

City Council Building
Chattanooga, Tennessee
February 12, 2013
6:00 p.m.

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

PLEDGE OF ALLEGIANCE

Councilman Benson led everyone in attendance in the Pledge of Allegiance.

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

On motion of Councilman Rico, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 3, SECTION 3-55, RELATIVE TO NEW SCENIC CORRIDOR**
passed second and final reading and was signed in open meeting.

AMEND CITY CODE

On motion of Councilman McGary, seconded by Councilman Murphy,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 24, SECTION 502, RELATIVE TO SCHEDULE II, SPEED ON
THROUGH STREETS**
passed second and final reading and was signed in open meeting.

REZONING

2012-039: Napier Associates/Defoor Brothers Development, LLC/Gunbarrel Partners/Waterside Property Investment, LLC

Pursuant to notice of public hearing the request of Napier Associates/Defoor Brothers Development, LLC/Gunbarrel Partners/Waterside Property Investment, LLC to rezone parts of properties located at 2351, 2417, 2424, 2428 and 2440 Elam Lane; 2545 and 2565 Lifestyle Way; and 2515 and 2519 Gunbarrel Road came on to be heard.

The applicant was present; opposition was in attendance.

Greg Hayes, Director of Development Services with the Regional Planning Agency (RPA), briefed the Council on this matter noting that Ordinances (a) and (b) on tonight's agenda are together with the first being a request for a C-4 zone and (b) for an amendment to the conditions; that both are for the Waterside development on East Brainerd Road. He stated the request is for rezoning 12.5 acres from MXU and part of it is R-1 to a C-4 for a planned commerce center, extending the C-4 zone northward and an additional 900 feet. He stated through a series of MXU zoning cases and one commercial rezoning this area has transitioned away from the specific plan recommendation while maintaining the essential principles of the plan. He stated the Traffic Engineer requested an update of a traffic impact study as there was a question about the traffic's impact, however, since then the traffic engineer has been satisfied and sent to Staff a communication today indicating he was okay with the traffic. He stated the land use principles of the Hamilton Place Community Plan support commercial and neighborhood boundaries should be maintained as defined by the land use plan; that due to the changes in the area, the multiple zoning requests by the same applicant and proposed improvements to Gunbarrel Road, Staff acknowledges the site has transitioned away from the specific land use plan map recommendations. He stated the new proposed development and development site is of a nature found along the interstate; that Staff and Planning recommend approval of the C-4.

Ken Defoor of 6110 Shallowford Road stated the Waterside plan has been slowly evolving for many years with C-4 along the interstate and will still hold mixed use along the Gunbarrel Road corridors; that the property along Gunbarrel is still R-1. He stated they are pushing the C-4 along the interstate and still "living in the spirit" of the plan; that he has satisfied the Traffic Engineer's request, ordered a traffic study, bore the expense and satisfied the Traffic Engineer on this issue.

REZONING (Continued)

Councilman Benson asked if Mr. Defoor is taking some of the mixed use and changing it to commercial will that change the percentage of residential and offices. Mr. Defoor responded "no"; that the balance will be kept as to the letter of the original agreement.

Councilman Benson indicated that would push more residential and offices toward Gunbarrel and more commercial toward the interstate. Mr. Defoor responded "yes".

Larry Grohn of 7032 Igou Gap Road was present in opposition and stated in terms of the Hamilton Place Plan he is not into growth and many plans do need tweaking from time-to-time. He gave background information for the current Council members who were not on the Council from 2001-2009 indicating approval of the Plan was in October 2001 and noted over the next few years Councilman Benson claimed the plan was "in concrete" and not flexible while at the same time claiming the plan may need to be tweaked. He stated on the heels of the election in 2005 a series of zoning change requests to the plan in the triangle area referred to as Waterside has taken place primarily all by the same developer; that the requests tonight are at least the tenth-to-twelfth request. He stated the changes have caused the Plan to "transition away from the specific plan"; that the city's Planners have indicated these changes are major changes to the original plan which called only for low, medium and high density residential. He stated a series of requests have changed this from its "R" status to mixed use status, to mixed use status to C-4 status which has had a severe impact on the residents who live opposite Gunbarrel from this development; that the two requests tonight have now gone to changing the mixed use residential density to C-4 and the planners request for a drainage impact study after the plan is approved sounds inadequate in reference to the flooding on Preston Circle which has been exacerbated by the current Waterside development; that the Council is now being asked to approve more hard surface that will cause more runoff. He stated it may be these zoning requests will eventually be what is best for the area and eventually approved by the Council; that the developer in question has been the largest contributor to Mr. Benson's campaigns since 2005; that this may be a conflict of interest where the citizens of the fourth district should be educated to even the hint of impropriety. He called upon Mr. Benson to disclose the extent of the contributions from the Defoor brothers and their family members in his current campaign and recuse himself from any discussion or votes on the issue before the Council.

REZONING (Continued)

Councilwoman Robinson stated she would like to set the record straight and asked Mr. Grohn if he is a candidate for the City Council election upcoming in about a month. Mr. Grohn responded "yes, ma'am, I am".

Councilwoman Robinson stated she found Mr. Grohn's statement inappropriate in this forum; that there is a way to get this information and have the questions answered without calling into question the character of one of East Brainerd's most respected developers who has been very responsible and reported to this Council on numerous occasions about the work he has done there and on a Councilman who has served that district for twelve years. She stated she is not asking for an answer but just stating that she would like to put on the record that Mr. Grohn is running for office against Mr. Benson. Mr. Grohn responded "yes, ma'am". Councilwoman Robinson then stated she had no further questions!

