

Municipal Building  
Chattanooga, Tennessee  
December 9, 1997

The meeting of the Chattanooga Council was called to order by Chairman Swafford with Councilmen Crockett, Eaves, Hakeem, Hurley, Pierce, Rutherford and Taylor present; Councilman Lively was out of the city on business. City Attorney Randall Nelson, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

INVOCATION

J. B. Collins gave the invocation for the evening.

MINUTE APPROVAL

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

SPECIAL PRESENTATION: RECOGNITION  
OF "TYNER RAMS," TSSAA 2A  
CHAMPIONS

Chairman Swafford recognized the presence of Coach Wayne Turner and the "Tyner Rams", the TSSAA 2A State Champions. He stated it is always a feat to win in any position, but when a team is number one across the State the Mayor and Council members wanted the "Rams" to know we are proud of them, the coaches, and the entire School and staff. He presented Coach Turner with a plate bearing the City's seal for display in his home, as well as a plate for Principal Steven Ball for display in the School's trophy case.

Coach Wayne Turner expressed thanks and appreciation to the Mayor and Council for the presentation as well as the opportunity for the team members to come down and be recognized tonight.

SPECIAL PRESENTATION: RECOGNITION  
OF "TYNER RAMS," TSSAA 2A  
CHAMPIONS (Cont'd.)

At this time Councilman Eaves presented each member with a gift bag which included a copy of a proclamation proclaiming the week December 6-18, 1997 as TYNER HIGH SCHOOL WEEK, a bib cap bearing the City's seal and a lapel pin (with the City's seal affixed). Prior to presenting the gift bags Councilman Eaves indicated that he is an alumnus of Tyner and played on the School's football team.

Gift bags were presented to team members: Anthony Jones, Rashuan Strickland, Darmecus Rawls, Windarek Stewart, Rory Hinton, Jermaine Harris, Prince McKinney, Marcus Douglas, Chad Anderson, Aaron Ellison, Nick Toney, Willie Hodges, Maurice McDowell, Tarus Hinton, Warren Sims, Jason Ball, Ejay Hughes, Brian Locke, Kelvin Hughley, Brian Gilliam, Clifford Billups, Floyd Zacharie, Marcus Gilliam, Desmond Richards, Douglas Paris, James Cooper, Tony Bird, Ronald Blache, Thomas Dingler, Jeffery Ramsey, Corey Harris, Cortez Stokes, Brian Jordan, Napoleon Clark, Corey Stovall, Corey Plumber, Kevin Russell and Adrian Patten. Gift bags were also presented to Assistant Coaches Bill Crews, Larry Dillard, Robin O'Brien, Chip Goins, Jim Parker and Efrin Stewart.

Coach Turner once again thanked the Mayor and Council for the recognition given them tonight.

Chairman Swafford expressed appreciation to Janice Miller and Scott Wilson of the Mayor's Office for their assistance.

REZONING

1997-233: William E. McCallie

Pursuant to notice of public hearing the request of William E. McCallie to rezone a tract of land located at 6808 Conner Lane came on to be heard.

The applicant was present; opposition was in attendance.

Barry Bennett stated the request for this rezoning is C-2; that the surrounding zoning includes C-2 and R-2; that another request (1997-242) on tonight's agenda is adjacent to this property and the applicant for that request is also requesting C-2. He stated the land use is predominantly single family residential with some duplex development to the west and north. He stated the Staff recommends against the C-2 zoning and the Planning Commission recommends denial of C-2 but approval of R-4 which is what the property to the north is currently zoned.

REZONING (Cont'd.)

Atty. Fred McClure represented the applicant and stated this property has been owned by the McCallie family for 75 years; that in 1971 the property was annexed into the City and was de-annexed in March of 1973 and re-annexed in July of 1973. He stated the property has been taxed at a commercial property rate when it was annexed, which was grandfathered-in, and can continue to operate as commercial property. He stated when the inspector came out and saw the property was operating as commercial it was indicated that it was not a legitimate use, which it was; that they then applied for the C-2 zoning. He stated he has a letter from the Planning Commission dated in 1973 to the State Real Estate Board advising that the property is C-2; that he does not think there is any question as it has been operating as commercial all this time and is grandfathered-in. He stated R-4 will not work; that the property is currently being used as a used car lot and R-4 does not allow that. He stated C-2 is what will work.

Deede Gram of 6833 Longview Road spoke on behalf of the residents of the neighborhood. She stated this is a beautiful neighborhood and the property in question is just a "finger" into this established neighborhood; that there are beautiful homes that were built in the early to late fifties. She stated there are many older people in the neighborhood; that the next few years are very critical as to the nature of the neighborhood and would like to see it stay steady; that they want people to move in the area because it is a gorgeous neighborhood and a beautiful place to live. She stated her property abuts behind this and the property in question is zoned R-1; that she is representing the people who live in R-1. She stated the neighborhood has duplexes owned by Bill McCallie and family; that he has R-2 for sale with a commercial Realtor with a commercial price and is using this request as a "stepping stone". She stated the zoning people recommended that he not get this; that he has been told this is grandfathered-in as C-2. She stated if the property is used as a beauty shop or office in the front, the people she has talked to would not be opposed to that. She stated if he has anything like the duplexes he has on Conner Lane, that would not be pleasing to the neighborhood because the duplexes are in disrepair. She stated it would be nice to have an insurance business and not a lot of repossessed cars. She stated they want to protect their borders as this is a wonderful little pocket and gorgeous area.

REZONING (Cont'd.)

Atty. McClure stated when a legal non-conforming use is grandfathered-in it is not grandfathered-in as a particular enterprise; that it is grandfathered-in as commercial property. He stated it is C-2 now and (they) want to continue to operate a commercial enterprise. He stated they are trying to avoid the confusion that is developing; that it was as a used car lot before this; that for 75 years it has been commercial. He stated this is a four acre lot and the rear lot acre is less than 1/4 of an acre; that there is nothing back there but brush and trees and this cannot be seen from Ms. Gram's house.

