

PUBLIC WORKS COMMITTEE
October 14, 2008
3:15 P.M.

Councilman Rico, Chairman, called the meeting of the Public Works Committee to order, with Councilmen Benson, Gaines, Page, and Berz present. City Attorneys Randall Nelson and Phil Noblett; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Jerry Stewart, Paul Page, Jim Templeton, Vickie Haley, Barry Bennett, Greg Haynes, Chief Williams, Chief Parker, Dennis Malone, John VanWinkle, and Bob Saylor. Officer Collins joined the meeting later.

AGENDA ITEMS FOR OCTOBER 14, 2008

Mr. Malone began with **Ordinance 6(b)**, which is a closure and abandonment for the City of Chattanooga of a portion of the former eastern right-of-way of the 400 Block of Cherry Street and the southern right-of-way of the 100 Block of 4th Street. He explained that Unum has requested abandonment in order to create a gateway.

Ordinance (d) is a closure and abandonment for C & L Rentals, LLC of a portion of the 2400 Block of 10th Ave., the 2500 Block of East 24th St., and portions of an unopened alley located off of said block of East 24th Street.

Ordinance (e) is a closure and abandonment for Jacquelyn C. Smith of the right-of-way designated for building of connectivity to Hewitt Lane per conditions of prior Ordinance No. 11705, located on the west line of the 1700 Block of Holly Oak Lane. Mr. Malone noted that there had been a change in some of the verbiage. Attorney Nelson explained that the change involved “Recommendation for approval by Planning.”

Councilman Benson stated that he would like for everyone to take a look at this situation if they had any doubt at all if it should be abandoned—that he would like for them to look at it first; that this is a situation of sadness due to the errors of a city employee, who is no longer with us; that it appears the City is trying to exercise, legally, our right, which would result in being mean spirited if we do; that when you view the whole situation, there may be a legal argument to build a bridge, but it would be like the “Bridge to Nowhere” in Alaska—it would lead to nowhere! He explained that the City is using the word connectivity and is creating a situation that would cost \$250,000, and it might involve destroying a home; that this man and his wife moved up from New Orleans to get away from flooding and bought their home through a reputable realtor. Now the City is saying their driveway is on an unused right-of-way, and the City can exercise authority.

Councilman Benson went on to say that the City is saying that they can take this from the applicant unless a bridge is built; that the City under Greg Albritton approved this development and the houses went up for sale; that it would be a travesty to consider not closing this, and he wanted all of the Council to see what the City is trying to do. He urged to not do this to this man! He again asked that the Council be willing to look at this and to enlighten themselves.

Councilman Page clarified that this Ordinance is being recommended for denial by the Planning Staff and Public Works and as he understands it, Councilman Benson is saying that it should not be denied.

Councilman Benson stated that there was 100% approval against what the City is asking for at the Planning Commission.

Councilman Page asked if he were correct in thinking that the Planning Commission is recommending that this be closed?

Councilman Benson stated that he did not want the Council to vote blindly; that Public Works is saying they might want a road or a bridge; that he thought Phil Noblett had a hard job of defending the City at the Planning Commission meeting.

Councilman Rico asked if the applicant could not get a temporary usage?

Councilman Benson questioned having to get a temporary usage to live in one's house!

Mr. Malone pointed out that the applicant has clear title to his house.

Councilman Benson stated that this concerns the applicant's driveway, and he should not have to go get a variance for this; that there is no reason to "connect" this and reiterated that he would like other Councilmembers to see what the City is recommending.

Councilman Rico asked if this was a moral issue versus a legal issue?

Councilman Benson responded that the City could legally demand that the bridge be built, and the developer would have to build it, which would cause him to go bankrupt. He urged the Council to look into this closely and not to be blind to the humane side—that if government is getting to this point, then it really worries him.

Mr. Malone contended that this should stay open.

Attorney Noblett explained that the issue the Council has before them is a closure and abandonment for the Smiths located on the west line of the 1700 Block of Holly Oak Lane; that the Council passed an Ordinance in 2005 making connectivity a condition on an abandonment; that the issue was platted July 8, 2006 about having this subdivision built, and the developer had not put in a right-of-way; that the property owner has Lot #11, and there is a platted right-of-way next to the property, and the applicant's driveway is on the right-of-way, and this is the right-of-way that is up before the Council to be closed. He noted that this would be the entrance to connectivity. He went on to say that Ms. Smith could obtain a temporary usage for the drive-way. He noted that this was a dedicated right-of-way, where we put sewer lines, and there is the condition of connectivity that the Council formerly imposed.

