

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

ANT GROUP, LLC,)
)
 Plaintiff,) Case No. 12-0107
)
 v.)
) Part II
 THE CITY OF CHATTANOOGA,)
 THE CHATTANOOGA CITY COUNCIL,)
)
 Defendants.)

**PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED
COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT**

Comes the Plaintiff, ANT Group, LLC, by and through its attorneys, Grant, Konvalinka & Harrison, P.C., pursuant to Rule 15 of the Tennessee Rules of Civil Procedure, and hereby moves this Honorable Court for leave to file its First Amended Complaint, submitted contemporaneously herewith and attached as **Exhibit 1**, for the purpose of asserting additional allegations in support of its claim that the Defendants' actions were arbitrary, discriminatory, and capricious without any just cause or reason and also to assert an additional cause of action against the Defendants related to actions and conduct performed by the Defendants during the same time of the events giving rise to Plaintiff's original Complaint filed on February 15, 2012, that have just recently been discovered by Plaintiff during depositions taken of the Defendants' witnesses.

I. INTRODUCTION

As shown below, granting Plaintiff leave to file its First Amended Complaint is proper, because the evidence discovered during the exchange of documents and obtained from recent depositions of various members of the City Council demonstrates that the

Defendants have unambiguously engaged in a series of actions that demonstrate the decision to deny Plaintiff's rezoning application was arbitrary, discriminatory and capricious and that the Defendants' actions violated the Tennessee Open Meetings Act, T.C.A. § 8-44-101 *et seq.*, thus voiding or otherwise invalidating the actions of the City Council on December 20, 2011.

Moreover, granting Plaintiff leave to file its First Amended Complaint will neither delay this action nor prejudice the Defendants. Indeed, the changes made in the First Amended Complaint relate to the same set of facts that gave rise to Plaintiff's original Complaint. The law is clear that granting leave to allow amendments should be freely given. In this case, the Plaintiff has learned of additional unlawful actions taken by members of the City Council that violate the Open Meetings Act and which ultimately led to an arbitrary and capricious decision of the City Council to deny Plaintiff's rezoning request. Accordingly, Plaintiff request that its motion be granted.

II. BACKGROUND FACTS

This case involves Plaintiff's complaint for declaratory judgment against the Defendants in connection with Plaintiff's request to rezone property located at 1825 Gunbarrel Road, Chattanooga, Tennessee for the purpose of developing a free standing, family-style, sit down, restaurant (IHOP) at a location that already contains five other major chain restaurants. Plaintiff alleges that the City Council's decision on December 20, 2011 to deny Plaintiff's request to rezone its property from R-4, which already permits a restaurant (without any operational limitations) in a four-story office building,

to O-2 was arbitrary, discriminatory and capricious and without any just cause or rationale.

After Plaintiff filed its original Complaint, the parties engaged in written discovery. After the deposition of Bassam Issa, corporate representative for ANT Group, LLC on September 17, 2012¹ and Patrick Neuhoff on September 19, 2012, the parties agreed to delay taking additional depositions until after the parties engaged in mediation which concluded on December 4, 2012. Thereafter, Plaintiff took the deposition of Councilwoman Pam Ladd on January 9, 2013, Karen Rennich on January 11, 2013, Councilman Jack Benson on January 23, 2013 and Councilman Andrae McGary on January 23, 2013.

In connection with these recent depositions in January, Plaintiff has obtained additional information which Plaintiff believes further supports its claim that the City's decision to deny its rezoning application was arbitrary, discriminatory and capricious. Additionally, Plaintiff believes that the information discovered in these deposition gives rise to a cause of action against the Defendants for violation of the Open Meetings Act, T.C.A. § 8-44-101 *et seq.* Plaintiff has succinctly and precisely set forth its allegations related to this cause of action in its First Amended Complaint. The allegations relate specifically to information obtained in the depositions and could not have been previously discovered. Accordingly, Plaintiff respectfully requests that its Motion for Leave to File its First Amended Complaint be granted.

¹ The City did not complete the deposition of Mr. Issa and is schedule to resume the deposition on February 1, 2013.

III. LAW AND ARGUMENT

Rule 15.01, which governs amended and supplemental pleadings, provides that “the court should freely give leave [to amend a pleading] when justice so requires. See Duty v. Dabit, No. M2001-00586-COA-R3-CV, 2002 WL 459002, at *4 (Tenn.Ct .App. Mar. 26, 2002). A decision whether to allow an amendment is one which rests in the sound discretion of the trial court. See Merrimar v. Smith, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1980). Factors the trial court should consider when deciding whether to allow amendments include “[u]ndue delay in filing; lack of notice to the opposing party; bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment.” Cumulus Broadcasting, Inc. v. Shim, 226 S.W.3d 366, 374 (Tenn. 2007) (quoting Merriman v. Smith, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979)). In ruling on a motion to amend, trial courts shall be very liberal in allowing pretrial motions to amend. Garniner v. Word, 731 S.W.2d 889, 891 (Tenn. 1987).

In the case at bar, Plaintiff seeks to amend its Complaint to add additional allegations demonstrating how egregious the Defendants acted during the entire time Plaintiff’s application to rezone was under consideration with the various public agencies (i.e., Regional Planning Agency, Regional Planning Commission, and the City Council) and also to assert an additional cause of action against the Defendants for violation of the Tennessee Open Meetings Act, T.C.A. § 8-44-101 *et seq.*

The purpose provision of the Act states: “[I]t [is] to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted

in secret.” T.C.A. § 8-44-101(a). To effectuate this purpose, the Act provides that “[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” T.C.A. § 8-44-102(a). The Act further provides consequences for violations which include voiding and/or invalidating the actions taken by the governing body that were taken in circumvention of the Open Meetings Act. T.C.A. § 8-44-105. This includes informal assemblages or electronic communication used to decide or deliberate public business. T.C.A. § 8-44-102(c).

In this case, Plaintiff’s First Amended Complaint sets forth specific allegations demonstrating that the Defendants engaged in a series of acts, which included email correspondence and an informal assemblage, which was in circumvention of the spirit and requirements of the Open Meetings Act. Specifically, Plaintiff’s First Amended Complaint alleges that on September 19, 2011 (eight (8) days after Plaintiff filed its application with the Regional Planning Commission) Councilman Jack Benson, in an effort to evade the constraints of the Act, sent an email to the entire City Council proffering an in depth argument against Plaintiff’s rezoning application. **(See Exhibit O to First Amended Complaint)**. Subsequently, Jack Benson sent no less than five (5) additional emails to local citizens encouraging them to stack the audience against Plaintiff. **(See Exhibits G -M to First Amended Complaint)**. Contained in those emails were specific references to Bassam Issa’s ethnicity (Mr. Issa is Muslim), including but not limited to the following:

- **Basam (Sam) does not take “no” for an answer. I have told him No and the Friends of East Brainerd has told him no....Our citizens know**

his operational style and they will strongly object to any of his attempts to break the Land Use Plan for his own personal gain. We need your understanding of the facts on this issue as well as your support of our LAND USE PLAN. Thanks Jack. (Email dated September 19, 2011, attached as Exhibit O to First Amended Complaint).

- Ying Hau Beens and Balsm [sic] Issa are bringing the same operational style that their previous culture condoned. We can't let them ravage our planned growth. Jack (Email dated October 17, 2011, attached as Exhibit J to First Amended Complaint).
- Don: At next month's [Council] meeting, we need you to speak again. The neighbors would be welcome but you and the other speakers are really needed....Jack (Email dated October 11, 2011, attached as Exhibit H to First Amended Complaint).
- Don: I have just found out that the City Council meeting for the IHOPS issue will be heard on Tuesday, December 20 @ 6:00.... PLEASE TELL any others you can bring. We need a good showing.... We need a good show of hands even if there is not room for all to speak. (Email dated November 21, 2011, attached as Exhibit L to First Amended Complaint).
- Don: I want to thank you for attending and speaking at the RPA. It made a difference and helps us to get a unanimous vote opposing the zoning request. When he comes to the City Council next month, we will need you again.... He comes from another culture and he can't seem to adjust to ours. Thanks, Jack (Email dated November 15, 2011, attached as Exhibit K to First Amended Complaint).
- Don: Your assessment of Sam Issa is on target. He will not take No for an answer and he will "do anything" to turn the No into a Yes. He came from a country where negotiations with government officials are successful with greedy actions which are illegal in the United States. We can't be a party to his methodology. (Email dated October 14, 2011, attached as Exhibit I to First Amended Complaint).
- Don: Thanks for speaking and doing a great job. I'm not surprised that McGary voted for it but I was shocked Murphy and Scott joined him. However, Murphy told me today that if we voted again that he would vote against it. Sam Issa has complained to the Chairman that he didn't get the normal 2 minutes rebuttal time. She told him that he could come before the Council and have his 2 minutes at 9:00a.m. Friday. I don't think it will change a vote. He is relentless and a real

“headache”. Jack. (Email dated December 21, 2011, attached as Exhibit P to First Amended Complaint).

In addition to the above email correspondence, the deposition of Councilwoman Pam Ladd confirmed that Jack Benson met with other members of the City Council outside of the Open Meetings Act in an effort do persuade them to deny Plaintiff's application. Some of the excerpts from Ms. Ladd's deposition are as follows:

Q: Do you know when this meeting that you had [prior to December 20, 2011] with Mr. Benson occurred?

A: I don't know.

Q: Do you know why Mr. Benson brought this to your attention?

A: Well, he wanted to - - definitely wanted me to know his opinion about this upcoming zoning.

(Ladd Deposition, p. 46)²

....

Q: Okay. This occasion that you're referencing here, did this occur before a vote was taken on the ANT Application?

A: It was before the vote but not the night of the vote. It was sometime before the vote.

Q: Okay. Do you know how long this discussion lasted at this fellowship gathering?

A: I got up and left, so I don't know what all occurred after I left.

Q: Is it typical for the council members to discuss matters that are on the agenda?

A: It's not typical. During that time it's not typical.

Q: Okay. Do you know what provoked Mr. Benson to bring it up during this meeting?

Mr. Bobo: Object to the form.

AL I don't.

Q: Did anyone else bring it up during this meeting?

² Deposition excerpts of Pam Ladd's deposition are attached hereto as Exhibit 2.

A: I came in and there was already some discussion going on prior to my coming into the room, so I don't know if a question had been asked of him [Jack Benson]. But there was just some discussion already, and that was a piece that I heard. And I left the room.

...

Q: Do you know if he told other members of the council [about the attempted bribe]?

A: There were other members present when I heard it repeated in that meeting.

(Ladd Deposition, p. 48-50)

In light of Councilwoman Ladd's deposition, as well as the deposition of Councilman Benson and Council McGary³, it is clear that there is substantial evidence to support Plaintiff's claim that the City council acted arbitrary and capricious and that their actions violated the Open Meetings Act.

Further, the criteria under Rule 15 of the Tennessee Rules of Civil Procedure for allowing Plaintiff to file its First Amended Complaint are met. Namely, there has not been any undue delay, bad faith or dilatory motive, or repeated failure to cure deficiencies by previous amendments. In fact, Plaintiff is filing this motion approximately one (1) day after it received the deposition transcript of Councilwoman Ladd and, therefore, could not have sought to amend its complaint prior to this time. Also, the allegations contained in the First Amended Complaint make clear that the Defendants' actions were arbitrary and capricious and that there were several actions taken by members of the City Council to evade the constraints of the Act.

Moreover, none of the recognized factors that might weigh against allowing a requested amendment has any applicability here. Most importantly, no prejudice to the Defendants

³ At the time of filing this Motion, neither the deposition transcript of Councilman Benson nor the deposition transcript of Councilman McGary were finalized by the Court Reporter.

would arise from allowing Plaintiff to add additional allegations because the events occurred during the exact time period that gave rise to Plaintiff's original Complaint. Apart from the minimal task of altering its Answer, the Defendants will not be put to any additional burdens. As Tennessee Courts have routinely held, unless substantial reasons exist to deny leave to amend, the discretion of the trial court is properly exercised in allowing amendments. Huntington Nat. Bank v. Hooker, 840 S.W.2d 916 (Tenn. Ct. App. 1991).

CONCLUSION

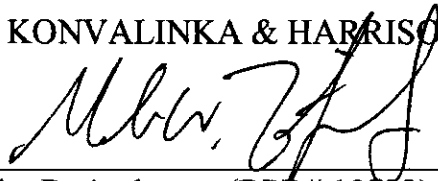
For all the reasons stated above, Plaintiff ANT Group, LLC respectfully requests that its motion be granted such that it is permitted to file its First Amended Complaint.

THIS MATTER HAS BEEN SET FOR HEARING ON February 11, 2013 AT 8:00AM IN PART II OF THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE.

Respectfully Submitted,

GRANT, KONVALINKA & HARRISON, P.C.

By: _____


John R. Anderson (BPR# 10732)
Mark W. Litchford (BPR# 027381)
Grant, Konvalinka, & Harrison, P.C.
633 Chestnut Street, Suite 900
Chattanooga, Tennessee 37450-0900
Telephone: (423) 756-8400
Facsimile: (423) 756-6518
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been served via hand-delivery and/or U.S. Mail to the following individual(s):

Phil Noblett, Deputy City Attorney
Patrick Bobo, Assistant City Attorney
Chattanooga City Attorney's Office
100 E. 11th Street, Suite 200
Chattanooga, TN 37402-4233
*Attorneys for City of Chattanooga and
The Chattanooga City Council*

This the 31st day of January, 2013.



GRANT, KONVALINKA & HARRISON, P.C.

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

ANT GROUP, LLC,)	
)	
Plaintiff,)	Case No. 12-0107
)	
v.)	
)	Part II
THE CITY OF CHATTANOOGA,)	
THE CHATTANOOGA CITY COUNCIL,)	
)	
Defendants.)	

**FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND OTHER RELIEF PURSUANT TO T.C.A. § 8-44-101 et seq.**

Plaintiff ANT Group, LLC (hereinafter “Plaintiff” or “ANT Group”), for its cause of action against the Defendants, the City of Chattanooga and the Chattanooga City Council (hereinafter together referred to as “Defendants” or “Chattanooga”) states as follows (new allegations are contained in bold):

1. Plaintiff is a limited liability company and at all times pertinent herein was duly operating under the laws of the State of Tennessee in Hamilton County.
2. The Defendant City of Chattanooga is a municipal corporation. The Defendant Chattanooga City Council is the legislative and quasi-judicial branch of the City of Chattanooga. Chattanooga and the Chattanooga City Council may be served through the Chattanooga City Attorney, Mike McMahan, at the Office of the City Attorney, 100 East 11th Street, Suite 200, Chattanooga, Tennessee, 37402.
3. Plaintiff has possessory interests in a 0.9 acre of vacant real property located at 1825 Gunbarrel Road, Chattanooga, Hamilton County, Tennessee (the “Property”) that is positioned in a predominantly commercial district near Hamilton Place Mall.



4. This action is brought for a declaratory judgment pursuant to the provisions of T.C.A. § 29-14-101 *et seq.* **Alternatively, this action is brought pursuant to T.C.A. § 8-44-101 *et seq.* for violation of the Tennessee Open Meetings Act.**

5. An actual controversy exists between the Plaintiff and Defendants.

6. Venue and jurisdiction are proper.

FACTUAL ALLEGATIONS

7. ANT Group is owned by Bassam Issa (“Issa”), who is engaged as a commercial developer. In or around September 2011, ANT Group desired to construct a family sit-down restaurant commonly known as International House of Pancakes (“IHOP”) on the Property.

8. The Property is located across from approximately 300,000 square feet of commercially zoned property and a large shopping center that includes Target, Earth Fare and Kohl’s and the Lighting Gallery, which is owned by Councilman Jack Benson and his family. Included in the shopping center are a number of specifically food-oriented establishments such as Chick-Fil-A, Golden Corral, Shoguns, Panera Bread, Moe’s Southwestern Grill and Firehouse Subs. On the west side of Gunbarrel Road (adjacent side for the proposed IHOP), the Property is flanked on the north by a gas station, an AT&T retail store, a car wash, and on the south by a bank with 24-hour ATM service.

9. To facilitate the construction of the IHOP, Plaintiff applied to the Chattanooga-Hamilton County Regional Planning Commission (the “Commission”) on September 9, 2011, for rezoning of the Property, which comprised an approximately 0.9 acre tract located in District 4, from R-4 Special Zone to C-2 Convenience Commercial Zone.

10. The R-4 Special Zone did not have any conditions in place and Plaintiff could have developed the Property with any of the R-4 permitted uses, including but not limited to,

“drug stores or restaurants in office buildings of four (4) or more stories.” Accordingly, Plaintiff could have constructed an IHOP as long as it was contained in a four-story office building, which would have increased the intensity or use of the Property.

11. Plaintiff’s intent for rezoning the property to C-2 was to construct a smaller scale restaurant than that permitted in R-4, as well as limit the size and square footage of the proposed building.

12. Prior to applying to the Commission for rezoning of the Property, Volkert, Inc., a professional traffic engineering company, completed a traffic study of the proposed IHOP and concluded that the development would produce no significant impact to the capacity and/or operations along Gunbarrel Road.

13. On September 15, 2011, Issa attended a City of Chattanooga Presubmittal Meeting to review the site plan with members of the Chattanooga-Hamilton County Regional Planning Agency Staff (the “Staff”). At that meeting, the Agency reported that no major issues were identified with the site plan, that the development met the minimum requirements regarding landscape buffers and that the site provided an appropriate amount of parking on-site.

14. In October 2011, Issa met with Councilman Jack Benson (“Benson”) to discuss the material blueprints of the IHOP, which included, among other things, installing significant landscaping as a buffer for the neighborhood and a restriction on the maximum square footage of the restaurant.

15. Benson represented on several occasions during this meeting that he had never voted to approve any rezoning that conflicted with or deviated from the 2001 Hamilton Place Community Land Use Plan (the “2001 Plan”) before and that he would ensure the Commission

and the Chattanooga City Council (“City Council”) denied ANT Group’s request to rezone the Property.

16. In early November 2001, Issa again met with Benson to identify eight (8) properties located within the 2001 Plan that the City Council approved for rezoning that were in conflict with or a deviation from the 2001 Plan. Benson became upset with Issa and abruptly terminated the meeting and stated that the City Council would never vote to approve the request because the Property is located in his (Benson’s) district. Benson further stated that if Issa attempted to take the matter to court that he would accuse Issa of bribery.

17. Thereafter, in November 2011, the Staff published a written recommendation for denial of Plaintiff’s request, Case NO. 2011-115, which concluded that the proposed rezoning conflicted with the current zoning policy that was adopted in the 2001 Plan. The Staff also stated that the City Traffic Engineer did not support the rezoning and that the Property was located on a corridor intended for office-institutional development to protect the bordering neighborhood. A copy of the Staff’s recommendation is attached hereto as **Exhibit A**.

18. The Staff made this recommendation despite the fact that since the adoption of the 2001 Plan, at least eight (8) properties located within the 2001 Plan had been rezoned in direct contravention of the 2001 Plan and the Staff had actually supported 3 of the 8 cases.

19. The Staff made this recommendation despite the fact that the City Traffic Engineer specifically stated he concurred with the Volkert traffic report, which concluded the traffic generated would be comparable to an office development.

20. Upon information and belief, the 2001 Plan actually recommends that zoning should be flexible as the property contained within the 2001 Plan develops over time.

21. On November 14, 2011, pursuant to notice of public hearing, the Commission voted to recommend denial of Plaintiff's request, Case No. 2011-115, to the City Council without any dialogue from the members of the Commission. A copy of the minutes from the November 14, 2011 Commission hearing is attached hereto as **Exhibit B**.

22. On December 20, 2011, Plaintiff's request for rezoning, Case No. 2011-115, went before the City Council pursuant to notice of public hearing.

23. Benson admitted at the Council meeting that prior properties located within the 2001 Plan had been approved for rezoning, but that those cases had nothing to do with commercial but rather had been for preservation. Benson further stated that the Council had never gone against the recommendations of the Commission or the recommendations of the 2001 Plan.

24. Benson subsequently requested that Mike Baker ("Baker") approach the Council "on behalf of Erlanger" to publicly oppose Plaintiff's request to rezone the Property. Issa was not provided an opportunity to present a rebuttal to either Benson's or Baker's representations to the City Council.

25. Thereafter, the City Council denied the first reading of the proposed ordinance, namely, "An Ordinance to amend Chattanooga City Code, Part II, Chapter 38, Zoning Ordinance, so as to rezone property located at 1825 Gunbarrel Road, more particularly described herein, from R-4 Special Zone to C-2 Convenience Commercial Zone" on the grounds that the proposed rezoning was in direct conflict with the 2001 Plan. A copy of the December 20, 2011 City Council Minutes is attached hereto as **Exhibit C**.

26. The 2001 Plan was adopted by the City Council on October 9, 2001 pursuant to Resolution 23151. Benson, who was a member of the City Council at that time, publicly stated

during the October 9, 2001 City Council meeting that the 2001 Plan would be suitable to change periodically and that the 2001 Plan needed to be “tweaked”. A copy of the Chattanooga City Council Resolution No 23151 and the October 9, 2001 City Council minutes are attached collectively hereto as **Exhibit D**.

27. The 2001 Plan expressly states that it is intended to be a guide policy and that planned developments should allow flexibility in certain issues such as mixed uses. Upon information and belief, the City Council has on several prior similar situations voted to approve requests to rezone certain tracts of land in and around Hamilton Place Mall that were in direct conflict of the 2001 Plan.

28. For example, upon information and belief, from 2004 through 2010, the City Council voted on several occasions to rezone approximately 45 acres of property located within the 2001 Plan from heavy residential zone to mixed use zone to allow for retail establishments such as an HHGregg, Mellow Mushroom and the Melting Pot.

29. Upon information and belief, in 2003, the City Council approved an ordinance to rezone approximately 0.9 acres of property located at 7214 Jarnigan Road (within the 2001 Plan) from R-1 Residential to R-4 Special Zone to allow for the construction of several large office buildings directly within an established neighborhood. The 2001 Plan did not recommend approval for R-4 Special Zone for this property.

30. Upon information and belief, both of the aforementioned approved ordinances infringed upon previously established residential neighborhoods and involved applicants that had a previous business relationship with Benson.

31. Additionally, on at least one prior occasion, the City Council specifically voted to approve a request to rezone property located within the 2001 Plan despite the fact that the Staff recommended denial.

32. Specifically, on April 8, 2008, the City Council approved an ordinance to amend the Zoning Ordinance so as to lift conditions imposed by Ordinance No. 11925 (Case No. MR. 2006-233) on tracts of land located at 7610 and 7614 Standifer Gap Road (within 2001 Plan). A copy of Ordinance No. 11925 is attached hereto as **Exhibit E**.

33. The aforementioned tracts were subject to two conditions: (1) a density of 18 dwelling units per acre; and (2) traffic calming measures as approved by the City Traffic Engineer. Minutes of the April 8, 2008 City Council Meeting show that the Staff recommended denial of Case No MR 2006-233, but the City Council, upon the motion of Benson, voted to approve the request. A copy of the April 8, 2008 City Council Minutes is attached hereto as **Exhibit F**.

34. Shortly after the City Council meeting on December 20, 2011 concluded, Issa was informed, and thereon believes and alleges, that Benson, in an effort to obtain the necessary denial votes from the Council, lied to several members of the City Council by, among other ways, specifically telling the members that Issa attempted to bribe Benson with \$2,500.00 cash in return for Benson's affirmative vote.

35. Plaintiff was informed, and thereon believes and alleges, that Benson requested Baker to specifically appear at the Council Meeting on December 20, 2011 and represent that he (Baker) was speaking on behalf of Erlanger in opposition to Plaintiff's request when in fact Baker had not been so authorized by Erlanger.

36. Upon information and belief, Benson's sole purpose in having Baker oppose the request to rezone the Property was to persuade the Council to deny Plaintiff's request.

37. After the City Council allowed members of the audience to present their objections, the City Council failed and otherwise refused to allow Issa to submit a rebuttal, which Issa was entitled to present.

38. Upon information and belief, the existing infrastructure surrounding the Property will not be negatively affected by the construction of an IHOP restaurant since similar commercial development has already been constructed such as Chick-Fil-A, Golden Corral, Shoguns, Panera Bread, Moe's Southwestern Grill and Firehouse Subs.

39. Upon information and belief, approving the Property for C-2 convenience zoning will not result in any further encroachment of commercial area into the existing neighborhood because the current R-4 special zone allows Plaintiff to construct a larger, more extensive, restaurant that would increase the intensity of the area.

40. There is no rational or legally justifiable basis for denying Plaintiff's request to rezone the Property to C-2 and, by denying Plaintiff's request, the City has acted in an unreasonable, discriminatory, arbitrary, capricious and unconstitutional manner without just cause.

41. **Upon information and belief, the Defendants' consideration of Plaintiff's rezoning application was completely tainted from the beginning, thus ensuring that the application would be denied. Plaintiff has been informed, and thereon believes and alleges, that members of the City Council, including Jack Benson, engaged in a series of unethical and illegal actions, including but not limited to, stacking the audience in opposition to Plaintiff at the Planning Commission meeting on November 14, 2011;**

attacking Issa's ethnicity by degrading Issa's cultural background and referring to his culture as greedy and supportive of illegal methods; requesting "a car full" of opposition to appear at the Planning Commission meeting on November 14, 2011; publishing an editorial in opposition to Plaintiff's request in the Times Free Press on October 9, 2011; and stacking the audience in opposition to Plaintiff's request at the City Council meeting on December 20, 2011.

42. For example, Benson sent a series of emails from September 2011 (shortly after Plaintiff filed its rezoning application with the Regional Planning Agency) through December 2011 containing the following correspondence:

- a. On October 4, 2011, Benson sent an email to Don Shoemaker encouraging Mr. Shoemaker to bring a "car full" to the Planning Commission meeting on November 14, 2011, to oppose Plaintiff's application. Exhibit G.
- b. On October 11, 2011, Benson sent an email to fellow resident Don Shoemaker stating: "Don: At next month's meeting, we need you to speak again. The neighbors would be welcome but you and the other speakers are really needed.... If they had voted today it would have been denied. Hope you can speak next month prior to the vote. Thanks Jack. Exhibit H.
- c. On October 14, 2011, Benson sent an email to Don Shoemaker stating "Your assessment of Sam Issa is on target. He will not take No for an answer and he will "do anything" to turn the No into a yes. He came from a country where negotiations with government officials are successful with greedy actions which are illegal in the United States. We can't be a party to his methodology. Thanks to you and others like you, we are able to resist his methods. Exhibit I.
- d. On October 17, 2011, Benson sent an email to Don Shoemaker stating: "Balsm [sic] Issa bring[s] the same operational style that [his] previous culture condoned. We can't let them ravage our planed growth. Jack". Exhibit J.
- e. On November 15, 2011, Benson sent an email to Don Shoemaker stating: "I want to thanks you for attending and speaking at RPA It made a

difference and helped us to get a unanimous voting opposing the zoning request. When he comes to the City Council next month, we will need you again.... He comes from another culture and he can't seem to adjust to ours. Thanks, Jack" Exhibit K.

f. On November 21, 2011, Benson sent an email to Don Shoemaker stating: I just found out that the City Council meeting for the IHOPS issue will be heard on Tuesday, December 20 @ 6:00.... PLEASE TELL any others you can bring. We need a good showing.... We need a good show of hands even if there is not room for all to speak." Exhibit L.

g. On December 15, 2011, Benson sent an email to Roger Meyer and Bernard & Elizabeth O'Brien stating: "We really need you this Tuesday evening at 6:00 at the City Council chamber to voice opposition to the IHops zoning request. It is first on the agenda so it would be wise to arrive early.... Hope to see you Tuesday at 6:00. Exhibit M

43. Benson also submitted to the Times Free Press an editorial that was published in the Sunday Edition of the TFP on October 9, 2011, which contained blatant misrepresentations about the Land Use Plan and about the permitted uses of Plaintiff's property under an R-4 zone. Exhibit N.

44. Upon information and belief, Benson's actions were a direct effort to unlawfully persuade, among others, members of the Chattanooga-Hamilton County Planning Commission and the Chattanooga City Council to deny Plaintiff's rezoning request.

45. Upon information and belief, this is the first time Benson has ever submitted an editorial to the Times Free Press or any media outlet during his time as a City Council member and no other member of the City Council has ever taken such efforts to solicit opposition.

COUNT I
REQUEST FOR DECLARATORY JUDGMENT

46. The Plaintiff incorporates by reference the above Paragraphs as if stated fully herein.

47. In its denial of the Plaintiff's request to rezone, Defendants acted in an arbitrary, discriminatory and capricious manner without just cause or any rationale.

48. Because the act of denying the Plaintiff's request to rezone was arbitrary, discriminatory, and capricious and was plainly contrary to the prior actions of the City Council, this Court should declare the City's actions to be unconstitutional as a deprivation of Plaintiff's property interests without due process.

COUNT II
VIOLATION OF THE TENNESSEE OPEN MEETINGS ACT

49. **The Plaintiff incorporates by reference the above Paragraphs as if stated fully herein.**

50. **Defendants are subject to the Tennessee Open Meetings Act, T.C.A. § 8-44-101 *et seq.* in that it is a governing body, as defined under T.C.A. § 8-44-101(b)(2), with decision making authority and they must conduct all meetings open to the public with proper notice, the purpose of which is to promote governmental accountability by facilitating public access to official decision making.**

51. **Plaintiff has been informed, and thereon believes and alleges, that Defendants engaged in a series of informal assemblages and/or electronic communication that was intended to be, and indeed was, used to decide or deliberate public business, including but not limited Plaintiff's application for rezoning, in circumvention of the spirit and requirements of the Tennessee Open Meetings Act.**

52. For example, on September 19, 2011, Benson, in a nefarious intent to evade the constraints of the Act, sent an email to all members of the City Council expressing a clear argument against Plaintiff's rezoning application and persuading the members to deny Plaintiff's request. Exhibit O.

53. Plaintiff has been informed, and thereon believes and alleges, that after Plaintiff filed its rezoning application with the Regional Planning Agency on September 9, 2011, Benson met individually with each member of the City Council and that substantive discussions regarding Plaintiff's rezoning application occurred during these meetings.

54. Also, Plaintiff has been informed, and thereon believes and alleges, that on December 20, 2011, Benson spoke with members of the City Council in an informal private assemblage prior to the scheduled 6:00 City Council Members and that the members debated and otherwise deliberated about Plaintiff's rezoning application.

55. Based upon these unlawful acts of the Defendants, as well as other unlawful acts which will be revealed during discovery of this matter, Plaintiff believes and alleges that the Defendants had formed a consensus prior to the public meeting at 6:00 on December 20, 2011 to deny Plaintiff's rezoning application.

56. Upon information and belief, Defendants failed to give proper notice to the public of these closed meetings.

57. Upon information and belief, Defendants failed to keep detailed minutes and/or tape recordings of all discussions, persons present, or actions taken during these previous meetings.

58. Plaintiff has been informed, and thereon believes and alleges, that the Defendants' course of conducting the aforementioned meetings and engaging in the

electronic communications away from and outside of the public was calculated to minimize public input and awareness of all of the details surrounding the Defendants' decision-making process and the information upon which the City Council relied to deny Plaintiff's rezoning application.

59. The Defendants' conduct constituted an evaluation or deliberation of the issues regarding Plaintiff's rezoning application outside of the public view. Benson provided input to the City Council on the issues and clearly and unambiguously made his position known that he would deny and that other City Council members should deny also. The electronic communication went to all of the individuals of the City Council, thus a quorum of the members were involved. This constitutes a deliberation under the Tennessee Open Meetings Act and effectively circumvented the requirements of the Act and should have been made available to the public.

60. Plaintiff has been informed, and thereon believes and alleges, that the Defendants' meetings and electronic communications do not qualify for any exception under the Tennessee Open Meetings Act.

61. As a result of the Defendants' actions, Plaintiff was denied its right to observe the performance of the public officials and attend and listen to the deliberations and decisions that went into the decision to deny Plaintiff's rezoning application.

62. Plaintiff has been informed, and thereon believes and alleges, that the ultimate decision to deny Plaintiff's rezoning application was made in violation of the Tennessee Open Meetings Act and that the Defendants actions during the public City Council meeting on December 20, 2011 did not constitute a new and substantial reconsideration of Plaintiff's rezoning application.

63. Plaintiff has been informed, and thereon believes and alleges, that even if a revote of Plaintiff's application was reconsidered by the Defendants, Benson had already secured the majority of denial votes, including confirmation from Peter Murphy outside of a public meeting that he (Councilman Murphy) would vote against Plaintiff's application. Exhibit P.

64. The failure of the Defendants to conduct all of its proceedings in public is in direct contravention of the explicit public policy of the State of Tennessee and renders the Defendants' consideration of Plaintiff's rezoning application entirely suspect.

65. The Defendant's behavior in conducting these meetings and engaging in the electronic communications was arbitrary, capricious, and contrary to law, including but not limited the Tennessee Open Meetings Act.

66. As a result of the Defendants' unlawful actions, Plaintiff requests that the Court declare the Defendants' actions on December 20, 2011 null and void.

WHEREFORE, Plaintiff prays as follows:

1. That proper process issue to the Defendants requiring answer to this complaint within the time allowed by law;
2. That the Court order the Defendants to grant Plaintiff's zoning request;
3. A declaratory judgment that the Defendants made an arbitrary, capricious, and unreasoned decision to deny the Plaintiff's zoning request;
4. **That the Court void or otherwise invalidate the actions taken by the Defendants on December 20, 2011;**

5. That the Court enter an order for redress in equity as well impose civil fines against the Defendants
6. That the Plaintiff be awarded its attorneys' fees and costs in this cause given the egregious actions of the Defendants as such award will serve as an incentive to protect the public's right to open meetings and to deter the Defendants from skirting the requirements of the Open Meetings Act;
7. That the Court impose, at a minimum, a one-year requirement of judicial oversight over the Defendants; and
8. That Plaintiff is entitled to such other and further relief as the equity and justice of this cause may require.

Respectfully Submitted,

GRANT, KONVALINKA & HARRISON, P.C.

By: _____

John R. Anderson, BPR No. 010732
Mark W. Litchford, BPR No. 027381
Ninth Floor, Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450-0900
423/756-8400
423/756-0643 – facsimile

VERIFICATION

I, Bassam Issa, an authorized representative of ANT Group, LLC, being first duly sworn, aver that the foregoing allegations contained in the Verified Complaint are true and accurate to the best of my knowledge, information and belief.

ANT GROUP, LLC

By: _____
Bassam Issa

Sworn to and subscribed before me this _____ day of _____, 2013

Notary Public

My Commission Expires: _____

Zoning Request Form

Print Form

Opposition
Chattanooga-Hamilton County



Regional Planning Agency

1250 Market Street
Suite 2000

Development Resource Center
Chattanooga, Tennessee
37402

Phone: 423-668-2287
Fax: 423-668-2289
www.chrcpa.org

Office Use Only
Case Number: 2011-115
Date Submitted: 09/09/2011
Planning District: 10
County District: 8
City District: 4
Jurisdiction: Chattanooga
Neighborhood: Brainerd E. Brainerd Chamber Council, Friends of E. B.
Staff Action: *D*
PC Action/Date: *D* 11/14/11
Legis. Action/Date:



Zoning Request	
From: R-4 Special Zone	To: C-2 Convenience Commercial Zone
Proposed Development or Use: IHOP Restaurant	

Property Location / Information	
Address: (Street Number & Street Name) 1825 Gunbarrel Road	Tax Map No: 158D-F-012 Plat Book/Page No. 86-121, 86-130
Current Use: Vacant	Adjacent Uses: Bank, Offices

Applicant Information

All communication by phone, fax, email, or mail will be with the Applicant. If you are not the property owner, you will need to submit a letter from the property owners(s) indicating that you are acting as their agent in filing this application (e.g. engineer, architect, consultant, broker, etc.).

- Property Owner
 Architect
 Engineer
 Optionee
 Purchaser of Property
 Trustee
 Other:

Name	ANT Group, LLC	
Address:	7025 Shallowford Road	
City	Chattanooga	State: TN
Zip Code:	37421	
Daytime Phone:	423-760-2134	
Cell Phone:	423-760-2134	
Other Phone:		
Email:	issagroup@aol.com	
Fax:	423-899-0398	

Applicant Contact Information (If Different)	
Name:	Same
Address:	
Phone:	

CHECKLIST (OFFICE USE ONLY)

<input checked="" type="checkbox"/> Application Complete	<input checked="" type="checkbox"/> Deeds for property to be rezoned
<input checked="" type="checkbox"/> Ownership Verification (Tax Map Parity Listed)	Deed Book: 7859-266
<input checked="" type="checkbox"/> Map showing property to be rezoned	<input checked="" type="checkbox"/> Copy of Plans, if applicable
<input checked="" type="checkbox"/> Site Plan, if applicable	Plat Book/Page: 86-130
<input checked="" type="checkbox"/> Total acres to be considered: 0.860	<input checked="" type="checkbox"/> Notice Signs: How Many? 1
<input checked="" type="checkbox"/> Filing Fee: \$635.00	<input type="checkbox"/> Cash <input type="checkbox"/> Check No. 2594
Accepted by: Marcia Parker	Date: 09/09/2011

Case Number:	2011-115
Applicant Request:	Rezoning to C-2 Convenience Commercial
STAFF RECOMMENDATION:	DENY
Applicant:	ANT Group, LLC
Property Address:	1825 Gunbarrel Road
Jurisdiction:	City Council District 4 / Hamilton County District 8
Neighborhood:	East Brainerd
Development Sector:	Outer Suburban Growth
Proposed Development	PLANNING COMMISSION ACTION:
Site Plan Submitted:	Yes Deny
Proposed Use:	Commercial development
Purpose:	IHOP Restaurant
Site Characteristics	
Current Zoning:	R-4 Special Use Zone
Current Use:	Vacant (site prepared with parking and dumpster area)
Adjacent Uses:	Office, Bank, Commercial development across street
Size of Tract:	0.86 acres
Access:	Good, direct access onto Gunbarrel Road
Analysis	
Extension of Existing Zoning?	No
Community Land Use Plan:	Hamilton Place Community Plan (2001)
Proposed Use Supported by Community Land Use Plan?	No
Proposed Use Supported by Comprehensive Plan?	No

Comments

Planning Staff: The applicant has proposed rezoning a 0.9 acre tract from R-4 Special Zone to C-2 Convenience Commercial Zone for a 24-hour a day, sit-down restaurant called IHOP.

In order to provide a thorough and thoughtful review of this case, staff reviewed the proposal itself, adopted plans and policies for the area, the planning and zoning history of the site and surrounding community, the traffic study, and other applicable land use factors.

Rezoning Proposal

Site Context

The property is between a one-story, multi-tenant medical office building and a one-story bank branch with drive-thru service (*see maps at end of text*).

Site Plan

The applicant attended a City of Chattanooga Presubmittal Meeting on 09/15/11 to review the site plan with City staff. At that meeting no major issues were identified with the site plan. It does meet the minimum requirement regarding landscape buffers and provides an appropriate amount of parking on-site. The applicant is proposing to

use the existing curb-cut on Gunbarrel Road. (see maps at end of text)

Community Input

The applicant and associates attended a meeting of the Friends of East Brainerd on 8/18/11. At that meeting, they provided information regarding the rezoning proposal and the use of the site for an IHOP restaurant. They answered community members' questions during the meeting and made themselves available afterwards to address any additional issues. Additionally, the applicant hosted a public meeting at the community YMCA to provide additional information and respond to questions. Staff understands that the applicant, the property owner, and other representatives have spoken with other East Brainerd and nearby residents.

Area History of Plans and Policies

The following is a synopsis of zoning policies and plan recommendations for the portion of the Hamilton Place community in which the proposed rezoning is located:

1986 Shallowford Rd/Gunbarrel Road zoning policy

"The surrounding residential neighborhood will remain viable or such as long as the commercial zoning are confined to the areas indicated in this policy study."

Preliminary Zoning Policy Recommendations: Gunbarrel Road from Igou Gap to East Brainerd Road:

"This section of Gunbarrel is predominately residential. There is still some new subdivision development occurring in this area. Given the land use character of this section and the lack of significant road improvements, the recommendation for this portion of Gunbarrel Road is moderate-density residential at 7.5 units per acre with owner-occupied townhouses or condo's being the preferred use. Property at the intersection of Gunbarrel Road and East Brainerd Road is developed commercially."

Note: A Preliminary Zoning Policy Study for Internal Properties Located Between I-75, Gunbarrel Road, Igou Gap Road and Hamilton Place Mall was conducted four months after the opening of Hamilton Place Mall but seems to focus on property between I-75 and Gunbarrel Road north of Igou Gap Road.

Note: A 1988 Zoning Administrative Policy for Growth Corridor Overlay Zone Design Standards (1988 Growth Corridor Policy for Gunbarrel Road) was created to develop minimum design criteria which promote and encourage timely, efficient and high quality development of land within certain urban corridors.

2000 Jarnigan Road/Igou Gap Road/ West of Gunbarrel Road Zoning Policy Study

- Request by City Council
- Adopted by City Council, Resolution No. 22584, July 2000

According to the study, because of the increase in zoning applications for the area south of the mall and west of Gunbarrel Road, the City Council asked RPA to review and make recommendations to revise the existing policy. The following are the Policy Goals from the study:

- Allow Some New Commercial Development
- Protect Existing Residential Neighborhood
- Provide Diversity in Housing
- Provide Transition between Uses

Area V of that study focused on this section of Gunbarrel Road. The policy recommendation for that area was Institutional/Office- "The East Brainerd Road Area Study adopted in 1990 called for institutional uses along Gunbarrel Road. Up to this point in time the recommendations of that plan have been followed. It is recommended that this area continue to be developed as institutional and office." That study recommended that a "larger study of the mall area is needed".

2000 Zoning Study

City Council requested (Resolution No. 22611) a Zoning Study for an area bounded on the west by Gunbarrel Road, on the north by Standifer Gap Road, on the east by Jenkins Road, and on the south by East Brainerd Road, but excluding properties that were currently covered by an adopted zoning policy.

2001 Adopted Plan: Hamilton Place Community Plan

"The purpose of the Hamilton Place Community Plan is to address both the livability needs of surrounding neighborhoods and the long-term economic vitality of the Hamilton Place retail district. Throughout the plan, strategies and policies are presented to promote a positive and mutually supportive relationship between the retail district and established neighborhoods. Most importantly, this plan strives to build "community centered" vision by informing how the retail district and neighborhoods are pieces of a larger community context that also includes streets, parks, public facilities and the natural environment." With this "community" focus in mind, the following goals, developed through this planning process, structure the Hamilton Place Community Plan:

- Protect and enhance existing neighborhoods
- Strengthen existing commercial areas
- Improve the transportation system
- Protect the environment

- Identify opportunities for community facilities and parks

Planning Principles:

Planning principles were developed through the planning process to support the goals identified above and to provide guidance for future land use. The principles identified for Land Use are as follows:

- Commercial and neighborhood boundaries should be maintained as defined by the land use plan
- Configure new development so that it is compatible with existing adjoining uses.
- Examples include placing smaller scale, less intense buildings next to existing neighborhoods.
- Placement of large-scale buildings next to neighborhoods should be avoided.

Planning Challenges:

The plan states that two critical challenges emerged to guide the development of the Hamilton Place Community Plan: defend the neighborhoods and strengthen the commercial core:

Defend the Neighborhoods

"There is an overwhelming concern from area residents to protect their neighborhoods and clearly define where growth should occur. In the public phone survey 89% stated that the City should clearly define where future growth will occur, and 79% valued the protection of existing neighborhoods. The "pressured sites" are where this issue is most obvious and where solutions will occur first. The solution involves clearly defining an appropriate land use mix that can bridge the gap between the intensity of commercial uses and the surrounding single-family residential neighborhoods. These areas include among others the "triangle" site north of Shallowford Road, the area south of Shallowford Road just east of the YMCA, the Igou Gap/Gunbarrel area, and the Igou Gap/Clearview Drive area. In order to support and connect to existing neighborhoods, new development should also include parks and open spaces that are inter-connected by pedestrian-friendly sidewalks and greenways."

Strengthen the Commercial Core

"As identified in the public phone survey, 76% of respondents believe that the prosperity of the commercial area is important to the larger community. A key challenge of this plan will be to find ways to support the future success of the commercial areas while minimizing their impact on the neighborhoods. The ability to accommodate infill development and a broader

mixture of uses including retail, residential, and office will allow the commercial core to grow and adapt over time. One of the biggest challenges to this future commercial development is transportation access, which will eventually impact the quality of the area's shopping experience."

Plan Recommendation: Gunbarrel Road between Igou Gap Road and East Brainerd Road

The land use strategy supports the current policy of office and institutional uses along this portion of Gunbarrel Road with the exception of the Applegate subdivision.

Comprehensive Plan 2030

This portion of East Brainerd is identified in the City and County adopted Comprehensive Plan 2030 as contained in the Outer Suburban Growth Development Sector. The Plan identifies Outer Suburban Growth areas as providing both infill and outward growth opportunities for conventional low-density development. These areas are appropriate for the separation of residential and non-residential uses. Regarding business uses, the plan states that a mix of retail and office uses is encouraged.

Zoning History

In 2000, a zoning request for R-1 Residential to C-2 Convenience Commercial was processed for 1821 and 1825 Gunbarrel Road. The proposed use at that time was "retail (restaurants)". The site plan showed two 7,000 square feet restaurants. At that time, staff recommended a denial of the C-2 and approval of the R-4 Special Zone. The reason for the recommendation was that "The policy for this area recommends office/institutional uses. The request for commercial does not meet the existing policy. The site is located between two existing office developments (O-1 zone)." The Chattanooga-Hamilton County Regional Planning Commission recommended that the petition for C-2 be approved subject to restaurant use only, excluding fast food restaurants or any restaurant that has a drive-thru or curb service; and no lighting to be directed off-site. In April 2001, City Council reviewed the case and deferred action on the request (then identified as Brick Oven Pizza). It was announced at the next hearing that the case had been requested for withdrawal (10/2001).

The Hamilton Place Community Plan was adopted in October 2001. This property and the abutting property were rezoned from R-1 Residential to R-4 Special Zone in 2003. The purpose stated at that time was a "medical office building" with the site plan showing a 10,000 square foot building with 153 parking spots. Staff supported the rezoning to R-4 Special Zone as there was already development of that type in the area, it was a reasonable extension of current zoning,

and it was in conformance with the plan for the area. The Chattanooga-Hamilton County Regional Planning Commission also recommended approval of the 2003 request.

In June 2006, Bassam Issa received a variance from the Board of Zoning Appeals for 1825 Gunbarrel Road to 1) reduce the number of parking spaces from 414 to 364 and 2) a Special Permit for off-street parking on an R-1 lot adjacent to R-4 property.

Staff Recommendation

The applicant and his team have done a very thorough job in preparing for this rezoning request. They provided a detailed site plan and proposed site specific conditions, attended a community meeting and hosted another to present the request, and provided a traffic study as part of the proposal. However, staff is recommending denial of the C-2 Convenience Commercial zoning request and affirms the existing policy of office and institutional uses to the west of Gunbarrel Road. This recommendation supports the policies in place since 2000 (and earlier) and the adopted plan (2001) that support maintaining a commercial edge and supporting existing neighborhoods.

Site zoning

At the time of rezoning from R-1 Residential to R-4 Special Zone in 2003 (Ord. No. 11500), the purpose was identified as a "medical office building" with the site plan showing a 10,000 square foot building with 153 parking spots. However, no conditions were placed on the R-4 zoning at that time. Staff understands that the applicant can choose to develop the site with any of the R-4 Special Zone permitted uses listed below along with the additional 14 Special Permit uses:

R-4 SPECIAL ZONE

Permitted uses.

- (1) Single-family, two-family, and multiple-family dwellings, excluding factory manufactured homes constructed as a single self-contained unit and mounted on a single chassis.
- (2) Lodging Houses, Boarding Houses and Bed and Breakfast.
- (3) Colleges, schools and libraries.
- (4) Churches and including a columbarium and/or mausoleum as an accessory use.
- (5) Dormitories.
- (6) Professional, medical or dental offices and clinics.
- (7) Laboratories and research centers not objectionable because of odor, dust, noise, or vibration.
- (8) Offices.
- (9) Studios.
- (10) Parks and Playgrounds.
- (11) Home occupations.
- (12) Banks and bank branches.
- (13) Accessory uses and buildings.
- (14) Day care homes.
- (15) Kindergartens operated by governmental units or by religious organizations.
- (16) Drug stores or restaurants in office buildings of four (4) or more stories.
- (17) Museums and art galleries with retail sales as an accessory on-site use, except that such accessory use shall require a Special Permit under the terms of Article VIII.
- (18) Identification signs for commercial uses, subject to the same regulations which govern size, appearance, location, etc., for signs identifying on premise office uses.
- (19) Radio, television and motion picture production studios, excluding transmission towers.
- (20) Parking lots and garages as an accessory to a permitted use when located on the same lot or an adjacent lot.

(21) Short-Term Vacation Rental.

Uses permitted as special exceptions by the board of appeals.

- (1) Fraternal, professional or hobby clubs.**
 - (2) Hospitals and nursing homes.**
 - (3) Funeral homes, mortuaries, and undertaking establishments (and including cremation/crematory, when used in conjunction with such establishments).**
 - (4) Day care centers.**
 - (5) Kindergartens not operated by governmental units or by religious organizations**
 - (6) Small animal hospitals.**
 - (7) Radio, television and motion picture studios transmission towers shall require a Special Permit under the terms of Article VIII.**
 - (8) Drug and alcohol, penal or correctional halfway houses or rehabilitation centers and uses similar in character.**
 - (9) Gift shops.**
 - (10) Beauty shops, barber shops, and hair salons.**
 - (11) Assisted Living Facilities.**
 - (12) Medically Assisted Living Facilities.**
 - (13) Communication Towers.**
 - (14) Social Service Agency.**
-

In 2006, the applicant also obtained a Special Permit for off-street parking on an R-1 lot adjacent to R-4 property. With the Special Permit, the property could be developed with even greater intensity as much of the required parking could be accommodated off-site. The R-4 Special Zone allows "Drug stores or restaurants in office buildings of four (4) or more stories". It is staff's understanding, in consultation with the City Zoning Official, that this restaurant could be something like an IHOP as long as it was contained in a four-story office building. Final determination as related to use of the zone and use specific to this site is made by the City Zoning Official.

This proposed IHOP site does not adjoin commercially zoned property on the west side of Gunbarrel Road. The site has both an R-4 Special Zone to the north and south of it. There is a C-2 Convenience Commercial Zone to the north of this site at the southwest corner of Gunbarrel Road and Igou Gap Road. One property was rezoned to C-2 prior to the adoption of the Hamilton Place Community Plan and one immediately at the intersection was rezoned by Bassam Issa- ANT Group LLC in 2006. Staff, Planning Commission and City Council supported the request, with staff's reason for recommendation being in part that "The request for commercial zoning is in keeping with the recommendation of the 2001 Hamilton Place Community Plan. Commercial development is recommended for this corner of Gunbarrel Road and Igou Gap Road."

There is no precedent by City Council for a change in the existing policy of office and institutional uses. There was a 2005 request for property (1511 Gunbarrel Road) south of the rezoning request site for R-4 Special Zone and C-5 Neighborhood Commercial for 200' parallel to the road. Both Staff and Planning Commission recommended denial of that C-5 request while recommending approval of the R-4. The staff recommendation gave a reason as "Approve R-4 for the requested use of offices for the entire site. This is in keeping with the recommendations of the Hamilton Place Plan that supports office

development west of Gunbarrel Road. Opening up this corridor to commercial rezoning not only goes against the Hamilton Place Plan, but also opens up the rest of the corridor for commercial consideration". City Council approved an R-4 Special Zone for the entirety of the site. Currently at 1511 Gunbarrel Road, approximately 200' of the property parallel to the road is undeveloped with the rear of the parcel containing two buildings.

Traffic Study

City Traffic Engineer's comments: "I have reviewed the traffic impact study that Volkert prepared for this zoning request and concur with its conclusion that the traffic generated would be comparable to what an office development would generate. I do, however, have concerns with the precedent that this case would cause for this section of Gunbarrel Road south of Igou Gap Road. If other property owners in this area were encouraged to request and be granted rezoning of their office zone to commercial, there is the potential that higher amounts of traffic could be generated than what currently exists, particularly during the peak hours.

Because Gunbarrel at East Brainerd Road is at capacity, any additional traffic at this intersection would create even more congestion during peak hours. Based on these observations, I recommend that this case be denied."

Precedent

The challenge of this zoning case remains the complexity of the existence of a regional mall with expected large and smaller-scale satellite commercial development, an existing road system, and maintaining the viability of neighborhoods as stated in the adopted Hamilton Place Community Plan. The heart of each of the studies since 1986 has been to determine an answer to the appropriate arrangement of these pieces.

Staff's approach was to look at this proposal at two levels. The first was to examine the site in respect to the proposed use and conditions, site plan, and the immediately surrounding development. If you stand at the site during the day and look around, it may seem that a restaurant could be an appropriate fit. There are existing restaurants across the street, a carwash two lots down, a bank on one side and an office on the other.

The differences are easier to see in the evening, night and on the weekends. Offices and office buildings for the most part maintain hours of operation from Monday-Friday within the range of 7:00 a.m.-5:00 p.m. While some institutional uses such as the hospital are open 24 hours a day, the offices within the hospital are primarily open during regular office hours.

The R-4 Special Zone allows "banks and bank branches". The property immediately abutting the rezoning request site is developed with a bank branch. It does have a drive-through which is open until 4:00 p.m. Monday-Thursday, 6:00 p.m. on Friday and from 8:00 a.m.-noon on Saturday. Staff discussed the possible appropriateness of the proposed IHOP while considering a range of conditions. The applicant has proposed nine conditions to be placed on the C-2 Convenience Commercial Zone:

Applicant proposed zoning conditions for the C-2 Convenience Commercial Zone:

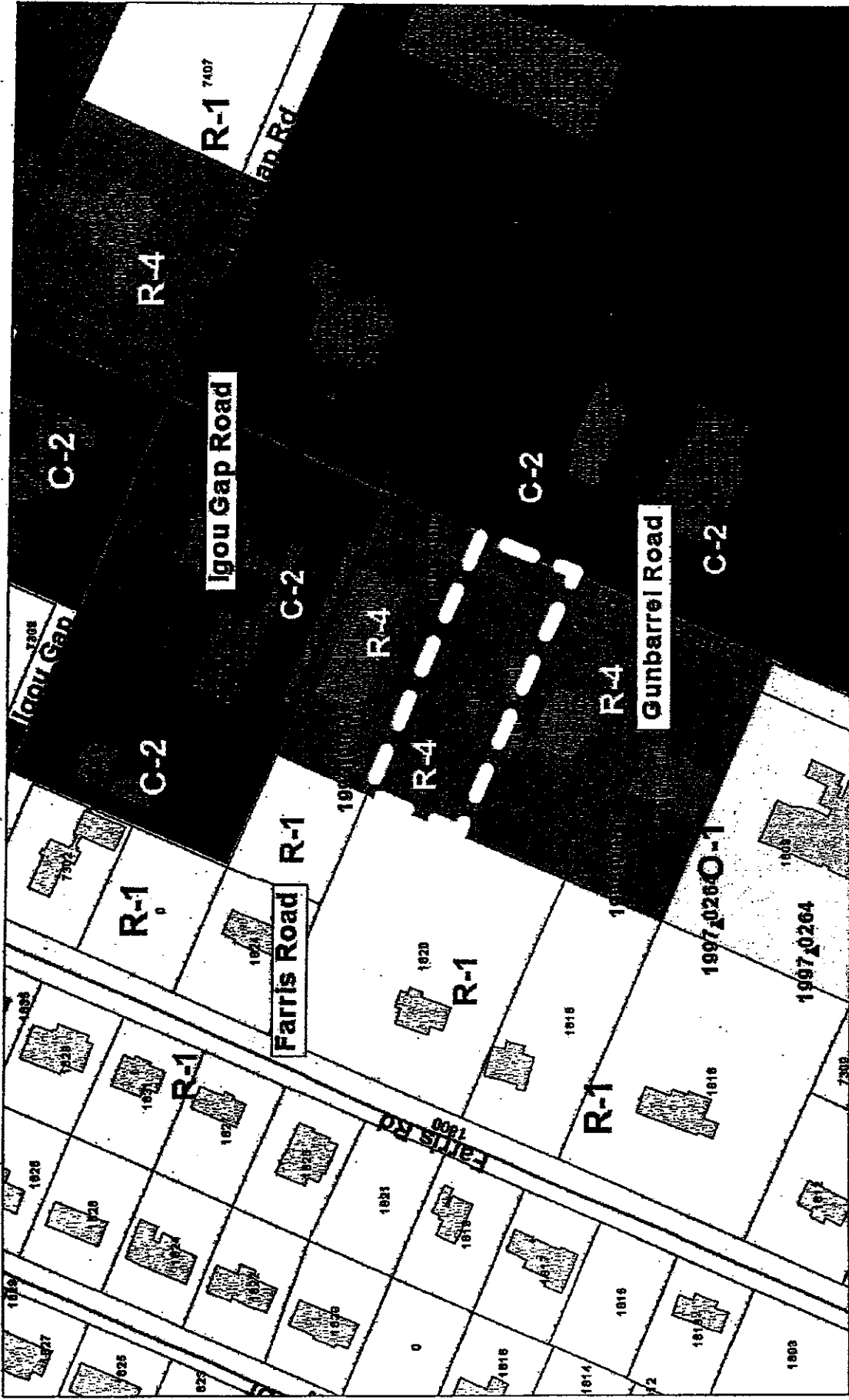
- The use of the property will be limited to a family style sit down restaurant only.
 - The building square footage will be limited to a maximum of 4,000 square feet.
 - Ingress or egress from existing curb cuts only.
 - Install landscaped buffer along the rear property line. Buffer to be a 20' Type "B" Landscaping Buffer.
 - Dumpster to be enclosed in masonry walls to coordinate with the building design.
 - Lighting to be directed away from all adjacent residential areas with poles being a maximum of 35' height.
 - Drive thru service will be prohibited.
 - The sale of alcohol will be prohibited.
 - The building architectural design will be similar to the new IHOP constructed on Brainerd Road.
-

For the most part, the proposed conditions and the site plan seem adequate for many site-specific issues although placement of the dumpster in close proximity to the R-1 Residential Zone should be reconsidered. However, once commercial development is permitted within this institutional/office policy area, greater noise and activity will be introduced during evening and weekend hours. The IHOP model as a 24-hour sit-down restaurant particularly reflects some of the differences between a traditional office model and a commercial development.


