

**City Council Building
Chattanooga, Tennessee
October 11, 2011
6:00 p.m.**

Chairman Ladd called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, McGary, Murphy, Rico, Robinson and Scott present. City Attorney Michael McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, City Attorney McMahan gave the invocation for the evening.

MINUTE APPROVAL

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

**AMEND CITY CODE: REGULATION OF STRUCTURE
HEIGHTS**

Councilwomen Scott and Berz made the motion and second to deny this ordinance.

Councilman Murphy made the motion to amend to exclude that portion of Stringer's Ridge starting at State Route 27 continuing to the west or south geographically and otherwise leaving the ordinance as is.

Councilwoman Scott expressed appreciation for the thought of that amendment; however she stated the basic fundamental issues for this particular problem could be so negative that the process to get there would be flawed. She stated first of all, this issue is a challenge to private property rights and a challenge to commercial businesses.

**AMEND CITY CODE: REGULATION OF STRUCTURE
HEIGHTS (Continued)**

Councilwoman Scott stated it is a challenge to the potential for devaluation of property which is currently functioning in manufacturing; that both of these issues are extremely important and any ordinance which puts a manufacturer or commercial property owner at risk has the potential to come back at us under a lawsuit because although it says it is possible for you to get something approved, just the process to go through it is extraordinary. She stated when this was first mentioned the discussion was made this would prohibit, perhaps, cell towers from coming into neighborhoods and she wondered about that; that she thought how difficult that is. She stated the reality is our Chapter 38 on cell towers has an enormous number of "hoops" that people have to go through as they have to satisfy many, many things to put a cell tower in and that is a process in addition to this one.

Councilwoman Scott stated this has the ability to affect commercial and manufacturing in places where we have had commercial and manufacturing for many, many years. She stated this particular ordinance has a preface to it that says this is being done for the health, safety and welfare of the public. She stated there has been no data to show health, safety and welfare is related and that verbiage generally goes if we are looking at down zoning a community that is falling into disrepair and has a safety issue and crime issue that is superimposed on living conditions and this is not. She stated the other thing that bothers her about this is the fact that scenery in this particular ordinance is identified as history, which is good, and it is her thought the Civil War would be an example, a battlefield, and so on; however, if she looks at this city and say "where in this city is it not historic relating to either a battlefield, a battle, an Indian reservation, an event", this entire city is that way! She stated in talking about scenic, how scenic is the Tennessee River and, yet, we look at buildings going up right next to it. She stated we will be making a mistake, even though the ordinance has the best of intentions we will be making a mistake if we start selecting views to protect and have views that we populate and make structures on that get in the other people's ways, where will it end. She stated we do not tell people what colors to paint their houses just for aesthetic reasons and it is not a good idea. She asked Council members to vote against this.

At this point Councilman Benson called for the question.

Councilwoman Berz stated Councilwoman Scott said that well and noted the only other thing she would add is it establishes a special exceptions permit and everyone knows how she feels about that; that she agrees with everything said.

**AMEND CITY CODE: REGULATION OF STRUCTURE
HEIGHTS (Continued)**

Chairman Ladd stated Councilman Murphy had a motion to amend however there was no second to the motion.

Councilman Murphy stated the amendment would have ameliorated virtually every problem Councilwoman Scott is concerned with manufacturing and would have preserved the intent. He stated we have all sat at Chamber meetings and seen what they do by way of the video presentation which always focuses on our scenic assets; that it is the same thing with the Convention and Visitors Bureau. He stated in fact, the way the city looks is vitally important to our economy and additional data shows a majority of our residents believe it is our strongest asset, hands down! He stated it was not multiple choice, they could say anything at all they value about our community and a majority of the responses close behind that was the historic value; that the professional planners that drafted this ordinance understood we could not protect every hill and knob in the city; that the other criteria which was omitted in Councilwoman Scott's discussion was there would be significant public investment in the locations and there is in each of them by the federal, state and the city of Chattanooga governments.

Councilman Murphy stated it is not a "Pandora's Box", perhaps it is ahead of its time, however, he pointed out the Planning Commission unanimously recommended this to us – unanimously, including the representatives of both Mayors and the representatives of the County Commission and City Council that sit on that body. He stated he does not think it is radical and it is not extreme; that there is an agenda to eliminate this from discussion and if there is an agenda to eliminate it from discussion from the Council there probably will be to eliminate it from discussion in the regional strategic plan. He stated he does not believe that "putting the water back in the bottle once it has spilled" is a viable option. He stated Councilwoman Scott discussed the cell tower process and he has sat in a meeting when a cell tower made it through every single "hoop" Councilwoman Scott described at the local level; that our Board of Zoning Appeals was bulldogged and told "you cannot turn this down" even though it is right next to a national military reservation and they felt wrongly, he pointed out, they could not turn it down. He stated the process we have now does not work; that the only reason why that process did not go forward is the federal government intervened because they determined that applicant had not followed the federal regulations.

