

**AGENDA SESSION**  
**OCTOBER 11, 2011**  
**3:00 P.M.**

Chairman Ladd called the Agenda Session to order with Councilpersons Berz, Scott, Gilbert, Robinson, Rico, and Benson present. Councilmen Murphy and McGary joined the meeting later. City Attorney Michael McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Chief Parker, Lee Norris, Larry Zehnder, Jim Templeton, Danny Thornton, Jerry Stewart, Johnny Feagans, Dan Johnson, Dennis Malone, Steve Leach, Greg Haynes, John Bridger, Gary Hilbert, and Daisy Madison.

Mr. Johnson proceeded to go over tonight's agenda, beginning with **Ordinance First Reading (a)** that amends the City Code to establish a Special Exceptions Permit relative to the regulation of structure heights in areas that are identified to have scenic value. He stated that we would deal with this later tonight.

**Ordinance (b)** amends the Zoning Ordinance referencing unit density per acre in the UGC Zone. Councilwoman Scott stated that she would like to hear why we should do this—that she would like to have an excellent reason for doing this.

Mr. Haynes responded by saying that he did not know if it would be an "excellent" reason, but the only thing he knew of was that the minimum lot size is 5,000 sq. ft. where townhouses are permitted. He spoke of a case with UTC where townhouses and lot size had come up in the process—that this is a large size for townhouses in this zone and UTC got a variance. The question arose as to whether 5,000 sq. ft. is appropriate for townhouses in this zone, and they had reasoned that it was not; that this is too much in Urban zones, and this amendment is to allow smaller townhouse units and gives flexibility.

Councilwoman Scott questioned townhouses in the R-1 Zone, asking if they go smaller and smaller—what is the distinction? She noted there are several sections of townhouses. Mr. Haynes explained that there is a difference between townhouses and condos. She asked if the difference was "fee simple"? He responded that both can be "fee simple"; that with condos you can have a building with 10-12 units on one lot but with townhouses it is divided into units, including the land underneath. Councilwoman Scott wanted to know what becomes "too small" a lot or structure? She wanted to know what our goal is? She asked if no matter how small, we could call it a townhouse? Mr. Haynes responded that "urban" is the key word; that they were trying to bring the urban zone more in line—that 5,000 sq. ft. is arbitrary and more suburban than urban.

Councilwoman Robinson stated that she guessed one of the things that Councilwoman Scott may be asking about is referring to unit density. Mr. Haynes agreed that there was a switch in terminology—there is a maximum of 24 units per acre.

Councilwoman Scott asked if this was a 0 ft. lot line with 24 units, what would be the average sq. ft. of the dwelling? Mr. Haynes responded that offhand, he did not know. She asked how small the dwelling would be and if we were talking about closet-size houses?

**Ordinance ©** amends the City Code to establish a Special Exceptions Permit for an ethanol transfer facility. Councilwoman Scott noted that there were several versions of this and asked if this would be discussed in another committee, right now, or later tonight at Council meeting? Chairman Ladd asked if the Legal and Legislative Committee would be the appropriate place? Attorney McMahan explained that it was a change in the Zoning Code—that this could be taken up in Legal and Legislative, but not its companion piece.

Mr. Johnson stated that **Ordinances (d) through (f)** are zoning issues.

**Resolution (a)** is a Special Exceptions Permit for MAP Engineers to abandon a PUD on property located at 1515 North Concord Rd. Mr. Johnson noted that there was a split decision between Planning and the Staff on this issue. **Resolutions (b) and (c)** are Public Works' items that were discussed last week. **Resolution (d)** is a Parks and Recreation issue regarding a change order to the Agreement with Jones and Jones for additional services to evaluate the Ross's Landing area for an increased amount of \$19,800 for a revised contract amount not to exceed \$188,300. Mr. Zehnder is to discuss this in the Legal and Legislative Committee. **Resolution (e)** is a Special Exceptions Permit to extend a PUD. **Resolution (f)** is also a Special Exceptions Permit for a PUD. **Resolution (g)** authorizes the City Attorney to file a lawsuit against Jason Headrick regarding a continuing nuisance at 1004 Brynewood Park Drive. This is to be discussed in Legal and Legislative Committee.

Councilwoman Berz asked Greg Haynes to come to the podium, stating that she needed help concerning these Special Exceptions Permits of the PUD's. She stated that we were getting to rule by Special Exceptions rather than changing the law; that we needed to take a serious look at the Land Use Plan. She asked why we were dealing with Special Exceptions Permits rather than changing the law? She wanted to know what was happening? She noted that some Special Exceptions are "okay" and asked what makes some "not okay"—that some were "okay" and some were not "okay". She noted that we go from something like PUD's and then to something like a duplex, and we seem whimsical. She stated that this goes beyond discretion, and we will "get nailed". She stated that ruling by Special Exception obviates the law.