Thomas Lawson of 7417 Preston Circle stated he lives opposite the development on the other side of Gunbarrel; that each time he has been before the Council he has talked about the water situation and each time Mr. Defoor says he is not sending any more water there, but before 2009 when all those opened up he has had water in his yard but never had water come from Gunbarrel. He stated Mr. Benson was at his house and saw the water coming from Gunbarrel; that as he understands the law if one more ounce of water is placed on his land, somebody else is responsible for it. He stated his house has been flooded twice with three feet of water one time, even last week; that he does not know the answer but knows the more that is built there and the more cement put in, with the widening of Gunbarrel and Shallowford, all will continue to give him more and more water. He stated he does not know what the answer is but knows something needs to be done and knows Mr. Defoor is doing exactly what the city told him he could do; that something needs to be done by either changing the plan or . . . he does not know what to do!

Councilwoman Berz asked Mr. Haynes to enlighten her as there has been a back-and-forth about exceptions to a plan; that apparently at the beginning of 2000 there was a well thought out plan for the area noting she was not on the Council at the time. She asked how a plan works if we have a plan and sometimes we stick to the plan and other times we do not; that we have had a number of discussions about this particular area.

Mr. Haynes responded that is a big question; that everyone has different opinions on how a plan should be used but a plan does not guarantee zoning changes and is not "etched in stone".

REZONING (Continued)

Mr. Haynes stated a plan is a guide, a policy which means most land use plans have been adopted by the Council; that there is a general agreement the land use recommendations in the plans are appropriate and should help direct future development.

Councilman McGary inquired as to the water quantity issue; that his concern is whether or not it is under the jurisdiction of this body to actually deal with the issue; that the issues of water quantity, detention actually apply to the building permit process. He inquired as to the building permit process and whether any issues are addressed in the site plan.

Mr. Haynes stated water quantity issues are not addressed in the site plan other than the detention pond in the middle if that addresses everything or if there are other components.

Bill Payne, City Engineer, stated from the perspective of this project for the zoning stage there are already some elements of *City Code* that specifically address what size and extent a detention pond must be constructed, what rules must be followed to obtain a land disturbing permit which would be issued as part of an overall building permit for a project. He stated those rules are not any different regardless of the type of zone; that it has to do with the amount of impervious area, dictate the size of the detention ponds, whether or not the one that is shown is adequate for the rezoning is something we can only know whenever they get to the point of submitting footprints of what the buildings look like that they know what the storm drainage system looks like to take the water away from the building and parking lots. He stated at this point they have done master planning for that based on an earlier revision and all of that would be subject to be reviewed again and would have to be very specifically detailed out.

Councilwoman Scott inquired as to the plans for adjoining properties in reference to the map shown for areas "X" or "10"; that the previous drawing showed it as R-1. Mr. Haynes stated the site plan submitted does not show zoning on it.

Councilwoman Scott asked if it is residential. Mr. Haynes responded "it is" noting that most all of that is R-1.

Councilwoman Scott stated essentially with this change will be C-4 juxtaposed against R-1. Mr. Haynes responded "right'" that those large tracts "X" and "XV" are owned by Mr. Defoor and there is no residential there.

REZONING (Continued)

Councilwoman Scott asked if the plan is for residential to go there.

Mr. Defoor stated along Gunbarrel there are plans for residential; that he does not really know for sure as there may be movement in that road toward the interstate or a little longer; that this is a preliminary plan but along hugging Gunbarrel is a plan for residential. He stated he does not know exactly what type but it will be residential.

Councilwoman Scott asked if the areas pictured to the left with parking lots are the planned residential. Mr. Defoor stated that will be office.

Councilwoman Scott asked where the residential is; that some of this was mixed use and she is trying to find where the residential is.

Mr. Defoor stated to the right of the plan on the map and to the end of the triangle is a plan to put some form of residential in that area.

Councilwoman Scott stated some of this is mixed use but the commercial is being developed ahead of the residential.

Mr. Defoor stated from day one when this was voted all the property abutting the interstate at that time was C-4; that it started out as C-4 and what they are doing now is continuing the C-4 along the interstate. He stated offices and residential, some commercial, have been on the interior of the main site, but the area previously discussed will be designated for some type of residential plan with high density, two level senior living; that he does not know what the market will bear yet but he has had an understanding with the city all along that he will not come to ask for commercial zoning along Gunbarrel Road. He stated they may have a parking lot but the majority of the space going back the other way a few hundred feet will be residential.

Councilwoman Scott stated when we have a mixed zone and the development occurs in order of commercial first and residential last, how is the community and city protected if the developer decides never to put residential in.

City Attorney McMahan stated it is his understanding the original ordinance has a percentage of residential requirements.

Mr. Defoor stated it has to balance with so much residential and commercial, an equation.

REZONING (Continued)

City Attorney McMahan stated there is no time limit as to when to put in residential. Mr. Defoor responded "that is right."

City Attorney McMahan stated the question is if Mr. Defoor decided to leave those lands vacant and never put in residential he could legally do that. Mr. Defoor stated he could not afford to do it.

City Attorney McMahan stated that is the answer, he can legally do that.

Councilwoman Scott asked if he sells the property would the requirements go with the property.

City Attorney McMahan stated if he sells this property subject to the existing zoning conditions a realtor will tell them what those conditions are.

Councilwoman Scott stated the developer next would have to complete residential. City Attorney McMahan stated unless he came back to this body and this body rezoned they can always rezone.

Mr. Defoor stated after ten years and a long time there had never been a mixed use plan in Chattanooga; that he tried to protect Gunbarrel Road as best he could. He stated nobody wants to live on an interstate due to the noise and back yards as it would be impractical; that the early plan was to try to push C-4 along the interstate and come back with a mixed use on the interior areas closest to Gunbarrel Road to protect the neighborhoods.