Staff also looked at this rezoning through a broader lens of the overall community. The plan recommendation for most of the western edge of Gunbarrel Road between Igou Gap Road and East Brainerd Road is for an Office/Institutional Use as those properties for the most part abut single-family residences. The recommended land use intensity is not higher as there is no ability to buffer the impact of higher-intensity uses with a less-intense use (i.e. introducing a transitional use to step down the activity/impact of a higher-intensity use). The exception is the section for this rezoning case where the properties to the east side of Farris Road have a plan recommendation of medium-intensity residential.

In reviewing the land use, current zoning, and past and existing plans/policies, staff is affirming the existing plan recommendation for office/institutional uses along the western side of Gunbarrel Road. Economic development and job growth are important aspects of community planning. There are still sites for development in the Hamilton Place Mall area particularly to the north of Shallowford Road and possible sites for redevelopment among the vacant commercial properties in the area. Staff supports the planning history for the area that strives to maintain the balance of commercial growth and the redevelopment of a community while maintaining the integrity of neighborhoods. It is a goal of almost every planning process to support reinvestment in the existing residential properties, an investment that can come with continued high quality of life and an understanding of the proposed development form in the area.

In summary, staff is recommending denial of the commercial rezoning request because it is not supported by the City Traffic Engineer and clearly conflicts with the established zoning policy for office-institutional development along this corridor, which was intended to protect the bordering neighborhood.



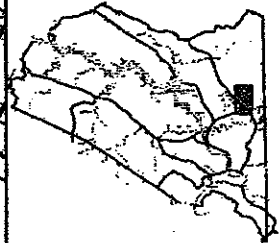
1 in. = 150.0 feet



RPA
REGIONAL PLANNING AGENCY
CHATTAHOOGA - HAMILTON COUNTY

2011-0115 R-4 to C-2

Chattahooga - Hamilton County Regional
Planning Agency



SITE INFORMATION

OWNER INFORMATION:
 MR. BARBARA ISA
 ART GROUP, LLC
 503 FRONT CORNER DRIVE
 COLLEEN, IN 47833

PROJECT CONTACT INFORMATION:
 MR. DAVID SHANAHAN
 THE THROGOT GROUP, LLC
 640 POWERS FERRY ROAD
 SUITE 100
 ATLANTA, GA 30389
 770-446-0446
 dshanan@throgot.com

ZONING:
 EXISTING: R-4 (SPECIAL ZONE)
 PROPOSED: C-2 (COMMERCIAL EXTERIOR ZONE)
 REGULATED AREA OF RECORDING: 0.860 ACRES (87,448 SF)

PARKING:
 REQUIRED: 96 (1 SPACE PER 75 SF OF FLOOR AREA)
 PROVIDED: 94

DRIVE AISLES: 24'

REQUIRED BUILDING SETBACKS:

FRONT: 25'

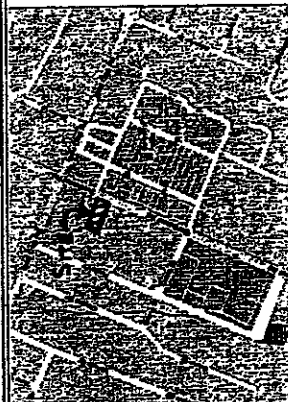
SIDES: 10' (MINI ADJACENT TO RESIDENTIAL ZONING)

REAR: 25' (MINI ADJACENT TO RESIDENTIAL ZONING)

LANDSCAPE BUFFER:

A 30' TYPE 'B' LANDSCAPE BUFFER IS REQUIRED ALONG ALL PROPERTY LINES THAT ADJUT RESIDENTIAL ZONING.

SITE LOCATION MAP

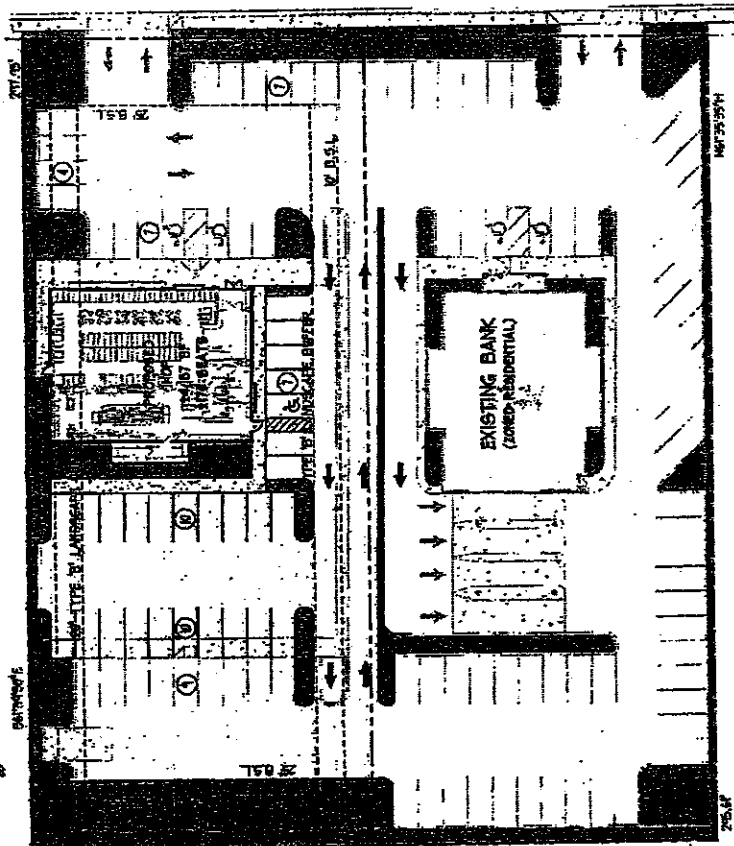


LEGEND

PROPOSED ASPHALT AREAS

PROPOSED LANDSCAPED AREAS

HAMILTON EAST PROFESSIONAL COURTS,
 LLC, A TENNESSEE LIMITED LIABILITY COMPANY
 DEED BOOK 729, PAGE 651 LOT 6 FINE TERRACE
 SUBDIVISION (PG 24, PG 14)
 ZONED R-4



CAVIN V. BRYANT AND SARAH S. BRYANT, TRUSTEES
 DEED BOOK 407, PAGE 531
 ZONED R-4

DEBORAH JUSTIANO
 DEED BOOK 428, PAGE 482
 ZONED R-4

VIC K. SCOTT AND JELLA SCOTT
 DEED BOOK 176, PAGE 98
 ZONED R-4

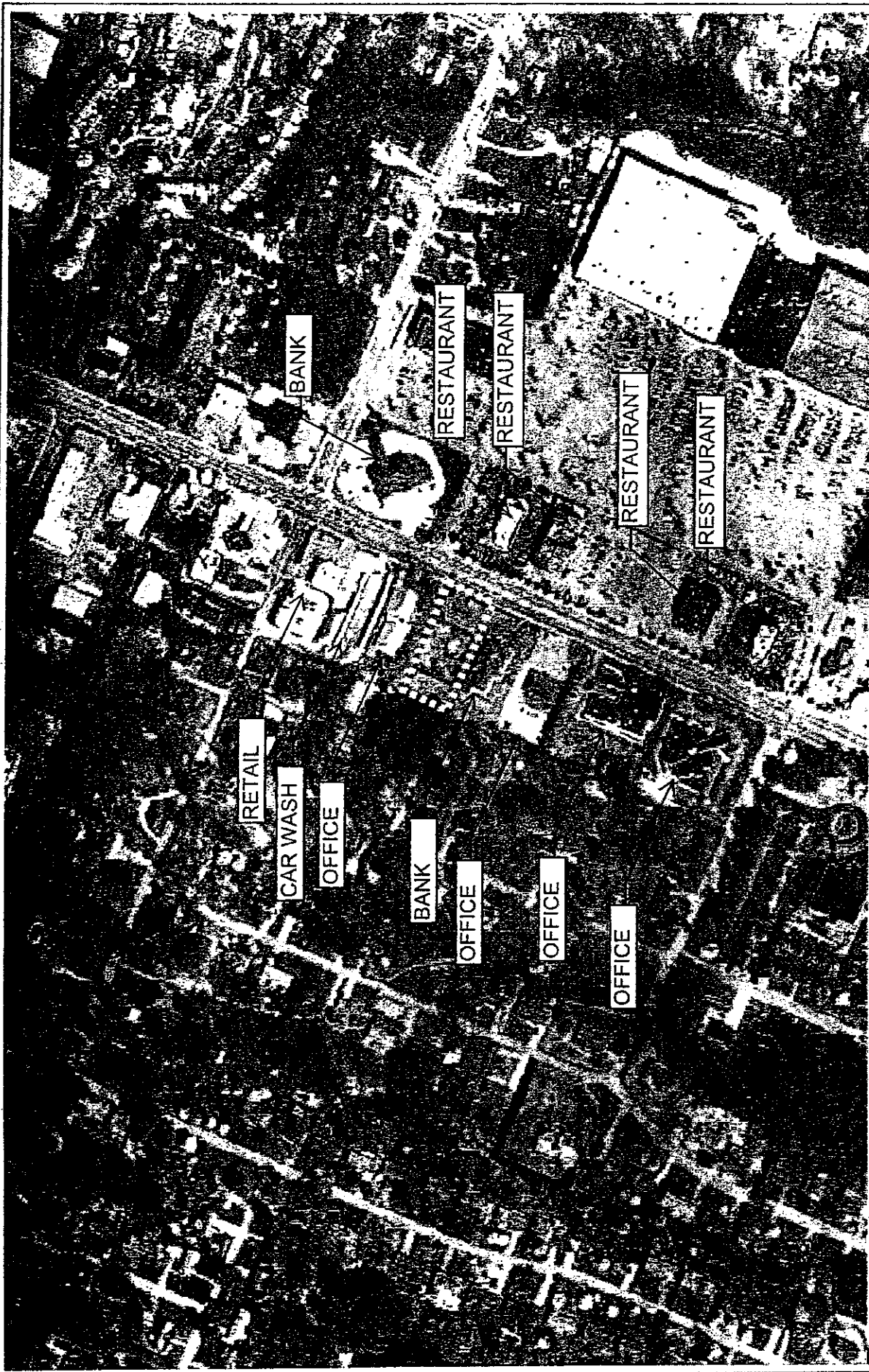
IHOP - GUN BARREL ROAD
 RE-ZONING SITE PLAN
 CHATTANOOGA, TENNESSEE

DATE:	04/08/2011
SCALE:	1"=40'
NO. PROJECT #:	891
FILE NAME:	0911-SITE PLAN
PROJECT NUMBER:	314

NO.	REVISIONS	BY	DATE

NO.	REVISIONS	BY	DATE





2011-115 R4 to C2

Printed: Sep 14, 2011

Scale: 1:4000

NEUHOFF TAYLOR ARCHITECTS

PROFESSIONAL CORPORATION

IHOP Zoning Proffers

- The use of the property will be limited to a family style sit down restaurant only.
- The building square footage will be limited to a maximum of 4,000 square feet.
- Ingress or egress from existing curb cuts only.
- Install landscaped buffer along the rear property line. Buffer to be a 20' Type "B" Landscaping Buffer.
- Dumpster to be enclosed in masonry walls to coordinate with the building design.
- Lighting to be directed away from all adjacent residential areas with poles being a maximum of 35' height.
- Drive thru service will be prohibited.
- The sale of alcohol will be prohibited.
- The building architectural design will be similar to the new IHOP constructed on Brainerd Road.



AERIAL PHOTO WITH SITE PLAN





- Commercial
- Office
- Institutional/Civic
- High-density residential

Hamilton Place Community Plan, 2001
 Gunbarrel Road- Igo Gap to East Brainerd

2011-115 City of Chattanooga
November 14, 2011

RESOLUTION

WHEREAS, Bassam Issa of ANT Group, LLC petitioned the Chattanooga-Hamilton County Regional Planning Commission to recommend to the Members of the City Council of the City of Chattanooga the rezoning from R-4 Special Zone to C-2 Convenience Commercial Zone property located at 1825 Gunbarrel Road.

Lot 2, Revised Plat of Lots 1 and 2, Amy's Addition to Pine Terrace Subdivision, Plat Book 86, Page 130, ROHC. Tax Map 158D-F-012 as shown on the attached map.

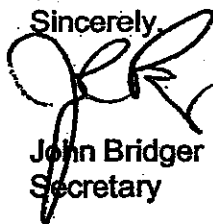
AND WHEREAS, the Planning Commission held a public hearing on this petition on November 14, 2011,

AND WHEREAS, the Planning Commission heard and considered all statements favoring or opposing the petition,

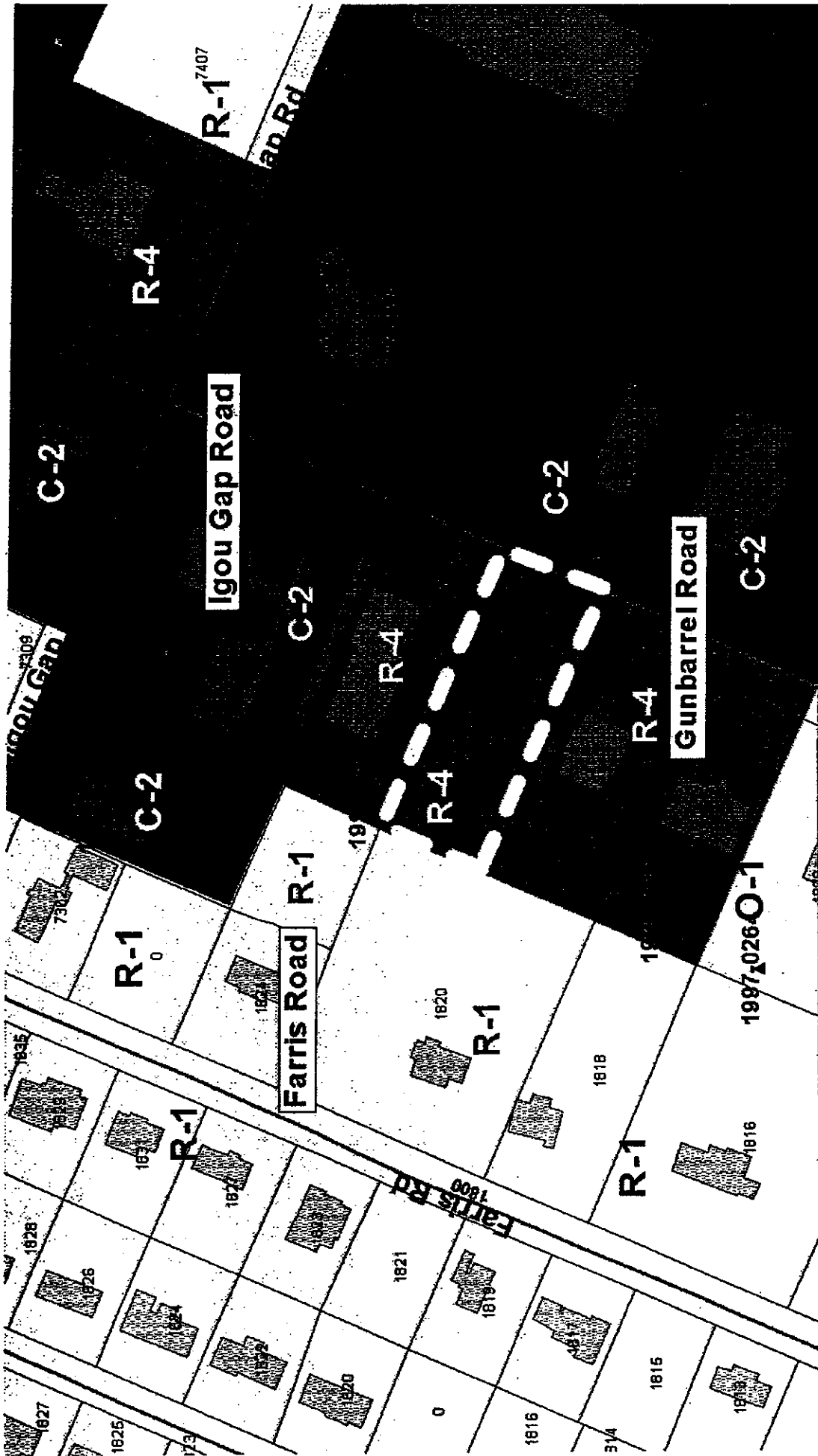
AND WHEREAS, the Planning Commission has studied the petition in relation to existing zoning and land use and potential patterns of development.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission, on November 14, 2011, recommended to the Members of the City Council of the City of Chattanooga that this petition be denied.

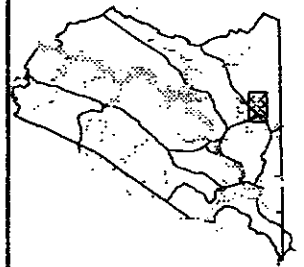
Sincerely,

A handwritten signature in black ink, appearing to read "JBR", is written over the word "Sincerely,".

John Bridger
Secretary



PLANNING COMMISSION RECOMMENDATION FOR CASE NO: 2011-115: Deny



2011-0115 R-4 to C-2



1 in. = 150.0 feet



Chattanooga - Hamilton County Regional Planning Agency

Revised Plan 2011-115

SITE INFORMATION

OWNER INFORMATION:
 MZ BUSBY T&A
 MZ GROUP LLC
 403 FRONT CREEK DRIVE
 COLLEEN, TN 37043

PROJECT CONTACT INFORMATION:
 MR. DAVID SHUMWAY
 THIS TRULOCK GROUP LLC
 4405 POWERS FERRY ROAD
 SUITE 100
 ATLANTA, GA 30334
 770-485-1404
 dshumway@trulock.com

ZONING:
 EXISTING: R-4 (SPECIAL ZONE)
 PROPOSED: C-2 (CONFORMANCE COMMERCIAL ZONE)
 REGULATED AREA OF REZONING: 0.860 ACRES (571,48 SF)

PARKING:
 REQUIRED: 54 (1 SPACE PER 75 SF OF FLOOR AREA)
 PROVIDED: 54

DRIVE AISLE: 14'

REQUIRED BUILDING SETBACKS:
 FRONT: 75'
 SIDE: 10' (WHEN ADJACENT TO RESIDENTIAL ZONING)
 REAR: 25' (WHEN ADJACENT TO RESIDENTIAL ZONING)

LANDSCAPE BUFFERS:
 A 20' TYP. 1/2" LANDSCAPE BUFFER IS REQUIRED ALONG ALL PROPERTY LINES THAT ADJ. RESIDENTIAL ZONING.

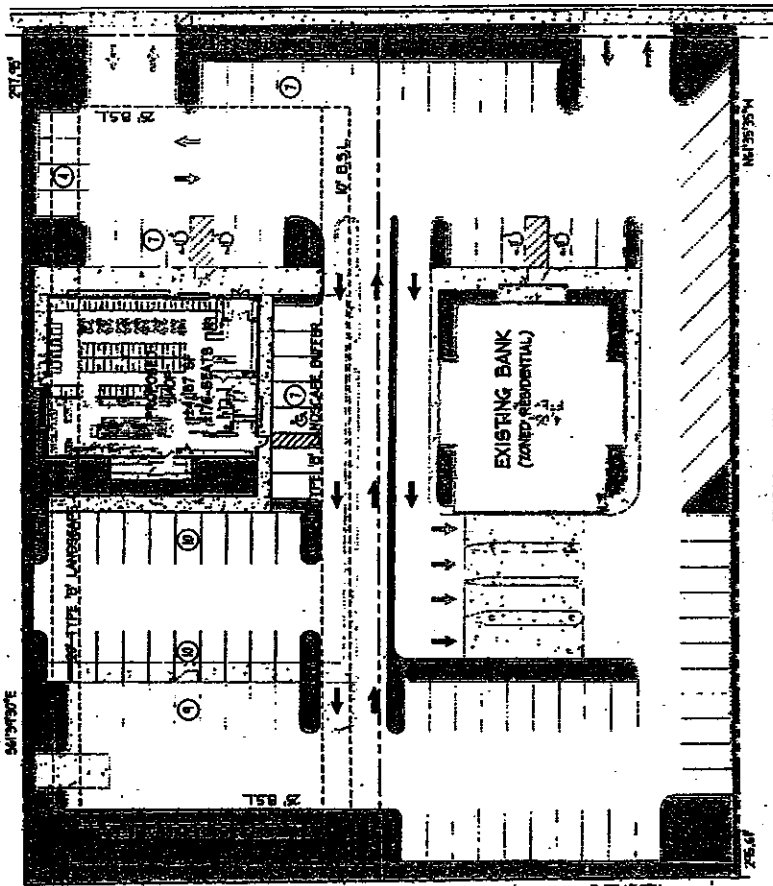
SITE LOCATION MAP



LEGEND

- PROPOSED ASPHALT AREAS
- PROPOSED LANDSCAPED AREAS

HAMILTON EAST PROFESSIONAL PROFESSIONAL COURTS, LLC, A TENNESSEE LIMITED LIABILITY COMPANY
 DEED BOOK 7224, PAGE 884 LOT 6 PINE TERRACE
 SUBDIVISION (78 '74, PG 14)
 ZONED R-4



GAVIN V. BRYANT AND SARAH S. BRYANT, TRUSTEES
 DEED BOOK 487, PAGE 527
 ZONED R-1

DEBORAH DISTERFANO
 DEED BOOK 6282, PAGE 462
 ZONED R-4

VID H. SCOTT AND ZELLA SCOTT
 DEED BOOK 7156, PAGE 951
 ZONED R-1

INGERLITZ DESIGN GROUP, INC.
 CIVIL ENGINEERING AND PLANNING
 6000 ROCKY HILL DRIVE
 SUITE 200
 RICHMOND, VA 23133
 TEL: 804/271-1111 FAX: 804/271-1112
 www.ingerlitz.com



DATE	BY	DATE	BY	DATE	BY
09/06/2011	J.P.P.				
11-40					
1911-SITE PLAN					
FILE NOTE					
PROJECT MANAGER	J.P.P.				

Comparative Analysis of Traffic Impacts

Based on Land Use Type

In an effort to compare the traffic impact of the proposed Gunbarrel IHOP and a building permitted under the existing land use zone, an analysis of the traffic generated by land uses was developed. The proposed IHOP is a 4,200 SF structure and is covered under ITE Land Use Code 932 – High-Turnover (Sit Down) Restaurant. The existing land use zoning for the site is R-4. A medical office would be acceptable under this zoning and would be in keeping with context of businesses along this corridor. This would be covered under ITE Land Use Code 720 – Medical-Dental Office.

To calculate the maximum size medical office possible on the remaining site, a back calculation was conducted utilizing the parking available on the site. The required parking (22) for the existing was subtracted from the existing parking spaces (91). This calculation left 69 parking spaces. The 69 remaining spaces were then divided by 5 spaces/1,000 SF GLA (the required parking space rate). This calculation resulted in 13,800 SF GLA. Based on available site parking, a medical office of 13,800 SF GLA can be built on the remaining site. Next, trip generation numbers were calculated for the two land uses. The results of this analysis are shown below.

	AV Peak (Vehicles)	PM Peak (Vehicles)	PM/TAPE (Vehicles)
	45	44	534
	32	48	499
	+13	-4	+35

TABLE 1: Trips Comparison

The trip generation numbers so very minor differences between the volumes of traffic generated. One important item to consider in evaluating the traffic impact of the two facilities is hours of operations. The standard medical office generally operates from 7:30 AM to 5:30 PM. This is roughly a ten hour time frame. The IHOP will open must earlier 7:30 AM and close much later than 5:30 PM. The IHOP may even be a 24 hour operation. The point of this being that the daily traffic generated by the IHOP is spread over a much wider time (20+ hours) while the daily traffic for the medical office would occur in a much shorter time frame (10 hours). In conclusion, the IHOP and the medical office produce relatively identical volumes of traffic while the impact of the IHOP traffic should be lessened in many respects due to its extended hours of operation.

VOLKERT



www.volkert.com

1428 Chestnut Street
Chattanooga, TN 37343
423.842.3335
Fax 423.842.8630
chattanooga@volkert.com

August 16, 2011

J. Patrick Neuhoff, President
Neuhoff Taylor Architects, P.C.
699 Dallas Road
Chattanooga, TN 37405

SUBJECT: Proposed Restaurant
Gunbarrel Road, Chattanooga, TN

Dear Mr. Neuhoff:

Volkert, Inc. has completed the traffic engineering study you requested for the above referenced project. The study methodology and finding are detailed in the following paragraphs.

Trip generation for the day care facility was developed using the Trip Generation Handbook, published by the Institute of Transportation Engineers (ITE), 8th Edition. It was determined that the proposed restaurant best fit Land Use Code 932 – High-Turnover (Sit-Down) Restaurant. Based on the gross floor area (4,200 square feet), the restaurant is expected to generate 534 daily trips with 50% (267) entering and 50% (267) exiting. Of these daily trips, 45 are expected to occur during the AM peak hour of adjacent street traffic with 52% entering (25 trips) and 48% exiting (23 trips). During the PM peak hour of the adjacent street, 44 trips are expected to occur with 59% (28 trips) entering and 41% (19 trips) exiting.

Peak hour traffic counts were taken on November 4, 2010 on Gunbarrel Road near the proposed site (traffic data attached). The AM peak hour counts indicate 43% of the traffic traveled north and 57% travelled south. The PM peak hour counts indicate 50% of the traffic traveled north and 50% travelled south. Using the existing traffic patterns, directional distributions were applied to proposed trips to be generated by the facility. That is, for the AM peak hour, 43% of the proposed traffic is assumed to be northbound and 57% southbound and for the PM peak hour, 50% is assumed to be northbound and 50% southbound. Of the 25 AM trips entering, 43% (11) were assumed to be traveling north and 57% (14) were assumed to be traveling south. Of the 23 AM trips exiting, 43% (10) were assumed to be traveling north and 50% (13) were assumed to be traveling south. Of the 28 PM peak hour entering trips, it was assumed that 50% (14) would travel north and 50% (14) south. Of the 19 PM trips exiting, 50% (9) were assumed to be traveling north and 50% (10) were assumed to be traveling south. Turning movement diagrams for the proposed AM and PM peaks are attached to this letter.

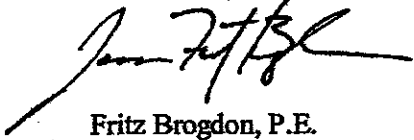
The proposed driveway was analyzed utilizing Highway Capacity Software (HCS+). The HCS+ analysis showed a level-of-service (LOS) of B for the proposed driveway during the AM peak hour and a LOS of C during the PM peak hour. The results of these analysis's are attached to this letter.

Based on the finding of our analysis, it is anticipated that the proposed development driveway should operate efficiently and the traffic generated by the proposed restaurant should produce no significant impact to the capacity and/or operations along Gunbarrel Road.

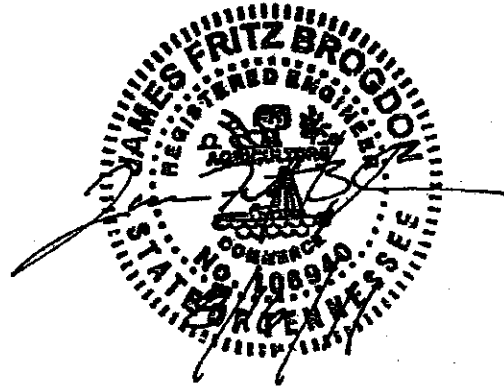
If you have any questions or wish to discuss the finding of this study, please feel free to call me.

Very truly yours,

VOLKERT, INC.



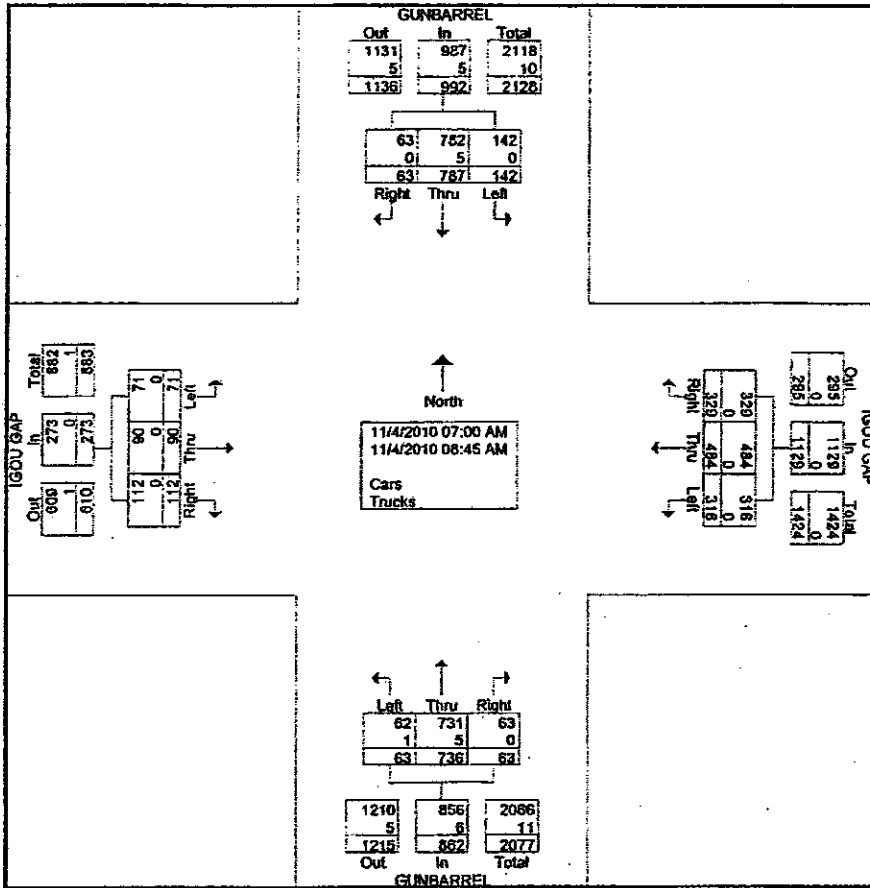
Fritz Brogdon, P.E.
Project Manager



All Traffic Data Services, Inc

1336 Farmer Road
 Conyers, Ga. 30012
 404-374-1283

File Name : #10Gunbarrel@lgouGapAM
 Site Code : 00000000
 Start Date : 11/4/2010
 Page No : 2

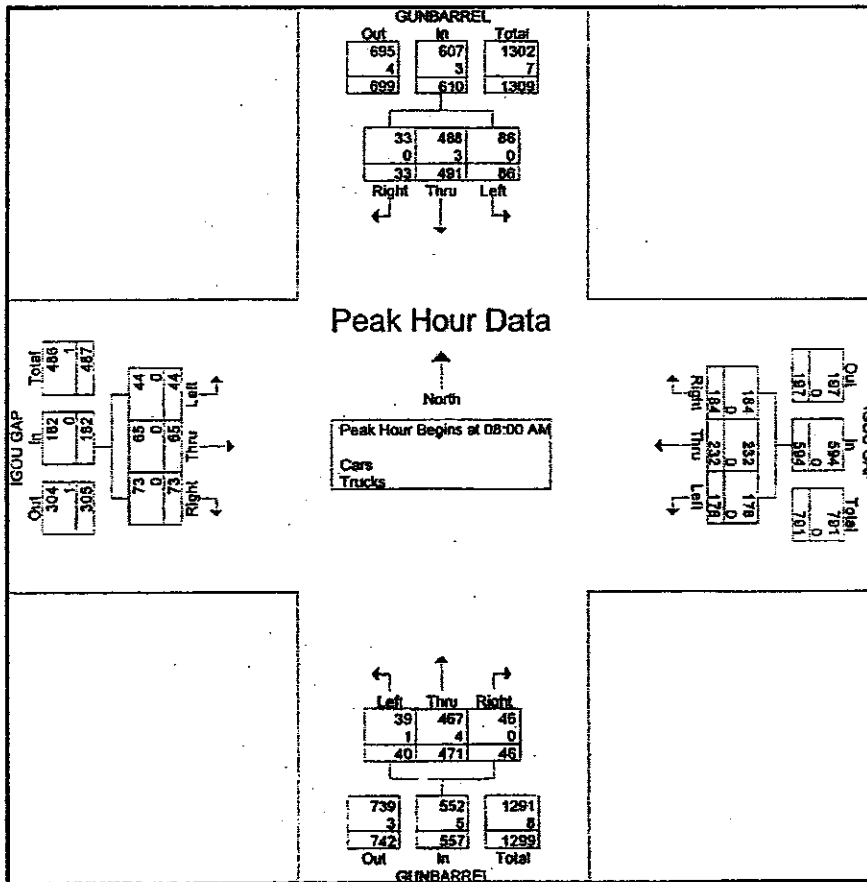


All Traffic Data Services, Inc

1336 Farmer Road
Conyers, Ga. 30012
404-374-1283

File Name : #10Gunbarrel@IgoGapAM
Site Code : 00000000
Start Date : 11/4/2010
Page No : 3

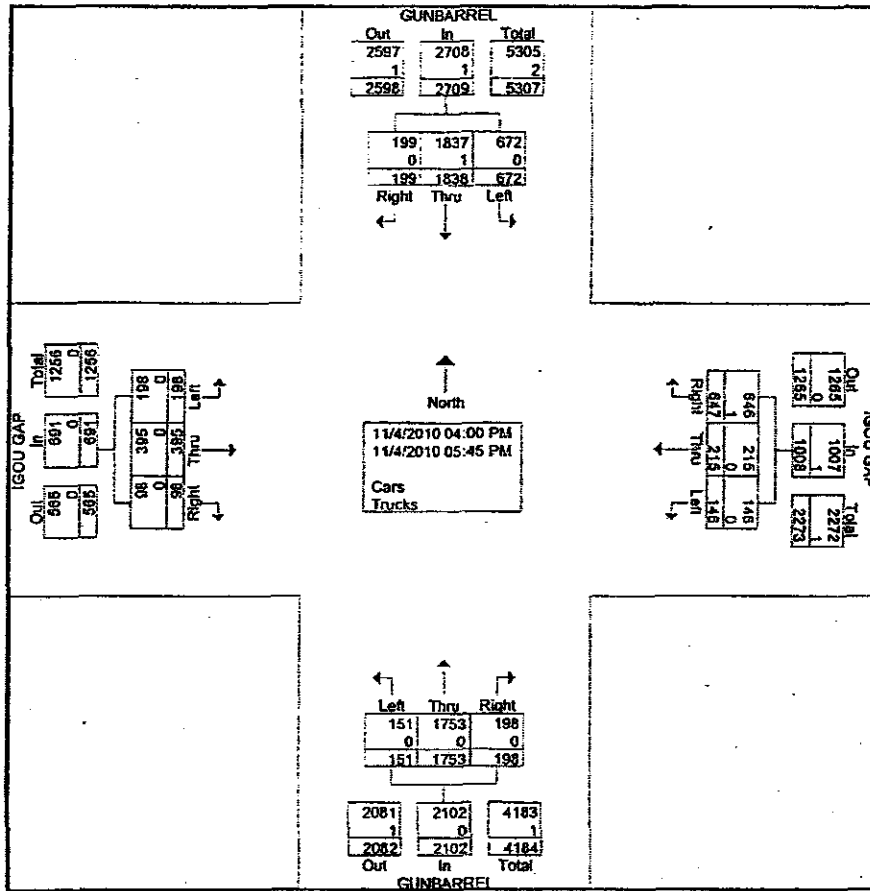
Start Time	GUNBARREL Southbound				IGOU GAP Westbound				GUNBARREL Northbound				IGOU GAP Eastbound				Int. Total
	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	
Peak Hour Analysis From 07:00 AM to 08:45 AM - Peak 1 of 1																	
Peak Hour for Entire Intersection Begins at 08:00 AM																	
08:00 AM	20	109	5	134	36	65	28	139	7	94	8	109	10	21	16	47	429
08:15 AM	23	123	6	152	47	64	43	154	8	107	15	130	11	16	22	49	485
08:30 AM	22	115	11	148	49	49	54	152	13	85	12	110	15	13	18	46	456
08:45 AM	21	144	11	176	46	54	49	149	12	185	11	208	8	15	17	40	573
Total Volume	86	491	33	610	178	232	184	594	40	471	46	557	44	65	73	182	1943
% App. Total	14.1	80.5	5.4		30	39.1	31		7.2	84.6	8.3		24.2	35.7	40.1		
PHF	.935	.852	.750	.866	.908	.892	.852	.864	.769	.636	.767	.669	.733	.774	.830	.829	.848
Cars	86	488	33	607	178	232	184	594	39	467	46	552	44	65	73	182	1935
% Cars	100	99.4	100	99.5	100	100	100	100	97.5	99.2	100	99.1	100	100	100	100	99.6
Trucks	0	3	0	3	0	0	0	0	1	4	0	5	0	0	0	0	8
% Trucks	0	0.6	0	0.5	0	0	0	0	2.5	0.8	0	0.9	0	0	0	0	0.4



All Traffic Data Services, Inc

1336 Farmer Road
Conyers, Ga. 30012
404-374-1283

File Name : #10Gunbarrel@lgouGapPM
Site Code : 00000000
Start Date : 11/4/2010
Page No : 2

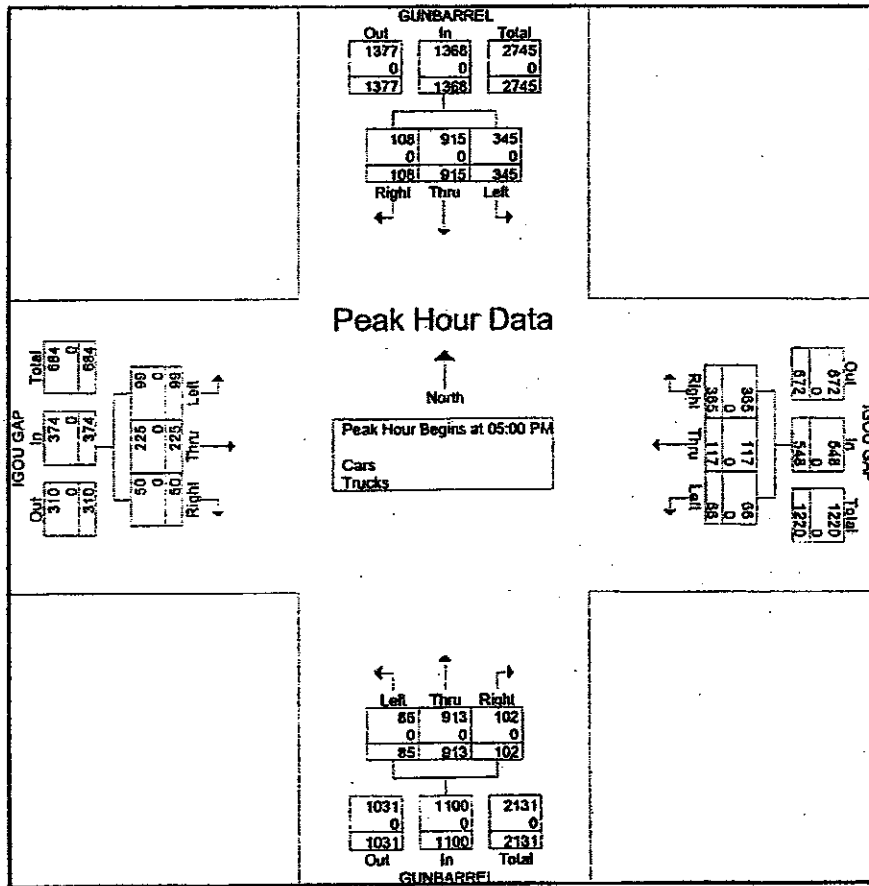


All Traffic Data Services, Inc

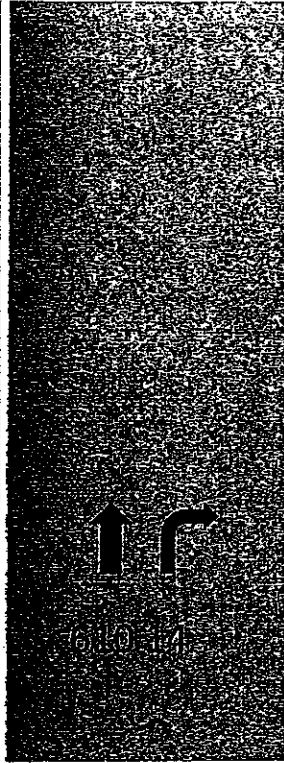
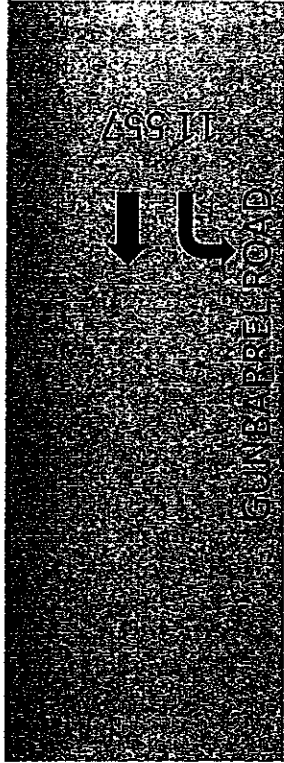
1336 Farmer Road
Conyers, Ga. 30012
404-374-1283

File Name : #10Gunbarrel@IgouGapPM
Site Code : 00000000
Start Date : 11/4/2010
Page No : 3

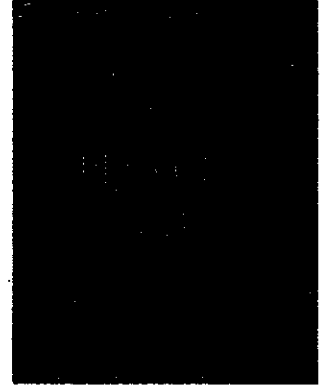
Start Time	GUNBARREL Southbound				IGOU GAP Westbound				GUNBARREL Northbound				IGOU GAP Eastbound				Int. Total
	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	
Peak Hour Analysis From 04:00 PM to 05:45 PM - Peak 1 of 1																	
Peak Hour for Entire Intersection Begins at 05:00 PM																	
05:00 PM	86	223	33	342	14	22	80	116	24	216	38	278	20	47	13	80	818
05:15 PM	86	260	28	374	18	36	77	131	23	221	24	268	28	67	15	110	883
05:30 PM	82	199	25	306	15	27	102	144	23	251	17	291	33	63	8	104	845
05:45 PM	91	233	22	346	19	32	105	157	15	225	23	263	18	48	14	80	846
Total Volume	345	915	108	1368	65	117	365	548	85	913	102	1100	99	225	50	374	3390
% App. Total	25.2	66.9	7.9		12	21.4	66.6		7.7	83	9.3		26.5	80.2	13.4		
PHF	0.48	0.80	0.18	0.14	0.68	0.13	0.61	0.73	0.85	0.909	0.71	0.45	0.750	0.840	0.33	0.50	0.960
Cars	345	915	108	1368	65	117	365	548	85	913	102	1100	99	225	50	374	3390
% Cars	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Trucks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
% Trucks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0



NORTH

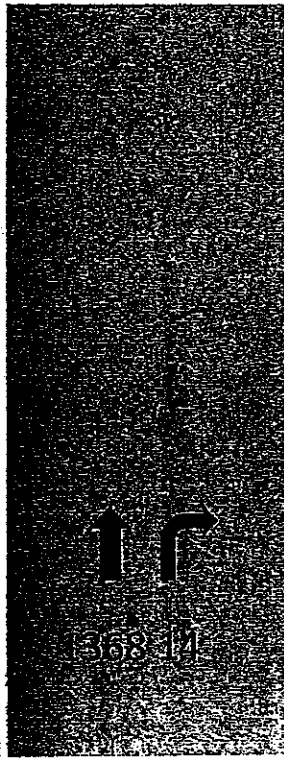
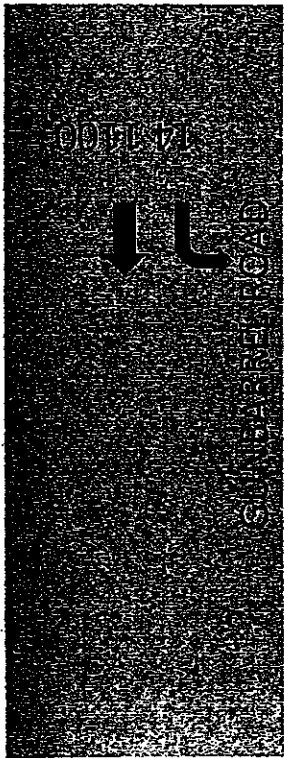


10 13



**AM PEAK W/
PROPOSED
TRAFFIC**

NORTH



9 10



**PM PEAK W/
PROPOSED
TRAFFIC**

TWO-WAY STOP CONTROL SUMMARY								
General Information				Site Information				
Analyst	Brogdon			Intersection	Proposed Driveway			
Agency/Co.				Jurisdiction	Hamilton			
Date Performed	8/16/2011			Analysis Year	2011			
Analysis Time Period	AM Peak							
Project Description								
East/West Street: Driveway				North/South Street: Gunbarrel				
Intersection Orientation: North-South				Study Period (hrs): 0.25				
Vehicle Volumes and Adjustments								
Major Street	Northbound			Southbound				
Movement	1	2	3	4	5	6		
	L	T	R	L	T	R		
Volume (veh/h)	11	557	0	0	742	14		
Peak-Hour Factor, PHF	1.00	1.00	1.00	1.00	1.00	1.00		
Hourly Flow Rate, HFR (veh/h)	11	557	0	0	742	14		
Percent Heavy Vehicles	0	--	--	0	--	--		
Median Type	Undivided							
RT Channelized			0				0	
Lanes	1	2	0	1	2	0		
Configuration	L	T	TR	L	T	TR		
Upstream Signal		0			1			
Minor Street	Eastbound			Westbound				
Movement	7	8	9	10	11	12		
	L	T	R	L	T	R		
Volume (veh/h)	10	0	13					
Peak-Hour Factor, PHF	1.00	1.00	1.00	1.00	1.00	1.00		
Hourly Flow Rate, HFR (veh/h)	10	0	13	0	0	0		
Percent Heavy Vehicles	0	0	0	0	0	0		
Percent Grade (%)		0			0			
Flared Approach		N			N			
Storage		0			0			
RT Channelized			0				0	
Lanes	0	1	0	0	0	0		
Configuration		LTR						
Delay, Queue Length, and Level of Service								
Approach	Northbound	Southbound	Westbound			Eastbound		
Movement	1	4	7	8	9	10	11	12
Lane Configuration	L	L					LTR	
v (veh/h)	11	0					23	
C (m) (veh/h)	931	1024					423	
v/c	0.01	0.00					0.05	
95% queue length	0.04	0.00					0.17	
Control Delay (s/veh)	8.9	8.5					14.0	
LOS	A	A					B	
Approach Delay (s/veh)	--	--					14.0	
Approach LOS	--	--					B	

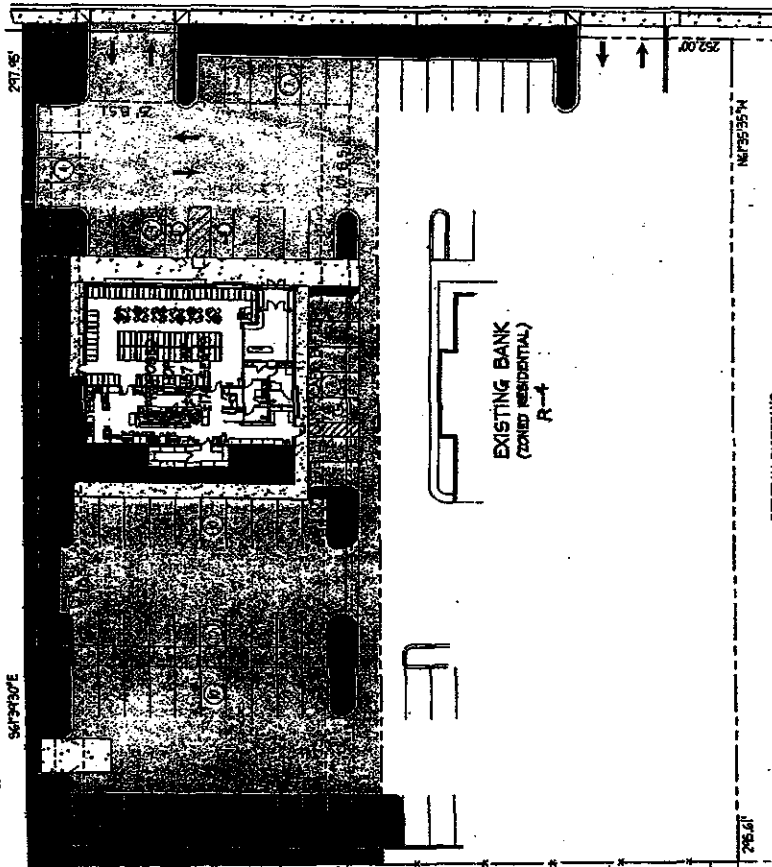
TWO-WAY STOP CONTROL SUMMARY								
General Information				Site Information				
Analyst	Brogdon			Intersection	Proposed Driveway			
Agency/Co.				Jurisdiction	Hamilton			
Date Performed	8/16/2011			Analysis Year	2011			
Analysis Time Period	PM Peak							
Project Description								
East/West Street: Driveway				North/South Street: Gunbarrel				
Intersection Orientation: North-South				Study Period (hrs): 0.25				
Vehicle Volumes and Adjustments								
Major Street	Northbound			Southbound				
Movement	1	2	3	4	5	6		
	L	T	R	L	T	R		
Volume (veh/h)	12	1100	0	0	1051	16		
Peak-Hour Factor, PHF	1.00	1.00	1.00	1.00	1.00	1.00		
Hourly Flow Rate, HFR (veh/h)	12	1100	0	0	1051	16		
Percent Heavy Vehicles	0	--	--	0	--	--		
Median Type	Undivided							
RT Channelized			0				0	
Lanes	1	2	0	1	2	0		
Configuration	L	T	TR	L	T	TR		
Upstream Signal		0			1			
Minor Street	Eastbound			Westbound				
Movement	7	8	9	10	11	12		
	L	T	R	L	T	R		
Volume (veh/h)	9	0	10					
Peak-Hour Factor, PHF	1.00	1.00	1.00	1.00	1.00	1.00		
Hourly Flow Rate, HFR (veh/h)	9	0	10	0	0	0		
Percent Heavy Vehicles	0	0	0	0	0	0		
Percent Grade (%)	0			0				
Flared Approach		N			N			
Storage		0			0			
RT Channelized			0				0	
Lanes	0	1	0	0	0	0		
Configuration		LTR						
Delay, Queue Length, and Level of Service								
Approach	Northbound	Southbound	Westbound			Eastbound		
Movement	1	4	7	8	9	10	11	12
Lane Configuration	L	L					LTR	
v (veh/h)	12	0					19	
C (m) (veh/h)	757	642					209	
v/c	0.02	0.00					0.09	
95% queue length	0.05	0.00					0.30	
Control Delay (s/veh)	9.8	10.6					23.9	
LOS	A	B					C	
Approach Delay (s/veh)	--	--					23.9	
Approach LOS	--	--					C	



HAMILTON EAST PROFESSIONAL PROFESSIONAL COURTS,
 LLC, A TENNESSEE LIMITED LIABILITY COMPANY
 DEED BOOK 723, PAGE 854 LOT 5 PINE TERRACE
 SUBDIVISION (PB 14, PG 14)
 ZONED R-4

56134307E

297.95



GANN V. BRYANT AND SARAH S. BRYANT, TRUSTEES
 DEED BOOK 4517, PAGE 921
 ZONED R-1

EXISTING BANK
 (ZONED RESIDENTIAL)
 R-4

DEBORAH DISTEFANO
 DEED BOOK 6263, PAGE 452
 ZONED R-4

VIO H. SCOTT AND ZELLA SCOTT
 DEED BOOK 1734, PAGE 681
 ZONED R-1

LEGEND

PROPOSED ASPHALT AREAS

PROPOSED LANDSCAPED AREAS

SITE INFORMATION

OWNER INFORMATION:
 MR. BASSETT ISA
 AIT GROUP, LLC
 415 FIRST CREEK DRIVE
 COLLEMAN, TN 37035

PROJECT CONTACT INFORMATION:
 MR. DAVID SULLIVAN
 THE TRULOCK GROUP, LLC
 1400 PROSPER FERRY ROAD
 SUITE 100
 ATLANTA, GA 30331
 770-852-0400
 dsullivan@trulock.com

ZONING:
 EXISTING: R-4 (SPECIAL ZONE)
 PROPOSED: C-2 (COMMERCIAL ZONE)
 REQUESTED AREA OF REZONING: 0.860 ACRES (71,441 SF)

PARKING:
 REQUIRED: 56 (1 SPACE PER 75 SF OF FLOOR AREA)
 PROVIDED: 57

DRIVE WHEELS: 24'

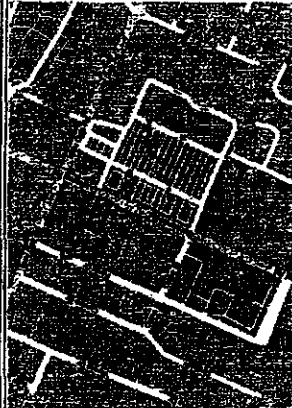
REQUIRED BUILDING SETBACKS:

FRONT: 20'
 SIDES: 10' (WHEN ADJACENT TO RESIDENTIAL ZONING)
 REAR: 25' (WHEN ADJACENT TO RESIDENTIAL ZONING)

LANDSCAPE BUFFERS:

A 20' TREE 10' LANDSCAPE BUFFER IS REQUIRED AROUND ALL PROPERTY LINES THAT ADJ. RESIDENTIAL ZONING.

SITE LOCATION MAP



IHOP - GUN BARREL ROAD
 RE-ZONING SITE PLAN
 CHATTANOOGA, TENNESSEE

DATE	09/08/2011
SCALE	1"=40'
DWG PROJECT #	09
FILE NAME	104-SITE PLAN
PROJECT MANAGER	JFP

NO.	REVISIONS	BY	DATE	NO.	REVISIONS	BY	DATE



2011-115

**CHATTANOOGA-HAMILTON COUNTY
REGIONAL PLANNING COMMISSION
MINUTES**

DATE: Monday, November 14, 2011
TIME: 1:00 p.m.
PLACE: Hamilton County Courthouse

The Planning Commission minutes are digitally recorded and are located on our website www.chcrpa.org by going to the Development Services tab then Monthly Zoning Information and then under Planning Commission Meeting Minutes.

Present:

County Commissioner Chester Bankston, Mr. Jon Bell, City Councilman Jack Benson, Mr. Y. L. Coker, Ms. Mary Eastman, Ms. Beverly Johnson (representing Mayor Ron Littlefield), Mr. Kenneth Jordan, Mr. Wanza Lee, Mr. Barry Payne, Mr. Adam Veron, Mr. Dan Wade (representing County Mayor Jim Coppinger) and Chairman Dale Mabee

**Planning
Commission
Members**

Others Present:

Mr. Greg Haynes, Mr. John Bridger, Mr. Hugh Failing, Ms. Sandra Harrison, Mr. Bryan Shults and Ms. Melissa Taylor

**Planning
Agency
Staff**

Public Hearing

The procedure followed in presenting each petition was as follows:

- 1) Presentation of maps and photos of the area showing zoning and land use.
- 2) Exceptions to this procedure come when the staff recommends approval and no opposition is present.
- 3) When opposition is present, each side needs to limit remarks to a total of three minutes.

**Public
Hearing
Procedure**



Withdrawn Case

Case No. 2011-120 – Deanna Duncan & J. Terry Cannon, Jr. – 1634 Rossville Avenue
– City of Chattanooga – Rezone from M-1 to C-3

2011-120
Withdrawn
City Dist.#7

This case was withdrawn by the applicant before the meeting.

Plan of Services for Proposed Annexed Area

City of Lakesite – Remaining Portion of Tax Parcel No. 084-015

City of
Lakesite
Map 084-015

Mr. Greg Haynes presented the City of Lakesite petition for land to be annexed into the City of Lakesite. This is for the remaining portion of Tax Parcel No. 084-015 that came before the Planning Commission months ago. RPA staff has reviewed a plan of services and included a report. The finding from the staff is that the proposed plan of services is reasonable and meets the letter and spirit of the governing statutory standard set forward in TCA Section 6-51-102.

No one in attendance was in opposition.