**AMEND CITY CODE: REGULATION OF STRUCTURE
HEIGHTS (Continued)**

Councilman Murphy stated there is nothing here in this community that we did to slow down that process and it is only by sheer, essentially, dumb luck that the view of that national military reservation and asset to our community is not despoliated. He stated he understands he will lose this vote and does not think it is productive to spend much more time on this; that he believes the professional planners and the Planning Commission were correct.

On motion of Councilwoman Scott, seconded by Councilwoman Berz,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, BY ADMENDING SECTION 38-502
AND ADDING NEW SECTIONS 38-13, 38-528, 38-529 TO IDENTIFY
CERTAIN AREAS OF SCENIC VALUE AND ESTABLISH A SPECIAL
EXCEPTIONS PERMIT RELATIVE TO THE REGULATION OF STRUCTURE
HEIGHTS IN SUCH AREAS**

was denied; on roll call vote:

MURPHY	NO
SCOTT	YES
ROBINSON	YES
BENSON	YES
GILBERT	YES
BERZ	YES
MCGARY	YES
RICO	YES
LADD	YES

AMEND CITY CODE: UNIT DENSITY PER ACRE

On motion of Councilman McGary, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SECTION 38-208(5) OF THE UGC
URBAN GENERAL COMMERCIAL ZONE REFERENCING UNIT DENSITY
PER ACRE**
passed first reading; **Councilwoman Scott voted "no"**.

**AMEND CITY CODE: SPECIAL EXCEPTIONS PERMIT
FOR ETHANOL TRANSFER FACILITY**

Councilmen Gilbert and Berz made the motion and second to deny the request.

Mike Price with MAP Engineers stated this matter was discussed during deliberations in committee today; that some of the information he has heard recently seems to be a little bit garbled in the sense of what may have been heard as it relates to their use. He stated during the discussion when the vote was taken at the County Commission level, Dr. Mackey asked the following question of County Attorney Norton, "If the M-2 special use permit were granted, would this violate the covenant and restrictions in the industrial park". He stated Atty. Norton is one who wrote the original conditions who stated "no, it would not". He stated he wants the Council to understand as they have heard some of the discussion; that tonight's vote is not so much about them as it provides a process going forward for this ethanol facility as well as any others in the future. He stated this does not violate the covenants and restrictions in the industrial park in any shape, form or fashion if this is indeed approved. He stated when someone looks at the number of items that have to be provided; this sets a road map as it relates to how ethanol facilities will be developed as you have to deal with issues as to how it is transported, the site plan, the conditions, set back, safety protocols, EPA, TDEC and other permit requirements. He stated when it finally gets back, if it passes, it will have already gone a rigorous review process from the city and state level; that given all the conditions this provides a proper protocol and approach as it relates to ethanol facilities and how they should be developed in our community. He asked the Council to keep in mind from the one proposed location they have, in driving across Jersey Pike right now Norfolk Southern is seen and what they are building; that as it relates to these requirements he does not know if they are having to do any of that because they and the railroad's "get out of jail free" card they are able utilize and they do not as they will have to meet all the requirements. He asked that this pass tonight, given all the discussion and background.

**AMEND CITY CODE: SPECIAL EXCEPTIONS PERMIT
FOR ETHANOL TRANSFER FACILITY (Continued)**

Sue Powell of 4720 Maywood Lane spoke on behalf of the residents of Lake Hills and the neighboring subdivisions of Councilman Russell Gilbert. She stated she is disappointed to hear the Council is considering changing the M-2 zoning to include ethanol pumping stations, something currently not allowed without a change in the covenants for a special permit exception. She stated originally the neighborhood was opposed because it was felt the Council was impacting their immediate neighborhood, but now the entire city of Chattanooga will be impacted; that no longer will residents be looking for yellow rezoning signs, they will have to follow the agenda of the City Council on a weekly basis. She stated what she understood from some people making comments in the newspaper it could pass anyway. She inquired as to the next request that would come from these particular people with regard to what takes place on that, whether the it thing will be storage. She stated there was a gentleman who owns a paper company that is directly across the street from this piece of property spoke against it; that they have fought in their neighborhood already the rezoning for a group home, rezoning on Jersey Pike for businesses that would directly back to their neighborhood and they would like for the council to act on the best half of the constituents.

Mrs. Powell stated when Mr. Price represented himself saying the people of Washington Hills were not opposed to an ethanol pumping station, which they did fight in their neighborhood, they called a special meeting and two were "for" and 50 were "against". She stated Jeff Strickland and Joyce Keown met with them three weeks ago and they were going to be here next week because they thought that was when the vote was going to take place. She stated they had a meeting themselves the second Tuesday of this month, 35 people were there and none were in favor of this station; that some of the reasons they are opposed are increased traffic, traffic delays on Jersey Pike, and traffic delays while offloading in other areas of the city where traffic will be impacted. She stated they do not know the process; that she attended both of the County Commission meetings and at the first meeting she heard people stand up saying it would violate the covenants and the next meeting no one stated it would violate the covenants, then when the question was called and people who sent her e-mails saying they were going to vote against it all of a sudden voted for it and she did not know what happened in the room! She stated they are concerned about spills and all the other things that might go along with this and asked that the Council vote against it.