Councilman Benson stated this is the first MX zone and like the 153 project it is his thought we made a mistake by not putting a time frame on so much commercial to be done and then could not do any more until residential and offices are done; that we did not put that in the conditions and he tried to get that on the 153 project which was turned down entirely. He stated Mr. Defoor contributed to his campaign but his (Defoor's) strongest competitor contributed also; that a lot of good people did and expressed appreciation for their confidence in him. He stated what Mr. Lawson stated was true; that we did not have all that water when Mr. Overton lived there; we had water but it never flowed upstream which is what it is doing now. He stated he and the Mayor looked at it and the water was "hip high" on the main floor and was a tragic thing and in Cannondale, also, noting the water was flowing upstream.

REZONING (Continued)

Councilman Benson stated public works went out there and does not think it can all be laid on Mr. Defoor because we are exploding out there in development – roof tops, asphalt, parking lots and there is no place for that water to go any more. He stated what Mr. Lawson stated was truthful and he is sorry it happened that way and expressed hope to keep the pipes cleaned out so it will drain better; that we are going to move the percentage of commercial toward the interstate and will be able to build less commercial closer to Gunbarrel if this is approved. Mr. Haynes responded “right” with the current zoning.

Councilman Benson stated if Mr. Defoor does not honor the MX conditions we could remove his certificate of occupancy for every one of his buildings. Mr. Haynes stated that is an enforcement issue; that the MXU is tied to the site plan and the C-4 is not necessarily tied to the site plan and gives him the flexibility to do what he needs to.

Councilman Benson stated if he does not build the residential with our conditions we could close down the Embassy Suites, anything else he has built if he does not fulfill the conditions. Mr. Hayes stated he did not know.

City Attorney McMahan stated he has to fulfill the conditions at the time he obtains the building permit; that once the building permit has been obtained he presumably at that point and time is consistent with all the conditions.

Councilman Benson stated he cannot obtain the building permit unless he obtains the zoning as the zoning requires that. He stated Mr. Defoor stated he would fulfill the obligations and does see that would be any worry on this; that if we give him this commercial he will have to put more residential closer to Gunbarrel over offices due to the percentage he has to meet.

Mr. Haynes stated that is if he submits a plan to extend the MXU; that if the C-4 and MXU are approved tonight all he has to develop is what is identified in the green and red boundaries on the map; that he is not proposing anything for the other areas as they are currently zoned R-1.

Councilman Benson stated he does not want this approval tonight to reduce his obligation to keeping up the percentage factor and the rest of the development. Mr. Haynes states for the green area only he is bound to put in a residential component which is almost a two percent area but there is nothing that says when.

REZONING (Continued)

Councilman Benson stated that was our mistake and we should not have done that.

Councilman Murphy stated the more he has heard from folks that live in this area the more he realizes we have a real problem with the way the water moves; that once the water gets past East Brainerd Road and goes to the golf courses and the Creek there is tremendous floodway capacity on South Chickamauga Creek where the levee is and knows Browns Acres and others have capacity for the stream as a whole but it seems before the water is getting there, there is too much water too fast and then there are the flood issues in East Brainerd we have heard about. He stated he hates to bring it up as there are a lot of things developed that produce a tremendous amount of high speed runoff in the area and in the past. He asked if we need to look at our detentive requirements for new impervious surface development in this area to give some relief to that surge that is hitting those branches before it moves on down past East Brainerd Road and has the backup and flood capacity that he previously mentioned.

Mr. Payne stated currently as the city ordinance is written every property boundary regardless of its size has the same requirement to check the rate at which the water leaves that property and the detention calculation nets out to be the same. He stated it is a question of how big it has to be built and that is a function of the impervious area; that he does not know at this point that every new development is having to already meet those standards and does not necessarily know it is all of the new ones so much as there are some older ones. He stated those rules mentioned were not adopted by the Council until 1993 and Hamilton Place was built prior to that date as were the majority of the subdivisions in some of the commercial areas. He stated there are a lot of impacts that were pre-existing to that and there have been adjustments in the *Code*. He stated anything we do we need to be cognizant of the fact that sometime within the next two years there are going to be rules in place as required by the city's new permit from the State of Tennessee that requires all the runoff from the first one inch of rain fall to be completely retained. He stated those standards are under development now and will be coming forward; that generally our standards as they currently exist are more or less in keeping with other communities that have similar peak attenuation.

Mr. Defoor stated he is very sorry that certain people are experiencing flooding; that his development did not cause it and can prove it. He stated they have calculations to prove they did not cause this and by law he cannot do it.

REZONING (Continued)

Mr. Defoor continued by stating in the future development the water goes toward the interstate and will not contribute stormwater at a faster rate than it's leaving the site now as it is against the law; that he is sorry we have global warming but we do. He stated under the Constitution he has the right to support anyone in this nation he deems qualified from his neighborhood, county, city or country and will continue to support those people as he does Mr. Benson, the Mayor, and will do the new Mayor, Mr. Berke, if elected, as he will Bob Corker and support the Governor to the best of his ability because he deems him to be doing a good job. He stated he is sorry this came up but that is his view. He expressed appreciation for the Council's vote on this and will continue to protect the neighborhood. He stated he will have residential in this and had projected this project would be finished in seven-to-eight years and it looks like it will be five-to-eight years late noting he will be 75 years old when this is finished but he intends to finish it!

On motion of Councilman Murphy, seconded by Councilwoman Robinson,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PARTS OF PROPERTIES LOCATED AT 2351, 2417, 2424, 2428 AND 2440 ELAM LANE; 2545 AND 2565 LIFESTYLE WAY; AND 2515 AND 2519 GUNBARREL ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE AND MXU ZONE TO C-4 PLANNED COMMERCE CENTER ZONE, SUBJECT TO CERTAIN CONDITIONS

passed first reading; **on roll call vote:**

RICO	YES
MCGARY	YES
MURPHY	YES
SCOTT	YES
ROBINSON	YES
BENSON	YES
GILBERT	YES
BERZ	YES

REZONING (Continued)

LADD

YES

AMEND CONDITIONS

2013-008: Napier Associates/Defoor Brothers

Pursuant to notice of public hearing, the request of Napier Associates/Defoor Brothers to amend conditions of Case No. 2012-014 to change MXU boundary and plan on properties located in the 2300 and 2400 blocks of Gunbarrel Road came on to be heard.