A motion was made by Mr. Jack Benson and seconded by Mr. Wanza Lee to approve the staff recommendation for the plan of services for City of Lakesite's remaining portion of Tax Parcel No. 084-015.

The motion to approve carried unanimously.

Public Hearing and Action - Subdivision Plats & Variances

S/D Plats &
Variances
Approved

A motion was made by Mr. Jack Benson and seconded by Mr. Y. L. Coker to approve the staff recommendation on the variance request from the Hamilton County Subdivision Regulations. Motion passed unanimously.

New Business (Rezoning, Closures/Abandonments, Special Permits, Condition Amendments, Mandatory Referrals, Regulation Amendments)

Case No. 2011-115 – ANT Group - City of Chattanooga – 1825 Gunbarrel Road -
Rezone from R-4 to C-2

2011-115
Opposition
Denied
CityDist.#4

Mr. Haynes gave the staff presentation and explained the staff recommendation to deny.

There was opposition present.

Mr. Pat Neuhoff of Neuhoff Taylor Architects, 609 Dallas Road, representing Mr. Bassam Issa, pointed out that IHOP has been looking for space along Gunbarrel Road for the past ten years and this is the only available vacant site that can be purchased which meet the specifications of the restaurant. He commended the Planning Commission for putting together the plan that has been in place for the past ten years and said it has been a very successful plan. He thinks that it is time to look at a new plan in considering development as we move forward.

Mr. Don Shumaker, 2428 Baskette Way in the Village of Ashwood Subdivision, asked that this area not be converted into commercial property. He said that a restaurant like IHOP would add to the already snail-like movement of traffic along Gunbarrel. He has no objections to updating the land use plan and looks forward to it.

Bernard O'Brian, a resident of the Village of Ashwood Subdivision, questioned the impact on the new zoning studies that are now in progress and questioned if the proposed zoning change would stand the test of law.

Mr. John Crawford recommended leaving the existing roads alone until the roads are developed in which the plan calls for.

Mr. Mike Ledford, President of Neighborhood Association for Bella Vista, asked to keep the plan the way it was designed; for office use only.

Mr. Roger Meyer, chair of Friends for East Brainerd, stated they have had three meetings on this and the only meeting where a lot of people showed up was the meeting at the Shallowford Road YMCA, of which the majority were part of the development group or family of that group. He said it was brought up as to why he was concerned being that he lives two miles off of Morris Hill Road to which he said Friends of East Brainerd's mission statement says that they will work to stop changes in the zoning.

Mr. Fred Williamson, 1407 Walker Hill Drive in the Concord Highland Subdivision, said a vote among the officers of the Subdivision Association was taken in which all were opposed to the increase in traffic, increase in noise and violation of the land use plan.

Mr. Chester Bankston made a motion to deny this request. Mr. Jack Benson seconded the motion and the motion to deny carried unanimously.

Case No. MR-2011-118 – Miller-McCoy, Inc./Memorial Health Care Systems, Inc. – City of Chattanooga - 2600 blk Robbins Street – MR: Sewer Easement Abandonment

MR-2011-118
App.w/conds
City Dist.#9

Mr. Greg Haynes gave the presentation and explained the staff recommendation to approve, subject to review of City Engineer and all public utilities.

There was no opposition present.

Mr. Dan Wade made the motion to approve staff recommendation. Mr. Y. L. Coker seconded the motion and the motion carried unanimously.

Case No. 2011-119 – Don Walker – Hamilton County – 8926 Fuller Road -
Rezone from A-1 to R-1

2011-119
Approved
Co. Dist. #7

Mr. Greg Haynes gave the presentation and explained the staff recommendation to approve.

There was no opposition present.

Mr. Dan Wade made the motion to approve the staff recommendation. Ms. Beverly Johnson seconded the motion and the motion carried unanimously.

Case No. MR-2011-124 – City of Chattanooga, Parks & Recreation Department/Larry Zehnder – City of Chattanooga – 1151 E, 23rd Street (Montague Park) – MR: Lease Agreement

MR-2011-124
Approved
CityDist.#8

Mr. Haynes gave the staff presentation and explained the staff recommendation to approve.

There was no opposition present.

Ms. Beverly Johnson made a motion to approve this request. Mr. Barry Payne scoded the motion and the motion to approve carried unanimously.

Case No. MR-2011-125- City of Chattanooga/Real Property Office, Dan Thornton -
City of Chattanooga –5740 Brainerd Road – MR: Acquisition

MR-2011-129
Approved
City Dist. #6

Mr. Haynes gave the staff presentation and explained the staff recommendation to approve.

There was no opposition present.

Mr. Dan Wade made the motion to approve. Mr. Jack Benson seconded the motion and the motion to approve carried unanimously.

Approval of Minutes of October 10, 2011

Minutes
Oct.10, 2011
Approved

A motion was made by Mr. Jack Benson and seconded by Mr. Barry Payne to approve the minutes as submitted and the motion to approve carried unanimously.

Adjournment:

Adjourn

There being no further business the meeting was adjourned at 1:47 p.m.

Respectfully submitted,

Dale Mabee, Chairman

John Bridger, Secretary

DM:JB:sh

CITY COUNCIL BUILDING
CHATTANOOGA, TENNESSEE
DECEMBER 20, 2011

Chairman Ladd called the meeting of the Chattanooga City Council to order, with Councilmen Benson, Gilbert, McGary, Murphy, Rico, Robinson and Scott present. Councilwoman Berz was absent due to previous commitment. City Attorney Michael McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

PLEDGE OF ALLEGIANCE/
INVOCATION

The Pledge of Allegiance was led by Councilwoman Scott, followed by invocation.

MINUTE APPROVAL

On motion of Councilman Rico, seconded by Councilwoman Robinson, the minutes of the previous meeting were approved as published and signed in open meeting.

Chairman Ladd asked that all cell phones be silenced. She also noted that it might seem that the Council was moving quickly on items but that all of them have been read and studied, and the Council had done their homework.

CLOSE AND ABANDON

(MR-2011-118 Memorial Health Care System)

On motion of Councilman Murphy, seconded by Councilman Rico,
**AN ORDINANCE CLOSING AND ABANDONING A PORTION OF
ROBBINS STREET BEGINNING AT THE EAST LINE OF KILMER
STREET THEN SOUTHEAST SOME SIX HUNDRED FIFTY (650)
FEET TO THE WEST LINE OF THE 800 BLOCK OF GLENWOOD
DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO
CERTAIN CONDITIONS**

passed second and final reading and was signed in open meeting with Councilwoman Scott abstaining.



DISTRICT REAPPORTIONING

On motion of Councilwoman Robinson, seconded by Councilman Rico,
**AN ORDINANCE REAPPORTIONING THE NINE DISTRICTS FOR
THE CITY COUNCIL**
passed second and final reading and was signed in open meeting.

Councilman Gilbert stated that the Council had gone back and forth on how to do this—from 50% to 60% and then a proposal back to 50%; that it seems to work better if the percentage is higher in districts 5, 8, and 9 because it gives more opportunity for representation in these districts rather than the other route that was proposed.

REZONING

2011-115 (Bassam Issa)

The request to rezone property located at 1825 Gunbarrel Road came on to be heard.

Councilman Murphy moved that the rezoning be approved. This was seconded by Councilman McGary.

Chairman Ladd noted that a lot of people were here tonight in interest of this case. She described the procedure, stating that the Clerk would first read the Ordinance; that RPA Director of Development, Greg Haynes, would give a presentation with the facts of the case; that the applicant would be given up to nine (9) minutes to present his case; and then three people from the opposing side could talk for three minutes each.

Greg Haynes of RPA stated that this rezoning was for an IHOP Restaurant and presented the map, noting that this was a one acre site that was zoned R-4 in 2003. He then provided a wider view of the zoning showing the surrounding landmarks of Erlanger, Target, and Hamilton Place Mall. He stated that both sides of Gunbarrel were being used commercially; that restaurants are on the east side and offices and a bank on the west side; that the applicant had provided a detailed site plan, using the curb cuts for a 24-hr restaurant. He noted that nine conditions had been placed on the request. He showed a photo of the new Brainerd Rd. IHOP, which is similar to what is being proposed here. He showed a view of the vacant lot and the adjoining office building on the north side and the Bank on the south side. Panera Bread is across the street.

REZONING (CONT'D)

Mr. Haynes stated that in 2001 a Land Use Plan was put into place that recommended offices and institutional uses on this side in order to protect and enhance the existing neighborhood; that RPA had supported this Policy since 1986. He stated that many seem to think that restaurants are an appropriate fit; however rezoning this property would set a precedent on the west side; that in an effort to promote strong commercial growth and protect the residential neighborhood, they were recommending denial.

Councilman Benson noted that the Planning Commission also recommended denial 100%; that the Traffic Engineer recommended denial; that once this is done, you can't keep other spots from going this way.

Mr. Haynes agreed that the Traffic Engineer felt that a precedent would be set.

Councilman Benson noted that the Planning Commission and also the Staff recommended denial.

Councilman Gilbert asked if there was not something that had been denied at this location in the past? Mr. Haynes stated that it was the Brick Oven Grill, and it was thought that this was about 18 years ago.

The applicant, Bassam Issa spoke. He stated that he was a local developer and was asking for this to be rezoned to C-2 for a restaurant; that they had imposed restrictions on themselves including (1) This be a Family Style Restaurant; (2) 2200 Sq. Ft.; (3) Parking Lot and Dumpster are existing, as are the lights and paving; and (4) Install landscaping buffer along the rear property line so that the neighborhood will not be affected. He stated that he would be glad to add any other restrictions that the Council felt were needed on this provided that it did not compromise the functionality of IHOP.

Mr. Issa explained why he felt he should get this rezoning—that this is a commercial sector and across from the property is Chick-Fil-A, Golden Corral, Shoguns and Panera, all well over \$3 million dollars; in behind them are Targets, a grocery store, two more restaurants, Kohls, and the Lighting Gallery owned by Councilman Benson and his son—that this is a lot of commercial property. He stated that his property was different from the rest; that on his side he is surrounded by the only gas station on Gunbarrel Rd., AT&T, and the Goo Goo Car Wash. The use on the south side is a Bank. He stated that in looking at all of this, no one on Gunbarrel Rd. from Crane Rd. to E. Brainerd Rd. have these same specifications; that the domino effect that Councilman Benson speaks of is in error.

REZONING (CONT'D)

Mr. Issa noted that the Traffic Study allowed this and the Traffic Engineer accepted this Traffic Study—that the number of cars would be the same as for an office; that the Traffic Engineer's fear was of a precedent being set, and this was his reason for recommending denial. He stated that the neighborhood directly behind him supported this.

He stated that there had been two public meetings to address the concerns of the opposition—that all of the concern seemed to be about the Land Use Plan, which had been emphasized by Councilman Benson. He noted that in eight (8) cases since 2000, the Land Use Plan had been broken in more sensitive areas; that according to Councilman Benson, and it is in print, he admitted he had broken it on the fringes, comparing it to his fingers and toes only and not his heart. Mr. Issa maintained that the heart is where the people are; that Councilman Benson broke the Land Use Plan on Bell Vista and also Jarnigan; that either he did not know what was in the Land Use Plan or broke it regardless, thinking that he could justify anything that he felt was the most important thing to do—that the people would catch him; that he claimed to protect the Land Use Plan, but he had broken it; that he wanted to shut someone else out; that he was not the Land Use Protector but the Land Use Breaker.

Councilman Benson said that he had to respond because Mr. Issa said something about him; that every time we had "tinkered" with the Land Use Plan it had nothing to do with commercial; that they had helped Mr. Issa with an office, and he had built a nice building; that other places that they had "tinkered" with the Land Use Plan it had been for preservation. He stated that this Council had never gone against the recommendations of the Planning Commission and the neighborhood and Mr. Issa was going into the heart of his district and making something commercial. He stated that Commissioner Henry was present tonight to speak against this; that he and Commissioner Henry had told Mr. Issa that this property was inappropriate for a business; that we had bent over backwards with the R-4 Zone and he could build something that was four stories high; that Mr. Issa bought this property at the office zoned price and was trying to sell it at the commercial zoned price.

Councilman Benson stated that he had tried to protect the residences and all went along with it. He asked those in objection in the audience to raise their hands. He noted that a representative from Erlanger was present; also Friends of East Brainerd; two developers who had to pay the commercial price for commercial land; two County Commissioners and one ex-Commissioner; the Neighborhood Associations of Ashwood, Bell Vista, and Concord Highlands—

REZONING (CONT'D)

that all of these were in opposition. Also, the Variance Board Chairman was present and in opposition. He stated that Mr. Issa had taken after him because he had taken after Mr. Issa; that he had been warned that this was not commercial land; that never had he had a more credible group of people raising objections.

Councilman McGary asked how many people attended the two public meetings? Mr. Issa stated 70 at the first and about 30 at the second. Councilman McGary asked those in favor of this in the audience to please raise their hands. He also asked them to raise their hands if they attended both meetings. Mr. Issa stated that at the first meeting it was about a 45-50 split—close to equal; that at the second meeting 20 were for this and about 6 against.

The opposition spoke. The first to speak was Mr. Don Shoemaker of 2428 Baskette Way. He stated that he was the President of the Village of Ashwood Homeowner Association on Shallowford near Gunbarrel. He stated that he truly enjoyed going to the IHOP restaurants and truly hoped that they would be able to find an acceptable place in this area. He was present today to ask that the Council not allow this in this area; that this is one of the very few non-commercial areas on Gunbarrel, and once it is gone, it can never be reclaimed. He noted that recently the Land Use Plan helped to prevent a developer from building a very high density apartment unit on the adjacent property and this Plan helped to prevent more than 600 additional daily vehicles access to Shallowford Rd. He stated that Gunbarrel could be a nightmare every day, and a restaurant with the popularity of IHOP would further add to the snail's pace movement on Gunbarrel at the very times of the day that the traffic is already at its highest volume and slowest pace. He stated that Mr. Issa feels that thousands of taxpayers' dollars should be ignored because he knowingly speculated and bought this property that had previously been turned down for rezoning; that now he wants the Council to rezone it for him, when they would not do it for the previous owner. He went on to say that he had no objections to updating the Land Use Plan to reflect the needs of today's community, but it should only be done on a planned, deliberate and professional basis, like the 2003 Plan was. He stated that if this property goes commercial, there will be very little a new plan would have to work with in this community to preserve the integrity and planned use of this area in our city. He asked that the Council not allow this and thanked them for allowing him to speak.

REZONING (CONT'D)

Mr. Bernard O'Brien, a retired Federal Judge, of 2050 Baskette Way spoke next. He was concerned about the proposed zoning change standing the test of law. He mentioned the Study of the changes and our community's future by the explosive growth of industry, insinuating that a zone change will force the specialist planners to work around the change which can only have an undermining effect. He questioned whether the zoning change accommodating a single seller can pass the test of legality; that the single technical basis for the Council's granting this petition is not present here. There is no inherent defect in the proposed property which might allow the indulgence of this Council. In matters of this nature, he quoted the Attorney General of Tennessee's opinion published as No.00-184: "*All land use decisions made by the Legislative Body and the municipalities or Counties planning commission shall be consistent with the Growth Plan*" Zoning Regulations 420, 421, and 422." They do not permit eateries as a basis for change. He further noted the implementation instructions found in Section 6.1 of the Land Use Policy, page 42, "*The Land Use Plan is intended to guide policy and specific zoning decisions over time*". He stated that he would invite the City's Legal Staff to look into this.

The next speaker was Mike Ledford of Skyline Drive. He stated that he was the President of the Bell Vista Neighborhood Association. He mentioned an article in the newspaper concerning the proposed site that stated this project had the approval from those who live behind the property. He stated that he lived behind the property and did not approve of this. He stated that there were six restaurants across the street and that was a good place for them; that they opened at 6:00 a.m. and closed at 10:00 p.m.; that IHOP would be open 24 hours. He stated that the lighting is 35 ft. high and intrusive; that in addition there would be noise from the dumpsters, which would be intrusive, and there would be a great deal of trash; that there were 220 houses in the neighborhood and the question should be asked where those for this lived; that some that were for it were from Atlanta and it should be those "who have skin in the game". He stated that renters are transients; that his property was worth \$300,000, and his taxes were paid each year; that people in his neighborhood had significant investments in their homes. He went on to say that this property was purchased for office use only and Mr. Issa knew this; that he was trying to change the rules; that he had to play by the rules and adhere to the rules. He asked that this be denied once and for all.

Councilman Benson stated that he appreciated what everyone had said; that a representative from Erlanger was here today who had "skin in the game", and he would like for Mr. Baker to talk if it were okay.

REZONING (CONT'D)

Chairman Ladd asked the rest of the Council if this was acceptable. A vote was taken and she broke the tie by allowing Mr. Baker to briefly speak.

Mike Baker stated that he was in the Real Estate Department of Erlanger; that they had made the decision to move to Gunbarrel Rd. in East Brainerd; that they had been very cautious with their buildings; that they would like to see this Land Use Plan continue and the Zoning Ordinance imposed; that it would be a benefit to their organization and to the community as well.

Chairman Ladd thanked him for being brief.

Councilman McGary asked Mr. Ledford if he was speaking on behalf of his neighborhood or just himself? Mr. Ledford responded that he was not speaking for all 250 people, prompting Councilman McGary to say, "then you are speaking for yourself".

Councilwoman Scott asked Mr. Baker what specifically about IHOP was objectionable to the Hospital? Mr. Baker responded that their medical space was for offices as required by zoning; that this would have some negative impact on their investment. She asked if Erlanger planned to purchase this property and was told "no". She asked how this would impact the monetary value of Erlanger? Mr. Baker noted that this would be a difficult question to answer.

On motion of Councilman Murphy, seconded by Councilman McGary,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART
II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE
PROPERTY LOCATED AT 1825 GUNBARREL ROAD, MORE
PARTICULARLY DESCRIBED HEREIN, FROM R-4 SPECIAL ZONE TO
C-2 CONVENIENCE COMMERCIAL ZONE

failed on Roll Call vote as follows:

COUNCILWOMAN ROBINSON	"NO"
COUNCILMAN BENSON	"NO"
COUNCILMAN GILBERT	"NO"
COUNCILMAN RICO	"NO"

REZONING (CONT'D)

COUNCILMAN MCGARY	"YES"
COUNCILMAN MURPHY	"YES"
COUNCILWOMAN SCOTT	"YES"
CHAIRMAN LADD	"NO"

The Rezoning was denied.

CLOSE AND ABANDON

(MR-2011-041 North Chattanooga Enterprises, LLC)

On motion of Councilwoman Scott, seconded by Councilman Murphy,
AN ORDINANCE CLOSING AND ABANDONING A RIGHT-OF-WAY
PARALLEL TO THE 800 BLOCK OF DALLAS ROAD AND A
PORTION OF AN UNOPENED ALLEY, MORE PARTICULARLY
DESCRIBED HEREIN
was denied.

Adm. Leach made sure that this was a denial.

COUNCILMAN RICO LEFT THE MEETING AT THIS TIME.

MOU

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE
DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A
MEMORANDUM OF UNDERSTANDING WITH THE HAMILTON
COUNTY GEOGRAPHIC INFORMATION SYSTEMS DEPARTMENT,
RELATIVE TO ON -LINE MAPPING SERVICES, FOR AN INITIAL SET-
UP COST OF TWENTY ONE THOUSAND THREE HUNDRED
DOLLARS (\$21,300.00), AND AN ANNUAL MAINTENANCE FEE OF
TEN THOUSAND NINE HUNDRED DOLLARS (\$10,900.00)
was adopted.

AGREEMENT

On motion of Councilman Murphy, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO FINALIZE AN AGREEMENT WITH NORFOLK SOUTHERN CORPORATION, RELATIVE TO CONTRACT NO. R-09-001, SOUTH CHICKAMAUGA CREEK GREENWAY, FOR CONSTRUCTION, ENGINEERING, ACCOUNTING, AND FLAGGING SERVICES RELATIVE TO THE WALKING TRAIL UNDER THE SOUTH CHICKAMAUGA BRIDGE PROJECT, PER RESOLUTION NOS. 25943 AND 26111, FOR A REVISED AMOUNT OF EIGHTEEN THOUSAND SEVEN HUNDRED FIFTY-THREE AND 92/100 DOLLARS (\$18,753.92), AND RETURN THE REMAINING THIRTY-SEVEN THOUSAND NINE HUNDRED NINETY-SIX AND 08/100 DOLLARS (\$37,996.08) BACK INTO THE PROJECT FUND ACCOUNT
was adopted.

CONTRACT

On motion of Councilman Murphy, seconded by Councilwoman Scott,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO AWARD CONTRACT NO. W-11-002-201, ROOF REPLACEMENTS FOR MOCCASIN BEND WASTE WATER TREATMENT PLANT, TO PARRIS ROOFING, IN THE AMOUNT OF ONE HUNDRED FORTY-THREE THOUSAND FIVE HUNDRED NINETY DOLLARS (\$143,590.00), WITH A CONTINGENCY AMOUNT OF FIFTEEN THOUSAND DOLLARS (\$15,000.00) FOR AN AMOUNT NOT TO EXCEED ONE HUNDRED FIFTY-EIGHT THOUSAND FIVE HUNDRED NINETY DOLLARS (\$158,590.00)
was adopted.

CONTRACT CHANGE ORDER

On motion of Councilman Murphy, seconded by Councilwoman Scott,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 2 (FINAL) WITH TRUE NORTH EMERGENCY MANAGEMENT SERVICES, RELATIVE TO CONTRACT NO. C-11-001-401, MONITOR PERFORMANCE OF DEBRIS REMOVAL CONTRACTOR REDUCING THE CONTRACT AMOUNT BY TWO HUNDRED THOUSAND TWO HUNDRED FORTY-FIVE DOLLARS (\$200,245.00), WITH A FINAL CONTRACT AMOUNT OF NINE HUNDRED FORTY-NINE THOUSAND SEVEN HUNDRED FIFTY-FIVE DOLLARS (\$949,755.00)
was adopted.

CONTRACT C.O.

On motion of Councilman Murphy, seconded by Councilman McGary,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 (FINAL)
FOR EAST TENNESSEE GRADING, INC. RELATIVE TO CONTRACT
NO. E-09-021, INTERSECTION IMPROVEMENTS-SR153
NORTHBOUND OFF-RAMP AT BONNY OAKS DRIVE FOR AN
INCREASED AMOUNT OF FOUR THOUSAND THREE HUNDRED
EIGHTY-FIVE AND 60/100 DOLLARS (4,385.60), FOR A REVISED
CONTRACT AMOUNT NOT TO EXCEED TWO HUNDRED
FOURTEEN THOUSAND SEVEN HUNDRED NINETY-TWO AND
60/100 (\$214,792.60), AND TO RELEASE THE REMAINING
CONTINGENCY OF SIXTEEN THOUSAND SEVEN HUNDRED SEVEN
AND 40/100 DOLLARS (\$16,707.40)

was adopted.

Adm. Leach noted that there was a mistake in the Contract number. It read E-09-0210 and should have been E-09-021. This change was made and accepted on motion of Councilwoman Robinson, seconded by Councilman Gilbert.

CONTRACT CHANGE ORDER

On motion of Councilman Benson, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 (FINAL),
FOR HIGHWAYS, INC., RELATIVE TO CONTRACT NO. E-04-036-
203, ENTERPRISE SOUTH ROADWAY EXTENSION--PHASE 2, FOR
A DECREASED AMOUNT OF ONE HUNDRED NINETY-FIVE
THOUSAND NINE HUNDRED EIGHTY-NINE AND 88/100 DOLLARS
(\$195,989.88), FOR A REVISED CONTRACT AMOUNT NOT TO
EXCEED TWO MILLION TWO HUNDRED THREE THOUSAND FIVE
HUNDRED EIGHTY-FIVE AND 12/100 DOLLARS (\$2,203,585.12),
AND TO RELEASE THE REMAINING CONTINGENCY OF TWO
HUNDRED FORTY THOUSAND DOLLARS (\$240,000.00)

was adopted

CONTRACT CHANGE ORDER

On motion of Councilman Gilbert, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 FOR HALCROW, INC., RELATIVE TO CONTRACT NO. E-10-013-101, CONSTRUCTION FEASIBILITY STUDIES AND CONCEPTUAL DESIGNS FOR IMPROVEMENTS TO THE WILCOX TUNNEL, FOR AN INCREASED AMOUNT OF ONE MILLION TWO HUNDRED THIRTY-NINE THOUSAND SIX HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$1,239,675.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED TWO MILLION FORTY-EIGHT THOUSAND SIX HUNDRED FORTY-SIX AND NO/100 DOLLARS (\$2,048,646.00)
was adopted.

CONTRACT CHANGE ORDER

On motion of Councilwoman Robinson, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 (FINAL) FOR YERBEY CONCRETE CONSTRUCTION, INC., RELATIVE TO CONTRACT NO. E-10-007-201, 2010 CITY SIDEWALK REQUIREMENTS CONTRACT, FOR AN INCREASED AMOUNT OF TWENTY-EIGHT THOUSAND EIGHT HUNDRED THIRTEEN AND 61/100 DOLLARS (\$28,813.61), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED THREE HUNDRED FORTY-NINE THOUSAND TWO HUNDRED SEVENTY-FIVE AND 61/100 DOLLARS (\$349,275.61), AND TO RELEASE THE REMAINING CONTINGENCY OF THREE THOUSAND TWO HUNDRED TWENTY-FOUR AND 39/100 DOLLARS (\$3,224.39)
was adopted.

CONTRACT CHANGE ORDER

On motion of Councilman Benson, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 (FINAL), FOR HIGHWAYS, INC., RELATIVE TO CONTRACT NO. E-04-036-204, ENTERPRISE SOUTH ROADWAY EXTENSION—PHASE 1C, FOR AN INCREASED AMOUNT OF ONE HUNDRED NINETEEN THOUSAND THREE HUNDRED FIFTY-FIVE AND 06/100 (\$119,355.06), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED THREE MILLION ONE HUNDRED TWENTY-TWO THOUSAND THREE HUNDRED NINETY-ONE AND 81/100 DOLLARS (\$3,122,391.81), AND TO RELEASE THE REMAINING CONTINGENCY OF ONE HUNDRED EIGHTY THOUSAND SIX HUNDRED FORTY-FOUR AND 94/100 DOLLARS (\$180,644.94)
was adopted.

AGREEMENT

On motion of Councilwoman Scott, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE
DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN
AGREEMENT WITH HAZEN AND SAWYER, P.C., FOR
PROFESSIONAL SERVICES, RELATIVE TO CONTRACT NO. W-11-
012-101, DESIGN AND CONSTRUCTION PHASE SERVICES OF BAR
SCREEN AND FINE SCREEN REPLACEMENTS FOR MOCCASIN
BEND WASTEWATER TREATMENT PLANT, IN AN AMOUNT NOT
TO EXCEED SIX HUNDRED FORTY-TWO THOUSAND DOLLARS
(\$642,000.00)

was adopted.

PROPOSAL

On motion of Councilwoman Robinson, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A
PROPOSAL FROM THE TENNESSEE DEPARTMENT OF
TRANSPORTATION (TDOT) REGARDING STATE ROUTE 317
(APISON PIKE) FROM OLD LEE HIGHWAY TO STATE ROUTE 321
(OOLTEWAH-RINGGOLD ROAD)

was adopted.

BACKFLOW DEVICE

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING CHATTANOOGA FIRE
PROTECTION TO INSTALL AT DOGWOOD MANOR A NEW AMES
SIX (6") INCH 3000 SS BACKFLOW DEVICE FOR UPGRADE
REPAIRS TO FIRE SYSTEM PURSUANT TO THE TENNESSEE
DEPARTMENT OF HEALTH AND ENVIRONMENT STANDARDS, IN
THE AMOUNT OF TEN THOUSAND EIGHTY-ONE DOLLARS
(\$10,081.00)

was adopted.

INS. PREMIUM PAYMENT

On motion of Councilman Benson, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING PAYMENT OF FIFTY (50%)
PERCENT OF THE INSURANCE PREMIUM FOR CITY/COUNTY
JOINTLY-OWNED PROPERTIES IN THE AMOUNT OF ELEVEN
THOUSAND FOUR HUNDRED FORTY-THREE AND 42/100
DOLLARS (\$11,443.42)
was adopted.

R-O-W NAME CHANGE

(2011-PW-005 City of Chattanooga)

Councilman Murphy showed interest in deferring this. He asked Bill Payne to provide a history of the name Robbins Street in this area, questioning if there could be a more appropriate name.

Mr. Payne explained that Robbins is several blocks long; that they wanted to rename Kilmer Street to Robbins Street; that Memorial Hospital had no desire for it to be anything one way or the other; this helped Public Works with the duplicate name of Kilmer, and it was not a problem with Memorial.

Councilman Murphy noted that there were a lot of offset streets, and this was typical. He asked if this issue could keep a couple of weeks—that the name did not have to be Robbins.

Mr. Payne stated that not doing anything for two weeks was his concern; that he would recommend that we go with Robbins because it is longer and historically has been named that.

Councilman Murphy moved that this be deferred for two weeks. The motion died for lack of a second.

On motion of Councilman McGary, seconded by Councilwoman Robinson,
A RESOLUTION TO CHANGE THE RIGHT-OF-WAY NAME FROM
THE 900 BLOCK OF KILMER STREET TO THE 2600 BLOCK OF
ROBBINS STREET, TAX MAP NOS. 146E-D-001 AND 146E-F-006
was adopted.

AGREEMENT AMENDMENT

On motion of Councilman McGary, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT AMENDMENT WITH HAMILTON COUNTY RELATIVE TO ADDITIONAL GRANT SUPPORT FROM THE TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT) FOR THE DOWNTOWN RIVERWALK, FOR AN ADDITIONAL FUNDING AMOUNT OF FOUR MILLION SEVEN HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$4,722,875.00), WITH A CITY MATCH BEING MET WITH PRIVATE CONTRIBUTIONS
was adopted.

GRANT

On motion of Councilwoman Scott, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND, IF APPROVED, ACCEPT A 2012 PUBLIC LANDS HIGHWAYS DISCRETIONARY PROGRAM SUBMITTAL GRANT FOR THE MOCCASIN BEND GATEWAY PROJECT FOR THE MOCCASIN BEND NATIONAL ARCHAEOLOGICAL DISTRICT VISITOR AND INTERPRETATIVE CENTER, FOR AN AMOUNT OF TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00)
was adopted.

CONTRACT C.O.

On motion of Councilman Murphy, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 (FINAL) FOR VOLKERT AND ASSOCIATES, INC. RELATIVE TO CONTRACT NO. E-04-036-401, ENTERPRISE SOUTH ROADWAY PROJECTS - CONSTRUCTION ENGINEERING INSPECTION (CEI) SERVICES, FOR A DECREASED AMOUNT OF FORTY-SIX AND 24/100 DOLLARS (\$46.24), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED SEVEN HUNDRED TWELVE THOUSAND EIGHT HUNDRED THIRTY-ONE AND 58/100 DOLLARS (\$712,831.58)
was adopted.

CONTRACT C.O.

On motion of Councilman Murphy, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 2 FOR
BARGE, WAGGONER, SUMNER, AND CANNON, INC., RELATIVE TO
CONTRACT NO. R-09-001-101, SOUTH CHICKAMAUGA CREEK
GREENWAY PROJECT, FOR AN INCREASED AMOUNT OF FIFTY-
THREE THOUSAND ONE HUNDRED DOLLARS (\$53,100.00), FOR
A REVISED CONTRACT AMOUNT NOT TO EXCEED THREE
HUNDRED TWENTY-FOUR THOUSAND ONE HUNDRED DOLLARS
(\$324,100.00)
was adopted.

CONTRACT C.O.

On motion of Councilman Gilbert, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING CHANGE ORDER NO. 1 (FINAL)
FOR REMBCO GEOTECHNICAL CONTRACTORS, INC., RELATIVE
TO CONTRACT NO. E-10-880-201, LIGHTFOOT MILL ROAD
GROUND IMPROVEMENTS, FOR A DECREASED AMOUNT OF TWO
THOUSAND SIX HUNDRED THIRTY-ONE AND 40/100 DOLLARS
(\$2,631.40), FOR A REVISED CONTRACT AMOUNT NOT TO
EXCEED TWENTY-SIX THOUSAND SEVEN HUNDRED NINETY-
EIGHT AND 60/100 DOLLARS (\$26,798.60), AND TO RELEASE
THE REMAINING CONTINGENCY OF TWO THOUSAND NINE
HUNDRED FORTY-THREE DOLLARS (\$2,943.00)
was adopted.

VW LEASE

Councilwoman Scott made the motion to defer this until January 3rd. This was seconded by Councilman Gilbert.

Councilman Benson indicated that he was trying to figure out what this meant. Chairman Ladd stated that a deferral takes precedence.

Councilman Murphy asked Councilwoman Scott the purpose of the delay? She responded that as far as back-up documentation, she had nothing; that we were given a brief amendment to the lease; that she only got the actual lease a few minutes ago, and she would like to have the opportunity to read it; that everything may be in order, but she needed to read this to make sure it is in order.

VW LEASE (CONT'D)

Councilman Benson stated that he really did not know if Councilwoman Scott had the expertise and ability to interpret this material and asked Attorney McMahan if he felt that she did. Attorney McMahan responded that he could not speak to that; that the deeds were prepared by the attorney who had handled the issue, and that he relied on him as a Real Estate Attorney and also Mr. Payne; that he had to rely on other experts in the field.

Councilman Gilbert stated that Councilwoman Scott made a good point, and she should have the opportunity to read it.

Councilwoman Scott stated that she felt quite qualified to read a document after being on this Council for two and one-half years; that she would not be verifying a survey. She asked Councilman Benson if he had read this. Councilman Benson responded "no", and he did not intend to, prompting Councilwoman Scott to say that she was more diligent.

Councilman Benson stated that Volkswagen was in his district, and there was a deadline, and it would cost more in the delay time for her to read this than the benefit of her having the ability to interpret such a complex thing; that he thought the IDB Board had already met on this.

Attorney McMahan explained that it would go before the IDB Board after approval of the nine deeds; that the IDB Board will incorporate this into the lease with Volkswagen Chattanooga Operation.

Councilman Benson asked Attorney McMahan if there was not a rush on this—if they did not need this acted on before the end of the year? Attorney McMahan indicated that that was what he was told, also.

Attorney Mike St.Charles spoke. He stated that he was with the law firm of Chambless, Bahner, and Stophel, who represented Volkswagen; that he did call a Volkswagen representative, and this is time-sensitive, and they are working on several projects; that they were in the process of negotiating, and it would be beneficial to them to be able to finalize this before the end of the year.

Councilman McGary stated that he did think it was discourteous for the Council not to receive this information and were being told that they have to have this done now; that he agreed with Councilwoman Scott. He made mention of Councilman Benson's "fingers and toes and heart". He stated that he thought this was a good process to go through before the motion.

VW LEASE (CONT'D)

Councilman Murphy stated that we were in a dilemma and made the motion that the Council recess at this time with the understanding that the material can be read by Councilwoman Scott in less than an hour. This motion failed for a lack of a second.

Chairman Ladd reminded the Council that this was not a tennis match.

Councilwoman Scott stated that the Council met once a week every Tuesday, and she did not think it was too much to ask to have documents in time to read so that the Council could make an informed decision; that this involved transfer of land, and the information could have been here last week. She went on to say that she thought this was an insult and inappropriate for even Volkswagen; that the material was not provided and then to be expected to read all of this within an hour when there were multiple documents—that she would expect better of Volkswagen and any other entity.

Attorney St. Charles stated that her point was well taken, but he did not know if Volkswagen had control—that they did not prepare the deeds, that they came from the County Attorney; that Volkswagen was putting the deal together, but others, and not Volkswagen, prepared the documents; that he fully understood what she was saying, but Volkswagen had a deadline to meet—that they had worked around deadlines before and probably could now, but he did not think it was appropriate to blame this on Volkswagen.

Councilwoman Scott responded that if her comments were inappropriate, then she apologized, but it was the responsibility and fault of someone to have caused this delay.

Attorney St. Charles explained that the appropriate document was the Memo of Understanding; that Amazon came along and Volkswagen worked with the City to take 90 acres; that the City and County were to provide properties in place of what they gave up; that basically 90 acres were provided and some the City and County did not own; that this was kind of a housekeeping measure, but he did want Councilwoman Scott to be comfortable even though it would cause some inconvenience for them.

Councilman Benson stated that he would make a compromise and made the motion that the Council meet next Tuesday if this would help the situation.

VW LEASE (CONT'D)

Chairman Ladd reminded Councilman Benson that the Council would not be meeting next week. Councilman Benson stated that he was making the motion that we do meet next week. Councilman Benson's motion died for lack of a second.

Councilman Murphy stated that he was not asking that Attorney St. Charles disclose any of Volkswagen's secrets but had noted little snippets; that the only parcel he saw under consideration was parcel #3. He asked Mr. St. Charles if it would help him at all if we just defer on parcel #3 and proceed with the rest tonight? Attorney St. Charles responded that #6 and #1 are really the ones they are talking to people about and are significant. Councilman Murphy questioned if we could pass 6 and 1 tonight, which would get the ones that are time-sensitive. Attorney St. Charles again noted that Parcels #1 and #6 are under discussion in the contract; that the others would work fine.

Chairman Ladd asked Councilwoman Scott if this would satisfy her? She responded that she was not sure what this is all about, but it did not help her at all; that she would still like this deferred until January 3rd. A roll call vote was taken for deferral:

COUNCILMAN BENSON	"NO"
COUNCILMAN GILBERT	"YES"
CHAIRMAN LADD	"NO"
COUNCILMAN MCGARY	"YES"
COUNCILMAN MURPHY	"NO"
COUNCILWOMAN ROBINSON	"NO"
COUNCILWOMAN SCOTT	"YES"

The motion for deferral failed.

Councilman Murphy made the motion to only take into consideration two parcels tonight. A Roll Call Vote was taken:

VW LEASE (CONT'D)

COUNCILMAN BENSON	"YES"
COUNCILMAN GILBERT	"NO"
CHAIRMAN LADD	"YES"
COUNCILMAN MCGARY	"NO"
COUNCILMAN MURPHY	"YES"
COUNCILWOMAN ROBINSON	"YES"
COUNCILWOMAN SCOTT	"NO"

This motion failed because of lack of a majority vote.

Councilman Benson made the motion that this Resolution be approved. This was seconded by Councilwoman Robinson.

Councilman Murphy made a motion to amend Councilman Benson's motion and to exclude some of the parcels on tonight's vote. This was agreeable to Councilman Benson but Councilwoman Robinson said "no". Councilman Murphy reminded that this was now his motion and that Councilman Benson could second it.

Councilwoman Scott asked if any of the Councilmembers had read this document? Everyone responded "no".

Councilwoman Robinson stated that she was totally responsible and aware of the diligence the Council shares; that our attorney had told us what a Title Search is and guarantees where we buy and sell property; that there has been diligent research by professionals associated with these documents, and she would say it was a clean deal and that we have fulfilled our MOU with Volkswagen. She stated that basically, in her mind, as a Real Estate Agent, that she relied on professional expertise all the time; that her impression of what we are doing is "squaring off" properties that have been promised.

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

ANT GROUP, LLC,)
)
 Plaintiff,) Case No. 12-0107
)
 v.)
) Part II
 THE CITY OF CHATTANOOGA,)
 THE CHATTANOOGA CITY COUNCIL,)
)
 Defendants.)

**PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED
COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT**

Comes the Plaintiff, ANT Group, LLC, by and through its attorneys, Grant, Konvalinka & Harrison, P.C., pursuant to Rule 15 of the Tennessee Rules of Civil Procedure, and hereby moves this Honorable Court for leave to file its First Amended Complaint, submitted contemporaneously herewith and attached as **Exhibit 1**, for the purpose of asserting additional allegations in support of its claim that the Defendants' actions were arbitrary, discriminatory, and capricious without any just cause or reason and also to assert an additional cause of action against the Defendants related to actions and conduct performed by the Defendants during the same time of the events giving rise to Plaintiff's original Complaint filed on February 15, 2012, that have just recently been discovered by Plaintiff during depositions taken of the Defendants' witnesses.

I. INTRODUCTION

As shown below, granting Plaintiff leave to file its First Amended Complaint is proper, because the evidence discovered during the exchange of documents and obtained from recent depositions of various members of the City Council demonstrates that the

Defendants have unambiguously engaged in a series of actions that demonstrate the decision to deny Plaintiff's rezoning application was arbitrary, discriminatory and capricious and that the Defendants' actions violated the Tennessee Open Meetings Act, T.C.A. § 8-44-101 *et seq.*, thus voiding or otherwise invalidating the actions of the City Council on December 20, 2011.

Moreover, granting Plaintiff leave to file its First Amended Complaint will neither delay this action nor prejudice the Defendants. Indeed, the changes made in the First Amended Complaint relate to the same set of facts that gave rise to Plaintiff's original Complaint. The law is clear that granting leave to allow amendments should be freely given. In this case, the Plaintiff has learned of additional unlawful actions taken by members of the City Council that violate the Open Meetings Act and which ultimately led to an arbitrary and capricious decision of the City Council to deny Plaintiff's rezoning request. Accordingly, Plaintiff request that its motion be granted.

II. BACKGROUND FACTS

This case involves Plaintiff's complaint for declaratory judgment against the Defendants in connection with Plaintiff's request to rezone property located at 1825 Gunbarrel Road, Chattanooga, Tennessee for the purpose of developing a free standing, family-style, sit down, restaurant (IHOP) at a location that already contains five other major chain restaurants. Plaintiff alleges that the City Council's decision on December 20, 2011 to deny Plaintiff's request to rezone its property from R-4, which already permits a restaurant (without any operational limitations) in a four-story office building,

to O-2 was arbitrary, discriminatory and capricious and without any just cause or rationale.

After Plaintiff filed its original Complaint, the parties engaged in written discovery. After the deposition of Bassam Issa, corporate representative for ANT Group, LLC on September 17, 2012¹ and Patrick Neuhoff on September 19, 2012, the parties agreed to delay taking additional depositions until after the parties engaged in mediation which concluded on December 4, 2012. Thereafter, Plaintiff took the deposition of Councilwoman Pam Ladd on January 9, 2013, Karen Rennich on January 11, 2013, Councilman Jack Benson on January 23, 2013 and Councilman Andrae McGary on January 23, 2013.

In connection with these recent depositions in January, Plaintiff has obtained additional information which Plaintiff believes further supports its claim that the City's decision to deny its rezoning application was arbitrary, discriminatory and capricious. Additionally, Plaintiff believes that the information discovered in these deposition gives rise to a cause of action against the Defendants for violation of the Open Meetings Act, T.C.A. § 8-44-101 *et seq.* Plaintiff has succinctly and precisely set forth its allegations related to this cause of action in its First Amended Complaint. The allegations relate specifically to information obtained in the depositions and could not have been previously discovered. Accordingly, Plaintiff respectfully requests that its Motion for Leave to File its First Amended Complaint be granted.

¹ The City did not complete the deposition of Mr. Issa and is schedule to resume the deposition on February 1, 2013.

III. LAW AND ARGUMENT

Rule 15.01, which governs amended and supplemental pleadings, provides that “the court should freely give leave [to amend a pleading] when justice so requires. See Duty v. Dabit, No. M2001-00586-COA-R3-CV, 2002 WL 459002, at *4 (Tenn.Ct .App. Mar. 26, 2002). A decision whether to allow an amendment is one which rests in the sound discretion of the trial court. See Merrimar v. Smith, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1980). Factors the trial court should consider when deciding whether to allow amendments include “[u]ndue delay in filing; lack of notice to the opposing party; bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment.” Cumulus Broadcasting, Inc. v. Shim, 226 S.W.3d 366, 374 (Tenn. 2007) (quoting Merriman v. Smith, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979)). In ruling on a motion to amend, trial courts shall be very liberal in allowing pretrial motions to amend. Garniner v. Word, 731 S.W.2d 889, 891 (Tenn. 1987).

In the case at bar, Plaintiff seeks to amend its Complaint to add additional allegations demonstrating how egregious the Defendants acted during the entire time Plaintiff’s application to rezone was under consideration with the various public agencies (i.e., Regional Planning Agency, Regional Planning Commission, and the City Council) and also to assert an additional cause of action against the Defendants for violation of the Tennessee Open Meetings Act, T.C.A. § 8-44-101 *et seq.*

The purpose provision of the Act states: “[I]t [is] to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted

in secret.” T.C.A. § 8-44-101(a). To effectuate this purpose, the Act provides that “[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” T.C.A. § 8-44-102(a). The Act further provides consequences for violations which include voiding and/or invalidating the actions taken by the governing body that were taken in circumvention of the Open Meetings Act. T.C.A. § 8-44-105. This includes informal assemblages or electronic communication used to decide or deliberate public business. T.C.A. § 8-44-102(c).

In this case, Plaintiff’s First Amended Complaint sets forth specific allegations demonstrating that the Defendants engaged in a series of acts, which included email correspondence and an informal assemblage, which was in circumvention of the spirit and requirements of the Open Meetings Act. Specifically, Plaintiff’s First Amended Complaint alleges that on September 19, 2011 (eight (8) days after Plaintiff filed its application with the Regional Planning Commission) Councilman Jack Benson, in an effort to evade the constraints of the Act, sent an email to the entire City Council proffering an in depth argument against Plaintiff’s rezoning application. **(See Exhibit O to First Amended Complaint)**. Subsequently, Jack Benson sent no less than five (5) additional emails to local citizens encouraging them to stack the audience against Plaintiff. **(See Exhibits G -M to First Amended Complaint)**. Contained in those emails were specific references to Bassam Issa’s ethnicity (Mr. Issa is Muslim), including but not limited to the following:

- **Basam (Sam) does not take “no” for an answer. I have told him No and the Friends of East Brainerd has told him no....Our citizens know**

his operational style and they will strongly object to any of his attempts to break the Land Use Plan for his own personal gain. We need your understanding of the facts on this issue as well as your support of our LAND USE PLAN. Thanks Jack. (Email dated September 19, 2011, attached as Exhibit O to First Amended Complaint).

- Ying Hau Beens and Balsm [sic] Issa are bringing the same operational style that their previous culture condoned. We can't let them ravage our planned growth. Jack (Email dated October 17, 2011, attached as Exhibit J to First Amended Complaint).
- Don: At next month's [Council] meeting, we need you to speak again. The neighbors would be welcome but you and the other speakers are really needed....Jack (Email dated October 11, 2011, attached as Exhibit H to First Amended Complaint).
- Don: I have just found out that the City Council meeting for the IHOPS issue will be heard on Tuesday, December 20 @ 6:00.... PLEASE TELL any others you can bring. We need a good showing.... We need a good show of hands even if there is not room for all to speak. (Email dated November 21, 2011, attached as Exhibit L to First Amended Complaint).
- Don: I want to thank you for attending and speaking at the RPA. It made a difference and helps us to get a unanimous vote opposing the zoning request. When he comes to the City Council next month, we will need you again.... He comes from another culture and he can't seem to adjust to ours. Thanks, Jack (Email dated November 15, 2011, attached as Exhibit K to First Amended Complaint).
- Don: Your assessment of Sam Issa is on target. He will not take No for an answer and he will "do anything" to turn the No into a Yes. He came from a country where negotiations with government officials are successful with greedy actions which are illegal in the United States. We can't be a party to his methodology. (Email dated October 14, 2011, attached as Exhibit I to First Amended Complaint).
- Don: Thanks for speaking and doing a great job. I'm not surprised that McGary voted for it but I was shocked Murphy and Scott joined him. However, Murphy told me today that if we voted again that he would vote against it. Sam Issa has complained to the Chairman that he didn't get the normal 2 minutes rebuttal time. She told him that he could come before the Council and have his 2 minutes at 9:00a.m. Friday. I don't think it will change a vote. He is relentless and a real

“headache”. Jack. (Email dated December 21, 2011, attached as Exhibit P to First Amended Complaint).

In addition to the above email correspondence, the deposition of Councilwoman Pam Ladd confirmed that Jack Benson met with other members of the City Council outside of the Open Meetings Act in an effort do persuade them to deny Plaintiff's application. Some of the excerpts from Ms. Ladd's deposition are as follows:

Q: Do you know when this meeting that you had [prior to December 20, 2011] with Mr. Benson occurred?

A: I don't know.

Q: Do you know why Mr. Benson brought this to your attention?

A: Well, he wanted to - - definitely wanted me to know his opinion about this upcoming zoning.

(Ladd Deposition, p. 46)²

....

Q: Okay. This occasion that you're referencing here, did this occur before a vote was taken on the ANT Application?

A: It was before the vote but not the night of the vote. It was sometime before the vote.

Q: Okay. Do you know how long this discussion lasted at this fellowship gathering?

A: I got up and left, so I don't know what all occurred after I left.

Q: Is it typical for the council members to discuss matters that are on the agenda?

A: It's not typical. During that time it's not typical.

Q: Okay. Do you know what provoked Mr. Benson to bring it up during this meeting?

Mr. Bobo: Object to the form.

AL I don't.

Q: Did anyone else bring it up during this meeting?

² Deposition excerpts of Pam Ladd's deposition are attached hereto as Exhibit 2.

A: I came in and there was already some discussion going on prior to my coming into the room, so I don't know if a question had been asked of him [Jack Benson]. But there was just some discussion already, and that was a piece that I heard. And I left the room.

...
Q: Do you know if he told other members of the council [about the attempted bribe]?

A: There were other members present when I heard it repeated in that meeting.

(Ladd Deposition, p. 48-50)

In light of Councilwoman Ladd's deposition, as well as the deposition of Councilman Benson and Council McGary³, it is clear that there is substantial evidence to support Plaintiff's claim that the City council acted arbitrary and capricious and that their actions violated the Open Meetings Act.

Further, the criteria under Rule 15 of the Tennessee Rules of Civil Procedure for allowing Plaintiff to file its First Amended Complaint are met. Namely, there has not been any undue delay, bad faith or dilatory motive, or repeated failure to cure deficiencies by previous amendments. In fact, Plaintiff is filing this motion approximately one (1) day after it received the deposition transcript of Councilwoman Ladd and, therefore, could not have sought to amend its complaint prior to this time. Also, the allegations contained in the First Amended Complaint make clear that the Defendants' actions were arbitrary and capricious and that there were several actions taken by members of the City Council to evade the constraints of the Act.

Moreover, none of the recognized factors that might weigh against allowing a requested amendment has any applicability here. Most importantly, no prejudice to the Defendants

³ At the time of filing this Motion, neither the deposition transcript of Councilman Benson nor the deposition transcript of Councilman McGary were finalized by the Court Reporter.

would arise from allowing Plaintiff to add additional allegations because the events occurred during the exact time period that gave rise to Plaintiff's original Complaint. Apart from the minimal task of altering its Answer, the Defendants will not be put to any additional burdens. As Tennessee Courts have routinely held, unless substantial reasons exist to deny leave to amend, the discretion of the trial court is properly exercised in allowing amendments. Huntington Nat. Bank v. Hooker, 840 S.W.2d 916 (Tenn. Ct. App. 1991).

CONCLUSION

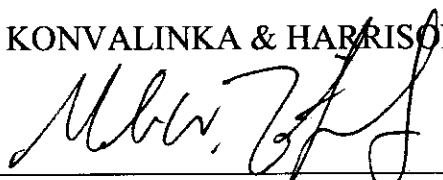
For all the reasons stated above, Plaintiff ANT Group, LLC respectfully requests that its motion be granted such that it is permitted to file its First Amended Complaint.

THIS MATTER HAS BEEN SET FOR HEARING ON February 11, 2013 AT 8:00AM IN PART II OF THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE.

Respectfully Submitted,

GRANT, KONVALINKA & HARRISON, P.C.

By: _____


John R. Anderson (BPR# 10732)
Mark W. Litchford (BPR# 027381)
Grant, Konvalinka, & Harrison, P.C.
633 Chestnut Street, Suite 900
Chattanooga, Tennessee 37450-0900
Telephone: (423) 756-8400
Facsimile: (423) 756-6518
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been served via hand-delivery and/or U.S. Mail to the following individual(s):

Phil Noblett, Deputy City Attorney
Patrick Bobo, Assistant City Attorney
Chattanooga City Attorney's Office
100 E. 11th Street, Suite 200
Chattanooga, TN 37402-4233
*Attorneys for City of Chattanooga and
The Chattanooga City Council*

This the 31st day of January, 2013.



GRANT, KONVALINKA & HARRISON, P.C.

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

ANT GROUP, LLC,)	
)	
Plaintiff,)	Case No. 12-0107
)	
v.)	
)	Part II
THE CITY OF CHATTANOOGA,)	
THE CHATTANOOGA CITY COUNCIL,)	
)	
Defendants.)	

**FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND OTHER RELIEF PURSUANT TO T.C.A. § 8-44-101 et seq.**

Plaintiff ANT Group, LLC (hereinafter “Plaintiff” or “ANT Group”), for its cause of action against the Defendants, the City of Chattanooga and the Chattanooga City Council (hereinafter together referred to as “Defendants” or “Chattanooga”) states as follows (new allegations are contained in bold):

1. Plaintiff is a limited liability company and at all times pertinent herein was duly operating under the laws of the State of Tennessee in Hamilton County.

2. The Defendant City of Chattanooga is a municipal corporation. The Defendant Chattanooga City Council is the legislative and quasi-judicial branch of the City of Chattanooga. Chattanooga and the Chattanooga City Council may be served through the Chattanooga City Attorney, Mike McMahan, at the Office of the City Attorney, 100 East 11th Street, Suite 200, Chattanooga, Tennessee, 37402.

3. Plaintiff has possessory interests in a 0.9 acre of vacant real property located at 1825 Gunbarrel Road, Chattanooga, Hamilton County, Tennessee (the “Property”) that is positioned in a predominantly commercial district near Hamilton Place Mall.



4. This action is brought for a declaratory judgment pursuant to the provisions of T.C.A. § 29-14-101 *et seq.* **Alternatively, this action is brought pursuant to T.C.A. § 8-44-101 *et seq.* for violation of the Tennessee Open Meetings Act.**

5. An actual controversy exists between the Plaintiff and Defendants.

6. Venue and jurisdiction are proper.

FACTUAL ALLEGATIONS

7. ANT Group is owned by Bassam Issa (“Issa”), who is engaged as a commercial developer. In or around September 2011, ANT Group desired to construct a family sit-down restaurant commonly known as International House of Pancakes (“IHOP”) on the Property.

8. The Property is located across from approximately 300,000 square feet of commercially zoned property and a large shopping center that includes Target, Earth Fare and Kohl’s and the Lighting Gallery, which is owned by Councilman Jack Benson and his family. Included in the shopping center are a number of specifically food-oriented establishments such as Chick-Fil-A, Golden Corral, Shoguns, Panera Bread, Moe’s Southwestern Grill and Firehouse Subs. On the west side of Gunbarrel Road (adjacent side for the proposed IHOP), the Property is flanked on the north by a gas station, an AT&T retail store, a car wash, and on the south by a bank with 24-hour ATM service.

9. To facilitate the construction of the IHOP, Plaintiff applied to the Chattanooga-Hamilton County Regional Planning Commission (the “Commission”) on September 9, 2011, for rezoning of the Property, which comprised an approximately 0.9 acre tract located in District 4, from R-4 Special Zone to C-2 Convenience Commercial Zone.

10. The R-4 Special Zone did not have any conditions in place and Plaintiff could have developed the Property with any of the R-4 permitted uses, including but not limited to,

“drug stores or restaurants in office buildings of four (4) or more stories.” Accordingly, Plaintiff could have constructed an IHOP as long as it was contained in a four-story office building, which would have increased the intensity or use of the Property.

11. Plaintiff’s intent for rezoning the property to C-2 was to construct a smaller scale restaurant than that permitted in R-4, as well as limit the size and square footage of the proposed building.

12. Prior to applying to the Commission for rezoning of the Property, Volkert, Inc., a professional traffic engineering company, completed a traffic study of the proposed IHOP and concluded that the development would produce no significant impact to the capacity and/or operations along Gunbarrel Road.

13. On September 15, 2011, Issa attended a City of Chattanooga Presubmittal Meeting to review the site plan with members of the Chattanooga-Hamilton County Regional Planning Agency Staff (the “Staff”). At that meeting, the Agency reported that no major issues were identified with the site plan, that the development met the minimum requirements regarding landscape buffers and that the site provided an appropriate amount of parking on-site.

14. In October 2011, Issa met with Councilman Jack Benson (“Benson”) to discuss the material blueprints of the IHOP, which included, among other things, installing significant landscaping as a buffer for the neighborhood and a restriction on the maximum square footage of the restaurant.

15. Benson represented on several occasions during this meeting that he had never voted to approve any rezoning that conflicted with or deviated from the 2001 Hamilton Place Community Land Use Plan (the “2001 Plan”) before and that he would ensure the Commission

and the Chattanooga City Council (“City Council”) denied ANT Group’s request to rezone the Property.

16. In early November 2001, Issa again met with Benson to identify eight (8) properties located within the 2001 Plan that the City Council approved for rezoning that were in conflict with or a deviation from the 2001 Plan. Benson became upset with Issa and abruptly terminated the meeting and stated that the City Council would never vote to approve the request because the Property is located in his (Benson’s) district. Benson further stated that if Issa attempted to take the matter to court that he would accuse Issa of bribery.

17. Thereafter, in November 2011, the Staff published a written recommendation for denial of Plaintiff’s request, Case NO. 2011-115, which concluded that the proposed rezoning conflicted with the current zoning policy that was adopted in the 2001 Plan. The Staff also stated that the City Traffic Engineer did not support the rezoning and that the Property was located on a corridor intended for office-institutional development to protect the bordering neighborhood. A copy of the Staff’s recommendation is attached hereto as **Exhibit A**.