**AMEND CITY CODE: SPECIAL EXCEPTIONS PERMIT
FOR ETHANOL TRANSFER FACILITY (Continued)**

Brenda Hammond, Corresponding Secretary of the Washington Hills Neighborhood Association, stated they met with Mrs. Powell's group and everyone opposed it; that it was about 50-4 that voted against it. She stated the concerns of the community involved traffic and the chemicals; that they already have the railroad under construction and whatever they are doing with the rails. She stated traffic is backed up all the way up to the crossing at Jersey Pike and Oakwood where she lives in the morning going to work and coming back in the evening. She stated they were not so much concerned about the ethanol being alcohol but mostly about the traffic in the area with the railroad tracks, the train stopping and the other things that they have going on in that area causes too much traffic delays going and coming to get to the freeway. She stated they voted in the community and they do not want the plant there; that they would appreciate the Council voting against it as there is too much going on in the area now and if it is opened up to a new vote, who knows what else will come in. She stated she would appreciate the Council voting against it and leave the property as it is with the railroad putting in their section and let that be the only one that comes in at this time.

Councilman McGary addressed both speakers in opposition and stated in hearing their testimony it was his understanding they were going to speak directly to the ordinance in question, however, he got the impression there might be a possible conflation of the two events; that we have the ordinance in question and it is his belief the ladies are speaking to a particular project or possible applicant in the future.

Ms. Hammond stated they do not want it to be rezoned, period; that they want it left as it is as it will "open the door" for who knows what to come in if the zoning is changed. She stated the members of the Washington Hills neighborhood would like for it to remain zoned as it is.

Councilman McGary asked Ms. Powell if she spoke to the ordinance in question or to a future applicant.

Ms. Powell stated she was speaking to the ordinance in question because for her it opens up across the city of Chattanooga for this type of facility to come in to the M-2 zoning that would not at this present time be allowed in any of it. She stated once this is opened up it will open it up to all communities that have M-2 zoning.

**AMEND CITY CODE: SPECIAL EXCEPTIONS PERMIT
FOR ETHANOL TRANSFER FACILITY (Continued)**

JoCarol Smith of 5436 Winniespan Road stated she spoke before the Council in July when the issue of the ethanol facility came up; that they are all opposed to it and wish it would be moved somewhere else or stay in its current location. She implored the Council to not have it in their area and asked why they really want to move from their area; that if they have this facility anywhere near where the Mayors' live they would not have it in their area.

Councilwoman Scott made the motion to amend this ordinance to include the version given to City Attorney McMahan which limits the *"M-2 portion to ethanol only and makes the permit revocable if there are violations, including bringing any other product in such as petroleum in this M-2"*; Councilman Murphy seconded the motion.

Councilman Benson asked for a point of order and stated we are not voting "up or down" for ethanol.

Chairman Ladd stated Councilwoman Scott's amendment was to the ordinance in front of us; that she can make an amendment.

Councilman Benson stated she can make an amendment and asked how we will separate the right of special exceptions with this amendment; that it seems it would be more appropriate when it comes up.

Councilwoman Scott stated the comment is for the amendment in general; that it is not specific to that location, it is specific to the ordinance itself.

Councilman Benson expressed his thought that people think we are voting approval or disapproval of the ethanol plant and we are not; that we are voting only for the right for them to go the special exceptions route.

Chairman Ladd stated she thinks the Council understands that and we have done our best to communicate that to those in the audience and we need to conduct our business up here.

AMEND CITY CODE: SPECIAL EXCEPTIONS PERMIT
FOR ETHANOL TRANSFER FACILITY (Continued)

On roll call vote to amend the ordinance:

SCOTT	YES
ROBINSON	YES
BENSON	NO
GILBERT	NO
BERZ	NO
RICO	YES
MCGARY	NO
MURPHY	YES
LADD	NO

The motion failed.

Councilman Gilbert stated the neighborhood has spoken as to how they feel about the area and we cannot say "what if" as "what if" has happened in that area as far as an explosion; that it might not have been ethanol, it was petroleum, but both are flammable and that caused a problem back then and probably will cause a problem again if it happens again. He encouraged the Council not to vote for this because this area is growing and if we make an exception for this someone will come right back up here trying to get an exception for that area saying we made an exception for one why not for them. He stated he does not want to "open that door" and feels the community has a say-so in this matter and they have spoken their views as it does affect them and him, also.

Councilman Benson asked for clarification that this is to deny the special exceptions permit. Chairman Ladd responded, "correct", this is to deny.

After two attempted roll call votes to deny the request, Councilman McGary clarified on a motion to deny vote "yes" and if we do not want to deny vote "no".

AMEND CITY CODE: SPECIAL EXCEPTIONS PERMIT
FOR ETHANOL TRANSFER FACILITY (Continued)

On roll call vote on Councilmen Gilbert and Berz' motion and second to deny:

BENSON	YES
GILBERT	YES
BERZ	YES
RICO	NO
MCGARY	NO
MURPHY	NO
SCOTT	NO
ROBINSON	NO
LADD	YES

The motion failed.

At this point, Councilman Murphy and Rico made the motion and second to approve the ordinance as written.