The applicant was present; there was no opposition.

Mr. Haynes stated the recommendation is for approval from Staff and Planning.

On motion of Councilwoman Robinson, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO AMEND CONDITIONS
OF CASE NO. 2012-014 TO CHANGE MXU BOUNDARY AND PLAN ON
PROPERTIES LOCATED IN THE 2300 AND 2400 BLOCKS OF GUNBARREL
ROAD, BEING MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO
CERTAIN CONDITIONS**

passed first reading.

REZONING

2013-009: Taqi Ali Mirza and Ron Morrer/Susan Higley

Pursuant to notice of public hearing, the request of Taqi Ali Mirza and Ron Morrer/Susan Higley to rezone properties located at 1951 and 2017 Dodson Avenue came on to be heard.

A representative for the applicant was present; opposition was in attendance.

Mr. Haynes stated the applicant has proposed rezoning of a 4.9 tract from C-2 and M-2 to M-1 for the first step toward legally operating a recycling processing center for use as a scrap metal yard. He stated the City Land Developer found in investigating the site that it is not in compliance and recommended the applicant pursue a zoning change.

REZONING (Continued)

Mr. Haynes stated if the M-1 is approved, they would still have to go back to Planning for a special permit for an outdoor recycling center. He stated in 2008 the property was rezoned to C-2 for a used car dealership and the Avondale Neighborhood Plan adopted in 2004 recommends medium density business mix. He stated Staff recommended denial and the request is not supported by the Neighborhood Plan; that the property is less than a quarter mile from an elementary school, in the center of a predominantly residential neighborhood, use is considered objectionable to close proximity to residences, is out of character with the community and could set a precedence for similar requests of this nature; however, the Planning Commission recommended approval.

At this point, Councilman McGary made the motion to deny the request with Councilman Gilbert seconding.

Ronald Morrer was present representing Canned Metal Recycling and EHS Industries and stated the business involves recycling automobiles and other precious metals and noted they have not had any problems doing that. He stated most complaints have been the visibility of the operation noting that the operation is an "ugly business" with scrap metal piled in the area; that they propose to put up a ten foot privacy fence to eliminate the problem of visibility. He stated the people in the neighborhood are worried if for some reason they go out of business it could open the door for a large chemical company to move into the neighborhood and would like to request if they get the M-1 status to have it on a reversionary zoning plan whereby if something happens and they were not in business and had to leave the zone would revert to the previous status. He stated they have been in business for about ten months with seven employees with the hope of having within a five year period at least fifteen-to-twenty jobs. He stated they do not take any hazardous materials or anything that could harm the neighborhood nor stormwater runoff problems as oil and antifreeze are disposed of in an environmentally safe manner. He asked the Council to consider giving them a chance to change the zone to M-1 with the condition that they complement the neighborhood.

Councilman McGary asked if the company has built a recycling plant neighboring a neighborhood previously. Mr. Morrer responded "yes", the owner has; that he has recycling plants in Birmingham and Alabama and is not sure about how close they are to residential.

REZONING (Continued)

Councilman McGary stated that is the issue here as he and his wife are big proponents of recycling; that it is a good idea but in the wrong place immediately abutting a neighborhood and opens "too wide a door" which is why he made the motion to deny the request.

Councilman Murphy stated there is a ditch or channel that runs through the property and feeds into Citico Creek and he does not care how careful they are being, automobile recycling is recycling for lead, heavy metal and petroleum contamination and is right across the street from the fire hall that is a wonderful addition to the neighborhood. He stated the channel runs further down through the elementary school property and whoever thought this was a good place for an automobile recycling he really questions what diligence if any they did on the environmental side. He stated to literally have it built over a body of water seems crazy as there are other M-1 parcels that can be acquired and move this business noting the jobs will be welcomed here in Chattanooga; however, this location, in his opinion, is not the right place.

James Moreland of 1806 Francis Street stated they are really appalled that this business was set and operating illegally and making people's lives absolutely miserable! He stated most of the people present tonight are seniors and live 20 feet from where this property is located. He stated the East Chattanooga and Avondale Neighborhood Associations have been flooded with people talking about noise, noise, noise! He stated they have worked all their lives to have a home and place to live and is appalled that a business will come and run illegally to set up an operation like this. He asked the Council to deny this request without any question!

Mr. Dave stated he moved into the neighborhood six months ago and thought about buying the house; that he met both gentlemen a couple weeks ago and think they are good persons but does not think this is a good area for the scrap metal business noting that the area is getting rough, as well as debris on his wife's car. He stated he was asked to go to a meeting regarding the scrap yard again indicating the possibility of buying the house he is in, however, right now he does not think so and will look for something else; that he has been in East Chattanooga all his life noting it is an historical place. He stated if the business was somewhere else he would support them but where there are now he cannot.

REZONING (Continued)

Tommye Montgomery stated she has been in East Chattanooga for over 50 years and has never seen a mess like this and is in fear for the people. She stated she had to take an Aleve the other day due to the grinding, booming and knocking noises and knows what that does to a person's nerves all day long. She stated in that area crime has jumped up 75 percent since that place has been there; that she talked to the police officers several times about how the crime has risen in that neighborhood since this place has operated. She stated people can be seen walking down the street with a refrigerator or stove on a dolly and in a few minutes they come back with the items crushed because they are breaking into people's houses and stealing it and rushing it to the recycling place where they can get money which is a disgrace to the East Chattanooga area. She stated if she has not lived there so long there is no way she would move into the area; that the beautiful fire hall and wonderful school in the area deserve more than what we have there. She commended the police as to how they have stepped up their services to help in catching some of the thieves breaking into homes.

