

LEGAL AND LEGISLATIVE COMMITTEE

MARCH 15, 2011

4:00 P.M.

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

Others present included Dan Johnson, Chief Parker, Richard Beeland, and Craig Joel.

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

DOWNTOWN DESIGN REVIEW PROPOSAL

Chairman Murphy noted that Kim White and Dale Mabee were present and asked them to come forward at this time. He thanked Mr. Mabee for serving on the Planning Commission.

Mr. Mabee thanked the Council for giving them this time to speak, stating that as they knew, Roger Tuder, Kim White and himself, along with the Homeowners' Association wished to establish a Downtown Design Review Process; as part of the Process, they had mentioned a Stakeholders' Committee, along with the RPA Staff, to design guidelines and ultimately to become the Review Committee. He went on to say that they had met with each Councilperson individually and wanted to meet with them as a whole to ask them to help them kick this thing off by assigning four at-large members to the Stakeholders' Committee; that this needed to be done within 30 days; that they respectively asked that it be within this timeframe period in order to be helpful to their Process. He went on to say that Roger Tuder was out of town today but that he supported this 100%. He then noted that John Bridger of RPA was present to brief the Council on their Process of Developing Guidelines.

Mr. Bridger provided a handout of the Process that they would use. This outline is made a part of this minute material. He explained that they first would get the Design Themes and based on that assessment, they would look at the C-7 Ordinance to base the design around. They would also look at State Enabling Legislation and had worked with the City Attorney's office on this; that the C-7 Zone would be compared to other city models downtown. He noted that this was their groundwork—they would first look at the design, and the process and then look at the components. He noted that this would not all get done in one meeting; that it would probably take three meetings and would be a six-month process.

Councilman McGary thanked Mr. Bridger and stated that he would like to ask a quick question—that it was his understanding that downtown will be slightly different in design from the North Shore.

Mr. Mabee responded that one thing, it would be a larger committee with a larger spectrum of stakeholders; that there could be taller buildings; that the North Shore has an Appeals Process to the Planning Commission—that this would be broader and the appeals process would somewhat take into consideration the economic impact.

Councilman McGary asked if this different work can be applied to the Downtown Overlay Zone? Mr. Mabee explained that it would go from the Riverfront to Georgia Ave. and down to 12th.

Councilwoman Berz stated that they were to be applauded on this; that Downtown is important to everyone; that she liked the idea that the Council was to include four members at-large as part of this; that this would erase lines. She questioned what methodology the Council would use to select these people, questioning if the names should come to Councilman Rico, as Chairman? She mentioned that when we formed the Audit Committee, four or five names were asked for, and they did not have to be from a particular district, and this worked well. She asked if this format could be used so that the total Council has input?

Councilman McGary asked if it were the impression that these four will be permanently seated and asked if four Councilpeople wanted to serve—that he felt that all who have a desire to serve should be able to do it; that he would volunteer himself, as he wanted to learn.

Councilwoman Scott asked for clarification—if this was for councilpeople or if the Council was supposed to nominate four people? Mr. Mabee stated that would be up to the Council's discretion—that it could be a councilperson. He noted that the Planning Commission rotates the councilperson.

Chairman Murphy stated that the committee needs to get a move on with the four nominees; that names could be submitted to Chairman Rico, and the names would be subject to a vote of nomination by the whole Council.

Councilwoman Scott asked if the Council could be provided with a written sheet in order to have an idea of what kind of representative is needed.

Councilman Gilbert stated that he thought this was a good concept.

Councilman McGary asked if other areas than the downtown was interested in something like this, could we rely on this leadership? Mr. Mabee responded “yes” was his short answer and that RPA and River City would also have to be involved. Councilman McGary asked that notes

be taken at the meetings so that the Council can have information to make this applicable to other areas.

OUTSIDE COUNSEL FOR SOME CITY CASES

Attorney McMahan first drew attention to **Resolution ©** on next week's agenda, asking to retain experts in the case of James L. Marine, et al versus the City of Chattanooga to pay the hourly rates of Kelley Fite (Forensic Firearms Examiner) \$150.00 per hour and David Dustin (Computer Animation) \$100.00 per hour for modeling, texturing, and positioning in a police shooting case in litigation in federal court. He noted that Mr. Marine died; that they needed the Forensic Firearms Examiner to get the angle of the bullets and how the bullets traveled using standard police procedures and the legal right for open fire. He noted that this was a big case.

Chairman Murphy reminded the Council that we are in a public meeting and that this is subject to litigation and questions might be handled better one on one with Attorney McMahan.

Councilman McGary asked if creating these models was costly and if this would be open-ended? Attorney McMahan stated that the most expensive would be the Firearms Examiner; that we have an outside figure of \$25,000 to \$35,000—that these are hourly rates.

Resolution (f) authorizes the City Attorney's office to retain the law firm of Chambliss, Bahner & Stophel, P.C. to assist in the defense of certain lawsuits against the City. These are personnel issues related to labor laws, and we need to get expertise on these. Attorney McMahan stated that he might have to testify in a reverse discrimination suit in the Police Dept.; that their office was overburdened right now.

Chairman Murphy again reminded the Council that the public meeting being subject to litigation applies.

Councilman Benson stated that he knew the City Attorney's office had been busy with annexation and other things. He asked if they were overburdened with outside litigations? Attorney McMahan responded that they had advertised for an in-house lawyer. Councilman Benson stated that would be more economical; that he was concerned about the things the Council was putting off on Attorney McMahan's office and now they did not have time for these other cases, which come at a high rate. He stated that the Council needed to be attentive to not putting too much on Attorney McMahan because it would result in putting more on the taxpayers. Attorney McMahan stated that outside counsel from time to time was necessary.

