

**AGENDA SESSION**  
**OCTOBER 18, 2011**  
**3:00 P.M.**

Chairman Ladd called the Agenda Session to order with Councilmen Benson, Rico, Robinson, Berz, Gilbert, Scott and Murphy present. Councilman McGary joined the meeting later. City Attorneys Michael McMahan and Phil Noblett and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Johnny Feagans, Dan Johnson, Karen Rennich, Danny Thornton, Jerry Stewart, Steve Leach, Lee Norris, Tony Boyd, John Van Winkle, Dennis Malone, David Johnson, Daisy Madison, Beverly Johnson, Larry Zehnder, Jana Lowery, Fire Marshall, Bill Payne, and Dickie Hutsell.

Mr. Johnson began with **Ordinance 5 (a)** amending the City Code referencing unit density per acre.

**Ordinance 5 (b)** amends the City Code to establish a Special Exceptions Permit for ethanol transfer facility. Councilman Benson confirmed that this just gives them the option if they choose to apply for a Special Exceptions Permit in the event the Council turns down **Ordinance 6(a)**, which is a rezoning from M-2 to M-1. Mr. Johnson responded that it was his understanding that this just adds them to the Special Exceptions category. Councilman Benson confirmed that it does not mean that they get the right for an ethanol facility.

**Ordinance 5(c)** amends the City Code to rezone property on O'Henry Drive from R-2 to C-2.

**Ordinance 6(a)** is a zoning change for property located at 6162 Enterprise Park Drive from M-2 to M-1 and is recommended for denial by Planning. Councilman Benson confirmed that if the Council turns this down, they can still come back and ask for a Special Exceptions Permit.

**Ordinance 6(b)** is being brought back from last week. Attorney McMahan related that Councilman Benson asked him to bring this back on the agenda; that last week there was not five votes to do anything; that Councilwoman Robinson recused herself and Councilman McGary was not present at the time of the critical vote; that Roberts Rules of Order stated that a person on the prevailing side can recommend that this be heard again but only at the meeting in question; however, as a rule, this Council has carried this forward to the next meeting. He noted that the Council can override Roberts Rules of Order.

Chairman Ladd asked what the Council's preference was in rehearing this case?

Councilman Gilbert stated that it was his opinion that some things were not brought out last week; that Mr. Price is efficient, but he did not hear from him that the community was for this, and this is what the community wants in this area. He stated that this was not discussed.

Councilman Benson added that the land was halfway developed and had to go back to the Bank; that the public would like to have this land remain pristine with no development, but this was not going to happen. He explained that this was all subject to a bad problem and no one in the community had spoken against this; that it was right on the fringe; that last week he abstained, and the way he understood this, he could ask that this be brought back at the subsequent meeting because he was on the prevailing side; that he thought this was why he had the right to bring it back.

Attorney McMahan stated that it could be brought back at the will of the Council.

Councilman Benson asked for clarification if this was “the will of the Council” or the “prevailing side” that could bring this back?

Councilwoman Scott asked if she be able to go back for a moment, asking how the vote went last week. She wanted to know if five votes were required to pass something and if we had only four votes against, she questioned if anything passed at all—that it could be that it was not denied or approved either.

Attorney McMahan agreed that it was not denied nor approved; that a rezoning takes five official votes, prompting Councilwoman Scott to say that we did not vote down anything—that a decision was not made. Attorney McMahan agreed that it was not denied—it just did not pass; that Roberts Rules of Order does not address this situation, and we would need to ask if it is the will of the Council to rehear this case. Councilwoman Scott asked if any other information was needed to vote on this? Attorney McMahan noted that one councilperson abstained; one was not present in the room when the vote was taken; and one recused herself—that three votes were unaccounted for.

Councilwoman Berz stated that she wanted to be clear—that it takes five votes to pass something and wanted to be sure we were not setting a precedent that when something is voted down, we can bring it back up again; that she understood that it takes five votes to pass something, or it fails—that if it fails, we don’t need a second vote—it automatically fails, and we should not start down this “slippery slope” and say that everything that does not get five votes can be brought back up again.

Attorney McMahan noted that most of the time, there are five votes to deny.

Councilwoman Berz wanted to know what Roberts Rules of Order has to say about negative motions—anything about negative motions not being made and what it says in regards to positive motions. Attorney McMahan responded that there was not a real quick answer to this; that he would leave the meeting and take a few minutes and go on-line. Councilwoman Berz stated that she just wanted to be consistent.

Councilman Benson stated that Roberts Rules of Order have a good reason for this in saying that anyone on the prevailing side can bring something back up to reconsider if there is new knowledge—that it can be the next meeting or the end of the ongoing meeting—that this was not a “slippery slope”.

Chairman Ladd noted that the question is “Was there a prevailing side”? The question also is “Do we accept a re-vote”? She noted that in this case there did not seem to be a prevailing side.

Councilman Murphy stated that the Chair can make a ruling; that the Council can overrule the Chair on a point of interest; that any five members can take proceedings to “act out of order” on the agenda; that the Council can move to proceed to act “out of order”; that this is within the Council’s power to set aside rules; that the Council can even “trump” Roberts Rules of Order.

Councilwoman Scott stated that she would like to go back to **Ordinance 6(a)**; that she would like some clarification on **Ordinance 6(a)**—was this to amend or change this property, while still being in M-2 zone, with a Special Exceptions Permit.

