LEGAL AND LEGISLATIVE COMMITTEE
February 5, 2002
3:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Littlefield, Chairman, with Councilpersons Robinson, Page, Benson and Taylor present. City Attorneys Randall Nelson and Mike McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Steve Leach and Adm. Boney. Todd Womack and Mayor Corker joined the meeting later.

CELL TOWERS REGULATIONS

Chairman Littlefield stated that he was trying to "march" in place until Mayor Corker showed up, as he had a matter to present to the Council concerning a reversion of property from CNE should they go out of existence. Since the Mayor was not present, Chairman Littlefield proceeded with the Cell Tower Issue.

He explained that there would be an amendment to the Cellular Tower regulations; that we had the "finest" legal minds in Chattanooga present, as well as Cellular Tower representatives and Mr. Gary Ball. He stated that we had promised the industry people that we would move as rapidly as possible as we had imposed a moratorium that some had felt was damaging to people waiting to move ahead. He went on to say that we had a draft of a plan at the last meeting that was approved and a hearing had been held in the Council Assembly Room to hear from residents and the industry. He stated that Mr. Leach, Attorney McMahan and himself had addressed the language.

Chairman Littlefield stated that he was proposing to get this committee's blessing to move forward in placing the version that we have on tonight's agenda with the understanding that we will finish up with the final version which will come before the Planning Commission meeting next Monday and will be before us on Tuesday night for second and third readings.

Attorney Nelson explained that if what Planning comes up with Monday is not in the parameters of what had already been done, then it will have to be re-advertised to make the amendment "fit into the motion".

Chairman Littlefield reiterated that we were trying to move rapidly and outlined the points that were being considered. (l) Increasing the minimum setback in commercial zones—proposing to increase the setback to 100 ft. or greater—greater being the height of the tower or evidence of an engineering failure point. (2) People want to know when there is going to be a tower erected in the same manner as posting a notice for rezoning and similar to the mail out notification done by the Board of Zoning Appeals to all people within 200 ft. (3) Instead of automatic adoption, every case will go before the Board of

Zoning Appeals and the Board of Variances and Zoning Appeals will move on the cases. (4) The most unique point being that one of the members of the Council had given Chairman Littlefield an article that appeared in a National League of Cities publication having to do with denial of towers based on a standard of minimal visual impact. He went on to state that the strongest criticism had focused on the damage to our scenic values, and this had become one of the most important issues to address, and they are addressing this in Massachusetts. He went on to say that he did not know if the people in Massachusetts held "beauty" in the same esteem as we did, but they had denied a tower on the standards of "minimal visual impact", and a Federal Court had upheld this community's ruling. He explained that our language was in keeping with this Federal Court Case and would give the Board of Zoning Appeals and Variances the right to say "no". He went on to add that he knew that no one would say that the towers are "pretty", but he did not think that this would mean that every tower application would be turned down—that he did not agree with this thinking. He mentioned a tower that was being proposed in front of the K-Mart property at South Terrace, stating that there were no complaints here. He mentioned the latest two towers that have been most criticized, stating that one of these could have been turned down using "minimal visual impact".

Mr. Leach stated that they were trying to benefit members of the industry in points that they could negotiate and discussions that they could still have. He mentioned the engineering break point as being a point of reference that is very beneficial.

Chairman Littlefield opened up the floor for comments.

Attorney Tracy Wooden was the first speaker. He stated that he had just a couple of comments, the first being a procedural matter. He stated that he would respectfully submit that he would like to see a draft in place rather than this going to the Council tonight for first reading. He stated that this was a good summary but the language is an important issue. He stated that to Chairman Littlefield's credit, under the moratorium there can be no tower applications, and he knew he was trying to accommodate the industry by getting the moratorium lifted, but they would like to see what is being voted on before it reaches the stage of second and third readings. Secondly, Mr. Wooden addressed this 100 ft. setback, which he thought was a terrible mistake that the City was making. He explained why he thought this way—that this does not change residential zone requirements which are much more stringent with much greater setbacks; that the reason they are not more stringent in commercial and manufacturing zones is because usually these lots are fairly small, and it would be difficult in this town to find a commercial zone to meet the 100 ft. setback requirement; that historically this City has not imposed these stringent setbacks on commercial and manufacturing zones because they would rather see towers here than in residential zones.