Councilwoman Rutherford asked for clarification regarding property that has been grandfathered-in, wanting to know if it is the land that is grandfathered-in and not the business. City Attorney Nelson responded "that is correct."

Councilwoman Rutherford inquired as to who determines the legal non-conforming use status. Mr. Bennett stated the building department makes that determination; that this is not a legal non-conforming use because it was never a clearly permitted use at that location.

Councilwoman Rutherford stated if it is not a legal non-conforming use, what does it mean; that he is operating illegally? Mr. Bennett responded "essentially that is what it means."

Councilwoman Rutherford moved that the matter be deferred two weeks so that she could get some answers. Councilman Eaves stated he would like to see the matter deferred six weeks (January 20, 1998).

Chairman Swafford asked that the people in opposition be provided information as to when the matter will come back before the Council.

On motion of Councilman Eaves, seconded by Councilman Taylor,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT  
OF LAND LOCATED AT 6808 CONNER LANE BEING ON THE  
SOUTHWEST LINE OF CONNER LANE SOUTHEAST OF LEE HIGHWAY,  
FROM R-2 RESIDENTIAL ZONE TO R-4 SPECIAL ZONE  
was tabled until January 20, 1998.

REZONING

1997-236: United Family Services

Pursuant to notice of public hearing the request of United Family Services to rezone a tract of land located at 3315 12th Avenue came on to be heard.

The applicant was present; considerable opposition was in attendance.

Mr. Bennett stated the rezoning request is for R-4 to operate an emergency shelter for teens to house 24 persons. He stated the surrounding zoning includes M-1 and R-2; that the land use in the area is predominantly single family residential. He stated Twelfth Avenue is a residential street with single family and some duplex development in some spots, as well as some multi-family. He stated the site itself is the location of the East Lake Baptist Church building that extends from Twelfth Avenue to Dodds; that other development that is non-residential would be to the north; that there is some industrial and commercial along Dodds Avenue. He stated the Planning Commission Board recommended approval of the zone subject to conditions; that the Staff recommended against the zoning because it would set a precedent and establish a non-residential zone away from the main non-residential thoroughfare and extend a precedent into Twelfth Avenue.

Eleanor Warren, Business Administrator of United Family Services (UFS), stated under the current zoning they can have eight persons in this facility; that the State has licensed them for 24 but they would like to serve as many as they can which is why they are asking for the rezoning. She stated there has been a lot of miscommunication that the teens will be at-risk children in State custody and not juvenile delinquents; that they are an agency that serves both black and white persons; that it has been stated they would serve only black children. She stated foster care parents are present with her who have housed some of their (UFS) children in their homes; that Candace Tinsley is her business partner over Program Services.

Candace Tinsley stated their clients are referred through the Tennessee Department of Human Services (TDHS); that the children are dependent and neglected; that they have been removed from homes where they have been neglected, abused and abandoned; that their cases are heard in Juvenile Court. She stated if they are delinquents they would be required to go to a secure environment and would not be allowed to be placed in a community setting; that they want them in a group setting where they can receive group counseling and would be better served because they gain more from group counseling as opposed to an adult individual. She stated the Ray family has housed some of their children for more than a year.

REZONING (Cont'd.)

Mrs. Ray stated she was present to stand up for children in foster homes; that her mother has been a foster parent for 22 years and many of the children she cared for have taken on various careers. She stated the children should not be referred to as foster or unwanted children because they are God's children and should not be feared but loved. She stated this agency should be welcomed with "open arms;" that if it were not for them what would happen to God's children.

Ms. Tinsley stated if these children are delinquents or a threat, their foster families would not be here tonight.

Tom Baker of 3004 Thirteenth Avenue spoke in opposition to the request. He stated he was given a letter tonight by the Department of Children's Services in Nashville that was faxed-in which might make this request moot; that the letter says the agency does not have a license to do this and does not have a contract, and the State Department will not be issuing contracts in the future. He stated he represents the East Lake residents and made reference to a petition with over 300 signatures; that he is in possession of a letter from the Mayor which expresses his opposition to the rezoning. He stated they are opposed to this for the same reason given by the Planning Commission whose recommendation was to not change the zoning because it is not compatible with the residential development, will be a negative impact on the surrounding area and will intrude too deeply into the residential area. He stated he has been working long and hard with the Council's help and the help of other city officials and employees; that East Lake is once again becoming a place to live and enjoy and property values are rising.

Mr. Baker made reference to information previously left for Council members and quoted from the Provider Policy Manual distributed by the Department of Children's Services. He stated this facility will have one staff person for every eight children; that three people cannot control 24 juvenile delinquents. He stated they have very limited means with which to control them; that the residents will be sent to the local public schools for their education. He stated this building houses 336 children in a day care program; that there is only one eating facility and one gymnasium. At this point he made reference to news articles previously given to Council members involving the Gardner House and indicated that it has been said if we do not learn from history we are destined to repeat it. He stated according to police records regarding Gardner House there are reports of assault and disorderly conduct but most are runaways. He stated 115 police calls have been made this year to the Gardner House; that he has been told this is the "tip of the iceberg" and the employees are encouraged to call the police only when it is absolutely necessary.

REZONING (Cont'd.)

At this point Councilwoman Hurley interrupted Mr. Baker's barrage of statements regarding group homes and stated that she has difficulty with the Council listening to attacks on other group homes; that Gardner House happens to be in Councilman Hakeem's district and is operated by a Board on which she sits. She stated there is a need for this type of care, and she is not sure how she is going to vote on this; that she thinks the State has a position whether the group (UFS) has a contract or not; that it is an open question regarding placing young people in residential facilities of a certain size. She stated to suggest that Gardner House is not well run and not calling for help if it needs it is not in anybody's interest to listen to; that what she is beginning to hear are attacks on the whole group home effort, which is a conscientious effort to rehabilitate young people; that this is occurring all over this county. She stated Mr. Baker's line of discussion is not compelling as far as she is concerned.

