

PUBLIC WORKS COMMITTEE
November 11, 2008

Councilman Rico, Chairman, called the meeting of the Public Works Committee to order, with Councilpersons Bennett, Berz, Benson, Gaines, Pierce, Shockley, Page and Robinson present. City Attorney Randall Nelson and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Richard Beeland, Chief Williams, Dennis Malone, Greg Haynes, Jerry Stewart, Councilman-Elect Russell Gilbert, Paul Page, Lee Norris, Steve Leach, Dan Johnson, Jim Templeton, Barry Bennett, Larry Zehnder, Rick Wood, Chief Parker and Daisy Madison. Joe Booth joined the meeting later.

EPB FRANCHISE

Mr. Leach addressed **Ordinance (b)** on tonight's agenda that grants a franchise to the Electric Power Board of Chattanooga to construct, operate and maintain a cable system in the City of Chattanooga, for the purpose of providing cable service. He called on Mr. Harold DePriest.

Mr. DePriest stated that the Electric Power Board was entering into the cable business and should be granted a Franchise; that the franchise was very similar to that of Comcast; that the City Attorney had been looking at this for a number of days, and he was asking the Council's consideration. He reiterated that it would be the same as afforded Comcast, and there would be some dollars in fees coming to the City; that the insurance and bonding would be the same as the existing franchise with Comcast.

Attorney Nelson explained that they basically took the Comcast Ordinance and changed the name to EPB; that they had changed one section and Comcast objected, and they went back and put it like it was.

Councilman Benson confirmed that there was not a "sweetheart" provision.

Attorney Nelson responded "no"—they just changed the name.

Councilman Pierce stated that he might be for asking for a "sweetheart" condition and questioned why EPB had to pay for a franchise fee; that he thought this fee should be passed on to customers and would represent a savings for them.

Attorney Nelson explained that EPB had to have the same conditions as a private company, prompting Councilman Pierce to say "says who?" Attorney Nelson responded State Law.

Councilwoman Berz wanted to know where EPB stood in their litigation? Mr. DePriest stated that it would probably go on for another 3-6 months. She wanted to know if this would have any effect on this decision today? Mr. DePriest stated that the litigation dealt with building the system and not the franchise.

Councilman Page noted that he wanted transparency and asked the question that at this point in time, it seems a little late in the game for this; that we had been working with EPB over the last year or so, and this was certainly no surprise. He asked if there was any other reason why this had not been done before this time?

Attorney Nelson referred to Section 3.2, requiring them to build out the system, noting that the contract provides for three years—that this was before EPB was ready to go, and if this franchise had been granted earlier, they would only have had two years. Mr. DePriest echoed that this was the appropriate time.

Councilman Benson stated that this was not just because of State Law concerning franchise fees—that if we passed this on to the customers, the City would be losing money, and we would have to raise Real Estate taxes; that he thought the State Law requirements were good and passing the fees on in the long run would not be a savings to the public.

Attorney Nelson explained that it would give EPB a competitive advantage, and we want a level playing field.

Councilman Pierce wanted to know if February was still the start-up date? Mr. DePriest explained that in February we would have Beta testing to make sure everything works; that the actual start-up would be month or two later.

Councilwoman Robinson wanted to know the complete roll-out and was told three years. Mr. DePriest stated that he would like to go faster—that they could put in cable quickly. Councilwoman Robinson asked that he come back and update the Council. Mr. DePriest indicated that he would be happy to do this.

Councilman Pierce asked Mr. DePriest if he had seen the survey on Chattanooga.com. Mr. DePriest indicated that he had heard about this.

Councilwoman Bennett wanted to know how the State Franchise factors in? Attorney Nelson explained that EPB could have gone to the City or the State.

Adm. Leach next went to **Resolution 7©**, authorizing an agreement with Jake Marshall, LLC for modifications and corrections to the DRC heating, cooling and ventilation systems in the amount of \$1,100,000.00, plus a contingency in the amount of \$55,000.00, for a total contract amount not to exceed \$1,155,000.00. He noted that this had been discussed last week and asked if there were any other concerns.

Councilwoman Gaines asked if Adm. Leach had anything he needed to share with the Council except what they had read in today's paper? (Councilman Rico jokingly asked that he say "no").

Adm. Leach stated that they had had an interesting seven years in this building; that this is a major issue to correct.

Councilwoman Berz stated that she kept coming back to recourse and asked if we had outlived our opportunities there?