Mr. Wooden next addressed the engineering failure point, stating that he had no problem with this. He explained that if they went before the Board of Appeals with an application in a residential zone, they would say there is commercial zoning nearby and why not place the tower there; that the City Ordinance would require a 100 ft. setback, and they would not be able to meet it in commercial zones, and they would have to go to residential areas. He also questioned each and every permit having to go before the Board of Zoning Appeals; that previously in years past, commercial zones did go before this Board and this had been taken out six years ago so that commercial zones could be utilized. He stated that he did not think that manufacturing zones had ever had to go before the Board of Zoning Appeals, and he submitted that there is no need for this now.

Chairman Littlefield stated that they had "wrestled" with this—how to provide for notification without going through the Board of Appeals; that if they sent out notices without going before a Board, then people would just have to come down and watch a building permit being issued, and this was not a procedure; that some manufacturing zones had residential zones abutting them, and this would give people a chance to have a say; that he thought this was fair.

Attorney Wooden stated that he was right if he was talking about every single tower, but he still questioned if it were necessary in a manufacturing zone.

Chairman Littlefield pointed out that there were industrial zones in many neighborhoods such as Ridgedale; that cellular tower applications come in waves along with new technology, and we need to provide for these occasions.

Councilman Page questioned the 100 ft. setback and how this applied to towers on top of buildings. Attorney McMahan explained that there were different standards written in the Ordinance. Attorney Wooden stated that Councilman Page was raising a valid point.

Chairman Littlefield stated that the Council would go as slowly as the Industry wanted them to go; that they were just trying to respond to the industry's request to go quickly.

Councilman Taylor asked if there had been communication in putting this together and if there had been dialog. Attorney Wooden stated that that was what was happening today, but he felt that they needed a real draft and then have dialog.

Councilwoman Robinson stated that she had looked at two or three ways to do towers—on top of buildings and really, really tall towers that contained many users and would require fewer towers; that if the towers are lower, we have to have more towers, but they are not in your face. She mentioned being in Montana, where towers are not noticeable because it is so flat there. She asked if we could ask companies to be imaginative and figure out ways to deliver their product without 190 ft. towers. She questioned if we could ask them to come back with something more aesthetically acceptable.

Attorney Wooden explained that if we have short towers, there would have to be one for every antenna put up; that if they are taller we can have more antenna rays; that we can have seven on one tower in geographical areas; that if they were real short towers, we would have to have seven of them. He stated that Councilwoman Robinson had raised a valid question, and we needed more dialog.

Councilwoman Robinson asked if service providers cooperate with each other to cluster on a single tower. Attorney Wooden responded that most providers don't build their own tower; that they try to locate on someone else's tower and lease a space to put their antenna.

Councilman Benson noted that he had read that there has to be 15 ft. between each antenna, and he did not understand the procedure at OLPH where they are proposing putting a tower through a chimney. Mr. Leach explained that this was called a camouflage tower; that it is a stealth tower like the one at the Unitarian Church. Attorney Wooden stated that this method could be used in some cases. Mr. Leach explained that you don't notice a stealth tower. Chairman Littlefield added that some are placed on billboards between here and Atlanta and also added that Councilwoman Robinson had done a lot of research on this.

Attorney Cindy Hall was the next speaker. She stated that she would not rehash what Attorney Wooden had said. She reiterated that her client was in full agreement that one more week would be beneficial rather than hearing this on first reading tonight; that Mr. Eddy was in Charlotte and would not object to putting this off one more week. Secondly, she addressed the 100 ft. setback, stating that they did have a problem with this; that it would eliminate a lot of lots; that industrial zones and commercial zones do not have the same problems as residential zones, and this encourages tower location out of residential zones; that people will have a lot more problems with the towers if they are placed in neighborhoods. She went on to state that the County had discussed eliminating towers by putting as many uses as they could on one tower and tall towers would have several users. She agreed that chimneys and steeples are one way to disguise towers and make them more aesthetically pleasing and added that she was not familiar with the case that was brought up in Massachusetts. She also added that if towers were denied because of purely aesthetical reasons that it would violate federal law if they were denied because they were not pretty. She went on to say that if towers were forced into neighborhoods that more affluent neighborhoods might have a louder voice, but they still needed cell coverage. She mentioned the lack of coverage in Riverview, which needs to be addressed. She stated that if Chattanooga were to keep up with growth in technology, we would have to operate off cell towers; that if we get behind in industry, it will put us behind everywhere else. She stated that she would not want one across the street from her, but they are necessary.

