

PUBLIC WORKS COMMITTEE

August 19, 2008

3:15 P.M.

Councilman Rico, Chairman, called the meeting of the Public Works Committee to order, with Councilpersons Bennett, Berz, Benson, Page, Pierce and Robinson present. Councilman Shockley joined the meeting later. Also present were City Attorneys Randall Nelson and Phil Noblett and Shirley Crownover, Assistant Clerk to the Council.

Others present included Chip O'Dell, Chief Randy Parker, Chief Rowe, Dan Johnson, Fireman Rozelle, Sandy Coulter, Laurie Shipley, Missy Crutchfield, Denny Malone, Gary Hilbert, Larry Zehnder, Jerry Stewart, Jim Templeton, Gene Hyde, Steve Leach, Beverly Johnson, Danny Thornton, Daisy Madison, Eddie Tate, and Richard Beeland. Lee Norris, Frank Hamilton, and Chief Bobby Dodd joined the meeting later.

WINDSTONE SUBDIVISION SEWER ISSUE

Chairman Rico called the meeting to order and noted that Attorney John Anderson was present to cover another item not on the agenda, which dealt with sewer issues; that we would go through regular business and then open up the floor to Mr. Anderson.

Councilman Benson stated that Mr. Anderson was a lawyer "on the clock" and asked that we hear from him first.

Mr. Anderson stated that he would be happy to go first; that he was representing Susan and Mike White and the Millers, who were residents of Windstone; that the reason they were here was a Pump Station in Windstone; that Windstone was not in Chattanooga. He handed out a notebook, which is made a part of this minute material. The first section defined what Hydrogen Sulfide gas was—it can result from bacterial breakdown of organic matter and be produced by human and animal wastes. He called attention to some of the effects of Hydrogen Sulfide and directed attention to a letter to Mr. Dave Hammel of Rainbro, Inc. concerning a Notice of Violation from Richard Urban with the Division of Water Pollution Control.

Mr. Anderson stated that a meeting was held several weeks ago and Councilman Benson and Bruce Gilliam of Hurricane Creek were present—that they asked for the meeting and Councilman Benson graciously agreed, along with Larry Henry, Public Works' people, Henry Hoss and Cleveland Grimes; that they talked about this issue, noting that the private company had not done a good job. Along with the previous letter mentioned, there was also a letter to Mr. Dave Hammel from Alice Cannella, Plant Superintendent at Moccasin Bend, stating that attention needed to be given to his level of chemical and corrosion control immediately to further reduce the hydrogen sulfide levels to below 10ppm. Mr. Anderson stated that 20 parts per million is maximum. His Tab (7) showed the parts per million discharging into the Pump Station, which is three times the OSHA recommendation.

Mr. Anderson went on to say that at certain levels, hydrogen sulfide can be toxic and at only 20 parts per million it is unhealthy. He went on to mention that the Harpeth Valley Utility District, which serves portions of Davidson, Williamson, and Cheatham counties has had to deal with some significant failures in recent years and the entire line had to be replaced at a total cost of \$3.4 million. He noted that these were immediate health concerns that were being discharged into the City's system.—that it is corrosive and toxic.

Mr. Anderson noted that Councilman Benson, in July, indicated that they should present these findings to the Council through the committee structure; that at first it was to be in the Legal and Legislative Committee but later decided that the Public Works Committee was the right place. He stated that we needed to have Rainbro, Inc. to stop this from coming into the City's system—that it ripples back and stopping it would help his clients.

He noted that these people live next to this Pump Station and that Bob Miller has been diagnosed with Chronic Hydrogen Sulfide Poisoning—that he was having testing done. He went on to say that it was not just these two families that were involved; that Hurricane Creek was also involved—that this smells terrible; that Ms. Cannella did testing, and there is a high concentration of the gas, and this needs to be addressed immediately; that the County is doing what they can through Larry Henry, and the Health Department is pursuing this as criminal; that from his clients' perspective, it is clearly a health issue; that the City needs to get on this immediately and tell Rainbro not to discharge this into the City's system; that they need to work with the City; that the City can tell this operator not to discharge this toxic material into its system.

Councilman Benson stated that we are concerned about our citizens and questioned what the City could do and wanted to know what our situation is legally and public works-wise?