18. The Staff made this recommendation despite the fact that since the adoption of the 2001 Plan, at least eight (8) properties located within the 2001 Plan had been rezoned in direct contravention of the 2001 Plan and the Staff had actually supported 3 of the 8 cases.

19. The Staff made this recommendation despite the fact that the City Traffic Engineer specifically stated he concurred with the Volkert traffic report, which concluded the traffic generated would be comparable to an office development.

20. Upon information and belief, the 2001 Plan actually recommends that zoning should be flexible as the property contained within the 2001 Plan develops over time.

21. On November 14, 2011, pursuant to notice of public hearing, the Commission voted to recommend denial of Plaintiff's request, Case No. 2011-115, to the City Council without any dialogue from the members of the Commission. A copy of the minutes from the November 14, 2011 Commission hearing is attached hereto as **Exhibit B**.

22. On December 20, 2011, Plaintiff's request for rezoning, Case No. 2011-115, went before the City Council pursuant to notice of public hearing.

23. Benson admitted at the Council meeting that prior properties located within the 2001 Plan had been approved for rezoning, but that those cases had nothing to do with commercial but rather had been for preservation. Benson further stated that the Council had never gone against the recommendations of the Commission or the recommendations of the 2001 Plan.

24. Benson subsequently requested that Mike Baker ("Baker") approach the Council "on behalf of Erlanger" to publicly oppose Plaintiff's request to rezone the Property. Issa was not provided an opportunity to present a rebuttal to either Benson's or Baker's representations to the City Council.

25. Thereafter, the City Council denied the first reading of the proposed ordinance, namely, "An Ordinance to amend Chattanooga City Code, Part II, Chapter 38, Zoning Ordinance, so as to rezone property located at 1825 Gunbarrel Road, more particularly described herein, from R-4 Special Zone to C-2 Convenience Commercial Zone" on the grounds that the proposed rezoning was in direct conflict with the 2001 Plan. A copy of the December 20, 2011 City Council Minutes is attached hereto as **Exhibit C**.

26. The 2001 Plan was adopted by the City Council on October 9, 2001 pursuant to Resolution 23151. Benson, who was a member of the City Council at that time, publicly stated

during the October 9, 2001 City Council meeting that the 2001 Plan would be suitable to change periodically and that the 2001 Plan needed to be “tweaked”. A copy of the Chattanooga City Council Resolution No 23151 and the October 9, 2001 City Council minutes are attached collectively hereto as **Exhibit D**.

27. The 2001 Plan expressly states that it is intended to be a guide policy and that planned developments should allow flexibility in certain issues such as mixed uses. Upon information and belief, the City Council has on several prior similar situations voted to approve requests to rezone certain tracts of land in and around Hamilton Place Mall that were in direct conflict of the 2001 Plan.

28. For example, upon information and belief, from 2004 through 2010, the City Council voted on several occasions to rezone approximately 45 acres of property located within the 2001 Plan from heavy residential zone to mixed use zone to allow for retail establishments such as an HHGregg, Mellow Mushroom and the Melting Pot.

29. Upon information and belief, in 2003, the City Council approved an ordinance to rezone approximately 0.9 acres of property located at 7214 Jarnigan Road (within the 2001 Plan) from R-1 Residential to R-4 Special Zone to allow for the construction of several large office buildings directly within an established neighborhood. The 2001 Plan did not recommend approval for R-4 Special Zone for this property.

30. Upon information and belief, both of the aforementioned approved ordinances infringed upon previously established residential neighborhoods and involved applicants that had a previous business relationship with Benson.

31. Additionally, on at least one prior occasion, the City Council specifically voted to approve a request to rezone property located within the 2001 Plan despite the fact that the Staff recommended denial.

32. Specifically, on April 8, 2008, the City Council approved an ordinance to amend the Zoning Ordinance so as to lift conditions imposed by Ordinance No. 11925 (Case No. MR. 2006-233) on tracts of land located at 7610 and 7614 Standifer Gap Road (within 2001 Plan). A copy of Ordinance No. 11925 is attached hereto as **Exhibit E**.

33. The aforementioned tracts were subject to two conditions: (1) a density of 18 dwelling units per acre; and (2) traffic calming measures as approved by the City Traffic Engineer. Minutes of the April 8, 2008 City Council Meeting show that the Staff recommended denial of Case No MR 2006-233, but the City Council, upon the motion of Benson, voted to approve the request. A copy of the April 8, 2008 City Council Minutes is attached hereto as **Exhibit F**.

34. Shortly after the City Council meeting on December 20, 2011 concluded, Issa was informed, and thereon believes and alleges, that Benson, in an effort to obtain the necessary denial votes from the Council, lied to several members of the City Council by, among other ways, specifically telling the members that Issa attempted to bribe Benson with \$2,500.00 cash in return for Benson's affirmative vote.

35. Plaintiff was informed, and thereon believes and alleges, that Benson requested Baker to specifically appear at the Council Meeting on December 20, 2011 and represent that he (Baker) was speaking on behalf of Erlanger in opposition to Plaintiff's request when in fact Baker had not been so authorized by Erlanger.

36. Upon information and belief, Benson's sole purpose in having Baker oppose the request to rezone the Property was to persuade the Council to deny Plaintiff's request.

37. After the City Council allowed members of the audience to present their objections, the City Council failed and otherwise refused to allow Issa to submit a rebuttal, which Issa was entitled to present.

38. Upon information and belief, the existing infrastructure surrounding the Property will not be negatively affected by the construction of an IHOP restaurant since similar commercial development has already been constructed such as Chick-Fil-A, Golden Corral, Shoguns, Panera Bread, Moe's Southwestern Grill and Firehouse Subs.

39. Upon information and belief, approving the Property for C-2 convenience zoning will not result in any further encroachment of commercial area into the existing neighborhood because the current R-4 special zone allows Plaintiff to construct a larger, more extensive, restaurant that would increase the intensity of the area.

40. There is no rational or legally justifiable basis for denying Plaintiff's request to rezone the Property to C-2 and, by denying Plaintiff's request, the City has acted in an unreasonable, discriminatory, arbitrary, capricious and unconstitutional manner without just cause.

41. **Upon information and belief, the Defendants' consideration of Plaintiff's rezoning application was completely tainted from the beginning, thus ensuring that the application would be denied. Plaintiff has been informed, and thereon believes and alleges, that members of the City Council, including Jack Benson, engaged in a series of unethical and illegal actions, including but not limited to, stacking the audience in opposition to Plaintiff at the Planning Commission meeting on November 14, 2011;**

attacking Issa's ethnicity by degrading Issa's cultural background and referring to his culture as greedy and supportive of illegal methods; requesting "a car full" of opposition to appear at the Planning Commission meeting on November 14, 2011; publishing an editorial in opposition to Plaintiff's request in the Times Free Press on October 9, 2011; and stacking the audience in opposition to Plaintiff's request at the City Council meeting on December 20, 2011.

42. For example, Benson sent a series of emails from September 2011 (shortly after Plaintiff filed its rezoning application with the Regional Planning Agency) through December 2011 containing the following correspondence:

- a. On October 4, 2011, Benson sent an email to Don Shoemaker encouraging Mr. Shoemaker to bring a "car full" to the Planning Commission meeting on November 14, 2011, to oppose Plaintiff's application. Exhibit G.
- b. On October 11, 2011, Benson sent an email to fellow resident Don Shoemaker stating: "Don: At next month's meeting, we need you to speak again. The neighbors would be welcome but you and the other speakers are really needed.... If they had voted today it would have been denied. Hope you can speak next month prior to the vote. Thanks Jack. Exhibit H.
- c. On October 14, 2011, Benson sent an email to Don Shoemaker stating "Your assessment of Sam Issa is on target. He will not take No for an answer and he will "do anything" to turn the No into a yes. He came from a country where negotiations with government officials are successful with greedy actions which are illegal in the United States. We can't be a party to his methodology. Thanks to you and others like you, we are able to resist his methods. Exhibit I.
- d. On October 17, 2011, Benson sent an email to Don Shoemaker stating: "Balsm [sic] Issa bring[s] the same operational style that [his] previous culture condoned. We can't let them ravage our planed growth. Jack". Exhibit J.
- e. On November 15, 2011, Benson sent an email to Don Shoemaker stating: "I want to thanks you for attending and speaking at RPA It made a

difference and helped us to get a unanimous voting opposing the zoning request. When he comes to the City Council next month, we will need you again.... He comes from another culture and he can't seem to adjust to ours. Thanks, Jack" Exhibit K.

f. On November 21, 2011, Benson sent an email to Don Shoemaker stating: I just found out that the City Council meeting for the IHOPS issue will be heard on Tuesday, December 20 @ 6:00.... PLEASE TELL any others you can bring. We need a good showing.... We need a good show of hands even if there is not room for all to speak." Exhibit L.

g. On December 15, 2011, Benson sent an email to Roger Meyer and Bernard & Elizabeth O'Brien stating: "We really need you this Tuesday evening at 6:00 at the City Council chamber to voice opposition to the IHops zoning request. It is first on the agenda so it would be wise to arrive early.... Hope to see you Tuesday at 6:00. Exhibit M

43. Benson also submitted to the Times Free Press an editorial that was published in the Sunday Edition of the TFP on October 9, 2011, which contained blatant misrepresentations about the Land Use Plan and about the permitted uses of Plaintiff's property under an R-4 zone. Exhibit N.

44. Upon information and belief, Benson's actions were a direct effort to unlawfully persuade, among others, members of the Chattanooga-Hamilton County Planning Commission and the Chattanooga City Council to deny Plaintiff's rezoning request.

45. Upon information and belief, this is the first time Benson has ever submitted an editorial to the Times Free Press or any media outlet during his time as a City Council member and no other member of the City Council has ever taken such efforts to solicit opposition.

COUNT I
REQUEST FOR DECLARATORY JUDGMENT

46. The Plaintiff incorporates by reference the above Paragraphs as if stated fully herein.

47. In its denial of the Plaintiff's request to rezone, Defendants acted in an arbitrary, discriminatory and capricious manner without just cause or any rationale.

48. Because the act of denying the Plaintiff's request to rezone was arbitrary, discriminatory, and capricious and was plainly contrary to the prior actions of the City Council, this Court should declare the City's actions to be unconstitutional as a deprivation of Plaintiff's property interests without due process.

COUNT II
VIOLATION OF THE TENNESSEE OPEN MEETINGS ACT

49. The Plaintiff incorporates by reference the above Paragraphs as if stated fully herein.

50. Defendants are subject to the Tennessee Open Meetings Act, T.C.A. § 8-44-101 *et seq.* in that it is a governing body, as defined under T.C.A. § 8-44-101(b)(2), with decision making authority and they must conduct all meetings open to the public with proper notice, the purpose of which is to promote governmental accountability by facilitating public access to official decision making.

51. Plaintiff has been informed, and thereon believes and alleges, that Defendants engaged in a series of informal assemblages and/or electronic communication that was intended to be, and indeed was, used to decide or deliberate public business, including but not limited Plaintiff's application for rezoning, in circumvention of the spirit and requirements of the Tennessee Open Meetings Act.

52. For example, on September 19, 2011, Benson, in a nefarious intent to evade the constraints of the Act, sent an email to all members of the City Council expressing a clear argument against Plaintiff's rezoning application and persuading the members to deny Plaintiff's request. Exhibit O.

53. Plaintiff has been informed, and thereon believes and alleges, that after Plaintiff filed its rezoning application with the Regional Planning Agency on September 9, 2011, Benson met individually with each member of the City Council and that substantive discussions regarding Plaintiff's rezoning application occurred during these meetings.

54. Also, Plaintiff has been informed, and thereon believes and alleges, that on December 20, 2011, Benson spoke with members of the City Council in an informal private assemblage prior to the scheduled 6:00 City Council Members and that the members debated and otherwise deliberated about Plaintiff's rezoning application.

55. Based upon these unlawful acts of the Defendants, as well as other unlawful acts which will be revealed during discovery of this matter, Plaintiff believes and alleges that the Defendants had formed a consensus prior to the public meeting at 6:00 on December 20, 2011 to deny Plaintiff's rezoning application.

56. Upon information and belief, Defendants failed to give proper notice to the public of these closed meetings.

57. Upon information and belief, Defendants failed to keep detailed minutes and/or tape recordings of all discussions, persons present, or actions taken during these previous meetings.

58. Plaintiff has been informed, and thereon believes and alleges, that the Defendants' course of conducting the aforementioned meetings and engaging in the

electronic communications away from and outside of the public was calculated to minimize public input and awareness of all of the details surrounding the Defendants' decision-making process and the information upon which the City Council relied to deny Plaintiff's rezoning application.

59. The Defendants' conduct constituted an evaluation or deliberation of the issues regarding Plaintiff's rezoning application outside of the public view. Benson provided input to the City Council on the issues and clearly and unambiguously made his position known that he would deny and that other City Council members should deny also. The electronic communication went to all of the individuals of the City Council, thus a quorum of the members were involved. This constitutes a deliberation under the Tennessee Open Meetings Act and effectively circumvented the requirements of the Act and should have been made available to the public.

60. Plaintiff has been informed, and thereon believes and alleges, that the Defendants' meetings and electronic communications do not qualify for any exception under the Tennessee Open Meetings Act.

61. As a result of the Defendants' actions, Plaintiff was denied its right to observe the performance of the public officials and attend and listen to the deliberations and decisions that went into the decision to deny Plaintiff's rezoning application.

62. Plaintiff has been informed, and thereon believes and alleges, that the ultimate decision to deny Plaintiff's rezoning application was made in violation of the Tennessee Open Meetings Act and that the Defendants actions during the public City Council meeting on December 20, 2011 did not constitute a new and substantial reconsideration of Plaintiff's rezoning application.

63. Plaintiff has been informed, and thereon believes and alleges, that even if a revote of Plaintiff's application was reconsidered by the Defendants, Benson had already secured the majority of denial votes, including confirmation from Peter Murphy outside of a public meeting that he (Councilman Murphy) would vote against Plaintiff's application. Exhibit P.

64. The failure of the Defendants to conduct all of its proceedings in public is in direct contravention of the explicit public policy of the State of Tennessee and renders the Defendants' consideration of Plaintiff's rezoning application entirely suspect.

65. The Defendant's behavior in conducting these meetings and engaging in the electronic communications was arbitrary, capricious, and contrary to law, including but not limited the Tennessee Open Meetings Act.

66. As a result of the Defendants' unlawful actions, Plaintiff requests that the Court declare the Defendants' actions on December 20, 2011 null and void.

WHEREFORE, Plaintiff prays as follows:

1. That proper process issue to the Defendants requiring answer to this complaint within the time allowed by law;
2. That the Court order the Defendants to grant Plaintiff's zoning request;
3. A declaratory judgment that the Defendants made an arbitrary, capricious, and unreasoned decision to deny the Plaintiff's zoning request;
4. **That the Court void or otherwise invalidate the actions taken by the Defendants on December 20, 2011;**

5. That the Court enter an order for redress in equity as well impose civil fines against the Defendants
6. That the Plaintiff be awarded its attorneys' fees and costs in this cause given the egregious actions of the Defendants as such award will serve as an incentive to protect the public's right to open meetings and to deter the Defendants from skirting the requirements of the Open Meetings Act;
7. That the Court impose, at a minimum, a one-year requirement of judicial oversight over the Defendants; and
8. That Plaintiff is entitled to such other and further relief as the equity and justice of this cause may require.

Respectfully Submitted,

GRANT, KONVALINKA & HARRISON, P.C.

By: _____

John R. Anderson, BPR No. 010732
Mark W. Litchford, BPR No. 027381
Ninth Floor, Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450-0900
423/756-8400
423/756-0643 – facsimile

VERIFICATION

I, Bassam Issa, an authorized representative of ANT Group, LLC, being first duly sworn, aver that the foregoing allegations contained in the Verified Complaint are true and accurate to the best of my knowledge, information and belief.

ANT GROUP, LLC

By: _____
Bassam Issa

Sworn to and subscribed before me this _____ day of _____, 2013

Notary Public

My Commission Expires: _____

Zoning Request Form

Print Form

Opposition
Chattanooga-Hamilton County



Regional Planning Agency

1250 Market Street
Suite 2000

Development Resource Center
Chattanooga, Tennessee
37402

Phone: 423-668-2287

Fax: 423-668-2289

www.chrcpa.org

Office Use Only

Case Number: 2011-115

Date Submitted: 09/09/2011

Planning District: 10

County District: 8

City District: 4

Jurisdiction: Chattanooga

Neighborhood: Brainerd E. Brainerd Chamber Council, Friends of E. B.

Staff Action: *D*

PC Action/Date: *D* 11/14/11

Legis. Action/Date:



Zoning Request	
From: R-4 Special Zone	To: C-2 Convenience Commercial Zone
Proposed Development or Use: IHOP Restaurant	

Property Location / Information	
Address: (Street Number & Street Name) 1825 Gunbarrel Road	Tax Map No: 158D-F-012 Plat Book/Page No. 86-121, 86-130
Current Use: Vacant	Adjacent Uses: Bank, Offices

Applicant Information

All communication by phone, fax, email, or mail will be with the Applicant. If you are not the property owner, you will need to submit a letter from the property owners(s) indicating that you are acting as their agent in filing this application (e.g. engineer, architect, consultant, broker, etc.).

- Property Owner
 Architect
 Engineer
 Optionee
 Purchaser of Property
 Trustee
 Other:

Name	ANT Group, LLC	
Address:	7025 Shallowford Road	
City	Chattanooga	State: TN
Zip Code:	37421	
Daytime Phone:	423-760-2134	
Cell Phone:	423-760-2134	
Other Phone:		
Email:	issagroup@aol.com	
Fax:	423-899-0398	

Property Owner Information (Agent Only)	
Name:	Same
Address:	
Phone:	

CHECKLIST (OFFICE USE ONLY)	
<input checked="" type="checkbox"/> Application Complete	<input checked="" type="checkbox"/> Deeds for property to be rezoned
<input checked="" type="checkbox"/> Ownership Verification (Tax Map Printout, Letter)	Deed Book: 7859-266
<input checked="" type="checkbox"/> Map showing property to be rezoned	<input checked="" type="checkbox"/> Copy of Plans, if applicable
<input checked="" type="checkbox"/> Site Plan, if applicable	Plat Book/Page: 86-130
<input checked="" type="checkbox"/> Total acres to be considered: 0.860	<input checked="" type="checkbox"/> Notice Signs: How Many? 1
<input checked="" type="checkbox"/> Filing Fee: \$635.00	<input type="checkbox"/> Cash Check No. 2594
Accepted by: Marcia Parker	Date: 09/09/2011

Case Number:	2011-115	
Applicant Request:	Rezoning to C-2 Convenience Commercial	
STAFF RECOMMENDATION:	DENY	
Applicant:	ANT Group, LLC	
Property Address:	1825 Gunbarrel Road	
Jurisdiction:	City Council District 4 / Hamilton County District 8	
Neighborhood:	East Brainerd	
Development Sector:	Outer Suburban Growth	
Proposed Development	PLANNING COMMISSION ACTION:	
Site Plan Submitted:	Yes	Deny
Proposed Use:	Commercial development	
Purpose:	IHOP Restaurant	
Site Characteristics		
Current Zoning:	R-4 Special Use Zone	
Current Use:	Vacant (site prepared with parking and dumpster area)	
Adjacent Uses:	Office, Bank, Commercial development across street	
Size of Tract:	0.86 acres	
Access:	Good, direct access onto Gunbarrel Road	
Analysis		
Extension of Existing Zoning?	No	
Community Land Use Plan:	Hamilton Place Community Plan (2001)	
Proposed Use Supported by Community Land Use Plan?	No	
Proposed Use Supported by Comprehensive Plan?	No	
Comments		
Planning Staff:	The applicant has proposed rezoning a 0.9 acre tract from R-4 Special Zone to C-2 Convenience Commercial Zone for a 24-hour a day, sit-down restaurant called IHOP.	
	In order to provide a thorough and thoughtful review of this case, staff reviewed the proposal itself, adopted plans and policies for the area, the planning and zoning history of the site and surrounding community, the traffic study, and other applicable land use factors.	
	<u>Rezoning Proposal</u>	
	<u>Site Context</u>	
	The property is between a one-story, multi-tenant medical office building and a one-story bank branch with drive-thru service (<i>see maps at end of text</i>).	
	<u>Site Plan</u>	
	The applicant attended a City of Chattanooga Presubmittal Meeting on 09/15/11 to review the site plan with City staff. At that meeting no major issues were identified with the site plan. It does meet the minimum requirement regarding landscape buffers and provides an appropriate amount of parking on-site. The applicant is proposing to	

use the existing curb-cut on Gunbarrel Road. (see maps at end of text)

Community Input

The applicant and associates attended a meeting of the Friends of East Brainerd on 8/18/11. At that meeting, they provided information regarding the rezoning proposal and the use of the site for an IHOP restaurant. They answered community members' questions during the meeting and made themselves available afterwards to address any additional issues. Additionally, the applicant hosted a public meeting at the community YMCA to provide additional information and respond to questions. Staff understands that the applicant, the property owner, and other representatives have spoken with other East Brainerd and nearby residents.

Area History of Plans and Policies

The following is a synopsis of zoning policies and plan recommendations for the portion of the Hamilton Place community in which the proposed rezoning is located:

1986 Shallowford Rd/Gunbarrel Road zoning policy

"The surrounding residential neighborhood will remain viable or such as long as the commercial zoning are confined to the areas indicated in this policy study."

Preliminary Zoning Policy Recommendations: Gunbarrel Road from Igou Gap to East Brainerd Road:

"This section of Gunbarrel is predominately residential. There is still some new subdivision development occurring in this area. Given the land use character of this section and the lack of significant road improvements, the recommendation for this portion of Gunbarrel Road is moderate-density residential at 7.5 units per acre with owner-occupied townhouses or condo's being the preferred use. Property at the intersection of Gunbarrel Road and East Brainerd Road is developed commercially."

Note: A Preliminary Zoning Policy Study for Internal Properties Located Between I-75, Gunbarrel Road, Igou Gap Road and Hamilton Place Mall was conducted four months after the opening of Hamilton Place Mall but seems to focus on property between I-75 and Gunbarrel Road north of Igou Gap Road.

Note: A 1988 Zoning Administrative Policy for Growth Corridor Overlay Zone Design Standards (1988 Growth Corridor Policy for Gunbarrel Road) was created to develop minimum design criteria which promote and encourage timely, efficient and high quality development of land within certain urban corridors.

2000 Jarnigan Road/Igou Gap Road/ West of Gunbarrel Road Zoning Policy Study

- Request by City Council
- Adopted by City Council, Resolution No. 22584, July 2000

According to the study, because of the increase in zoning applications for the area south of the mall and west of Gunbarrel Road, the City Council asked RPA to review and make recommendations to revise the existing policy. The following are the Policy Goals from the study:

- Allow Some New Commercial Development
- Protect Existing Residential Neighborhood
- Provide Diversity in Housing
- Provide Transition between Uses

Area V of that study focused on this section of Gunbarrel Road. The policy recommendation for that area was Institutional/Office- "The East Brainerd Road Area Study adopted in 1990 called for institutional uses along Gunbarrel Road. Up to this point in time the recommendations of that plan have been followed. It is recommended that this area continue to be developed as institutional and office." That study recommended that a "larger study of the mall area is needed".

2000 Zoning Study

City Council requested (Resolution No. 22611) a Zoning Study for an area bounded on the west by Gunbarrel Road, on the north by Standifer Gap Road, on the east by Jenkins Road, and on the south by East Brainerd Road, but excluding properties that were currently covered by an adopted zoning policy.

2001 Adopted Plan: Hamilton Place Community Plan

"The purpose of the Hamilton Place Community Plan is to address both the livability needs of surrounding neighborhoods and the long-term economic vitality of the Hamilton Place retail district. Throughout the plan, strategies and policies are presented to promote a positive and mutually supportive relationship between the retail district and established neighborhoods. Most importantly, this plan strives to build "community centered" vision by informing how the retail district and neighborhoods are pieces of a larger community context that also includes streets, parks, public facilities and the natural environment." With this "community" focus in mind, the following goals, developed through this planning process, structure the Hamilton Place Community Plan:

- Protect and enhance existing neighborhoods
- Strengthen existing commercial areas
- Improve the transportation system
- Protect the environment

- Identify opportunities for community facilities and parks

Planning Principles:

Planning principles were developed through the planning process to support the goals identified above and to provide guidance for future land use. The principles identified for Land Use are as follows:

- Commercial and neighborhood boundaries should be maintained as defined by the land use plan
- Configure new development so that it is compatible with existing adjoining uses.
- Examples include placing smaller scale, less intense buildings next to existing neighborhoods.
- Placement of large-scale buildings next to neighborhoods should be avoided.

Planning Challenges:

The plan states that two critical challenges emerged to guide the development of the Hamilton Place Community Plan: defend the neighborhoods and strengthen the commercial core:

Defend the Neighborhoods

"There is an overwhelming concern from area residents to protect their neighborhoods and clearly define where growth should occur. In the public phone survey 89% stated that the City should clearly define where future growth will occur, and 79% valued the protection of existing neighborhoods. The "pressured sites" are where this issue is most obvious and where solutions will occur first. The solution involves clearly defining an appropriate land use mix that can bridge the gap between the intensity of commercial uses and the surrounding single-family residential neighborhoods. These areas include among others the "triangle" site north of Shallowford Road, the area south of Shallowford Road just east of the YMCA, the Igou Gap/Gunbarrel area, and the Igou Gap/Clearview Drive area. In order to support and connect to existing neighborhoods, new development should also include parks and open spaces that are inter-connected by pedestrian-friendly sidewalks and greenways."

Strengthen the Commercial Core

"As identified in the public phone survey, 76% of respondents believe that the prosperity of the commercial area is important to the larger community. A key challenge of this plan will be to find ways to support the future success of the commercial areas while minimizing their impact on the neighborhoods. The ability to accommodate infill development and a broader

mixture of uses including retail, residential, and office will allow the commercial core to grow and adapt over time. One of the biggest challenges to this future commercial development is transportation access, which will eventually impact the quality of the area's shopping experience."

Plan Recommendation: Gunbarrel Road between Igou Gap Road and East Brainerd Road

The land use strategy supports the current policy of office and institutional uses along this portion of Gunbarrel Road with the exception of the Applegate subdivision.

Comprehensive Plan 2030

This portion of East Brainerd is identified in the City and County adopted Comprehensive Plan 2030 as contained in the Outer Suburban Growth Development Sector. The Plan identifies Outer Suburban Growth areas as providing both infill and outward growth opportunities for conventional low-density development. These areas are appropriate for the separation of residential and non-residential uses. Regarding business uses, the plan states that a mix of retail and office uses is encouraged.

Zoning History

In 2000, a zoning request for R-1 Residential to C-2 Convenience Commercial was processed for 1821 and 1825 Gunbarrel Road. The proposed use at that time was "retail (restaurants)". The site plan showed two 7,000 square foot restaurants. At that time, staff recommended a denial of the C-2 and approval of the R-4 Special Zone. The reason for the recommendation was that "The policy for this area recommends office/institutional uses. The request for commercial does not meet the existing policy. The site is located between two existing office developments (O-1 zone)." The Chattanooga-Hamilton County Regional Planning Commission recommended that the petition for C-2 be approved subject to restaurant use only, excluding fast food restaurants or any restaurant that has a drive-thru or curb service; and no lighting to be directed off-site. In April 2001, City Council reviewed the case and deferred action on the request (then identified as Brick Oven Pizza). It was announced at the next hearing that the case had been requested for withdrawal (10/2001).

The Hamilton Place Community Plan was adopted in October 2001. This property and the abutting property were rezoned from R-1 Residential to R-4 Special Zone in 2003. The purpose stated at that time was a "medical office building" with the site plan showing a 10,000 square foot building with 153 parking spots. Staff supported the rezoning to R-4 Special Zone as there was already development of that type in the area, it was a reasonable extension of current zoning,

and it was in conformance with the plan for the area. The Chattanooga-Hamilton County Regional Planning Commission also recommended approval of the 2003 request.

In June 2006, Bassam Issa received a variance from the Board of Zoning Appeals for 1825 Gunbarrel Road to 1) reduce the number of parking spaces from 414 to 364 and 2) a Special Permit for off-street parking on an R-1 lot adjacent to R-4 property.

Staff Recommendation

The applicant and his team have done a very thorough job in preparing for this rezoning request. They provided a detailed site plan and proposed site specific conditions, attended a community meeting and hosted another to present the request, and provided a traffic study as part of the proposal. However, staff is recommending denial of the C-2 Convenience Commercial zoning request and affirms the existing policy of office and institutional uses to the west of Gunbarrel Road. This recommendation supports the policies in place since 2000 (and earlier) and the adopted plan (2001) that support maintaining a commercial edge and supporting existing neighborhoods.

Site zoning

At the time of rezoning from R-1 Residential to R-4 Special Zone in 2003 (Ord. No. 11500), the purpose was identified as a "medical office building" with the site plan showing a 10,000 square foot building with 153 parking spots. However, no conditions were placed on the R-4 zoning at that time. Staff understands that the applicant can choose to develop the site with any of the R-4 Special Zone permitted uses listed below along with the additional 14 Special Permit uses:

R-4 SPECIAL ZONE

Permitted uses.

- (1) Single-family, two-family, and multiple-family dwellings, excluding factory manufactured homes constructed as a single self-contained unit and mounted on a single chassis.
- (2) Lodging Houses, Boarding Houses and Bed and Breakfast.
- (3) Colleges, schools and libraries.
- (4) Churches and including a columbarium and/or mausoleum as an accessory use.
- (5) Dormitories.
- (6) Professional, medical or dental offices and clinics.
- (7) Laboratories and research centers not objectionable because of odor, dust, noise, or vibration.
- (8) Offices.
- (9) Studios.
- (10) Parks and Playgrounds.
- (11) Home occupations.
- (12) Banks and bank branches.
- (13) Accessory uses and buildings.
- (14) Day care homes.
- (15) Kindergartens operated by governmental units or by religious organizations.
- (16) Drug stores or restaurants in office buildings of four (4) or more stories.
- (17) Museums and art galleries with retail sales as an accessory on-site use, except that such accessory use shall require a Special Permit under the terms of Article VIII.
- (18) Identification signs for commercial uses, subject to the same regulations which govern size, appearance, location, etc., for signs identifying on premise office uses.
- (19) Radio, television and motion picture production studios, excluding transmission towers.
- (20) Parking lots and garages as an accessory to a permitted use when located on the same lot or an adjacent lot.

(21) Short-Term Vacation Rental.

Uses permitted as special exceptions by the board of appeals.

- (1) Fraternal, professional or hobby clubs.
 - (2) Hospitals and nursing homes.
 - (3) Funeral homes, mortuaries, and undertaking establishments (and including cremation/crematory, when used in conjunction with such establishments).
 - (4) Day care centers.
 - (5) Kindergartens not operated by governmental units or by religious organizations
 - (6) Small animal hospitals.
 - (7) Radio, television and motion picture studios transmission towers shall require a Special Permit under the terms of Article VIII.
 - (8) Drug and alcohol, penal or correctional halfway houses or rehabilitation centers and uses similar in character.
 - (9) Gift shops.
 - (10) Beauty shops, barber shops, and hair salons.
 - (11) Assisted Living Facilities.
 - (12) Medically Assisted Living Facilities.
 - (13) Communication Towers.
 - (14) Social Service Agency.
-

In 2006, the applicant also obtained a Special Permit for off-street parking on an R-1 lot adjacent to R-4 property. With the Special Permit, the property could be developed with even greater intensity as much of the required parking could be accommodated off-site. The R-4 Special Zone allows "Drug stores or restaurants in office buildings of four (4) or more stories". It is staff's understanding, in consultation with the City Zoning Official, that this restaurant could be something like an IHOP as long as it was contained in a four-story office building. Final determination as related to use of the zone and use specific to this site is made by the City Zoning Official.

This proposed IHOP site does not adjoin commercially zoned property on the west side of Gunbarrel Road. The site has both an R-4 Special Zone to the north and south of it. There is a C-2 Convenience Commercial Zone to the north of this site at the southwest corner of Gunbarrel Road and Igou Gap Road. One property was rezoned to C-2 prior to the adoption of the Hamilton Place Community Plan and one immediately at the intersection was rezoned by Bassam Issa- ANT Group LLC in 2006. Staff, Planning Commission and City Council supported the request, with staff's reason for recommendation being in part that "The request for commercial zoning is in keeping with the recommendation of the 2001 Hamilton Place Community Plan. Commercial development is recommended for this corner of Gunbarrel Road and Igou Gap Road."

There is no precedent by City Council for a change in the existing policy of office and institutional uses. There was a 2005 request for property (1511 Gunbarrel Road) south of the rezoning request site for R-4 Special Zone and C-5 Neighborhood Commercial for 200' parallel to the road. Both Staff and Planning Commission recommended denial of that C-5 request while recommending approval of the R-4. The staff recommendation gave a reason as "Approve R-4 for the requested use of offices for the entire site. This is in keeping with the recommendations of the Hamilton Place Plan that supports office

development west of Gunbarrel Road. Opening up this corridor to commercial rezoning not only goes against the Hamilton Place Plan, but also opens up the rest of the corridor for commercial consideration". City Council approved an R-4 Special Zone for the entirety of the site. Currently at 1511 Gunbarrel Road, approximately 200' of the property parallel to the road is undeveloped with the rear of the parcel containing two buildings.

Traffic Study

City Traffic Engineer's comments: "I have reviewed the traffic impact study that Volkert prepared for this zoning request and concur with its conclusion that the traffic generated would be comparable to what an office development would generate. I do, however, have concerns with the precedent that this case would cause for this section of Gunbarrel Road south of Igou Gap Road. If other property owners in this area were encouraged to request and be granted rezoning of their office zone to commercial, there is the potential that higher amounts of traffic could be generated than what currently exists, particularly during the peak hours.

Because Gunbarrel at East Brainerd Road is at capacity, any additional traffic at this intersection would create even more congestion during peak hours. Based on these observations, I recommend that this case be denied."

Precedent

The challenge of this zoning case remains the complexity of the existence of a regional mall with expected large and smaller-scale satellite commercial development, an existing road system, and maintaining the viability of neighborhoods as stated in the adopted Hamilton Place Community Plan. The heart of each of the studies since 1986 has been to determine an answer to the appropriate arrangement of these pieces.

Staff's approach was to look at this proposal at two levels. The first was to examine the site in respect to the proposed use and conditions, site plan, and the immediately surrounding development. If you stand at the site during the day and look around, it may seem that a restaurant could be an appropriate fit. There are existing restaurants across the street, a carwash two lots down, a bank on one side and an office on the other.

The differences are easier to see in the evening, night and on the weekends. Offices and office buildings for the most part maintain hours of operation from Monday-Friday within the range of 7:00 a.m.-5:00 p.m. While some institutional uses such as the hospital are open 24 hours a day, the offices within the hospital are primarily open during regular office hours.

The R-4 Special Zone allows "banks and bank branches". The property immediately abutting the rezoning request site is developed with a bank branch. It does have a drive-through which is open until 4:00 p.m. Monday-Thursday, 6:00 p.m. on Friday and from 8:00 a.m.-noon on Saturday. Staff discussed the possible appropriateness of the proposed IHOP while considering a range of conditions. The applicant has proposed nine conditions to be placed on the C-2 Convenience Commercial Zone:

Applicant proposed zoning conditions for the C-2 Convenience Commercial Zone:

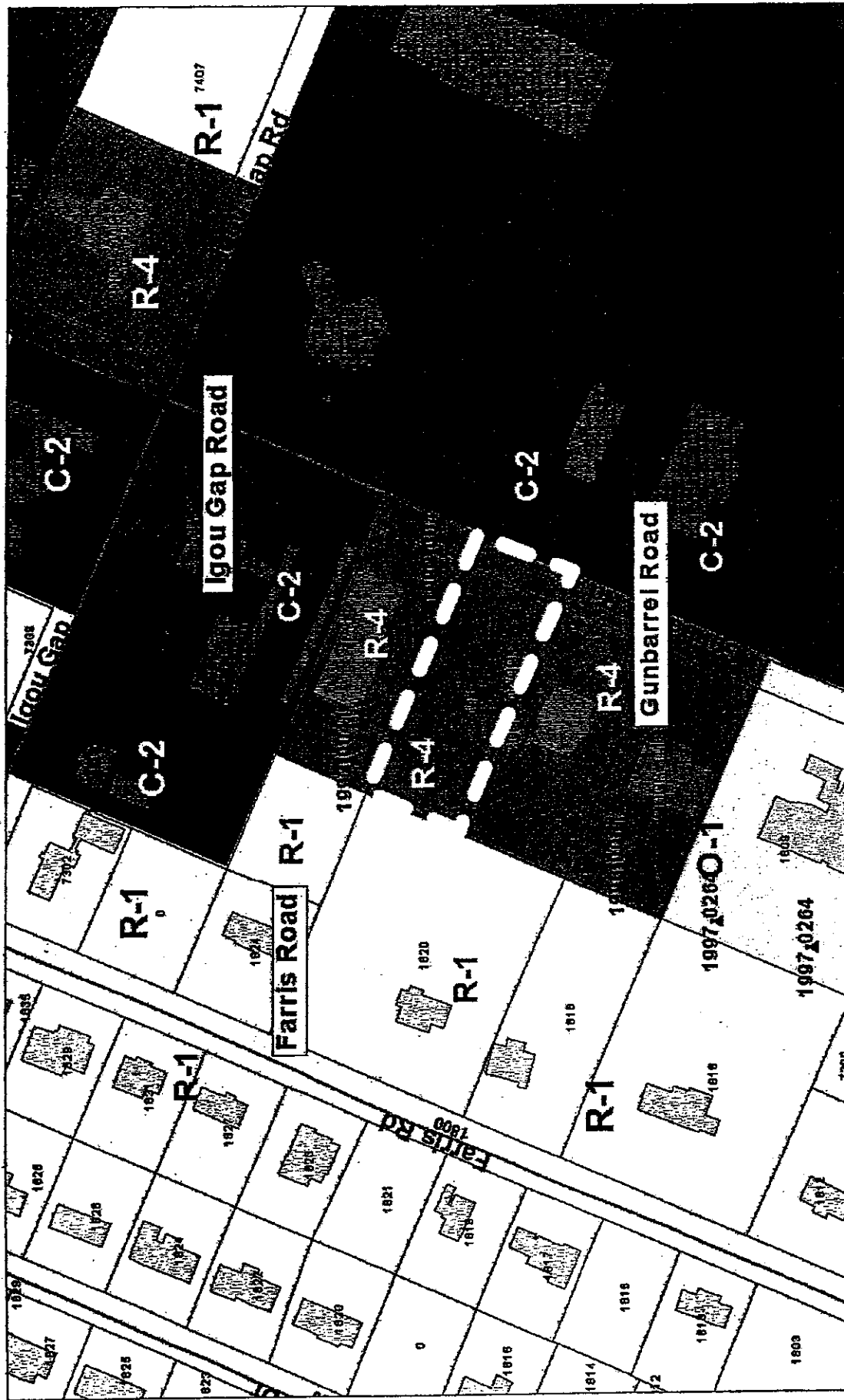
- The use of the property will be limited to a family style sit down restaurant only.
 - The building square footage will be limited to a maximum of 4,000 square feet.
 - Ingress or egress from existing curb cuts only.
 - Install landscaped buffer along the rear property line. Buffer to be a 20' Type "B" Landscaping Buffer.
 - Dumpster to be enclosed in masonry walls to coordinate with the building design.
 - Lighting to be directed away from all adjacent residential areas with poles being a maximum of 35' height.
 - Drive thru service will be prohibited.
 - The sale of alcohol will be prohibited.
 - The building architectural design will be similar to the new IHOP constructed on Brainerd Road.
-

For the most part, the proposed conditions and the site plan seem adequate for many site-specific issues although placement of the dumpster in close proximity to the R-1 Residential Zone should be reconsidered. However, once commercial development is permitted within this institutional/office policy area, greater noise and activity will be introduced during evening and weekend hours. The IHOP model as a 24-hour sit-down restaurant particularly reflects some of the differences between a traditional office model and a commercial development.

Staff also looked at this rezoning through a broader lens of the overall community. The plan recommendation for most of the western edge of Gunbarrel Road between Igou Gap Road and East Brainerd Road is for an Office/Institutional Use as those properties for the most part abut single-family residences. The recommended land use intensity is not higher as there is no ability to buffer the impact of higher-intensity uses with a less-intense use (i.e. introducing a transitional use to step down the activity/impact of a higher-intensity use). The exception is the section for this rezoning case where the properties to the east side of Farris Road have a plan recommendation of medium-intensity residential.

In reviewing the land use, current zoning, and past and existing plans/policies, staff is affirming the existing plan recommendation for office/institutional uses along the western side of Gunbarrel Road. Economic development and job growth are important aspects of community planning. There are still sites for development in the Hamilton Place Mall area particularly to the north of Shallowford Road and possible sites for redevelopment among the vacant commercial properties in the area. Staff supports the planning history for the area that strives to maintain the balance of commercial growth and the redevelopment of a community while maintaining the integrity of neighborhoods. It is a goal of almost every planning process to support reinvestment in the existing residential properties, an investment that can come with continued high quality of life and an understanding of the proposed development form in the area.

In summary, staff is recommending denial of the commercial rezoning request because it is not supported by the City Traffic Engineer and clearly conflicts with the established zoning policy for office-institutional development along this corridor, which was intended to protect the bordering neighborhood.



2011-0115 R-4 to C-2

Chattanooga - Hamilton County Regional
Planning Agency



1 in. = 150.0 feet



SITE INFORMATION

OWNER INFORMATION:
 MR. BASSANT USA
 AHT GROUP, LLC
 1113 FROST CREEK DRIVE
 COLLEEN, TN 37063

PROJECT CONTACT INFORMATION:
 MR. DAVID SUMMAHR
 THE TROJAY GROUP, LLC
 640 POWERS FERRY ROAD
 SUITE 100
 ATLANTA, GA 30385
 770-999-9444
 dsummar@trojay.com

ZONING:
 EXISTING: R-4 (SPECIAL ZONE)
 PROPOSED: C-2 (COMPATIBLE COMMERCIAL ZONE)
 REQUESTED AREA OF REZONING: 0.840 ACRES (29,448 SF)

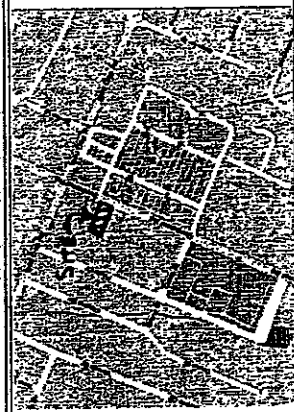
PARKING:
 REQUIRED: 96 (1 SPACE PER 75 SF OF TUDOR AREA)
 PROVIDED: 54

DRIVE ABLE: 24

REQUIRED BUILDING SETBACKS:
 FRONT: 25'
 SIDES: 10' (MINI ADJACENT TO RESIDENTIAL ZONING)
 REAR: 25' (MINI ADJACENT TO RESIDENTIAL ZONING)

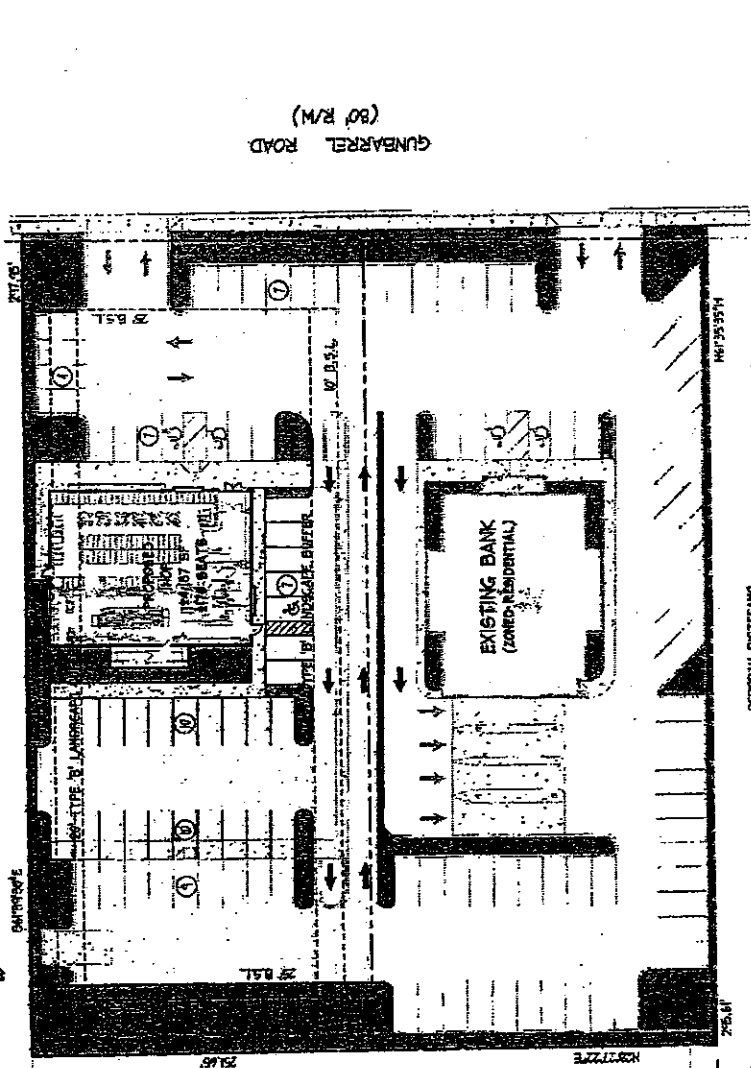
LANDSCAPE BUFFERS:
 A 20' TYPE 'B' LANDSCAPE BUFFER IS REQUIRED ALONG ALL PROPERTY LINES THAT ADJACENT RESIDENTIAL ZONING.

SITE LOCATION MAP



LEGEND

- PROPOSED ASPHALT AREAS
- PROPOSED LANDSCAPED AREAS



HAMILTON EAST PROFESSIONAL PROFESSIONAL COURTS,
 LLC, A TENNESSEE LIMITED LIABILITY COMPANY
 DEED BOOK 1729, PAGE 651 LOT 6 PINE TERRACE
 SUBDIVISION (PG 14, PG 14)
 ZONED R-4

DEBORAH DINEFANO
 DEED BOOK 4263, PAGE 482
 ZONED R-4

CAVIN V. BRANT AND SARAH S. BRANT, TRUSTEES
 DEED BOOK 487, PAGE 517
 ZONED R-4

WID H. SCOTT AND JELLA SCOTT
 DEED BOOK 1796, PAGE 991
 ZONED R-4

**IHOP - GUN BARREL ROAD
 RE-ZONING SITE PLAN
 CHATTANOOGA, TENNESSEE**

DATE	07/08/2011
SCALE	1"=40'
DDG PROJECT #	BT
FILE NAME	071-SITE PLAN
PROJECT NUMBER	24P

NO.	REVISIONS	BY	DATE

NO.	REVISIONS	BY	DATE



VW LEASE (CONT'D)

Councilwoman Scott stated that this may all be wonderful and nothing wrong; however the last time we amended a Volkswagen document it had language to extend a PILOT five extra years, and this was changed before this body (Council); that if the Council does not read the document, "fine", but for Attorney St. Charles to have read the document—he represents Volkswagen; that it is the Council's job to represent our citizens, which means that we should read this and not subrogate the Council's responsibility to an attorney of the other party, even though it might be wonderful.

At this point, members in the audience applauded Councilwoman Scott, and Chairman Ladd stated that she understood they liked what Councilwoman Scott had said, but there would be no outbursts.

Councilman Murphy talked about the parcels that were part of the amendment—Parcels 6, 7, and 9, dealing with the roadway. Mr. St. Charles indicated that it was really Parcels 1, 6, 7, and 9. Councilman Murphy stated that it was also the Council's responsibility to look after economic development for the community, and he felt that this was part of his job—that things like this could cause jobs not to come here. **Councilman Murphy made the motion again to amend to include Parcels 1, 6, 7, and 9 of this Resolution and let the remaining sections come before the Council on January 3rd. This motion failed for lack of a majority.**

At this point, Chairman Murphy renewed his motion that we recess this meeting until such time that Councilwoman Scott can read the material. Councilman Benson seconded this motion to recess this evening and return after Councilwoman Scott had read these documents.

Councilwoman Robinson suggested that we conclude our agenda tonight and then recess until Thursday afternoon at 4:00 P.M. and that the Clerk poll the Council to see who can be present.

Attorney McMahan confirmed that this meeting could be recessed until 4:00 P.M. on Thursday. Chairman Ladd reminded that two members would not be here on Thursday.

Councilwoman Robinson then suggested recessing until Friday at 10:00 A.M. and call the meeting into session for this one item and go ahead and conclude our agenda for tonight. Councilman Benson suggested that the meeting start at 9:00 A.M. rather than 10:00 A.M. because of the Christmas Party that is to be hosted by both the Mayor and the Council.

VW LEASE (CONT'D)

On motion of Councilwoman Robinson, seconded by Councilman Benson,
A RESOLUTION AUTHORIZING TRANSFER OF THE CITY'S
INTEREST IN CERTAIN PARCELS OF LAND AS MORE
PARTICULARLY SET FORTH HEREIN, TO THE INDUSTRIAL
DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA FOR
INCORPORATION INTO THE LEASE WITH VOLKSWAGEN
CHATTANOOGA OPERATION, LLC TO PROVIDE FOR ROADWAY
AND RAILROAD RIGHTS-OF-WAY; TO CORRECT THE
VOLKSWAGEN PROPERTY DESCRIPTION; AND AUTHORIZING THE
INTERIM DIRECTOR OF GENERAL SERVICES TO EXECUTE ANY
AND ALL DOCUMENTS RELATING THERETO
was deferred until Friday, December 23 at 9:00 A.M.

Councilman Gilbert asked Attorney St. Charles if this would allow enough time.
Attorney St. Charles stated that this was fine.

SOFTWARE UPGRADE

On motion of Councilman McGary, seconded by Councilwoman Scott,
A RESOLUTION AUTHORIZING A SOFTWARE UPGRADE BY
ACCELA FOR NEW SERVERS AND INTEGRATED VOICE RESPONSE
(VR) SYSTEM TO BE USED BY THE DEPARTMENT OF PUBLIC
WORKS-LAND DEVELOPMENT OFFICE AND THE CITY
TREASURER'S OFFICE, FOR AN AMOUNT OF NINETY-SEVEN
THOUSAND TWO HUNDRED EIGHTY-EIGHT AND 83/100
DOLLARS (\$97,288.83)
was approved.

OVERTIME

Overtime for the week ending December 15, 2011 totaled \$44,519.69.

PERSONNEL

The following personnel matters were reported for the various departments:

CHATTANOOGA POLICE DEPARTMENT:

- **BRENDA HAFLEY**—FMLA for Police Sergeant, effective 12/8/11—3/12/12.
- **JAMES KEEF**—Retirement of Police Sergeant, effective 12/29/11.

CHATTANOOGA FIRE DEPARTMENT:

- **TIM HUSTAD**—Retirement of Fire Captain, effective 12/15/11.
- **PATRICK O'BRIEN**—Promotion to Firefighter Senior, Range F2A, \$36,004 annually, effective 12/16/11.
- **JASON RAINS**—Assignment/Salary Change for Staff Lieutenant, Range F3C, \$46,358 annually, effective 12/16/11.

CHATTANOOGA PUBLIC WORKS DEPARTMENT:

- **JAMES P. WEISS**—Termination of Crew Worker I, effective 12/14/11.
- **GARY L. ROSHELL**—Termination of Crew Worker 1, effective 12/12/11.
- **MACKER C. STRICKLAND**—Termination of Crew Worker 1, effective 12/15/11.
- **DAVID MARTIN**—Retirement of Chief Electrical Inspector, effective 12/15/11.

INFORMATION SERVICES:

- **DARRYL KYLES**—Hire as Programmer 1, Range 18, \$41,572 annually, effective 12/16/11.

EMERGENCY PURCHASE

Adm. Leach presented an emergency purchase in open meeting for a Sanitary Sewer Extension for Red Bank Middle School repair. This purchase order was issued to Brown Brothers, Inc., in the amount of \$43,550, Requisition 51123. This was duly signed in open meeting.

REFUNDS

On motion of Councilman McGary, seconded by Councilman Murphy, the Administrator of Finance was authorized to issue the following refunds for water quality fees and/or property taxes due to overpayments and error and release:

VIP PROPERTIES	\$2,152.44
CHATT. RIVERBOAT CO.	\$9,236.00
VARIOUS ASSESSED OWNERS (Names included in minute material)	\$14,748.15
A H SENIORS, LLC	\$3,124.57

PURCHASES

On motion of Councilman Benson, seconded by Councilwoman Robinson, the following purchases were approved for use by the various departments:

PUBLIC WORKS DEPARTMENT:

MAYSE CONSTRUCTION CO. (Best Bid meeting specs.)
REQUISITION 49710/301442

Blanket Contract for Sewer Repair Services

\$500,000 annually, approximately

TOWER CONSTRUCTION CO. (Lowest and Best Bid)
REQUISITION 49732/301443

Blanket Contract for Sewer Pipeline Debris Removal Services

\$50,000 annually, estimated

PURCHASES (CONT'D)

GENERAL SERVICES DEPARTMENT:

INDUSTRIAL WELDING SUPPLY (Lowest and Best Bid)
Requisition 51018/301516

Blanket Contract for Welding Supplies & Gases

\$15,000 annually, approximately

CHEROKEE TRUCK EQUIPMENT, LLC (Best Bid meeting specs.)
Requisition 51012/301515

Blanket Contract for Heil OEM Truck Parts

\$200,000 annually, approximately

FINANCE AND ADMINISTRATION:

ACCELA GOVERNMENT SOFTWARE (Sole Source Purchase)
Requisition 52566

Business Permit Analysis

\$12,020

COMMITTEES

Councilwoman Scott announced that there would be a meeting of the Beer Code Sub-Committee on January 6, 2012 from 10:00 a.m. to 12:00 a.m.

Councilman Murphy scheduled a Legal, Legislative and Safety Committee for Tuesday, January 3rd to immediately follow the Public Works Committee to discuss the threshold for personnel discipline.

In the absence of Councilman Rico, Chairman Ladd noted that there would be a Public Works Committee meeting on Tuesday, January 3rd to immediately follow the Agenda Session.

AGENDA: JANUARY 3, 2012

Chairman Ladd stated that the agenda for January 3rd was discussed previously during today's Agenda Session.

REVEREND ANTHONY CHATMAN

Reverend Chatman stated that he had a couple of items to bring up; that there were certainly concerns within the city as to redistricting—that there had been big discussions in communities; that they would not go back the way it was, and they would have representation in the City of Chattanooga. His second item of concern was the Wilcox Tunnel. He mentioned surveys of the tunnel 17 years ago; that another facility got improved and built; that it did not take the City that long to do the Missionary Ridge Tunnel. He mentioned the funds that had gone into doing surveys and still no action on the Tunnel; that this is the African-American conduit from east to west, and they needed it and were demanding it; that he was tired of surveys and studies. He stated that his hat went off to Councilwoman Scott, and he thanked her for her position. He stated that the African-American community was saying that enough is enough, and they needed the Council's help; that the Council could stand up for Volkswagen but could not stand up for IHOP.

Councilman McGary thanked Reverend Chatman for addressing the Council. He stated that he had been having a conversation with the City Attorney regarding the Wilcox Tunnel; that the Feasibility Study is the last step before construction; that it is not a Study; that we are moving forward, and this is not simply another Study.

Revered Chatman responded that even though it is part of the process; that once you learn this process, there will be another Study about who we will get the actual job—that the City will have to decide to get a person to do the work—that this will entail another Study, and he questioned what we need to do right now about the traffic, noting that we have Study after Study.

Councilman Murphy stated that he would like for the public to know that Councilman Gilbert, Councilman McGary and himself had not been here long—that there was money for construction in Mayor Corker's time; that there was a geotechnical study to make sure the tunnel would not collapse; that we have to build the best two tunnels; that there will be a second tunnel built and the current one will stay open; there will be a new tube open for traffic. Councilman Murphy stated that he was proud because this Council had carried the ball further than ever before. He explained that there is no other city-owned tunnel but this one; that the other tunnel is State-owned, and the only one we have is the Wilcox Tunnel. He noted that tunnels are extremely expensive to build and reiterated that this Council has carried the ball further than ever before. He went on to say that our intent is to fix this problem with a second tunnel. He stated that he understood Revered Chatman's

REVEREND CHATMAN (CONT'D)

frustration—that he lived on one side of Missionary Ridge and used this tunnel daily, and he was not happy with it either.

Councilman Gilbert agreed that this Council has brought the tunnel forward and would make sure this happens; that he was looking for a new four-way tunnel.

Councilman Benson stated that the two tunnels could not be compared; that the other tunnel is State-owned; that we own Wilcox Tunnel completely.

CYNTHIA STANLEY CASH

Ms. Cash stated that she was here as a concerned citizen. She mentioned the history of the Studies and the cost to do the tunnel. She mentioned liking what Councilwoman Scott had said and mentioned that there had been Study after Study—that there had been several. She stated that some clean-up needed to be done in the tunnel; that the water in it is icy and it is trashy; that a clean-up needed to be done weekly. She corrected Councilman Benson, stating that Enterprise South is not in his district but in District 5. (Councilman Benson stated that it would be put in District 6).