Attorney Nelson responded that he presumed this was the case, noting that normally there is a six-year Statute of Limitations, and we have not brought legal actions within six years.

Councilwoman Berz stated that the way the newspaper talked, we had known from the beginning that we had problems and maybe there was a good reason we had said nothing—but this was over \$1 million dollars.

Adm. Leach responded that there had been attempts and studies, but there was not a good solution, and it was time to get this fixed.

Attorney Nelson questioned if the problem was one of design or equipment? Adm. Leach responded that it was poorly designed.

Councilwoman Berz stated that she had heard that when the system was put in that it should never have been put in here and it was probably a design problem, prompting Attorney Nelson to respond that in that case, there was a one-year Statute of Limitations on design.

Councilman Page stated that the Council needed to be prudent and carry out their responsibility; that we need the Attorney to say that the Statute of Limitations has run out; that the Attorney should advise us with either a "yes" or "no"; that there are a lot of presumptions, and we need a fiduciary finding.

Attorney Nelson asked if we have formally accepted the building? Adm. Leach noted that he had been asked this question but had never been told the answer.

Councilman Benson asked if there was any documentation that this was a failed system—that it was not working adequately. He wanted to know if we had made this known before the Statute of Limitations ran out?

Attorney Nelson responded “no”—just a notice.

Councilwoman Berz wanted to know why the City “slept” on their rights and did not do anything?

It was pointed out that the only person who was here when this happened was Councilman Pierce, prompting him to say that “he was asleep”.

Councilwoman Robinson wanted to know the year it was installed? Adm. Leach stated that they moved in in 2001.

Chairman Rico suggested that we let Attorney Nelson look the information up.

Adm. Leach stated that it was getting cold weather, and this needs to be fixed, with Councilwoman Berz agreeing that it should be fixed.

Councilwoman Gaines wanted to know if the County was involved in paying any of this?

Adm. Leach explained that he was just a tenant of the DRC.

Ms. Madison added that the cost was shared by all tenants—that they all pay rent.

Chairman Rico again asked that Attorney Nelson check on this and get back with us.

Resolution (d) authorizes the acceptance of a permanent conservation easement from Dean Construction, LLC on property described on the legal description and to be used as part of the South Chickamauga Creek Greenway and authorizing the Administrator of Parks and Recreation to execute the Deed of Conservation Easement relative to this donation. Adm. Leach noted that Larry Zehnder was here to discuss this.

Mr. Zehnder stated that they dedicated the Waterhaven Section on Friday; that it was procured by the Trust for Public Land and turned over to the City as a completed project; that Rick Wood of TPL was here; that they were turning over this easement to the City.

Councilwoman Berz asked Mr. Wood to show us his pictures. Mr. Wood showed a map of the area, with Councilwoman Berz stating that this was really nice.

Chairman Rico asked Mr. Zehnder if he did not have another announcement that he could share. Mr. Zehnder stated that they had been at Warner Park earlier in the day and were putting in a bid for a Softball Tournament—that they had a “live feed” and could show the crowd at ASA our new fields; that our people were waving and telling the people from ASA to come and everything was “live”. He stated that we were awarded the “Ten and Under” Girls Tournament for 2009; that this is the first time in nine years that we have had an ASA Tournament here; that it is difficult to get tournaments here but there has been a lot of lobbying, and he thanked all those who came out this morning for this.

Adm. Leach next went back to **Ordinance (i)** for Betts Engineering Associates, Inc. to lift conditions imposed in Ordinance No. 10011 (Case No. 1993-234) on tracts of land located at 1005 Glenwood Drive and 950 North Chamberlain Ave. Adm. Leach explained that this was basically around Memorial Hospital; that we had to move sewers and utility easements around.

Dennis Malone explained that in 1999 Memorial expanded from Citico all the way down; that at the time of the abandonment, they were required to provide an easement for sanitary sewers and TAWC; that with this planned expansion, it required a roadway to be abandoned; that they had asked to hold up a request for another month; that they had been working with the engineers about relocation and TWAC getting a new water line; that this requires providing a way for EPB to continue service; that the request is to abandon conditions. He went on to explain that the roadway is in front of the Emergency Room and the sanitary sewer is in this roadway, along with TWAC; that the request is for this roadway to be abandoned, and they will re-route the sewer and will be relocating all of the utilities.

Councilwoman Robinson stated that she was trying to get oriented.