On motion of Councilman Murphy, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SECTION 38-2 DEFINITIONS;
ARTICLE V, SECTION 38-301 M-1 MANUFACTURING ZONE; SECTION
38-321 LIGHT INDUSTRIAL ZONE; SECTION 38-528 M-2 LIGHT
INDUSTRIAL ZONE; AND ARTICLE VI, DIVISION 2 OTHER SPECIAL
EXCEPTIONS TO ESTABLISH A SPECIAL EXCEPTIONS PERMIT FOR
ETHANOL TRANSFER FACILITY**

passed first reading; on roll call vote:

GILBERT	NO
BERZ	NO

**AMEND CITY CODE: SPECIAL EXCEPTIONS PERMIT
FOR ETHANOL TRANSFER FACILITY (Continued)**

RICO	YES
MCGARY	YES
MURPHY	YES
SCOTT	YES
ROBINSON	YES
BENSON	NO
LADD	NO

REZONING

2010-081: MAP ENGINEERS, LLC/Arthur Yother/Charles Clark

The applicant was present; there was no opposition.

On motion of Councilman Rico, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY
LOCATED AT 1106 AND 1112 O'HENRY DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO C-2
CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN
CONDITIONS**

passed first reading.

REZONING

2011-102: Randy Chapman

There was no opposition in attendance.

REZONING (Continued)

On motion of Councilwoman Scott, seconded by Councilman Rico,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY
LOCATED AT 224 SOUTH MOSS AVENUE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-2 RESIDENTIAL
ZONE
was denied.

REZONING

2011-104: The Palms on Concord, LLC

The applicant was present; there was no opposition.

Councilmen Rico made the initial motion to approve; Councilman Murphy seconded the motion for the purpose of discussion.

(Councilman McGary left the meeting at this point.)

Councilman Benson stated he visited The Palms several times, even before this developer bought it; that it went defunct with vacant buildings creating problems and it was not finished. He stated he looked it over and understood the new developer wanted to come in and everyone was happy as it faces Concord Road. He stated when he heard they were going to rezone for apartments he went back over and thought this is a good idea as they are right on the interstate and would be nice and a little like Marietta with apartments "hanging over" the interstate. He stated the only thing he could see wrong was they needed another exit out as there was just one entrance in which will be addressed tonight. He stated he came back and looked at the Land Use Plan and it is right on the edge of the Plan; that another 25 yards would have had it outside the Plan. He stated he cannot vote against the Land Use Plan in East Brainerd and if he did not have that hanging over him he would say since this barely made it into the Plan and it is a good thing; that if he was not encumbered by trying to stick with the Plan he would be for it, otherwise he will have to vote against it and wanted them to know that.

REZONING (Continued)

Mike Price of MAP Engineers displayed the original plan as well as the new plan and stated it is important for the Council to see what the original drawings by the original developer were and what they are proposing as it relates to the development. He addressed Councilman Benson and expressed appreciation for his comments noting that he understands as it relates to the Land Use Plan adopted in 2001; that there have been a few changes to the Plan approved by the Council that is very similar in nature and on the very extreme edges on the northwest corner of the Plan off Pinewood Road there was an area designated for low density residential and it was rezoned for apartments. He stated the Land Use Plan as it was originally developed called for this particular area to be low density residential and that was the intent of the original developer who failed and went bankrupt. He stated his client, Emerson Russell, bought the property and spent \$1.5 million into the project to build 12 condominiums that now sit there today and to date none have sold; that we have a Plan that made a recommendation, however in following the ideals of that Plan it has shown clearly it does not work for this particular location. He stated this location calls for an apartment development and noted that Concord Road on the west side is rental property or apartments pretty much, so it is important to realize that is an area presently used for rental on a good basis and would continue to be so with this development. He stated they have mirrored the image of the original development plan and put together a plan that meets the needs of the community; that no one showed up on opposition at neither Planning nor here. He urged the rest of the Council to consider the fact this is a plan that meets what the community needs are, has tried twice to follow the Land Use Plan and has been unsuccessful; that it is unfair to penalize someone that has tried to follow the Plan and it simply does not work.

Councilwoman Scott stated she thought on one of the previous plans it showed the turnaround as being an exit. Mr. Price stated there is one and pointed to it on the display.

Councilwoman Scott asked why it is not an exit.

Mr. Price stated originally the plan called for it to be a cul-de-sac and they showed a cul-de-sac at the end. He stated one of the residents in the area commented that they would like a secondary entrance to help distribute traffic at two different points and they agreed to do that. He stated that was the sole reason that was added and it also provides a secondary way for the fire trucks to get in or out; that from a fire and safety standpoint they felt that was a good fit.

REZONING (Continued)

On roll call vote of Councilmen Rico and Murphy's motion to approve:

BERZ	NO
RICO	YES
MURPHY	YES
SCOTT	YES
ROBINSON	RECUSED
BENSON	NO
GILBERT	NO
LADD	YES

The motion failed: 4 "yes"; 3 "no"; one recusal.

