

**City Council Building  
Chattanooga, Tennessee  
December 14, 2010  
6:00 p.m.**

Chairman Rico called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, Ladd, McGary, Murphy, Robinson and Scott present. City Attorney Michael McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

**PLEDGE OF ALLEGIANCE/INVOCATION**

Following the Pledge of Allegiance, Councilwoman Robinson gave invocation.

**MINUTE APPROVAL**

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

**CLOSE AND ABANDON**

**MR-2010-116: Chattanooga Neighborhood Enterprise, Inc. by Jean Lamb**

On motion of Councilman McGary, seconded by Councilwoman Ladd,  
**AN ORDINANCE CLOSING AND ABANDONING A RIGHT-OF-WAY EASEMENT  
ALONG THE SOUTH SIDE OF 17<sup>TH</sup> STREET AND ADJACENT TO 1702 LONG  
STREET, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN  
CONDITIONS**

Passed second and final reading and was signed in open meeting;  
**Councilwoman Scott abstained.**

**AMEND ORDINANCE 10191**

On motion of Councilwoman Ladd, seconded by Councilwoman Robinson,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 10191, ENTITLED, "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 5800 BLOCK OF CASSANDRA SMITH ROAD, BEING ON THE SOUTHEAST LINE OF CASSANDRA SMITH ROAD SOUTHWEST OF HIXSON PIKE, FROM R-1 RESIDENTIAL ZONE TO R-T/Z ZONE FOR ALL BUT THE REAR 500 FEET, SUBJECT TO CERTAIN CONDITIONS," SO AS TO AMEND THE LEGAL DESCRIPTION BY DELETING THE WORD "DRIVE" AFTER THE WORDS "RIDGEVIEW CIRCLE."**  
Passed first reading.

**AMEND ZONING ORDINANCE**

On motion of Councilman Murphy, seconded by Councilwoman Scott,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, BY AMENDING SECTION 38-502 AND ADDING NEW SECTIONS 38-13, 38-528, AND 38-529 TO IDENTIFY CERTAIN AREAS OF SCENIC VALUE AND ESTABLISH A SPECIAL EXCEPTIONS PERMIT RELATIVE TO THE REGULATION OF STRUCTURE HEIGHTS IN SUCH AREAS**  
Was deferred until January 11, 2011.

**AMEND CITY CODE**

City Attorney McMahan suggested that this matter be deferred until the next meeting so that changes could be made pursuant to discussion in Committee today.

On motion of Councilman Murphy, seconded by Councilman Benson,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 35, ARTICLE IV, SECTIONS 35-162 AND 35-171 RELATIVE TO VEHICLES FOR HIRE**  
Was deferred until January 4, 2011.

**CLOSE AND ABANDON**

**MR-2010-094: Charter Real Estate**

The applicant was present; there was no opposition.

On motion of Councilwoman Berz, seconded by Councilman Gilbert,  
**AN ORDINANCE CLOSING AND ABANDONING A PORTION OF THE  
6000 BLOCK OF HALL ROAD AND AN ADJACENT ALLEY, MORE  
PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS**

Passed first reading.

**REZONING**

**2010-109: Ken Pritchard**

On motion of Councilwoman Scott, seconded by Councilman Murphy,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,  
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE A TRACT OF  
LAND LOCATED AT 1133 OLD PINEVILLE ROAD, MORE PARTICULARLY  
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-3 RESIDENTIAL  
ZONE**

Was deferred two months (February 8, 2011).

**CLOSE AND ABANDON**

**MR-2010-121: David Macallister**

The applicant was present; opposition was in attendance.

**David and Gwen Macallister** of 4500 Tennessee Avenue were present to request closure of a section of an alley directly behind their house that is literally 10 feet from the structure of their home by the window where they sleep which is a grave concern for them if not one of the biggest points to be made. Mr. Macallister stated ever since buying their home eight years ago they decided to renovate it and make it available to a growing family and more suitable for their three children; that they are long term residents of St. Elmo.

## **CLOSE AND ABANDON (Continued)**

Mr. Macallister stated they recently acquired a lot directly behind their home and desire to have the section of the alley closed to unify their properties for a place for their children to freely go back-and-forth with the intention of adding to the house for a safer place for their children to move around the property, as well as a garage on the back lot as they cannot build a garage on a self-standing lot. He stated if it were to be rezoned they would have an opportunity to do that since they do not have a basement; that they think closure of the alley would benefit all of the neighbors as it may limit the potential of thieves. He stated he talked to numerous people about this and it is hard to find an argument that keeping an alley open stops thievery; that they have had numerous incidents in the back with small things taken and if they did not have access to an alley 10 feet from his property, three feet off a useable patio it is his guess that would be a benefit. He stated it is their belief privatizing that section of the alley would increase property values of all concerned; that Jenny Shugart, Councilmen Rico and Benson and Bill Cannon have come out to view the alley and have had positive conversations about it. A video of the alley was shown at this time of his walk and drive through the alley reflecting the road conditions and the elevation. He stated the Council will hear from those in opposition that the work he has done in the alley has kept vehicles from using the alley.

Councilman Benson asked Mr. Macallister when he bought the house. Mr. Macallister responded "eight years ago last summer". Councilman Benson then asked if the alley was there when the home was purchased. Mr. Macallister responded "it was".

Councilman Benson stated Mr. Macallister has now purchased the property across the alley and wants to extend the house over the alley he is asking to be closed. Mr. Macallister stated there is a limitation on that; that Randy Taylor of the Tennessee-American Water Company stated he does have some rights to do that and gave him advice on that.

Councilman Benson stated he has been out to the site twice and most recently today; that he entered through 46<sup>th</sup> Street and thought he could go all the way through and understands Mr. Macallister said he had done some things and made it impossible to travel through. Mr. Macallister stated he has not done things to make it impossible; that other people have claimed that.