Mr. Morrer expressed apology to the people of the neighborhood for any inconvenience the business has caused them and respectfully requested a time limit to be able to shut down and clean up the property and put it back to the standard people were used to seeing.

On motion of Councilman McGary, seconded by Councilman Gilbert,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTIES LOCATED AT 1951 AND 2017 DODSON AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, FROM C-2 CONVENIENCE COMMERCIAL ZONE AND M-2 LIGHT INDUSTRIAL ZONE TO M-1 MANUFACTURING ZONE
was denied.

REZONING

2013-013: Grace Episcopal Church/Randy Durham

Pursuant to notice of public hearing the request of Grace Episcopal Church/Randy Durham to rezone properties located at 4018, 4022 and 4026 Brainerd Road came on to be heard.

The applicant was present; there was no opposition.

REZONING (Continued)

On motion of Councilwoman Berz, seconded by Councilman Benson,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTIES LOCATED AT 4018, 4022 AND 4026 BRAINERD ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
passed first reading.

REZONING

2013-015: Hole Foods, LLC c/o Rob Renner/ Dr. Gene Rudnick

Pursuant to notice of public hearing, the request of Hole Foods, LLC c/o Rob Renner/ Dr. Gene Rudnick to rezone property located at 7737 East Brainerd Road came on to be heard.

The applicant was present; there was no opposition.

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 7737 EAST BRAINERD ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM O-1 OFFICE ZONE AND R-1 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE
passed first reading.

REZONING

2013-016: Ragan-Smith Associates/Brant Enderle

Pursuant to notice of public hearing the request of Ragan-Smith Associates/Brant Enderle to rezone properties located in the 3800 block of Cummings Road came on to be heard.

The applicant was present; opposition was in attendance.

REZONING (Continued)

Mr. Haynes stated this is a rezoning request for R-3 along with a Resolution later on the agenda for a residential PUD; that the intended purpose for this request is for single family residential, condos and an assisted living facility and to make this happen the property needs to be rezoned R-3 primarily for the assisting living a facility which will require a special permit later on before that use goes in. He stated the PUD will allow for flexibility on lot sizes and development; that Planning and Staff recommend approval of the R-3 zone with a lengthy list of conditions.

Alan Jones, Landscape Architect with Ragan- Smith Associates at 1410 Cowart Street, stated the reason for the R-1 to R-3 rezone is to build an assisted independent living facility and incorporate townhomes which is in keeping with the character of the Black Creek Area; that they have an MXU zone to the north of the site and continuing the same trends. He stated the Lookout Valley Plan adopted in 2003 is in conjunction with this; that there is a limitation of 60 foot lots in an R-1 and the topography is very challenging and to do a feasible design with 60 foot lots a lot of land and topography has to be removed. He stated to enable them to conserve the mountain top they will have to be able to shrink the lot sizes to still get the density well under the four units per acre noting the design is at 3.5 right now.

Atty. John Konvalinka of 633 Chestnut Street indicated he was present to speak with regard to the special exceptions permit which has been mentioned in connection with this zoning request. He stated he does not have an objection to this request for R-3 as presented but he does in reference to the Resolution 2013-017 and did not want to waive his objection to the special exceptions permit. He asked to speak the nine minutes with regard to the special exceptions permit.

Chairman Ladd clarified that the nine minute time line is not extended to Resolutions.

Atty. Mike Mallen indicated his desire to speak, as well, and would speak after Mr. Konvalinka.

Chairman Ladd clarified both gentlemen would be allowed three minutes each when the Resolution is discussed.

REZONING (Continued)

On motion of Councilman Rico, seconded by Councilman Benson,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTIES LOCATED IN THE 3800 BLOCK OF CUMMINGS ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-3 RESIDENTIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
passed first reading; Councilwoman Berz and Scott voted "no"; Councilwoman Robinson recused.

CLOSE AND ABANDON

MR-2012-158: Alan Haniszewski, RTB Holdings

The applicant was present; there was no opposition.

On motion of Councilman Rico, seconded by Councilman McGary,
AN ORDINANCE CLOSING AND ABANDONING A PORTION OF AN UNOPENED RIGHT-OF-WAY LOCATED IN THE 1900 BLOCK OF JEFFERSON STREET, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS
passed first reading.

TEMPORARY USE

On motion of Councilman McGary, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING COMMUNITY PIE C/O TAYLOR MOHEN TO USE TEMPORARILY THE RIGHT-OF-WAY LOCATED AT 850 MARKET STREET FOR THE INSTALLATION OF TWO LIGHTED SIGNS AT A COMMERCIAL ESTABLISHMENT, AS SHOWN ON THE DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

SPECIAL POLICEMAN (UNARMED)

On motion of Councilman Murphy, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING THE APPOINTMENT OF MARK HEINZER AS A SPECIAL POLICE OFFICER (UNARMED) FOR THE CITY OF CHATTANOOGA PUBLIC WORKS DEPARTMENT, TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS
was adopted.

PRELIMINARY AND FINAL PUD

2013-014: B & L Builders

On motion of Councilman Benson, seconded by Councilman Rico,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR A
PRELIMINARY AND FINAL RESIDENTIAL PLANNED UNIT DEVELOPMENT
ON PROPERTIES LOCATED AT 7435 AND 7437 PINWOOD DRIVE,
SUBJECT TO CERTAIN REQUIREMENTS ATTACHED**
was adopted.

PRELIMINARY PUD

2013-017: Ragan-Smith Associates/Brant Enderle

The applicant was present; opposition was in attendance.

Councilmen Rico and McGary made the initial motion to adopt this Resolution.

