

## Burns Randy

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**From:** CROWNOVER@a1.cps.k12.tn.us  
**Sent:** Wednesday, May 20, 1998 2:18 PM  
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### LEGAL AND LEGISLATIVE COMMITTEE

May 19, 1998

5:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Pierce, Chairman, with Councilmen Hakeem, Crockett, Eaves, Taylor, Rutherford, Lively, Hurley and Swafford being present. City Attorneys Randall Nelson and Mike McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Jack Wilkinson, Beverly Pasley, Daisy Madison, Don Young, Richard Hutsell, Adm. Boney, Ann Coulter, and Barry Bennett.

### CELLULAR TOWER ORDINANCE

Chairman Pierce called the meeting to order and stated that a group including the Public Works Staff and some of the Council had met for a two hour meeting earlier in the week and were unable to come up with anything; that at this time he was asking that this matter be tabled because there were still some real concerns, and we needed to have the proper amount of time to discuss this; that some had real concerns. He stated that he felt comfortable with what we have with the understanding that the Council can come back and amend some of the things.

Councilman Hakeem stated that time was short at this time and asked what the feasibility was of discussing this in regular Council meeting. He stated there could and could not be a Council meeting next week.

Councilwoman Rutherford asked if this could be discussed in a meeting next week.

Chairman Pierce stated this could be discussed in Council meeting tonight and if enough people supported it, he was flexible; that he understood this was not under the Council's control, but we had been give some latitude. He questioned what would be accomplished by prolonging this.

Councilman Hakeem stated he would like to ask the appropriate person to outline what would happen if the Council delayed this.

Ms. Pasley spoke to postponing this, stating that the Staff had looked at the Ordinance to see if the setbacks were adequate or if they could be tightened more and wanted to make sure we don't have monopoles every 20 to 30 feet down main thoroughfares; that setbacks should not be so stringent that they infringe on residentially-zoned areas. She stated there might need to be some level administratively, yet to be determined, to review and look at the applications to see if they met the intent of the Ordinance.

Councilman Hakeem asked if there could be possible modifications if this were approved tonight; if it could be modified at the next Planning Meeting; such modifications as eliminating the possibility of towers being 20-30 feet apart on main thoroughfares. He questioned if under the present guidelines this could happen.

Attorney McMahan stated that "yes", it was possible but not feasible--that they would have a difficult time showing they could not use the monopoles for co-location.

Councilman Hakeem asked, concerning the tower on Brainerd Rd., if we come back and say it has to go back further and it encroaches on a residential area, and the residents say we don't want it here, what would happen. Attorney McMahan explained that the procedure has to be uniform; that the basis to deny cannot just be because people protest it; that the Board of Zoning Appeals will have to review the cases very carefully to see that they have proper landscaping; that this does not give the Board of Zoning Appeals any more discretion.

Councilman Hakeem asked if we could stall them to a point. Attorney McMahan responded that if we take much more time we will run the danger of the tower industry going to Federal Court and saying the City is being unreasonable. He stated we had to act reasonably so as not to preclude them from building.

Councilman Swafford asked about the committee, confirming that it would not be the Planning Commission and asking if it would be someone just to look at the site location before giving a final approval from Administration.

Ms. Pasley stated the committee could be comprised of someone from Planning, Public Works, and a Council person to review the site plan

and application and look and see if it fits within the intent of the Ordinance; that they would look at things like if the tower on Brainerd Rd. could have been situated further back on the property; that this tower was legally permitted but could it have been more aesthetically pleasing?

Councilman Swafford noted that currently tower permits in residential areas actually go before the Variance Board; that we are looking at increasing the Variance Board to nine members and hopefully we would follow up on this as soon as possible; that he felt it was important to have a representative from every District on the Variance Board.

Ms. Pasley stated that the Review Committee was not in the Ordinance as written.

Attorney McMahan stated that the Mayor could establish an Ad Hoc Committee and this would delay action of the Building officials, and the cases would have to be reviewed by Planning. He explained that the committee was a procedural matter; that the ones working on this had done the best they could, but their knowledge was limited. He stated the committee could report back to the Council.

Councilman Taylor stated that in considering the Brainerd Rd. tower, what stands out is the height of the pole. He asked if we could consider a height limit--that this one was extremely high.

Ms. Pasley stated that people from the industry were more able to speak to this; that the one on Brainerd Rd. was 190 ft. high. Someone from the industry stated that the maximum was 195 ft. or else they would have to have a Special Exceptions Permit.

Mr. Taylor stated as he understood it, to have co-location we have to give a little on the height of the tower.

Attorney Conner stated that 190-195 ft. would accommodate five companies. Attorney McMahan stated there could be three on every pole.