Councilman Benson asked what made the big hump in the road.

### **CLOSE AND ABANDON (Continued)**

Mr. Macallister stated there are two grades:, a grade from when we first start and a grade up to their property; that seven years ago he had taken part of the grade so that he could access a patio and it did not necessarily change the grade of the alley as they had the city involved at that point.

Councilman Benson stated he would like to see the city records because it is evident that is what happened out there when he built the patio; that it seemed evident when the patio was built it changed some of the roadway there to some extent; that a pickup truck could drive the alley right now and a fire engine probably could; that he did not want to drive it in his car this morning so he came in from 46<sup>th</sup> Street, a lower grade. He stated that he came in where the engineer lives and had to park in the driveway; that people in those houses do not have any place to park on Tennessee Avenue and if the alley is closed it will inhibit their parking and moving in-and-out ability; that it is his thought it will deplete their property values; that it would increase Mr. Macallister's property value and definitely does not blame him for wanting it. He stated he does not think Mr. Macallister can do this without diminishing the value of their properties and asked him to tell him why he does not think it would not hurt their value.

Mr. Macallister stated the size of their lot is the size of their lot; that when they bought the house if they could park two cars they could; that if they bought a house to park three, they could park three. He stated the administering of the alley would not change how many cars could be parked on their property; that the alley is a pass through and people are concerned that they cannot park in an alleyway that is being used; that if we are saying it diminishes it because of places to park ... At this point, Councilman Benson clarified "passage".

Mr. McAllister stated if we are looking at topographical map, the upper section toward his house does not diminish their accessibility one bit in his opinion; that he is only asking to close the section up high.

Councilman Benson stated he is just half way land locking them by closing this; that it would take off some of their ingress or egress access. Mr. Macallister responded "correct"; that it is the portion directly behind his property that historically in eight years has been there because of topography; that nobody used that until recently.

Councilman Gilbert asked if Mr. Macallister talked to his neighbors when he made the changes in the alley. Mr. Macallister responded "every one of them, it was full agreement".

### CLOSE AND ABANDON (Continued)

Councilman Gilbert asked if they all agreed to the change of the alley. Mr. Macallister responded "full agreement, absolutely"; that they had nine different transfers of owners in those three homes since they have been there; that this has been something they would have loved to do as they see that block as unique. He stated they united; that nobody voiced concern about it being closed; that as a matter of fact it gave privacy for potential theft and defined property lines as people had more parking. He stated if it is blocked off they would have more of an alley to actually park on because nobody would need to pass through it versus if they needed additional places to park; that now they park there and people are not happy about that at this point; that if they park there it blocks the entire alley. He stated if it is to be partitioned at the half it would not block anyone as they would have additional parking.

In looking at the photos shown by PowerPoint, Councilwoman Berz inquired as to the location of Mr. Macallister's house and the property he purchased; that what he is trying to do is consolidate the two. Mr. Macallister stated the yellow line depicted on the photo has been revised; that 4500 is their property and through discussion in combining lots, a new property line was to be established. He stated if this is approved they would be totally content with moving that southern section up to the southern property line.

Councilman Murphy inquired as to the property line. Mr. Macallister stated he and Mr. Stabler have been in discussion a couple years about swapping land to have it make more sense so that there would be some straight lines as opposed to jagged lines as reflected on the map; that Mr. Stabler would gain a large amount of property and he would gain property.

**David Levitt** of 4502 Tennessee Avenue spoke in opposition. He stated he is baffled by the map that has been shown. He stated he has spoken with Councilman Rico and sent e-mails to all on the Council. He referenced minutes from the Planning Commission and read an excerpt from his wife's presentation before the Planning Commission. He stated he is in opposition because it creates the following hardship on him and his neighbors: that it crowds an already difficult parking situation for three-to-four residents on the block and allows the applicant to spread out with ease. He stated it forces the same neighbors to make multiple turns and back blindly into 45<sup>th</sup> Street, limits emergency access, prevents all of them from getting deliveries of gravel, building materials or from using their own trailers which all devalue their property and creates hardships.

### **CLOSE AND ABANDON (Continued)**

Mr. Macallister stated this case never should have been brought forth lacking the signatures of people who are affected as it is clearly written in the zoning procedures pamphlet. He stated over eight years this alley was blocked and excavated by Mr. Macallister wherein he admitted it here and at the Planning Commission and wanted to mislead neighbors into believing they had no choice but to go along with his plans. He stated Mr. Macallister tried several methods to "sweeten the deal" to keep them quiet; that his misleading behavior does not end with neighbors noting that alleys to be considered as a tail end cannot connect to streets as this one does. He stated his wife talked to Bill Payne who admitted that the wording "tail end" was "an assessment based on the application and may not be the best use of that term", noting that he and others feel the same. He stated they should not be here and should have been asked to sign before the application was processed as the Council is assessing something that is the result of a compromise not a manipulation tactic; that others of similar desires are watching; that other neighbors are watching very carefully the precedent that will be sent.

**Curtis Stabler** of 1331 West 45<sup>th</sup> Street stated he really wishes it had not come to this; that he sat down with Mr. Macallister and tried to talk a compromise and suggested he offer an easement through his property to avoid people from being able to go through but allowing neighbors to use it in the event they had a trailer or some kind of need to get through. He stated he thought that was a good compromise but it was not accepted and that is why he felt he had to oppose this. He stated in terms of the argument about his house being close to the alley, his (Stabler's) house is much closer as the alley is literally within feet of his house and based on that argument it would be better to close his end because he is more impacted. He stated he does not think it is fair to impact three homeowners to the advantage of another homeowner and really feels bad a compromise could not be reached and he has to oppose it.