Ms. Cash continued, stating that she had some things to say to Councilman Rico concerning his attitude in the committee meeting; that she had read articles concerning this, and these articles had been re-worded from what Councilman Rico actually said; that she did not appreciate Councilman Rico's comments regarding White people making overtures to help Black people and him saying that "this race thing is getting out of hand, and I resent it". She stated that she would like Councilman Rico to make a list of what White people had done; that she wished the City had not taken over Wilcox Tunnel and had left it with the State.

She went on to say that the Attorney tells everyone in the audience what rules they are to abide by when they address the Council, and she thought that Councilmembers needed to have these rules read to them; that Councilman Rico had walked out of this meeting—that it might be for medical reasons—but when he walked out of meetings it was rude. She also chastised the Council for not giving Councilman Gilbert a chance to vote last week on the redistricting, just because he was late in attendance.

CYNTHIA STANLEY CASH
(CONT'D)

Councilman Benson explained to Ms. Cash that Councilman Rico had to leave the meeting because he was going through a Hospital Procedure and had to leave early to drink the Barium, if she knew what he meant.

He stated that he knew something about the tunnel since it was named after his wife's father; that we did not buy it or take it from the State.

Ms. Cash wished everyone a Blessed Holiday Season.

MAHMOOD ABDULLAH

Mr. Abdullah stated that he lived at 202 W. 8th St. and that he had a grievance; that he had a business opening up until a HUD investment shut down his business; that he was going to create a few jobs; that he was in District 7, and he hoped the Council would look into this. He stated that he was not asking for much. He was asking, however, for the recall of Councilman Rico. He stated that at about every meeting Councilman Rico jumps up and leaves. He stated that he was asking for the recall on behalf of the City and wanted Councilman Rico to do what is right. He wished the Council peace and the best of holidays.

This meeting was recessed until Friday, December 23rd at 9:00 A.M.

CITY COUNCIL BUILDING
CHATTANOOGA, TENNESSEE
December 23, 2011
9:00 A.M.

Chairman Ladd called the recessed meeting of the Chattanooga City Council to order with Councilmen Benson, Murphy, Scott, Rico and McGary present. Councilwoman Robinson joined the meeting later. Councilwoman Berz was out of the city. City Attorney Phil Noblett; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Mayor Littlefield, Steve Leach, Bill Payne, Karen Rennich and Richard Beeland.

Chairman Ladd wished everyone a good Friday morning. She apologized to those in the audience who made an effort to come in regards to a rezoning on Gunbarrel Rd.; that she had heard late yesterday that the applicant would not come in to make an additional statement, as he had requested to do so. She promised those in attendance concerning this issue that she thought the Council would be entertaining and an enjoyable trip for them! She stated that she was a little upset that we had only five members present—Councilman Murphy then appeared and a little later Councilwoman Robinson.

LAND TRANSFER (VW)

The Resolution was read. The motion was made by Councilman McGary, seconded by Councilman Benson, to approve.

Councilwoman Scott stated that a lot of effort had been made on the part of the City and also on the part of Volkswagen for this to come to an end; that the City had given what Volkswagen asked for and what we had agreed to give them; that with the additions, we are satisfying this requirement. She stated that she would like to make an amendment to the motion—that it be contingent upon Volkswagen signing an Estoppel to not allow any additional claims; that the City had fulfilled what we had agreed to.

Councilwoman Scott asked the City Attorney give an account of the actual acreage we are looking at. Attorney Noblett stated that he had been in conversation with Mr. Payne and that he could give us the exact numbers; that initially he thought it was 1076.3 acres; that these nine parcels were 233.8 acres.

LAND TRANSFER (VW)(CONT'D)

Mr. Payne noted that the acreage was 1320.1; that these are the numbers provided by Hamilton County, who is handling this.

Attorney Noblett stated that this is everything they are entitled to under the MOU.

Mr. Payne added that this was the intent of the initial MOU without taking this into account; that it was on the basis of consideration at that time; that 1300 acres was the initial number, and it was his belief and understanding that this satisfies this request.

Councilman Benson stated that he did not want to leave a reflection of bad faith with our MOU; that he had talked to someone that was deeply involved in recruiting additional companies to Chattanooga, and he was telling him that we are right on the brink of two more companies. He stated that he wanted us to live up to our word and did not want Volkswagen to feel like the City thinks "we've got them now".

Councilman McGary stated that he wanted to understand Councilwoman Scott's motion to amend; that this was time-sensitive. He wanted to know if she was asking for something in writing and would this be agreeable with Volkswagen.

Attorney St. Charles asked if this was a question for him? Councilman McGary stated that he wanted to know "yes or no" would this be satisfactory? Mr. St. Charles stated that this satisfies the obligation under the MOU; that the contact person for Volkswagen is in Costa Rico and could not be reached for 100% confirmation; that he thought 1320 acres satisfied the obligation. He stated that he did not think a letter would be a problem.

Councilwoman Scott asked for a vote on her amendment; that when a City says 1300 acres it is not 1320—that if that is bad faith, she was not sure what bad faith was; that we were living up to our agreement in good faith; that if this bothered any other companies that might come here, she would not be able to explain why; that she wanted to be sure we were putting this to rest; that Volkswagen can get 1200 additional acres in a subsequent deal—that she thought this was a lot of good faith.

Attorney St. Charles stated that he would not be able to provide an Estoppel until after the first of the year, when Mr. Hinton will be back in town.

Councilwoman Scott stated that her motion was contingent upon.

VW LAND TRANSFER (CONT'D)

Councilman Murphy noted that this was the stated intent of the City, and he did not think we needed to say anything more to accept this property; that if they should come back later and ask for more, we would have the opportunity to say "no" if we wanted to.

Councilman McGary asked about "contingent", questioning if the Estoppel had to be prior to approval—that he was confused about this.

Councilwoman Scott explained that her motion was like we did with a zoning request—that we approve contingent upon a person doing "this and this"—that this is the same concept.

Councilman Murphy noted that Councilwoman Scott's motion did not have a second.

Mayor Littlefield spoke, stating that he was concerned about this and knew how such proceedings can become a complicated process with Volkswagen; that something this innocent could land up going to Berlin and to their highest office; that this is over and above what we had agreed to; however this could be perceived as threatening and smells as an unfriendly act and make Volkswagen feel that we don't trust them. He stated that he would avoid this—that Volkswagen was looking at Chattanooga and had many other options. He noted that one city we competed with was Huntsville, Al; that they had been mentioned as a possibility as to where Audi might go. He stated that it was July 16, 2008, when it was announced that Volkswagen was coming here, and this appeared in the Huntsville newspaper, and he did not want to see something like this (Audi going to Huntsville) appearing in our newspaper. He went on to say that he met with Volkswagen executives last week in Germany and had an opportunity to talk to those at the highest level in a comfortable environment; that one of the highest executives mentioned that they came to Chattanooga because we exhibited the most interest of any other community in working directly with them, such as clearing the site in a speedy manner. He stated that Volkswagen had given a lot to Wolfsburg, and we would hope that German companies coming to the United States would look at one community in expanding their base. He stated that we had fulfilled our responsibility and it was relatively simple to confirm what we had done; that asking them for assurance beyond that would be seen as unfriendly.

VW LAND TRANSFER (CON'T):

At this point, Councilman McGary seconded the motion made by Councilwoman Scott for an amendment to the motion.

Councilwoman Scott stated that we had an agreement—three amendments of 1300 acres going to 1320+ acres—that we had exceeded the offer made; that if it seems outrageous to ask the other party to say this, it made no sense to her; that if we were doing something like this on our own property, we would ask for this assurance, and she did not think we should do anything less just because it is the City.

Councilman McGary stated that he appreciated Mayor Littlefield's comments and also his expertise in dealing with the Germans. He stated that he thought he heard Attorney St. Charles say that something in writing would not be a problem; that it would not be a problem to get an Estoppel. He asked Mr. St. Charles if he would understand this to be offensive?

Attorney St. Charles responded that from a legal standpoint, this would be understood; that Mayor Littlefield had raised an interesting point and that he had a better understanding of the politics of this than he did; that this is a factual issue, and he appreciated Councilman Murphy's comment that it is what it is; that if they felt they were entitled to more, they could come back; that an Estoppel says we agree to these facts—that he did not think Mr. Hinton would be offended; however he could not address what this would look like to the business people. He stated that the working relationship between Volkswagen, the Council, and the City is very positive; that we were here today because of the Volkswagen agreement to take land that was given to Amazon and Erlanger. He noted that his part in this was legal and not the political side.

Before a vote was taken on the amendment, Chairman Ladd asked that Councilwoman Scott repeat her motion—Councilwoman Scott stated the motion was to amend the Resolution to put a contingency that says that Volkswagen will sign an Estoppel that says they are satisfied with the 1320 acres instead of the 1300 acres—that this satisfies the agreement. She added to her motion that they would not ask for anything like the second amendment of the agreement with Volkswagen releasing property to Amazon and if the property goes back to the IDB, it will revert back to Volkswagen.

Attorney St. Charles stated that we needed to be careful with this—that they could not say they would not come back and ask for additional property and could not say they would agree to not come back and ask for the same modifications.

VW LAND TRANSFER (CONT'D)

Attorney Noblett stated that the MOU would give the opportunity of additional acreage.

A Roll Call Vote was taken on the motion to amend made by Councilwoman Scott and seconded by Councilman McGary:

CHAIRMAN BENSON	"NO"
CHAIRMAN LADD	"NO"
COUNCILMAN MCGARY	"NO"
COUNCILMAN MURPHY	"NO"
COUNCILWOMAN ROBINSON	"NO"
COUNCILWOMAN SCOTT	"YES"
COUNCILMAN RICO	"NO"

The motion to amend failed.

On motion of Councilman Rico, seconded by Councilman Murphy,

A RESOLUTION AUTHORIZING TRANSFER OF THE CITY'S INTEREST IN CERTAIN PARCELS OF LAND AS MORE PARTICULARLY SET FORTH HEREIN, TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA FOR INCORPORATION INTO THE LEASE WITH VOLKSWAGEN CHATTANOOGA OPERATION, LLC TO PROVIDE FOR ROADWAY AND RAILROAD RIGHTS-OF-WAY; TO CORRECT THE VOLKSWAGEN PROPERTY DESCRIPTION; AND AUTHORIZING THE INTERIM DIRECTOR OF GENERAL SERVICES TO EXECUTE ANY AND ALL DOCUMENTS RELATING THERETO

was adopted on roll call as follows:

COUNCILMAN BENSON	"YES"
CHAIRMAN LADD	"YES"
COUNCILMAN MCGARY	"YES"

VW LAND TRANSFER (CONT')

COUNCILMAN MURPHY	"YES"
COUNCILWOMAN ROBINSON	"YES"
COUNCILWOMAN SCOTT	"NO"
COUNCILMAN RICO	"YES"

Attorney St. Charles stated that Volkswagen appreciated this extra effort to approve this and to allow them to move forward.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga City Council until Tuesday, January 3rd, 2012, at 6:00 P.M. and wished everyone a happy and safe holiday season.

CHAIRMAN

CLERK OF COUNCIL

(A LIST OF NAMES OF PERSONS IN ATTENDANCE AT THE DECEMBER 20TH
MEETING IS FILED WITH MINUTE MATERIAL OF THIS DATE)

RESOLUTION NO. 23151

A RESOLUTION TO ADOPT THE HAMILTON PLACE
COMMUNITY PLAN.

WHEREAS, the City of Chattanooga City Council requested a comprehensive land use plan for the Hamilton Place area to address transportation, land use and quality of life issues; and

WHEREAS, the Chattanooga-Hamilton County Regional Planning Agency contracted with the consulting firm of Glattig Jackson Kercher, Anglin Lopez Rinchart, Inc. to assist with a public planning process and to produce a comprehensive plan; and

WHEREAS, the Chattanooga-Hamilton County Regional Planning Agency, on September 10, 2001, recommended the Hamilton Place Community Plan to the City of Chattanooga City Council;

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Hamilton Place Community Plan, a copy of which is attached hereto and made a part hereof by reference, is hereby adopted.

BE IT FURTHER RESOLVED, That nothing herein shall commit any City funding and any necessity for any costs or for specific projects shall be subject to future review and prioritization.

ADOPTED: October 9, 2001

/pm



Hamilton Place Community Plan

Chattanooga, Tennessee



Prepared for:

Chattanooga - Hamilton County Regional Planning Agency

Prepared by:

Glattig Jackson Kercher Anglin Lopez Rinehart, Inc.

Robert Charles Lesser & Co.

Rick Wood, AICP

September, 2001

Table of Contents

TABLE OF CONTENTS

1.0 Introduction

1.1 Purpose of this Study	1
1.2 Organization of the Report	2

2.0 The Planning Process

2.1 Kickoff Meeting and Public Comments	4
2.2 Stakeholder Interviews	5
2.3 Public Phone Survey	5
2.4 Saturday Design Charrette	5
2.5 Design Workshop	5

3.0 Context Analysis

3.1 Historic Development Pattern	7
3.2 Transportation	9
3.3 Land Use	11
3.4 Environment	12
3.5 Planning Challenges	13

4.0 Retail Market Analysis

4.1 Study Methodology	15
4.2 Situation Analysis	15
4.3 Retail Demand Analysis	15
4.4 Retail Trends	16
4.5 Town Center Case Studies	17
4.6 Conclusions and Recommendations	20

5.0 The Land Use Plan

5.1 Design Principles	21
5.2 Transportation Issues	25
5.3 The Land Use Plan: Key Study Areas	32

6.0 Implementation

6.1 Land Use and Zoning	42
6.2 Business Improvement District	42
6.3 Tax Increment Financing	42
6.4 Stormwater Management	42
6.5 Action Plan: Projects	43

This report was prepared in cooperation with the U.S. Department of Transportation, Federal Highway Administration and the Tennessee Department of Transportation.

This project is funded in part under an agreement with the State of Tennessee Department of Transportation.

Supporting Documents (under separate cover)

Hamilton Place Community Plan Phone Survey
Prepared by the Information Services Division of the RPA, summer 2001

Hamilton Place Community Plan Transportation Technical Memorandum
Prepared by Glattig Jackson Kercher Anglin Lopez Rinehart, Inc.

Hamilton Place Community Plan Retail Analysis
Prepared by Robert Charles Lesser & Co.



Introduction

Introduction

1.0 INTRODUCTION

1.1 Purpose Of The Study

The purpose of the Hamilton Place Community Plan is to address both the livability needs of surrounding neighborhoods and the long-term economic vitality of the Hamilton Place retail district. Throughout the plan, strategies and policies are presented to promote a positive and mutually supportive relationship between the retail district and established neighborhoods. Most importantly, this plan strives to build "community centered" vision by informing how the retail district and neighborhoods are pieces of a larger community context that also includes streets, parks, public facilities and the natural environment.

With this "community" focus in mind, the following goals, developed through this planning process, structure the Hamilton Place Community Plan:

Goals:

- Protect and enhance existing neighborhoods
- Strengthen existing commercial areas
- Improve the transportation system
- Protect the environment
- Identify opportunities for community facilities and parks

Planning Principles:

The following planning principles have been developed through this planning process to support the goals of the study and provide guidance for future land use decisions in the public and private sector. These principles are organized around the three broad categories of Land Use, Transportation, and Open Space.

Land Use

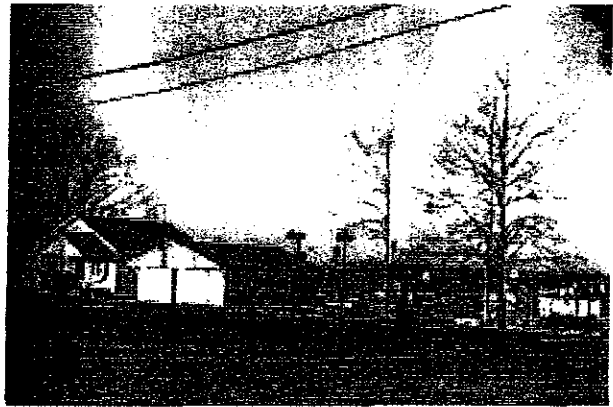
- Commercial and neighborhood boundaries should be maintained as defined by the land use plan
- Configure new development so that it is compatible with existing adjoining uses. Examples include placing smaller scale, less intense buildings next to existing neighborhoods. Placement of large-scale buildings next to neighborhoods should be avoided.

Transportation

- Promote and expand street network to provide better access to area destinations
- Encourage multi-modal transportation system that supports pedestrians, cyclists, transit, and the automobile.
- Promote pedestrian-friendly street design including sidewalks and street trees
- Establish neighborhood traffic calming programs



View of Hamilton Place Mall



Residential Neighborhoods and Commercial Growth



View of Residential Neighborhoods

Introduction

Open Space

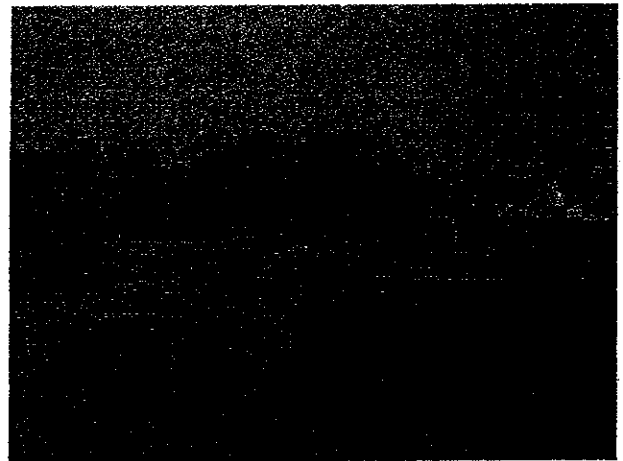
- Support new parks and greenway connections
- Promote effective and sustainable stormwater management
- Protect the natural environment including stream and creek corridors, and existing tree canopy
- Establish better landscape design standards and buffers

1.2 Organization of the Report

This report is organized into six sections. Following Section 1.0 Introduction, Section 2.0 The Planning Process describes the study process including the public events and information gathering conducted over the course of the study. Section 3.0 Context Analysis, outlines the area's physical context. Section 4.0 Retail Market Analysis, summarizes the results of the market analysis. Section 5.0 Land Use Plan, illustrates the recommended land use plan and includes potential development scenarios, illustrative sketches of future development, and transportation improvements. Section 6.0 Implementation, outlines the steps necessary for plan implementation, as well as, possible implementation tools.

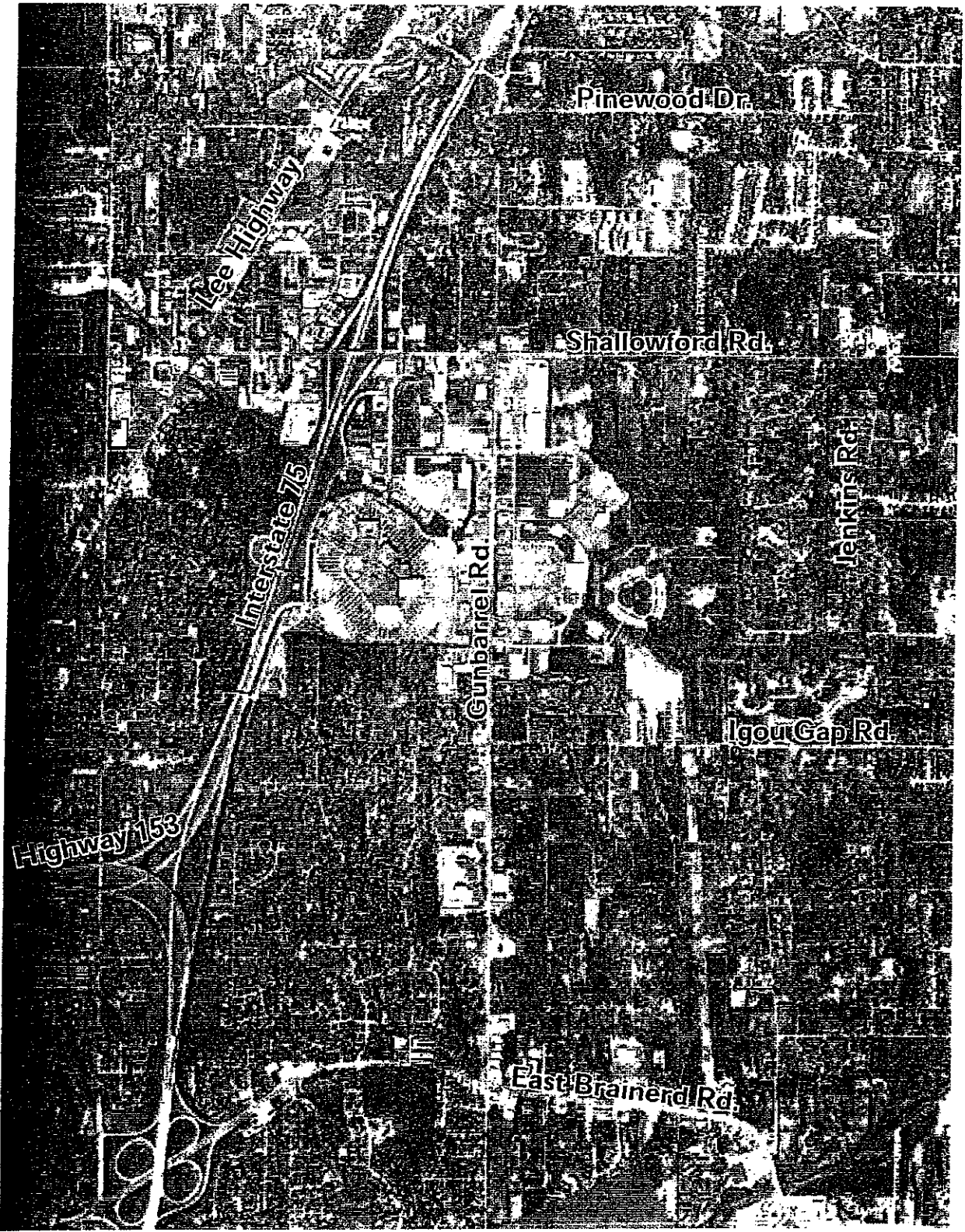


View of Gunbarrel Rd.

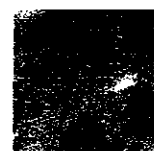


View of Igou Gap Rd.

Introduction



Study Area



The Planning Process

The Planning Process

2.0 THE PLANNING PROCESS

On October 2000 the Chattanooga City Council passed a resolution requesting the Regional Planning Agency to develop a comprehensive land use plan for the Hamilton Place Area. Council requested that the plan incorporate significant public input and that "the best consultants" be brought in to assist the RPA in developing a lasting and livable solution to the zoning, transportation, and quality of life problems in the area. This report is the culmination of nearly a year-long process of public comment, site analysis and stakeholder meetings organized around two key public planning events: a Saturday public charrette and a three-day public design workshop.

2.1 Kickoff Meeting and Public Comments

On November 30, 2000 RPA conducted a Kickoff Meeting to inform the area stakeholders of the planning process and to generate a first round of public comment to help frame the consultant selection process. The question presented to the attendees at the meeting was: "How can we make the Hamilton Place area a better place to live, work, and shop?" This was the first step to insure that everyone in the community have an opportunity to be heard and participate in the planning process. Hundreds of comments were received.

In conjunction with the kickoff, the Regional Planning Agency created a project website to document the planning process, provide for public comment, and inform the public about the project schedule and key meetings. The RPA website can be viewed at: www.chcrpa.org

Following the Kickoff Meeting, the RPA staff spent several months meeting with neighborhood groups, area landowners, business owners, developers, civic groups, professional organizations, and Chattanooga city officials, to discuss the planning process and gather comments. In April of 2001 the consulting firms of Glatting Jackson and Robert Charles Lesser and Co. were hired to assist RPA in the planning process and to develop recommendations for the Hamilton Place Community Plan. This plan, then, is the result of an ongoing partnership between a diverse group of area stakeholders, the RPA, and the consultant team.



Table session of Saturday charrette



Teams working at Saturday charrette.



Open house workshop

The Planning Process

2.2 Stakeholder Interviews

Leading up to the Saturday design charrette a number of meetings were held to introduce the consultant team to individual stakeholders in the area. These meetings were one-on-one sessions intended to identify issues and concerns of surrounding neighborhoods and commercial properties in the Hamilton Place area. Stakeholders included various City departments including: Traffic Engineering, Stormwater Management, and Parks and Recreation among others. The team also met with representatives from surrounding neighborhoods and commercial property interests in the area. These meetings resulted in a clear picture of past planning initiatives, current development issues and neighborhood concerns in the study area.

2.3 Public Phone Survey

In addition to the stakeholder interviews, the RPA implemented a resident phone survey. The survey provided staff with an objective and statistically valid representation of residents' views concerning current conditions and future development of the Hamilton Place community. A random sample representing the study area population was selected with a total of 350 surveys completed. The detailed survey results are published as a separate report that is available through the RPA. The key results from this survey have informed this study and are referenced throughout this report.

2.4 Saturday Design Charrette

With the completion of data collection, preliminary analysis, phone survey and stakeholder interviews, a Saturday charrette was held on June 30th. This charrette involved over 200 participants in a half-day working session. Participants included residents, property owners, business owners, realtors, developers, and elected officials.

The charrette was organized into three parts: an opening presentation that outlined the existing conditions and preliminary analysis, a community working session, and a series of community presentations. The charrette began with a brief overview of the team's initial findings, illustrating how the area's context influences the planning process. The preliminary market analysis and basic community design principles were presented. The public was then asked to participate in work sessions that allowed individuals the opportunity to voice specific issues and concerns they have for the future of the area. The participants worked as teams writing, talking and drawing their ideas for the Hamilton Place area. The teams then presented their plans to the larger group sharing ideas and concerns. The resulting plans jump-started the planning process outlining common themes and giving clear direction to the RPA and consultant team.



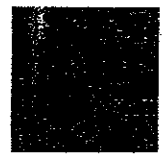
Public reviewing progress at workshop.



Discussion of ideas at workshop.

2.5 Design Workshop

The culminating public event in this process was a three-day, open house workshop held from July 24th to the 26th. The workshop began with an evening kick-off presentation that outlined a draft transportation, land use, and market approach to the study area informed by public input. The RPA and consultant team then set up an open house workshop studio which allowed the ability to work directly with local business owners, neighbors, property owners, and City staff over the next three days to refine and prepare a draft Hamilton Place Community Plan. The workshop ended with a closing presentation that summarized the draft plan for public review and comment. These public events were organized as working sessions with the consultant team and provided critical community input into the study process.



Context Analysis

Context Analysis

3.0 CONTEXT ANALYSIS

This planning process involved understanding the physical context of the study area. This research provides the foundation of our analysis and guides the recommendations shown in the Land Use Plan. This planning study for the Hamilton Place Community recognizes two key factors about the area.

Regional Character

Hamilton Place is a regional activity center. The Hamilton Place Mall draws its clientele from a large part of southeast Tennessee and north Georgia. This regional attraction is enabled by the area's location. Interstate 75 allows for quick access to the north and south, while Highway 153 connects Hamilton Place to Chattanooga's northern suburbs. The area's regional significance has emerged as the location of choice for most large retailers, which has, in turn, attracted other retail uses that tend to cluster around malls. It is important to note, however, that Hamilton Place is almost purely a regional center. Commercial uses that cater to the community's day-to-day needs, such as grocery stores, have tended to locate on Lee Highway or East Brainerd Road closer to the residential areas to the west and east of the mall.

Established Residential Neighborhoods

There has emerged a wide variety of housing types, styles and prices in the immediate vicinity of Hamilton Place. When coupled with easy access to shopping and to work downtown or in the Amnicola Highway corridor through I-75 or Highway 153, the greater East Brainerd area becomes an attractive place to live. This trend will likely continue.

Summary: The Planning Challenge

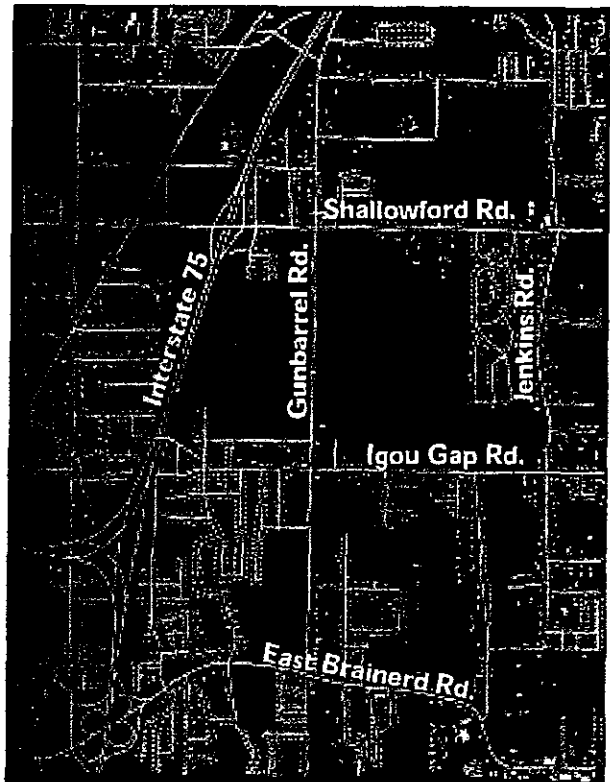
The plan for the Hamilton Place Community must address the friction that arises where these factors - the regional retail character of the area, and the established residential neighborhoods - come into conflict with each other. For example, roads that respond to the regional nature of the mall can be less than desirable addresses for residences, and residential areas adjacent to commercial tracts are not always appealing places to live. This plan seeks to find a sustainable design solution that balances commercial needs with residential needs.

Context Analysis

3.1 Historic Development Pattern

Hamilton Place Community - 1960s and 1970s

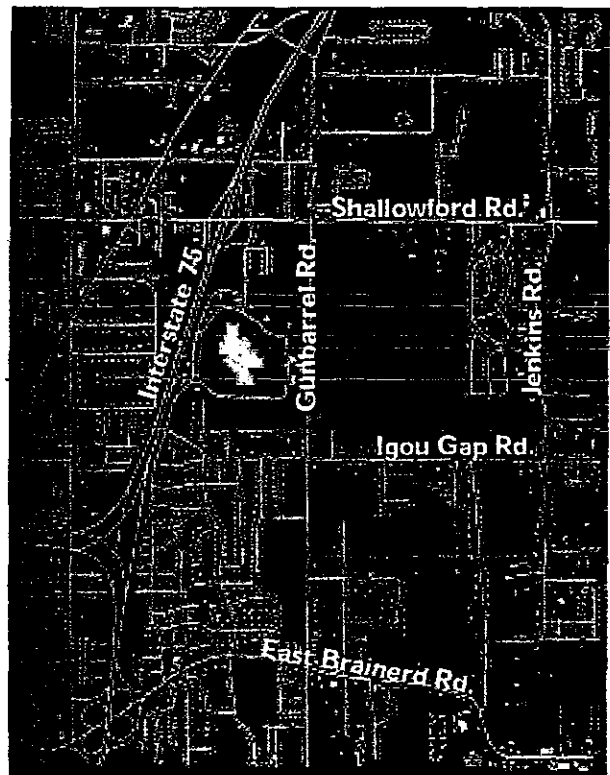
The Hamilton Place Community in the 1960s certainly looked very different than it does today. While the basic transportation network of Lee Highway, Interstate 75, Shallowford Road, Gunbarrel Road, Igou Gap Road, and East Brainerd Road was in place, there was minimal commercial development, and just a modest amount of residential development. The key local roads such as Shallowford Road and Gunbarrel Road were 2-lane rural roads serving a low-density rural residential pattern of development.



Hamilton Place: 1960's

Hamilton Place Community - 1980s

By the time Hamilton Place Mall was developed in the mid 1980s the area had grown with new commercial and residential development. Lee Highway had emerged as a commercial corridor and new residential was growing in the surrounding neighborhoods. The development of Hamilton Place Mall included important improvements to the transportation infrastructure including access roads to Shallowford Road, Gunbarrel Road, and Igou Gap Road, as well as, a half interchange on I-75 that provided interstate access to and from the south.

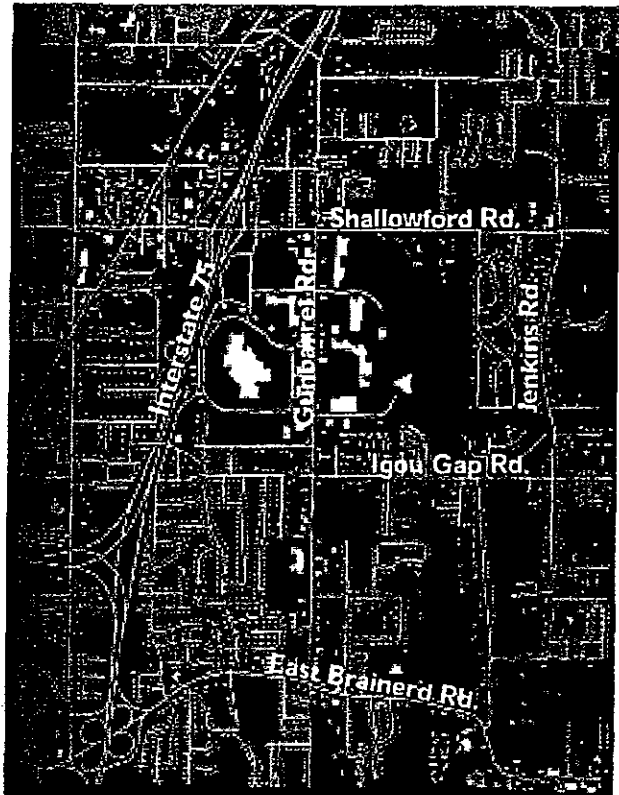


Hamilton Place: 1980's

Context Analysis

Hamilton Place Community - 1990s

By the 1990s, Hamilton Place had grown into a regional commercial center. The success of Hamilton Place Mall provided a catalyst for other regional commercial development along Shallowford and Gunbarrel Roads. This development included "big box" commercial uses such as Kmart and Wal-Mart along with smaller "outparcel" development consisting mainly of restaurants and small retail shops. At the same time new residential development has occurred as large 5 and 10 acre rural lots were redeveloped into single-family residential subdivisions.



Hamilton Place: 1990's

Hamilton Place Community - Today

The Hamilton Place Community today is a highly successful regional commercial center with over 3 million square feet of commercial development surrounded by strong and vibrant neighborhoods. The commercial success of the area has placed development pressure on the surrounding neighborhoods as residential land is converted to higher value commercial development, slowly eroding the edges of the surrounding neighborhoods. In the last 20 years a pattern of ever expanding commercial growth has been established setting high expectations for commercial resale values on surrounding property and growing concern from the surrounding neighborhoods.

Beyond the transportation improvements Hamilton Place Mall put in place, no new transportation network has been developed since the 1960s. While Shallowford Road and Gunbarrel Road have been widened, this widening can only effectively accommodate traffic to a certain point, beyond which the impact to the surrounding land uses becomes too costly and the ability to move traffic is maximized. The lack of road network, specifically, parallel alternatives to Shallowford and Gunbarrel Roads, forces all traffic to use just these two major roads creating a growing unacceptable level of congestion.



Hamilton Place: Today

Context Analysis

3.2 Transportation

The transportation system serving the Hamilton Place Community is experiencing significant congestion during the evening rush hours, especially along Shallowford Road. Unfortunately, congestion will only increase as the surrounding area continues to grow. This section of the report evaluates how the transportation system is working within the context of existing land uses and known future development.

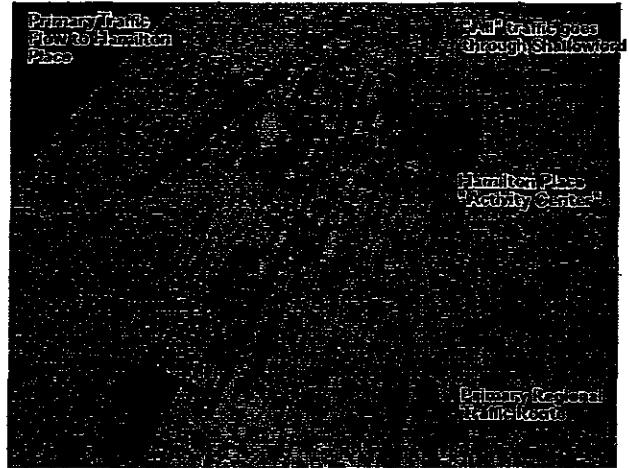
Street Network

The Hamilton Place Community is approximately twelve miles to the east of downtown Chattanooga. Nearly 90% of all the traffic accessing the Hamilton Place Community is using four routes: Interstate 75, Shallowford Road, Gunbarrel Road, and East Brainerd Road. Igou Gap Road and Jenkins Road are important, yet, secondary access routes to and from the community.

The primary traffic destination in the Hamilton Place Community is the commercial development south of Shallowford Road. The I-75 exits from both East Brainerd Road and the half interchange at Hamilton Place Boulevard provide important access to the area. However, the limited street network in the area still funnels the majority of regional traffic from Interstate 75, and local traffic west of Lee Highway, onto Shallowford Road.

The choke point in the Hamilton Place Community transportation system is the short segment of Shallowford Road from Lee Highway to Gunbarrel Road. Congestion is occurring on Shallowford Road because it is serving both the regional traffic from I-75 as well as the local traffic west of the Mall. In addition, the number and closeness of traffic signals, four between the short segment around the interchange from Napier Drive to Shallowford Village Drive, constrains the ability of the signal system to operate effectively. Regardless of future development, the community has two basic choices in managing congestion throughout the Hamilton Place Community: 1) continue to widen the few major roads, impacting the character of the community, 2) look for ways to create new street network to provide transportation alternatives.

Strengthen the Commercial Core: The Problem



LEVEL OF SERVICE DEFINITIONS SERVICE

LOS	Definition

Context Analysis

Traffic Analysis

A traffic analysis was conducted to understand the operating characteristics of the transportation system. The traffic study examined current year traffic (2001) as well as traffic expected in the year 2020. A detailed Transportation Technical Memorandum of this traffic analysis is published as a separate support document.

1998 traffic volumes from previous studies in the area were used as the base year (1998) condition. A 2% annual growth rate was then applied to the 1998 volumes to arrive at Year 2001 volumes. These volumes were then compared with actual volumes available in the area and used for validation. The 2% annual growth rate was then applied to arrive at Year 2020 volumes.

The operational condition, or level of service (LOS), of a roadway is measured by comparing the number of vehicles expected on the road with the number of vehicles the road can accommodate (capacity). The degree of congestion increases as the volume of vehicles approach the road's capacity. Levels of service range from "A" through "F" with "A" being the best and "F" the worst.

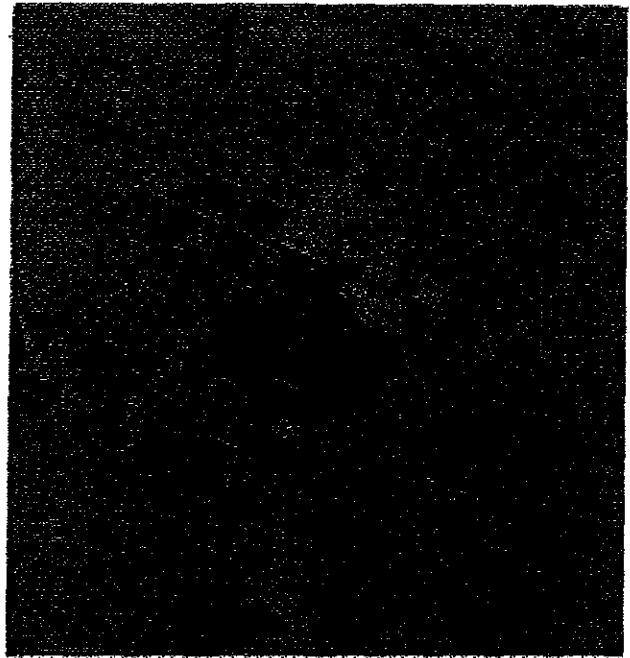
Existing Conditions

The transportation system serving the Hamilton Place Community in 2001 is experiencing significant delays along sections of Shallowford Road between Lee Highway and Gunbarrel Road. Among others, the intersection of Napier/Shallowford is currently operating at LOS F in peak hours. This is due to both the amount of traffic using this section of Shallowford and the number and closeness of traffic signals in and around the I-75 interchange.

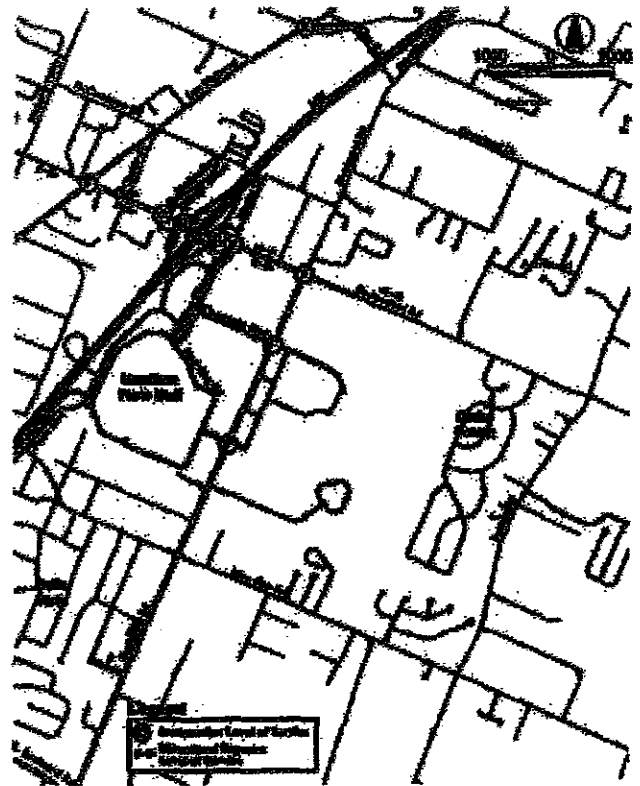
The intersection of Shallowford and Jenkins is also operating at an LOS F. This intersection is currently experiencing significant delay in part because the four-way stop condition cannot efficiently handle the amount of traffic in peak times.

Future Conditions

Future traffic volumes for the year 2020 assume only general growth within the area and do not account for any major development not currently anticipated in the immediate vicinity. The Year 2020 analyses showed that a large majority of the intersections in the study area were projected to be at or close to failure (LOS F).



Existing Conditions: 2001



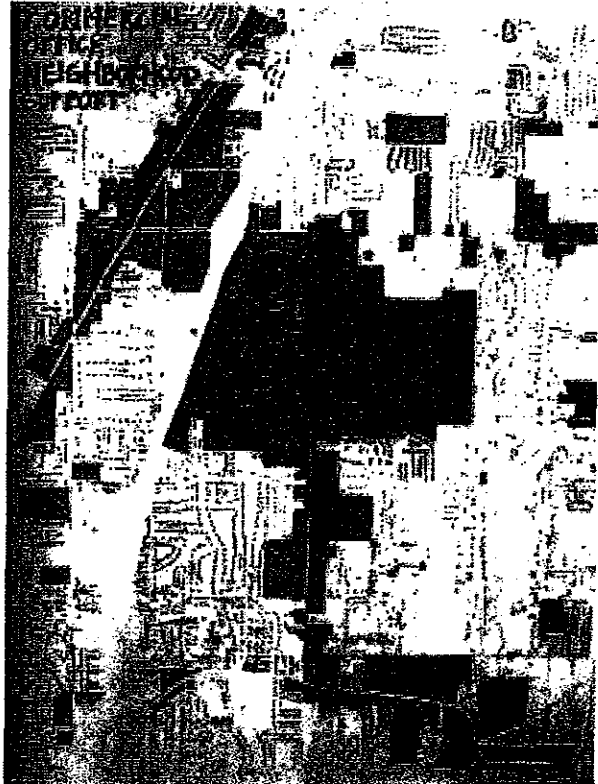
Future Conditions: 2020

Context Analysis

3.3 Land Use

Non-Residential Development

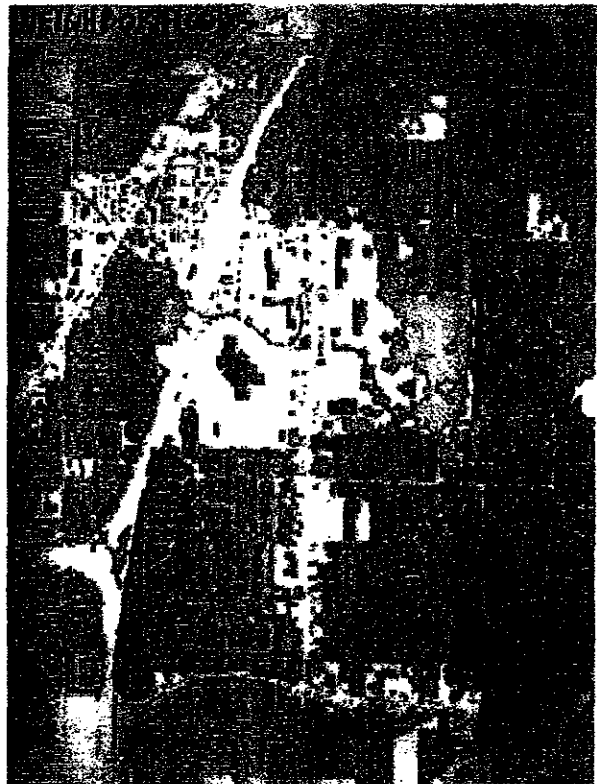
At the center of the Hamilton Place Community is a core of regional commercial and big box uses such as Hamilton Place Mall, smaller retail shops and restaurants, office and institutional uses such as Erlanger and Memorial Hospitals, and civic uses such as the various area churches and the local YMCA. For the most part this core of non-residential uses is centered along Gunbarrel Road between Shallowford Road and Igou Gap Road.



Non-Residential Development

Neighborhoods

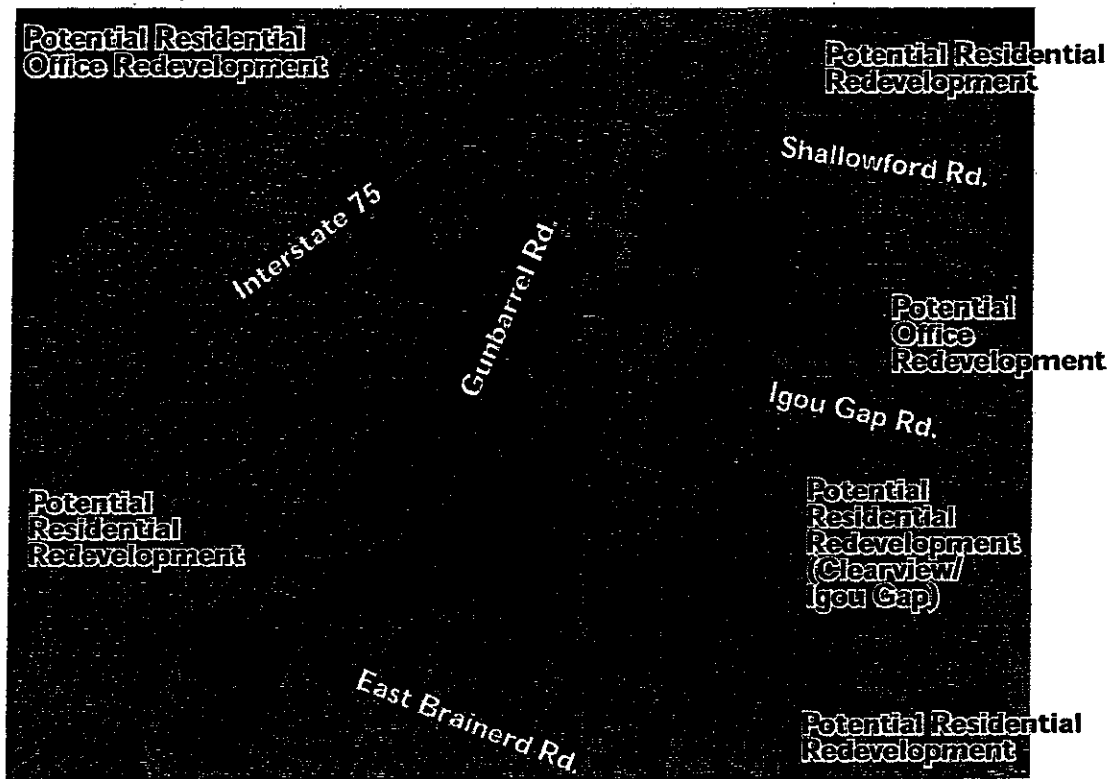
Surrounding this core are a number of strong neighborhoods including Bella Vista, Drake Forest, Ashwood, and Twinbrook among others. These neighborhoods frame the commercial core of Hamilton Place and are directly impacted by the character and outward expansion of commercial development. The existing tree canopy within the neighborhoods is a defining physical characteristic and an important component of the natural environment. Site design standards should be developed with strong tree protection provisions and new tree planting requirements.



Neighborhoods

Context Analysis

Land Use: Commercial Core - "Pressure Sites"



Pressured Sites

This conflict between the single-family residential neighborhoods and the expanding commercial areas has created a number of "pressured sites". These pressured sites are caught in between commercial development and the surrounding neighborhoods and are continually identified by speculators for commercial expansion. These areas include among others the "triangle" site north of Shallowford Road, the area south of Shallowford Road just east of the YMCA, the Igou Gap/Gunbarrel area, and the Igou Gap/Clearview Drive area. The key to this study is developing a strategy for these sites that balances commercial demand while protecting the existing neighborhoods.

3.4 Environment

Stormwater Management and Creek Systems

The Hamilton Place Study Area is located entirely within the South Chickamauga Creek watershed. The two sub-watersheds of Friar Branch and Mackey Creek bisect the study area. South Chickamauga Creek is listed on the state's Year 2000 305(b) Report as partially supporting its listed uses. This means that various sources of contamination have significantly diminished the ecological health of these waterways. Causes of contamination listed in the report are: habitat alteration, siltation, pathogens,

nutrients, and phosphates. Sources for contamination listed in the report are: channelization, land development and urban runoff/storm sewers. Flooding has increased in Friar and Mackey sub-watersheds due to the increase of impervious surface and loss of natural recharge areas that have resulted from over 3 million square feet of commercial development and hundreds of residential dwellings built in the study area over the past 20 years. A large detention project was recently completed to the northwest of the study area off of Lee Highway to help alleviate flooding in the Friar Branch watershed. Significant flooding still occurs in areas downstream from the retail core surrounding Hamilton Place Mall.

Tree Canopy

The type of development seen in the Hamilton Place Community consists of both large and small retail developments that are surrounded by vast areas of surface parking. The loss of tree canopy in the study area has caused significant negative impacts on the quality of life in the area. Impacts include increased heat gain in summer months loss of capacity for transpiration whereby trees absorb stormwater and release it into the atmosphere, loss of wildlife habitat, and a generally pedestrian unfriendly and aesthetically sterile environment.

Context Analysis

3.5 Planning Challenges

From this analysis, two critical challenges emerged to guide the development of the Hamilton Place Community Plan: defend the neighborhoods and strengthen the commercial core.

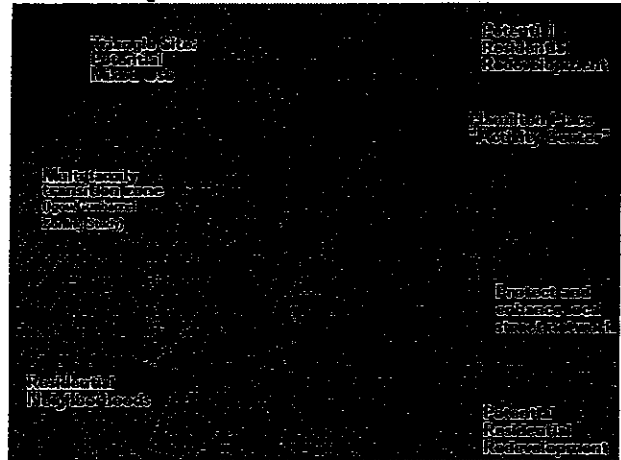
Defend the Neighborhoods

There is an overwhelming concern from area residents to protect their neighborhoods and clearly define where growth should occur. In the public phone survey 89% stated that the City should clearly define where future growth will occur, and 79% valued the protection of existing neighborhoods. The "pressured sites" are where this issue is most obvious and where solutions will occur first. The solution involves clearly defining an appropriate land use mix that can bridge the gap between the intensity of commercial uses and the surrounding single-family residential neighborhoods. These areas include among others the "triangle" site north of Shallowford Road, the area south of Shallowford Road just east of the YMCA, the Igou Gap/Gunbarrel area, and the Igou Gap/Clearview Drive area. In order to support and connect to existing neighborhoods, new development should also include parks and open spaces that are inter-connected by pedestrian-friendly sidewalks and greenways.

Defend the Neighborhoods: The Problem



Defend the Neighborhoods: Possible Solutions



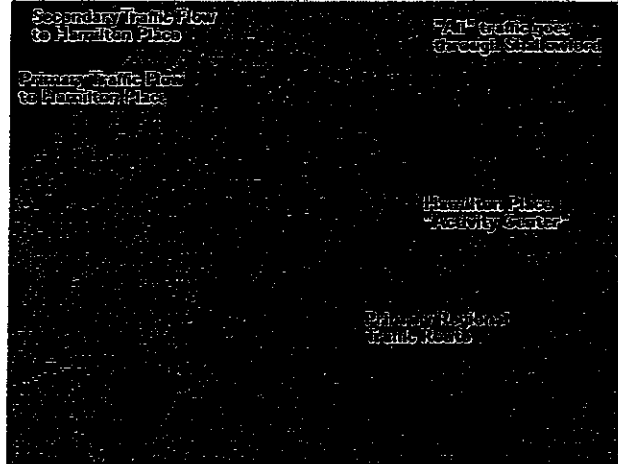
Context Analysis

Strengthen the Commercial Core

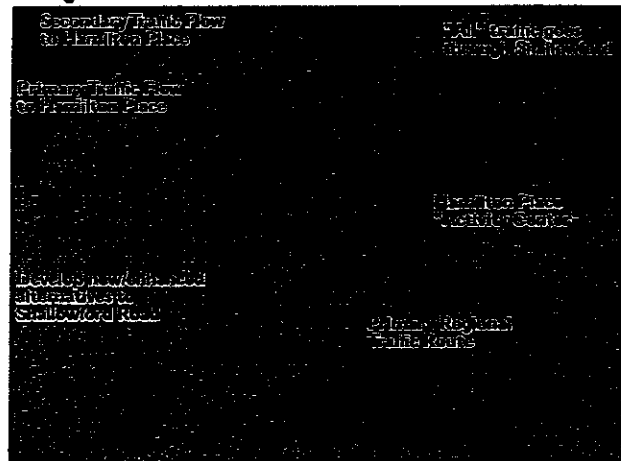
As identified in the public phone survey, 76% of respondents believe that the prosperity of the commercial area is important to the larger community. A key challenge of this plan will be to find ways to support the future success of the commercial areas while minimizing their impact on the neighborhoods. The ability to accommodate infill development and a broader mixture of uses including retail, residential, and office will allow the commercial core to grow and adapt over time. One of the biggest challenges to this future commercial development is transportation access, which will eventually impact the quality of the area's shopping experience.

As already outlined, there are only a limited number of useful routes to the commercial core of Hamilton Place. These routes, Shallowford Road and Gunbarrel Road specifically, are already experiencing unacceptable levels of congestion at certain times of the day. The potential solutions revolve around providing alternative routes that parallel both Shallowford Road and Gunbarrel Road to create a more extensive network of roads to serve the area. The key network enhancements include; 1) a better connection from the half interchange of I-75 to Gunbarrel Road via an extended Goodwin Drive, 2) an ultimate extension of Goodwin Drive from Gunbarrel Road to Jenkins Road, 3) a north-south connection (via Commons Boulevard) from Igou Gap Road to Gunbarrel Road and ultimately Shallowford Road.

Strengthen the Commercial Core: The Problem

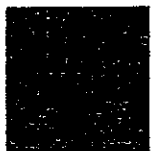


Strengthen the Commercial Core: Possible Solutions



10/10/2010 10:10:10 AM
10/10/2010 10:10:10 AM
10/10/2010 10:10:10 AM

10/10/2010



Retail Market Analysis

Retail Market Analysis

4.0 RETAIL MARKET ANALYSIS

This section provides a summary of the retail analysis completed by Robert Charles Lesser & Co. The detailed Retail Analysis Report is published as a separate report and is available through RPA. In particular, this section addresses two key aspects of successful retail centers: first, the supply and demand factors for retail space in the Hamilton Place area; and second, retail trends and case study examples of other regional shopping centers that provide potential models for the Hamilton Place area.

4.1 Study Methodology

The following methodology was utilized in order to assess the economic underpinning for retail space in the study area. This section is organized according to the following topics:

Situation Analysis

- Assess the Hamilton Place study area in the context of the larger retail environment in the Chattanooga metropolitan area.
- Examine the current commercial environment of the study area, including the amounts and types of space in addition to the occupancy levels.
- Conduct interviews with property owners and other key stakeholders in the study area in order to understand issues that bear upon the creation of a new economic plan.

Retail Demand Analysis

- Analyze projected household growth and tourism forecasts for Chattanooga in order to project retail expenditures. Analyze the same data for the study area.
- Prepare a statistical analysis for the total retail space demanded in the Chattanooga area by using the projected figures for retail expenditures.
- Prepare the same demand analysis for the study area.
- Assess the current supply of retail space in the Chattanooga area and forecast opportunities for new development in order to meet total demand. Provide the same assessment for the study area.