Atty. John Konvalinka referred Council members to Section 38-402, Subsection (1) regarding the application procedure for planned unit development which indicates "*to obtain a special exceptions permit to develop a planned unit development the developer shall submit a planned unit development plan...*"; also certain things that must mandatorily be included in the preliminary planned unit development lists six items. He stated with regard to (d) it says it must "... *show a plan for streets, thoroughfare, public utilities, schools and other public or community uses...*"; that Subsection (3)(c) notes "...*the building shall be used only for single-family homes, two-family dwellings or multi-family dwelling, and the usual accessory uses such as private or storage garages, storage space and for community activities including school and/or churches...*" He stated in regard to the ordinances, specifically the Staff recommendation that has been made, with regard to items just read in 38-402 in the Planning Commission requirements, Section 402 of the zoning ordinance require the submittal plans for public utilities such as public water and sewer lines; that this information was not submitted, has not been submitted and still has not been submitted tonight. He stated similarly, the second portion of this says the same zoning code requires the submittal of street plans with the preliminary PUD; that this information has not been submitted for review and has not been considered.

PRELIMINARY PUD (Continued)

Atty. Konvalinka continued by stating Section 402 of the zoning ordinance requires that the plan indicate the surrounding type of development and land use; that the plan should also indicate the adjacent type of land use in the same paragraph that has not been done and is required. He stated the plan submitted is also to indicate the density which has not been shown with regard to the assisted living facility that is referenced in the Staff report. He stated in regard to the Chattanooga Development Director Requirements, Chattanooga Traffic Engineering Department Requirements, Chattanooga Fire Department Requirements and Chattanooga Sewer Requirements, there is not sufficient information for review of this submittal. He stated with regard to whether there is an SWPP permit the Staff does not know whether that is necessary or not as there is a requirement that the developer should contact and make a determination of this. He stated he heard a Councilman say earlier tonight they made a mistake in the passage of something and should have considered something at the time; that there is a *Code* section that requires this information to be included -- not a may, it is a **shall** – in any planned unit development so anyone can have an intelligent response to what is being proposed. He submitted to the Council with regard to the *City Code* requirements this PUD is premature and should not be adopted as a special exceptions permit because there has been non-compliance with the *City Code*.

At this time Mike Mallen asked that the three minute time limit be split between he and Mr. Jones; however Councilman McGary reminded Council members that the initial agreement was for Mr. Mallen and Mr. Konvalinka to each have three minutes and expressed his thought the three minute time line should be respected. **After polling each Council member, it was agreed eight-to-one that only the three minute time for Mr. Mallen would be given with Councilwoman Robinson recusing.** Mr. Mallen then yielded his three minutes to Alan Jones.

Mr. Jones stated the person the lawyer is representing is not a resident of Black Creek; that a neighborhood community meeting was held in January prior to the Planning meeting noting no one had any objections; that he received several phone calls throughout the week after it was publicized asking when the living facility would be built. He stated in addressing the technicalities of the *Code*, he noted he used to be an employee of the city and understands the Codes pretty well and has a great relationship with RPA; that he has been in conversation with RPA during the process noting this is a preliminary PUD, not a final PUD. He stated there have been many cases throughout the history of PUDs being approved where sewer, road and all the technical engineering plans are not required for a preliminary plan.

PRELIMINARY PUD (Continued)

Mr. Jones stated in addressing the stormwater, this has been the second wettest month since 1928 noting they do have SWPP and bulk grading plans and appropriate NPDES permits, are in compliance with TDEC and the city has inspected and are in compliance as far as stormwater goes; that they have a grading permit that is active. He stated in reference to traffic, no four way intersections are allowed inside the city outside downtown; that they proposed to RPA to amend the plan and resubmit after the Planning Commission but was told not to worry about it but to address it when the final PUD is submitted. He stated in reference to this being a premature PUD plan that is exactly what it is as it is a preliminary PUD plan and once the approval for the PUD is given they will go through all of the engineering documents required by the city and state and submit a final PUD at that time.

Councilwoman Scott asked when they plan to move forward on this; whether it is within the next month-or-two or six months. A gentleman with Mr. Jones stated they are doing preliminary grading now and do not have any permits to do anything further at this point. Mr. Jones stated they will start moving when they get approval for site plan development.

Councilwoman Scott suggested deferring this a month to give them an opportunity to bring back the things they have started on and give a little more information; that it is difficult to have the *Code* read and to know exactly, specifically and clearly what it says and not have all that information before the decision is made. She asked if they would be able to bring more of the details in a month. Mr. Jones stated they will not be able to get engineering plans done in a month.

Councilwoman Scott inquired about two months. Mr. Jones stated the PUD plan they submitted is what they are bound to; if they make any significant changes they have to come to the Council again to get it amended. He stated what is shown on the graphic is exactly what they will be doing; that the only thing missing is what the road is doing vertically and what utilities are going underground; that everything above ground will be within the graphic.

Councilwoman Scott stated we are missing the street, parking, the land use, the specific density including the assisted living facility and the fire information. Mr. Jones stated all of that will be addressed when they get the actual site plans.

Councilwoman Scott stated it seems as if there will be a long way ahead of them. Mr. Jones responded "yes"; that this is at the preliminary stage and will go through all the typical procedures for getting permits through the city.

PRELIMINARY PUD (Continued)

At this point Councilwoman Scott made the motion to defer the matter two months; however, the motion failed for lack of a second.

Councilman McGary noted Atty. Konvalinka had several aspects highlighted in his documentation, and inquired as to the wording under "special notes" "*...no revised or corrected plat is required; please include the specified conditions...*" noting the phrase following provides clarity "*...in preparation of the Final PUD plan...*" which is the issue before the Council, the final PUD plan. He asked the City Attorney if this is a preliminary plan when are they required to come back before Council for the final PUD.

City Attorney McMahan stated a preliminary PUD plan is good for up to 24 months before they have to finalize it or lose it; that they will have to go through the total process with Staff approval if they stick with the preliminary plan.