**Samantha Christen** of 4504 Tennessee Avenue stated she finds it intriguing Mr. Macallister stated "the size of the lot is the size of the lot" and they are supposed to be happy and content with that and accept it but he is not. She stated the alley is a pass through and she is the one who has to make multiple point turns every time she goes in-and-out of her driveway as Councilman Benson found out today. She stated since purchasing her property on April 30, 2010 she has twice almost been hit backing out of her property onto West 45<sup>th</sup> Street; that as a single female she is not concerned about not having an open throughway behind her house.

### **CLOSE AND ABANDON (Continued)**

Ms. Christen stated having access that runs the entire length of the block protects her because it does not allow for any potential hiding places for would-be perpetrators. She stated his argument for closing the alley would be a preventative for crime is unfounded; that there is vehicular and pedestrian traffic of what the irregular nature itself serves to provide security. She stated in this case inconsistency of traffic would continue to be the biggest deterrent and since moving to her home she has had no theft off her property and keeps a \$1,800.00 boat on her porch which is still there. She stated in regard to safety of his children she asked if the Council has considered the safety of children in the neighborhood who daily utilize the alley to go back-and-forth between bus stops in the morning and afternoon and if it is allowed to be closed their safe access will be allowed to be taken away and will have to walk in the dark on the sidewalks of Tennessee Avenue and if the sidewalks are not good enough for Mr. Macallister's children why would the parents of other children make their children walk on those sidewalks. She stated financially these will be partially landlocked properties and will negatively impact their property values; that had the alley not been open when she purchased her home she would never have purchased it as she does not want to be limited to two parking spaces and the others should not either as it negatively impacts it and she would never have considered her home for purchase had the alley been closed or had she known this would have been a consideration.

Mr. Levitt stated the Council is hearing a lot of the same points but pointed out 4504, 4502 and 1331 are all opposed and the only one for it is the one that stands to gain the most financially from this and reminded the Council this is a public alley. He stated in referring to his notes Mr. Macallister brought up a lot of points and when looking at a public alley he did not think it could be altered without permission from the city; that Mr. Macallister admitted altering it and somewhat admitted it here and "danced around it" quite a bit tonight and the Council picked up on it. He stated he mysteriously on the video is not showing the elevation changes from the alteration that affects Samantha. He stated they have four wheel drive trucks and has used the alley from day one and has never been in support of closing it as it is inconsiderate and devalues their properties. He stated this is a bad precedent, neighbors are present who are watching how this "goes down" and that will have an effect on the Council making future decisions; that he does not need to name names and is pointing it out as one was at the Planning meeting and he is watching very carefully to see how this is handled. At this point Chairman Rico informed Mr. Levitt that his time had expired.

### CLOSE AND ABANDON (Continued)

Mr. Levitt stated he was going to read the letter that the Macallisters sent to them and pointed out at the end of the Planning Commission Mr. Macallister said he would have not applied for this and gone to the expense if he had known he did not have pre-approval; that they never approved this and does not know what neighbors he got to approve it but they were not one of them. He stated Mr. Macallister waited to bring this up... Again, Chairman Rico stopped him at this point as Mr. Levitt's time was up. Mr. Levitt asked that the Council "do the right thing".

**Greg Haynes**, Director of Development Services with the Regional Planning Agency (RPA) reminded the Council that this is a request for a portion of the alley to be closed, not the whole alley; that the portion being requested is outlined in yellow dots on the map.

Councilwoman Berz stated she has a question and a statement and asked Ms. Christen how closing a portion of the alley limits her parking. Ms. Christen responded it limits her parking because when she has guests there is no safe parking on Tennessee Avenue or any safe parking on West 45<sup>th</sup> Street as her guests park on Seneca so they walk through the alley to get to her home.

Councilwoman Berz addressed Mr. Levitt and stated that he presents a good argument but suggested in the future that he not give implied threats and stay issue focused as opposed to making personal attacks. She stated that she appreciates all the information he gave however "people watching" and other implied threats she does not take lightly and does not appreciate it! Mr. Levitt stated he did not think they were threats as he was just pointing out what was going on in the neighborhood.

Councilwoman Ladd stated she also made two visits to see the alleyway and thanked Councilwoman Berz because her question did help clarify points she wanted to make. She expressed agreement with the applicant that closing the alley does not affect the amount of parking Ms. Christen would have for her home as it would allow for additional parking because it would not have a cut-through access; that she understands her point that she wants pedestrian cut-through to get to her home, but in looking at it from both the Seneca and 45<sup>th</sup> Street sides she cannot see that it would limit from having access to have utility trucks pull into that alley. She stated a good point was made about it being a safe pedestrian access for children to come through and the issue has become very convoluted and there are so many personal investments; that she cannot address what has gone on personally between the parties or who said what or who hit who first!

### **CLOSE AND ABANDON (Continued)**

Councilwoman Ladd stated just looking at the facts is what the Council is trying to do today and it was clarified for her as that was the point she was going to make.

Councilman Murphy stated Mr. Macallister indicated he was desirous of building a detached parking structure on the lot he owns across the alley but we cannot let him do that because the parcels are not immediately adjacent. Mr. Haynes responded "correct, that he cannot build across the alley"; that he cannot build anything on the alley.

Councilman Murphy stated that he knows he cannot build anything on the alley and is not suggesting that he could and asked if he could build a detached structure for parking and storage in the small square lot. Mr. Haynes responded he is pretty sure he can and that is an enforcement question.

Councilman Murphy asked Lee Norris of Public Works if he could answer the question and Mr. Norris responded he did not have an answer for that one.

Mr. Haynes stated that the question is whether or not the garage would be a secondary or primary use allowed on the lot itself, "yes", he can build on a separate parcel; whether or not he can build his garage as part of his primary use on another lot he is not sure; that it is an enforcement question.

