

## **LEGAL AND LEGISLATIVE COMMITTEE**

**April 6, 2010**

**3:50 P.M.**

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

Others present included Dan Johnson, Daisy Madison, Chief Snyder, Chief Rawlston, Dickie Hutsell, Karen Rennich, and Barry Bennett.

**On motion of Councilman McGary, seconded by Councilwoman Ladd, the minutes of the previous meeting were approved as published and signed in open meeting.**

Chairman Murphy asked if there was any old business.

Councilman McGary stated that last week Councilpersons indicated their interest in running for Chairman and Vice-Chairman and some were not here, and he would like to open this up for a brief moment for full disclosure.

Councilwoman Ladd stated that she had been approached by a few to consider throwing her hat in the ring for Vice-Chairman, and she was asking the Council's consideration in this regards.

Councilman McGary outlined the three questions that were asked of candidates last week—Why you are interested? What you hope to accomplish? and What would you do differently?

Councilwoman Ladd stated that she was interested because she had been approached; that she brought a skill set to the table from a business standpoint; that she would like to increase the communication between Administration and the Council by asking questions and gaining more information to keep us informed. She stated that she would also like to streamline how things are done by the Staff to be more effective and would support the Chairman in what he does and would hope that he would allow her to have input. She stated that she had a background in strategic planning.

Councilman Gilbert stated that he wanted to have a clear understanding—that we have one running for Chairman (Councilman Rico) and now three for Vice-Chairman.

Councilwoman Robinson stated that she had just heard two names—that she was not running.

Councilman Gilbert confirmed that the two were Councilwomen Ladd and Berz.

### **AGENDA ITEMS FOR APRIL 13, 2010**

Mr. Bennett was asked to give a brief description of the five amendments to the Zoning Ordinance that are on for first reading.

**Ordinance (a)** amends the Zoning Ordinance in order to provide a special permit process for kennels/small animal facilities. Mr. Bennett explained that the way it reads now, the M-1 Zone is wide-open and things are not specifically prohibited by right; that there are issues with facilities that have outdoor kennels or runs. He asked Dickie Hutsell to speak to this.

Mr. Hutsell stated that this was proposed because of two situations, one being Dr. Fredrico in an M-1 Zone; that idea and concept is that it is a catch-all for any use, and it is kind of vague, and they would like the Special Permit process. He mentioned 64 kennels being within so many ft. of residential property. The other situation is M-1 use off of Dodds Ave. that is adjacent to residential property.

**Ordinance (b)** amends the Zoning Ordinance for definitions of dwelling. Mr. Bennett explained that this referred to O-1 single-family dwellings in regards to attached from detached.

Mr. Hutsell stated that they had a situation in Councilman Benson's district, which was O-1 off of Applegate; that a lot of mixed use zones allow offices and residences—the definition said single-family detached dwelling and some buildings have both offices and dwellings—they were taking out detached from the definition.

Councilwoman Robinson asked if parking was being considered. Mr. Hutsell explained that one would still have to take into consideration the square footage and would have to provide the proper amount of parking. She asked if one could not have home offices in residential areas? Mr. Hutsell explained that we are talking specifically about the O-1 Office Zone; that you can have home occupations in residential zones with conditions; that this is only the O-1 Zone, saying that dwellings and offices can be in the same building but only one dwelling per structure.

Councilwoman Berz asked how this affected E. Brainerd Rd. and transition zones? Mr. Bennett responded that on E. Brainerd Rd. some are O-1 but most are R-4, which already permit residences. Councilwoman Berz confirmed that they would have to provide sufficient parking, asking if they could concrete their backyards? Mr. Bennett explained that there is a parking matrix with specific square footage—that it is a combination of the two. Councilwoman Berz asked about concreting their front yards? Mr. Hutsell responded that they could do that anyway. Councilwoman Berz stated that she was thinking about O-1 and tearing up a neighborhood. Mr. Bennett stated that R-4 and O-1 are both pretty much safe for offices.

**Ordinance (c)** amends the Zoning Ordinance relative to exterior lighting. Mr. Bennett stated that language in the Industrial Zone is important, and the language is not clear, and the intent is not being met; that they were adding general regulations to cover any zone.

Mr. Hutsell mentioned the situation of the Fed-Ex on Shallowford Rd. and the neighborhood near Boyd-Buchanan; that this adjoins residences and Fed-Ex has long-term leases; that they had talked them into saying contiguous to the rear because we needed to have more enforcement ability.

**Ordinance (d)** amends the Zoning Ordinance relative to detached dwellings. Mr. Bennett stated that detached and attached were not individually defined and both needs to have a definition—that this is a housekeeping matter.