Councilman Murphy then voiced his wish to change his vote from "yes" to "no"; however, the outcome of the vote remained a failed vote: 3 "yes"; 4 "no"; one recusal.

It was noted that Councilman Murphy was now voting with the prevailing side. Councilman Benson stated he also voted on the prevailing side.

Councilman Benson stated we are making a mistake here but he cannot vote against the Land Use Plan and expressed appreciation for other Council member sticking to the Land Use Plan; that he believes that is not best for our community.

(Councilman McGary rejoined the meeting at this point.)

With the return of Councilman McGary to the meeting, Councilman Murphy then made the motion to reconsider the vote on approval; Councilman Rico seconded the motion.

REZONING (Continued)

Chairman Ladd explained to Councilman McGary that the Council had difficulty with the vote on this and it has now been motioned and seconded to do a revote.

On roll call vote:

RICO	YES
MCGARY	NO
MURPHY	YES
SCOTT	YES
ROBINSON	RECUSED
BENSON	ABSTAINED
GILBERT	NO
BERZ	NO
LADD	YES

The motion failed: 4 “yes”; 3 “no”; one recusal; one abstention.

Councilman Benson then made the motion to revote by division; Councilwoman Robinson seconded the motion.

City Attorney McMahan read from *Robert’s Rules* with reference to a vote by division: *“If a pending main motion or amendment contains two or more parts capable of standing as separate questions, the assembly can vote to treat each part individually in succession; such a course is proposed by the motion for division of the question.”*

Councilman Benson inquired as to the motion, stating that he wants to know how the motion read; the original motion. Councilman Murphy stated the motion was to approve with Councilman Rico making the motion.

Chairman Ladd suggested that the meeting move on as two votes have been taken as there was a motion to revote and it was voted down; that she does not see a division “coming into play” here on anything!

REZONING (Continued)

Councilman Rico stated it was his thought there was an effort to get Councilman McGary's vote since he was not present for the initial vote noting that he (McGary) did not know what we voted on.

Councilman McGary stated his vote of "no" was in reference to revoting the issue; that he understands the original motion failed. He stated the original was to approve and that failed and when he came in he did not want to revote the issue; that he voted not to revote the issue.

Chairman Ladd stated the motion failed because two members did not vote on it and it failed. She asked that the Council move on to other business as it is dysfunctional to continue to "play with the vote".

On motion of Councilman Rico, seconded by Councilman Murphy,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY
LOCATED AT 1515 NORTH CONCORD ROAD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO R-3 RESIDENTIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**
was denied.

SPECIAL EXCEPTIONS PERMIT

2011-106: MAP Engineers/Michael A. Price

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

Mike Price stated this is the same case the Council just voted on and it is to approve the special exceptions permit to allow this development to go forward. He stated during the vote he never heard from those that voted against it what was their rationale or reason behind it other than Councilman Benson's. He stated given the fact there was no opposition and passed unanimously at Planning Commission and two developers tried with a concerted effort to make this pass, he fails to understand why this would fail before this body if it came before it as the first submittal as proposed apartments without trying to go with a residential medium density development he understands that, but it has been tried and failed.

SPECIAL EXCEPTIONS PERMIT (Continued)

Chairman Ladd stated if Mr. Price wants to speak on the resolution in front of the Council he can, but does not want to go back and revisit what the Council has just done. She asked if he has anything to inform the Council regarding this resolution.

Mr. Price apologized and stated the plan before the Council indicates a special exceptions permit of a PUD that would be in keeping with the community is laid out in a manner similar to the one that was previously approved and asked the Council's approval.

Councilman Murphy asked what would be the effect of abandoning the prior PUD special exceptions permit and what impact would that have now that the prior matter has failed to gain a majority.

Greg Haynes, Director of Development Services with the Regional Planning Agency (RPA), stated the original process was to rezone the property to R-3 and currently there is an R-2 PUD that sits on this property, so the process that was requested was to get rid of that PUD and if the PUD is abandoned there would be a blank R-2 zone, a wide open R-2 zone. He stated if the rezoning had been successful it would have rezoned that to R-3, so this resolution is to abandon the existing PUD and if that is done there will be an R-2 zone. He stated part of Staff's thinking on this was that the PUD gave this a level of protection and flexibility to the developer, but also protection with a lot of conditions that came with the original PUD. He stated the PUD also allows it to be developed more than just duplexes as the R-2 zone on its own includes single family or duplexes; that if it is a plain R-2 with no PUD on top they can do that. He stated if the PUD is left in place they can develop it as the conditions state that originally went with this PUD.

Councilman Murphy stated he knows the result had not been achieved that the applicant's representative hoped and asked if he wanted to think about what he wants at this point on this issue; whether a motion to defer would be appropriate because it sounds like he may have more avenues open under the PUD than under plain R-2 zoning which confines him to single family or duplexes.

Mr. Price stated the overlying issue now is an R-2 would allow a density of eight units per acre and they are around 16 or 17 units on this; that it moves them a step closer in the right direction but does not move them completely where they need to be; that he will take a vote moving in the right direction and asked for a deferral for one week.