Mr. Haynes asked what she was specifically talking about? She responded “all kinds of Special Exception Permits”. Mr. Haynes explained that there are nine Special Exceptions Permits granted by the Council and two are pending; that the Board of Appeals has 22 Special Exceptions Permits; that Special Exceptions Permits are tools used to make sure—that some of the uses are appropriate; that once we get a zone in place, they can then come back with specific uses—that to say that all Special Exception Permits are good or bad is very difficult.

Councilwoman Berz asked if we could not change the law itself? She stated that in view of all these Special Exceptions Permits we needed to re-look at this because we are a growing and changing town; that we need something appropriate for 2011; that Special Exception Permits puts the Council in a discriminatory manner and could be harmful. Mr. Haynes agreed that sometimes it feels like Special Exception Permits are not always the right direction to take. Councilwoman Berz stated that we had a “load”—that we were reaching a “tipping point”.

Mr. Bridger explained that the general rule is that we use Special Exception Permits for something like Day Care Centers—that they can work or they can be a problem—that they are site driven; that it becomes a problem if we use them for everything; that we can’t do them ad hoc; however, he thought there were times when it makes sense; that they wanted to get the Council’s feedback and get a consistent approach.

Councilwoman Berz reiterated that we were getting “top heavy”. She stated that we could be accused of discriminatory practices, and she did not like this—that she did not believe in law by exception.

Councilman Benson stated that he thought Councilwoman Berz was right; that we had done downzoning and some lost their “grandfather clause”, and we began Special Exceptions; that it was first done in Highland Park and now all were going for Special Exceptions Permits for everything in the world. He went on to say that the Variance Board plays a role, and the Council is pre-empting them; that soon we will have Special Exception Permits for Special Exceptions.

Councilman Murphy stated that he did not have a long tenure on the Council; that we did Special Exception Permits starting with Day Cares and Adult-Oriented Establishments; that there was a genesis before duplexes.

Mr. Haynes agreed that that was fairly accurate; that PUD Special Exceptions had been added—that Special Exception Permits are a popular tool; that they are fairly liberal; that the limit is the underlying zone—that the underlying zone controls the density.

Councilman Murphy asked that as a Planner, someone briefly explain that one of our growth tools is density.

Mr. Bridger responded that downtown people want more density, and they have to decide what zoning tools allow this.

Councilwoman Robinson went back to the remarks made by Councilwoman Berz—that this is a law, and we are asked to bend and tweak it—that we are seeing some of this driven by approved projects that stalled out because of the economy—that they had to get a loan and renting is now an option; that townhouses are at the mercy of an imperfect process, and we need to get these houses built because we are having a huge new surge in the need for housing, and we need to be able to grow—not grow by Special Exceptions Permits but by law. She stated that this needed to be discussed in detail—that just a Tuesday afternoon was not enough time to understand this. She stated that she would have to recuse herself on a couple of these because she had “up close dealings”.

Councilman McGary noted that we had Special Exception Permits for PUDs, Night Clubs, Homes for the Elderly, and now ethanol plants—that he thought it was disingenuous to treat them all the same. He questioned how we go about the Special Exceptions Permits process—that this was his concern, as well. He stated that he was growing tired when Special Exceptions Permits come up—that we always have the same conversation; that he was truly concerned about being above board; that this needed to be discussed in Legal and Legislative Committee as a priority issue; that the Council as a body needs to be upfront and honest and not to have to have these ten-hour deliberations; that everyone has different priorities, and this is tedious and time-consuming and also frustrating; that we need to be clear and let people go on their way.

Councilman Murphy thanked Councilman McGary, stating that this issue was dealing with housing and residences and doing a global review, and he did not want to infringe on anyone else’s committee; that perhaps it should be in the Housing Committee; that some of it dealt with his committee, but he did not want to infringe on the Housing Committee.

Councilwoman Robinson responded that with all due respect, she was all for getting this resolved and Councilman Murphy could have a “two-fer” in his committee. Councilman Murphy responded that he would be Vice Chairman, due to Councilwoman Robinson’s seniority. She agreed that she did have “seniority”.

#### **AGENDA ITEMS FOR OCTOBER 18, 2011**

**Ordinance (a) First Reading** is for Englewood Enterprises, LLC, rezoning 6162 Enterprise Park Drive from M-2 to M-1. Mr. Johnson noted that this was the companion piece that the Attorney had referred to.

**Resolution (a)** authorizes Dan Thornton as Acting Director of General Services Division. Councilwoman Scott asked about the “acting” position. She asked if when this position is made permanent, will this be a Department Head? Mr. Johnson responded that this is a division and not a department. Councilwoman Scott asked who this person would report to. Mr. Johnson responded, the Mayor. Councilwoman Scott wanted to know how this position is different from a Department Head, such as Adm. Leach organizational-wise? Mr. Johnson explained that Public Works is a department with many functions and of course the Administration of a Department reports to the Mayor; that General Services provides services for all departments and includes the division of Purchasing. Councilwoman Scott questioned why this position was not an Administrator at the Administrator level? Mr. Johnson responded that at one time this position was an Administrator but it was changed because of the cost; that the responsibilities were then scattered throughout the City and other departments and divisions, and it was more concentrated now with a particular division for this. Councilwoman Scott asked if the salary was not equivalent to an Administrator salary. She also wanted to know if the Council would get to approve this person? Mr. Johnson responded that the Council would not get to approve a Division head. Councilwoman Scott stated that she would like to request that the Council would have approval.