Councilman Benson stated that the cul-de-sac is extra large.

Mr. Malone maintained that Hewitt Lane was sub-par.

Attorney Noblett went on to say that this issue concerns a dedicated right-of-way where connectivity is needed to get out, and there is no other alternative access; that we are dealing with a sewer line that would have to be relocated and Public Works wants this connectivity to be built.

Councilman Benson maintained that the sewer line was dead, with Mr. Malone disagreeing, saying that it is active.

Councilwoman Berz asked Attorney Noblett how this came about to the best of his understanding?

Attorney Noblett responded that the abandonment was being asked for to make the lot bigger.

Councilwoman Berz asked who was requesting this? Attorney Noblett responded, Mr. Gilbert, the developer; that to do this, there would have to be a realignment of Hewitt Lane, and the developer would have to build the connectivity.

Councilman Page stated that as he understood this, this had not happened and would never happen.

Councilwoman Berz verified that the lady who is asking for this (Mrs. Smith) has been damaged as a result of the developer not doing what he was supposed to do.

Attorney Noblett explained that Mr. Albritton had given the developer this information and that Mr. Albritton could not speak for the City Council; that the Council required that the developer build connectivity to Hewitt Lane and this has not happened; that he is saying that he did not know when the right-of-way would be abandoned.

Attorney Nelson stated that Councilwoman Berz might be interested in reading the letter from John Anderson.

Attorney Noblett again mentioned the case in 2005, where the Council required that the connectivity be done—that Mr. Anderson's client, who is the developer, agreed to build a connector to Hewitt Lane, and this condition was imposed, and the developer committed and now he does not want to build it—that this is the concern that Public Works has.

Councilwoman Berz clarified that the developer did not do what he said he would do and now Mrs. Smith is damaged and is coming back to the City to fix it. She noted that she was stating this simply.

Councilman Page asked why we could not still insist that he build it? Attorney Noblett responded that bonding requirements were involved and the time for bonding has expired. Councilman Page determined that there was no legal recourse that we have and now there is no way to make the developer build. Attorney Noblett stated that the Council could revoke what they gave him initially because he did not live up to his end. Councilman Page asked if this was feasible? Attorney Noblett mentioned Lot 12, noting a sewer line through the middle of the property, and the line would have to be moved. He added that this would have no effect on Mrs. Smith.

Councilman Benson stated that he wanted to help Mrs. Smith—that the way this citizen has been done is a travesty.

Councilman Page verified that it was just a matter of moving the sewer line and revoking what the Council previously agreed to. He asked if moving the sewer line would be expensive? Mr. Burns noted that if we revoked this, the sewer line would not have to be moved—that all we had to do was just revoke it.

Attorney Noblett again stated that the Council imposed connectivity. Councilwoman Berz asked if Attorney Noblett was suggesting that the Council needed to work with Public Works on this? Mr. Malone stated that it was up to the Council—that in looking at connectivity, if the Council does away with this, that they can live with it.

Attorney Nelson stated that we could revoke the Hewitt Lane abandonment and live with this as connectivity; that the conditions of this Ordinance have not been fulfilled, and we can wipe it off the books. He asked Mr. Malone if they could live with Hewitt Lane as connectivity. Mr. Malone contended that this would make other lots unbuildable. Attorney Nelson stated then it is back on the developer and not Mrs. Smith.

Mr. Barry Bennett stated that this was a legal issue between the City and the original developer and a more personal and emotional issue was brought into this with the applicants not having any knowledge of the situation—that all were equal issues; that his personal feeling was that the personal and emotional issue had to be considered along with the legal issue; that in looking at the legal history and the personal history, it was felt that the bridge was necessary for this area; that he did not know if a bridge was absolutely necessary for this area; that something else might work just as well that would not impact people in this area. He stated that we needed to take a fresh look to see what is needed and necessary for this area—something that would not be as extravagant as building a bridge.

Councilman Page stated that he thought Councilman Benson, our Legal people, and Public Works need to have a sit-down and come up with an alternative—that this is convoluted and would take our best minds to solve it.

Councilman Benson stated that the Smiths would be at the Council meeting tonight with their attorney.