Councilman Murphy stated that is the question we want to encourage development and utilization of property; that in looking at the lot it is an awfully small lot and would be suitable for a large garage-type workshop structure and would have to have a variance to build even a modest size house on that lot. Mr. Haynes responded that it depends upon what the lot size is; that it looks as if it is smaller than 7500 square feet.

Councilman Murphy stated he would hope the Council would not deny him the beneficial use of the property should we not approve his request to close the alley; that if the policy does that maybe we need to revisit them in terms of proximity to the primary dwelling. He stated not everybody can have their legal lots contiguous to the extent people want to have a beneficial use on the other side of an alley and we should support that.

## CLOSE AND ABANDON (Continued)

Mr. Haynes stated whether the alley is closed or kept open changes his right to use the second lot any different than what he has now; that he can use the lot now.

Councilman McGary stated in the notes Planning prepared he noticed the neighbors were opposed and Mr. Levitt gave cogent arguments for it; that there was mention about "a dirt pile and vehicles" and asked that the dirt pile be explained.

Mr. Levitt stated they had pictures for the Planning Commission and he has photos on his cell phone; that Mr. Macallister was putting construction material, cement bags, piles of gravels in addition to parking kids' toys and was making it look as if it was not in use and was inaccessible due to disrepair. He stated this goes back to his argument that Mr. Macallister altered the alley and did not want them using the alley and this was an excuse to move forward to what he is trying to do. He stated if he gives them an easement and kept it as it is now they would not care what he does on his property as it would not affect their property; that they want to be able to access the alley as when they purchased their homes and continue to do. He stated the only reason they stopped was because they were out of town during the summer and when they came back it looked as if he was trying to fix his patio and do things to improve the house and did not say anything about it at the time but did take pictures when he realized what he was doing.

Councilman McGary stated Mr. Macallister mentioned prior to any alteration to the actual alley he consulted his neighbors and asked if he heard him correctly. Mr. Macallister responded "that is true".

Councilman McGary stated prior to applying for this closer did he approach his neighbors, particularly the neighbors at 1321, 4504 and 4512. Mr. Macallister responded "yes, sir".

Councilman McGary asked when exactly was the conversation. Mr. Macallister stated he and Mr. Stabler had multiple conversations even through yesterday and he does not have a logical argument against this. He stated up until the Commission meeting things were nice, neat and orderly and it seemed from his impression that this was going to be a beneficial thing for everybody; that at the County Commission when they asked for opposition, David stood up and he (Macallister) was literally stunned and shocked noting he does not do well in conflict and did not have a rebuttal because they had met weeks before and talked about the alley and he did not have opposition to it.

### **CLOSE AND ABANDON (Continued)**

Mr. Macallister stated he talked to "Kat" in the past about it, talked to Samantha in the alleyway about it and her direct words were "I will not oppose this alley" which was prior to his application.

Councilman McGary asked Councilman Benson to illuminate the Council as to why the Planning Commission denied this. Councilman Benson mentioned the situation in Highland Park some time ago when the alley ran right past someone's window and at that time the Council thrashed that one and realized by closing the alley it made one person increase the value of their home and others lose the value of theirs. He stated he was going back to the principle involved as that is a governmental entity there and does not think government should be in the position of making a decision that favors one part at the expense of others as all citizens are taxpayers. He stated if he was Mr. Macallister he would be wanting the same thing; that he is going to enhance the value of his property by closing this alley but he (Benson) is afraid he (Macallister) will devalue the value of others that bought in there and that is a problem which is why Planning turned it down; that Staff recommended approval at first. Mr. Macallister stated everyone that has been out there has approved it as they have seen the situation.

Councilwoman Robinson stated the thing that strikes her about this is the neighbors all oppose it; that this is an alley that the home owners that are here that are speaking out share. She stated the alley was open and operational when all these families purchased their homes and Mr. Macallister can make great maps and draw great design but at the end of the day it is the people who have invested in those homes there that she gives greater credence to in an instance like this. She stated the fact all of the neighbors are opposed to it, in spite of the fact as a mother of four she knows Mr. Macallister would make for a great, safe backyard for his kids; that she believes that with the lot he owns with some clever fencing and a good play area that same play place could be created for his kids and at the same time leave the alley open for its infrequent use.

Mr. Macallister stated if they had to do that they would have to cross over the public alley and knowing St. Elmo they know what happens in alleys and he would not in his right mind as a parent say "okay, go play in the garage". Councilwoman Robin clarified that she was not suggesting that. Mr. Macallister stated he does not at this point let them cross the alley by themselves nor would he let them cross any other street by themselves. He stated it would not be a cohesive valuable thing to do.

### **CLOSE AND ABANDON (Continued)**

Councilwoman Scott recognized Councilwoman Robinson's idea which was one she was going to mention and asked Mr. Haynes to tell the Council why alleys were created in the first place.

Mr. Haynes stated the primary reason for alleys is for the city to manage and control access to lots and properties and safety. He stated most of the neighborhoods in urban areas have alleys because they either do not have driveways from the street and can access their property from the rear where most garages and driveways are; that alleys are the city's right-of-way to use as the connection; that the city does not own the property and is actually owned underneath by property owners on either side depending upon how it was subdivided. He stated that is basically like a government easement that gives the city the right to use that as a public access and is not created to give each property owner easy access to their lots as it is primarily used to control access to lots in urban neighborhoods.

Councilwoman Scott asked if they are also used by service people that come to homes, as well. Mr. Haynes stated it is a good efficient way not only for vehicle access but also utilities.