Retail Trends

- Identify trends amongst retailers and shopping center developers in order to uncover new opportunities for the Hamilton Place area.
- Assess the suitability of the study area for implementing new shopping center concepts.

Town Center Case Studies

- Conduct case studies of other mall-anchored districts in various U.S. cities. Study examples that are similar to the Hamilton Place area in terms of traffic congestion and residential conflict with encroaching commercial land usage.
- Identify potential solutions to use in the Hamilton Place area.

4.2 Situation Analysis

The study area has a large retail base of approximately 3.0 million square feet. Hamilton Place Mall serves as a regional shopping development with approximately 1.3 million square feet. The remaining 1.7 million square feet of retail space in the study area is located in ten strip shopping centers. Occupancies are high with a current occupancy rate in the 95% range for the mall, and surrounding retail centers. Sales per square foot are high in comparison to the metropolitan area overall and at the high end of the national average. Therefore, the commercial success of the Hamilton Place area continues to draw national retailers to this location.

4.3 Retail Demand Analysis

The population of the retail trade area and the amount of their disposable income determines retail expenditure. Retail expenditure then determines the support for retail space in any particular community.

The Chattanooga Region

The results of a statistical demand analysis prepared by RCLCo indicate that the Chattanooga Metropolitan Statistical Area (MSA) area could support approximately 365,000 square feet of additional retail space at this time. By 2005, we estimate the MSA could support an additional 339,000 square feet of retail space, or a total of 704,000 square feet. Demand for this space is derived from the indigenous population of the MSA, regional population from within a 50-mile radius outside the MSA and visitors (tourism) to the area. Retail demand in the MSA is concentrated in two areas, downtown and Hamilton Place with only small amount supported in other areas of the MSA.

Retail Market Analysis

Hamilton Place

The Hamilton Place area can be expected to absorb most of the additional supply of retail space for the Chattanooga MSA. This is due to the strong economic base as well as the interest of retailers in the study area. In particular, the Hamilton Place area could support approximately 291,000 square feet of additional retail space at this time. By 2005, we estimate the study area could support an additional 142,000 square feet of retail space for a total of 433,000 in additional square footage beyond the retail space that exists today.

Retail expenditures by store category suggest strong opportunities for both big box and town center types of development. Restaurants/bars and convenience goods are the types of stores that go into a town center, while comparison goods typically go into big box centers (or sometimes called power centers) or malls. Apparel and accessories can go into either type of center.

4.4 Retail Trends

Retail space is the most rapidly evolving real estate product. Retailers are often searching for new store formats in order to enliven the shopping experience and improve profitability. The U.S. market in general is "over-retailed" creating a highly competitive environment. Commercial developers strive to meet the needs of retailers as they implement new concepts. Two primary trends in retail space are the development of big box stores and town centers. While numerous big box retailers are already located in the Hamilton Place area, a town center does not exist in the area and this suggests that an opportunity exists.

Big Box or Power Centers

Big box retailers occupy large warehouse-style stores with the goal of providing consumer goods at the lowest competitive price by purchasing directly from the manufacturer versus through a wholesaler. These retailers and power centers are regional in nature due to their ability to draw from a larger regional area, similar to a regional mall. Examples include Sam's Club, Circuit City, Costco, Target and Home Depot. Retailers who choose this store format derive their profits from high sales volume rather than price mark-ups and thus they require large stores. Typical big box store sizes will be between 90,000 - 200,000 square feet in size.

The big box retailers have been successful because they offer low prices and convenience for shoppers with busy schedules. However, controversy sometimes arises when a big box retailer seeks to develop a new store in an existing community. The first issue is that smaller established retailers are often priced out of the market as the lower-priced retailer takes their customers. The second issue is the visual, environmental, and traffic impacts generated by

the large scale warehouse-type buildings and parking lots. Nonetheless many retailers have chosen the big box store format because it is a profitable concept. The Hamilton Place area has certainly been a part of this trend given the presence of the major big box retailers in the shopping district.

Town Centers

New town center developments have emerged in various suburban mall locations around the nation over the last decade. From a retail perspective, a town center is a pedestrian-oriented retail destination where shops and restaurants face streets and sidewalks much like traditional main streets or downtowns. Typically, new town centers will have a strong destination anchor such as an existing mall or a new movie theater that will attract visitors. From a broader perspective, the town center concept includes a mix of uses including retail, residential, office, civic, and public space.

There are a number of reasons for the rise in town center developments. First, retailers and shopping center developers have discovered that today's busy customer values the ability to park near or in front of their desired destination without having to navigate through a typical mall. For this reason a number of national restaurant and retailing chains will only locate new stores in town center environments. In addition, as older suburban malls are renovated or redeveloped, developers are attempting to attract new businesses and development by improving the quality of their projects through streetscape and attractive public spaces. Finally, "town center" development reflects a growing desire for community and a "sense of place" that is simply not present in typical suburban communities.

Town center development has a number of unique characteristics relative to typical suburban commercial development. In order to create a pedestrian-oriented environment buildings are placed along streets and blocks with a highly designed streetscape. This pedestrian environment should be supported by a central public plaza or park, creating spaces for meeting, gathering, and relaxing. Parking is generally placed behind or to the side of buildings with only on-street parking in front along pedestrian-oriented streets. The kind of density and orientation necessary to create a pedestrian-oriented town center will usually require structured parking decks in order to get enough parking within a reasonable distance of shops. Town centers are usually anchored by strong destinations such as existing malls, movie theaters, office uses, hotels, etc. Ideally, there should be a mix of uses that include in addition to retail, residential and office to generate activity throughout the day. In addition this mix of uses minimizes vehicle use as visitors or residents have a variety of destinations within walking distance.

Retail Market Analysis

4.5 Town Center Case Studies

A number of "town center" retail projects have been developed throughout the U.S. Four examples stand out as comparable situations to the Hamilton Place area including; Perimeter Center Mall in Atlanta, GA, The Avenue at White Marsh in Baltimore, MD, Phillips Place in Charlotte, NC, and Valencia Town Center in Los Angeles, CA. While the demographic characteristics are not necessarily comparable to Chattanooga, each of these examples have a strong relationship to a regional mall either directly or nearby, and include the types of retail uses that, if located in Chattanooga, would only locate in the Hamilton Place area.

Perimeter Center Mall, Atlanta, GA: (Expanded existing mall)

This existing regional mall in suburban Atlanta was facing stiff competition from the new North Point regional mall. Additional competition existed from nearby power centers (big boxes) and smaller shopping centers. Both shoppers and retailers were gravitating towards the newer mall and the other nearby centers. The Perimeter Mall stores were primarily in the mid-price range with Rich's as a major anchor. While there is 20 million square feet of office space in the immediate vicinity of the mall, the workers were not patronizing the shopping center on a regular basis.

The mall's redevelopment included, among other improvements, the creation of a pedestrian-oriented environment at the front entrance to the mall. The focus of this "town center" are high-quality restaurants that wanted their own identity and entrances separate from the mall. Outdoor eating areas and public park space help create an environment that attracts a large lunch and dinner crowd from the nearby offices and neighborhoods. The mall now attracts more foot traffic and has increased sales by tapping into a new segment of customers that come to the mall for the restaurant experience.

The Avenue at White Marsh, Baltimore, MD: (Town center across from mall)

The Avenue at White Marsh is a new town center in the suburbs of Baltimore, across the street from the White Marsh Mall, the largest regional mall in the greater metropolitan area. The developer of The Avenue was searching for a way to accommodate numerous restaurant operators who targeted White Marsh as an opportunity area, as well as provide a place for upscale retail to support the surrounding neighborhoods and offices.



Perimeter Mall, Atlanta, GA: Active outdoor public space



Phillips Place, Charlotte, NC: Mixed use buildings with on-street parking



Phillips Place, Charlotte, NC: Active public space

Retail Market Analysis

Completed in 1997, the Avenue at White Marsh has 300,000 square feet of shops located along a pedestrian-oriented street. A parking lot separates The Avenue from the White Marsh Mall. The Avenue includes a state-of-the-art movie theater, retailers such as Ann Taylor and Bath & Body Works, restaurants, two hotels within walking distance, and public space including plazas and fountains. The success of the Avenue includes sales per square foot that exceed the national average, increased sales at the nearby mall, and has increased the attractiveness and value of surrounding office and residential.

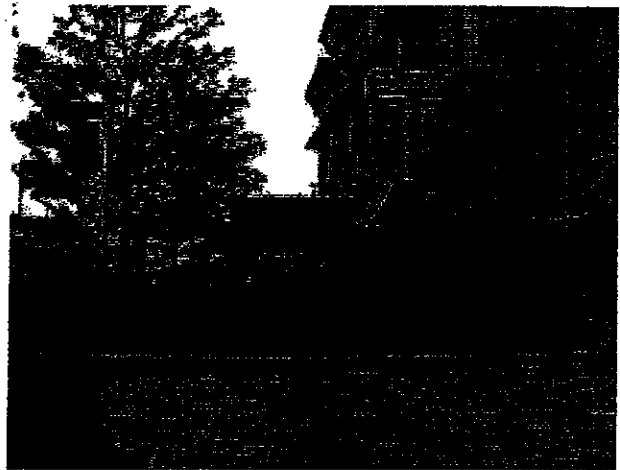
Phillips Place, Charlotte, MD: (Mixed-use residential/retail center near mall)

SouthPark is an existing regional mall in the affluent SouthPark neighborhood of Charlotte, North Carolina. The SouthPark neighborhood is rapidly growing and has a residential base with one of the highest income levels in the Southeast. As with the Hamilton Place area, local SouthPark residents were in conflict with commercial developers over growth and traffic issues. Yet developers were looking for a way to provide this growing and affluent neighborhood with additional upscale shopping given the lack of large tracts of available land. The resulting Phillips Place is a "town center" organized along a retail main street and anchored by a multiplex movie theater and a hotel.

The developer of Phillips Place partnered with other specialized developers in order to build the various mixed-use components of the project. As a result, Phillips Place includes 130,000 square feet of shops and restaurants, over 400 multifamily residential units, a 124-room hotel, and a multiplex theater. The pedestrian-oriented streets and public spaces serve as public event locations and have helped Phillips Place become a community focal point.

Valencia Town Center, Los Angeles, CA: (Town center attached to regional mall)

Valencia is a master-planned community in suburban Los Angeles. The Valencia Town Center Mall was built in 1992 with such mid-range stores as Sears and JC Penney. The developer of Valencia sought to attract affluent young people in the Generation X population group as home buyers in the community, as well as, offer upscale retail in Valencia within walking distance to the existing mall. Valencia Town Center Drive is the result. Retail shops are located along a half-mile extension of the existing mall. The mixed-use site has a major pedestrian focus placing the retail development within walking distance of nearby hotel, office and apartment uses that are located along the Town Center Drive.



Perimeter Mall, Atlanta, GA: Public open space and plazas



Phillips Place, Charlotte, NC: On-street parking and streetscape



Phillips Place, Charlotte, NC: Buildings built to the street

Retail Market Analysis

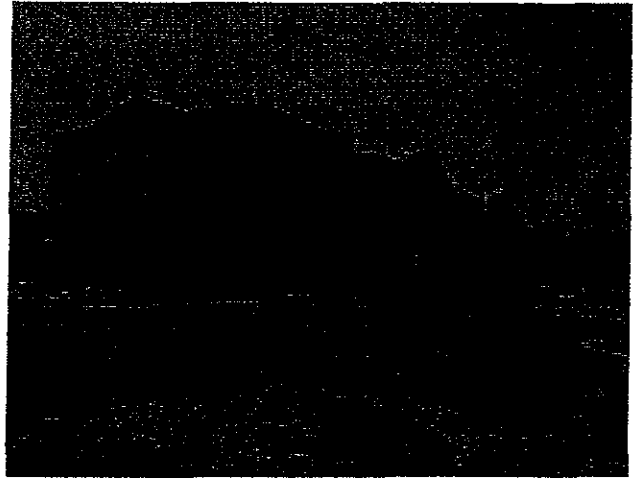
This main street is vibrant most of the day due to the synergy created by the various land uses. The Town Center Drive includes over 100 retail shops, 3 restaurants, a hotel, office, apartments, a multiplex theater, and a public park that has hosted outdoor musical and cultural events. The success of Valencia Town Center Drive has included attracting higher-end retail uses, enhancing the performance of the existing mall, supporting residential development, and attracting office and hotel uses.

Summary: Case Studies

Again, while the demographic characteristics of these case study examples are not necessarily comparable to Chattanooga; the analysis of retail demand in the Chattanooga area demonstrates that local shoppers patronize the types of stores that flourish in a town center setting. Spending is strong on restaurants, convenience goods and apparel. These are exactly the types of retail goods that sell best in a vibrant, pedestrian-oriented setting. Like Hamilton Place, each of these examples have a strong relationship to a regional mall either directly or nearby, are in suburban settings where the lack of community identity has created demand for a pedestrian-oriented retail project with a sense of place, and include the types of retail uses that, if located in Chattanooga, would only locate in the Hamilton Place area.

There are a number of important characteristics that are applicable to future "town center" development in Hamilton Place:

- Development should be pedestrian-friendly with buildings built to the street and streets designed for pedestrians.
- Public parks and gathering places should be incorporated into the design to create a community focus.
- There should be a mix of uses including offices, retail, residential, and civic uses.
- And finally, new development should be integrated with adjacent development through street connections and appropriate land uses.



Phillips Place, Charlotte, NC: Multi-story, mixed use buildings

Retail Market Analysis

4.6 Conclusions and Recommendations

Based on this retail analysis there is demand for new retail development in the Hamilton Place Study Area. While modest population growth in the Chattanooga area will moderate new retail growth, the Hamilton Place area along with downtown remain as the primary target areas for new commercial development regionally. The estimated retail demand in the Hamilton Place area through 2005 is approximately 433,000 square feet, net of vacant space.

Commercial Development Strategy

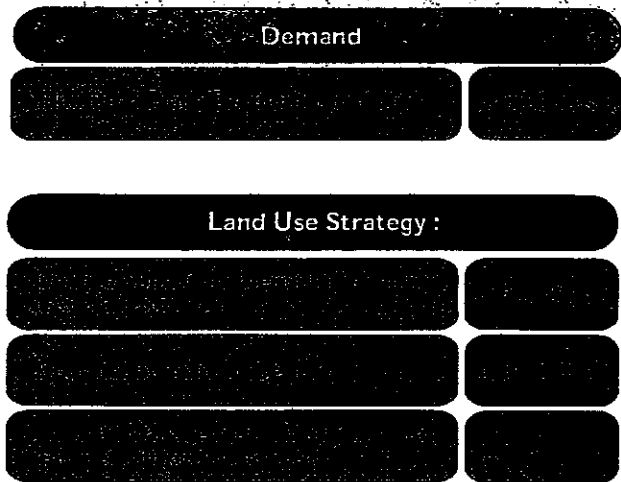
Given this demand and the likelihood that Hamilton Place will continue to be a successful regional center, the future commercial development strategy should focus on two policies; densification of Hamilton Place's existing commercial areas, and directing development into existing commercial centers regionally. As a regional growth management policy, the directing of new commercial into existing commercial centers or corridors will require strong political and community support. In Hamilton Place only part of the solution will be strongly holding line on further commercial expansion outward. New development will need to be planned in more dense "town center" patterns much like the examples illustrated from around the country. A new set of development standards and/or a planned mixed-use development zoning category will be necessary to effectively deal with the unique site standards and mix of uses that are recommended as part of the "town center" development concept.

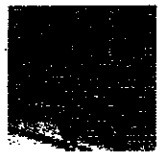
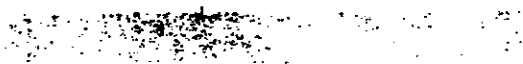
Challenges and Benefits

The challenges in developing in this manner are great. Local developers are unfamiliar with this type of development and have few local models to follow. This densification solution will likely require structured parking in order to offset the lost parking spaces and accommodate additional shoppers to the area, a costly solution for parking without some kind of incentive. And the redevelopment of existing land will be in many cases more expensive than developing on greenfield sites.

However, the benefits to this new approach to retail development are numerous. The pedestrian focus of a town center will help to alleviate some of the existing traffic as the dense mix of uses minimizes the dependence on the automobile and supports transit. New public parks will create a stronger sense of place in the community providing places for civic events. This focused new development will rely on existing regional infrastructure such as roads and water/sewer instead of requiring further expansion. And the land use conflicts between the existing neighborhoods and expanding commercial areas will be minimized.

COMMERCIAL DEVELOPMENT STRATEGY





The Land Use Plan

The Land Use Plan

5.0 THE LAND USE PLAN

The Land Use Plan is the product of an intensive citizen participation process that included a public design charrette and design workshop. This section is organized by the major topics that best describe the ideas represented in the plan. These topics include: Planning Principles, Transportation Issues, and Key Study Areas.

For the purpose of this plan, medium-density residential shall be limited to a maximum of eight dwelling units per acre gross density and shall be "fee-simple" to encourage owner occupancy. High-density residential shall be limited to a maximum of fifteen dwelling units per acre gross density and may include apartments, assisted living facilities, or other "for rent" residential uses.

5.1 Planning Principles

The following Planning Principles have been developed through this planning process and structure the Hamilton Place Community Plan; responding to the market and physical realities of the area. Together they set a vision for this plan that seeks to create an exceptional quality of life for the Hamilton Place Community based on balancing growth and development with the ultimate livability of the community. They are organized around the three broad categories of Land Use, Transportation, and Open Space.

Land Use

- Commercial and neighborhood boundaries should be maintained as defined by the land use plan
- Configure new development so that it is compatible with existing adjoining uses. Examples include placing smaller scale, less intense buildings next to existing neighborhoods. Placement of large-scale buildings next to neighborhoods should be avoided.

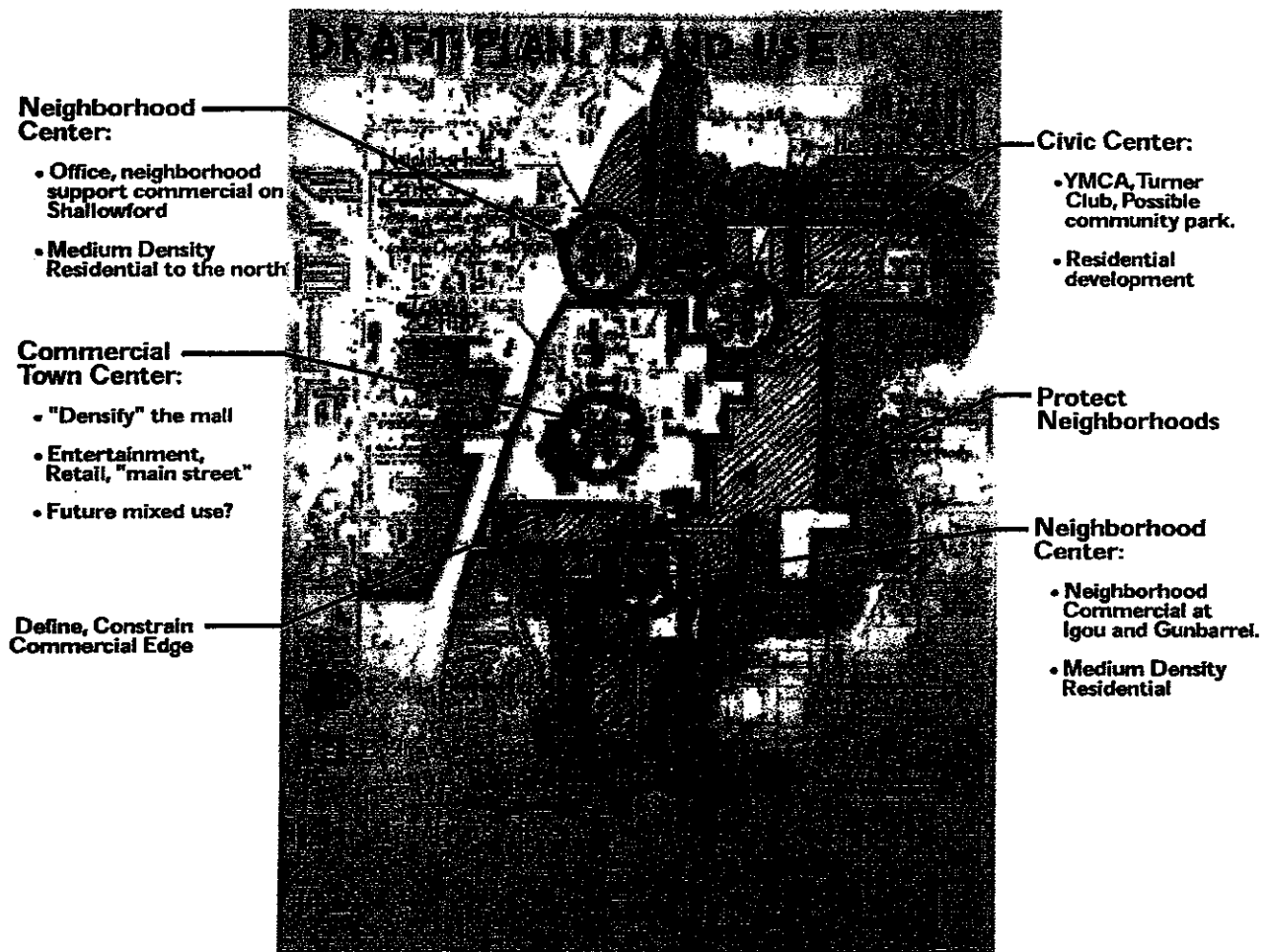
Transportation

- Promote an expand street network to provide better access to area destinations
- Encourage multi-modal transportation system that supports pedestrians, cyclists, transit, and the automobile.
- Promote pedestrian-friendly street design including sidewalks and street trees
- Establish neighborhood traffic calming programs

Open Space

- Support new parks and greenway connections
- Promote effective and sustainable stormwater management
- Protect the natural environment including stream and creek corridors, and existing tree canopy
- Establish better landscape design standards and buffers

The Land Use Plan



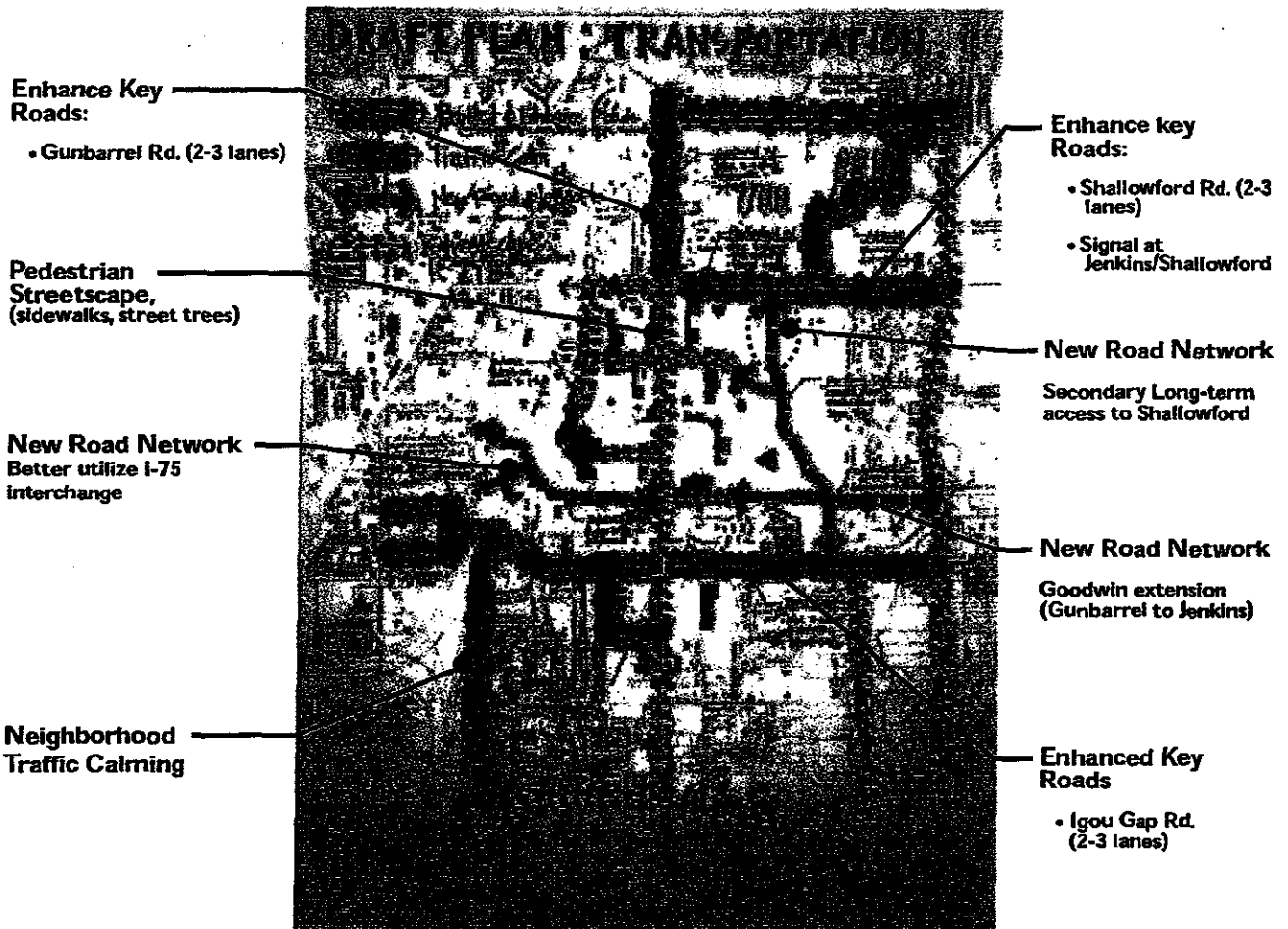
Land Use:

Supporting both the retail market analysis and neighborhood concerns this plan recommends holding the current extent of commercial zoning. This strategy revolves around focusing new commercial and office development within the existing commercial core through densification into "town and neighborhood centers". While the town center is envisioned as an intense mix-use commercial development, the neighborhood center is a lower intensity commercial, civic, or residential development that is in scale and character with the surrounding neighborhoods. The remaining "pressured" sites should then be targeted for higher density, for-sale and rental, residential development including single-family homes, townhomes, and apartments. In this way, the higher density residential begins to serve as a pedestrian-friendly transition between the core of commercial activity and the surrounding single-family neighborhoods. Where higher intensity uses abut single-family neighborhoods the landscaping screening and buffering should provide a significant visual barrier.

Principles:

- Commercial and neighborhood boundaries should be maintained as defined by the land use plan
- Configure new development so that it is compatible with existing adjoining uses. Examples include placing smaller scale, less intense buildings next to existing neighborhoods. Placement of large-scale buildings next to neighborhoods should be avoided.

The Land Use Plan



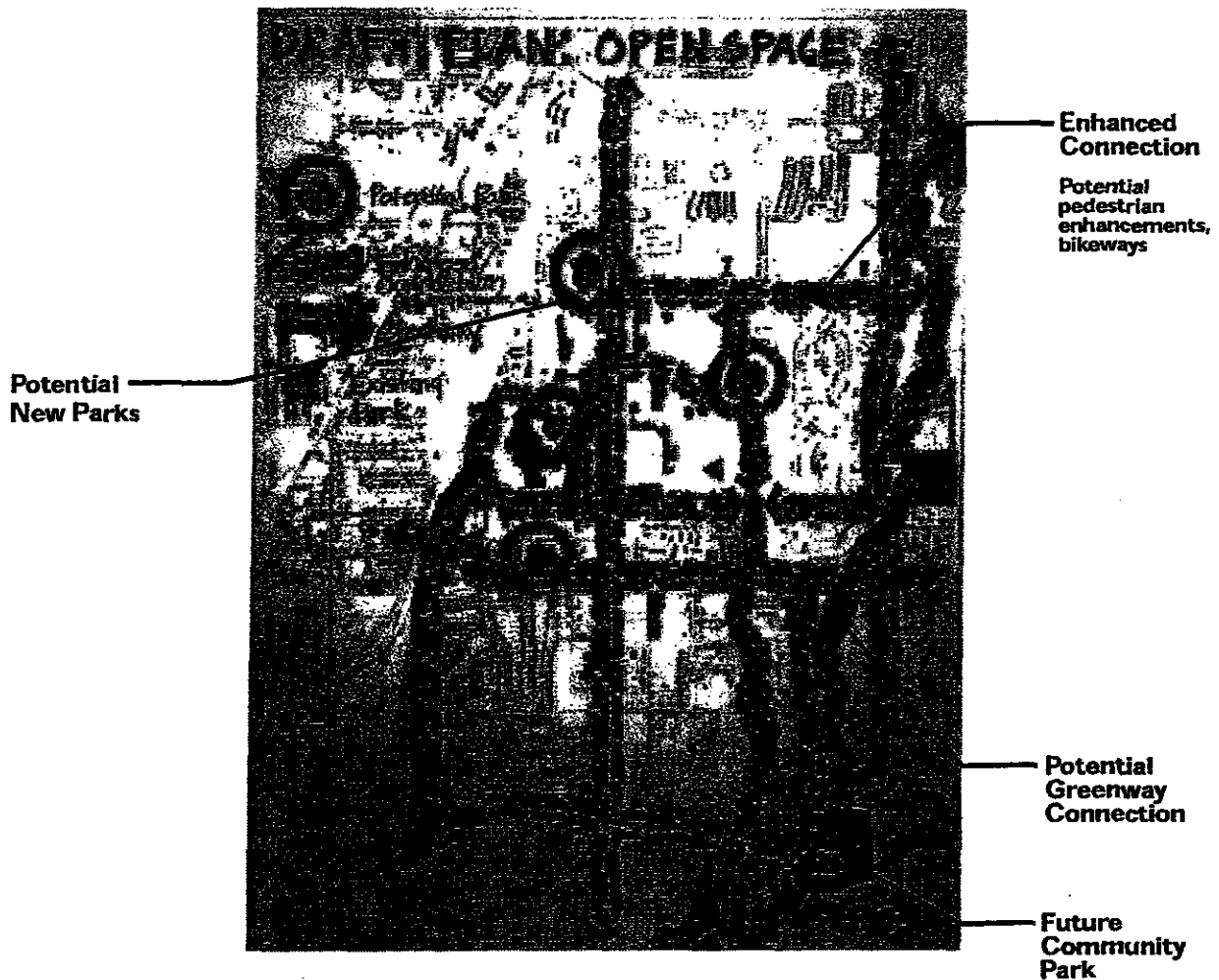
Transportation:

The transportation strategy is centered on creating alternative routes to the key congested roads (Shallowford Road and Gunbarrel Road) and enhancing access to Interstate 75. At the same time, inadequate roadway facilities such as portions of Igou Gap Road, Shallowford Road, and Gunbarrel Road should be upgraded from their current rural condition to include safety improvements, adequate travel and turn lanes and sidewalks. Several neighborhood roads that are impacted by cut-through and speeding traffic are identified for neighborhood traffic calming.

Principles:

- Promote and expand street network to provide better access to area destinations
- Encourage multi-modal transportation system that supports pedestrians, cyclists, transit, and the automobile.
- Promote pedestrian-friendly street design including sidewalks and street trees
- Establish neighborhood traffic calming programs

The Land Use Plan



Open Space:

To support the existing and proposed community parks and open space in the Hamilton Place Area a series of additional neighborhood parks and public spaces have been recommended to serve the commercial and residential population of the Hamilton Place Community. These parks and public spaces should be located within future neighborhood and town center development and connected through greenway and pedestrian corridors along the area's creek systems and existing street network.

Principles:

- Support new parks and greenway connections
- Promote effective and sustainable stormwater management
- Protect the natural environment including stream and creek corridors, and existing tree canopy
- Establish better landscape design standards and buffers

The Land Use Plan

5.2 Transportation Issues

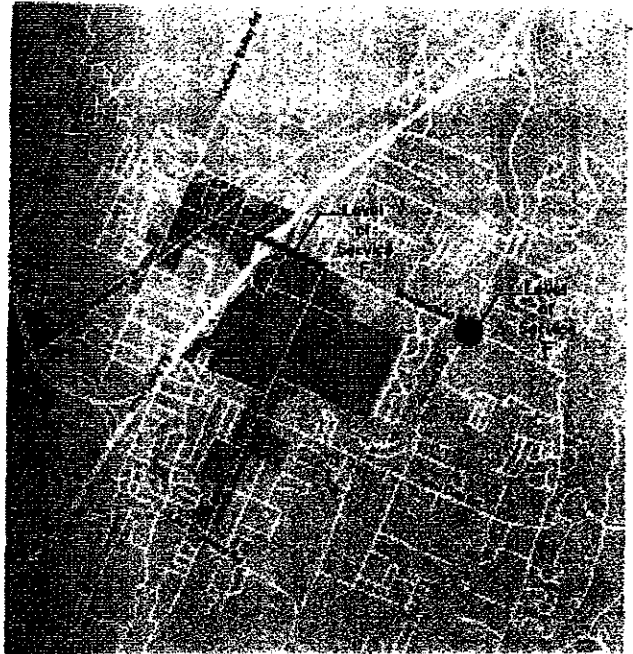
The transportation plan is centered on three strategies: 1) making key roadway improvements to inadequate facilities, 2) creating additional network alternatives, 3) managing neighborhood impact through traffic calming.

Key Roadway Improvements

A key to managing future traffic in the area is integrating transportation improvements with land use planning and the community vision for the area. Clearly, throughout the community planning process the widening of Shallowford Road (west of Gunbarrel Road) from four lanes to six lanes with additional auxiliary turning lanes at intersections was not a financially feasible or community-acceptable solution.

The continued widening of Shallowford Road has perpetuated traffic and land use problems in the area. As the roadway has become larger, residential and rural land uses adjacent to Shallowford Road have changed to commercial land uses because residential uses are no longer appropriate adjacent to a larger roadway. The new commercial land uses unfortunately generate higher traffic counts, thus causing the new widened roadway to become congested again, creating pressure to add more lanes.

During the planning process, the participants at the workshops preferred to limit Shallowford Road to four lanes and a turning lane between Lee Highway and Gunbarrel Road. Transportation improvements should be directed towards improving the street network and providing a transportation option to Shallowford Road. The community also expressed a desire to promote additional street network to manage the size of all existing roadways. Specifically, the community identified the four lane with turning lane (5-lane) roadways to be limited to Shallowford, west of Gunbarrel, Gunbarrel south of Shallowford, and East Brainerd. The community identified 3-lane roadways for Gunbarrel, north of Shallowford, Shallowford, east of Gunbarrel, Igou Gap, Goodwin Road, as well as all new streets introduced into the study area.



Existing level of service



Proposed maximum street improvements

The Land Use Plan

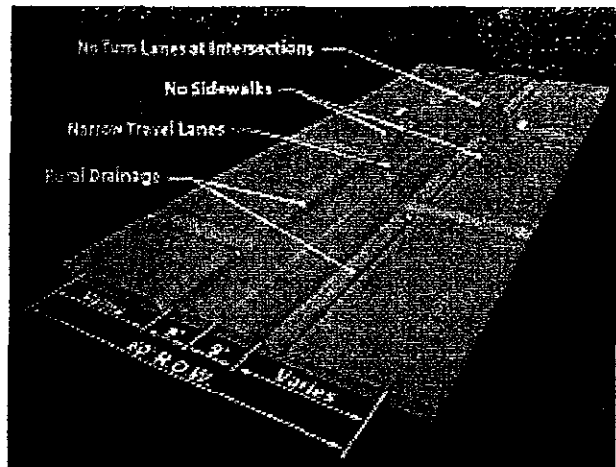
Many streets within the Hamilton Place community were designed and built as 2-lane rural country roads between 1930 and 1960. These roadways are now obsolete. Additional development and higher traffic volumes have created dangerous situations on these old country roads.

Improvements to the roadways are needed reduce roll-over accidents occurring on the sides of the roads, provide sidewalks and bicycle facilities that do not currently exist, accommodate turning movements at intersections and driveways, and improve stormwater drainage in the study area.

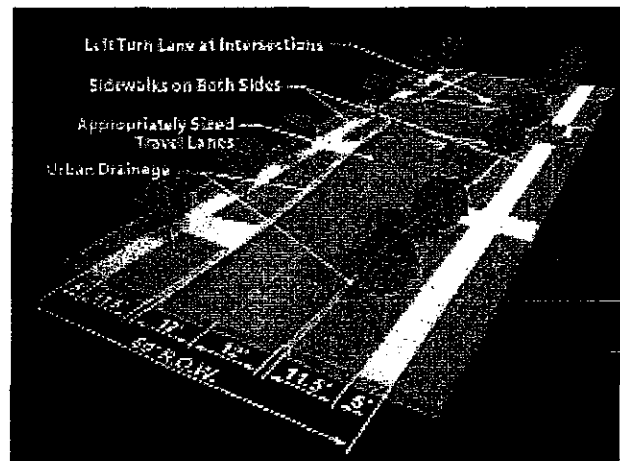
It is also recommended to introduce a traffic signal at the intersection of Jenkins Road and Shallowford Road. The LOS at the intersection with a traffic signal and a 3-lane Shallowford will improve from LOS F to LOS B.

Streetscape and Sidewalks

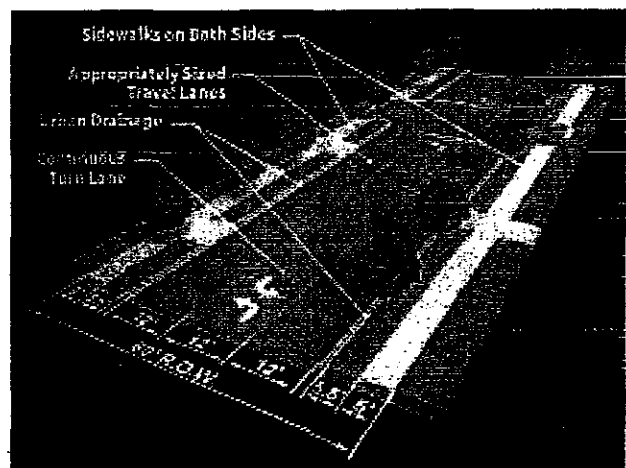
In addition to making the needed improvements to rural segments of Shallowford, Gunbarrel and Igou Gap Roads a sidewalk and streetscape program for existing roads should be implemented. A consistent level of pedestrian amenities should be established for all roads in the Hamilton Place area. These amenities should include at a minimum sidewalks and regular street trees.



Existing Rural 2-Lane Roads.



Proposed Urban 3-Lane section (left turn lane at intersections)



Proposed Urban 3-Lane section (continuous center turn lane)

The Land Use Plan

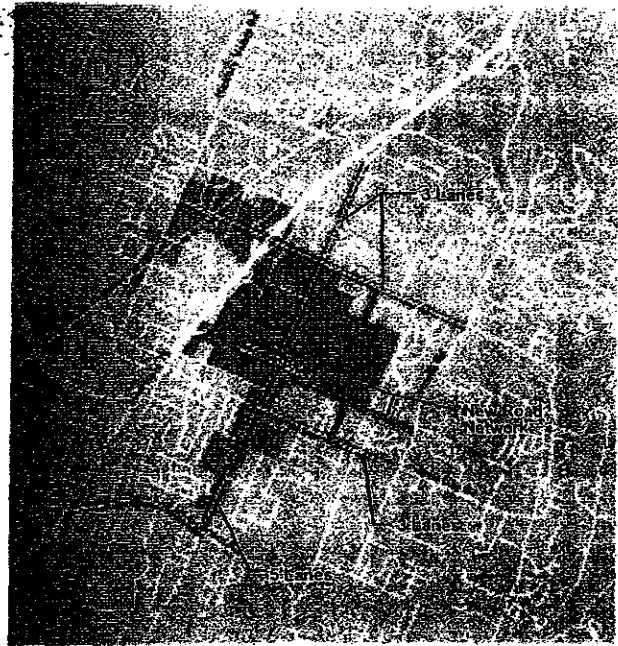
Network Improvements

The most significant improvement to the Hamilton Place Community's transportation system is to minimize the concentration of regional traffic from I-75 mixing with local traffic on Shallowford Road. Fortunately, a solution exists. Currently, Hamilton Place Mall has access to and from the south via I-75 to Hamilton Place Boulevard.

This plan's recommendation is enhance access to the Hamilton Place interchange with I-75 by extending Goodwin Road west to Hamilton Place Boulevard. Future extension of Goodwin east to Jenkins Road is also recommended.

The Goodwin Road extension will provide a parallel route to Shallowford Road, providing an alternative to widening Shallowford Road. Similarly, the plan recommends extending Commons Boulevard east and south to the newly extended Goodwin Road and on to Igou Gap Road. This new network of streets will provide secondary routes to traffic thereby providing alternatives to Shallowford and Gunbarrel Roads. In addition, through private development connections should be established between Commons Boulevard and Shallowford Road to provide future development in that area multiple transportation options.

Traffic improvements in the area will not eliminate congestion on Shallowford Road. The community's choice lies in the size of the road - is it 4, 6, or 8-lanes. With the network improvements identified in this report, Shallowford Road will be limited to 5-lanes west of Gunbarrel Road and 3-lanes east of Gunbarrel Road.



Proposed Street/ Network Improvements.



Future level of service.

The Land Use Plan

Neighborhood Traffic Calming

When street networks do not operate efficiently, traffic diverts from intended arterial roads such as Shallowford Road onto local residential streets, negatively affecting neighborhoods. Other motivations for evading the arterial street include street aggressiveness of other drivers, unpredictability of travel time, perceived delay at traffic signals and blighted appearance of the arterial routes.

Major flows of cut-through traffic are seen on Igou Gap, Ashford Drive, Franks Road, Pinewood Drive and N. Concord Road. Some cut-through traffic can be attributed to evading the traffic congestion all along Shallowford Road, from Jenkins to Lee Highway.

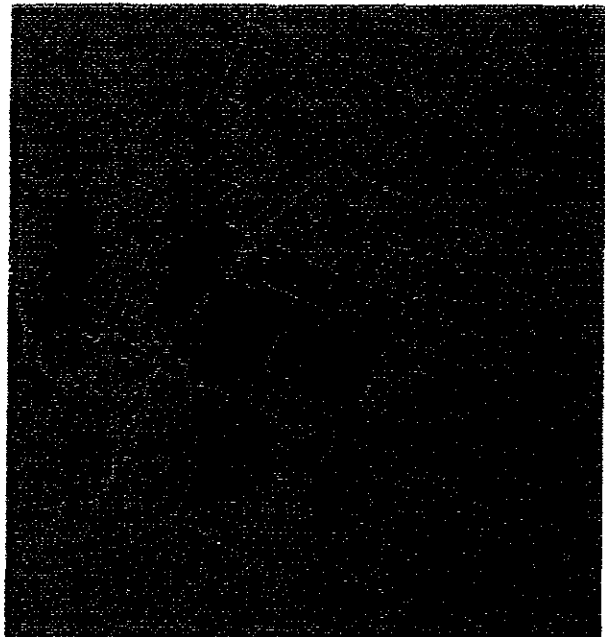
Alternative Solutions to the Neighborhood Cut-Through Traffic Problem

Possible solutions can be identified for the cut-through traffic problem in the Hamilton Place Community:

New Arterial Streets - Extension of Goodwin Drive from Jenkins Road to Interstate 75.

More Capacity on Existing Arterials - Small increments of capacity can be gained by squeezing more efficiency out of the arterial streets as they now exist, through turn lanes, intersection control, access management and so forth. The current plan is looking at all reasonable measures of this type including the addition of a turn lanes on Igou Gap, Jenkins Road, Gunbarrel Road north of Shallowford, and Shallowford east of Gunbarrel

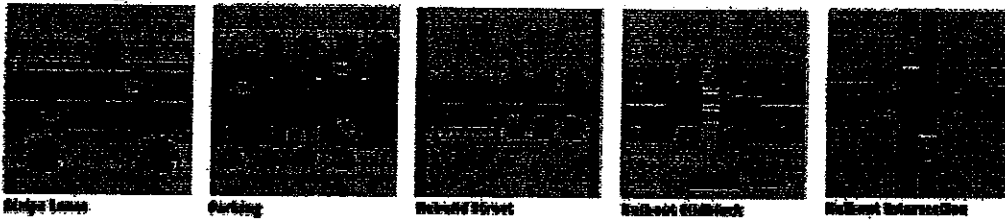
Discourage Cut-Through Traffic through Traffic Calming - This will be the most productive approach to the area's problem of cut-through traffic. The entire spectrum of traffic calming measures promotes the return of cut-through traffic to the arterial streets.



Neighborhood cut-through traffic.

The Land Use Plan

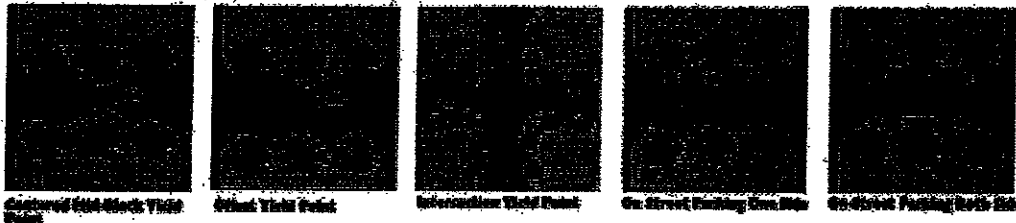
Narrowing the Street



Deflecting the Vehicle Path



Sharing the Pavement



Menu of Traffic Calming Devices

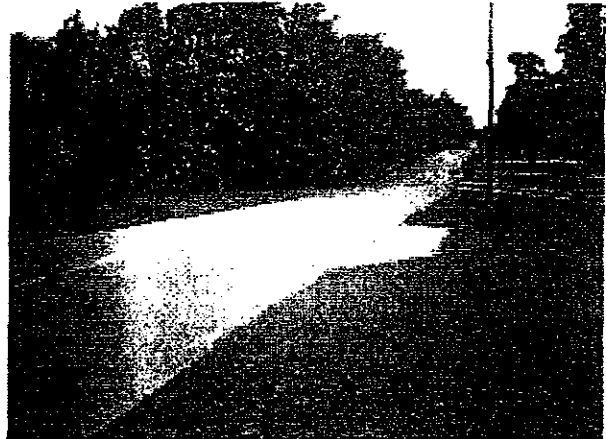
Traffic calming devices are simple traffic engineering measures that cause motorists to drive with more care, more slowly and perhaps to take another route. There is an extensive "menu" of traffic calming devices, all of them some combination of the following six basic actions:

1. Narrowing the street reduces the speed that most drivers find reasonable and comfortable (the "design" speed). Narrowing is done through reducing the pavement width, adding parking to the street, or adding a median. At intersections, tight corner radii complement narrowing. The perception of narrowing, which can be as effective as actual narrowing, is gained with street trees along the curb, overhead tree canopy and buildings brought close to the street.
2. Deflecting the vehicle path causes the driver to slow and devote more attention to the task of driving. Deflection is done through changing the route of the automobile. Some measures apply at mid-block locations, while others are most appropriate for intersections.
3. Changing the pavement surface demands attention from drivers, and reduces the comfortable driving speed (the "design" speed). Speed bumps, speed tables, special pavement materials, and rumble strips are the most frequent approaches to changing the pavement surface.
4. Sharing the pavement with other vehicles is a powerful way to slow traffic and raise the attention level of drivers. Long a feature of traditional local streets, shared-use can be reintroduced into other streets by selective short sections of narrow pavements, either at mid-block locations or near intersections.
5. Diverting the driver's route makes vehicular access more difficult, and encourages the driver to use another route. Diagonal street closures, one-way streets, median closing and turning movement restrictions are primary examples of diversion.
6. Traffic control devices slow traffic through regulation. STOP signs, four-way STOP signs, traffic signals and posted speed limits are the devices most frequently used to calm traffic. Intensified enforcement of traffic regulations can calm traffic, generally by remaining drivers of posted speed limits and by enforcing the observance of STOP signs. Police officers are the usual source of intensified enforcement, but neighborhood volunteers can also provide effective work in this area.

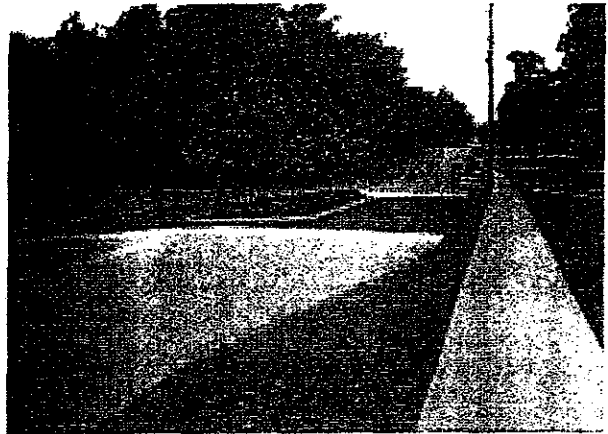
The Land Use Plan

Pinewood Drive Traffic Calming Example

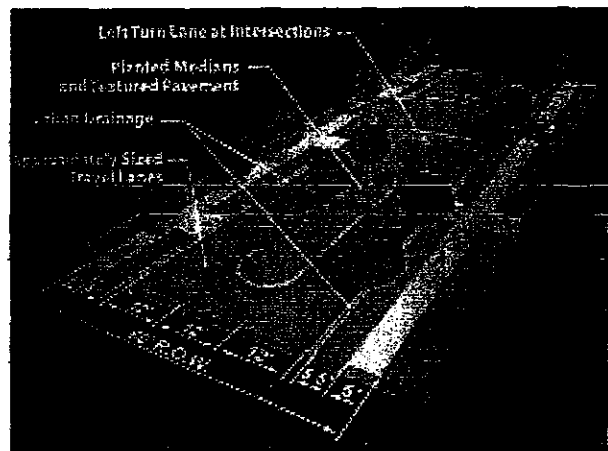
This photo image of Pinewood Drive illustrates one potential example of a traffic calming device appropriate for Pinewood Drive. The long, straight segment of Pinewood Drive has encouraged drivers to speed along this section of road, impacting the surrounding neighborhoods. A "splitter island" as illustrated here would provide a way to calm this traffic by requiring drivers to slow down and maneuver around the island. In addition this island can serve as a neighborhood design amenity with trees, landscaping and unique pavement materials that create neighborhood landscape features that serve to beautify the area.



Current view of Pinewood Drive

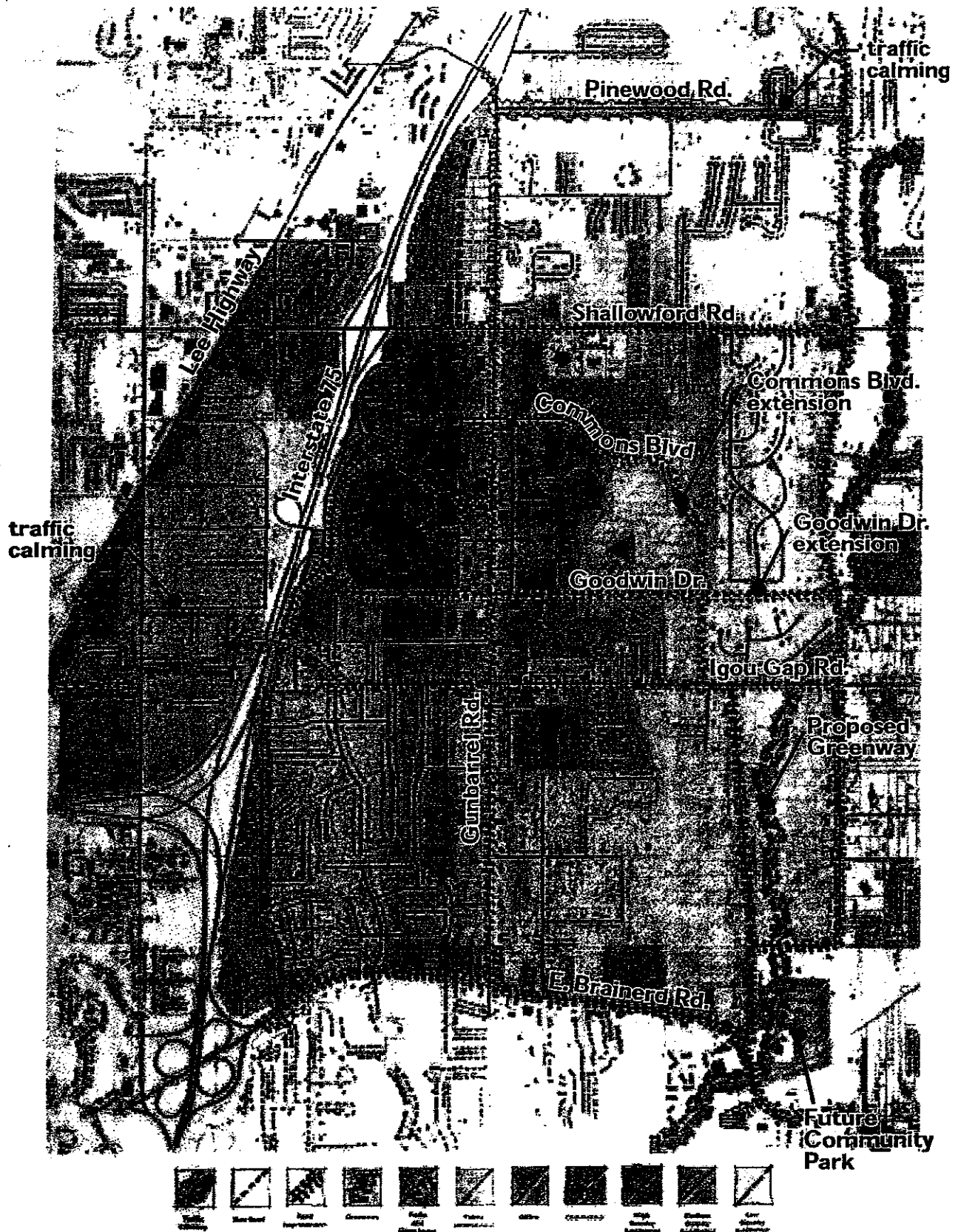


Proposed traffic calming for Pinewood Drive

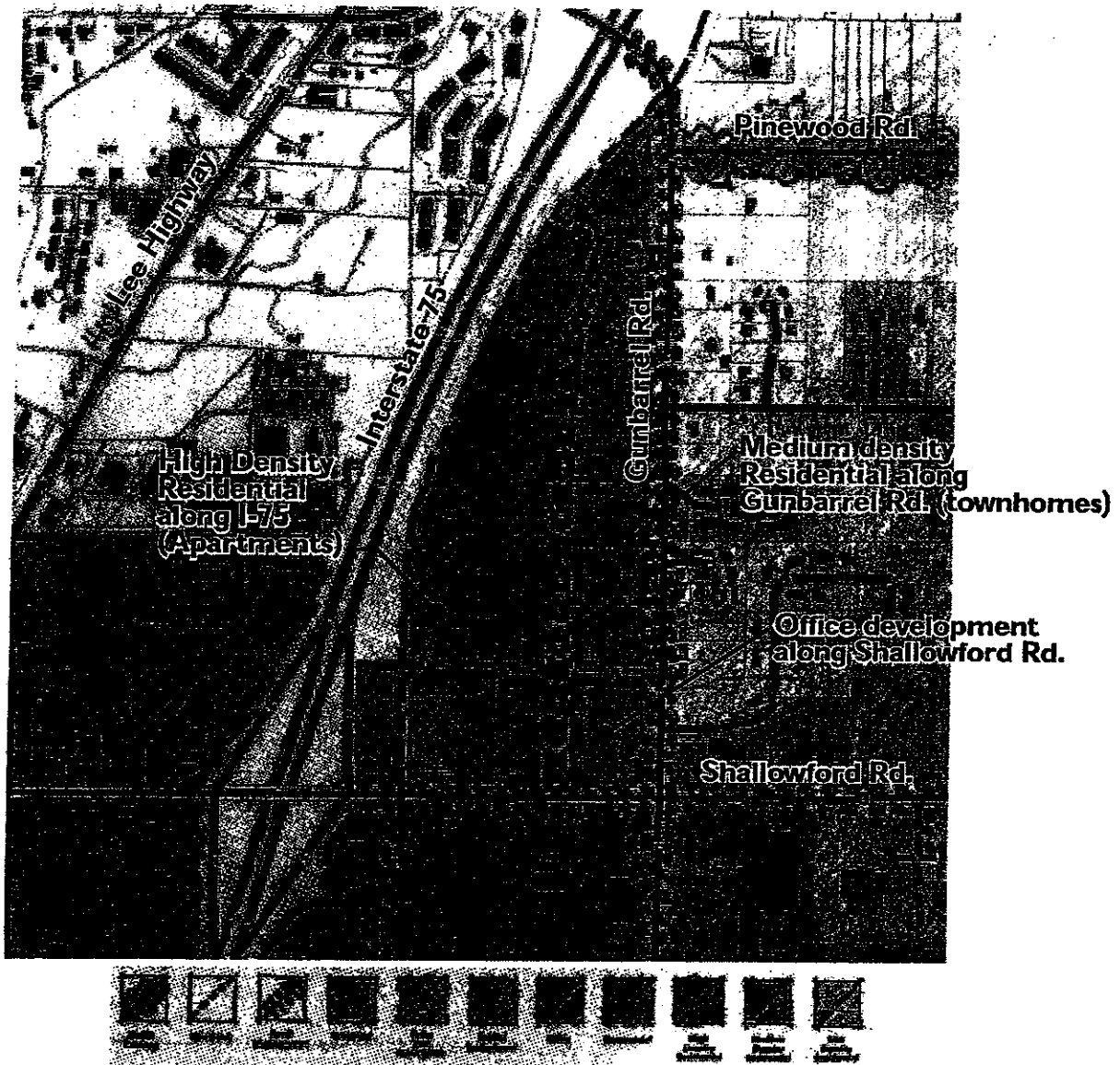


3-Lane urban road with traffic calming.