Chairman Swafford echoed his agreement with Councilwoman Hurley's remarks.

Mr. Baker stated he and residents of East Lake pray the Council does not rezone this property; that they hope Gardner House is not repeated in East Lake.

Councilwoman Hurley immediately injected that Gardner House does an exceptionally good job.

Mr. Baker continued his remarks by stating if East Lake is the only place that can house the teenagers they ask that the zoning be limited to zoning for this single use so that they (UFS) could not come back to request more, and to consider something that has been working in many areas which is to make a requirement in this building that a neighborhood police precinct be set aside. He stated he knows these children have to be taken care of in some place; that this will give a positive look at the police force and stop problems that might start. He stated he hopes the Council will deny this application and concluded his remarks by asking everyone in opposition to stand. (A large delegation from East Lake stood.)

Ms. Warren stated she understood there was a letter from the State that indicated no contracts were being issued at this time; that this is true, however, United Family Services is currently under contract with the Southeast Regional Community Health Agency as well as the Hamilton County Community Health Agencies and are giving emergency care. She stated these are annual contracts that are issued locally; that the State has sent out a request for proposal (RFP) and are in the process of revising that which is due by January 1; that they will certainly provide emergency foster care under these two contracts.

REZONING (Cont'd.)

Ms. Tinsley stated it was mentioned earlier that some of the other group homes have experienced problems with runaways and police reports are made; that after having been in this service for over ten years the same children are placed from shelter-to-shelter and often the same child runs away; that the statistics quoted could be reflective of the same children running more than one time.

Councilman Hakeem stated he is trying to get some clarification about foster care, whether this is the same thing we are talking about at this facility.

Ms. Warren responded "yes;" that they have two different licenses, one for children's placement and a residential children's license.

Councilman Hakeem asked if they are receiving State and county assistance. Ms. Warren responded "right;" that they have a contract with Hamilton County Community Services Agency to provide prevention and respite.

Councilman Hakeem inquired as to the impact on the effort they are putting forth to start with eight as opposed to starting with 24. Ms. Warren stated the need is truly clear; that they are shipping children across the State.

Councilwoman Hurley inquired as to whether United Family Services would be in competition with other facilities. Ms. Warren responded "yes;" that it is a competitive business.

Councilman Taylor stated reference has been made with regard to the type of children, asking for clarification as to whether the children will be juvenile delinquents; that he knows some children will come through that facility without any type of record.

Ms. Tinsley stated the children with them have no active criminal record; that they might have experienced some past truancies but that is not considered a delinquent act.

Councilwoman Rutherford stated this has been one of the hardest decisions she has had to make; that she feels there is such a tremendous need for this facility. She stated when she looks out in the audience she sees hatred and mean spiritedness from the people of East Lake and she is really sorry; that Mr. Baker also made statements she cannot endorse. She stated she has talked with leading people in this business such as Judge Bailey, Phil Acord, Larry Bird and some people in the State office.

REZONING (Cont'd.)

Councilwoman Rutherford stated she will make a decision based on what they advised as she told some of the residents she would. She stated however this vote goes the residents of East Lake should look deep within themselves as she cannot believe they look as mean as they do; that we are talking about the welfare of our young people.

Councilwoman Hurley stated she wishes the group were going to do eight people; that 24 is not a group home. She stated she has had a lot of experience in this area as a volunteer; that the Contract that exists for what is being described is the same type contract as the Gardner House and Hastings Home which are run-away shelters. She stated she thinks this is important work and has to go forward; that she would support this in a different place for a different service but 24 in that location the State will not contract for because the slots existing now are already under contract for the service being described. She stated Ms. Warren stated it is a competitive business and she (Hurley) thinks there should be a lot of work out there to be done as foster care is absolutely critical. She stated she thinks she will abstain or vote "no" because she believes this particular service is not the service that we are "crying out" for at this time. She stated there are a variety of reasons that have more to do with putting 24 kids in one place, which is more like an institution.

Ms. Warren stated what they are proposing is an emergency shelter. Councilwoman Hurley stated that is what Gardner House and Hastings Home are doing. Ms. Warren stated their stay would be temporary until a permanent placement is found. Councilwoman Hurley indicated that she understood. Ms. Warren then indicated the teens would stay at her shelter three-to-seven days. Councilwoman Hurley again indicated that she understood.

Councilman Hakeem stated it goes without saying this Council is "between a rock and a hard place." He stated we have to look at the fact that these are our children in Chattanooga and if we do not look out for them, who will? He stated we can say send them some other place but will it come back to haunt us in another way; that his District has 16 group homes and in another we have agencies for people who have mental problems. He stated we have to look after our own; that he does not know how this will turn out, however, we need to still think about those things.

Councilman Taylor stated when we look at the number 24, is there any way the number can be increased an additional amount, whether Ms. Warren can request an additional 15% for an emergency shelter. Ms. Warren indicated that the law states 24 is the maximum.

REZONING (Cont'd.)

Councilman Taylor asked if there is no additional 25% that can be added. Ms. Warren responded "no."

Councilman Taylor stated one of the greatest concerns he has involves the children; that the young children within the building is a major concern for him, considering he has a three year old who is in kindergarten. He stated this is a tough decision to make and recognizes their dedication and concern to do this.

At this point Councilman Taylor made the motion to deny; Councilman Crockett seconded the motion.