Councilwoman Scott asked if there is adequate turning radius for trucks that would have to service or deliver. Mr. Haynes that is "way above him" as it is a city engineer's question; that a response would be subjective on his part and he does not know. He stated RPA does not review them for that and could not answer.

Councilman McGary stated he asked Mr. Macallister if he approached his neighbors and asked each one in opposition to individually approach the microphone; that he has heard one person of the opposition party say Mr. Macallister did not approach any of them and Mr. Macallister stated he has had individual conversation more than once with each of them. He stated in being transparent he is prepared to vote against this if there was not conversation, however, if there was and switching of minds he would be far more in opinion to make this an issue to visit versus voting it down. He again asked if Mr. Macallister approach them and to respond "yes or no" with no explanations and if he did, did they agree to go along with his request.

Mr. Saylor stated he and Mr. Macallister talked about this to which Councilman McGary immediately interjected that Mr. Macallister approached him (Saylor) and that is a "yes". Mr. Saylor stated they also talked about swapping property which did not happen, to which Councilman McGary stated "he made a deal".

### CLOSE AND ABANDON (Continued)

Mr. Saylor clarified that they talked about it, talked about trading property and talked about the alley. Councilman McGary asked Mr. Saylor if he never agreed to it. Mr. Saylor stated he told him if everybody was okay with it so was he.

Ms. Christen stated Mr. Macallister did approach her two weeks after she moved in and asked her what she thought about closing the alley and as she told Councilman Rico earlier today, she was not completely unpacked in her house and had no idea what the "lay of the land" was and said she would need to think about it. Councilman McGary asked if she never agreed to it to which she responded she "never agreed to it".

**"Kat" Levitt** of 4502 Tennessee Avenue stated Mr. Macallister talked about this plan but when she called the building (inspector) they said there was nothing she could do and she went on with the attitude she could not fight it and that is why she was like "whatever", hands off about it; that she did not say "yes" we should do that and never said that. She stated he made it clear to her once he owned both sides there was nothing they could do and so did the person she talked to at the city noting that she wished she had the female person's name; that later she found out they could fight it then she decided to fight it.

Councilman McGary asked if she never indicated to Mr. Macallister she was against it but felt powerless. Ms. Levitt responded "exactly"; that she felt powerless and pressured. Councilman McGary asked if she communicated that to him. Ms. Levitt responded by asking what do you do in that situation; that he felt bad as he knew he was putting them in a corner so he kept trying to do nice things, but they felt it was manipulation.

Mr. Levitt stated he could honestly say he has never been in agreement with it and did not like it from day one; that he never approached him directly and went to his wife first. He stated he said to his neighbors before the Planning meeting he would do what they want to do on this; that he is opposed and does not like it. He stated if he has told them he could do it legally and to make a long story short he found legally "no" he could not; that he has never been in agreement with it and went to the Planning Commission. He stated the Planning Commission told him it was for a parking pad and parking space; that this is unacceptable to him as he wants use of the alley.

Councilman McGary stated since Mr. Levitt was the one who indicated Mr. Macallister did not approach them and we have found he did approach them so that was a misstatement!

**CLOSE AND ABANDON (Continued)**

**Councilman McGary** stated particularly since Mr. Levitt indicated people are here watching the proceeding he (Macallister) approached his wife and not him directly which was also a misstatement! He stated in being actual and factual about what took place, fair representation of what Mr. Macallister has done is in order whether he (Levitt) agrees or disagrees; that his colleagues on the Council are able to weigh facts as to which way they are going to go. At this point he stated he has heard so much information it is confusing to him who is "up or down" and **made the motion to defer the matter until the beginning of next year; Councilwoman Berz seconded the motion.**

***(COUNCILMAN GILBERT EXCUSED HIMSELF FROM THE MEETING AT THIS POINT.)***

Councilman Benson stated he does not see the purpose for deferral as this is clear cut and could not vote for the deferral. He stated he does not want to put off all the work as the Council will not meet for two weeks and then have this long discussion again in January; that if the Council was going to meet the Tuesday before Christmas he would vote to defer.

Councilwoman Robinson called for the question.

**On the vote on the motion and second by Councilmen McGary and Berz to defer the motion failed.**

**At this point Councilwoman Ladd made the motion to deny the matter with Councilman Murphy seconded the motion. On voice vote the motion carried, however clarification was needed on the actual vote and a roll call vote was taken. On roll call vote:**

<b>LADD</b>	<b>YES</b>
<b>BENSON</b>	<b>YES</b>
<b>BERZ</b>	<b>ABSTAIN</b>
<b>MCGARY</b>	<b>NO</b>
<b>MURPHY</b>	<b>YES</b>
<b>ROBINSON</b>	<b>YES</b>
<b>RICO</b>	<b>YES</b>

**CLOSE AND ABANDON (Continued)**

**The motion carried with five (5) “yes”, one (1) abstention and one (1) “no” vote.**

*(It should be noted for the record that Councilmen Gilbert and Scott were present for the meeting; however, Councilman Gilbert excused himself from the meeting due to personal commitment and Councilwoman Scott excused herself from the meeting momentarily prior to the vote being taken.)*

On motion of Councilwoman Ladd, seconded by Councilman Murphy,  
**AN ORDINANCE CLOSING AND ABANDONING PART OF AN UNNAMED ALLEY LOCATED BETWEEN THE 4400 BLOCK OF SENECA AVENUE AND THE 1300 BLOCK OF WEST 45<sup>TH</sup> STREET, SUBJECT TO EASEMENTS OF COMCAST, TENNESSEE AMERICAN WATER COMPANY, AND AT&T SOUTHEAST, MORE PARTICULARLY DESCRIBED HEREIN**  
Was denied.

**REZONING**

**2010-139: Cagle Development**

Pursuant to notice of public hearing, the request of Cagle Development to rezone properties located at 2104, 2106 and 2108 Garfield Street and 408 North Willow Street came on to be heard.