Councilman McGary pointed out that as far as a salary comparison that \$98,000 compared to an Administrator’s salary; that an Administrator reports to the Mayor. He asked what it would take for the Council to make this an Administrative position that goes through the Mayor with approval by the Council?

Attorney McMahan responded that legally this would be a conflict of interest for him to advise, with it having an impact on the Council and the Mayor; that the Council would need to hire outside special counsel.

Councilman Murphy pointed out that the Personnel Department serves all departments and asked its direct analogy to General Services? Mr. Johnson responded that the analogy was very similar, as would be the IS Division and also the Finance Department; that IS is a Division—that this is all semantics. Councilman Murphy disagreed, saying that it was not semantics; that this position pays more than \$98,000, and this salary is in the ball park of a Department Head; that Councilman McGary wanted to get independent counsel.

Mr. Johnson explained that salaries of positions have different ranges and sometimes they can overlap.

Councilman Gilbert asked in the history of Chattanooga—what is the norm for this position as to Administrator or Director and the time involved? Mr. Johnson responded that he could not answer that; that during Mayor Robert’s administration he thought this position was an Administrator and then was changed to Director and then it was eliminated altogether.

Councilwoman Robinson asked the essential difference between an Administrator, who is appointed by the Mayor and a Director, who is also appointed by the Mayor; that the City Council approves Administrators but does not approved Directors. She asked if this was the “sticking” point?

Councilman Benson stated that he would hate to see us spend money for a lawyer; that it would cost a lot of money; that this goes back to the days of Grady Jacoway and then it was Rayburn Traugher.

Mr. Johnson agreed that it was the difference between an Administrator and a Director.

Councilman Benson stated that we have enough Council business without spending this money; that he was not for hiring a lawyer. He went on to say that this particular Resolution has nothing to do with this discussion that is going on now. Mr. Johnson agreed, stating that this was just to allow Dan Thornton to sign documents. Councilman Benson stated that we could let Councilman Murphy bring this up in Legal and Legislative Committee.

Councilman McGary stated that Danny Thornton was worth \$90,000 but if we wanted to hire independent counsel, where could this take place? Attorney McMahan responded under “Other Business” at 6:00 P.M. Councilman McGary stated that he would be supportive of this—that it is an issue of equity, and it needs to be across the board with no special favors. Councilwoman Scott stated that she would withdraw.

Councilwoman Robinson stated that she thought we were getting ahead of the curve in hiring a lawyer; that we had not even talked about this issue among ourselves; that Mr. Johnson says it is semantics; that after the discussion today, she would expect that the Mayor would say it would be no problem with calling this position an Administrator—that right now, we have no language to tell us that.

**Resolution (b)** authorizes the appointment of Tiffany Newcomb as a special unarmed police for Animal Care Trust. **Resolution (c)** is a Public Works’ item to be discussed next week. **Resolution (d)** authorizes an Agreement with Franklin Associates Architects, Inc. for the renovation of the Memorial Auditorium for a stipulated sum not to exceed \$80,000, plus reimbursable expenses not to exceed \$10,000. Councilwoman Scott asked to be reminded where this funding was coming from. Mr. Johnson responded that some of it was raised and we have appropriated some. She asked if this was Grant money or donations? Mr. Johnson responded that \$300,000 was designated for this; that there is \$750,000 in the Capital Budget. Ms. Madison confirmed that this is part of the Capital Budget and will be coming from bond proceeds.

Councilwoman Berz stated that she thought from previous talks that the money for the Community Theatre would come from donations. Ms. Madison responded that it is a joint effort; that she did not know the exact numbers, but we have added dollars. Councilwoman Berz still thought that the Community Theatre was all private money. Ms. Madison stated that she would get this information.

**Resolution (e)** authorizes the appointment of D. Stacy Morrison as a special unarmed police officer for the Public Works Department.

Mr. Johnson went over tonight's purchases—one for a blanket contract for General Services for generator maintenance and repair services from Energy Systems Southeast for approximately \$15,000 annually; another for Parks and Recreation—emergency roof repair by JDH Company, Inc. in the amount of \$24,660, which Adm. Zehnder will bring forward tonight for signature. Two purchases were for Public Works—a blanket contract for Vapor Phase Odor Neutralizing Products and Service from BioTriad Environmental, Inc. for approximately \$25,000 annually and a rejection of bids for Drive: Motor, Spiral & Gear Reducer.

**On motion of Councilman McGary, seconded by Councilman Gilbert, the minutes of the previous meeting were approved as published.**

This meeting adjourned at 3:45 P.M.