Mr. Leach responded that this is a zoning case and at the same time, we have an Ordinance to allow a Special Exceptions Permit. Councilwoman Scott questioned how this was zoned. She wanted to know if this was zoned as M-2 with a Special Exceptions Permit if it would be for ethanol and ethanol only? She noted that **Ordinance 5(b)** would be an option rather than rezoning to M-1. Attorney McMahan stated that an ethanol facility could go in an M-1 Zone without a Special Exceptions Permit—that it had to be in an M-1 Zone to go without the Special Exceptions Permit; that petroleum is also allowed in M-1. Councilwoman Scott wanted to know if it would be more restrictive if it remains in M-2 Zone with a Special Exceptions Permit? She noted that if the Council voted to rezone to M-1 that anything could happen. She stated that she thought she was clear now.

Adm. Leach stated that Dickie Hutsell could further clarify this.

Mr. Hutsell noted that there had been a lot of discussion surrounding this; that if the Council did choose to rezone the property to M-1, it would have the authority to condition the rezoning. He stated that it was their opinion, on the Staff, that if we went the M-1 Zone route that this could be dealt with in an M-1 Zone—that conditioning it to only ethanol could be achieved; that a Special Exceptions Permit in an M-2 Zone would work, also. Councilwoman Scott asked if this would leave us open to being “arbitrary and capricious” down the road. She wanted to know what the safest thing was to limit this to one specific thing and nothing else. Attorney McMahan responded that it would be M-2 with a Special Exceptions Permit, requiring a Site Plan to be submitted.

**Resolution 7(a)** authorizes Dan L. Thornton to sign vouchers, requisitions, and other documents on behalf of the Mayor's Office relative to renovation capital funds, purchasing real estate, and building and fleet maintenance, effective as of October 5, 2011.

**Resolution (b)** authorizes the appointment of Tiffany Newcomb as special police officer for Animal Care Trust.

**Resolution (c)** authorizes execution of Interlocal Agreements with the City of East Ridge and the City of Red Bank to provide traffic signal equipment maintenance services and traffic signal timing management services. This will be discussed in more detail in Public Works Committee.

**Resolution (d)** authorizes the Administrator of Education, Arts and Culture to enter into an agreement with Franklin Associates Architects, Inc. to design, prepare for bid, and oversee Phase 1 of the renovation of the Memorial Auditorium Community Theatre for a stipulated sum not to exceed \$80,000.00, plus reimbursable expenses not to exceed \$10,000. Mr. Johnson noted that Mr. Franklin was in the audience to answer any questions.

Councilwoman Scott stated that she would like to know how much of this project is ADA versus additional capacity—that it was her understanding that this part included electrical and fire safety. Mr. Franklin answered that the ADA portion is mainly the elevator; restrooms are also ADA, as is the second handicap lift. He mentioned the men's restroom, again stating that the elevator is the largest percentage. She asked if 75% to 80% of the total expense is ADA related, and he responded "yes".

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

**Resolution (f)** is a Special Exceptions Permit for Michael A. Price to abandon a PUD on property located at 1515 North Concord Road.

**Resolution (g)** is a Parks and Recreation item for an agreement with Tower Construction Co. to construct a maintenance building at the City's East Lake Park in an amount not to exceed \$28,618.11.

#### **AGENDA ITEMS FOR OCTOBER 25, 2011**

**Ordinance 6(a)** will be discussed next week in Legal and Legislative Committee.

**Resolutions (a) through (e)** are Public Works' items.

**Resolution (f)** authorizes the appointment of Michael Dozier as a special police officer for the Fire Dept.

**Resolutions (g) through (k)** are Public Works items and have to do with street name changes.

**Resolution (l)** amends the Five Year Capital Improvements Plan to include an additional \$10 million dollars of TIGER funds in Fiscal Year 2013 to be used for the renovation of Wilcox Tunnel for a total project estimate of \$47 million with a City match of \$22 million over a five year period.

Councilman Gilbert noted that **Resolution (j)** was not in his district but was in Councilman McGary's district.

Mr. Johnson went over 12 purchases that will be on tonight's agenda. Councilwoman Scott had a question about the purchase for Parks and Recreation of the installation of Bicycle Pavement Markings for an estimated \$70,400 annually. She wanted to know if this is just to paint bike racks? Mr. Johnson explained that it was pavement markings, made out of thermo plastic. She wanted to know if this was just paint? Councilman Murphy questioned why this was under Parks and Recreation rather than Public Works? Mr. Johnson explained that Parks and Recreation handle bikes—that Public Works will be putting in the pavement markings. Mr. Johnson explained that the purchase for General Services in the form of a blanket contract for fueling station service and repair is tied to the Emergency Purchase of Fueling Station Repair Services that will be discussed later in the evening and signed at tonight's meeting. The Information Services purchase of annual Motorola CSR System Maintenance Renewal is the 311 Software.

Mr. Johnson went over two appointments—one for the Historical Zoning Board—Stuart Wood for a five year term ending in 2016 and the Metropolitan Airport Board—Gene Veazey for a three year term ending in 2014.

At this point, Chairman Ladd recognized the presence of former Councilman David DiStefano.

Councilman Benson stated that he would like to address the Chairman of the Parks and Recreation Committee—that he had read in the newspaper about a meeting tonight concerning closing three or four Recreation Centers. He asked if there was any truth to this at all?

Mr. Johnson responded that there was no truth to this; that this was started by Commissioner Mackey and Chairwoman Ladd had responded to him, telling him that he was wrong—that this was not true, and he had asked no one in the City about this.

Councilman Gilbert stated that he told Commissioner Mackey personally that we had never heard of four Centers closing and that he needed to get his information from the correct people, either himself as Chairman of Parks and Recreation Committee or the Administrator of Parks and Recreation. He stated that they had talked about the importance of Centers, and he questioned him saying something like this without getting the facts.

Councilwoman Robinson asked when the meeting was scheduled and was told at 6:00 P.M. tonight. She asked if she could suggest that someone from the City be present at this meeting to refute this? Mr. Johnson responded that she could suggest this. She stated that someone needed to get the record straight.

The meeting adjourned at 3:35 P.M.