Councilman Pierce stated all he had to say has been said; that this is a hard decision to make and thinks the Council is ready to vote. He stated he has sat here on many, many occasions of zoning and the hardest thing is to bring something new into one's community; that sometimes you have to "bite the bullet" and do the right thing. He stated it is unfair that Councilman Hakeem has nine group homes; that this is something we all need to share; that Councilwoman Hurley has them, as well. He stated if we do not want our kids who does. He stated he has to say publicly that he asked if Mayor Kinsey was present tonight because he (Pierce) does not see why the Mayor would get involved by writing a letter; that we have two branches of government -- executive and legislative -- and this is a legislative matter. He stated he is sorry Mr. Baker asked the Mayor to write the letter.

Councilman Pierce continued by stating he appreciates the comment if we did rezone to put limitations on it such as the police precinct; that the Council cannot act on that; that we need them in every area. He stated he also appreciates the matter of limiting this so no other facility would go into the building if it is approved. He stated he does not know what else to say; that based on the information he has heard it was a business decision to put this in with the nursery (day care), and it is not up to him to make the decision who should be with whom. He stated it is not surprising to look out and see this group in opposition; that we have to "bite the bullet." At this point he "called for the question."

Chairman Swafford reiterated that this is a tough vote and it was a hard issue at the Planning Commission; that the Planning Commission really struggled and made the recommendation after a long discussion. He stated it is a tough issue any time it involves children; that he learned the building is situated coming in from Dodds Avenue. He expressed agreement with Councilman Pierce's remarks.

REZONING (Cont'd.)

Councilman Crockett stated for something this large it makes him think about the cost for having a long term care for children; that he thinks this fits the description of non-therapeutic children. He stated it is important neighborhoods embrace that to some degree and that is not being done in this case; that he cannot support this.

At this point a roll call vote was taken on the motion to deny. The vote talley was as follows: 4 (yes); 3 (no); 1 (abstention). The motion failed for lack of support of the required number of votes (5) to deny or approve the request.

Chairman Swafford stated no action is taken on the petition and the zoning is not granted; that the matter can be requested by any Council member to be placed back on the agenda in the future. He stated if someone wants to put the matter back on the agenda it would be voted on and is a decision that can be made when there is a full Council. He reiterated that this is a no-action vote and the zone remains the same. Chairman Swafford asked if there are any other motions. Councilman Pierce responded "not at this time."

Councilman Taylor stated he is the District representative for the East Lake area; that the East Lake community is a fine group of persons to work with, and it is a pleasure to be their representative. He stated he appreciates their concern for their community.

On motion of Councilman Taylor, seconded by Councilman Crockett,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT  
OF LAND LOCATED AT 3315 12TH AVENUE BEING ON THE  
NORTHWEST LINE OF 12TH AVENUE AT EAST 34TH STREET, FROM  
R-2 RESIDENTIAL ZONE TO R-4 SPECIAL ZONE, SUBJECT TO  
CERTAIN CONDITIONS

was not denied nor approved due to insufficient number of votes; on roll call vote to deny:

Crockett	"Yes"
Eaves	Abstain
Hakeem	"No"
Hurley	"Yes"
Pierce	"No"
Rutherford	"Yes"
Taylor	"Yes"
Swafford	"No"

(COUNCILMAN PIERCE EXCUSED HIMSELF FROM THE MEETING AT THIS POINT)

REZONING

1997-239: Charles A. Thompson, Jr.

Pursuant to notice of public hearing the request of Charles A. Thompson, Jr. to rezone a tract of land located at 2006 Cushman Street came on to be heard.

The applicant was present; there was no opposition.

Mr. Bennett stated this request is an upgrade to R-2.

On motion of of Councilman Hakeem, seconded by Councilman Pierce,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT  
OF LAND LOCATED AT 2006 CUSHMAN STREET BEING ON THE  
SOUTHWEST LINE OF CUSHMAN STREET SOUTHEAST OF ROANOKE  
AVENUE, FROM M-1 MANUFACTURING ZONE TO R-2 RESIDENTIAL  
ZONE

passed first reading.

REZONING

1997-242: Brenda Kinsman

Pursuant to notice of public hearing the request of Brenda Kinsman to rezone a tract of land located at 6809 Conner Lane came on to be heard.

The applicant was present; there was no opposition.

Mr. Bennett stated this request is directly across Conner Street from tonight's first case (1997-233); that it is presently zoned R-4 and the request is for C-2 for a wholesale used car lot. He stated the surrounding zoning includes C-2 and R-2, as well as R-1; that the land use includes commercial and single family residential, with some duplex development. He stated both the Staff and Planning Commission recommend denial of the application.

Fielding Atchley spoke on behalf of the applicant and stated this lot has a good deal of history and made reference to the triangular shaped property. He stated when the City annexed the property in 1971 the triangular shaped property had a garage and has always been a general commercial use through the years. He stated the applicant has owned the corner lot for the past 16 years and used the triangular piece for storage and parking for vehicles; that they have recently leased the front property and desire to move their operation to the back portion.

REZONING (Cont'd.)

Councilman Eaves inquired as to whether the correct map of the property is being reflected inferring that the map reflects the property previously discussed on Conner Lane (1997-233). Mr. Bennett clarified the correct property location on the map involves the triangular property highlighted in pink.

Mr. Atchley stated the triangular property is a "hybrid" and has had continuous commercial use. He stated there might be a legal issue because the garage caved-in, and they need to do some renovating on the existing structure on the property. He stated there is a drainage issue, as well; that when the matter came before Planning in 1994 it was deferred to see if the water runoff could be addressed. He stated the City had too many other water problems and when it was renovated the owner put in a tiled drainage pipe. He stated this would be a clear case for an exception; that he has no objection as there are several neighbors who have signed the document asking for the change. He asked that the C-2 zoning be allowed.

Councilman Hakeem inquired as to the reason why both Conner Lane rezoning requests are being heard together.