Adm. Leach noted that Jerry Stewart was present; that Windstone comes over the hill and discharges into the manhole—that we have sealed the manhole. He mentioned the operation of grinders in Windstone and residual odors. He mentioned an Agreement that was signed Feb. 27, 2001 between the City to allow discharges into our system.

Mr. Stewart stated that there were no overflows or spills in Windstone, with Adm. Leach adding that we are the recipient of this. Mr. Stewart mentioned C-MOM, which is part of a Federal Government program; that we had been working on this during 2005-2006; that beginning in May we sent out e-mails to all our customers that they should start monitoring points that go into our system at least two times a week; that we stipulated 10 parts per million; that since that time, several have reported that they have an issue; that we have spent \$500,000 a year on Odor Control; that we are just now getting reports from our neighbors; that we consider this a problem and do have some leverage; that they are not supposed to discharge toxics and are just now getting responsible; that we are sharing this with TDEC.

Adm. Leach asked if Mr. Hammel was doing reports, and Mr. Stewart responded “yes”; that Mr. Hammel was working to resolve this; that he had some device called a “Sewer Buddy”—that using Calcium Nitrate tends to take care of the sulfide issue.

Councilman Page noted that he was just a “lay” person, but to Mr. Anderson, this seemed like a reasonable request. He asked that Public Works and our Attorney draft a letter to Mr. Anderson and his clients.

Mr. Stewart responded that he would be obliged to write a letter.

Councilman Page suggested that Mr. Stewart and Steve Leach and our Attorney move forward with this.

Mr. Anderson stated that they were not here because the City of Chattanooga had done anything wrong; that they were here asking for help; that TDEC, in this room, said in July that they did not have the tools to do this—that the State can’t or won’t do anything about this—that they said they did not have the tools in their toolbox to take care of this matter. He stated that the question was “How do we get a private operation to be more responsible?” He went on to say that pressure needed to be placed on them not to discharge these toxics—that just a letter seems not enough effort to achieve this goal; that he was asking the City to help with this and say to the operator not to have more than ten parts per million put into the City’s sewer system.

Susan White, one of Mr. Anderson’s clients, spoke. She stated that the System had been treating this since September of last year, and it was well in excess of 20 parts per million—that really there is no longer a need for Windstone to discharge into the City system; that this could be reversed and ties cut with TDEC.

Councilman Benson questioned why the City had to take something that will contaminate our citizens?

Adm. Leach explained that the Agreement was made back in 1987, and we had to live within our Agreement—that we don’t want to cut them off; that if someone is willing to pay for it, they can have an alternative sewer system for Windstone.

Councilman Benson noted that Hurricane Creek had also suffered because of this Agreement that the City had made.

Mike White wanted to know what leverage the City has?

Attorney Anderson responded that as it relates to the Agreement—that the City can say to the private operation “don’t send us toxic material that exceeds levels”. He went on to say that there had been a notice from Ms. Cannella not to send it; that the State has said we don’t have the tools, and he was here to ask the Council to help because this was being discharged into the City’s system.

Mr. White stated that he felt like the City could get rid of this operator—that no one else has the legal right to tell Mr. Hammel that this is the solution for the City and Windstone.

Mr. Stewart responded that all our customers have to be treated the same; that that was the emphasis they made in May—to everyone—that this is an essential part of C-MOM, and they expect all to do it; that they could send Mr. Hammel another letter; that we are being put in the role as regulator—that the State has the Operational Permit.

One of the affected neighbors stated that the problem was that WWTA responds to individual operators, who do their own self-reporting and self-testing, and they had not reported this; that they were sitting in yards with raw sewage and Mr. Hammel neglects to report anything—that he is an individual doing this for personal profit and gain, and a letter will not do the job.

Mr. Stewart stated that we are not allowed to plug this.

Mr. Anderson stated that he realized the conundrum that the City was facing; that he would like to give Attorney Nelson the time to consider this—that it was not an easy issue; that they were hoping for a concentrated effort—that the State was no help

Chairman Rico stated that Randy Nelson would work on this.

