

**LEGAL AND LEGISLATIVE COMMITTEE**  
**February 10, 2009**  
**3:15 P.M.**

Councilman Benson, Chairman, called the meeting of the Legal and Legislative Committee to order with Councilpersons Bennett, Rico, Berz, Gaines, Pierce, Page, Robinson and Gilbert present. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present include Fire Marshall Craig, Donna Kelley, Doug Kelley, Jim Templeton, Larry Zehnder, Dan Johnson, Jerry Stewart, Richard Beeland, Daisy Madison, Steve Leach, Dennis Malone, Karen Rennich, Greg Haynes and Barry Bennett.

Chairman Benson called the meeting to order, stating that we had a very brief agenda concerning a statement in the M.L.K. Plan and confusion about it. He asked if there was anything else anyone wished to bring up.

Councilwoman Bennett noted that the Police Dept. had brought copies of their Annual Report.

Councilwoman Berz asked if we were going over the rest of the Agenda because she needed to get more information about one Ordinance.

Councilwoman Bennett noted that we had already discussed Agenda items.

Councilwoman Berz stated that she was looking at **Ordinance 6(d)**, and she had questions about this.

Chairman Benson stated that because of the confusion, he had asked Karen Rennich to come and speak to the MLK Plan—either she or Richard Beeland.

Ms. Rennich stated that she had nothing prepared but would be happy to answer any questions.

Chairman Benson stated that this was in Councilman Pierce's district and asked him how he wanted this to be handled.

Councilman Pierce stated that he had been in contact with Karen and Richard and that he would be asking for an amendment to the Plan at the 6:00 P.M. meeting; that there may be some to show up, and he hoped that the Council would be able to move on the Plan tonight.

Councilman Rico pointed out that the Mayor had nothing to do with the statement that was in question

Councilman Pierce noted that some had pointed this to the Mayor's Office, and he had asked Richard Beeland to let everyone know that the Mayor had put nothing in this Plan.

Chairman Benson confirmed that it was a change made by RPA.

Ms. Rennich explained that they first put out a Draft, which was not meant to be final; that after that there is some overhauling and tweaking; that she did not feel that this Plan was any different; that in fact in the Ft. Wood Plan we saw many more changes; that this was just standard procedure; that it had been going on for two to three months, and they did make some changes.

Councilwoman Berz indicated that she had received tons of e-mail concerning this and wanted to know what this was all about; that some people said they were not included or chose not to be included; that she was just trying to get a feel for what is happening.

Councilman Pierce responded that the process was open; that all that needed to be included had had input and that he appreciated RPA; that when we have such Plans that from time to time people find little items that are not to their liking; that basically the community feels this is no big thing.

Councilwoman Berz stated that she understood that Councilman Pierce had an amendment. He agreed that it was just a simple amendment, and he had full support of the community. Councilwoman Berz asked if he would like to share this amendment at this time. Councilman Pierce responded "no"; that there would be no use for the people to come to the 6:00 P.M. meeting if he did it here.

Mr. Beeland confirmed that the Mayor's Office added nothing; that such documents had been used for years as a guide for development, and this document is a neutral device and has data in it.

Ms. Rennich added that this was brought to the attention of Planning in December, and she had been involved; that some said the data was misleading, and it was; that it was a simple mistake, and they had corrected the information.

Mr. Beeland stated that this had been in draft form since December and had been available for review and input; that RPA had sent it back.

Chairman Benson noted that Red Cross became a social service over night, and it was strictly offices.

Ms. Rennich added that some of these function as offices and some as social service providers; that Social Services need to understand that there is a wide range and how they have to function—that it is a very valid point to help people understand the terminology.

Chairman Benson confirmed that Councilman Pierce would offer the amendment tonight.

At this point, Councilwoman Berz wanted to discuss **Ordinance 6(d)**, Colman S. Hochman from R-4 to RT-1 on a tract of land located at 6203 East Brainerd Rd. She stated that she had read all of the information about the Hochman property and was trying to get a feel for this.

Mr. Haynes explained that this was in East Brainerd and Brainerd Hills, rezoning from R-4 to RT-1; that sometimes planners change their minds; that some of their initial concerns was that RT-1 had to get a variance for setbacks and people were frustrated with the process; that this was already built in an R-4 Zone and R-4 Zones only allow duplexes or condominiums and not townhouses; that if the applicant had RT-1, it would allow him to sell these as townhouses as townhouses are allowed in RT-1. He stated that they now saw the request as reasonable and better for the neighborhood; that in looking at the bigger picture, they were supportive of the changes.

