

LEGAL AND LEGISLATIVE AND SAFETY COMMITTEE
FEBRUARY 14, 2012
3:50 P.M.

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

Others present included Donna Kelley, Jenny Lowery, Madeline Green, Jean Smith, Dan Johnson, Richard Beeland, Larry Zehnder, Greg Haynes, Ulystein Oates, Ron Swafford, John Bridger, Lt. Carroll, Dickie Hutsell, Johnny Feagans, Danny Thornton, David Johnson, Daisy Madison, and Chief Parker.

On motion of Councilman Rico, seconded by Councilwoman Ladd, the minutes of the previous meeting were approved as published.

Chairman Murphy noted that we went over **Resolution (a)** last week that awards a contract to Thompson Engineering for the Police Services Center parking lot.

The issue tonight is **Resolution (k)** that approves a Special Exceptions Permit for an ethanol transfer facility on property located at 6162 Enterprise Park Drive. Chairman Murphy stated that all would have a “say”, but we would not say the same thing three times. He asked if the applicant was present for them to come forward.

Mike Price was asked to bring the Council up to speed as to what has happened with the County Commission. It was noted that the franchisee had not been approved by the Planning Commission yet. The County Commission has moved on the sale of additional property contiguous to the Industrial Park, and there is proper support as well.

Chairman Murphy asked anyone in the audience who would like to speak to come forward.

Ms. Sue Powell of 4720 Maywood Lane addressed the Council. She mentioned a diagram in the paper of the proposed route under Jersey Pike; that the railroad will be putting in a pumping station, which the Council has no control over. She noted that she had already stated her objections; that this is not allowed and under the cover of a Special Exceptions Permit it is a way of doing something that would not otherwise be legal. She urged that the Council listen to the neighborhood, which did have objections; that she had asked numerous people. She thanked the Council for giving her a few minutes to speak to this issue.

Councilman Gilbert reported to Mike Price that this was discussed last week and asked if he had information today concerning his questions; that one last time, he was asking about agreements. He asked Mr. Price if they had them?

Mr. Price responded that he had the necessary agreement in hand to allow them to construct the pipeline, which was all other than the franchisee; that he had contacted Norfolk Southern but had not contacted CSX; that they had the right to go under there and all other routes had been secured.

Councilman Gilbert asked if he was sure they can do the pipeline and not use trucks? Mr. Price responded “yes”; however one truck per day is allowed. Councilman Gilbert asked how many trucks currently are going in and out? Mr. Condra responded that the total market is about 100 rail cars with 3.5 trucks per rail—that it varies from day to day, but he would estimate 10-15 a day.

Councilwoman Berz stated “and so we will be down to one truck per day”? She wanted to know who would monitor this? Mr. Price responded that they could self-report as part of the conditions. Councilwoman Berz stated that these were good conditions but that they were illusionary—that this could not be monitored. Mr. Price felt that monitoring would be fairly simple as to the number of trucks; that information could be given to the Land Development Office to verify the number. Councilwoman Berz asked about measuring stormwater independently and wanted to know how we could make sure they were telling the truth—that she did not think one truck would cut it. Mr. Price responded “by the pipeline”; that there would be no reason for them to cheat.

Councilwoman Ladd mentioned a similar facility opening up this month, doing the same thing, and they said they would have 80% of the market. She asked if they would be able to sustain their company with only 20% if this were correct? Mr. Price responded “that is great”, and they can make claims but that they were just as competitive, if not greater and urged “let the game be on”. Councilwoman Ladd asked if they had a business exit strategy? Mr. Price responded that to do so, would be saying that they were destined to fail. Councilwoman Ladd felt that they needed an exit strategy in case they were not able to sustain the business. Mr. Price responded that this was allowed by a Special Use Permit and presented a scenario if they should fail—that they were not rezoning the property, and it would remain M-2; that the office building on the front could be sold; that the worst case is the rail, but that could be utilized and could meet other uses. He also mentioned the fear of the neighborhood that this would be like Alton Park and become a wasteland or brownfield and could not be re-utilized.

Councilman Gilbert followed up with the “Alton Park” statement; that what really concerned the neighborhood was this being highly explosive and there being a safety issue. He asked if they were equipped for this? Mr. Price stated that this could be addressed thoroughly. He noted that there had been no safety citations; that there is a Safety Manual; that they had met with the Fire Department, and they accepted the hydrants as laid out.

Councilwoman Scott stated that she had shared some of the same concerns as Councilman Gilbert but noted that there is a Federal Government site that one can look at as to accidents and the degree and any fatalities in relation to injuries. She stated that she had spent time doing this, and there were not many injuries; that most of the injuries involved trucks on the highway as opposed to rail cars—that the injuries were all truck related.

Councilman McGary stated that it was Mr. Price's job to convince the Council that this is in the best interest of his client and also the City. He asked Mr. Price what his concerns would be? Mr. Price responded that his main concern was that it never seemed to galvanize with the community that the fear factor has been addressed—that this mindset was difficult to overcome—that he would truly love to overcome this and felt they had addressed these concerns with covenants and restrictions, but the community still was not on board. Councilman McGary asked if he were speaking for himself or his client? Mr. Price responded he was speaking for all but felt the responsibility lay mostly with him because he did most of the speaking.

Councilman Benson stated that Mr. Price had addressed all the issues except two that worried him; that an Industrial Park had been established and parameters in utilizing it, and they had established a covenant, which had been violated—at least the spirit of the covenant had been violated. He went on to say that he would like to do away with Special Exception Permits because they brought on "special pressure".

Mr. Price noted that research had been done, and they found two facilities that have fuel distribution on site and neither of these two facilities were required to rezone to M-1; that they were told that they had to rezone to M-1; had they been able to operate in M-2, they would not have been required to go the Special Exceptions Permit route. He reiterated that there were a couple of uses with fuel distribution that were allowed to operate in an M-2 Zone.

Councilman Gilbert asked him the names of the two facilities and was told UPS and Chattanooga Gas.

The meeting was adjourned at 4:10 P.m.