Ordinance-First Reading (a) amends Ordinance No. 11433, entitled “An ordinance closing and abandoning several unopened rights-of-way between Winding Way, Edgewood Circle, Manchester Road, and Glenn Road” to correct the legal description therein. Dennis Malone, Assistant City Engineer, was here in the interest of this Ordinance, which also is in reference to **Resolution 7(a)** on next week’s agenda that authorizes Todd McCain to temporarily use the right-of-way at Manchester Avenue and Glenn Road to install a back entrance at the property, subject to certain conditions. Mr. Malone explained that they had found a discrepancy in the previous Ordinance (11433)—that it was to close all of Center Street and only a piece did not get closed, which is the piece in question; that it was in the City’s best interest to clear up the intent of Ordinance 11433 to close all of Center Street.

Councilman Page asked if there was any controversy about this?

Mr. Malone noted that there was a controversy with Mr. McCain's request.

Adm. Leach explained that Ordinance 6(a) tonight clarifies the Ordinance that was passed in 2003 and 1951; that the roads clarified are related to Mr. McCain's request. He stated that the blue part on the map, which is made a part of this minute material, is open and Mr. McCain is asking for temporary use for a driveway.

Attorney Phil Noblett stated that in the 1951 Ordinance, we don't have a map showing what is abandoned.

Adm. Leach explained that the Ordinance tonight is clarifying what has been closed in this area.

Councilwoman Bennett attempted to look at the relationship between the two—Ordinance 6(a) is housekeeping and the Resolution 7(a) on next week's agenda is being recommended for denial by Public Works.

Adm. Leach explained that there was a debate on whether this portion was closed and as it turns out, it was never closed.

Mr. Malone added that the proposed driveway shows closure.

Adm. Leach stated that Phil Noblett had determined in fact that this portion was still open and the Council needs to take action up or down on the temporary usage.

Attorney Noblett stated that in 2003, the blue area was requested to be closed; that two other people are using this address; a third one is asking for temporary use, and the City has to allow all three; however if someone else has improved the right-of-way, then the third person has to have their permission to use it.

Todd McCain spoke. He stated that an interesting thing was that there was a Court Order in 1989—that the two owners using the "blue" part had an issue between them; that the Court decided that Mr. Gentry did not own the "blue" strip, but he had signed a Quitclaim Deed to another owner for five pieces that abut this "blue" strip; that he issued the Quitclaim Deed after the Court said he did not own it; that in 2003 there was a petition to have all of the "red" and "blue" area closed, and they pulled out this little section of Manchester; however the other two are already using this as a back drive; that there is some confusion because Mr. Gentry and Mr. Moore are keeping this area up. He stated that he was not aware that he had to get their permission; that he would be glad to work with them on landscaping.

Attorney Noblett explained that the City did not build this road, and these people did—that all property owners are on legal footing.

Mr. McCain maintained that this was public property and questioned why he would have to go to a private citizen to get his permission to use public property?

Attorney Noblett noted that these people had invested a certain amount of money into this property and Mr. McCain would be using it for free.

Councilman Pierce wanted to know who authorized these people to spend money to improve the right-of-way?

Mr. McCain responded that they just did it; that he was trying to do this the right way.

Attorney Noblett stated that the City had no objections to him having this temporary usage, but some issues had to be resolved with the other owners.

Councilwoman Berz wanted to know who owns the property—is it the City?

Attorney Noblett responded “no”—that there was no dedication of the property as a road; however no street was built; that the City used it for a sewer easement; that the Court could not abandon it in 1999.

Councilman Pierce asked “Whose sewer is it”? Attorney Noblett responded that the City of Chattanooga has the easement.

Mr. McCain stated that this goes back to 1914 and actually seeing a deed; that it is known that this is based on tradition; that dedications were not done until recently—that hundreds of City roads have no Deed of Dedication.

Councilwoman Berz still wanted to know who owns this? Mr. McCain maintained that the City of Chattanooga owns this, even though there is no Deed of Dedication; that the area is public because the City was averse to closing it—that the City of Chattanooga owns it. Councilwoman Berz stated “then the City owns it”, with Attorney Nelson stating that we own the right-of-way.

Councilman Page questioned if the house at the top of the drawing is using this as a driveway? Mr. McCain responded that Mr. Gentry uses it. Councilman Page questioned if it went all of the way through. Mr. McCain stated that the Ordinance in 1951 closed it—that the issue is between the “red” and “blue” area; that in 2003, maybe, Mr. Gentry deeded this to Mr. Boyd.