Councilwoman Berz asked the difference between a townhouse and a condominium? Mr. Haynes explained that when a person owns a condo, they only own the contents of the structure and the outside is held in common; that with a townhouse you own the lot that it is built on.

Chairman Benson stated that condos are not part of the zoning laws; however Mr. Haynes stated there was some confusion between multi-family condos and townhouses, and they needed to clear up the definitions. Mr. Bennett added that the land use is pretty much the same as apartments.

Councilwoman Berz stated that she was trying to get hold of this. She wanted to know that if this area was downzoned to R-1, how did this piece of land become something else?

Mr. Haynes responded that he did not think it was downzoned; that this area had been R-4 since the 1990's.

Councilwoman Berz still wanted to know when this area was downzoned, how could R-4 be still in there.

Mr. Bennett stated he would have to research this.

Councilwoman Berz stated that other developers would be testing the waters; that if this is not cleared up, this area will be hit with something that is not good for the area.

Mr. Haynes stated that this property is still zoned R-4.

Councilman Benson added that this is a problem that Councilwoman Berz will be facility; that if R-1 property ceases to exist, the property will be subject to change or houses will be built that are not aesthetically pleasing.

Councilwoman Berz asked how houses could hold on to their R-1 zoning and remain intact.

Chairman Benson stated that if the houses are torn down and the lots are big enough, they can subdivide.

Councilwoman Berz indicated that she knew what he was talking about and asked if we could not be pro-active. She wanted to know what we needed to do to be pro-active?

Mr. Haynes stated that she could open up a “big can of worms” if she asked for a Zoning Study to be done.

Councilwoman Berz wanted to know what she needed to do to protect the whole area.

Mr. Haynes recommended that she just be vigilant; that we could do a Zoning Study but people would be concerned about taking away their rights; that it depended on how pro-active she wanted to be.

Councilwoman Berz reiterated that she thought this area had been downzoned and was already R-1.

Mr. Bennett noted that a lot of the area is zoned R-4 or O-1.

Mr. Haynes questioned if this was because of a Zoning Study or Zoning Policy.

Councilwoman Berz stated that this neighborhood thought they were safe and they were not; that we were dealing with Zoning Laws from as far back at 1963 that are archaic and this affects everything.

Chairman Benson mentioned where one house had been torn down and Don Walker built three houses there, which is what he could legally do if the lot was big enough.

Mr. Haynes agreed that a builder can build what is allowed.

Mr. Bennett stated that in re-subdividing of lots, aesthetics and compatibility are issues that we are powerless to control.

Councilwoman Bennett stated that this is part of what happened in North Chattanooga; that with the re-districting, they thought there had been a blanket downzoning and found this not to be true.

Mr. Haynes noted that some people feel that when an area has been downzoned that the troubles are over.

Councilwoman Berz stated that she did not mind requesting something be done; that this was a vacuum they had not thought about this; that it was a beautiful area where a bank had been and then that car wash came in..

Attorney McMahan noted that State Law has something to say about this.

Mr. Haynes noted that some may think the car wash is beautiful, even more beautiful than the bank.

Councilwoman Berz stated that she thought we could do something that would be proactive.

Mr. Haynes asked her for specifics.

Councilwoman Berz stated something for the whole City.

Councilman Rico asked where property rights came in?

Mr. Haynes stated that property rights was the number one issue.

Mr. Bennett stated that we had more control than previously because the City can form a Design Review Committee as pertains to aesthetics; however this is only for non-residential property or high density; that there is no separate committee for neighborhoods, but it could be city-wide as triggered by someone getting a building permit.

Councilwoman Bennett noted that 20 years ago there was not downzoning but a U-2 that was improperly zoned and created some problems; that single-family was used a lot of different ways, and it threw older neighborhoods out of balance.

Mr. Bennett stated that for some reason, most of Chattanooga is zoned R-2 and R-3 and most of the property in Hamilton County is zoned Rural Residential, which is the same as R-2, and it is developed with single-family with some vacant lots and people assume these lots are R-1 until people start getting permits for duplexes; that this was brought to their attention, which spurred downzoning to try to reclaim and safeguard neighborhoods.

Councilwoman Berz stated that we were getting reading for big growth and wanted to know how we could be pro-active and not become an area of mostly concrete like Atlanta and not just say “it is a State Law”—that we are part of the State, and she would like to make a formal request.

Mr. Haynes noted that we have a Comprehensive Plan for the whole county; that we want to protect and preserve communities while still encouraging growth; that we do have this guide to look at the big picture; that the next level would be involving neighborhoods and Land Use Plans where we list goals and priorities; that Land Use Plans give us guidance; that with individual zoning cases, we have to look at what State Law allows; that the Council could take changes to the State.