SPECIAL EXCEPTIONS PERMIT (Continued)

At this point Councilman Murphy made the motion to defer the matter one week with Councilman Rico seconding the motion.

Councilman Benson stated the PUD will not be a violation of the Land Use Plan.

Mr. Price stated the PUD would never be a violation of the Land Use Plan; that the underlying zone is what would be the issue there; that the PUD is simply an overlay on top of the present zone and an R-2 or R-1 would not violate the Plan.

Councilman Benson stated the R-1 or R-2 would be okay but (he) was afraid it would not work next to the interstate.

Mr. Price stated it is not going to work at this point; that most likely the resolution is that this will go back to the receivership and let the banks take it back over. He stated the vote was a surprise to him and his client and they need to refigure where they are going from here. He stated a week would be in order.

Councilman Benson stated the immediate community had no objection to the first one; that the only objection he had was the Land Use Plan.

Councilwoman Berz stated she does not like taking away protections and having a wide open zone; that when talking about the apartments as opposed to owned property are the same protections that the PUD had originally there.

Mr. Price stated the conditions relating to the PUD had do more with density, the landscaping protection and the layout. Councilwoman Berz stated that is exactly what she is talking about.

Mr. Price stated to his knowledge none of those are changing or have been exceeded with the present plan. He stated as an answer to Councilwoman Berz' question there will be more protection for the community as a result of this.

Councilwoman Berz asked if the difference would be whether the property is owned or rented. Mr. Price responded "correct".

Councilwoman Berz asked if he is sure. Mr. Price responded "yes", that the original plan was for condominiums which were one tract of ground; that if it is an apartment development, the same thing occurs -- it is one tract of ground.

SPECIAL EXCEPTIONS PERMIT

Councilwoman Berz asked if there is still the same protection to density. Mr. Price stated the density is overridden by the fact that it is an R-2 zone and negates anything over eight units per acre -- it prevents that. He stated these are issues he would like a week or so to think about to be able to come back before the body.

Councilman McGary called for the question at this point.

On motion of Councilman Murphy, seconded by Councilman McGary,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT TO
ABANDON A PLANNED UNIT DEVELOPMENT ON PROPERTY LOCATED
AT 1515 NORTH CONCORD ROAD**
was deferred one week; Councilwoman Robinson recused from voting.

GRANT

On motion of Councilman McGary, seconded by Councilman Rico,
**A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE
DEPARTMENT OF PUBLIC WORKS TO APPLY FOR AND, IF APPROVED,
ACCEPT A GRANT FROM THE LYNDHURST FOUNDATION IN THE
AMOUNT OF FOUR HUNDRED THIRTY THOUSAND DOLLARS
(\$430,000.00), AND TO EXECUTE A PARTNERSHIP AGREEMENT FOR THE
DEVELOPMENT OF THE MAIN TERRAINE PARK, PROJECT NO. R-11-001-
801, TO BE LOCATED BETWEEN MAIN STREET AND 13TH STREET**
was adopted.

WAIVE LANDFILL DISPOSAL FEES

On motion of Councilman Murphy, seconded by Councilman Rico,
**A RESOLUTION AUTHORIZING THE WAIVER OF LANDFILL DISPOSAL FEES
ASSOCIATED WITH THE ANNUAL TENNESSEE RIVER RESCUE CLEANUP IN
AN AMOUNT NOT TO EXCEED ONE THOUSAND FIVE HUNDRED
DOLLARS (\$1,500.00)**
was adopted.

CHANGE ORDER

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1 TO THE AGREEMENT WITH JONES AND JONES ARCHITECTS FOR ADDITIONAL SERVICES TO EVALUATE THE ROSS'S LANDING AREA, FOR AN INCREASED AMOUNT OF NINETEEN THOUSAND EIGHT HUNDRED DOLLARS (\$19,800.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED ONE HUNDRED EIGHTY-EIGHT THOUSAND THREE HUNDRED DOLLARS (\$188,300.00)

was adopted.

SPECIAL EXCEPTIONS PERMIT

2007-166: R and S Development

On motion of Councilwoman Scott, seconded by Councilman Rico,
A RESOLUTION TO EXTEND THE SPECIAL EXCEPTIONS PERMIT FOR A PLANNED UNIT DEVELOPMENT (FORMERLY KNOWN AS THE COVENANT) NOW REFERRED TO AS PERRY NORTH PLANNED UNIT DEVELOPMENT, AND REFERENCED IN CITY COUNCIL RESOLUTION NUMBER 26069, ON TRACTS OF LAND LOCATED IN THE 1000 BLOCK OF DALLAS ROAD

was adopted.

PUD SPECIAL EXCEPTIONS PERMIT

2011-105: MAP Engineers/Michael A. Price

On motion of Councilwoman Robinson, seconded by Councilman Rico,
A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT SPECIAL EXCEPTIONS PERMIT FOR A PLANNED UNIT DEVELOPMENT, KNOWN AS CREEK PLANTATION CONDOMINIUMS, ON TRACTS OF LAND LOCATED AT 110 THROUGH 286 TEMPLETON LANE, 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 adopted.