Mr. Haynes stated the preliminary plan goes to the Planning Commission and then to the Council and once the preliminary plan is approved the final is submitted to RPA who then comes before the Council as the final does not go back to Planning. He stated approval of a preliminary plan does not allow any development and cannot move ahead on anything until the final PUD plan; that Mr. Konvalinka is correct as the zoning regulations specify what is supposed to be submitted but does not know if it specifically says when as it can be assumed because it is under the preliminary PUD plan section it should be submitted when that is. He stated the requirements specified to be submitted require quite a bit of investment, interior drawings and costs a lot of money to get engineering drawings for road profiles, utility plans and everything else listed. He stated they recommend approval for the preliminary plan, the concept or layout shown in the site plan subject to bringing all the other engineering pieces together. He stated if they do not submit everything to Staff they do not bring it to the Council; that they try to be flexible and move the process along.

Councilwoman Berz questioned why the legislative body is approving concepts. Mr. Haynes responded that is the way the *Code* is written.

Councilwomen Berz stated the *Code* is not written that way; that she is not sure why the word "preliminary" is in there as the *Code* clearly says there are certain "hoops" that have to be "jumped through"; that the legislative body should be approving ordinances not concepts.

PRELIMINARY PUD (Continued)

Councilwoman Berz stated she is a policy and process person and is trying to figure out why we approve concepts as that is RPA's job; that we are "flying in the face of the law" as it is written whether right or wrong and (she) does not understand if any developer is following a concept that follows the concept of a plan it would seem all we would be looking at is "have they done it right" before it comes to us. She stated as we are growing and changing in Chattanooga we cannot do policy by exception and we have to revamp our laws so they are clear, cogent and "open the doors" for development as no one should have to come back twice to us. She stated the project is a great project but she would be voting against it due to process and policy as we need to redo planning for the Chattanooga that is coming up.

Councilman Benson stated we went through this same thing when Jim Kennedy was the economic development recruiter for the Chamber and at the time we were ruled as development unfriendly throughout the state by entrepreneurs and others who wanted to come in; that we found out that is why PUDs and other things did leave that impression as other cities were moving to the preliminary, so before people spend a lot of money for engineering they could get a "feel" for whether this was on the road to approval. He stated when the PUD is finally approved it will have to meet the conditions so we will not have a developer come in and spend a lot of money and have it turned down which is why we have the preliminary.

Councilman Murphy stated the *Code* reads in a way that we might not intend it to read; that the role this body has is if this is an appropriate land use decision which should be the first question and then they can do the study and determine if it is feasible and then bring it back, but the *Code* reads how it reads and we probably should change it. He stated everything that has been said makes perfect sense but what we should be having a vote on is not whether they have shown us where the sewer lines are going to go and how deep; that at this stage it is "do we think an assisted living facility at that location would be an appropriate thing". He asked the City Attorney if we are "flying in the face" of our *Code* as written if we do not have the "T's and I's" crossed and dotted now should we change it.

City Attorney McMahan stated the suggestion that the ordinance be changed is a good suggestion; that Mr. Bridger told him today the Staff will be working on a number of changes to bring our current zoning ordinance up to a more robust standard.

PRELIMINARY PUD (Continued)

City Attorney McMahan stated what the Council is voting on tonight, the preliminary plan Subsection (1) has certain requirements and he is not sure how deficient the plan submitted is noting (a) is the "...location, size accessibility and existing zoning of the proposed site..." - that information is available tonight; that "...the surrounding type of development and land use..." is available tonight. He stated "... (c) the type of development proposed..." is there; that "...the density of the proposed development..." there seems to be a deficiency with respect to how many units there are in the proposed assisted living facility so that information is a little bit deficient. He stated "... parking areas and open space..." is not as complete as it probably should be; "... plans for streets, thoroughfare, public utilizes, schools and other public or community uses...", in this case the street is shown, but public utilities generally described as sewers, schools and other public or community uses apparently is not immediately part of this plan so that is not particularly a plan. He stated (e) is the key point "...the City Council may require such other additional information as determined necessary to adequately review the propped development...", so if the Council feels there is some deficiency in (a) - (d) the opportunity should be taken to require the developer to come back with additional information before voting.

Councilwoman Scott asked for clarification on the assisted living facility as a special permit wanting to know if by this particular Resolution does this fold in a special approval of a special permit for the assisted living facility at the same time. Mr. Haynes responded "no"; that permit would be applied to the Board of Zoning Appeals and they have to review and approve that.

Councilman Murphy stated we could require additional information but can go ahead and vote and require that information within a specified period of time; that he knows it says two years but that is how long before the PUD expires and asked if a year would be enough. He **made the motion to amend to reflect subject to completion of all required components to approve a PUD within one year**; Councilman Gilbert seconded the motion; the motion carried with Councilwomen Berz and Scott voting "no"; Councilwoman Robinson recused.

Councilmen Rico and McGary then made the motion and second to adopt with the amendment.

On motion of Councilman Rico, seconded by Councilman McGary,

A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR A SINGLE FAMILY PRELIMINARY PLANNED UNIT DEVELOPMENT ON PROPERTIES LOCATED IN THE 3800 BLOCK OF CUMMINGS ROAD,

PRELIMINARY PUD (Continued)

SUBJECT TO THE COMPLETION OF ALL REQUIRED COMPONENTS TO APPROVED A PLANNED UNIT DEVELOPMENT WITHIN ONE (1) YEAR
was adopted.

BOARD APPOINTMENTS: MOCCASIN BEND CLEAN WATER AUTHORITY

On motion of Councilman McGary, seconded by Councilman Rico,
A RESOLUTION APPROVING THE MAYOR'S APPOINTMENT OF THE BOARD OF COMMISSIONERS FOR THE MOCCASIN BEND CLEAN WATER AUTHORITY AS SET FORTH HEREIN
was adopted; Councilwoman Scott voted "no".