Mr. Bennett stated the reason the two cases are together is that the Planning Commission and Staff felt it was the same use on both sides of the road, extending commercial zoning away from the thoroughfare and intruding into the residential neighborhood. He stated sometimes the R-4 serves as a buffer between residential and commercial and that is why the Planning Board actually recommended, R-4 for the previous case rather than C-2. He stated this property is already zoned R-4; that it is felt a true commercial development could be maintained along the commercial thoroughfare at the intersection and not allowed to go further into residential areas.

On motion of Councilman Hakeem, seconded by Councilman Eaves,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT  
OF LAND LOCATED AT 6809 CONNER LANE BEING ON THE  
NORTHEAST LINE OF CONNER LANE SOUTHEAST OF LEE HIGHWAY,  
FROM R-4 SPECIAL ZONE TO C-2 CONVENIENCE COMMERCIAL  
ZONE

**was denied.**

REMOVE CONDITIONS

1997-247: Ben Ward

Pursuant to notice of public hearing the request of Ben Ward to amend Ordinance No. 9851 so as to remove certain condition from the Ordinance on a tract of land located at 2318 East Third Street came on to be heard.

The applicant was present; there was opposition in attendance.

Mr. Bennett stated the property in question is located on the corner of East Third and Derby Circle; that the request is to lift conditions on Ordinance 9851 approved in 1993. He stated the property is presently zoned C-2; that the stated reason is to be able to market and sell the property with the adjoining commercial property. He stated the surround zoning does include other C-2 which abuts to the west but the remainder is surrounded by R-2 and R-1. He stated the land use is predominantly single family residential abutting and adjacent to the property; that the neighborhood is entirely single family residential with some duplex development. He stated when this property was first rezoned in 1993 there was considerable discussion, and the decision that was arrived at was pretty much a cooperative agreement between the applicant and the neighborhood association to allow some reasonable commercial use and protect and maintain the residential neighborhood (Glenwood). At this point Mr. Bennett read the conditions as specified in Ordinance 9851:

1. Subject to proposed use only.
2. Subject to access to Third Street only.
3. Subject to a sight-obscuring landscaped screen along Derby Circle and the south property line in accordance with the provisions of the proposed Landscape Ordinance.
4. Subject to 50 foot setback from Derby Circle with no parking access or use other than landscaping within 50 foot setback.
5. All existing easements are retained.

Mr. Bennett stated because of the history of this site and the Glenwood Neighborhood Association's effort to maintain residential integrity the Planning Commission Staff recommended denial to lift the conditions and the Planning Board recommended approval of lifting a portion of the conditions.

Chairman Swafford stated two specific conditions were recommended to be lifted by the Planning Board.

REZONING (Cont'd.)

Ben Ward of Crye-Lieke Realtors stated that conditions 1 and 4 were the two the Planning Board recommended be lifted. He stated the application was filed on behalf of Ed Houston who came before the Council in 1993 to request rezoning of this property. He stated at that time Mr. Houston was granted this rezoning but with the specific conditions; that the first condition indicated that the rezoning was granted for the "proposed use only." He stated at the time Mr. Houston's proposed use was for a restaurant and since that time he has had a death in his family and plans have changed drastically. He stated condition four included approval of the rezoning "subject to a 50 foot setback with no parking access or use other than landscaping." He stated the frontage is 112 feet and in this condition half of it was being taken up by landscaping; that half of the lot would be for landscaping only.

Mr. Ward stated with the recommendation of the Planning Commission to delete conditions 1 and 4 this would help in the effort to market the property; that he has had this property on the market since January of 1996 and have had some people interested, but when the conditions were released they turned and ran. He stated he had a meeting with the neighborhood association and some fear Mr. Houston might sell the property for use as a car wash; that he has tried to reassure them this is not the case. He stated the property is being marketed for \$50,000+ and does not think anyone would put a car wash or "shade tree" mechanic shop at this location. He stated at this time Mr. Houston is unable to sell the property and if these conditions are not lifted he will be unable to do anything with it. He stated this property will never have a resident at that corner; that he is asking that conditions 1 and 4 be lifted and give Mr. Houston an opportunity to get out of the condition he is in now.

John Holmes, President of the Glenwood Neighborhood Association, spoke in opposition to the request. He stated he has nothing against Mr. Houston; that he is asking the Council for help because residents of Glenwood feel if they can help the City they will; that they allowed an HIV unit in their neighborhood when other neighborhoods turned them down. He stated the Association has begged Messrs. Houston and Ward to tell them what is going in, and they refuse to do so; that the other day someone told him a lady in this city wants to put a massage parlor on the corner which is the closest thing to an immoral purpose. He stated a petition was circulated in opposition to this. (The petition is filed with minute material of this date.) He asked the Council to deny this. Mr. Ward stated there is no contract on this property; that he does not know who gave that information to Mr. Holmes; that he wishes there was some type of contract so that a specific use can be given. He reiterated there is no contract.

REZONING (Cont'd.)

In looking at the map, Councilwoman Rutherford stated property east of this property looks like it is zoned C-2. Mr. Bennett stated he does not believe it is zoned C-2; not that he is aware of. Councilman Hakeem clarified property to the east is residential. Councilman Swafford stated the C-2 is the old Red Food store which is now the Dialysis Clinic.

Councilman Hakeem stated the neighborhood has signed a petition in opposition to this; that Mr. Houston is a resident of the neighborhood, has a fine family and is a gentleman. He stated he (Hakeem) was elected to represent the community as a whole; that this would be spot zoning in an R-1 community. He stated it has been said a house would never go on that corner but houses are on the other three corners and there is a desire to maintain the residential integrity. He stated the only reason this was rezoned was to assist Mr. Houston in his present endeavor; that the community does not feel compelled to speculate on a spot zone.

Councilman Taylor stated in looking at this there is a 50 foot setback from Derby and considering the lot size would that seem appropriate. Mr. Bennett stated the normal set back is 25 feet and it can be doubled; that the 50 feet was left as a buffer so that it could never be used as commercial.