Councilman Pierce asked if this would be cutting Citico off? Attorney Nelson responded “no”.

Adm. Leach noted that this was the old TB Hospital area, north of the campus.

Councilman Page asked if there was any downside or controversy?

Adm. Leach responded “no”—that we were just moving utilities around.

Councilwoman Gaines noted that we were talking about two pieces—that the Zoning would be postponed; that after the tour, there were questions about Kilmer Street and air conditioning; that we had to deal with the concerns on Kilmer—that it was a short street; that the bottom line was that the people on Kilmer Street wanted to take this opportunity to block their street with a cul-de-sac; that they will be inundated with traffic. She stated that she did not want to stop this.

Mr. Leach continued with **Resolution (b)**, authorizing the City Attorney to institute a cause of action against Dement Construction Company for damage to property located on Williams Street relative to Waste Resources Management.

Attorney Nelson explained that the State was working on the Interstate and a construction co. (Dement Construction Company) put some piers down over sewer lines; that we were not “sleeping” on our rights.

Adm. Leach added that we had removed some of the blockages and were not “sleeping”.

Resolution 7(e) is a Street Dedication of the right-of-way for the 1300 Block of West 43rd Street between Tennessee Avenue and Seneca Ave. to honor Fidesah Ingram and authorizing the placement of signage reading “In Honor of Fidesah Ingram” along said right-of-way. The official name of the right-of-way shall remain West 43rd Street on City records. Adm. Leach explained that this was a small connector street in St. Elmo that stems from a desire to honor a teacher; that it is an Honorary gesture and not a permanent road change.

Chairman Rico stated that he would like the Legal and Legislative Committee to take issues like this on for a discussion.

Councilman Benson stated that there appears to be a perception; that this was requested by a daughter of a teacher—that we all have mothers and questioned where this would end. He stated that he did not know this teacher, but he really thought this matter should have come to the Legal and Legislative Committee first; that we had tightened up on our regulations and this is not something we would want to open up again—that the main criteria seemed to be that the person being honored was dead.

Chairman Rico stated that this woman was dead.

Councilwoman Robinson questioned if we wanted to defer this.

Chairman Rico stated that this had been going on for a long time, and he felt we needed to pass this.

Councilman Benson stated that we would look at this policy again and try to be careful.

Chairman Rico suggested “grandfathering” this in.

At this point, Joe Booth was present to mention a City Code correction dealing with road cuts and housekeeping. Adm. Leach added that we were just trying to make it standardized, and this issue would be added next week.

Ordinance 6(a) First Reading on next week's agenda is for a closure and abandonment for Jacquelyn C. Smith, abandoning 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.

Adm. Leach stated that this was in East Brainerd and is really two issues. One issue is with Mrs. Smith and her being too close to the right-of-way. The second issue is related and is a request by the Staff to address a previous Ordinance that requires a road to be built. The road is required to be built by an Ordinance that the Council passed, which Adm. Leach stated left his department in a quandary.

Councilman Benson stated that he could get Public Works out of the quandary; that if we enact this Ordinance, Mrs. Smith will lose her house; that in speaking to connectivity, Public Works is trying to make the developer build a bridge, which would ruin two communities. He stated that a hammerhead would solve the problem. He stated that there were two issues—one is to get the house free and clear and in good faith; the other is to pursue to get this developer to put in a hammerhead so that the serenity of Hewitt can remain—that the serenity would be destroyed if they put up a bridge. He stated that Clearview would be very upset and the people in Holly Oaks would lose the value of their houses, just because we do something “because we can do it”. He reiterated that a hammerhead would solve this.

Chairman Rico stated that Public Works could not just let the conditions of the previous Ordinance go.

Councilman Benson stated that he thought all of the Council had gone out to see this and there was to be no debate; that we needed to free up the right-of-way.

Adm. Leach stated that he thought both issues could be done simultaneously.

Councilman Benson stated that we could put some leverage on the hammerhead, with Adm. Leach stating that this would be their only leverage. Councilman Benson contended that the developer did this after a Public Works' engineer told him he could do it.

Adm. Leach stated that the developer built the road and allowed the house to be built; that the right-of-way is on the books and if they allowed this, they would lose leverage.

Councilman Shockley asked how the Fire Department fit into this equation?

Councilman Benson responded that the cul-de-sac had been enlarged.

Councilman Shockley stated that he thought the Fire Department did not think this would work.