Councilwoman Berz still questioned if we did not know who owns it?

Mr. McCain responded that to say that the City does not own the “blue” section would “open up a can of worms”; that the City has lots of roads that do not have a Deed of Dedication; that he had been asked to “run title” and now the City comes in and says they need to protect this issue; that the City uses many platted roads where there are no deeds.

Attorney Noblett stated that the question was dedication; that if in 1914 it was not accepted; that in this case someone put a sewer in—that it may have even been before this was in the City; that it had been used by the City as a right-of-way and there was an acceptance of the easement.

Councilwoman Bennett clarified that Attorney Noblett was saying that one of the conditions was an agreement between the owners. She asked Mr. McCain if he saw this as workable? He responded “no”. He went on to say that he would contribute his share but that Mr. Gentry would not work with him—that this was a civil matter.

Attorney Noblett agreed that it was a civil matter and would have to be resolved between Mr. McCain and Mr. Gentry.

Mr. McCain stated that the City was taking the “middle” ground; that this condition would mean that it was a “no” to him; that the City was saying “yes” we have to be fair to all and “yes” you can have temporary usage as long as the neighbors agree, which in essence was a “no”.

Councilwoman Berz was still asking “Who owns the property”?

Attorney Noblett responded that the City has an easement; that it could be owned by the original owner.

Councilwoman Berz wanted to know how Mr. Gentry got this?

Mr. McCain responded that Mr. Gentry specifically does not own this, but he deeded it out; that he was trying to do this right and would be more than happy to agree to contribute his 1/3 share; that people before Mr. Gentry owned this.

Councilman Shockley noted that the City was using this as an easement and asked who agreed to this easement? Attorney Noblett responded “no one”, with Councilman Shockley stating, then the City just decided it was “okay”.

Adm. Leach asked Mr. McCain if he could not put in his own road and have his own driveway? Mr. McCain responded that it looks like a driveway, but it actually goes up the middle. Adm. Leach questioned if it would be wide enough if it were paved. Mr. McCain responded it would be one big wide thing.

Attorney Noblett still maintained that as long as McCain used the right-of-way, he would be using someone else's improvement. Mr. McCain stated that Mr. Gentry would not work with him. Attorney Noblett pointed out that Mr. Gentry quitclaimed it away.

Mr. McCain questioned why a lawyer (Mr. Gentry) would draft something that had no effect.

Councilman Page stated that this was a legal issue, and our Attorney needed to tell us what to do.

Attorney Noblett responded that the City has to allow all people to use this in the same manner; that some folks have incurred expenses and all would need to agree; that the City has no interest in this—that one of the property owners are saying they have paid money to improve this—that the City has no issue—that the property owner who has used his own money has a greater right.

Councilman Page stated “then this is a civil matter”.

Mr. McCain stated that the City could approve the temporary usage—only with a condition—that he get a private owner's okay; that he wanted to be a good neighbor; however Mr. Gentry could say give me \$400,000 for your share, and he would be “sunk”—that he was “barred” from using this.

Attorney Noblett stated that this needed to be resolved in Court.

Mr. McCain stated that a Temporary Use is what is before us.

Councilwoman Berz stated that on the issue of the Temporary Use, she had no problem with this.

Mr. McCain asked what he could do.

Attorney Nelson questioned why the City cared about this condition (other owners agreeing) or whether it was an open right-of-way or not; that if someone claims they have a “higher” right, then it should be proved in Court.

Mr. McCain maintained that if Mr. Gentry had a higher value, that it should not preclude other owners.

Attorney Noblett noted that in 2003, they did not include this “blue” area; that Mr. Gentry wanted to use it as a right-of-way, and we can't prevent it.

Councilman Pierce stated then the City will give him (McCain) permission to use this right-of-way.

Adm. Leach noted that **Ordinance 6(b)** on tonight's agenda will be deferred for one week.

Resolution (f) authorizes eminent domain proceedings against MAPCO Express, Inc. for a right-of-way and temporary construction easement on property located at 1933 Hamill Road Improvements (Hixson Pike to Highway 153) Phase I.

Resolutions (g), (h), (i) and (j) are all relative to the Agreement for the Closure/Post Closure Plan for City Landfills and Solid Waste Management and delete "not to exceed amounts", replacing them with other "not to exceed" amounts.