The applicant was present; there was no opposition.

**Councilman Murphy made the motion to amend with the following condition t which he shared with the applicant prior to the meeting if it is acceptable to the applicant's agent: “No metal or vinyl siding, no un-stuccoed or otherwise treated cinder or masonry block, (treated shall not mean merely painted and the above is not to exclude brick, brick veneer or similar.)”; Councilwoman Robinson seconded the motion; the motion carried.**

**Mike Price** of MAP Engineers was present representing the applicant **added when he was before the Variance Board they put a condition that the garbage truck pickups would be done during hours 8 a.m. – 5 p.m.** and that may be another condition the Council might want to add as it relates to this rezoning.

## **REZONING (Continued)**

Councilman Benson commended Eddie Cagle and Mr. Price for working with the neighborhood so well and it is his thought it was a win-win out there; that the neighbors actually wanted it.

On motion of Councilman Murphy, seconded by Councilman McGary,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTIES LOCATED AT 2104, 2106 AND 2108 GARFIELD STREET AND 408 NORTH WILLOW STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**

Passed first reading.

## **REZONING**

### **2010-144: Ronnie Bull**

Pursuant to notice of public hearing the request of Ronnie Bull to rezone property located at 1329 Gadd Road came on to be heard.

The applicant was present; there was no opposition.

**Ronnie Bull** of 214 Grays Road stated he purchased the property in 1988 which was zoned R-1 at the time but there has always been a commercial property on it since he can remember as there was a grocery store, an antique store and hair salon; that he tore the building down and had it rezoned and it was a spot zone as M-3. He stated since then things have changed as he had to give up a corner of the property at the curve and lost about 18-20 feet off the corner that he had to sign over to the city because the asphalt had been encroached upon over the years. He stated up until lately it has not been a big issue except there was a guy who wanted to rent the building and when he applied for a license for a car detailing business Allen Welton sent him a letter that it needed to be rezoned C-2 as it was out of zone. He stated he went before the Planning Commission and there was concern about the density and questions himself as there is recreation across the street that is high density and the property he has is quite small. He stated they talked about an R-4 zoning and the only thing about the R-4 that bothers him is that he is pretty restricted and would still like to have the C-2 if he could; that he does not know if he can totally agree with the density.

## **REZONING (Continued)**

Mr. Bull stated he needs to rezone it to something other than M-3 which was a spot zone; that C-2 would be a spot zone and R-4 would be, as well; that his preference would be C-2 even if it had some sort of restriction on it and if not he will have to settle for the R-4.

On motion of Councilwoman Ladd, seconded by Councilwoman Berz,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY LOCATED AT 1329 GADD ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-3 WAREHOUSE ZONE TO R-4 SPECIAL ZONE**

Passed first reading.

## **REZONING**

### **2010-145: Passpointe Engineering (Jan Pass)**

Pursuant to notice of public hearing, the request of Passpointe Engineering (Jan Pass) to rezone part of the property located at 331 Stringer Street came on to be heard.

The applicant was present; there was no opposition.

Councilwoman Robinson stated in the notes provided by the RPA Staff they state approval is recommended with a couple conditions and asked if they are in this version.

Councilwoman Scott clarified that it is her understanding the applicant agreed to the conditions.

On motion of Councilwoman Scott, seconded by Councilwoman Ladd,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE SO AS TO REZONE PART OF THE PROPERTY LOCATED AT 331 STRINGER STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE AND C-2 CONVENIENCE COMMERCIAL ZONE TO O-1 OFFICE ZONE, SUBJECT TO CERTAIN CONDITIONS**

Passed first reading.

**REZONING**

**2010-146: Fletcher Bright**

Pursuant to notice of public hearing, the request of Fletcher Bright to rezone property located at 550 South Terrace came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilwoman Berz, seconded by Councilwoman Ladd,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY LOCATED AT 550 SOUTH TERRACE, MORE PARTICULARLY DESCRIBED HEREIN, FROM 0-1 OFFICE ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE**

Passed first reading.

**REZONING**

**2010-148: Duckett Properties, LP**

Pursuant to notice of public hearing, the request of Duckett Properties, LP to rezone part of the property located at 1701 Rossville Avenue came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilwoman Robinson, seconded by Councilwoman Berz,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PART OF THE PROPERTY LOCATED AT 1701 ROSSVILLE AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO UGC URBAN GENERAL COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**

Passed first reading.

**REZONING**

**2010-149: Timothy W. McDonald**

Pursuant to notice of public hearing, the request of Timothy W. McDonald to rezone properties located at 603 and 607 East Main Street and 1427, 1433 and 1435 Park Street came on to be heard.

### REZONING (Continued)

The applicant was present; there was no opposition.

On motion of Councilman McGary, seconded by Councilwoman Berz,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTIES LOCATED AT 603 AND 607 EAST MAIN STREET AND 1427, 1433 AND 1435 PARK STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-3 RESIDENTIAL DISTRICT TO UGC URBAN GENERAL COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**

Passed first reading.

### AGREEMENT

On motion of Councilwoman Ladd, seconded by Councilman Murphy,  
**A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO ENTER INTO AN AGREEMENT WITH BRIGHTBRIDGE IN THE AMOUNT OF THIRTY-FOUR THOUSAND NINE HUNDRED EIGHTY DOLLARS (\$34,980.00) FOR BROWNFIELD CLEANUP PROGRAMMATIC SERVICES AND PROJECT MANAGEMENT FOR THE PROJECT ON TENNESSEE AVENUE AND THE OLD 36<sup>TH</sup> STREET LANDFILL SITE**

Was adopted.