Councilwoman Berz stated that she thought we needed to start at Square One without conditioning an abandonment; that we needed to re-think the whole thing and allow for sewers and a new abandonment.

Councilman Rico asked about other properties that might be involved?

Councilwoman Berz responded that this is a variable—that we should not be held captive to an old abandonment; that we needed to take a fresh look, as Mr. Bennett said, to see how we can help Councilmen Benson's people; that she would be in favor of going with Councilman Page's suggestion.

Councilman Benson stated that he would be glad to work with Public Works if we can come up with a solution without working the Smiths over.

Councilman Rico still mentioned a Temporary Use or a Variance. Councilman Benson still contended that the Smiths should not have to be made to go for a variance, nor a temporary use because they need for their property to be free and clear.

Mr. Bennett noted that with a Temporary Use there is always the perception in peoples' minds that the City may need this right-of-way at some point in the future and may come in and want to do something with the property.

Councilman Benson suggested that this be deferred and let other councilmembers go out and look at this, and he thought they would come away feeling like he did.

Councilwoman Berz stated that the stakeholders might have an alternative suggestion, prompting Councilman Benson to say that Councilwoman Berz could “mediate” this.

Resolution (d) authorizes Contract No. E-08-022-201, Ashland Terrace Paving and Milling to Talley Construction Company, Inc., using unit prices and adjustment factors established per the Tennessee Department of Transportation Project No. CNE-385, with a total contract amount not to exceed \$125,000. Mr. Malone stated that this would be hot mix paving along Norcross to Ashland Terrace, all the way to Hixson Pike.

Resolution (e) authorizes an Agreement with S&ME, Inc. relative to Contract No. E-006-302, Northpoint Boulevard Extension Phase 2 and 3, for professional services in an amount not to exceed \$9,000.00, and **Resolution (f)** authorizes an Agreement with S&ME, Inc. relative to Contract No. E-03-028-301, Hamill Road Improvements Phase I, for construction testing services in an amount not to exceed \$7,000.00. Because the combined amount is over the \$10,000 threshold, this had to be brought to Council.

Resolution (g) authorizes Ryan Dillard to temporarily use the right-of-way (sidewalk) at 401 North Market Street and Manning Street to replace existing awnings and install signage and non-permanent planters.

Resolution (h) authorizes Timothy Dunn to temporarily use a portion of the right-of-way beginning at Laurel Lane and Ochs Highway to use as a private driveway into the back of the applicant’s property. This is in the St. Elmo area.

AGENDA ITEMS FOR OCTOBER 21, 2008

Ordinance First Reading (a) is a closure and abandonment for Corrie Eldred/Betts Engineering of the 3000 Block of Basham Street and four unopened alleys located off the west line of the 2900 Block of Alton Park Boulevard. This is in the vicinity of the Fed-Ex Building—they bought up the property and Fed-Ex is asking to close the alley.

Resolution 7(a) authorizes Contract No. E-08-013-201, West Martin Luther King Blvd. Roadway Improvements to Thomas Brothers Construction, Inc. in the amount of \$765,952.85, plus a contingency amount of \$45,000.15 for a total contract amount not to exceed \$810,953.00. This is related to the BC-BS move up on Cameron Hill and is to provide accessibility on MLK. This includes removing part of an additional median; installation of new traffic signals; and work to include raised cross-walks.

Resolution 7(b) authorizes an Agreement with Aquaterra Engineering, LLC relative to Contract No. E-04-002-301, Mountain Creek Improvements (North of Stonebrook), for engineering services in an amount not to exceed \$4,500.00. This is for testing services and exceeds the \$10,000 threshold for the year.

Resolution 7(c) authorizes an Agreement with the Electric Power Board (EPB) for a Sales Order to relocate existing facilities within an EPB Easement for the Northpoint Boulevard Extension Phase 2 Project in an amount not to exceed \$15,975.00. EPB had an pre-existing easement and had to adjust the lines in place, and the City is obligated to pay them to relocate.

Resolution 7(d) authorizes an Engineering Services Agreement with Brown and Caldwell relative to Contract No. W-08-001, Phase I of the Equipment Maintenance and Reliability Improvement Program, in the amount of \$536,067.32, plus a 10% contingency fee. This will be discussed further after 7(e).

Resolution 7(e) authorizes an Engineering Services Agreement with Consolidated Technologies, Inc. for ground water sampling, monitoring, and reporting during 2008-2009 for the Summit, North Hawthorne Street, Birchwood Pike, and Montague Park Landfills in an amount not to exceed \$44,200.00. Mr. Stewart stated that this was ground water sampling and a continuation.