AUTHORIZATION TO FILE LAWSUIT

Councilman McGary stated he was approached by two individuals who would like to briefly be heard on this matter.

Jason Headrick of 1004 Brynewood Park Drive stated the issue is there used to be a huge ditch that separated the two properties and he talked with the landowner and her husband and they approved for him to do that because the guy that used to live there, Tyrone, wanted to have the land leveled to park his car or a trailer. He stated what he did was put a cap over the top of the drainage ditch and filled it in with dirt; that the biggest issue is there is a curb inlet where the water comes down the hill and hits the curb inlet which was too small and 90% of the water would go right over it and not into the drainage ditch and would go into Mrs. Hewlett's yard. He stated after five years the city finally came out and put in a slightly larger drainage ditch noting that he has a video which reflects the drainage ditch does nothing and does the exact same thing. He stated "she" took a track hoe and dug a little tract of land out and put rocks in it for water to be diverted where the drainage ditch goes under because it is crossed; that as they dug in it they busted the top of the concrete and now it is caving in and that is what the issue is. He stated Channel 3 came out today and he showed them on the other side of the street is another inlet and it has a concrete cover over it which never had a problem there. He stated if this had a concrete cover so when the water went into it, the water could not bounce up and go into her yard and then there would never be an issue. He stated he does not feel this is his problem it is the city's problem because they are not properly installing the drainage. He stated he has several pictures and videos so the Council would understand more what he is talking about.

Trina Hewlett of 4502 Sherry Lane in Brynewood Park stated she is the property owner; that her husband was sick and dying with cancer when this man bought this property that was a wooded area; that he cut off the trees himself and did not get approval for a permit to do it. She stated while she was in-and-out of the hospital with her husband being sick for a year this man came onto their property without their permission, covered up the city drainage with two-by-fours and plywood which has caved in. She stated she reported it to the city immediately and they fined him and gave him sanctions noting this has been going on for so long. She stated he has totally ignored it like it is nothing; his wife is a business owner who has a nail shop in Dayton and they have the money, they have destroyed her property.

AUTHORIZATION TO FILE LAWSUIT (Continued)

Mrs. Hewlett stated the city has written him, sent certified letters and he went over there and covered this up. She stated she has asked him to uncover it, to fix it and did not report it to the city; that the city gave him permission to do something on his side because the ditch ricocheted on her and he covered it up and had someone to come out and build a brick mailbox to cover where the catch basin was on his side. She stated there was a catch basin going up the front of his yard and he took asphalt and covered and sealed it; that the city has pictures where he went underground and blocked up the drain where she lives at the bottom of the subdivision so all the rainwater comes down through there. She stated he blocked it up so when it rains hard it jumps over because it is blocked up under there where he went in to block it.

Mrs. Hewlett stated this man did not have an architect to come in to tell him how he should put the house on the property; that he did it himself and now her property is getting the rain. She stated when the storm came in May her backyard was like a flood; that her in-ground pool rose up and when it receded it was/is cracked. She stated her backyard is destroyed and this man passes her everyday and does not have any remorse. She stated she is a widow and asked the Council to give her justice, please, and proceed with this lawsuit; that she has been begging and begging the city and they sent him a letter giving him 14 days to respond; that he does not respond to any mail and does not pick up certified letters or anything! She stated she has a five year old son that she had before her husband died and she is his mother and responsible for him; that she is a taxpayer, is never behind on her taxes, pays her mortgage and deserves to live decently. She asked the Council for justice today and to proceed with this lawsuit so the city can come out and fix the problem.

Councilman Murphy stated both individuals have points to make that would be better made in court. He stated Mrs. Hewlett might not have had the money to seek legal redress prior to the city acting; that if she goes to an attorney and explain the city has already initiated the lawsuit the cost to her to join that lawsuit might be a lot less because the city is going to bring in its engineers and its lawyers are going to be pressing the suit and she may be able to join a lawsuit for an affordable amount where if she had to go it alone and seek legal redress against her neighbor on her own she would not have been able to. He stated he would be voting "yes" and moved that the Council authorize the lawsuit.

AUTHORIZATION TO FILE LAWSUIT (Continued)

Councilman Murphy addressed Mr. Headrick and stated he made some points and noted he is being recorded regarding everything said and his offering to give videos and photos, but it looks strong like he is going to court and it would be better saved for when it gets to court.

Mr. Headrick attempted to speak and Chairman Ladd cautioned that the discussion is now with the Council.

Councilman McGary stated he was going to offer the gentleman a couple minutes to respond; that he made statements and Mrs. Hewlett made others and he would like to hear his response.

Chairman Ladd asked if there is a specific question Councilman McGary wanted to ask.

Councilman McGary stated Mr. Headrick stated the city is at fault here and Mrs. Hewlett stated that Mr. Headrick has physically done some things and has altered the actual property and he would like to have him respond whether he actually did those things "yes" or "no" and if he is still holding to the thought the city is responsible.

Mr. Headrick attempted to give a response and stated they came out and took this . . .

Councilman McGary interrupted stating it is a "yes" or "no" question -- did he physically alter the property the way Mrs. Hewlett has indicated "yes" or "no". Mr. Headrick responded "no, sir".