Councilwoman Berz tried to state the issue—that an old Ordinance was involved—that this was a policy matter and Public Works did not want to change the policy; that the folks came in last week; that the homebuilders and safety people were supposed to figure out the best way to handle this; that the policy was complied with, and we can't arbitrarily change this.

Adm. Leach noted that what Councilwoman Berz was talking about was that with a certain amount of houses, two entrances are required, with Councilman Benson noting that this was a different issue.

Adm. Leach still maintained that the Council said specifically that the developer was to provide connectivity; that someone was saying that one of our city engineers said that the developer did not have to do this; however the engineer had no authority to say this. He added that the Smiths could go get a variance and meet this requirement; that the sewer line needs to be moved and the developer should have done this; that the Ordinance could be amended to get what we are after; that Public Works needed the ability to turn around or to circulate among the two communities; that if they don't want to connect—fine; that we really have two issues—one involves the lady (Mrs. Smith) and the other is that the Ordinance needs to be amended.

Councilman Benson stated that a bridge would inundate these people with traffic. Adm. Leach assured him that he was not pushing for a bridge.

Councilwoman Bennett stated that she thought the points of connectivity should have been handled before building the houses; that there is a lot of confusion and mistakes have been made.

Councilwoman Robinson stated that she had a question about how the system works; that there is a platted subdivision and the survey shows a flood plain; that there seems to be a city right-of-way and what was sold is built across it, and she questioned how this happened? She asked if the buyer did not get a Title Search?

Adm. Leach mentioned a loan survey.

Attorney Nelson stated that the recourse should be against the Title Company.

Councilwoman Robinson pointed out that someone saying they are not guilty does not necessarily mean they are not guilty; that this should be a huge important safeguard for investors in homes. She still questioned how this happened in the first place and could other properties be under the same threat.

Councilman Benson stated that it still goes back to the City's Engineering Department; that the Smiths bought their house in good faith.

Adm. Leach still contended that their engineer saying it was okay was just "hearsay". Mr. Malone added that nothing had been provided to them to prove this.

Councilwoman Robinson stated that someone buying something in the flood plain is not our problem; that ultimately it is the Title Company showing there is no clear title.

Councilman Benson disagreed, stating that it is our problem if the Engineering Dept. okays something, questioning if we wanted a lawsuit.

Chairman Rico stated that the opposition needed to get proof to show this.

Councilman Page stated that the Council could not solve this unless we take on the responsibility of expense; that we need to bring the parties together—the developer, homeowner, and the City—that he thought this was our first step.

Councilman Benson noted that most of the Council had gone out to see this; that we can close the right-of-way and get a hammerhead; that the real problem is tearing up two communities that were in his district.

Councilwoman Robinson stated that the homeowner could sue the developer and tell him he had to buy the property back.

Adm. Leach stated that we could approve this abandonment and clear up the title issue, but he questioned how we would get the developer to build a hammerhead in lieu of the bridge—that this would not solve the connectivity issue, and we would still have to amend the previous Ordinance that was still on the books.

Councilman Benson pointed out that our passing Ordinance 6(a) would free the Smiths; however Adm. Leach noted that it does not solve our problem.

Councilwoman Robinson urged to not let the developer off the hook; that we should make the Smiths (whole) and let it be his responsibility to build a hammerhead or else we will be left to build the hammerhead.

Councilman Benson pointed out that so far the people out there had gotten by okay; that it was not right to make the Smiths beg for a variance or have to hire a lawyer; that we need to correct this wrong when the Public Works Department gave clearance.

Lee Norris added that this was still "hearsay".

Councilman Benson asked if it was “hearsay”, why did they build this size cul-de-sac?

Attorney Nelson asked who signed the Building Permit?

Adm. Leach explained that all they do is pull up the plat and tell the person where to build the house; that they did not do a survey after the house is built; that this house was built too close—that it was on the right-of-way; that to make this “whole”, there is a series of issues. He stated that they did not object to this closure; that they just wanted some recognition by the builder that he owes the City some responsibility—that right now they have to build connectivity, and the City needs recognition by the builder that he has to help out with the hammerhead.

Councilman Benson still questioned why they built the super wide cul-de-sac? Mr. Malone contended that it was standard size. Councilman Benson questioned why the city engineer said do this and said they did not have to have connectivity.

Councilman Page asked Adm. Leach if he was now recommending that the Council pass this? Adm. Leach noted that this was not a Fire Department issue but a Public Works’ issue. Councilwoman Bennett asked if we needed to hear from the Fire Department?