The Land Use Plan



The Land Use Plan



5.3 The Land Use Plan: Key Study Areas

The purpose of the Land Use Plan is to communicate the recommended land use and development pattern for the Hamilton Place Community. In addition, this plan illustrates potential access points, and street and block layouts for a number of key sites. These layouts are intended to be illustrative and not site specific. All future development should follow the intent of expanding the street network and providing multiple ways to access development.

Shallowford Road and Gunbarrel: "Triangle" Site

The triangle site is one of the key "pressured" areas in the Hamilton Place area. This 75-acre site is accessed from

Gunbarrel Road on the east and Shallowford Road on the south. The land use strategy here supports the overall intent of limiting commercial expansion by recommending a mixed-use pattern of development.

- The Shallowford Road frontage should include civic and office uses. Limited supporting commercial uses are only appropriate in the context of a mixed-use planned development.
- The Gunbarrel Road frontage should include medium density residential uses such as townhomes.
- The Interstate 75 frontage should include medium and high density residential uses from townhomes to apartments.

The Land Use Plan

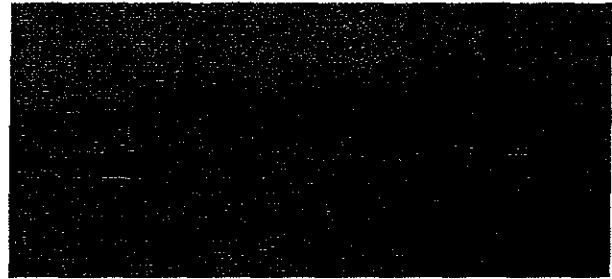
Potential access should be planned as a series of blocks that provide multiple ways to get in and out of the site from both Shallowford Road and Gunbarrel Road. The Land Use Plan shows one potential way of organizing future development into blocks that accommodate office, townhome and apartment uses. Parks and open space should be designed as an integral part of the development providing needed public space.

Shallowford Road and Gunbarrel Road Intersection Sketch: Existing

The current view of this intersection shows the pedestrian-hostile nature of both these roads. The lack of consistent sidewalks or street trees emphasizes the inattention to pedestrian amenities. The absence of crosswalks at the intersection discourages pedestrian crossings.

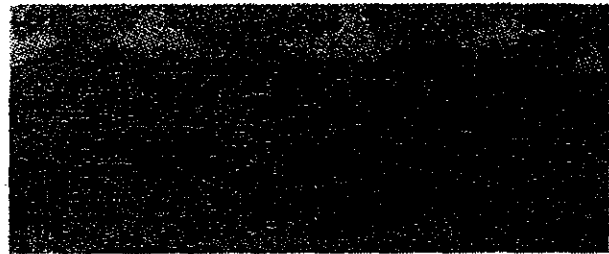


Current view of Shallowford/Gunbarrel Intersection.



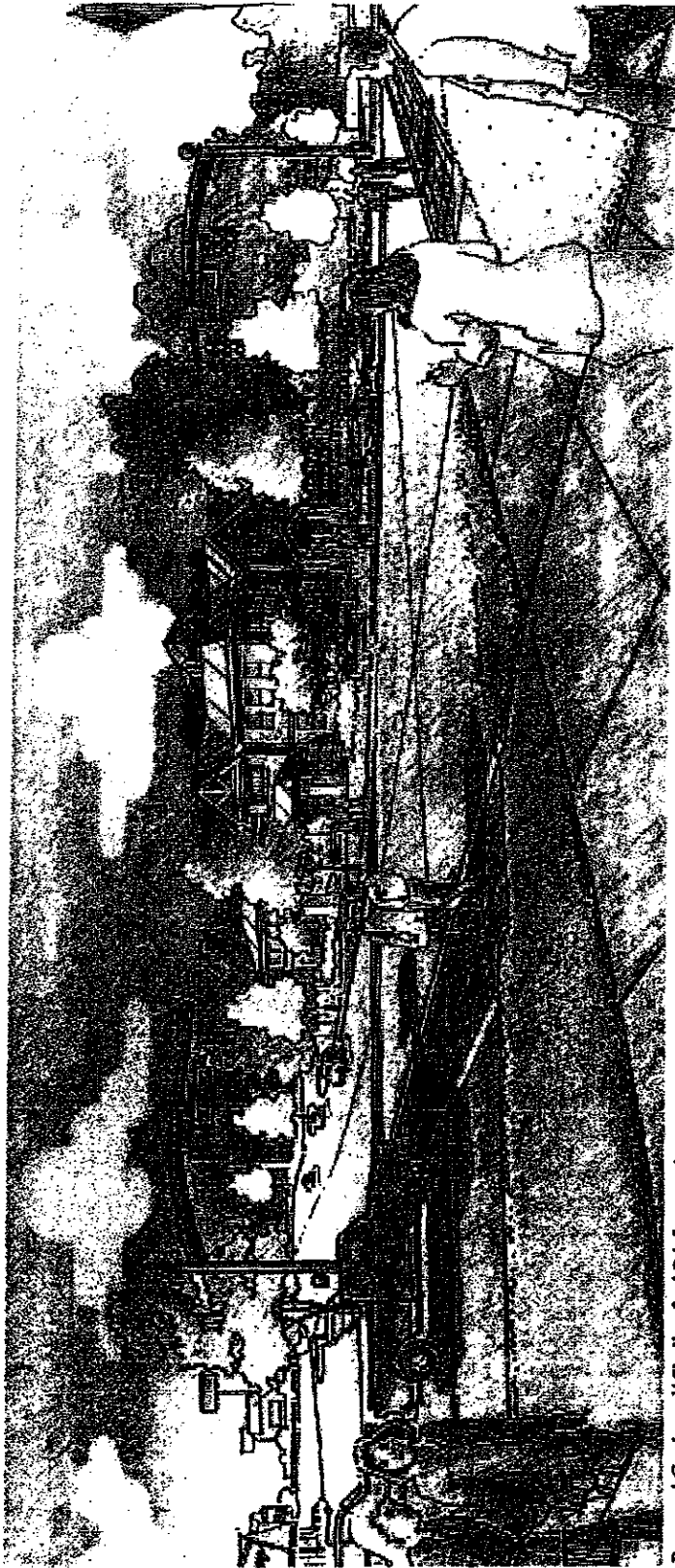
Shallowford Road and Gunbarrel Road Intersection Sketch: Proposed

This sketch illustrates a potential office development scenario on the north side of Shallowford Road. The buildings are built close to the street with parking located to the side or behind. The enhancement of both Shallowford Road and Gunbarrel Road with sidewalks, street trees and crosswalks create a pedestrian-friendly street scene that is supported by the potential "street friendly" development on Shallowford.



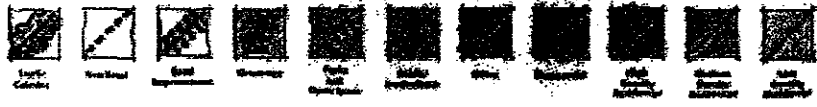
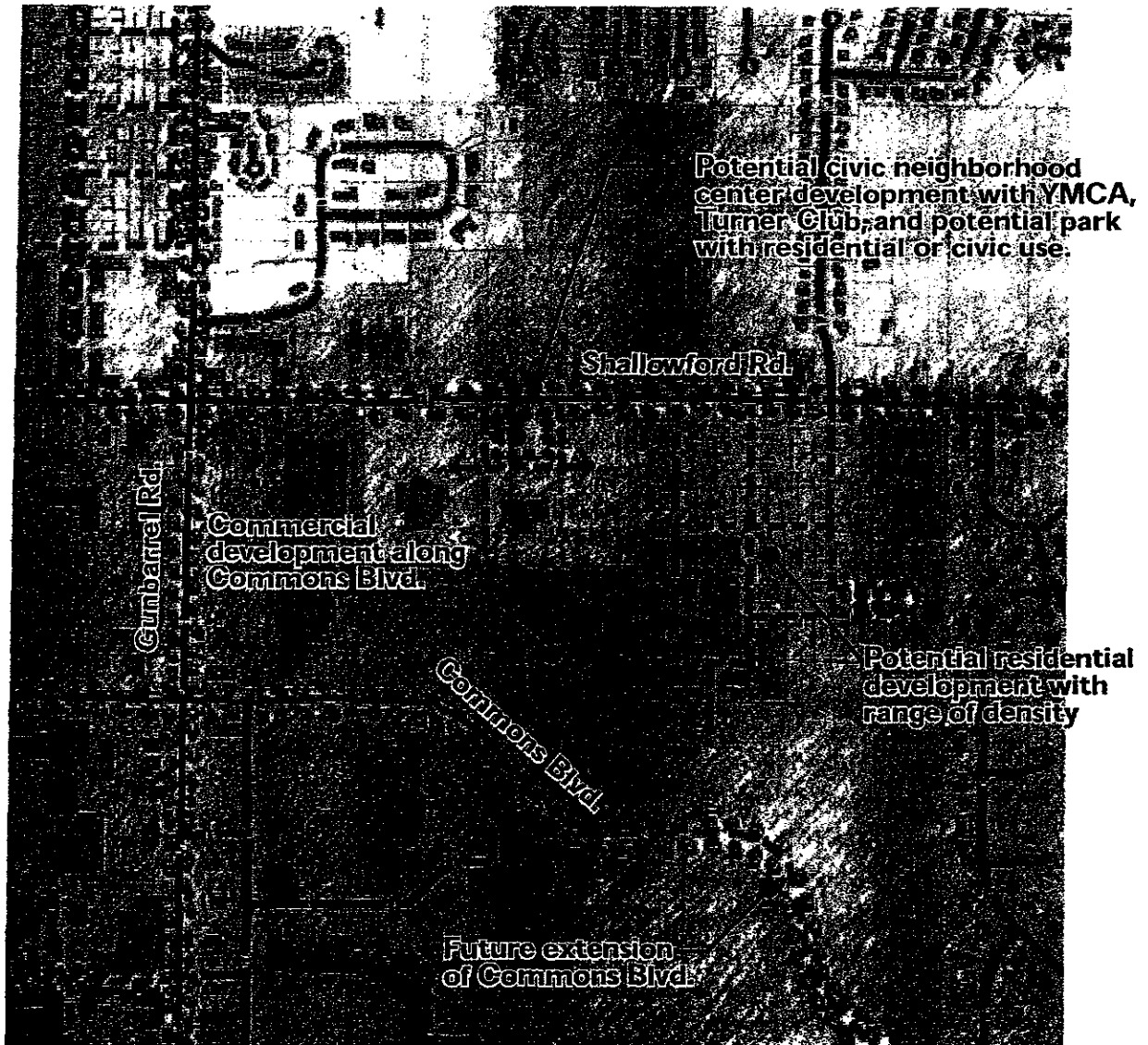
Proposed improvements with development of "triangle" site.

The Land Use Plan



Proposed Gunbarrel/ Shallowford Rd. Intersection

The Land Use Plan



Shallowford Road

The amount of underutilized and undeveloped land on Shallowford Road east of Gunbarrel Road has created increasing pressure to expand commercial development eastward along Shallowford Road. The land use strategy here is to promote medium and high density residential development that acts as a transition between the commercial uses and the surrounding single-family residential neighborhoods. These areas provide opportunity to develop a more pedestrian-friendly links between existing single-family residences and commercial and office uses.

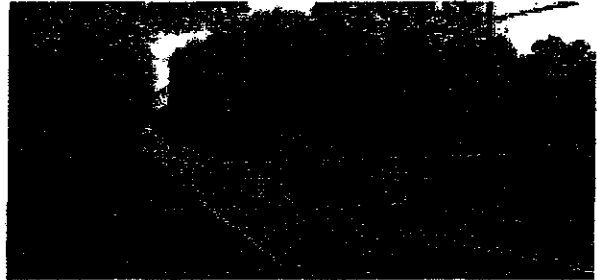
- Medium density residential development on both the north and south sides of Shallowford Road.
- Commercial development on both sides of Commons Boulevard, oriented away from Shallowford Road.

The Land Use Plan

Potential access on the south side of Shallowford Road should be planned to include connections between Shallowford Road and the extension of Commons Boulevard. The Land Use Plan shows a potential development scenario and illustrates the value of connections between Shallowford Road and Commons Boulevard. These connections will allow future residential development the ability to access both Shallowford Road and Commons Boulevard, minimizing traffic pressure on Shallowford.

Shallowford Road Sketch: Existing

The existing view of Shallowford Road, east of Gunbarrel, illustrates the rural nature of both the road and the surrounding development. The 2-lane rural cross section of the road has deep swales and lacks sidewalks. The adjacent land exists in large 5 and 10 acre parcels as single-family homes or in an undeveloped state.

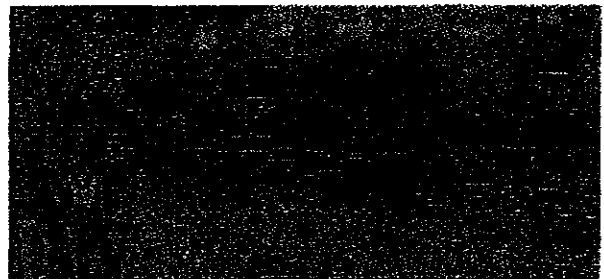


Current view of Shallowford Rd.



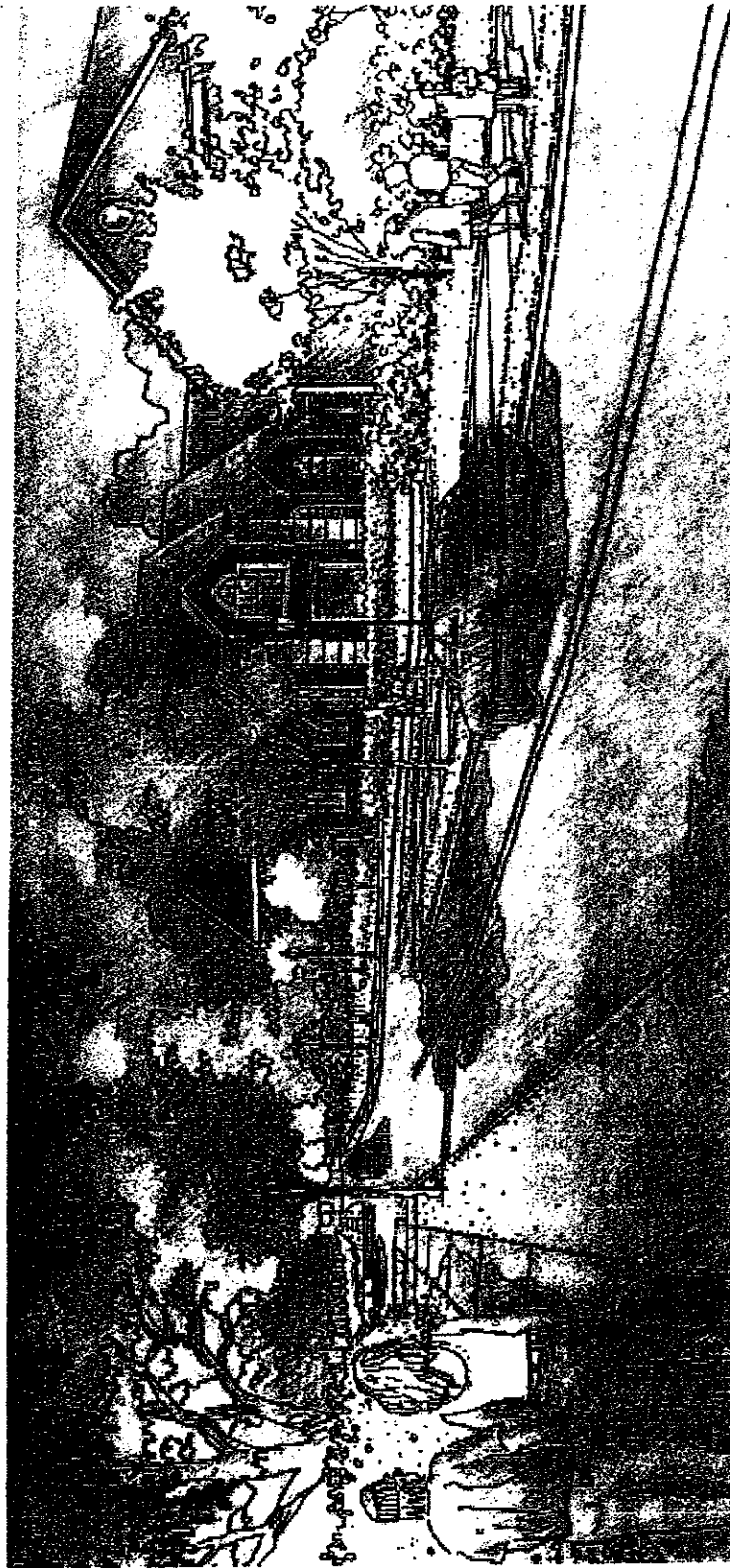
Shallowford Road Sketch: Proposed

This potential development scenario shows the proposed improvements to Shallowford Road that include center turn lanes at intersections, curb and gutter road design, sidewalks and street trees. The development of medium density residential, such as townhomes, establishes the residential nature of Shallowford Road east of Gunbarrel and with the pedestrian enhancements to Shallowford Road, strengthens the surrounding neighborhoods.



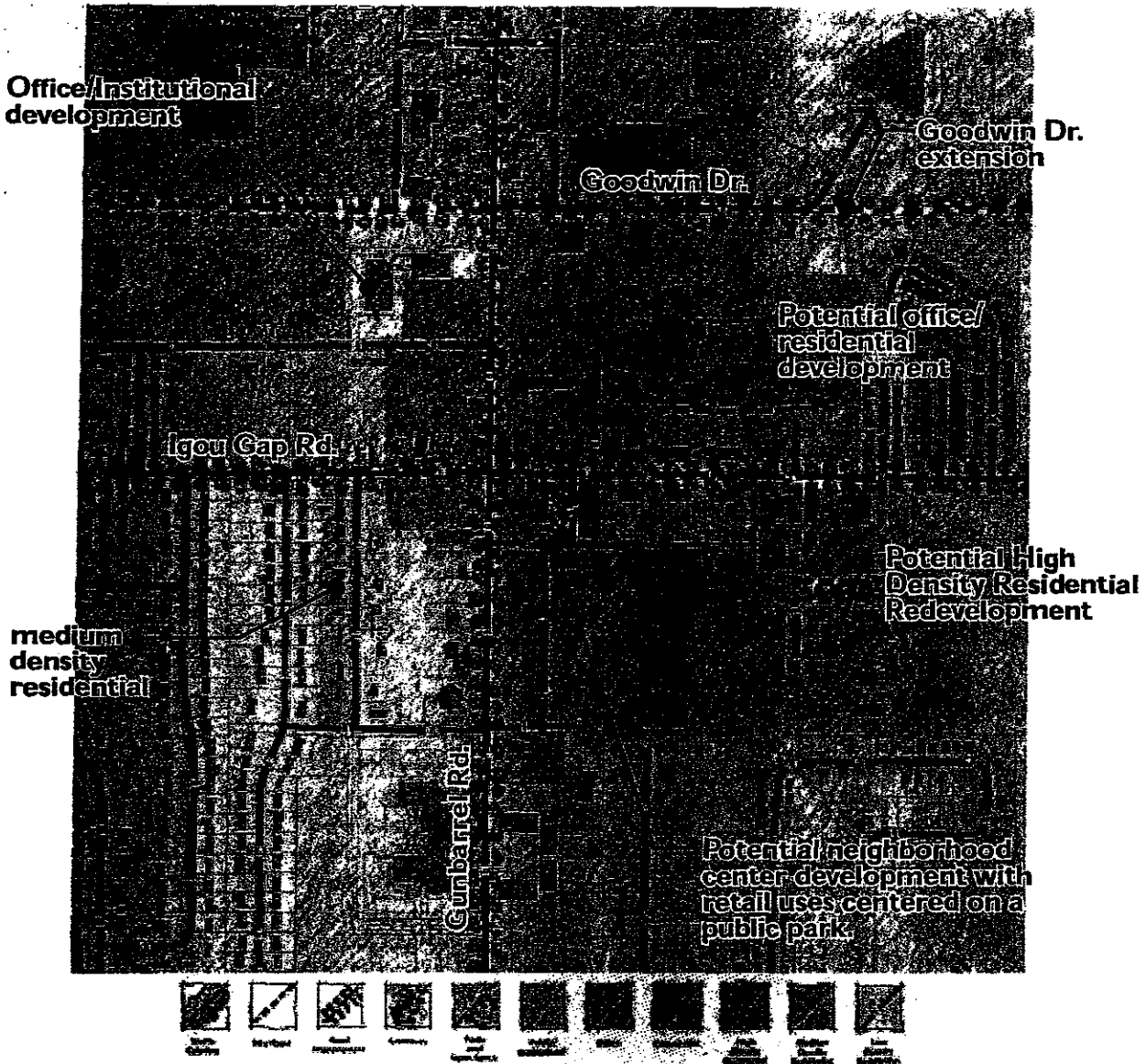
Potential improvements to Shallowford Rd. with new residential development.

The Land Use Plan



Proposed improvements to Shallowford Rd.

The Land Use Plan



Gunbarrel and Igou Gap Roads
 The land use strategy on the west side of the Gunbarrel/Igou Gap Road intersection centers on *protecting the residential edge* of the Bella Vista neighborhood from commercial expansion off of Gunbarrel Road. This plan follows the existing Gunbarrel Road/Igou Gap Road zoning policy.

- Parcels fronting on both sides of Farris Road should be planned as medium density residential uses such as townhomes.
- Parcels fronting on the north side of Igou Gap Road should be planned as medium density residential uses.
- Parcels fronting on the south side of Jarnigan Road should be planned to allow both office and medium density residential uses.

Igou Gap and Clearview Drive
 The land use strategy in the Igou Gap Road and Clearview Drive area recognizes the impact of the surrounding commercial development on the adjacent single-family homes.

- Office and medium density residential uses along Igou Gap Road.
- High density residential development along Clearview Drive.

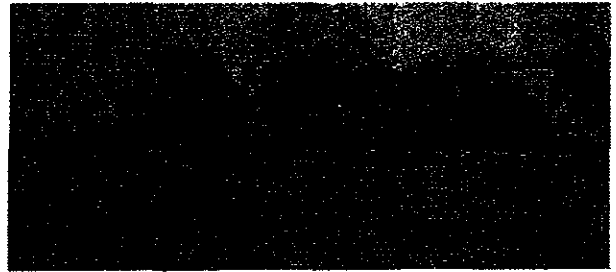
The Land Use Plan

Gunbarrel/Igou Gap Road Intersection Sketch: Existing

Much like the Gunbarrel/Shallowford Road intersection there is a lack of consistent sidewalks or crosswalks. The size of the roads and lack of pedestrian amenities creates strong barriers to pedestrians. The vacant parcel across the street awaits development.



Current view of Igou Gap/ Gunbarrel Rd. Intersection.



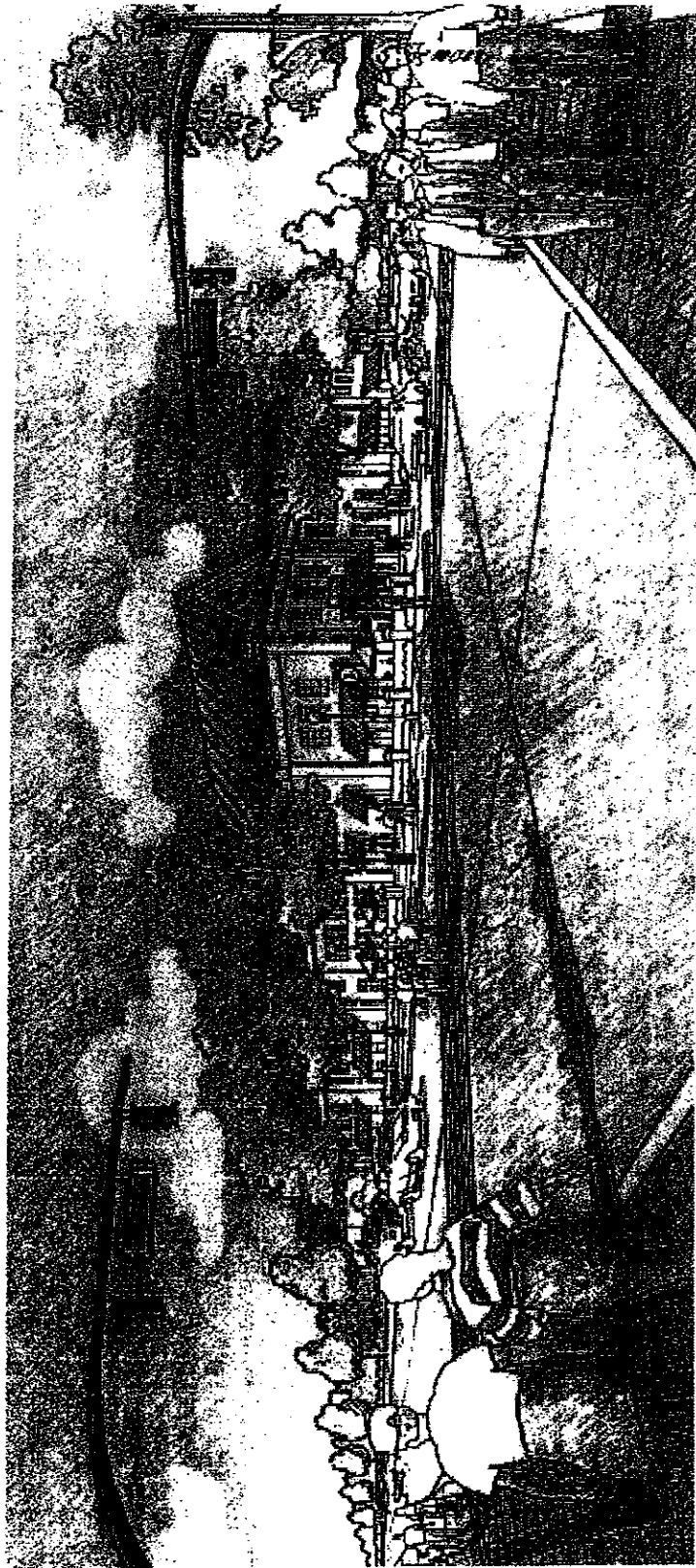
Gunbarrel/Igou Gap Road Intersection Sketch: Proposed

This sketch of proposed development shows the positive impact of sidewalk, crosswalk and other pedestrian amenities in creating a more pedestrian-friendly atmosphere. The future commercial development across the street is built close to the street with retail uses facing the street, encouraging pedestrian activity.



Proposed Improvements with new commercial development.

The Land Use Plan



Proposed Igou Gap/ Gimbarrel Intersection.

The Land Use Plan

Gunbarrel Road between Igou Gap and East Brainerd

The land use strategy supports the current policy of office and institutional uses along this portion of Gunbarrel Road with one notable exception. Due to the nature of the rest of this corridor, this plan recommends that the area of Applegate Road is also appropriate for professional office uses. Due to the quality and nature of existing structures on Applegate Road, it is recommended that existing structures be retained. Landscaping buffers against residential properties should also be retained. Any new development or redevelopment in this area should continue to maintain a high level of buffering against adjoining residential properties and should be at a scale that is compatible with adjoining residences.

Skyline Drive

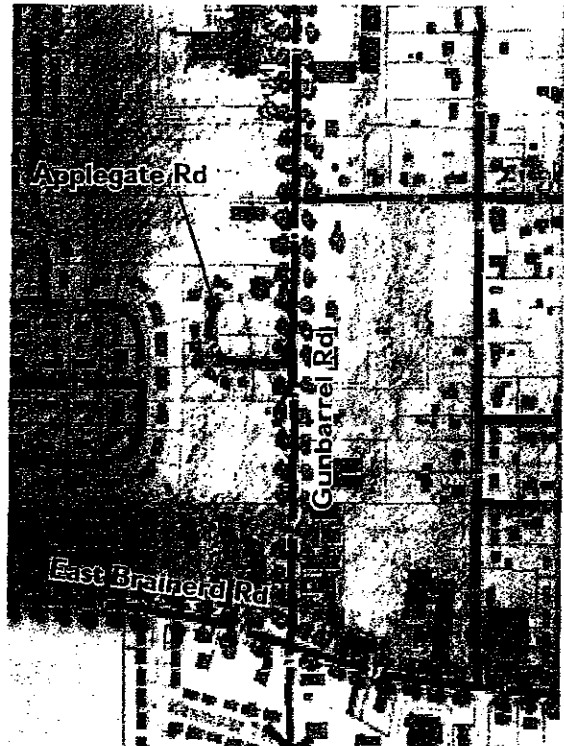
Skyline Drive is a narrow strip of single-family residences that is sandwiched between commercial development to the west and CBL's new office building to the east, and is topographically separated from the rest of the residences in the area. This area is appropriate for commercial development ONLY if it is developed as part of a redevelopment of the adjoining commercial property to the west, and ONLY if there is no access to Franks Road to the south.

Hamilton Place Mall/"Town Center"

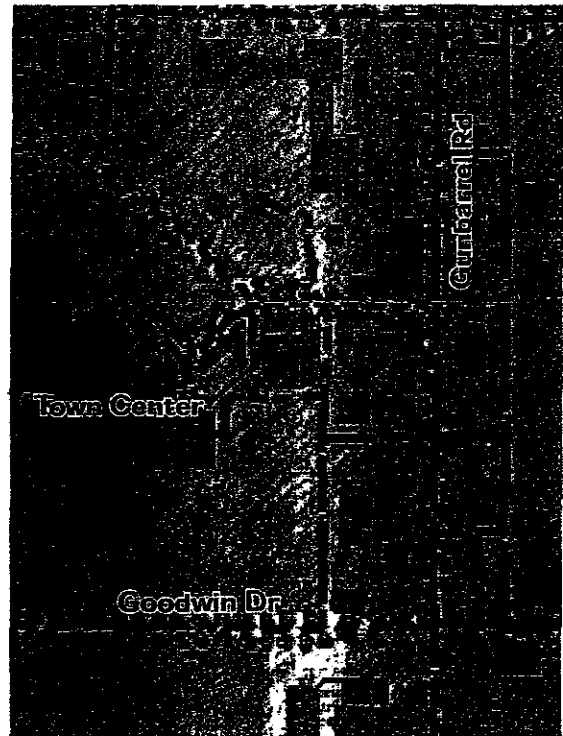
Supporting the overall strategy of focusing future commercial development on existing commercial land through densification, the Land Use Plan identifies the Hamilton Place Mall area as a target location for a mixed use "town center". This town center should be planned as pedestrian-oriented commercial main street with a mix of retail, office and residential uses. In the long-term this center may require the development of structured parking and could provide a central location for transit routes and/or a transit center.

Single Family Residential

The remainder of the study area should remain as low to medium density single family residential.



Gunbarrel Rd. detail



Town Center detail



Implementation

Implementation

6.0 IMPLEMENTATION

The implementation of the concepts and design ideas of this plan will require the continued energy and support of all those who have participated in developing them, including the City of Chattanooga, the Tennessee Department of Transportation, the Chattanooga-Hamilton County Regional Planning Agency, local businesses, property owners and area residents. First, the community needs to endorse the plan and work with the City to further develop specific project details and prioritization. This report should continue to serve as a reference for the neighborhood associations and business owners to communicate to the City the desired improvements.

The City should use this document as a reference tool to communicate with private developers the urban design intent of the plan and facilitate appropriate solutions. Past development trends suggest that creative partnerships may be required to realize the new types of development envisioned in this plan.

6.1 Land Use and Zoning

The Land Use Plan is intended to guide policy and specific zoning decisions over time. Individual rezoning of property should occur as land redevelops, in keeping with the recommendations of this plan. Given the nature of several of the key "pressured sites" redevelopment will most likely require land assembly and coordinated master plans. A special planned development zoning category designed for the Hamilton Place area may provide a useful tool for both developers and the City in implementing the concepts of this plan on specific sites. This planned development zone would allow flexibility in certain issues such as site design, and arrangement and mix of uses, (within the allowed uses of the plan) while specifying others including access, open space, and connections to adjacent parcels. In this way, the planned development category becomes a site specific land use and zoning agreement between the City and the developer that allows flexibility while still meeting the intent of the Hamilton Place Community Plan.

Another strategy to encourage development that is consistent with the intent of this plan would be a Neighborhood Center Zoning Option that could be applied for in conjunction with the underlying zoning. This option, in concept, would alleviate and/or allow flexibility with the standard site planning requirements in favor of more pedestrian-friendly site standards. These pedestrian-friendly standards are intended to support a more attractive and vibrant community. They should include among other things, placing buildings close to the street and sidewalks, and requiring parking to be placed behind buildings.

6.2 Business Improvement District

Important implementation stakeholders in this plan are the commercial property owners. One way to organize them and identify their role in the implementation of the plan is to create a business improvement district (BID). In essence, the BID becomes a special taxing district whereby the commercial property owners agree to tax themselves in order to fund improvements to the area that benefit everyone but are beyond the scope and ability of any single property owner. The funds generated could be used for shared physical improvements such as sidewalks, street trees and crosswalks. In addition, the BID could fund organized security, public events, and other community information programs. The BID is a way for the commercial property owners to take an active role in implementing the plan.

6.3 Tax Increment Financing District

Another possible method of funding improvements in the area is through a tax increment financing district (TIF). A TIF district essentially focuses the increase or increment in property tax value in the area, over a specified period of time, to fund projects and improvements specifically within the area. The benefit of this approach is that funds generated are part of the property tax already being collected and are not additional taxes on area property. The greatest value comes when undeveloped or underdeveloped property redevelops and generates a large increase in property value and in turn, property tax. A critical impact of the TIF district is that this increment of property tax is excluded from the City's general funds and cannot be spent on projects outside of the area.

6.4 Stormwater Management

The following recommendations should be implemented to address existing deficiencies and to insure appropriate stormwater management for future developments:

- Conduct a stormwater study for the entire South Chickamauga Creek watershed.
- Analyze existing stormwater detention ponds in the study area and redesign them as needed to function better during both minor and major water events to prevent downstream flooding.
- Incorporate stormwater detention into new parks and open space areas wherever possible. City of Chattanooga's Stormwater Management can provide technical assistance with such projects.
- Review and revise the landscape ordinance to better utilize landscaped areas required in new development for onsite groundwater recharge.
- Protect riparian areas. They provide opportunities for open spaces, habitat, and recreation, slow stormwater runoff, and help increase water quality through shading, regulation of temperatures, and filtering of surface water runoff.

Implementation

6.6 Action Plan: Projects

Land Policy Issues

Project:
Planned Development Zoning Category

Sponsor:
Chattanooga-Hamilton County

RPASchedule:
Short-term: 1-5 years

Action:
Adopt planned development (PD or PUD) zoning categories to accommodate "town center" and "neighborhood center" development

Benefit:
The PD zone will allow a mixture of uses and establish development standards while maintaining development flexibility

Issue:
Need to create enough incentive (site design flexibility, expedited review) in order to encourage developers to use it

Project:
Neighborhood Center Zoning Category

Sponsor:
Chattanooga-Hamilton County

RPASchedule:
Short-term: 1-5 years

Action:
Adopt a zoning option that allows flexibility in with the standard site plan requirements in favor of lot size, height and neighborhood supportive siting standards

Benefit:
Will support more pedestrian-friendly and neighborhood supportive development

Issue:
Need to create enough incentive (site design flexibility, expedited review) in order to encourage developers to use it

Transportation Issues

Project:
Bike and Pedestrian Improvements from Chattanooga to Hamilton County

Sponsor:
Hamilton County

RPASchedule:
Short-term: 1-5 years

Action:
Improve safety and connectivity for bike and pedestrian travel along major corridors and provide for more direct routes to major destinations

Benefit:
Will improve safety and connectivity for bike and pedestrian travel along major corridors and provide for more direct routes to major destinations

Issue:
Need to create enough incentive (site design flexibility, expedited review) in order to encourage developers to use it

Implementation

Project:

Igou Gap/Franks Road Improvements (from Franks Road to Jenkins Road)

Sponsor:

City of Chattanooga

Schedule:

Long-term: 5-10 years

Action:

Improve Igou Gap Road from a rural 2-lane road to an urban 2-lane road (curb and gutter) with a third-left turn lane where necessary. Improvements should also include sidewalks and streetscape.

Benefit:

Eliminates current safety issues. Adds left turn lanes, sidewalks and streetscape.

Issues/Cost:

1.5 miles @ \$2.8 mil./mile = \$4.2 million

(These are estimates of design and construction costs and are for general planning purposes only. Does not include right-of-way acquisition.)

Project:

Goodwin Drive Extension (from 1-75 to Gumbarel Road)

Sponsor:

City of Chattanooga, CBI, Associated

Schedule:

Short-term: 2-5 years

Action:

Extend Goodwin Drive from Gumbarel Road west to 1-75 half interchange.

Benefit:

Provides a needed alternative to Chalkwater Road for anyone coming to the Hamilton Place area from 1-75 south (via downtown or Highway 153).

Issues/Cost:

Will require right-of-way and support from adjacent property owners.

0.7 miles @ \$3.4 mil./mile = \$2.4 million

(These are estimates of design and construction costs and are for general planning purposes only. Does not include right-of-way acquisition.)

Project:

Goodwin Drive Extension (from Gumbarel Road to Franks Road)

Sponsor:

City of Chattanooga, CBI, Associated

Schedule:

Short-term: 2-5 years

Action:

Extend Goodwin Drive from Gumbarel Road east to Franks Road.

Benefit:

Provides an additional route of travel from downtown area to Franks Road.

Issues/Cost:

Will require right-of-way and support from adjacent property owners.

0.5 miles @ 2.8 mil./mile = \$1.4 million

(These are estimates of design and construction costs and are for general planning purposes only. Does not include right-of-way acquisition.)

Implementation

Project:
Gunbarrel Road Improvements (from Shallowford Road to Standifer Gap Road)

Sponsor:
City of Chattanooga

Schedule:
Long-term: 5-10 years

Action:
Improve Gunbarrel Road from a rural 2-lane road to an urban 2-lane road (curb and gutter) with a third left turn lane where necessary. Improvements should also include sidewalks and streetscape.

Benefit:
Eliminates current safety issues. Adds left turn lanes, sidewalks and streetscape.

Issues/Cost:
.7 miles @ \$2.8 mil/mile = \$1.96 million

(These are estimates of design and construction costs and are for general planning purposes only. Does not include right-of-way acquisitions.)

Project:
Commons Boulevard Extension south to Lion Gap Road

Sponsor:
City of Chattanooga

Schedule:
Long-term: 5-10 years

Action:
Extend Commons Boulevard from Gunbarrel Road south to Lion Gap Road and Lion Gap Road.

Benefit:
Provides a needed alternate to Gunbarrel Road.

Issues/Cost:
Will require right-of-way and utility relocation on property owned.

.9 miles @ \$2.4 mil/mile = \$2.16 million

(These are estimates of design and construction costs and are for general planning purposes only. Does not include right-of-way acquisitions.)

Neighborhood Issues

Project:
Chattanooga 6th Street Corridor
Priority:
City of Chattanooga
Timeline:
2011-15
Project Description:
City of Chattanooga and Business Improvement Districts
are working to improve 6th Street

Schedule:
Long-term: 5-10 years

Action:
Stimulate economic growth and improve neighborhood
quality of life through transit

Benefit:
Traffic calming, alternative transit options and
pedestrian friendly environment
improvement of neighborhood quality of life

Issues/Cost:
Cost will be shared between City of Chattanooga
and Business Improvement Districts
Source: Chattanooga Business Improvement District

Implementation

Development Issues

Project:
Business Improvement District

Sponsor:
City of Chattanooga, Commercial property owners

Schedule:
Short-term: 1-5 years

Action:
Establish a BID for the Hamilton Place area.

Benefit:
This district will generate funds for area improvements based on fees paid by commercial property owner.

Issues:
Will require strong commercial property owner support.

Project:
Tax Increment Financing District

Sponsor:
City of Chattanooga, Commercial property owners

Schedule:
Short-term: 1-5 years

Action:
Establish a TIF district for the Hamilton Place area.

Benefit:
This district will generate funds for area improvements based on the increased value of property and re-development.

Issues:
May require state or federal authorization. Will need support from both the City and area property owners.

Other Issues

Project:
Area Specific Transportation Program

Sponsors:
City of Chattanooga, Commercial property owners

Funding Source:
City of Chattanooga, Business Improvement District, Tax Increment Financing District

Schedule:
Short-term: 1-5 years

Action:
Develop and implement a program to improve pedestrian and bicycle safety and accessibility in the Hamilton Place area and surrounding area.

Benefit:
The program will create a safer and more accessible environment for pedestrians and bicyclists, increasing the area's attractiveness and economic vitality.

Issues:
Cost will be high. Program will require strong support from both the City and area property owners.

Project:
Hamilton Place Open Space Plan

Sponsor:
City of Chattanooga

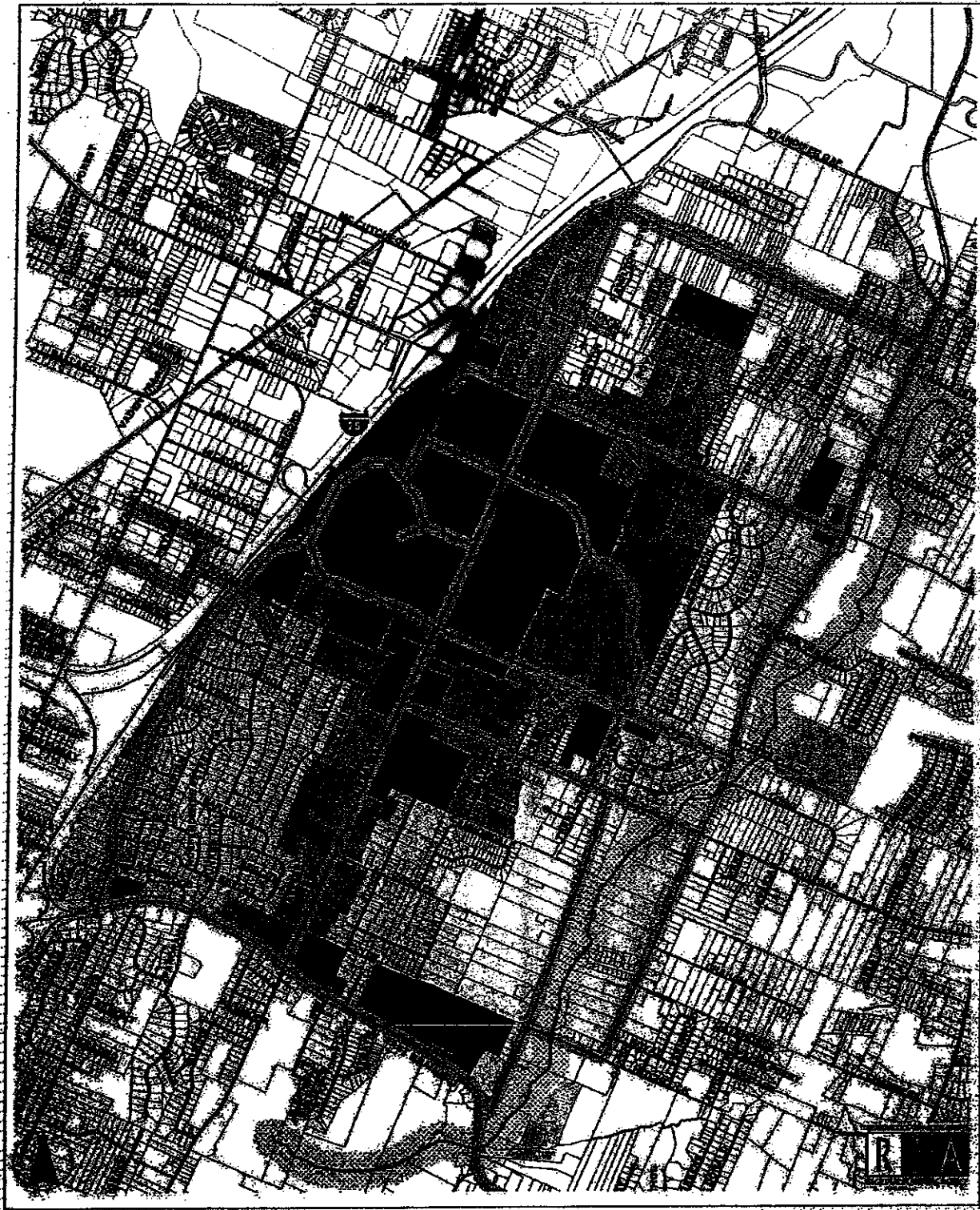
Funding Source:
City of Chattanooga, Business Improvement District, Tax Increment Financing District

Schedule:
Long-term: 5-10 years

Action:
Develop and implement a plan for open space and recreation in the Hamilton Place area.

Benefit:
The plan will create a more attractive and livable environment, increasing the area's economic vitality and quality of life.













Issues:
Program will require strong support from both the City and area property owners. The program will need to be implemented as part of the regional parks and open space plan.



Hamilton Place Community Plan

Land Use Policy

September 2001

- | | | |
|--|---|--|
|  Commercial |  Medium-density residential |  Illustrative Road Improvements |
|  Office |  Low to medium density residential |  Streetscape |
|  Institutional/Civic |  Open space |  Traffic calming |
|  High-density residential |  Medium-density residential/Civic |  Greenway |

**City Council Building
Chattanooga, Tennessee
October 9, 2001
6:00 p.m.**

The meeting of the Chattanooga Council was called to order by Chairman Hakeem with Councilmen Benson, Franklin, Littlefield, Lively, Page, Pierce and Robinson present; Councilman Taylor was out of the city on business. Special Counsel Mike McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal, CMC, were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman Benson gave invocation.

MINUTE APPROVAL

On motion of Councilman Lively, seconded by Councilman Franklin, the minutes of the previous meeting were approved as published and signed in open meeting.

CLOSE AND ABANDON

MR-2001-024: Bal Harbor Subdivision

On motion of Councilman Franklin, seconded by Councilman Lively,

**AN ORDINANCE CLOSING AND ABANDONING A SEWER EASEMENT
LOCATED ALONG THE NORTH PROPERTY LINE OF LOT 72, BAL HARBOR
SUBDIVISION, AS SHOWN ON THE MAP ATTACHED HERETO AND MADE
A PART HEREOF BY REFERENCE**

passed second reading. On motion of Councilman Lively, seconded by Councilman Franklin, the Ordinance passed third and final reading and was signed in open meeting.

REZONING

Councilman Littlefield made the motion to move Ordinance 6(l) and Resolution 7(a) forward on the agenda; Councilman Franklin seconded the motion; the motion carried.

2001-145: Concorde Investments, LTD

Pursuant to notice of public hearing, the request of Concorde Investments, LTD to rezone a tract of land located at 7301 East Brainerd Road came on to be heard.

Attorney John Anderson, representative for the applicant, requested that this application be withdrawn.

On motion of Councilman Littlefield, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 7301 EAST BRAINED ROAD, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-3 RESIDENTIAL ZONE TO C-2
CONVENIENCE COMMERCIAL ZONE**

was withdrawn at the request of the applicant's attorney.

ADOPTION OF HAMILTON PLACE COMMUNITY PLAN

Jeff Pfitzer, Planner with the Planning Agency, stated with the help of the consultant team everyone has been apprised throughout the summer regarding the comprehensive land use study for the Hamilton Place area; that they worked diligently with the community over the last four months to develop the Plan that is before the Council this evening. He stated this is the result of a lot of collaborative "give and take" over the summer and it is felt this is a sound and workable plan for the long range for this community. He stated in light of the fact that everyone has been briefed throughout the summer he offered himself available to answer questions in lieu of providing a full presentation of the Plan.

At this point, Chairman Hakeem offered those in attendance an opportunity to express (three minute) remarks regarding their concerns relating to this item.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Robert Reid, of 7418 Igou Gap Road, was the first to speak and indicated that he needed answers to questions. He stated that he went to the meetings and every step with everyone; that the group was told by Councilman Benson and the Planning Staff that there would be no commercial and where he comes from that means "no". He stated when he went to the first meeting, Home Depot got commercial zoning with the reason that it stuck out in the road too much; that he went to the second meeting and the commercial boundary went back on the north side of Igou Gap and Skyline Drive with the reason given that it was harsh land. He stated that he tried to understand what harsh land was, and found after looking in the "book" on page 44 that harsh land was a commitment to CBL; that the "deal" was that CBL would take care of the road from Gunbarrel to the freeway and to compensate them they had to have something. He stated the land was given to them (CBL) as commercial to develop and recoup their money. He stated when "no" is said and something differently is done, it becomes a lie; that he may be politically incorrect, but a lie was told twice. He stated this Plan is built on lies and will, therefore, never benefit citizens; that if you say "no" and give it to one because he has money and not to others, the citizens' rights have been taken away.

Councilman Littlefield suggested that the Council hear from everyone and allow Planning to answer questions at the end.

Bruce Crane of Crane Road stated that he lives directly across from Erlanger-East, next to the Pomerance Eye Center. He stated according to the Plan part of the area is zoned office and the other is not on Farris Road. He stated that he was wondering if at a later date this whole area would probably get rezoned as several doctors have stopped and asked about the property and whether it is zoned for office. He stated his response to them has been "no" and they have left their name and number with him so that he could call when and if it is rezoned. He expressed interest in having the rest of the property rezoned for office; that he had it up for rezoning last year and it was deferred until the Plan was complete.

Norman Smith stated that he and others have worked with the RPA on this Plan throughout the whole period and commended them for the work they have done. He stated it is his thinking that they have done the best they can do; that the Plan does not make everyone happy, yet, they have done a marvelous job. He asked the Council to adopt the Plan.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Dennis Chastain, of 7433 Igou Gap, stated before this Plan is adopted it would benefit the City of Chattanooga to save money by going ahead making the land commercial because of the safety of the roads. He stated that he has had one vehicle totaled coming out of his driveway; that before this Plan is adopted he would love for Council members to come out in the peak hours of driving to see what residents go through daily. He stated they never asked for shopping centers or apartments that adjoin their land; again reiterating that it would benefit everyone for the matter to be looked into further.

Steven Halbert, 7434 Igou Gap, stated where he is located he is "sandwiched" between WalMart, Hamilton Chase and the new Target; that he can see Hamilton Chase on one side and Target on the other. He stated that they are having a problem between the apartments and housing and cited a concern with dogs in the neighborhood behind him with reference to a poisoning incident and stolen guns. He stated that even though the apartments are looked at as residential, if it is looked at thoroughly it is more commercial because apartment owners are making a profit and money off the apartments. He stated people living in the apartments do not care and homeowners are suffering the consequences of the noise from the dumpsters that are emptied at 3 a.m., lights from headlights and dogs barking. He stated that he does not understand why they cannot get something resolved with this constant battle between apartments and homeowners; that they would like to have the same opportunity to be able to sell their properties at the same market rate and same value as CBL. He stated they could not understand why where they are located and "sandwiched" in commercial that they cannot get the same commercial zoning.

Ralph Williams, of 7315 Shallowford Road, stated that he lives across from Arby's and has the same problem as the previous speaker with noise and lights. He stated he and his wife have lived in their home since 1974 and have raised three children. He stated the community has changed and their lives have changed since Hamilton Place was developed. He stated he has cooperated with the City with the various changes and gave them 3,000 square feet; that he used to have three acres. He stated he never opposed the zoning request necessary to develop property around them and accepted it as positive growth; that after the mall was developed over thirteen years ago he has requested zoning for C-4 only to be turned down for the reason that there is too much traffic on Shallowford and encroachment on the neighbors.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Mr. Williams stated during this time period, CBL has continued to get rezoning changes resulting in more traffic and encroachment and there seems to be a double standard. He stated it is clear to all who will be honest in the matter that the triangle frontage on Shallowford and I-75 is suited best for commercial zoning; that the Plan before the Council tonight denies the best use of that triangle. He stated much time and money went into this Plan, yet, it needs some fine-tuning, as it is too restrictive for future development other than for CBL. He stated CBL has done a great job but are not the only ones there; that the triangle should become a broader zoning for office. He asked the Council to vote "no" on the Plan.

Jill M. Isinghoe, of the Concord and Highland Subdivisions, stated that this Plan has been worked on extensively and does not satisfy everyone; that it does not satisfy her neighborhood in some respect. She stated that commercial has to stop somewhere; that if we do more commercial and keep expanding, it will continue to threaten neighborhoods. She expressed sympathy with the families that live next to Target and other developments, stating that it seems the Council needs to do something to fix the problem already existing and prevent future problems. She stated since the City created this problem by allowing commercial development on top of residential there should be some arrangement made to purchase the homes from these people and turn the areas into greenways or parks for adequate buffers. She stated the current zoning requirement for buffering between commercial and residential is woefully inadequate, as twenty-to-thirty feet is nothing. She stated future areas encroaching on residential should ask for what they want such as 100 feet for buffering, greenways, parks and major expanses of land so that homes and properties are not threatened.

Jimmy Ray Lee, of 1832 Clearview Drive, stated that he lives behind Target. He commended the Staff on the Plan and stated that he is always for progress; that he has some concerns that should be tweaked. He stated he and others on Clearview are at a dead end street and have a sense of being trapped right now; that there is only one way in and out. He stated that he moved there twenty years ago when it was "country"; that they now have commercial and the traffic, safety issues and noise are horrendous. He stated the people on Clearview are retired (people) who have put their entire life and savings into their property and it has totally changed; that many have lived there as long as 40 years and have a concern about being trapped on Clearview Drive.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Mr. Lee stated that they are concerned about their property value as it is felt it will go down; that they do not think it is fair to the residents on the street who have lived there a long time. He stated that they appreciate the effort toward apartments and townhouses and does not know how much that will help; that he would appreciate the Council considering what they are dealing with on this dead end street of retired people who have invested their whole life.

Harley Foote stated that he owns property at 7426 and 7428 Igou Gap. He stated those who have spoken before him had said what he wanted to say, too. He spoke in reference to the C-2 zone, which would help him and all the others on Clearview Drive, stating that they just do not have anywhere to go. He expressed appreciation to the Council for their time and encouraged them to have the zoning reflect C-2.

Barbara Reid, of 7418 Igou Gap, stated that hundreds of people participated in this Plan, yet all their input was not used. She stated the issue was not to make everyone happy, but to bring forth a solid foundation for a Plan that is fair, consistent and impartial. She stated the number of persons participating has been used over-and-over to validate the Plan; that it has been tweaked for high dollar people like CBL and Home Depot. She stated if the main objective is to protect the neighborhood, the question should be why the Plan cannot be adjusted so as not to allow for further intrusion into pocket neighborhoods like hers? She asked why they should settle for offices and town homes? She stated that she is sick and tired of hearing it said that they have been given an upgrade from residential to town homes and they should be happy with that; that the Council dumped commercial in their back yard and they have been living in a commercial environment for twenty-plus years. She stated they are now being stripped of the benefits of official commercial zoning and it is not right, nor fair. She asked that the Council stop fooling themselves and others; that they are not giving them anything; that they are taking away from them and abandoning them. She stated if the Council puts this Plan through as it is, it has to fail down the road because it is not built on solid foundation.

Bernie Medley, of 1831 Clearview Drive, stated that he lives behind Target. He stated a lot of work went into this Plan and (he) thinks it is a good one. He stated he has been in touch with many people trying to get the noise of the dumpsters stopped from 3 a.m. until 6:30 or 7 a.m. He stated according to the Plan fifteen units can be placed on each acre; that there are twenty acres, which would allow for some 300 units or more.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Mr. Medly asked where the cars would go for such a high number of units? He stated the reason for building such high density housing for people on low income is so they can walk to work to Target or whatever is around. He stated he does not know how anyone will have any kind of life living with all that noise; that it would be a deterrent to live there and the only feasible thing to do is to make it commercial.

James D. Boatman, of 1825 Clearview Drive, who also lives behind Target, stated that the runoff pond is full of mosquitoes and asked if any of the Council members would buy his property! He asked that the Council change this (Plan) so that he and others could sell their property.

Russell Chastain stated that he was raised on Igou Gap and is still a property owner there. He stated the property on Igou Gap is unfit to live on and the residential should become commercial.

Mike Ledford, of Skyline Drive, was present representing the Belle Vista Homeowners Association composed of twenty homes. He stated they fully support the Plan and live on the west side of Gunbarrel; that they think it is a well thought out Plan, as commercialization has to stop at some point. He stated several speakers have mentioned dumpsters, explaining that offices don't usually generate this type of traffic; that with the cool weather people like to sleep with their windows open and the noise from the dumpsters is incredible. He stated regardless of the Plan something should be done about the noise level in the neighborhood. He reiterated that they are comfortable with the Plan and encouraged the Council to adopt it.

Lloyd Stanley, of 7442 Preston Circle, stated that he has been before the Council many times as people along this route have been fighting this battle a long time. He stated no plan is going to satisfy everyone and commended all who have been involved in the development of this one; that it is his thought if this effort had been launched several years ago there might not have been "hard feelings" and frustration. He stated this Plan is comprehensive and those who have worked on it have diligently tried to listen to all of the neighborhood and individuals, as well as businesses. He stated this is a compromise and compromises rarely satisfy everyone completely. He urged the Council to adopt the Plan as the best compromise we can have.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Eric Henson stated that he lives on Ashwood Drive and indicated that the neighborhood has been very involved in the development of the Plan. He stated as others have mentioned, it is not a perfect Plan, yet overall it has been developed with input of all involved and is one they wholeheartedly support and strongly recommended that the Council adopt as it is.