Mr. Stewart then moved to **Resolution 7(d)**, which he stated was part of their CMOM Program and noted that representatives were present from Brown and Caldwell to discuss Phase I.

The representative stated that this program is the right thing to do and is an effective way to manage the City's assets; that this grows from CMOM and is an effective asset program. It is being conducted for ongoing regulatory attention and from a regulatory perspective, this is a pro-active program. He noted that the department is moving on with Oracle and now is the appropriate time to use this program to make things more efficient. He noted that there was a pay back and rather than reactive it will be pro-active. He mentioned four tasks in Phase I, again stating that there must be a tangible payback; that they would be looking at the System to support and implement; that Phase I was assessment; that they would be looking at strengths and weaknesses and working on high value changes; that they would be able to give performance at a glance. He explained that the potential outcome would be lower outcome maintenance, improved safety, life extension of equipment, and reducing the risk of environmental exposure. He stated that they did a "quick and dirty" assessment price of this, which is about \$570,000.00—that this is very preliminary but will result in potential savings and a better use of resources. He again mentioned the payback assessment in Phase I, which is the Implementation Phase at \$570,000 a year, stating that this is a very economical payback. He stated that these were the highlights of the agreement.

Councilman Page stated that this seemed to be assessment versus implementation, costing around \$1.5 million, with around \$500,000 now. He asked if this included Phase II. Mr. Stewart stated that Phase II would cost about a million dollars. Councilman Page verified that we were not committing to Phase II right now. Mr. Stewart agreed that we were not. Councilman Page asked if this would be taken out of Fund Balance?

Mr. Stewart explained that we can't use bonds or borrow money for this.

Councilwoman Gaines verified that this was part of CMOM, with the representative adding that it deals with effective management.

Councilman Page pointed out that we might be borrowing from the Federal Government soon.

Mr. Stewart stated that they had looked at other cities doing this, and it makes clear sense.

Councilwoman Berz verified that we would be paying this company \$1.5 million dollars in two Phases, with around \$500,000.00 now for Phase I, with an additional one million dollars and this would pay to evaluate our system and come up with glitches and a program of preventative management.

The representative responded that they would help the City find an optimal way to do this.

Councilwoman Berz asked about the strategic plan—that the representative was saying that in 2 1/2 years, this money will be recouped. She mentioned that she often said “quick and dirty” and questioned if the money could be recouped in 2 ½ years?

The representative responded that this was the range they expected to see; that some things are harder to do, but this falls within their range.

Councilwoman Berz stated that she was not hearing an implementation cost over the long run and questioned if 2 ½ years included implementation, which is unknown?

The representative responded that in talking about implementation, we take the dollars spent and spend them more effectively—that we will stop doing some things and start doing others.

BRAKE NOISE ON LARGE TRUCKS

John VanWinkle was present and stated that Councilwoman Bennett had asked him to research this on behalf of one of the residents near Signal Mtn. Rd. He stated that he had requested the enforcement of State signs for engine brake prohibition. State Law requires signs that say “Compression Brakes Prohibited”; that trucks can not be in violaton of the signs but still be a nuisance to neighborhoods. Mr. VanWinkle stated that they asked the State Traffic Engineer how to proceed on State roads; that the State Law is pretty specific. He passed out a handout (which is made a part of this minute material) that included e-mails that had been sent. The State Traffic Engineer suggested that we could pass our own local Ordinance.

The second page of his handout is a draft Ordinance—**Section 24-274 Regulation of the use of truck engine brakes.** *The City Traffic Engineer, after an engineering and traffic investigation, is authorized and directed to place signs prohibiting the use of truck engine brakes on city streets as may be necessary to limit excessive roadway noise.* He stated that this had been sent to Randy Nelson, and he and Phil Noblett were working on this.

Mr. VanWinkle stated that his question would be—Is a local Ordinance enforceable? He stated that he thought it would be but that he was not an attorney—that an attorney needs to say how we should proceed; that if we had a local Ordinance, it would go to City Court. He stated that there was still work to be done, but he was prepared to put up signs, but his question was—could they be enforced.