Councilman Taylor asked what is directly across the street. Mr. Bennett responded that Second Baptist Church is directly across the street.

Councilwoman Rutherford clarified that this is not a rezoning but only to lift conditions. Councilman Hakeem stated the end result would be to spot zone if you remove the conditions.

Councilwoman Rutherford stated the property is now C-2. Councilman Hakeem clarified that it is "with conditions."

Councilwoman Rutherford inquired if there is a more restrictive zone to allow Mr. Houston to sell his property.

Councilman Hakeem stated Councilwoman Rutherford can review that at some time, however, the matter is before us tonight. At this time, Councilmen Hakeem and Hurley made the motion and second to deny the request.

Councilwoman Rutherford asked if the matter could be tabled for one month and let Planning and the neighbors compromise on the zoning; Councilman Taylor seconded the motion.

REZONING (Cont'd.)

Councilwoman Hurley stated it is her recollection that the Council tried very hard to make a special exception which was a spot zone with conditions; that if we lift conditions it becomes a true spot zone.

At this point the vote was taken on Councilmen Rutherford and Taylor's motion to table; however, the motion failed with only two votes (Rutherford and Taylor) to approve the tabling motion.

The initial motion by Councilmen Hakeem and Hurley to deny the request was then "on the floor" for vote.

On motion of Councilman Hakeem, seconded by Councilwoman Hurley,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, AS AMENDED BY ORDINANCE  
NO. 9851 SO AS TO REMOVE CERTAIN CONDITIONS FROM  
ORDINANCE NO. 9851 ON A TRACT OF LAND LOCATED AT 2318  
EAST THIRD STREET, BEING ON THE SOUTHWEST LINE OF EAST  
THIRD STREET AT DERBY CIRCLE  
was denied; Councilmen Rutherford and Taylor voted "no".

ADD CONDITION

1997-250: George and Barbara Edwards

Pursuant to notice of public hearing the request of George and Barbara Edwards to add a condition to Ordinance No. 10586 on a tract of land located at 4706 Hixson Pike came on to be heard.

The applicant was present; there was no opposition.

Fred Thompson with Miller and Martin stated the applicant is seeking to allow a related use to the current use; that there is a landscaping condition they are retaining.

Councilman Crockett stated he wants to be clear on the conditions. Councilwoman Hurley stated that was her question. Mr. Thompson stated the applicant is seeking to allow a high end resale shop for fashion wear, cocktail dresses, sportswear and mother-of-the-bride apparel.

REZONING (Cont'd.)

On motion of Councilwoman Rutherford, seconded by Councilwoman Hurley,

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, AS AMENDED BY ORDINANCE NO. 10586, SO AS TO ADD AN ADDITIONAL CONDITION TO THE CONDITIONS IMPOSED IN ORDINANCE NO. 10586 ON A TRACT OF LAND LOCATED AT 4706 HIXSON PIKE, BEING ON THE SOUTHEAST LINE OF HIXSON PIKE SOUTHWEST OF WILLIAMS ROAD

passed first reading.

REZONING

1997-251: Sterling House Corporation

Pursuant to notice of public hearing the request of Sterling House Corporation to rezone a tract of land located in the 7600 block of Shallowford Road came on to be heard.

The applicant was present; there was no opposition.

Mr. Bennett stated the request is for R-4 for a 42 unit assisted living facility on 4-1/2 acres. He stated the surrounding zoning includes predominantly R-1 abutting to the south, east, west and further to the north and R-4 to the northwest. He stated the land use abutting the site is a single family subdivision and a proposed assisted living facility on the north side. He stated the Staff and Planning Commission recommend approval subject to conditions.

George Elder of George S. Elder Company represented the applicant. He stated he invited each member of that adjoining subdivision to a meeting prior to the Planning Commission meeting and had the developer there to answer any and all questions. He stated the 42 units applied for was for the first phase and then they would come back if there is a demand for additional units; that the wanted to make that clarification.

Mr. Bennett stated the ordinance has a condition that states the maximum would be the 42 units; that the only way to change this would be to request an amendment to the conditions at some point in time. Mr. Elder stated he did not think the developer understood that.

Mr. Bennett stated the matter will have to go back through the process to have conditions amended or lifted; that it was Planning's understanding there would be only 42 units.

REZONING (Cont'd.)

Mr. Elder stated it was stated at the meeting there would be 42 units and sometime after we would meet requirements of Code.

Mr. Bennett corrected his previous statement and clarified that the ordinance does not reflect only 42 units; that he was reading from the Staff's recommendations.

Councilman Eaves stated the neighborhood is of the understanding that it is for 42 units and that you would apply for extra when you want to; that he would like to have that in the ordinance. He stated they are of the understanding that this R-4 is for that use (assisted living) only. He stated they did understand from Mr. Elder that the developer may at some time in the future want to come back for more; that they want to see how this one goes; however, they do want it as part of the ordinance that it is a restricted R-4 only for that purpose.

Chairman Swafford stated the City Attorney is amending the ordinance to reflect that; that it was discussed at Planning but it was not made a part of the ordinance.

Councilwoman Rutherford asked how many units can be built on the 4-1/2 acres. Mr. Bennett stated the R-4 zone is the same as R-3 regarding residential density; that it would provide for 20 units per acre, approximately 100+ units,

Mr. Elder stated they do not build within that type of density; that this is the largest assisted care living corporation in the United States, and they plan to build a beautiful facility that will fit in with that neighborhood.

City Attorney Nelson added the following amendments to the ordinance: ". . . (3) That this is for assisted living for the elderly only." and "(4) There shall be a maximum of 42 units built."

Mr. Elder stated there could be 42 units initially but not a maximum of 42. City Attorney Nelson stated there would be under this plan depending upon what the Council wants. He stated the developer will have to come back and go back through that same process to go beyond the 42.