AGENDA ITEMS FOR AUGUST 26, 2008

Ordinance 6(a) is a closure and abandonment for Edward E. Stephens for a portion of Sewer Line and Easement #672, between manholes #2 and #4, located in the 4400 Block of Pinnacle Lane.

Ordinance 6(b) is a closure and abandonment for the City of Chattanooga of two portions of Sewer Easement MF#10547 located off the east line of the 2100 Block of Market Street. This is redevelopment of the whole piece of property.

Resolution 7(a) authorizing Todd McCain to use temporarily the right-of-way at Manchester Avenue and Glenn Road to install a back entrance, subject to certain conditions had been discussed "ad nauseam" in the words of Adm. Leach.

Resolution 7(g) authorizes acceptance of payment from Museum Bluff Condos in the amount of \$22,737.00 for streetscape work at 2nd Street, Cherry Street, and Walnut Street per the Agreement for the purchase and sale of land for Parcel 6 between the Chattanooga Downtown Redevelopment Corporation and Windsor/Aughtry Company, Inc. This is near the River.

Resolution 7(h) authorizes Contract No. S-08-004-201, Private Sanitary Sewer Service Line Repair (SLAP) to Roto Rooter in the amount of \$12,898.00, plus a contingency amount of \$3,200.00. for a total contract amount not to exceed \$16,098.00. This comes from Community Development Block Grants.

Resolution 7(i) authorizes Contract No. E-08-007-201, Asphalt Milling and Paving Requirements Contract to Highways, Inc. in the amount of \$549,000.00, plus a contingency amount of \$11,000.00, for a total contract amount not to exceed \$560,000.00.

Resolution 7(j) authorizes Contract No. E-08-012-201, Chip Seal Requirements Contract to Tinsley Asphalt in an amount not to exceed \$797,976.00, plus a contingency amount of \$80,024.00, for a total contract amount not to exceed \$875,000.00. Adm. Leach noted that chip seal was heard last week.

Differences between chip seal and paving were discussed, with there being an almost \$8.00 difference in the two. A handout of the 2008 Resurfacing List was provided and is made a part of this minute material. The first two pages contained Chip Seal Contracts and the last page was a Milling and Resurfacing Contract. Mr. Tate stated that we would like to pave everybody's street, but we have to manage the budget the best we can—that there is never enough money.

Councilwoman Bennett thanked Public Works for responding so quickly to the Lookout Valley problem. She stated that this would be part of the tour next week.

Councilwoman Robinson asked for an explanation in the difference of chip seal and paving, stating that it looked like tar and gravel. Mr. Tate stated that the short answer was “yes”—that is what it looks like; that a gentleman addressed the Council last week about chip seal—that when they were doing repairs—some did like they wanted them to do; however in this case, we did not get that result. Mr. Tate went on to say that when you put a chip seal down, it will fade to gray in a few years, and they will look similar to each other; that chip seal should extend the life.

Councilwoman Bennett stated that she had learned that it helps if neighborhoods are prepared.

Mr. Norris noted that one of the State associations gets communities involved, and he thought we would start doing this; that Atlanta will be the first test case.

Councilman Page noted that Grubb Road has a real history.

Resolution 7(k) is a street name change that changes the right-of-way name of the 5200 Block of Polk Avenue to the 5200 Block of Tanner Avenue.

EMINENT DOMAIN PROCEEDINGS—DEANE F. ALLEN

Resolution 7(l) authorizes eminent domain proceedings against Deane F. Allen for permanent slope and temporary construction easements on property located at 0 Apison Pike, Parcel No. 140-160.07, relative to the Summit Ballfield Complex.

Councilwoman Bennett indicated that she thought we needed to defer this.

Danny Thornton stated that several things had been accomplished. Ms. Allen was supposed to have been contacted in January, and she was not. Mr. Thornton contacted her in April. The other thing is a corrected Deed, which gives us something to work through. Barge Waggoner found the error and corrected it. This issue gets the road and serves in getting the project done on time.

Councilwoman Robinson asked whose district this was in? Councilman Benson stated that it was his district.

Attorney Nelson stated that the Attorney for Ms. Allen will show up tonight—that this just authorizes us to do this.

The meeting adjourned at 4:30 P.M.