Ms. Hall went on to question if the City could not live with a 50 ft. setback on commercial property, which would make it workable; that adhering to the 100 ft. setback might mean going into residential zones in order to work within the restrictions. She urged to let this Ordinance "sit" for a week.

Chairman Littlefield stated that it would go before the Planning Commission next week.

Councilman Page asked the implications of the 100 ft. setback—if it were a safety factor or an aesthetic factor or was intended to force towers to build higher. Mr. Leach responded that the engineering failure point was in conjunction with the setback; that it would force towers onto larger industrial or manufacturing lots and not on "postage stamp" lots; that if a 180 ft. tower had a 110 ft. engineering failure point then the setback would be 110 ft. He stated that this was intended to force the industry to look at larger sites. Councilman Page asked if the larger sites would make it more aesthetically pleasing. Mr. Leach responded that if they met the 100 ft. setback, it would be an acceptable location on a larger lot. Councilman Page continued to ask what differences it would make. Chairman Littlefield explained that it would move the towers back from the edges, to which Councilman Page inferred that it would make it more attractive. Mr. Leach added that this was just one tool; that landscaping and stealth towers could also be used for attractiveness; that the setback would just force them on larger lots and in the center.

Councilman Benson stated that if the tower one saw when coming through the tunnel had been placed on the old Boys' Club lot that it would have been a lot less intrusive.

Councilman Page asked about the use of pine trees for towers. Mr. Leach responded that this would be called a stealth tower. Councilman Page asked if this would not be a more aesthetic way to construct a tower. Chairman Littlefield stated that each tower would have to be looked at on a case-by-case basis. Mr. Leach stated that there was a whole list of things that could be done, mentioning the Unitarian Church and OLPH. He added that the Unitarian Church tower took three years to get in; that the citizens did not want it here and a lot of trading went on.

Attorney Hall assured Councilman Page that the 100 ft. setback was not being imposed from a safety standpoint and that 100 ft. was not necessary; that towers collapsed on themselves by design.

Mr. John Enloe of "Signal One" spoke next. He stated that he had been dealing with the Planning Staff and was sensitive to their concerns. He stated that he would reiterate what Tracy Wooden and Cindy Hall had said; that no one wants a moratorium and wanted to get rid of this one as quickly as possible but getting the Ordinance right was more important to him; that he did not know what it would be amended to later; that we will know what the Ordinance will be in one or two weeks, and he wanted to make sure we would not be meeting again in three months; that he did not want lawsuits because they could not live with the Ordinance. He reiterated that no one wants a moratorium, but it is more important to get an Ordinance that they could live with.

Chairman Littlefield reiterated that we were trying to respond to the industry to move quickly.

Mr. Enloe stated that he would quickly move along; that a lot of issues had been raised and more thought needs to be done in relation to the Ordinance. First off, he addressed the setback, which he felt was the most sensitive area. He stated that some would not like this and some areas are more sensitive than others; that we need some kind of control over the sensitive versus the non-sensitive; that this is a "broad brush" Ordinance to say that people can have some "say"; that first we need to see where the sites are; that you can't just say "this is a great place for a tower"; that when customers come to them they have a circle within which the site must be located because they need coverage in a certain area. He mentioned negotiating to get the 100 ft. setback reduced and going through the process to get this amended.

Mr. Enloe stated that he had no problem with the notification, but he would prefer that every case not have to go to the Variance Board, but if this is the case, they would have to determine which sites are a problem and which sites are not. He reiterated that he understood where the Council was coming from, but the problem is that this is so broad and is subject to anyone's interpretation and a lot of money is involved before one gets to the point of coming before the Variance Board, and it is difficult to invest this much money and then take it to the Variance Board and have someone say it does not look too good and deny it. He stated that they needed some kind of guidelines.

Chairman Littlefield responded that we would welcome suggestions and guidelines and that they had discussed "what is beauty?" He added that in some places, tall towers would be acceptable.

Mr. Enloe suggested reducing the 100 ft. setback to something workable. He mentioned that Councilwoman Robinson had talked about short towers, and they would work on some topographical areas but if we build towers with seven licensees then there would be fewer towers.