Mr. Elder asked Councilman Eaves if that is what he (Eaves) wants. Councilman Eaves stated assisted living people are good people; that the neighbors are concerned about traffic. He stated they do not have an objection to this, but they think they have agreed to the 42 units; that he does not think you will find a problem with the addition if it is needed because they are very much convinced this is as good a neighbor as they could ever possibly get.

REZONING (Cont'd.)

Mr. Elder stated he sees that there would be more units; that they are not limiting it to 42. Councilman Eaves stated he thought Mr. Elder said they might want more later. Mr. Elder stated they will put in a 50 foot buffer; that they want to make sure the ordinance is not saying that 42 is the maximum.

Chairman Swafford stated what the City Attorney is saying is there will be 42 as the maximum and that is what he has written; that the developer will have to go back and ask that the number be raised.

Councilwoman Rutherford stated if we passed this on first reading tonight with the maximum 42 units, before second and third reading Mr. Elder could get with the neighbors and make sure it is clarified to them what is wanted and the ordinance can be amended next week and make it the initial stage of 42 units.

Mr. Elder stated the developer is asking for 42 units with the right to go in to do more if the demand is there. City Attorney Nelson stated the developer will have to go back through the process unless the ordinance is changed.

Mr. Elder stated the developer might not want to go forward if it is written this way.

Councilwoman Hurley stated that was what she was going to ask; that presumably everyone left knowing it was not 42 units.

Mr. Elder stated he would be glad to meet with Councilman Eaves and the neighbors.

On motion of Councilman Eaves, seconded by Councilman Hakeem,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT  
OF LAND LOCATED IN THE 7600 BLOCK OF SHALLOWFORD ROAD  
BEING ON THE SOUTHWEST LINE OF SHALLOWFORD ROAD  
NORTHWEST OF GUINEVERE PARKWAY, FROM R-1 RESIDENTIAL  
ZONE TO R-4 SPECIAL ZONE, SUBJECT TO CERTAIN CONDITIONS  
**was deferred one week.**

REZONING

1997-252: R & E Properties

Pursuant to notice of public hearing the request of R & E Properties to rezone a tract of land located at 5510 Moody Sawyer Road came on to be heard.

REZONING (Cont'd.)

The applicant was present; there was opposition in attendance.

Mr. Bennett stated this request is for a 303 unit mobile home park; that the property is presently zoned R-1 for all the abutting property in all directions. He stated the land use is pretty much entirely single family residential; that both the Staff and Planning Commission recommend denial. He indicated there was opposition at the Planning Commission.

Jerry Turner was present representing the applicant and stated much of the property is single family R-1, but it should be noted ingress and egress would be through a lower density from R-2; that they can build within 25 feet of the back lot line. He stated four conditions for zoning can be added to reflect: (1) there will be no construction within 100 feet of the back lot line, and they agree to the 100 foot buffer, (2) that by law used double wide mobile homes can be placed on the lot, however, all the homes will be new and there will be no used mobile homes, (3) that there will only be 200 units. He stated the applicant was asking for 303 units but the number is being reduced to 200; and (4) the applicant agrees there will not be any apartments or multi-family at all. He stated if the rezoning is approved the property will be assessed at 40% rather than 25% and will create a number of jobs, new roads, landscape and more affordable housing.

Councilwoman Hurley stated Councilman Lively represents this area and called her and apologized for not being here tonight as he had to be out of town on business. She stated he is very much opposed to this request.

On motion of Councilwoman Hurley, seconded by Councilman Crockett,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT  
OF LAND LOCATED AT 5510 MOODY SAWYER ROAD BEING AT THE  
END OF MOODY SAWYER ROAD SOUTHWEST OF RAGNAR DRIVE,  
FROM R-1 RESIDENTIAL ZONE TO R-3 RESIDENTIAL ZONE  
was denied.

REZONING

997-255: Myrtle Inglis

Pursuant to notice of public hearing the request of Myrtle Inglis to rezone a tract of land located at 7148 Lee Highway came on to be heard.

The applicant was present; there was no opposition.

REZONING (Cont'd.)

Mr. Bennett stated the property is off Lee Highway and the request is for C-2; that one-third of the frontage of the property is C-2. He stated the surrounding development does include a mix of commercial and industrial uses with the nearest residential use being an R-3 PUD. He stated they had quite a bit of a problem a couple years ago in trying to determine what would be proposed and the only thing was the R-3 PUD. He stated the Staff recommends against the zoning because of the concern for maintaining some degree of protection for the residential area, and the Planning Commission did recommend approval.

Rudy Walldorf stated one of his officers has talked with each of the Council members about this request; that the use will be for the Barn Nursery. He stated there will be an addition built and will create as many as 80 new employees depending upon the season. He stated he has talked with the neighbors and does not know of any opposition. He asked the Council to please approve the request.

Chairman Swafford recognized and welcomed former Mayor, Gene Roberts, who was present with Mr. Walldorf.

On motion of Councilman Eaves, seconded by Councilwoman Rutherford,  
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT  
OF LAND LOCATED AT 7148 LEE HIGHWAY BEING OFF THE  
SOUTHEAST LINE OF LEE HIGHWAY NORTHEAST OF MCCUTCHEON  
ROAD, FROM R-3 RESIDENTIAL ZONE TO C-2 CONVENIENCE  
COMMERCIAL ZONE  
passed first reading.

SPECIAL POLICE OFFICERS

On motion of Councilman Taylor, seconded by Councilwoman Rutherford,  
A RESOLUTION AUTHORIZING THE APPOINTMENT OF CARL WAYNE  
BOYD, BILLY CAYLOR, JERRY D. FRITZ, JOHN D. GIBSON, RAY  
S. HARRINGTON, CHARLES E. HARRIS, THOMAS B. SCOTT, AND  
SAMUEL L. TAYLOR AS SPECIAL POLICE OFFICERS FOR THE  
PUBLIC WORKS DEPARTMENT, STORM WATER DIVISION, CITY OF  
CHATTANOOGA, TO DO SPECIAL DUTY AS PRESCRIBED HEREIN,  
SUBJECT TO CERTAIN CONDITIONS  
was adopted.