Attorney Nelson stated that we do have in place a Noise Ordinance that limits noises over 90 decibels; that the Police Dept. does have a decibel meter, and this could be used to enforce the Ordinance. He went on to say that Phil Noblett had drafted two amendments. One says *“Trucks, tractors, and semitrailers, as defined in T. C.A. 55-8-101, shall not use an engine compression braking device unless the engine compression braking device is equipped with an operational approved muffler to prevent excessive or unusual noise. In this section, “approved muffler” shall mean any muffler that complies with the Federal Motor Carrier Safety Regulations on noise emissions found at 49 CFR 325, et seq.* The second amendment reads, *“The City Traffic Engineer is authorized and directed to conduct an engineering and traffic investigation to determine areas of the City which are subject to excessive roadway noise to adjoining property owners. Excessive or unusual noise shall be considered in conformance with the provisions described in sections 25-66 through 25-74 of the Chattanooga City Code as well as this section.”* Attorney Nelson stated that this was their current effort.

Attorney Noblett had joined the meeting at this time and stated that we currently have something about mufflers in our Code; that this is based on State Law; that something with decibel meters might work.

Mr. VanWinkle asked if the signs posted now are enforceable? He stated they could change the signs; that they can put up signs and are prepared to do so, if they will hold up in court. He stated that if the Noise Ordinance will suffice, then no action needs to be taken; that if the City Ordinance says put signs up, then the City Council can make the specifications; that the Noise Ordinance says nothing about signs.

Attorney Noblett noted that moving vehicles make decibel meter testing more difficult.

Attorney Nelson suggested putting some sort of patrol car that would be unmarked at a given hour and assigning an officer to write citations.

Councilman Rico stated that if they were going to put a patrol car in this district, then put one in his, too, because he had the same problems in St. Elmo.

Councilman Page pointed out that the State Law states that compression brakes are a safety issue and trucks have to use these brakes. He questioned how we could prohibit this if it were necessary for safety?

Mr. VanWinkle responded that trucks could use regular brakes to slow a vehicle; that the area we are talking about is not a steep grade; that they don't have to use "jake" brakes but can use regular brakes or not go so fast. He reiterated that we could pass our own law and have signs; that right now we do not have an Ordinance and have to rely on the State; that the State Law might need to be changed.

Attorney Noblett stated that State Law says we can use engine brakes but have to have a muffler.

Mr. VanWinkle stated that he appreciated them including what he had proposed and put this in the Ordinance.

Attorney Noblett stated that he had put in **Section D**, which has previously been noted, which was the language that Mr. VanWinkle was requesting.

Attorney Nelson added that they would also need to check the Uniform Manual. Mr. VanWinkle stated that this was not in the Manual.

Councilwoman Berz suggested adopting © and (d), which have been read and go according to State guidelines.

Mr. VanWinkle stated that State Law was not strong enough to uphold; that we did not have this problem all over town; however it could be in St. Elmo.

Mr. Stewart questioned using decibel meters, stating that it might not be above 90 decibels.

Attorney Noblett clarified that it would be within certain noise levels.

Mr. VanWinkle stated that in the State of Georgia, engine brakes are prohibited; that he would not want us to go that far but do this on an as-needed basis.

Mr. Templeton stated that trucks have high and low gears; that if you gear down, it makes noise; that there are two speeds—that on the high side it does not make a rattle.

Since Councilman Rico had to leave, Councilwoman Berz was chairing the meeting and she asked the pleasure of the Council?

Mr. VanWinkle stated that he was not an attorney, and he would go with Phil Noblett; that he would recommend considering a proposed Ordinance, and he hoped the Police Dept. would possess this tool to help enforce nuisance problems on Signal Mtn. Rd.

Councilwoman Gaines stated that she would be scheduling a committee meeting (Safety) in early November to review the Noise and Curfew Ordinance—that they were trying to combine the Ordinances in order to get some teeth in them; that if Mr. VanWinkle is interested in attending, she would ask Carol O’Neal to notify him.

Mr. VanWinkle stated that his job was to put signs up—that he was not legislative or an attorney; that he had done some research and Phil Noblett had done some research, too; that he would be happy to attend the Safety Committee meeting.

Councilwoman Gaines stated that she would make a note to have him notified.

Attorney Nelson asked Councilwoman Gaines if she wanted them to draft this Ordinance and respond to her committee.

Councilwoman Gaines stated that she would be meeting with Crystal Freiberg and look at all of this and integrate it at some time.

The meeting adjourned at 4:30 p.m.