Resolution (e) authorizes the City Attorney's office to retain the law firm of Gearhiser, Peters, Cavett, Elliott & Cannon, PLLC for the case of *City of Chattanooga, Tennessee and Chattanooga*

Downtown Redevelopment Corporation v. Hargreaves Associates, Inc. et al. Attorney McMahan stated that we were going to appeal this and needed a lawfirm with construction expertise.

PILOTS

Chairman Murphy stated that this pertains to a question of Councilman McGary.

Councilman McGary noted that he would not be at tonight's Council meeting. He went on to say that a number of Councilmembers were absent last week; that firstly, we as a Council make PILOT recommendations on information we have just been given in a week's time, two-weeks' time or even a day's time; that Amazon was kept under wraps and Councilwoman Scott, as Chairman of the Economic Committee, did not learn about it until the week that we voted on it; that he felt uncomfortable making decisions at the end of the process that involved millions of dollars; that we are just told by the Chamber of Commerce, here is the information and now we need you to vote; that if this was a large corporation, and they were told they were getting ready for a merger and had to make a decision, it would be frowned upon; that such things should be on the front-end; that the Council is the legislative body that makes decisions, and he would like to see one person from the Council being privy to the conversation from the beginning; that it has been said that these are confidential matters; that as Councilmembers, everyone should be able to hold information if necessary; that one other person should be privy to the confidential material.

Secondly, he mentioned the Sunshine Law—that one person should be privy, and it could be the Chairman of the Economic Development Committee; that it was his hope that one become privy so that the Council would have another resource at their disposal, and there could be more full and robust discussion.

Another issue did not concern wrong-doing but accountability; that we needed to have greater confidence in the consistency of PILOTS; that we don't get all PILOTS done in a consistent way; that the package should be presented as consistent across the board, and it should be a fair and equal process.

He stated that we had a quorum at last week's meeting and took a vote on this and four voted "yes" and one voted "no". He stated that it was his suggestion that one person from this body be privy to PILOTS from the beginning so that we would have two resources—more information and greater consistency.

Chairman Murphy questioned whether this discussion should even be in his committee; that he thought the question Councilman McGary was prepared to speak about was the PILOT money dispute between the School Board and the County Commission.

Councilman McGary apologized, stating there were too many PILOT issues; that his other question concerned the constitutionality of school funds and whether this body (City Council) should enter into the dispute with the County Commission and School Board in designating funds. He wanted to know what our options and concerns should be?

Councilwoman Ladd stated that she could see she did not miss much at last week's meeting! She stated that her opinion or concerns about the PILOT money for the County School Board should be left between the County Commission and the School Board—that it is in their jurisdiction; that we need to allow them to work through their own process.

Councilman McGary responded that he understood Councilwoman Ladd's concern; that his concern lay elsewhere—that the assumption had been made by elected School Board members and discussed by their School Board. He asked if this was something the Council originally understood at one time and is now being changed? He stated that it was a constitutionality issue that affects all of us and is not purely a county issue.

Attorney McMahan explained that the City went out of the school business in 1996-97; that it was abolished and we ceded all matters of the School Board; that originally the PILOT Agreements had no payment to school taxes; that this had only happened in the last 2-3 years; that the big issue and the "goliath" in the room was Volkswagen. He stated that this was not a constitutional issue; that the PILOT agreements do not specify the "school use" in the School System; that this is taking discretion away from the School Board.

Councilman Rico stated that he agreed with Councilwoman Ladd; that this matter is up there, and they need to be the ones to fight over it—that it is not over yet.

At this point, Councilman Gilbert asked if it were legal for the County to do road work in the City? Attorney McMahan stated that there are statutes that provide this.

Chairman Murphy stated that Parks and Recreation would be meeting next week; that he would not have much in his committee next week and suggested that maybe committee meetings could start later. Councilwoman Scott stated that in view of Councilman McGary's concern, we might need to have an Economic Development Committee next week. This prompted Chairman Murphy to say that we should then start at the normal time.

TEN PERCENT RULING ON PERSONNEL HEARINGS

Councilman Gilbert questioned when Attorney Benson should come back with his ruling as to a solution to this problem? Chairman Murphy stated that he had talked to the Mayor about this and what he was hearing from Administration that to bring all into the Fire and Police procedures is not being practical; that he did not feel like there was majority support for 10%

and thought that this was being worked on. Councilman Gilbert maintained that there are a lot of cases, and we need to look at the rules and make them fair for all employees and employers; that everyone needed to know their rights.

Chairman Murphy questioned when this would be coming back, again stating that he had this discussion with the Mayor; that there could be a suggestion of a number as early as next Tuesday; that it would not be the same outcome as the Fire and Police because many felt this was too low and we would be having more hearings than Nashville has.

Councilman Gilbert stated that it involves jobs and money and should be the same grievance procedure.

Chairman Murphy stated that Administration saw a clear objection to Attorney Benson and the issue is not going to be raised to the level of review for those in uniform service; that there probably will be a disparity.

Councilman Gilbert stated that we had been told that if Attorney Benson came up with some sort of solution, that we would listen to him; that we asked him to come back, and we need to hear him.

Chairman Murphy stated that this was not his fault.

Doug Collier was in the audience and suggested that their Counsel, Mr. Benson, does have some facts and needed to sit down with the Legal and Legislative Committee and Administration to discuss these facts; that he thought the facts would surprise some.

Chairman Murphy stated that when Attorney Benson appeared the last time and said that the grievance procedure should be the same, Department Heads thought he was going a bit too far; that there might be some improvement. He asked that Councilman Gilbert "prod" this along, as he had already tried.

The meeting adjourned at 4:30 P.M.