Councilwoman Rutherford stated they had spent two hours in a meeting yesterday, and there were still a lot of questions to be resolved, and we had not had time to resolve them. She moved that we have a committee meeting two weeks from tonight to allow enough time for discussion and for Planning to look at this further. This was seconded by Councilman Crockett.

Councilman Swafford questioned what would be accomplished by postponing this--that Planning was here now; that Ann Coulter was

here. He questioned what we were looking to get.

Councilwoman Rutherford responded that when the Council passes this Ordinance and takes off the moratorium, we do not have any guarantees; that this could have an effect for years to come. She stated she would like to listen to what Planning has to say and maybe have a two-hour meeting. She stated she did not think it would put this City in any great danger to wait two weeks.

Chairman Pierce noted that if we make any major changes in the Ordinance, it will have to go back to Planning, and he did not know how long this would take.

Councilwoman Rutherford stated the moratorium was in effect until September.

Councilwoman Hurley stated that Councilwoman Rutherford had suggested postponing this for two weeks because we might not have a Council meeting next week; that she thought if we had six people present that we ought to have a Council meeting next Tuesday night; that it was not a foregone conclusion that we would not have a Council meeting next week.

Councilwoman Rutherford explained that she was not wanting it postponed because we would not have a Council meeting next week; that she understood Chairman Crockett would be out of town, and she thought he would like to be here for this.

Councilman Hakeem stated he was hearing from one week to two weeks or did we want to hold it until September for a Study.

Councilwoman Rutherford explained that her reasoning for two weeks was because several people would be out next week.

Councilman Eaves stated when he left town last week, he thought this was settled; that now people were saying they don't like towers--that he had overhead utility lines in his district that were higher than the towers; that we were in a new communication age, and in all fairness had been told that what we are trying to do is "beyond the pale of what the Federal government allows us to do"; that he was delighted that the tower people had agreed to co-locate together--that this was a pretty cooperative effort, having 2-3 on one tower and not a jungle of towers. He stated he did not see delaying this; that we could be in Court if we do not move tonight.

Councilman Crockett stated that a lot of his questions had been answered; that the amendments might be relatively minor and not have to go back to Planning; that this was a complicated issue, but the Council had had complicated issues before; that he would like to get comfortable with it; that we had lived with highly complex issues

before.

Again, Councilwoman Rutherford moved that this be tabled for two weeks, and this was seconded by Councilman Crockett. This motion died for lack of support.



Councilman Hakeem moved that this be on the agenda tonight. This was seconded by Councilman Eaves and was recommended to the full Council, with Councilwoman Rutherford opposing this.

Attorney McMahan suggested following up with the recommendation of the Planning Committee to add a "Structural Review Committee". Attorney Nelson stated that a temporary committee could be formed by Executive Order of the Mayor.

Councilman Swafford stated he thought it would help to have an extra "set of eyes" and suggested to Ms. Coulter that this committee needs to be added.

#### SIGN ORDINANCE AMENDMENT

Councilman Hakeem moved that the Ordinance to amend the Chattanooga City Code, Part II, Section 3-2, relative to the definition of a sign be tabled for two weeks. This was seconded by Councilwoman Hurley.

Councilman Lively stated that he was the one that asked the City Attorney to draw this Ordinance up; that everyone thought the Sign Ordinance was totally perfect, and it was not perfect; that as it stands every church steeple is illegal, and this would correct this.

Chairman Pierce stated he thought this Ordinance was drawn about one individual business, and it would tear up our Sign Ordinance.

At this point Chairman Pierce noted that Resolution (d) relative to a moratorium on cellular towers would stay on the agenda.

#### BUDGET MATTERS

Councilman Swafford conducted this part of the meeting and called on Adm. Boney. Adm. Boney stated that he had three fairly routine matters that were on the Agenda. (1) Ordinance--First Reading (b) provides for an interim budget and appropriating funds for the usual and ordinary expenses of the City government for the months of July, August, and September, 1998, pending the adoption of the 1998-99 annual budget, in other words a temporary operating budget. (2)

Resolution (e) authorizing the transfer of credits from one account to another account within the various departments, agencies, and divisions of the government. Adm. Boney stated that on next week's agenda there was Ordinances--First Reading (a) to amend Ordinance No. 10589, the Budget Ordinance, so as to provide for certain changes in personnel set out in Section 8(c). He explained this was to amend the Budget to add a Construction Manager in the General Services Dept. He stated this had come up many times before, and he was recommending this be amended.

On motion of Councilman Hakeem, seconded by Councilwoman Hurley, these items will be recommended to the full Council.

The meeting adjourned at 5:30 P.M.