**Ordinance (e)** amends the Zoning Ordinance in UGC (Urban General Commercial Zone) for auto-oriented uses. Mr. Bennett noted that the specific case involved in this is the Race Trac on S. Broad St.; that they had revised this and made it much more user-friendly; that they needed specific needs for security issues, etc.; that this may not meet the original intent, but it needs to fit into this area. These regulations will provide a process to accommodate this.

Councilwoman Scott had a question regarding the Ordinance in reference to convenience stores and talking about parking behind when the convenience store faces the front, and they would need to know what is going on in the back—that gas pumps are involved, and this might make it more difficult to see what is going on in front and in back. Mr. Bennett mentioned the intent of the UGC Zone; that this was not mandated, and we had used the word “should” rather than “shall”; that they do have options based on reviews of the Site Plan; that it is a recommended standard but not mandated. She stated that her question was a practical matter for people not there to buy gas but just to buy a coke, and they are not handicapped—would this suggest they park around the back and walk to the front.

Mr. Bennett agreed that restrictions might need to be changed—that they may be too harsh, but this is to serve as a guideline; that the intent is to establish framework for the overall zone; that it is not the intent to make any aspect difficult for anyone; that they want this to fit into this environment as closely as possible.

Ms. Rennich stated that to her this was saying only for temporary parking; that she did not work on this language—that it could be confirmed or tweaked.

Councilwoman Scott stated that she did not want to be legislating something that would be more pleasing to the eye but would make an unsafe situation occurring in the back of the store; that she did not want to sacrifice a safety issue.

Ms. Rennich stated that they were trying to address safety issues in auto-oriented uses; that the safety issue has to work in; that the front entrance is important, and this language was trying to address this.

Councilman Benson stated that this all came through the Planning Commission and questioned if we make changes, would it have to be sent back to them? Mr. Bennett responded that every variation has been discussed; that anyone with specific concerns or recommendations could e-mail them to Karen or himself. Councilman Benson felt that if it were anything of substance, it might have to be sent back. Attorney McMahan explained that it just could not go out of the scope. Mr. Bennett stated that he thought they could do this without any problem. Chairman Murphy noted that these are all on next week's agenda. Mr. Bennett stated that they would address these issues.

Chairman Murphy stated that we needed to address nightclubs, and the Ordinance that is on the agenda tonight relative to two-family dwellings in an R-1 Zone needs conditions. He asked if they had an update on duplexes ready. Ms. Rennich stated that they had something on duplexes but not nightclubs. Chairman Murphy agreed that we needed to fix the issue on duplexes. Councilman Benson stated that if we were through with this discussion, that he had another problem. Chairman Murphy advised him that we were ready for an update on duplexes.

Ms. Rennich presented a handout with steps to determine if property qualifies for application for a Special Permit. (This is made a part of this minute material). She stated that the question seems to center around not having enough information provided and notification; that they were advocating a more involved process to get more information and to notify the public; that RPA would provide more detailed recommendations and analysis. She read **Step 1—Determine if property qualifies for application for a Special Permit.** (This is all included in minute material). She stated that this was a simple yes or no matrix; that they were proposing that applicants go back to the original intent of the Zoning Study which is parcel by parcel; that annexations are handled differently.

**Step 2—A City Zoning Official agrees property qualifies for an application for a Special Permit.** This official would be Dickie Hutsell, and he would make the determination that this qualifies.

**Step 3—Application and Notification.** (This is outlined in document in minute material).

**Step 4—Regional Planning Agency Staff Assessment.** Ms. Rennich stated that Zoning Studies go into a lot of detail; that the Timeline would be a period of two years, then the application would have to be reheard as of the time of the new application.

Councilman McGary asked if the Planning Commission would do an indepth study or rely on the Staff's recommendation. Ms. Rennich responded that it would be the Staff recommendation. He asked if these zoning sites could be expandable. Ms. Rennich explained that they are mapped from the Ordinance on file and the digital map; that borders are set at the time of the Zoning Study. Mr. Bennett felt that they were expandable. Councilman McGary wanted to know when a Zoning Study was done and was told when a Councilperson asks for it. Ms. Rennich added that some areas have no Zoning Studies. Councilman McGary asked if Zoning Studies were different from Neighborhood Plans and was told "yes". He asked if interiors or exteriors were on the Site Plan? Ms. Rennich responded that exteriors were on the Site Plan; that interiors were harder and the person would have to show how it added additional value. Councilman McGary asked about first class mail notification and if this cost would be incorporated into the fee? Ms. Rennich noted that the fee for a Special Permit would be \$75.00, and she thought this would cover first class and would not be certified mail and would go to all property owners within 300 ft. of an area requested.

