

LEGAL AND LEGISLATIVE COMMITTEE
JANUARY 11, 2000
5:30 P.M.

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

Others present included Adm. Marcellis, George Morgan, Jerry Pace, John Bridger, Ann Coulter, Attorney Phil Noblett, Adm. Boney, and Scott Wilson.

MC PROPERTIES' REZONING REQUEST

Chairman Eaves stated that MC Properties wanted to make a presentation, and the City Attorney would give us some verification. He stated in the interest of time, MC Properties could make their presentation and the Council might want to ask Attorney Nelson some questions about the legality of their proposal.

Attorney John Anderson of Grant, Konvalinka, and Harrison made the presentation. He thanked the Council for giving them this opportunity and expressed appreciation for hearing them. He stated this was at the corner of Napier Drive and Shallowford Rd. and would add retail and commercial space and enhance the quality of life. He stated that in November, after MC was considered by the Planning Commission, he was telephoned by Jerry Pace to see if a solution could be developed. He stated that he met with Jerry Pace and Blake Druary; that MC had promised to contribute \$500,000 for a bridge and after discussion they had changed this to give \$500,000 to the City to work with; that there is a proposed site that they would like for the City to acquire as a buffer for a Park; that New Hope Church would be moving to another location. Attorney Anderson stated that development comes with a price. He mentioned hearing Congressman Wamp say that prosperity comes with a price; that in developing this retail area, MC Properties is willing to also do for others—that they will contribute \$500,000 for quality of life and enhancement. He stated that they had worked hard for a solution and turning them down was not a solution—that it would only postpone and someone else would be back later asking for the same thing. He stated that they had been working on this since February of 1996, and the retail businesses were anxious.

Attorney Anderson noted that development would be coming in the future north of Shallowford for retail; that what they were proposing would act as a buffer; that the solution is for a permanent barrier from the development; that they would give the City of Chattanooga \$500,000 to provide for this barrier.

Attorney Anderson went on to explain that the City could use the new taxes to acquire the surrounding property, and it could become a City Park. He stated that he had had a conversation with Moses Freeman, and he was willing to work with the residents in this area in helping to design and develop the appropriate plans. He stated that it was at the heart of smart growth to encourage the private sector to be innovative and creative. He urged the Council to move forward to approve this; that Chattanooga is in the forefront for smart growth definition.

Councilwoman Rutherford stated that she did not think she would ever see a Plan that she could endorse, but she liked this concept a lot. She asked if we had the figure of what it would cost to buy and develop this Park for the City and questioned where the money would come from.

Adm. Boney stated he would have to take a look at this; that it could be interesting, and he was willing to consider it as far as we can go.

Councilman Hakeem asked if this proposed Park was something to happen and clarified that MC Properties was going to put \$500,000 into this. Attorney Anderson added that the City could use the new sales and property taxes to purchase the property and the \$500,000 could be used as a catalyst to solve what has been a problem. Councilman Hakeem asked how large the site was, and the answer was 9.9 acres. He asked Adm. Marcellis in regards to traffic what we anticipated. Adm. Marcellis stated that he had not been approached by MC Properties on this project. Attorney Anderson added that they had talked to John VanWinkle in Traffic Engineering, and he had felt that the improvement would mitigate traffic, and there would not be an impact.

Councilman Taylor asked if there was any figure that could be put on as far as taxes are concerned and what the effect would be. Attorney Anderson stated that the impact on Shallowford Rd. should be favorable; that a fly-over would be completed for a project of this magnitude. Councilman Taylor stated that two years ago there was some comment about a Plan for a proper buffer for a long-range goal. Mr. Pace stated that part of the Phoenix Group had some Plans for a buffer up to Standifer Gap Rd. Councilman Taylor asked if the City was going to do something about a buffer and where this Plan was in relation to this. Mr. Pace stated that when this came before the Planning Commission in November, the Commission recommended denial and the Staff recommended O-1 with a buffer.

Councilwoman Hurley asked about the legality of this.

Attorney Nelson responded that first, anything that MC offers in the way of money for Parks has to have a natural relation to the part that is being zoned; that it has to be dedicated to that area. Secondly, he mentioned the Phoenix case which was filed in Chancery Court and had not moved forward; that if we rezone here, it will undercut what we did on the Phoenix case, whether it be good or bad; that if we condemn the area to make a Park with a buffer, we will have to pay commercial values for the green area.

Councilwoman Hurley asked if to create a park, we would have to condemn. She asked if we could buy the property. Attorney Anderson stated that the benchmark for commercial value is the 30 acres at Igou Gap which is right at \$6.00 a sq. ft., which would amount to \$5 million dollars. Councilwoman Hurley stated that arguably this would be taxable and the asset to the City goes away for ten years. Attorney Anderson stated that the \$500,000 would be used as leverage for the acquisition of this property.

Councilman Taylor stated that as a point of clarification, who was to purchase the property for the Park. Attorney Anderson stated that the City would do the purchasing, and they would give us \$500,000 for this; that he felt it would generate more than \$100,000 in new property taxes.

Councilwoman Rutherford asked about the Phoenix case. Attorney Nelson stated that it was in Chancery Court, and we could be hurting our chances in Chancery Court. She asked when this would be heard. Attorney Nelson stated that there was no reason to move to set it; that they were hoping this previous case would be reversed and neither side wanted to push it; that it could be heard in 3-4 months.

Councilman Eaves asked Attorney Anderson if they owned any of the land in the "green". Attorney Anderson stated they had an option on a little of it.

Councilman Pierce stated that he thought \$7 million dollars was a hell of a price to pay to develop a Park, and this was not even a part of the Parks Study. He mentioned the land we had already purchased in the Brainerd area for a Passive Park. He stated he thought this was out of the question. Councilman Eaves asked if \$7 million dollars had been thrown out as a figure for a purchase price. Attorney Anderson stated that \$7 million dollars was the worst case scenario. Councilman Hakeem stated that he thought he heard Attorney Anderson say that \$5 million dollars was a very conservative price.

Councilman Eaves stated that land in East Brainerd is impossible to come by; that in the Concord area where the most is needed, it is a heavy traveled area and there is a lot of people; that we would be able to develop a Park and not really go out and pay for it. We would be able to have a Park to use as a buffer area and protect the residential area without any large expenditure which seemed like a pretty good idea to him. He stated he was not sure what it would take to buy the land.

Attorney Anderson stated that he thought it would be less than \$6.00 a sq. ft.

Councilman Taylor stated he was hearing we are getting a Park free, but we would have to purchase the land. Attorney Anderson reiterated that the sales and property taxes would give the City leverage to buy it. Councilman Taylor suggested MC Properties buying it and giving it to the City as a Park. Attorney Anderson stated they might consider this if the City would give them a tax abatement. Attorney Nelson stated that there would be a way to do this as real property taxes, but it could not be done with sales tax.

Mr. Kinser from the neighborhood asked to speak. He stated that he came to the meeting in an objective mood to help Mike Clark, but he had become highly agitated; that it was too soon for them to make a decision; that he was not opposed to Mike's Plan, but if they had to face Phoenix again, he could not be for this; that if it is a condition for part of the rezoning, he would try to be favorable; that he would like to have a ruling as to what it will cost and who will pay for it; that he could not at this time vote for this and looked on it unfavorably. He stated that the Council could not decide on this tonight, and he saw no need to go any further until these questions are answered. He stated the whole scenario had changed, and he did not know—that this was a mess and some Plan was needed before he could go along with this.

The meeting adjourned at 6:00 P.M.