Councilman McGary asked if Mr. Headrick is standing by his story that the city is completely at fault. Mr. Headrick responded "that is true, sir".

On motion of Councilman Murphy, seconded by Councilwoman Robinson,
**A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO
FILE A LAWSUIT AGAINST JASON HEADRICK AND ALL INDIVIDUALS
RESPONSIBLE REGARDING A CONTINUING PUBLIC NUISANCE AT THE
PROPERTY LOCATED AT 1004 BRYNEWOOD PARK DRIVE, TAX MAP NO.
109K-B-032**

was adopted.

OVERTIME

Overtime for the week ending October 6, 2011 totaled \$22,298.61.

PERSONNEL

The following personnel matters were reported for the various departments:

CHATTANOOGA POLICE DEPARTMENT:

- **JENNIFER MCCOY** – Reinstatement, Police Officer 1, Range P2, \$35,913.00 annually, effective September 23, 2011.
- **JANNIE RICH** – Resignation, School Patrol Officer, effective September 30, 2011.

PARKS AND RECREATION:

- **EDMOND YANDOW** – Termination, Carousel Assistant PT, effective September 15, 2011.
- **JESSICA A. STEELE** – Hire, Recreation Program Specialist, Range 13, \$32,573.00 annually, effective September 9, 2011.
- **MARQUIS BONNER** – Hire, Park Ranger, Range 4, \$22,350.00 annually, effective September 15, 2011.

CHATTANOOGA FIRE DEPARTMENT:

- **JAMES M. MOORE** – Suspension (10 days without pay), Assistant Fire Chief, effective September 26 – October 7, 2011.

PUBLIC WORKS DEPARTMENT:

- **BILL BERRY** – Suspension (3 days without pay), Crew Worker 3, Traffic Engineering, effective September 29 – October 3, 2011.

PERSONNEL (Continued)

- **JEREMIAH AKERS** – Hire, Electrician 2, Waste Resources, Range 14, \$34,201.00 annually, effective September 23, 2011.
- **MATTHEW SNYDER** – Hire, Sewer Project Coordinator, Waste Resources, Range 15, \$44,000.00 annually, effective September 23, 2011.
- **MATTHEW CORRELL** – Termination, Electrician 2, Waste Resources, effective October 6, 2011.
- **JAMES WILSON, III** – Suspension (2 days without pay), Crew Supervisor 2, City Wide Services, effective September 2 – 6, 2011.

FINANCE DEPARTMENT:

- **JENNIFER BENEFIELD** – Hire, Accountant 1, Range 17, \$42,000.00 annually, effective October 5, 2011.

PURCHASES

On motion of Councilwoman Berz, seconded by Councilman Benson, the following purchases were approved for use by the various departments:

GENERAL SERVICES:

ENERGY SYSTEMS SOUTHEAST (Lowest and best bid)
R47599/301351

Blanket Contract for Generator Maintenance & Repair Services

\$15,000.00 – Annual approximation

PUBLIC WORKS DEPARTMENT:

BIO TRIAD ENVIRONMENTAL INC. (Only bid meeting specifications)
R47618/301362

Blanket Contract for Vapor Phase Odor Neutralizing Products & Service

\$25,000.00 – Annual approximation

EMERGENCY PURCHASE

The emergency purchase of roof repair caused by the April 2011 storms at the Recreation Central Complex for the Parks and Recreation Department on R49938 to JDH Company, Inc. in the amount of \$24,660.00 was duly reported and signed in open meeting.

REJECTION OF BIDS

The rejection of bids for Drive: Motor, Spiral and Geer Reducer for the Public Works Department on R39002 was duly rejected. Requirements will be re-advertised.

COMMITTEES

Councilwoman Scott reminded Council members of the meeting of the **Personnel, Performance and Audit Review Committee for Tuesday, October 18 immediately following Public Works** for a presentation of a proposed ordinance by the Council's Audit Committee **and for Tuesday, October 25 following Legal and Legislative** for an update on Employee/Manager Education.

Councilwoman Robinson scheduled a joint meeting of the **Housing and Neighborhood Services and Legal and Legislative Committees for Tuesday, November 1** immediately following Public Works.

Councilman Rico scheduled a meeting of the **Public Works Committee for Tuesday, October 28 following the Agenda session.**

Councilman Murphy scheduled a meeting of the **Legal and Legislative Committee for Tuesday, October 25** to continue discussion regarding redistricting and other matters.

Councilman Benson stated the **Economic Development and Sustainability Committee would meet on Tuesday, October 25** in reference to TIF, a tax Increment funding; that we have never had a TIF in Chattanooga but other cities have found it very successful. He stated it is funding for a very large mixed use project and will involve quite a bit of investment in Black Creek and the Lookout Valley areas above the golf course all the way up the Mountain. He stated the Chamber has not used it in Chattanooga, yet, but are somewhat familiar with it.

AGENDA: OCTOBER 18, 2011

Chairman Ladd stated the agenda for next week was discussed earlier during the Agenda Session.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, October 18, 2011 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)**