AGREEMENT: CONSOLIDATED  
TECHNOLOGIES, INC.

On motion of Councilman Eaves, seconded by Councilman Taylor, A RESOLUTION AUTHORIZING THE PUBLIC WORKS ADMINISTRATOR AND THE CITY FINANCE OFFICER TO EXECUTE AND ATTEST, RESPECTIVELY, AN AGREEMENT WITH CONSOLIDATED TECHNOLOGIES, INC., RELATIVE TO THE CARTER STREET CSO FACILITY, FOR A TOTAL COST NOT TO EXCEED ONE HUNDRED ONE THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$101,150.00) was adopted.

CONTRACT: W. ROGERS COMPANY

On motion of Councilman Crockett, seconded by Councilman Taylor, A RESOLUTION AUTHORIZING THE AWARD OF CONTRACT NO. CSO-4A-97, CARTER STREET CSO CONTROL FACILITY, TO W. ROGERS COMPANY FOR THEIR BID IN THE AMOUNT OF TWO MILLION, FOUR HUNDRED EIGHTY-THREE THOUSAND DOLLARS (\$2,483,000.00) was adopted.

OVERTIME

Overtime for the week ending December 5, 1997 totaled \$112,683.73.

PURCHASE

On motion of Councilman Eaves, seconded by Councilwoman Hurley, the following purchase was approved for use by the Finance Division:

BELLSOUTH (Best cost estimate)

Purchase of Upgraded Telephone System; Savings of more than \$700,000 over seven years

\$924,063.00 (Seven year cost)

PERSONNEL

The following personnel matter was reported for the Parks and Recreation Department:

JASON R. GRUBB -- Resignation, Laborer II, Golf Courses, effective December 3, 1997.

PURCHASES

On motion of Councilwoman Hurley, seconded by Councilman Taylor, the following purchases were approved for use by the Parks and Recreation Department:

SEQUOYAH EQUIPMENT CO. (Lower and better bid)  
Requisition No. R0027549

Purchase of Farm Tractor

\$14,300.00

ARAMARK UNIFORM SERVICES (Lower and better bid)  
Requisition No. R0030839

Purchase of Twelve Month Requirements Contract for Uniform Rental

\$6.25 each

PERSONNEL

The following personnel matter was reported for the Public Works Department:

RICHARD OAKES -- Employment, Laborer III, Waste Resources, Pay Grade 5/Step 1, \$16,151.00 annually, effective December 15, 1997.

PURCHASE

On motion of Councilwoman Hurley, seconded by Councilman Taylor, the following purchases were approved for use by the Public Works Department:

CROSIBLE FILTRATION, INC.  
Requisition No. R0031100

Purchase of Twelve Month Requirements Contract for Filter Cloth

\$5,450.00 per set, delivered

PERSONNEL

The following personnel matter was reported for the Fire Department:

LARRY P. GORDON -- Fire Fighter/Private, Five day suspension effective December 14, 1997.

PERSONNEL

The following personnel matters were reported for the Police Department:

STEVEN T. BROWN -- Hire, Police Officer (has been working undercover), Pay Grade 10/Step 1, \$21,747.00 annually, effective November 22, 1996.

CHAD SUTTLES -- Hire, Police Officer (has been working undercover), Pay Grade 10/Step 2, \$22,563.00 annually, effective January 31, 1997.

HOTEL PERMITS

On motion of Councilman Crockett, seconded by Councilwoman Hurley, the Administrator of Finance was authorized to issue the following hotel permits:

KING'S LODGE, INC. -- 2400 Westside Drive, Chattanooga, TN

HAMILTON INN -- 6860 Lee Highway, Chattanooga, TN

WITHDRAWAL OF HEARING REQUEST

City Attorney Nelson stated the request for appeal brought to the Council two weeks ago has been withdrawn.

COMMITTEES

Council members were reminded of the Youth and Family Support Committee scheduled for Tuesday, December 16 at 4 p.m. for a report of the "First Things, First" program by Ray Bond.

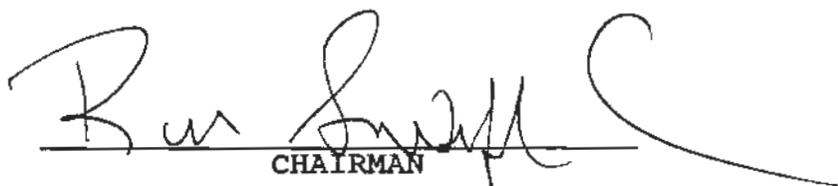
COMMITTEES (Cont'd.)

City Attorney Nelson stated Judge Williams contacted him regarding a concern he has involving the Meter Patrol; that he (Nelson) has drafted an ordinance which protects the Meter Patrol and would like to bring it to a meeting of the Legal and Legislative Committee. Chairman Swafford asked if the matter has been discussed with Administration. City Attorney Nelson responded "no," that he did not think there will be any objection by Administration.

A joint meeting of the **Public Works and Legal and Legislative Committees** was scheduled for Tuesday, December 30 at 4 p.m. to discuss residential dumping and filling and the draft ordinance regarding the Meter Patrol.

ADJOURNMENT

Chairman Swafford adjourned the meeting until Tuesday, December 16, 1997 at 6 p.m.

  
CHAIRMAN

  
CLERK OF COUNCIL

(A LIST OF NAMES OF PERSONS IN ATTENDANCE IS FILED  
WITH MINUTE MATERIAL OF THIS DATE)