated the matter would be discussed three weeks from today and again suggested that Ms. Adams call Mr. Yankowski tomorrow.

ADJOURNMENT

Vice Chairman Pierce adjourned the meeting of the Chattanooga Council until Tuesday, September 20, 2005 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)