### QUIET TITLE ACTION

On motion of Councilwoman Ladd, seconded by Councilwoman Berz,  
**A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE A QUIET TITLE ACTION FOR 1029 DARTMOUTH STREET (TAX MAP NO. 127P-F-021) AND THE FORMER ALTON PARK RECREATION CENTER (TAX MAP NO. 167F-C-001) LOCATED AT THE CORNER OF WEST 45TH AND CENTRAL AVENUE**

Was adopted.

### ACCEPT SCULPTURE

On motion of Councilwoman Ladd, seconded by Councilman McGary,  
**A RESOLUTION AUTHORIZING THE DEPARTMENT OF PARKS AND RECREATION TO ACCEPT A SCULPTURE ENTITLED "ARISE" BY ANDREW LIGHT OF LEXINGTON, KENTUCKY AND DONATED BY THE FRIENDS OF HIXSON FOR THE COLLECTION OF CITY PUBLIC ART TO BE LOCATED IN THE HIXSON COMMUNITY AT ACCESS ROAD AND HIXSON PIKE**

Was adopted.

### AGREEMENT

On motion of Councilwoman Berz, seconded by Councilwoman Robinson,  
**A RESOLUTION AUTHORIZING THE CITY FINANCE OFFICER TO EXECUTE  
A LOAN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF  
ENVIRONMENT AND CONSERVATION IN THE AMOUNT OF FIVE  
MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00) AND  
OTHER DOCUMENTS NECESSARY FOR SAID LOAN; AND TO MAKE  
CERTAIN REPRESENTATIONS, CERTIFICATIONS AND PLEDGES OF  
CERTAIN REVENUE IN CONNECTION WITH SAID LOAN FOR THE  
INTERCEPTOR SEWER SYSTEM (ISS) CAPITAL PROJECTS**

Was adopted.

### DUES

On motion of Councilwoman Robinson, seconded by Councilwoman Ladd,  
**A RESOLUTION AUTHORIZING PAYMENT OF 2011 MEMBERSHIP DUES  
FOR THE NATIONAL LEAGUE OF CITIES IN AN AMOUNT NOT TO  
EXCEED TEN THOUSAND SIX HUNDRED TEN DOLLARS (\$10,610.00)**

Was adopted.

### RENEW LEASE AGREEMENT

On motion of Councilman Murphy, seconded by Councilwoman Ladd,  
**A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE  
DEPARTMENT OF PARKS AND RECREATION TO EXECUTE RENEWALS OF  
A FIVE-YEAR LEASE AGREEMENT AND MANAGEMENT AGREEMENT  
BETWEEN THE CITY AND MARINEMAX EAST, INC. FOR ROSS'S LANDING  
MARINA**

Was adopted; Councilwoman Scott voted "no".

### GRANT

On motion of Councilman McGary, seconded by Councilman Murphy,  
**A RESOLUTION AUTHORIZING THE POLICE DEPARTMENT TO APPLY FOR  
AND ACCEPT A BUFFER ZONE PROTECTION PLAN GRANT IN THE  
AMOUNT OF ONE HUNDRED SEVENTY THOUSAND NINETY-ONE AND  
80/100 DOLLARS (\$170,091.80)**

Was adopted.

### GRANT

On motion of Councilman Murphy, seconded by Councilwoman Robinson,  
**A RESOLUTION AUTHORIZING THE POLICE DEPARTMENT TO ACCEPT A  
DOMESTIC PREPAREDNESS STATE HOMELAND SECURITY GRANT IN THE  
AMOUNT OF NINETY-NINE THOUSAND DOLLARS (\$99,000.00)**

Was adopted.

### AGREEMENT

On motion of Councilman McGary, seconded by Councilman Murphy,  
**A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES  
TO ENTER INTO A MEMORANDUM OF AGREEMENT BETWEEN THE CITY  
OF CHATTANOOGA AND VOLKSWAGEN GROUP OF AMERICA, INC.  
WITH REGARD TO THE DONATION, TRANSFER AND USE OF TWO (2)  
2010 VOLKSWAGEN JETTA SPORTSWAGENS**

Was adopted.

### CONTRACT

Councilwoman Scott reiterated this contract is the result of the MOU signed a couple years ago regarding Volkswagen.

On motion of Councilwoman Ladd, seconded by Councilwoman Robinson,  
**A RESOLUTION AUTHORIZING THE PURCHASE OF CONTRACT  
ADMINISTRATION SERVICES FROM EMJ CORPORATION RELATIVE TO  
THE VOLKSWAGEN SET-OUT YARD AND OTHER RELATED RAIL  
PROJECTS IN AN AMOUNT NOT TO EXCEED FOUR HUNDRED  
THOUSAND DOLLARS (\$400,000.00)**

Was adopted.

### MANAGEMENT SERVICES

On motion of Councilwoman Robinson, seconded by Councilman Murphy,  
**A RESOLUTION AUTHORIZING THE PURCHASE OF DESIGN AND  
CONSTRUCTION MANAGEMENT SERVICES FROM SSOE SYSTEMS, INC.  
RELATIVE TO THE VOLKSWAGEN SUPPORT YARD AND OTHER RELATED  
RAIL FACILITIES IN AN AMOUNT NOT TO EXCEED THREE HUNDRED  
THOUSAND DOLLARS (\$300,000.00)**

Was adopted.

## OVERTIME

Overtime for the week ending December 10, 2010 totaled \$5,859.24.

## PERSONNEL

The following personnel matters were reported for the various departments:

### **CHATTANOOGA POLICE DEPARTMENT:**

- **PEARL SHELTON** – Resignation, School Patrol Officer, effective November 29, 2010.
- **PHILLIP JOHN** – Resignation, Police Cadet, effective December 6, 2010.
- **MELINDA HARRIS** – Leave of Absence (without pay), Crime Analyst, effective December 8 – 31, 2010.