Councilwoman Scott wanted to know what the mailing would say and if the form would allow a response to come back to give their opinion so that they would not have to show up. Ms. Rennich explained that it did not require action on their part; that there would be a telephone number where they could call their office, and they would keep a log; that there would be no self-addressed envelope to come back; that they did get calls from the community. Councilwoman Scott confirmed that they did not have to do anything but there was an opportunity for feedback.

Councilman Benson noted that the only Special Permit we had granted was on Holly Street and there were very specific conditions; that it was not an absentee slum owner and everyone on that street supported this man, and he lived across the street. He questioned what would prevent an absentee slum owner from meeting the requirements; that we were putting the responsibility on the Planning Staff and they would have a special fee to notify these people. He asked what they would do with the information. Mr. Bennett stated that they were inundated with these requests. Chairman Murphy stated that we could address the fee. Mr. Bennett stated that there could be some legal ramifications if we required that someone live across the street; that most are absentee landlords, and he

was not sure how this could be controlled; that if the Council wanted this to be a condition, it could be.

Councilwoman Berz stated that Councilwoman Robinson had made some astute comments about due diligence and the fact that the realtor was not obligated to tell a buyer about a zoning rule. Councilwoman Robinson stated that any buyer has their own responsibility—that this is a “glitch”; that some homes show up as an R-1 area and later we find there has been a legal non-conforming use and then that they have lost this legal non-conforming use; that people move out and lose this status and someone buys it thinking it is a duplex, and it no longer is a legal non-conforming use. Councilwoman Berz asked if the realtor was supposed to know this? Councilwoman Robinson stated that the Title Company should find this out; however it was incumbent upon the buyer.

Ms. Rennich stated that this was a large issue and they had wanted to talk to the Realtors to remind them of this issue; however a lot of these people don't use Realtors. Councilwoman Berz stated that one of their questions could be “Have you done a Title Search?” Councilwoman Ladd added “Or do you have Title Insurance”. Chairman Murphy stated that this would occur at closing time; that a Title Company won't know how long the power has been off in a structure that is not zoned R-2 but has a legal non-conforming use. Councilwoman Robinson stated that a duplex in an R-1 Zone should be a big red flag! Chairman Murphy stated that this was not intended to protect “stupid” buyers but the neighborhood. Councilwoman Robinson responded that these are the ones that are showing up down here. Councilwoman Berz stated that they could be asked if they had done due diligence. Councilwoman Robinson stated that it could be specified that the purchase of this property reflects the zoning, and it has been vacant for longer than 100 days and “yes”, it has lost the legal non-conforming use. Chairman Murphy pointed out that this would be for applicants who have not made the purchase yet.

Upon questioning by Councilman McGary, Mr. Bennett explained that the intent of this document is by asking questions, it would give the Council enough information to make an objective decision; that it is just one more component. Councilman McGary wanted to know if seven people showed up who were against this, would this have to be factored in? Mr. Bennett responded that people come to public hearings—that this is another component in this process.

Chairman Murphy suggested having the fee reflect an expense to do pre-posting in order to get cards back saying whether someone is for or against. Councilwoman Robinson stated that we do a lot of mailings, questioning if we wanted to go to the expense of a stamped card; that she had never heard from anyone saying “yes I got a letter”; that most said “No, I did not get a letter”.

Ms. Rennich stated that neighborhood associations could give feedback; that this might make applicants be more apt to try to sell their project to the neighborhood.

The next issue was fact finding on Special Gatherings. Councilman Gilbert mentioned an area on Wilcox Blvd. Attorney McMahan stated that he thought this was wanted on April 20<sup>th</sup>. Chairman Murphy mentioned the constitutional right for assembly and the right to assemble on private property, noting that lawsuits would be generated. Councilman Gilbert stated that if they were paying to get on private property that the responsibility would be on the owner. Councilman Benson stated that he thought this was already on the books.

Councilman Benson wanted something discussed concerning wreckers; that it was not him wanting this but the Wrecker Board; that Ken Fritz needs to be here for this discussion. Chairman Murphy asked if this needed to be discussed in committee before going on the agenda and if it should be on the agenda next week. Councilman Benson mentioned that David Carroll had called him about his son and a bill he received for \$350 for parking on private property for no more than an hour; that the owner had testified to the Beer and Wrecker Board that \$150 was the maximum, and he had called the lady about this. He stated that we have a problem, and we need a “ceiling”. Chairman Murphy stated that this would be on the agenda next week.

Mr. Bennett mentioned a handout explaining the intricacies of re-voting; that we would give this new process a try; that we don’t have to vote; that the last vote keeps the process in place; that if the Council still wants to re-vote, a motion can be made to keep the process in place or not in place; that the last vote kept it in place. Councilwoman Berz asked if we already had the amended Ordinance.

The meeting adjourned at 5:00 p.m.