Attorney Nelson questioned the width of the cul-de-sac, with Adm. Leach maintaining that it is a standard cul-de-sac. Councilman Benson added that it was wide enough to turn fire trucks.

Mr. Malone noted that on Hewitt Lane, they have to back out, with Councilman Benson stating that you would have more than just that issue if you built a bridge.

Councilwoman Robinson asked what if the connectivity were established and the bridge put in and the subdivision owner were required to “cede” the recommended footage and some of the next lot? Attorney Nelson noted that he does not own it anymore, with Mr. Malone noting that the builder swapped lots.

Adm. Leach stated that he did not think the Fire Dept. would have an issue but connectivity is good for Public Works; that they could still get trucks down there to pick up garbage; however we have to go back to the Ordinance and eliminate the right-of-way because it does say connectivity on Hewitt Lane.

Councilman Page asked if doing this would be problematic?

Councilwoman Robinson stated that it would be for the entire City. Adm. Leach explained that it would not be for the whole City but just this one condition only; however this action does not make the developer build something on the other side of the creek.

Councilwoman Berz asked if the proper and normal action would be that the homeowner goes after the Title Company? She asked if this would normally happen?

Adm. Leach responded either that or go apply for a variance.

Councilwoman Robinson stated that she thought both actions could be taken.

Councilwoman Berz asked if allegedly the City gave the wrong information in Public Works? She asked if we could not go ahead and pass this Ordinance and rescind the condition in the previous Ordinance?

Adm. Leach agreed that we could do both.

Councilwoman Berz asked the cost to the city?

Adm. Leach responded “nothing really”; that there would be some minor costs involved with a hammerhead on Hewitt Lane.

Councilwoman Berz asked generally when we put conditions on property, why don't we check and see if the conditions are being met?

Adm. Leach responded that he was as surprised as anybody if this is the case—that there was no hard evidence that his employee did anything improper.

Councilwoman Berz stated that we needed to make sure that our conditions are met.

Mr. Haynes pointed out that on the Plat it shows that it is intended that there be connectivity, but the next step was not taken.

Adm. Leach agreed that it was very obvious on the Plat, but the house is too close to the property line and that is why we have a Board of Appeals for equity. He agreed that the Smiths do not deserve this; however the question was how to make them “whole”—he stated that we could abandon the right-of-way but we do not get connectivity and that was the Council's decision; that we need to amend the existing Ordinance; that the Plat is still of record; that the developer should have freed up the lot; that with the sewer line, there is no buildable lot—that no one can build over a sewer line.

Councilwoman Robinson stated that we could take part of the lot because it is unbuildable; however that would take a lawyer.

Adm. Leach stated that for equity, we needed some relief. Chairman Rico stated “give them relief and amend the Ordinance”. Chairman Rico asked Attorney Nelson if he could bring an Ordinance to amend this?

Barry Bennett added that Attorney Phil Noblett already has the language to do this; that he met with the Council on site and there was some discussion regarding this—to amend the Ordinance to not require connectivity; that John Anderson was the developer’s attorney, and he sent the language to Planning and their office sent it on to Phil Noblett; that there was an Ordinance to approve the request for abandonment and there could be an Ordinance to amend the previous Ordinance that would delete the condition that asked for connectivity. He reiterated that Phil Noblett has the language.

Mr. Norris asked “how do we get a hammerhead”; that this would be releasing him from building connectivity.

Councilwoman Berz confirmed that this condition was in the 2005 Ordinance.

Councilwoman Robinson asked where the land for the hammerhead would come from?

Adm. Leach noted that Hewitt Lane is pretty narrow.

Mr. Bennett noted that where the hammerhead is needed has nothing to do with this property and this condition could not carry over to something else.

Councilman Pierce asked why not table this to after election??

Councilwoman Robinson still questioned the hammerhead and the flood plain?

Councilwoman Bennett stated that last week the Council heard about engine brakes, and this issue was deferred to the Safety Committee. She urged that this issue not get lost; that she had talked to John VanWinkle about this, and he was ready to go.

The last Resolution was **7(b)**, authorizing the Department of Public Works to accept a payment from Hudson Companies, Inc. for Pedestrian Poles and Fixtures relative to streetscape work at 345 Frazier Ave. for the sale and redevelopment of the property in the amount of \$5,247.00.

The meeting adjourned at 4:20 P.M.