Councilwoman Robinson asked if as technology develops and is improved if signals can be smaller and stronger and if signals will be able to cover a greater distance, and the need will be less. Mr. Enloe responded that unfortunately it seemed to be going in the other direction—that sites have to be closer together.

Councilman Benson stated that "beauty was in the eye of the beholder" and is subjective. He stated that he was very much in agreement with Chairman Littlefield and thought if we were in a position to post notices that people would find "#4" validated; that the tower on McCallie Ave. was a good indication of something with a negative visual impact.

Mr. Enloe reiterated that businesses have to invest much money.

Councilman Benson still maintained that putting up notices should alleviate this problem; however Mr. Enloe explained that a lot of money had to be invested before a case was ready to go before the Variance Board.

Ms. Hall again stated that this would run afoul of Federal Law if "beauty" is used as a criteria for denial.

Chairman Littlefield noted that this would go before the Planning Commission on Monday, and we would go forward with the moratorium; that the final draft would be hashed out at the Planning Commission Meeting on February 11th at 1:00 P.M.; that this will then come back to the Council on March 12th for first reading. He stated that there would be a Legal and Legislative Committee meeting between now and then to discuss this further. Second and third readings will be on March 19th, and the Ordinance will become effective on April 2nd.

Mr. Gary Ball stated that what the neighborhood had previously heard was in a reactive mode and what he was hearing today was proactive, and they would go along with this.

Chairman Littlefield asked for a motion to table this issue. **On motion of Councilwoman Robinson, seconded by Councilman Benson, this matter will be tabled.**

Attorney Nelson stated that the moratorium would have to be extended next week.

CNE ASSETS

Chairman Littlefield called on Mayor Corker to address the committee.

Mayor Corker stated that first he would like to share with the committee the impact of the "Renewal Cities"; that any business located in the Renewal City area is included in the Central Business area and will get each year a $l,500 tax credit if they employ people and that this is equal to $l,500 in cash; that companies that have done nothing will benefit from this. He stated that this was a real positive impact on employment, and we needed to make sure that every business is fully aware of this; that they just have to file, and the credit will come back to them.

Mayor Corker went on to discuss the Resolution authorizing an Agreement between the City and CNE that provides for the reversion of certain assets of CNE originally funded by the City in the event that CNE should change its mission or no longer provide fit, affordable housing. Mayor Corker explained that we were re-establishing relationships with various entities; that we had noticed this need in dealing with CNE and looking at corporate documents; that nothing was provided if CNE was not in business. He stated that there had been a very productive and positive dialog with Caroline Bentley and the CNE Board that states that all assets that CNE owns will come back to the City of Chattanooga if their mission changes or something prevents them from existing. He mentioned a $14 million dollar fund balance and the fact that we invest $2 million dollars through the General Fund. CNE is also paying back CBDG money. He explained that we are building up equity at CNE, and we needed to make sure that there was a clear understanding that those assets belong to us; that Lyndhurst had contributed $20 million dollars up to date; that if we have an asset, we need to know that it is ours and this document tonight gives us full ownership.

Mayor Corker went on to explain that CNE would send to Adm. Boney any restricted loans, and it would not accrue to our fund balance. He stated that this should have been done in 1986; that this is a proper business relationship.

Councilman Benson asked if we were securing our shares. Mayor Corker responded that all of the fund balance accrues to the City's benefit (that some are restricted) and should the mission change, the assets will revert back to the City.

Councilwoman Robinson confirmed that the Mayor said this should have been done in 1986; that doing this would clean house. She confirmed that CNE was performing effectively.

Mayor Corker responded that this just established a professional relationship; that there had never been any controversy; that they will tell us quarterly what is happening; that we need to plan together about HOPE VI and the infrastructure involved; that there is a lot of pressure with CDBG money being involved, and we need to work closely with CHA and CNE; that there is no problem with CNE.

Chairman Littlefield acknowledged that this just states that if CNE ceases business, the assets come back to the City. He asked if we were going to do the same thing with the Airport Authority. Mayor Corker answered that we were looking at this.

On motion of Councilwoman Robinson, seconded by Councilman Page, this will be recommended to the full Council for approval.

The meeting adjourned at 4:10 P.M.