Councilwoman Bennett stated that this was a TML issue; that as a Council we can have the opportunity to make an effort.

Councilwoman Berz stated that she would like to make this request; that the State should not be able to dictate to us, and we should be able to keep the beauty of our communities.

Councilwoman Bennett stated that this opportunity comes up in the Fall, and it is announced that they are working on legislative issues; that this has been included in our Pre-Budget meetings and needs to go into committee.

Councilwoman Berz stated that we needed to deal with major issues now or else we will have to react rather than being pro-active.

Chairman Benson stated that the Planning Staff needs to take the initiative to be pro-active; that we can't trespass over individual rights—that it is a two-edged sword and such efforts could kill development.

Councilwoman Robinson stated that when they went to Greenville, South Carolina, they heard about this in regards to BMW; that they told them of changes they could not imagine. She stated that we did need to take control.

Mr. Haynes agreed that it was a good thing to look at changes.

Chairman Benson suggested calling Greenville about this also. Mr. Haynes stated that they had already done this.

Councilman Rico stated that Mayor Littlefield had said we need smart planning.

Councilwoman Berz questioned what we needed to do, of record, to do smart planning and not just react to something negatively. She wanted to know what is needed of this Council.

Mr. Haynes stated that this was a tall order.

Councilwoman Robinson noted that one-half of our growth area is in Georgia and South Carolina told them their growth area was upstate—that they had the advantage of everything being in South Carolina; that we could not over estimate the challenge we will be facing; that growth would not be a respecter of State Law.

Ms. Rennich stated that Councilwomen Bennett and Berz had mentioned Design Review; that this was on their to-do list; that they had turned this in to the City Attorney so he could see what they were doing; that they needed to follow up with the Council on this—to see if any other States are using guidelines, and they would bring this information to the Council. Secondly, she stated, RPA had had four or five meetings with other Planners, the Southeast Development District and State Planners from North Georgia and North Alabama, who are concerned with some of the same issues; that they were about ready to go with what needs to go into a Regional Plan; that they were in the buy-in stage and would take it from there and come back and update the Council; that they were looking at options of what we want; that they were trying to fill all needs and the AIA would also bring some guidance.

Councilwoman Berz still wanted to know what we do to protect neighborhoods?

Mr. Haynes asked her to be specific as to what we want to protect neighborhoods from; that a good place to start was the Comprehensive Plan; that the Staff had looked at the Plan and looked at the action steps.

Councilwoman Robinson asked if the Southeast Development District included Bradley County and Marion County? Ms. Rennich responded that they do planning primarily for Tennessee; however some is in North Georgia and North Alabama—that these are sub-sections; that we need to get all involved together, including the people of North Alabama; that what folks want to see is infrastructure and land use issues, also green building and affordable housing and not duplexes. Councilwoman Robinson asked if this included MAGLEV and was told “yes”.

Councilman Gilbert stated that he agreed with Councilwoman Berz; that Volkswagen is here and people will be coming and developing and building where they can make a profit; that we need to be pro-active and not let them build in our neighborhoods. He went on to say that well-to-do neighborhoods have rules and guidelines in place, where other communities don't have these rules and guidelines.

Ms. Rennich stated that they could come back in 2-4 weeks with a presentation and some ideas to run by the Council.

Chairman Benson noted that the 2001 Land Use Study cost around \$185,000, with hiring two consultants and having 20 charettes; that he thought we would be doing more harm than good if we started from scratch. He questioned opening this up and starting from scratch.

Mr. Haynes assured we would not start from scratch but build on what we already have.

Councilwoman Gaines asked if they were "tweaking" the Comprehensive Plan as they go. She mentioned an old piece, which was the "20-20 Plan" and asked if all could be blended together.

Mr. Haynes explained that the "20-20 Plan" was an annexation plan; that it had other goals that were not material to the Comprehensive Plan.

Mr. Bennett noted that the current Comprehensive Plan does not include a Land Use Plan.

Mr. Haynes stated that it was still a good place to start.

Councilman Page mentioned Hixson; that the most important thing that happened during his tenure was the 58 Highway Plan and the North River Plan; that if it were not for these documents, he would have been lost; that it was time for these to be updated; that Councilman Gilbert was involved with this years ago, and it was really, really important to get grass-root support and that this be anchored in the community.

Mr. Bennett pointed out to Councilman Benson that the \$185,000 he was talking about that went to out of town consultants were actually people who had worked with RPA.

The meeting adjourned at 4:00 P.M.