### **CHATTANOOGA FIRE DEPARTMENT:**

- **JAMES T. SPURLING** – Retirement, Captain, effective December 13, 2010.

### **PUBLIC WORKS DEPARTMENT:**

- **CHARLES YOUNG** – Hire, Combination Inspector, Land Development, Range 15, \$38,480.00 annually, effective December 3, 2010.
- **DALE WELLS** – Hire, Combination Inspector, Land Development, Range 15, \$35,911.00 annually, effective December 17, 2010.

## EMERGENCY PURCHASE

The emergency purchase of a Replacement Transformer from the Electric Power Board of Chattanooga for the Public Works Department on R36875 in the amount of \$40,747.00 was duly reported and signed in open meeting.

### HOTEL PERMITS

On motion of Councilman McGary, seconded by Councilman Murphy, the following hotel permits were approved:

**COMFORT INN & SUITES** – 2341 Shallowford Village Drive, Chattanooga, TN

**INTOWN SUITES GUNBARREL ROAD** – 1914 Gunbarrel Road, Chattanooga, TN

**EXTENDED STAY AMAERICA #125** – 6240 Air Park Drive, Chattanooga, TN

**SLEEP INN** – 2351 Shallowford Village Drive, Chattanooga, TN

**CHATTANOOGA TN LODGING LLC D/B/A/ COUNTRY SUITES BY CARLSON CHATTANOOGA** – 7051 McCutcheon Road, Chattanooga, TN

### REFUNDS

On motion of Councilman McGary, seconded by Councilwoman Robinson, the Administrator of Finance was authorized to issue the following refunds for water quality fees and/or property taxes:

**RAINBOW CREEK APARTMENTS LP** -- \$5,711.44

**REGIONS BANK** -- \$2,043.09

**JOHN J. & SANDRA BOWE** -- \$1,327.43

**JOHN O. & KATHRIN NUNES** -- \$4,266.20

**SARAH T. JONES** -- \$1,190.87

**PATRICK N. & LAUREL RHYNE** -- \$1,867.73

**PATRICK MITCHELL** -- \$1,458.46

**FREDERICK YARBROUGH** -- \$1,099.41

**CHARLOTTE MUSE** -- \$3,867.33

**CHRISTOPHER POOLE** -- \$1,223.77

### REFUNDS (Continued)

**AMANDA STARNES** -- \$1,127.70

**MARY REILLY** -- \$1,375.91

**PEDRO F. PONS** -- \$1,104.23

**ALBERT KOEHLER** -- \$1,102.30

**BILLY D. SMITH** -- \$1,476.36

**HAMILTON GROVE LIMITED PARTNERSHIP** -- \$5,781.95

**RIDGE MOUNTAIN LLC** -- \$7,141.25

### BOARD APPOINTMENTS

On motion of Councilwoman Robinson, seconded by Councilman Murphy, the following Board appointments were approved:

#### BOARD OF ZONING APPEALS:

- Appointment of **DR. ED MCKINNY** for a term expiring July, 2013 representing District 2.

#### BOARD OF SIGN APPEALS:

- Appointment of **MIKE FEELY** for a term expiring July 2013 representing District 7.
- Appointment of **TRAVIS LYTL** for a term expiring July 2013 representing District 3.

#### COMMUNITY DEVELOPMENT CITIZENS ADVISORY COMMITTEE:

- Appointment of **CAROLYN JACKSON** for a term expiring December 14, 2013 representing District 9.

**BOARD APPOINTMENTS (Continued)**

- Appointment of **TERESA WOOD** for a term expiring December 14, 2013 representing District 7.

**PURCHASES**

On motion of Councilwoman Berz, seconded by Councilwoman Ladd, the following purchases were approved for use by the various departments:

**PUBLIC WORKS DEPARTMENT:**

**PROCURE, INC. (Best bid)**  
**R31630**

Purchase of Rosemount Transmitters *(Although the bid from Daly Instrumentation was lower, this bid was for a substitute brand and model. Since the transmitters will be replacing existing equipment, Waste Resources cannot accept substitutions.)*

\$15,145.00

**CHATTANOOGA FIRE DEPARTMENT:**

**TENNESSEE FIRE EQUIPMENT (Lowest and best bid)**  
**R32549/300535**

Purchase of MSA Facepiece and Voice Amplification System *(Walter A. Wood, MSC Industrial Supply and All Safe Industries submitted lower bids; however, they are not authorized MSA Fire Service Distributors for the City of Chattanooga.)*

\$21,424.00

**GENERSERVICES (RADIO SHOP):**

**J. MARK BOWERY INSURANCE (Only proposal meeting specifications)**  
**RFP 36422**

Purchase of Blanket Contract of Tennessee Valley Regional Communications System Insurance

\$83,125.00 – Annual estimation

## COMMITTEES

Councilman Murphy stated the **Legal and Legislative Committee will meet on Tuesday, January 4, 2011.**

Councilman McGary stated that the Education, Arts and Culture Committee met today and reported a concession bid has been cleared by legal zoning and the documents are in Purchasing; that a pre-bid meeting and bid dates should be ready mid-January and is being prepared. He stated after the award vendors should be operational within 60-90 days for both the Auditorium and Tivoli. He stated food and beverages will be served in the lobby only for a contract for one year with two one-year renewals.

Councilwoman Ladd stated the **Public Works Committee will meet on Tuesday, January 4, 2011** immediately following the agenda session.

## ADJOURNMENT

Chairman Rico adjourned the meeting of the Chattanooga Council until Tuesday, January 4, 2011 at 6:00 p.m.

---

**CHAIRMAN**

---

**CLERK OF COUNCIL**

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