BOARD APPOINTMENT: ANIMAL CONTROL BOARD

On motion of Councilwoman Robinson, seconded by Councilman Benson,
A RESOLUTION APPROVING THE APPOINTMENT OF ANNE FRICKER TO THE ANIMAL CONTROL BOARD FOR COUNCIL DISTRICT 6 TO FULFILL THE UNEXPIRED TERM OF TAMMY STONE WHICH TERM WILL EXPIRE DECEMBER 18, 2015
was adopted.

APPROVE FUNDS FOR DEPOSIT

On motion of Councilman Rico, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO APPROVE FUNDS TO BE DEPOSITED INTO THE LOCAL GOVERNMENT INVESTMENT POOL RELATIVE TO THE STATE INDUSTRIAL ACCESS ROAD SERVING VOLKSWAGEN GROUP OF AMERICA, CONTRACT NO. E-09-015-801, TDOT PIN NO. 114048.00, FOR AN ESTIMATED AMOUNT OF TWO HUNDRED THIRTY-THREE THOUSAND FOUR HUNDRED FIVE DOLLARS (\$223,405.00)
was adopted.

PAYMENT APPROVAL

On motion of Councilman McGary, seconded by Councilman Benson,
**A RESOLUTION APPROVING PAYMENT FOR THE NEW PURCHASE OF
BROCADE EQUIPMENT FOR THE NEW HEALTH AND WELLNESS CENTER
AND POLICE STATION, IN THE AMOUNT OF ONE HUNDRED TWELVE
THOUSAND ONE HUNDRED EIGHTY-TWO AND 26/100 DOLLARS
(\$112,182.26)**
was adopted.

OVERTIME

Overtime for the week ending February 7, 2013 totaled \$32,938.35.

PERSONNEL

The following personnel matters were reported for the Chattanooga Police Department:

- **HARRY HORTON** – Military Leave (Not to exceed 60 days), Police Officer 1, effective January 4, 2013.
- **ROBERT BROUDRICK** – Resignation, Police Cadet effective February 4, 2013.
- **TAYLOR WALKER** – Reinstatement, Police Officer 1, Range P2, \$35,913.00 annually, effective February 4, 2013.

EMERGENCY PURCHASE

The emergency purchase of Sewer Bypass Services from Xylem Dewatering Solutions, Inc. on R72055 in the amount of \$14,755.30 for the Public Works Department was duly reported.

EMERGENCY PURCHASE

The emergency purchase for Fire Tanker from Rosenbauer South Dakota on R72112 in the amount of \$163,602.00 for the Chattanooga Fire Department was duly reported.

EMERGENCY PURCHASE (Continued)

Councilman Murphy inquired as to how old the other tankers are that remain in service.

Chief Parker stated this replaces a 39 year old vehicle that is being surplused noting it is going up for sale in a couple weeks.

Councilman Murphy asked how old the ones are that remain in service. Chief Parks stated it is 39 years, also; that there is one other that is 39, as well, and is being repaired; that the other is a 1968 model.

Councilwoman Scott stated when we get to the point where we have fire hydrants in all the places we need them we may not need so many tanker trucks. Chief Parks stated "we will still need a few as we have to service the freeway and other areas".

REFUNDS

On motion of Councilman McGary, seconded by Councilman Rico, the Administrator of Finance was authorized to issue the following refunds of water quality fees and amended report from TMA audit, respectively:

HAWKINSVILLE MISSIONARY BAPTIST CHURCH	\$3,570.00
REALTY INCOME PROPERTIES 5 LLC.	\$16,653.00
BEELER IMPRESSION PRODUCTS	\$18,829.95

DONATION

The anonymous donation of \$1,000.00 from a Community Partner to the Office of Multicultural Affairs for funding OMA programs (Human Rights/Community Awareness and Hands Across Chattanooga International Welcome Fair) was duly reported.

PURCHASES

On motion of Councilman Rico, seconded by Councilman Murphy, the following purchases were approved for use for the various departments:

PURCHASES (Continued)

PARKS AND RECREATION:

SOUTHERN ATHLETIC FIELDS
R50870

Increase Blanket Contract for Athletic Field Supplies

\$15,000.00

GENERAL SERVICES:

MOUNTAIN VIEW FORD (Lower and better bid)
R69868/302433

Blanket Contract for Police Interceptor Lighting

\$100,000.00 – Annual estimation

CHATTANOOGA HUMAN SERVICES DEPARTMENT:

CMS (Lowest and best bid)
302428

Blanket Contract for Floor Cleaning Services

\$14,814.00 – Annual estimation

REJECT ALL BIDS

On motion of Councilman Rico, seconded by Councilman Murphy, the rejection of bids for the demolition of building (first phase of Firing Range) on R71895 for General Services was approved.

BOARD REAPPOINTMENT

On motion of Councilman Benson, seconded by Councilman Rico, the following Board reappointment was approved; **Councilwoman Scott voted "no"**:

ERLANGER BOARD OF TRUSTEES:

- Reappointment of **DONNIE HUTCHERSON** for a four year term expiring November 19, 2016.

(Councilwoman Robinson excused herself from the meeting at this point.)

STATUS OF FAMILY RESIDENTIAL FIRE

Councilman McGary asked for an update of the family that suffered a fire earlier this week on Rubio.

Chief Parker stated they all got out safely and were placed in temporary housing noting that is all he knows as that is what has been reported to the media.

COMMITTEES

Councilman Murphy scheduled a meeting of the **Legal and Legislative Committee for Tuesday, February 19** immediately following the Agenda Session.

Councilwoman Berz reminded Council members of the **Budget and Finance Committee's educational sessions scheduled for Tuesday February 19 from 1:00 p.m. – 2:45 p.m.**

NEXT WEEK'S AGENDA: FEBRUARY 19, 2013

Chairman Ladd referred to next week's agenda and inquired as to whether there were questions; being none, the meeting continued.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, February 19, 2013 at 6:00 p.m.

CHAIRMAN

CLERK OF COUNCIL

**(A full digital audio of the Council meeting of this date is filed in
the Clerk of Council's Office)**

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