Steven Halbert, of 7432 Igou Gap, stated all the neighbors on Igou Gap agree it is a good Plan overall; that it needs some tweaking or "tuning up" for his neighborhood. He stated that he is not saying it is a bad plan and knows the RPA put a lot of work, energy and money into it. He stated that the neighborhood between Gunbarrel and Clearview should be further looked into.

Vernice Redding, of 7503 Igou Gap, expressed agreement that the Plan is a good one and can only speak for her part. She stated that she strongly feels that her neighborhood needs to be improved not only for the future but long term. She stated that they know being such a busy street with offices and residential that the traffic will increase and the quality of the roads and living is going to depreciate; that even expanding the road will help but not solve the problem. She stated finding a solution to help decrease traffic is the main problem. She asked the Council to please look into this more and listen to their concerns.

Councilman Benson stated that he was glad everyone had an opportunity to talk as everyone had an opportunity for input. He asked for a show of hands of persons not wanting the Council to adopt the plan and a few raised their hands. He then asked for a show of hands of those not wanting the Plan adopted who came to the meetings and had input, to which the response was much the same as the previous few. At this point he asked for a show of hands of those from the area asking for the adoption of the Plan, as is, to which the majority raised their hands. His next question to those in attendance was for a show of hands of persons asking for adoption of the Plan who attended the meetings and the majority, again, raised their hands.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Councilman Benson continued by stating that many on the Council attended the meetings, too, and indicated that the Hamilton Plan is a sound land use plan that was developed for the purpose of mitigating years of negative efforts of uncontrolled growth in the area. He stated hundreds of persons spent hours attending many meetings throughout this six-month process, guided by professional consultants, but driven by the community; that a consensus was forged on what would make the area a better place to live and work. He stated no one was without input or consideration, indicating that he is not totally happy with every detail of the Plan. He stated that it is his belief that the Plan is in the best interest of the commercial and residential areas of the community today.

Councilman Benson concluded his remarks by stating that he respects the Plan's integrity and the hundreds of those in attendance who were involved in the development of it; that people from both residential and commercial have ownership in this Plan. He stated that he would not break faith with the residents and demean their participation by voting to change or violate the Plan this evening. He expressed belief that once the Plan is in place and there are experiences concerning the need for changes, it would be suitable and proper to have periodic reviews with citizens and professionals for input recommending needed changes so that it would be taken back to the people the way it came. He stated that he sees where tweaking really needs to be done. He commended the RPA Staff and consultants for an excellent job.

Jeff Pfitzer expressed thanks to all the residents and stated that he was not going to try to argue point-by-point with regard to questions raised. He spoke briefly of the general intent of the Plan as formulated and grounded in the economic study and traffic analysis. He stated one of the fundamental issues identified in the economic analysis was that even though this is a strong economic center in the region, there is stagnant growth both in population and income and is very near the spending capacity for additional retail growth. He stated strictly from the economic standpoint it was determined not in the best interest to continue outward growth of retail in this area. He stated the traffic study also recommended that the roads need improvement to handle the traffic currently generated; that the traffic and noise impacts some of the codes enforcement policies. He stated part of the safety in developing the land use component is to stop pushing this harsh edge commercial deeper and deeper into the residential areas. He stated that historically vital and sustainable communities contain a mixture of uses including not only commercial but a variety of housing, as well as office uses, and are more pedestrian friendly, diverse or high quality areas.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Mr. Pfitzer stated what they have identified are the areas where there are pressures, making reference to Target's unplanned growth which was not part of the plan for this area and RPA commented against it at the time. He stated this is a good example of what happens when we try to fit it into the landscape where it does not need to be. He stated the solution is not to keep pushing it further out but leave the community together; that they wrestled with that in this Plan to find a way to identify a number of strategies that do not keep pushing the edge out in an effort to create a more pedestrian friendly mixture of uses. He stated this has not been an easy solution; that it is hoped the strategy in place can rise to the challenge of working together as a community to create a more livable environment for everyone involved.

At this point Councilmen Benson made the motion to adopt the Plan; Councilman Littlefield seconded the motion.

Councilman Page stated that he recognizes that this is a good place to start and is very supportive of the Plan. He inquired as to how matters might be resolved regarding the Igou Gap and Clearview areas?

Mr. Pfitzer stated that the original recommendation by the consulting team was that this area should be all residential and after considerable negotiations with the neighborhood regarding the range of options that might provide relief, office use was included into the mix.

Councilman Lively stated that he represents the district furthest away from Hamilton Place, and during the last eleven years of his tenure on the Council he has probably had to look at more zoning ten times the number than in the district he represents. He stated this area deserves a change and he has never seen anything in "concrete forever". He stated the Plan deserves a periodic review and expressed support for it.

Chairman Hakeem stated that he did not know if it would be the Neighborhood Services Department that would deal with the dumpster issue in that area or not, as there are many other areas that are looking for a resolution regarding the same matter. He stated two citizens addressed the same concern regarding the early morning dumpster noise, as well as the gentlemen who made reference to the water runoff problem and mosquitoes.

**ADOPTION OF HAMILTON PLACE COMMUNITY
PLAN (Continued)**

Mr. Pfitzer stated in conversation with the owner of the land today indication was given someone was working on the most appropriate method of control, reiterating that he was assured they would be working on it this week.

Chairman Hakeem stated that he also heard during the discussion that the Igou Gap residents are looking at traffic and how it impacts them.

Mr. Pfitzer stated the length of Igou Gap road is in desperate need of being brought up-to-standard. He stated improved intersections are the key element of the Plan.

After the vote was taken, Chairman Hakeem stated that the Plan was unanimously put into place with the understanding it would be reviewed in the future. He asked that those in attendance know that the Council did not take lightly any concern they had; that it is not easy for the Council to make these decisions. He stated decisions of the Council are made in an attempt to do so in the best interest of the total community. At this point, he inquired as to the safety conditions on Igou Gap Road?

Mr. Pfitzer responded that he has been in discussion with the City Engineer and Traffic Division and indicated that they were waiting for final action on the Plan before moving forward with the capital budget planning and TIP improvements with the Metropolitan Planning Agency. He stated that we are looking at a much shorter time frame than recommended by the consultant; that some conditions are much more pressing issues than having to wait five or ten years.

Chairman Hakeem expressed thanks to those in attendance regarding this matter.

On motion of Councilman Benson, seconded by Councilman Littlefield,
A RESOLUTION TO ADOPT THE HAMILTON PLACE COMMUNITY PLAN
was adopted.

AMEND ZONING ORDINANCE

Jerry Pace, Director of Operations with the Planning Agency, requested that this matter be tabled one week.

On motion of Councilman Littlefield, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, BY AMENDING ARTICLE VI,
SECTION 105 AND 106, TO INCORPORATE NEW LANGUAGE RELATIVE
TO SINGLE FAMILY DWELLINGS AND DUPLEXES ON LOTS OF RECORD
AND TO REVISE ARTICLE VI, SECTION 108, TO INCORPORATE NEW
LANGUAGE RELATIVE TO CORNER LOT SETBACKS**
was tabled one week.

CLOSE AND ABANDON

MR-2001-074: William A. Spears

The applicant was not present; there was no opposition.

Councilman Franklin stated Ordinances (b) and (c) were discussed in today's Public Works Committee meeting and approval is recommended.

On motion of Councilman Franklin, seconded by Councilman Littlefield,
**AN ORDINANCE CLOSING AND ABANDONING THE UNOPENED
SOUTHEAST END OF LOWELL STREET RIGHT-OF-WAY, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE,
SUBJECT TO CERTAIN CONDITIONS**
passed first reading.

CLOSE AND ABANDON

MR-2001-080: Joe E. Proctor

The applicant was present; there was no opposition.

On motion of Councilman Lively, seconded by Councilman Franklin,
**AN ORDINANCE CLOSING AND ABANDONING A 900.15 FOOT LONG
AND 40 FOOT WIDE SECTION OF CHICKAMAUGA WORLEY SHORTCUT,
MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE
MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE**
passed first reading.

REZONING

2001-112: Henry Luken, III

Pursuant to notice of public hearing, the request of Henry Luken, III to rezone a tract of land located at 806 East Main Street came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilman Pierce, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 806 EAST MAIN STREET, MORE PARTICULARLY
DESCRIBED HEREIN, FROM C-2 CONVENIENCE COMMERCIAL ZONE
TO M-1 MANUFACTURING ZONE, SUBJECT TO CERTAIN CONDITIONS**
passed first reading.

REZONING

2001-127: Clydell Darleen Floyd

Pursuant to notice of public hearing, the request of Clydell Darleen Floyd to rezone a tract of land located at 3700 Dodds Avenue came on to be heard.

The applicant was present; there was no opposition.

In the absence of Councilman Taylor, Councilman Pierce made the motion to defer the matter one week in light of the fact this request is in District 7.

On motion of Councilman Pierce, seconded by Councilman Lively,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 3700 DODDS AVENUE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO C-2
CONVENIENCE COMMERCIAL ZONE**
was tabled one week.

REZONING

2001-132: Rajesh Mujral

Pursuant to notice of public hearing the request of Rajesh Mujral to rezone a tract of land located at 3885 Tradeway Drive came on to be heard.

The applicant was present; there was no opposition.

Councilman Lively expressed familiarity with this request and made the motion to approve on first reading.

On motion of Councilman Lively, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 3885 TRADEWAY DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM M-2 LIGHT INDUSTRIAL ZONE AND R-3
RESIDENTIAL ZONE TO C-1 HIGHWAY COMMERCIAL ZONE**
passed first reading.

REZONING

2001-134: Bryan Owens

Pursuant to notice of public hearing, the request of Bryan Owens to rezone a tract of land located at 18 Market Street came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilwoman Robinson, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 18 MARKET STREET, MORE PARTICULARLY
DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO C-3
CENTRAL BUSINESS ZONE**
passed first reading.

REZONING

2001-140: UTC (Tom Ellis)

Pursuant to notice of public hearing, the request of UTC (Tom Ellis) to rezone tracts of land located at 723, 739 and 744 McCallie Avenue came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilman Lively, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACT OF
LAND LOCATED AT 723, 739 AND 744 MCCALLIE AVENUE MORE
PARTICULARLY DESCRIBED HEREIN, FROM C-2 CONVENIENCE
COMMERCIAL ZONE TO R-4 SPECIAL ZONE**

passed first reading.

REZONING

2001-141: UTC (Tom Ellis)

Pursuant to notice of public hearing, the request of UTC (Tom Ellis) to rezone a tract of land located at 1111 Oak Street came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilman Pierce, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 1111 OAK STREET, MORE PARTICULARLY DESCRIBED
HEREIN, FROM M-1 MANUFACTURING ZONE TO R-4 SPECIAL ZONE**

passed first reading.

REZONING

2001-143: John S. Wise, III

Pursuant to notice of public hearing, the request of John S. Wise, III to rezone tracts of land located at 725, 825 and 855 Cherokee Boulevard came on to be heard.

REZONING (Continued)

In the absence of Councilman Taylor, Councilman Lively made the motion to defer the matter one week in light of the fact this request is in District 7.

On motion of Councilman Lively, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 725, 825 AND 855 CHEROKEE BOULEVARD, MORE
PARTICULARLY DESCRIBED HEREIN, FROM M-2 LIGHT INDUSTRIAL ZONE
AND R-1 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**
was tabled one week.

AMEND CONDITIONS

2001-144: Chattanooga Neighborhood Enterprise

Pursuant to notice of public hearing, the request of Chattanooga Neighborhood Enterprise to amend conditions imposed in Ordinance No. 11123 on property located at 1706 and 1708 Long Street came on to be heard.

The applicant was no present; there was no opposition.

On motion of Councilman Pierce, seconded by Councilman Lively,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO AMEND CERTAIN
CONDITIONS IMPOSED IN ORDINANCE NO. 11123 ON PROPERTY
LOCATED AT 1706 AND 1708 LONG STREET, BEING MORE
PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS**
passed first reading.

AMEND CONDITIONS

2001-149: Kevin G. Whitmore

Pursuant to notice of public hearing the request of Kevin G. Whitmore to amend conditions imposed in Ordinance No. 11123 to rezone a tract of land located at 224 West 19th Street came on to be heard.

The applicant was not present; there was no opposition.

REZONING (Continued)

Mr. Pace stated that this Ordinance adds permitted uses for offices, which was not a part of the original Ordinance for the Southside area.

Councilman Pierce inquired as to whether office use is part of the land use plan for the Southside area? Mr. Pace responded "yes"; that north of this area there is C-3 and office was left off as a permitted use. He stated this Ordinance adds offices back in for the Southside redevelopment area.

On motion of Councilman Lively, seconded by Councilman Benson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO AMEND CERTAIN
CONDITIONS IMPOSED IN ORDINANCE NO. 11123 ON PROPERTY
LOCATED AT 224 WEST 19TH STREET, BEING MORE PARTICULARLY
DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS**
passed first reading.

FINAL PUD SPECIAL EXCEPTIONS PERMIT

On motion of Councilman Lively, seconded by Councilman Littlefield,
**A RESOLUTION APPROVING A PROPOSED FINAL INSTITUTIONAL
PLANNED UNITED DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A
PLANNED UNIT DEVELOPMENT KNOWN AS UNIVERSITY OF TENNESSEE
AT CHATTANOOGA INSTITUTIONAL PLANNED UNIT DEVELOPMENT, ON
A TRACT OF LAND LOCATED GENERALLY FROM THE RAILROAD EAST
OF CENTRAL AVENUE AND FROM EAST 8TH STREET TO THE TENNESSEE
RIVER, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON
THE FINAL PLANNED UNIT DEVELOPMENT PLAN ATTACHED HERE TO
AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN
CONDITIONS**
was adopted.

EASEMENT

Chairman Hakeem explained that this Resolution references the property located under the bridge which will be used for storing equipment. He stated the State is going to lease it from us for a period of time.

EASEMENT (Continued)

On motion of Councilman Lively, seconded by Councilman Franklin,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO EXECUTE A TEMPORARY CONSTRUCTION EASEMENT ON SURPLUS PROPERTY LOCATED ON THIRD STREET, MORE PARTICULARLY DESCRIBED HEREIN, WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION RELATIVE TO THE THIRD STREET VIADUCT REPLACEMENT PROJECT, FOR A TOTAL CONSIDERATION OF SIX THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$6,550.00)

was adopted.

AGREEMENT: TDOT AND CSX TRANSPORTATION, INC.

Councilman Franklin asked that this Resolution be tabled for one week pursuant to discussion in today's Public Works Committee.

On motion of Councilman Franklin, seconded by Councilwoman Robinson,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO EXECUTE AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION AND CSX TRANSPORTATION, INC., RELATIVE TO THE CONSTRUCTION OF THE THIRD STREET BRIDGE, PROJECT NO. BR-STP-3552(1), 33958-2342-94 AND AUTHORIZING THE TRANSFER OF EIGHT HUNDRED FIFTY-FIVE THOUSAND TWO HUNDRED FIVE AND 22/100 DOLLARS (\$855,205.22) TO THE STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE CITY'S SHARE OF THE CONSTRUCTION

was tabled one week.

CONTRACT: MEDIA CONSULTANTS SYSTEMS INTEGRATORS

Councilman Franklin stated Resolutions 7(e) – (g) were discussed in Public Works Committee meeting and approval is recommended.

On motion of Councilman Franklin, seconded by Councilman Littlefield,

A RESOLUTION AUTHORIZING THE AWARD OF CONTRACT DRC-1-01A, RELATIVE TO THE DEVELOPMENT RESOURCE CENTER AUDIO-VISUAL SYSTEM, TO MEDIA CONSULTANTS SYSTEMS INTEGRATORS FOR THEIR LOW BID IN THE AMOUNT OF ONE HUNDRED THIRTEEN THOUSAND SEVEN HUNDRED FIFTY-FOUR AND 16/100 DOLLARS (\$113,754.16)

was adopted.

CHANGE ORDER

On motion of Councilman Franklin, seconded by Councilman Littlefield,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1, RELATIVE TO LOST MOUND DRIVE AT AMNICOLA HIGHWAY, CONTRACT NO. RW-1-00, WITH LONAS CONSTRUCTION COMPANY, WHICH CHANGE ORDER INCREASES THE CONTRACT AMOUNT BY TWENTY-FOUR THOUSAND FOUR HUNDRED AND 33/100 DOLLARS (\$24,400.33), FOR A REVISED CONTRACT PRICE OF ONE HUNDRED FORTY-SEVEN THOUSAND TWO HUNDRED TWELVE AND 48/100 DOLLARS (\$147,212.48)

was adopted.

TEMPORARY USE: KAREN POOLE

On motion of Councilwoman Robinson, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING KAREN POOLE TO USE TEMPORARILY THE CITY'S RIGHT-OF-WAY LOCATED AT 38 FRAZIER AVENUE TO INSTALL AN AWNING, SUBJECT TO CERTAIN CONDITIONS

was adopted.

CONTRACT: RAINES BROTHERS, INC.

Chairman Hakeem stated this Resolution has been added to tonight's agenda pursuant to discussion in today's Public Works Committee meeting.

On motion of Councilman Franklin, seconded by Councilman Littlefield,
A RESOLUTION AUTHORIZING THE AWARD OF CONTRACT SS-3-01, MARKET STREET STREETScape FROM 12TH STREET TO 13TH STREET AND 13TH STREET STREETScape FROM BROAD STREET TO MARKET STREET, WHICH INCLUDES PHASES IA, II AND III, TO RAINES BROTHERS, INC., FOR THEIR LOW BID IN THE AMOUNT OF ONE MILLION THREE HUNDRED NINE THOUSAND SIX HUNDRED TWENTY-SIX AND 47/100 DOLLARS (\$1,309,626.47)

was adopted.

OVERTIME

Overtime for the week ending October 5, 2001 totaled \$88,919.55.

PERSONNEL

The following personnel matters were reported for the Public Works Department:

JERRY STEWART – Promotion, Director, Waste Resources, Pay Grade 39/Step 8, \$79,411.00 annually, effective September 15, 2001.

RUBY FARMER – Family Medical Leave, Office Assistant, Citywide Services, effective September 25 – December 17, 2001.

KEITH D. SANDERS – Termination, Crew Worker, Citywide Services, effective September 18, 2001.

ROY E. DUNCAN – Return from Family Medical Leave, Crew Worker, Waste Resources, effective September 27, 2001.

TRAVIS M. BELL – Lateral Transfer, Sanitation Worker, Citywide Services, Pay Grade 3/Step 2, \$17,680.00, effective October 9, 2001.

PURCHASES

On motion of Councilman Franklin, seconded by Councilman Lively, the following purchases were approved for use by the Public Works Department:

LEE-SMITH, INC. (Lower and better bid)
Requisition R0060805/B0000593

Leaf Vac Truck

\$127,600.00

LEE-SMITH, INC. (Lowest and best bid)
Requisition R0060789/B0000591

Twelve Yards Truck

\$47,494.00

STEVEN WEST

Steven West of the Public Works' Trash and Brush Department addressed the Council regarding the proposed amendments to the Trash and Brush Ordinance. He stated that the way the Ordinance is set up their jobs would be cut in half and it might be deemed by some that they are not working. He stated he and others in this Department have mouths to feed and the way the new Ordinance is proposed it is an injustice to the City taxpayers. He stated that he sometimes puts a television out for pickup and has to wait until the crews are in his neighborhood just as everyone else does, even though he works for the Department; that it is his hope the brush and trash collection will be left the way it is. He stated on the south side of town the majority of junk is collected, whereas in Hixson the majority of brush is collected and that is just the way it is. He stated the way the Mayor has the Ordinance set up there will be different sites for people to take appliances and heavy trash and indicated that everyone does not have a truck, including himself. He stated he would have to load his van and take it to the dumpsite.

Chairman Hakeem asked for clarification regarding Mr. West's comments.

Deputy Administrator Beverly Johnson stated that the intent is not for Mr. West to be out of a job; that the intent is to continue to collect brush and to continue to collect heavy, bulky items. She stated the purpose of the policy is for citizens not to co-mingle those items so that when brush is put out only brush would be in the pile, which would be picked up as it has always been done; that there is nothing different about that. She stated the intent is to continue to collect bulky items – televisions, sofas and appliances – and to do that on an on-call basis; that it is done that way now and will continue. She stated the intent is for citizens not to mix brush with appliances so that it slows the collection schedule down and also increases the amount of trash going into the landfill. She stated the Department is not changing what they do just the way they do it.

Mr. West acknowledged that Ms. Johnson's comments cleared things up a great deal.

Councilman Benson asked for clarification that the intent to do this is not an effort to reduce the work force or reduce through attrition?

Mrs. Johnson responded that the intent is not to reduce the labor force; that they are looking at extending the labor force through additional inspectors to make sure the way the brush and trash is collected is consistent with the proposed policy.

1ST READING 1-9-07
2ND READING 1-16-07
INDEX NO. _____

2006-233
Dave Gardner

ORDINANCE NO. 11925

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF LAND LOCATED AT 7610 AND 7614 STANDIFER GAP ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-3 RESIDENTIAL ZONE, SUBJECT TO CERTAIN CONDITIONS.

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Ordinance No. 6958, as amended, known as the Zoning Ordinance, be and the same hereby is amended so as to rezone:

Two unplatted tracts of land located at 7610 and 7614 Standifer Gap Road being the properties described in Deed Book 1025, Page 714, and Deed Book 4212, Page 202, ROHC. Tax Map 139N-A-002 and 003.

from R-1 Residential Zone to R-3 Residential Zone.

SECTION 2. BE IT FURTHER ORDAINED, That this rezoning shall be subject to:

1. A density of 18 dwelling units per acre; and
2. Traffic calming measures as approved by the City Traffic Engineer.

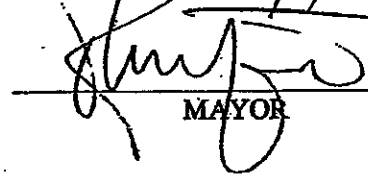
SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

PASSED on Second and Final Reading
January 16, 2007.


CHAIRPERSON

APPROVED: DISAPPROVED: _____

DATE: 1/17, 2007


MAYOR

DML/add



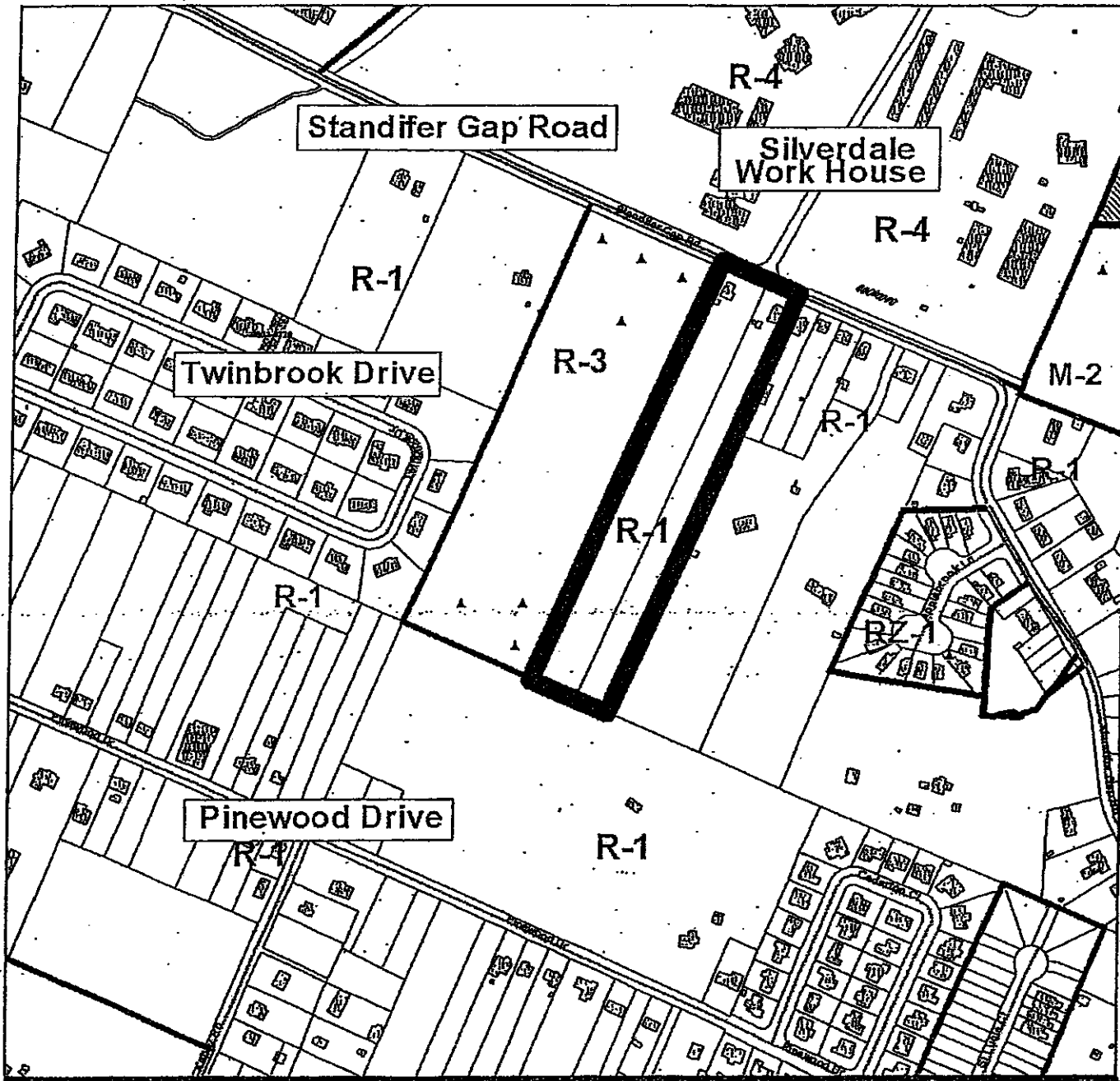
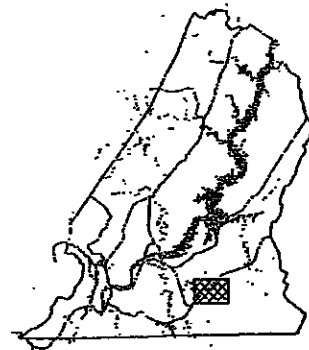
CHATTANOOGA - HAMILTON COUNTY REGIONAL
PLANNING AGENCY



CHATTANOOGA
CASE NO: 2006-0233
PC MEETING DATE: 12/11/2006
FROM: R-1
TO: R-3



1 in. = 400.0 feet

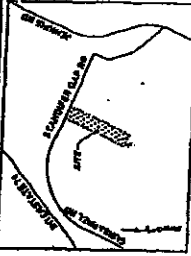


PLANNING COMMISSION RECOMMENDATION FOR CASE NO. 2006-233: Approve, subject to:

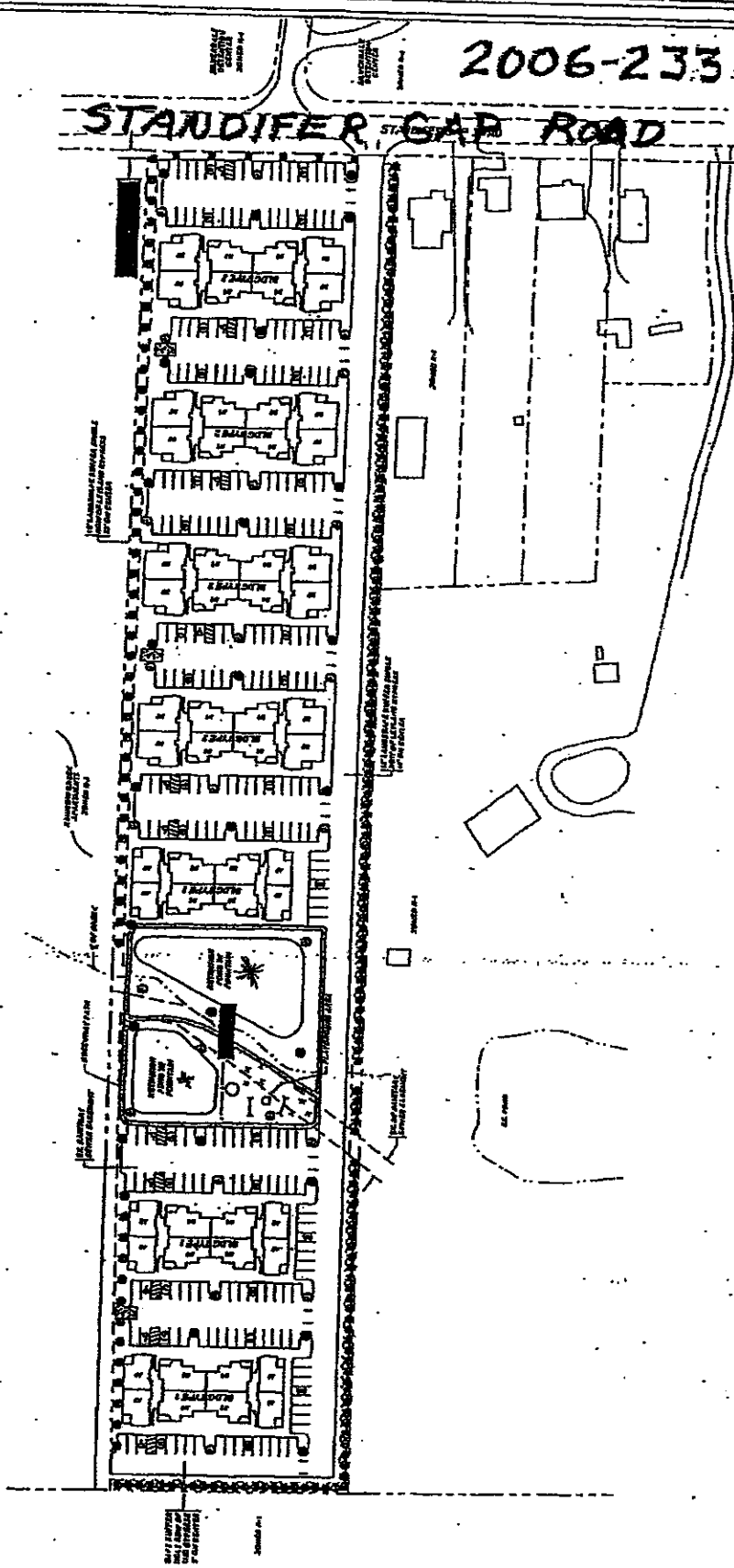
- 1) A density of 18 du/acre; and
- 2) Traffic calming measures as approved by the City of Chattanooga.

SITE ANALYSIS

TAX MAP ID: 139N-A-002 & 003
 CURRENT ZONING: R-3
 PROPOSED ZONING: R-3
 NUMBER OF PROPOSED APTS: 168 APTS.
 NUMBER OF PARKING SPACES: 276 SPACES
 RECREATION ACRE: 0.88± ACRES
 TOTAL ACREAGE: 7.35± ACRES



2006-233
STAUDIFER GAP ROAD APARTMENTS



**City Council Building
Chattanooga, Tennessee
April 8, 2008
6:00 p.m.**

Chairman Page called the meeting of the Chattanooga Council to order with Councilmen Bennett, Benson, Berz, Franklin, Gaines, Pierce, Rico and Robinson present. City Attorney Randy Nelson, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman Franklin gave invocation.

MINUTE APPROVAL

On motion of Councilwoman Robinson, seconded by Councilwoman Gaines, the minutes of the previous meeting were approved as published and signed in open meeting.

SPECIAL PRESENTATION: MRS. MABEL SCRUGGS

Mayor Littlefield, along with Councilwoman Robinson, asked Booker T. Scruggs, II to escort his mother, Mabel Scruggs to the podium. He stated it is a great honor to express the city's appreciation for 99 years of service to humanity. He read the foregoing certificate, which has been spread upon the minutes:

In Appreciation

for outstanding contributions to the

City of Chattanooga

this certificate is presented to

Mrs. Mabel Humphrey Scruggs



SPECIAL PRESENTATION: MRS. MABEL SCRUGGS
(Continued)

In recognition of her 99th Birthday Celebration

*In admiration of 99 years of loyal and dedicated service to the
City of Chattanooga and her family, and*

*Whereas, as a founding member of the local chapter of the Zeta Phi Beta Sorority, Mrs.
Scruggs has proven her commitment to community service by serving as a productive member of
society, and*

Whereas, such deeds deserve public acclaim and recognition,

*Now Therefore, be it resolved by the City of Chattanooga that this
Certificate of Appreciation be conferred.*

Dated this 8th day of April 2008

Ron Littlefield, Mayor

Councilwoman Robinson presented the certificate to Mrs. Scruggs at this point and expressed thanks for raising such a fine family in our city. She stated she has known Booker for 32 years when they met as members of the then Adult Education Council and became very good friends. She stated he has produced the longest running public affairs program, "Point of View", in the world. She continued by stating that he often spoke of his family and his fine son, Cameroon, noting how proud he is of him. She stated it is a real pleasure to have Mrs. Scruggs here this evening and thanked her for coming to receive the certificate and letting us give her a hug!

Mrs. Scruggs expressed thanks to everyone and stated that she would not have thought this would have ever happened to her, and again expressed thanks.

At this point, Mayor Littlefield asked those in attendance in support of Mrs. Scruggs to stand. He presented her with a commemorative plate and lapel pin, both bearing the Official Seal of the city. (Mrs. Scruggs received a standing ovation at this time.)

Councilman Pierce acknowledged that Mrs. Scruggs lives in District 9 and wished her many more birthdays!

On behalf of the Council, Chairman Page expressed thanks to Mrs. Scruggs for her years of help and service to the community.

ROW NAME CHANGE

Councilman Benson stated there a large number of people have been working to seek a compromise today and have been present since 3 p.m. He noted County Commissioner Larry Henry's presence and noted that he has another meeting to attend. He **made the motion to move Ordinance (c) forward on the agenda; Councilwoman Gaines seconded the motion; the motion carried.**

2008-035: City of Chattanooga c/o Bill Payne, City Engineer

Pursuant to notice of public hearing, the request of the City of Chattanooga to change the right-of-way name of the 100 block of South Crest Road to the 3100 and 3200 blocks of South Crest Place came on to be heard.

On motion of Councilwoman Gaines, seconded by Councilman Pierce,
**AN ORDINANCE TO CHANGE THE RIGHT-OF-WAY NAME OF THE 100
BLOCK OF SOUTH CREST ROAD TO THE 3100 AND 3200 BLOCKS OF
SOUTH CREST PLACE, MORE PARTICULARLY DESCRIBED HEREIN AND
AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART
HEREOF BY REFERENCE**

passed first reading.

APPROPRIATION

On motion of Councilman Rico, seconded by Councilwoman Gaines,
**AN ORDINANCE APPROPRIATING ONE THOUSAND FIVE HUNDRED
DOLLARS (\$1,500.00) FROM THE GENERAL FUND TO "A NIGHT TO
REMEMBER," A NON-PROFIT ORGANIZATION, AS A SPONSORSHIP FOR
ITS 21ST ANNIVERSARY**

passed second and final reading and was signed in open meeting.

ROW NAME CHANGE

2008-002: City of Chattanooga c/o Bill Payne, City Engineer

Pursuant to notice of public hearing, the request of the City of Chattanooga to change the right-of-way name of the 1200 block of Gifford Street to the 1200 Block of Prayer Lane came on to be heard.

The applicant was present; there was no opposition in attendance.

RIGHT OF WAY NAME CHANGE (Continued)

On motion of Councilman Rico, seconded by Councilwoman Gaines,
**AN ORDINANCE TO CHANGE THE RIGHT-OF-WAY NAME OF THE 1200
BLOCK OF GIFFORD STREET TO THE 1200 BLOCK OF PRAYER LANE,
MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE
MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE**
passed first reading.

REZONING

2008-033: David L. Gardner

Pursuant to notice of public hearing, the request of David L. Gardner to rezone a tract of land located in the 400 block of Jersey Pike came on to be heard.

The applicant was present; opposition was in attendance.

Greg Haynes, Director of Development Services with the Regional Planning Agency (RPA), stated that the request is for office and warehouse space. The site plan was shown and it was noted this request is located near the Lake Hills neighborhood and north of Bonny Oaks and Highway 58 and is in close proximity to properties on Brentwood Drive and other residences. He stated the Highway 58 Plan recommends residential for the area and with the surrounding uses it is unlikely someone would develop it as residential; that duplexes could be allowed; other M-2 in the Bonny Oaks area includes the industrial park. He stated Planning recommends approval of the M-2 just for the parcel to the south with eight conditions but denial of the M-2 for the upper R-1 property.

David Gardner of 400 Broadcreek Court stated that he asked for the rezoning change primarily for the need for warehousing. He stated there is a commercial park across the street that is similar to what he wants to build noting that it will not be a typical structure and will not be just a plain warehouse. He stated all the construction thus far has a façade on the front appearance; that his building would be more residential in nature than just the typical metal building. He stated that it is his thought this is a fantastic project that will serve the needs of a lot of small businesses located logistically in the centermost part of Chattanooga; that there is great demand for this type of building in this area, especially with Enterprise South Industrial Park. He stated even small business owners deserve an opportunity to have affordable office and warehouse space.

REZONING (Continued)

Nathalie Strickland of Brentwood Drive in Lake Hills spoke in opposition to the request. She stated that residents of her neighborhood went before RPA in February to oppose the rezoning of this property and the Planning Commission tabled a decision so the neighborhood could meet with the applicant and other stakeholders. She stated their concerns were not alleviated and they again voiced opposition at a March 10 meeting where the Planning Commission voted for the change to M-2. She stated the RPA Staff's recommendation did not support the M-2 designation and it was unclear (to them) why it was passed. She stated today as the Council votes on the future of their neighborhood she wanted to share their concerns and asked that the Council deny a zoning change.

Ms. Strickland stated the first issue is that of spot zoning; that the site map shows the property is currently zoned R-1 and R-2. She stated she recently contacted the City Attorney's Office and was referred to RPA for an official definition of spot zoning and was told an official definition does not exist and it is not illegal. She stated the State of Tennessee Court of Appeals defines spot zoning in a case overturned in February, 2007, Rick Phillips vs. TDOT which indicates "*spot zoning is a process of singling out small parcels of land for use classification totally different from that of surrounding areas for the benefit of the owner of such property and the detriment of other owners and as such is the antithesis of planned zoning*". She stated rezoning the property to M-2 would amount to spot zoning. She stated that the Supreme Court further explained the law is well settled on spot zoning and ordinances are invalid on general grounds that do not bear substantial relation with public health, safety and general welfare. She stated it is universally held that a spot zoning ordinance which singles out parcels of land and marked off into separate districts is invalid if not in accordance with the zone. She stated that she would like to point out that rezoning this property would be in direct opposition to the Highway 58 Plan that was developed and rezoning the property M-2 or O-1 would be against the protecting character of the existing neighborhoods.

Ms. Strickland stated another issue is speculative zoning and the minutes of June 12, 2007 were referenced wherein speculative zoning was discussed. She stated James Cunningham owns the property and Mr. Gardner does not, nor does he have contracts for tenants he proposes to build for. She stated the uses have changed from meeting-to-meeting and an explanation for the use has changed from the time of their neighborhood meeting and the Planning meeting days later. She stated they were presented a design with a façade and the enhancement was not in keeping with the neighborhood.

REZONING (Continued)

Ms. Strickland stated there is no doubt a business of this nature would make it very difficult for nearby residents to sell their homes and will lower property values. She stated the property is higher in elevation than the residential area; that a Class A buffer has been recommended and the back of the building would be close to the property lines, too close for a comfortable distance from residences. She stated they are concerned about water runoff which is already prone to flooding; that a retention pond is required and would be located off the cul-de-sac where children play, which creates a safety issue and would be a breeding ground for insects. She stated there is more than adequate suitably zoned vacant property in the immediate vicinity and pointed out a glut of available property zoned for office use. She stated voting approval of this application would set a precedent for other property in the area and would tear apart the fabric of the neighborhood. She asked consideration due to this request being a spot zone with speculative zoning. She stated there could be legal implications and asked that a copy of her presentation be added to the minutes of the meeting. **(Ms. Strickland did not leave a copy of her statement with the Clerk of Council.)**

Mimi Hooker of the Highway 58 area and President of the Chamber Council for Enterprise Gateway stated she was not speaking for Enterprise Gateway or the Chamber, but on behalf of the residents. She stated she was very curious about what is going on down here when O-1 was recommended and now it is M-2; that she is not sure how much forethought has gone into the request and rezoning issue. She stated the Council members' jobs are not easy and asked that they please consider the residents and children in the neighborhood who use the area for play and other recreational activities. She expressed thanks for their time and asked that the M-2 proposal be denied.

David Gardner complimented the person speaking in opposition for a well planned speech and stated that a few things were presented that are not exactly factual. He stated this is not a spot zone as there is M-2 in the area; that the entire Bonny Oaks Industrial Park is literally a softball toss across the street. He stated M-1 property is no more than 150 yards away as well as at the corner; that this is not spot or speculative zoning. He stated as far as the building sitting up higher and the residents not being comfortable, the landscape ordinance for this zoning would accommodate this property; that there would be a 30 foot landscape buffer and other things and there is a mound of trees between the residents and the proposed building site with 35 years of pine trees and growth underneath. He stated he does have specific tenants in mind and nothing has changed from the first time it was presented and what he is saying now.

REZONING (Continued)

Mr. Gardner stated the specific tenants are to find service companies for small distributors and operating hours would be between 8 a.m. – 6 p.m. Monday through Saturday. He stated there would be no manufacturing or fabrication businesses, just small service companies such as plumbers and electricians. He stated the Highway 58 Land Use Plan is a guide and not something that is set in stone.

At this point Chairman Page declared the public hearing closed.

Councilman Benson stated that this request is located in Councilman Franklin's district and the two of them have talked and agree. He stated so much was referred to about Planning and there is some misunderstanding. He stated Planning is a recommending body and the Council makes legislative decisions up or down on rezoning. He stated the reason it came out of Planning this way is they were able to extract a lot of qualifying conditions and those conditions helped minimize any negative impact in case the Council decided to approve the change; that it is coming out better than it went in. He stated as far as Mr. Gardner is concerned he is a good corporate citizen and he (Benson) knows what he has done on the interstate beautification free of charge on I-75. He stated that he told him from the very beginning that a land use plan is in place and the Council does not change land use plans unless it goes back to RPA or the neighborhood. He stated when the matter came to Planning there were no more than four-or-five neighbors who spoke up and what worried Planning is what happens to what is presently zoned versus what Mr. Gardner was presenting with the conditions. He stated sometimes when the neighborhood does not get involved and are not knowledgeable on the situation we have to do what is thought best, because the way it is presently zoned, six houses can be put in there. He stated that he told Mr. Gardner he would have to vote against this tonight because the neighborhood has been educated now and he did not feel that way at Planning.

Councilwoman Robinson asked the City Attorney if it is permissible for someone other than the owner to make a request for rezoning.

Councilman Benson stated that the owner can give approval.

City Attorney Nelson stated that he would take the question under advisement.

Mr. Haynes clarified when a person makes application if they are not the owner they have to get the owner's signature (on the application). He stated they sometimes ask for a letter from the owner giving permission.

REZONING (Continued)

Councilman Franklin stated that he and Councilman Page have been involved in the land use plan as well as the Highway 58 Plan from its inception and are very much aware of what has been proposed and things that can go in certain areas. He stated the Jersey Pike and Bonny Oak Road areas are unique and most sites abut up to residential except on the side where there are industrial areas and some manufacturing. He stated there are two-to-three different zones surrounding this property and most significant to the Council depending upon the circumstance is the protection of residential as it abuts to commercial and manufacturing; that the Council has consistently been supportive of that. He stated certainly this is good property and Mr. Gardner has done a good job as it relates to developing property and has no doubt he can develop this property pretty well, but it does present itself with particular problems.

Councilman Franklin stated as it came through Planning, their job was to make sure without the appearance of opposition there are conditions in place in case the community and others decide to go another way and certainly with the R-2 zoning there could be duplexes. He stated that being the case, it comes down to whether there would be an office or duplex and which would have the most adverse effect on the neighborhood. He stated this property sits ten-to-fifteen feet above the neighborhood and has a high concentration on the backside of long time residents and families. He stated as we go forward two things stand out – property value and safety, then one other as it relates to the land use and what the process has been. He stated at this point, it is his thought the Lake Hills Association and residents should take precedence over anything that would adversely affect them. He again stated that he knows Mr. Gardner will do a great job, however this may not be best suited for this area. He stated they have talked on several occasions and his (Franklin's) job is to balance what is best for the community at-large. He stated his recommendation is for denial of the zoning and to try to stay within the land use and Highway 58 Plan to keep the "best foot forward" for the community.

On motion of Councilman Franklin, seconded by Councilwoman Gaines,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED IN THE 4400 BLOCK OF JERSEY PIKE, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, FROM
R-2 RESIDENTIAL ZONE TO M-2 LIGHT INDUSTRIAL ZONE, SUBJECT TO
CERTAIN CONDITIONS**
was denied.

ROW NAME CHANGE

2008-045: City of Chattanooga c/o Bill Payne, City Engineer

Pursuant to notice of public hearing, the request of the City of Chattanooga to change the right-of-way name of an unnamed alley located on the east line of Adams Street to Quincy Alley and an unnamed alley located on the west line of Jefferson Street to Zachary Alley came on to be heard.

Councilman Pierce inquired as to the significance in naming alleys.

Adm. Leach stated that this was requested by the applicant who is redeveloping the block with interior addresses to allow for delivery of services.

Councilman Benson stated that this Council adopted a policy a few years back that we would not name anything after someone who is still living.

Councilman Rico stated that the names are those of dead Presidents.

Councilman Pierce stated this is the first time to his knowledge that an alley has been named.

Adm. Leach stated that this will occur again, speaking in reference to a development that will front on the alleys; that it will not just be an alley for access as there will actually be homes, offices and retail shops fronting on them.

Councilman Rico stated that the matter was discussed in Public Works Committee and approval is recommended. He noted that all the other streets surrounding this request are named after Presidents, too.

On motion of Councilman Benson, seconded by Councilwoman Bennett,
**AN ORDINANCE TO CHANGE THE RIGHT-OF-WAY NAME OF AN
UNNAMED ALLEY LOCATED ON THE EAST LINE OF ADAMS STREET TO
QUINCY ALLEY AND AN UNNAMED ALLEY LOCATED ON THE WEST LINE
OF JEFFERSON STREET TO ZACHARY ALLEY, MORE PARTICULARLY
DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE**

passed first reading.

REZONING

2008-051: Robert Walters

Pursuant to notice of public hearing the request of Robert Walters to rezone a tract of land located at 7333 Shallowford Road came on to be heard.

The applicant was not present.

On motion of Councilman Benson, seconded by Councilwoman Bennett,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 7333 SHALLOWFORD ROAD, MORE PARTICULARLY
DESCRIBED HEREIN AND SHOWN ON THE MAP ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE, FROM O-1 OFFICE ZONE
TO C-2 CONVENIENCE COMMERCIAL ZONE**
was denied.

REZONING

2008-062: Delta Brogdon

Pursuant to notice of public hearing, the request of Delta Brogdon to rezone tracts of land located at 6024 Talladega Avenue and 5945 Shaw Avenue came on to be heard.

The applicant was present.

Mr. Haynes stated that this request for C-2 is for both properties; that each sits on individual lots and the proposed use is for commercial. He stated the assisted living and small engine repair uses have changed since the matter was heard at Planning and the request is for a more specific use which the applicant can explain in more detail. He stated the detail from the land use plan for Shepherd shows medium business and light business mix. An aerial view of the properties was shown by PowerPoint showing the residences to the west adjacent to the property and the existing commercial use across the street. He stated comments from the pre-submittal meeting and the Land Development Office indicate this would work with proper landscaping buffers. He stated the Traffic Engineer recommends access from Shaw Avenue. He stated the Shepherd Neighborhood Community met with them and support the rezoning as long as conditions were placed.

REZONING (Continued)

Mr. Haynes stated the Staff initially recommended only the property off Shaw Avenue being rezoned; however, Planning recommended both being rezoned subject to two conditions: no engine repair shops and vehicle access on Shaw Avenue only. The City Engineer suggested that there not be access from the airport connector.

Judge Walter Williams stated he was speaking on behalf of the Brogdons and the community, noting that the community is in agreement and wanted to make sure the Council understands what the community has said about this. He stated the Brogdons did meet with him and asked that he speak for them and the community. He stated if the Council is amenable to rezoning to C-2 the community wants to make sure there are strict landscape requirements and buffers between the proposed C-2 and the residential area and also want to make sure there was an agreement that the smaller building on Talladega is shifted so it would front on Shepherd Road; that the entrance would go from Shepherd on the airport connect and will not be from Talladega whatsoever. He stated there would be no small engine repair at all and the applicant must be specific as to the use so there would not be any small engine repairs. He stated the community had no objection to access from Shepherd Road and understands the Traffic Engineer objects and wants entrance from Shaw Avenue. He stated if the entrance is from Shaw Avenue there should be a proper driveway maintained from Shaw Avenue all the way across the property. He stated that he wanted to stress that all requirements of the city regarding landscaping and any other requirements the city imposes must be met. He stated the smaller building would have to have frontage that would not face Talladega as it is presently facing; that the building would be shifted or do whatever so there would be no frontage from the airport connector.

At this point Chairman Page declared the public hearing closed.

Councilwoman Berz thanked Judge Williams and noted that she had received a number of telephone calls. She asked the applicants if what Judge Williams talked about is what they are in full agreement with.

Frank Brogdon spoke for himself and his brother, Delta Brogdon, and responded "yes", what Judge Williams said was exactly what was discussed in the meeting with the community.

Councilwoman Berz stated that she wanted to hear from the other folks in the neighborhood.

REZONING (Continued)

Malcolm Walker of 6312 Atlanta Avenue and President of the Shepherd Community Council stated that he was trying to be quiet and let the voice of the majority be heard. He stated he was out of the country when it was decided the Community Council would be supportive of the package totally. He stated there was a meeting and knew this was coming about; that he asked a member of the Planning Staff to inform Judge Williams of what the Staff's recommendation would be however he (Williams) did not get the call nor the information. He stated as they were meeting they were coming up with plans for what must be in place if the Council decided to approve both properties for C-2. He stated that he had no problem, none of them at all, with the Shaw Avenue property because the land use plan recently approved suggested that property should be commercial. He stated that he personally was concerned about the Talladega property because it does infringe into developed areas of the community where the land use plan indicates should remain residential. He reiterated that he was trying to be quiet; that there was a meeting in his absence and he wanted to go along with the majority and that was the thinking.

Councilwoman Berz stated that she is committed to what the neighborhood wants and has no problem either way. She stated the problem is that she is receiving two messages and would like to do what the neighborhood wants to happen. She stated if a full agreement is made that would be great, if it comes to an agreement relative to one pierce versus the other – she wants a clear message.

Amelia Williams of 6205 Talladega stated that she lives on the other end of this Talladega property. She stated there were two meetings; that one was when Malcolm asked some of us to meet with the Brogdons to see if all could come together. She stated at that meeting it is her thought she was the one out of line with the rest because she has concerns about this being commercial and does not think it is necessary to go into the neighborhood, which has been her disagreement all along. She stated that she does not want to be different from anyone else; that she really feels this is infringing into the neighborhood when someone starts encroaching farther than allowed. She stated that she feels the same as Malcolm.

Chairman Page expressed whether the matter should be deferred or whether Councilwoman Berz would want to take time to meet with those concerned in the hall.

Councilman Franklin stated that he wanted to hear the rest of what Judge Williams has to say.

REZONING (Continued)

Judge Williams stated there is no problem relative to a larger structure; that the property is being rezoned to C-2 and there is no problem at all.

Councilwoman Berz inquired as to Shaw Avenue.

Judge Williams responded "there is no 'stripe' there at all"; that the "stripe" if there is one at all is Talladega. He stated the agreement from the Community Council is the requirement that the structure be turned to face the airport connector along with required proper landscaping, with the entrance from Shaw Avenue or Shepherd Road, and it seems now to be from Shaw Avenue. He stated there are one or two who have problems with the smaller structure on Talladega; that at the meeting the agreement was for C-2 for both, again noting that he wanted to acknowledge there is some "stripe" against the smaller structure.

George Maffett, Vice President of the Shepherd Community Council, stated he was in charge of the meeting when the President was out; that Malcolm asked him to carry it on. He stated he and Malcolm discussed what was going on and, he is right, the message was not delivered from Mr. Shultz of the Planning Staff. He stated Judge Williams met with them and the Brogdons and everyone in the meeting had a chance to speak and Amelia was there. He stated two people figure they are "on top" and if two people get outvoted, they are outvoted! He stated he would not go against what they have decided and take up Judge Williams' time. He stated Shepherd is not his; that he owns a lot of property, however once he meets with someone he will not get in a room like this and turn his back and thinks it is a shame the community would come down and do such a thing! He stated he is not for this and does not know what they want to do. He stated he is for the recommendation Judge Williams came up here for and if he had something to say he would have said it in the meetings and if a person got voted out they just got voted out! He stated he has been voted out many times and can not have his way as we are in a democracy; that if ten members say "yes" and two say "no", not matter if he were President, that is the majority; that if he were President he would go with the ten representing the "voice of the people".

Councilwoman Bennett stated one thing she is looking at is how the community works through the process; that it is an opportunity for them to decide the conditions attached, which is one of the things she does not see a lot. She stated the only thing she sees is there can not be an engine repair and where the traffic area should be; that the applicant should be specific on how the property would be used and she does not see it listed.

REZONING (Continued)

Councilwoman Bennett stated she would be concerned about, in terms of any rezoning, is if it is close to the neighborhood. She stated the neighborhood should be clear about what kinds of uses are appropriate and compatible with their community.

Councilwoman Berz stated what she is hearing as it relates to Shaw Avenue is there is no argument and what she heard Councilwoman Bennett saying even though there is no objection on the application is very non-specific and very few comments as to regulations. She stated in her mind, Shaw Avenue is not opposed and obviously should be rezoned but with conditions she does not see on the documents before her. She asked Greg Haynes if there can be conditions; that what she has before her are all kinds of possible uses but no specific ones.

Councilman Page stated if the Council desires the matter could be passed on first reading tonight and then have very specific conditions for next week; that the parties could meet with the neighborhood to make sure it is what they want and Atty. Williams can write it up.

Councilwoman Berz stated at least the Shaw portion can be passed on first reading and come back and talk about conditions; that she has no problem either way it goes as there seems to be some sort of discussion that needs to happen. She stated it would be good deferring the whole thing to be specific; that she is a little hesitant to pass anything on first reading as she is getting a whole bunch of different messages. She stated to those in attendance that she wants to hear them in full and suggested that they sit down together. At this point she **made the motion to defer the matter one week** for an opportunity to "get wth folks"; **Councilman Pierce seconded the motion.**

On motion of Councilwoman Berz, seconded by Councilman Pierce,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 6024 TALLADEGA AVENUE AND 5945 SHAW
AVENUE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN
ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY
REFERENCE, FROM R-1 RESIDENTIAL ZONE TO C-2 CONVENIENCE
COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**
was tabled one week.

LIFT CONDITIONS

2008-064: Ilya Kyskin (Sixth Project, LLC)

Pursuant to notice of public hearing, the request of Ilya Kyskin to lift conditions imposed in Ordinance no. 11925 (Case No. MR-2006-233) on tracts of land located at 7610 and 7614 Standifer Gap Road came on to be heard.

The applicant was present; there was no opposition.

Councilman Benson stated about thirty-five people from the community met with the applicant and the applicant made every move to try to work this out in cooperation with the community. He stated an effort was made to meet with everyone on all sides, noting that one side was the workhouse and obviously could not meet with them. He stated that the Staff recommends denial of the request.

Mr. Haynes stated initially the Staff recommended denial until a better idea of the full project was known and the Staff is okay with it, now.

On motion of Councilman Benson, seconded by Councilwoman Gaines,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO LIFT CONDITIONS
IMPOSED IN ORDINANCE NO. 11925 (CASE NO. MR-2006-233) ON
TRACTS OF LAND LOCATED AT 7610 AND 7614 STANDIFER GAP ROAD,
MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE
MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE**
passed first reading.

REZONING

2008-065: Ilya Kyskin (Sixth Project, LLC)

Pursuant to notice of public hearing, the request of Ilya Kyskin to rezone tracts of land located in the 7600 block of Standifer Gap Road came on to be heard.

The applicant was present; there was no opposition.

REZONING (Continued)

On motion of Councilman Rico, seconded by Councilwoman Gaines,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED IN THE 7600 BLOCK OF STANDIFER GAP ROAD, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, FROM
R-1 RESIDENTIAL ZONE TO R-3 RESIDENTIAL ZONE AND O-1 OFFICE
ZONE, SUBJECT TO CERTAIN CONDITIONS**
passed first reading.

REZONING

2008-066: Keither Perry

Pursuant to notice of public hearing, the request of Keither Perry to rezone a tract of land located at 1700 Jefferson Street came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilwoman Robinson, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 1700 JEFFERSON STREET, MORE PARTICULARLY
DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE, FROM R-3 RESIDENTIAL
ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO CERTAIN
CONDITIONS**
passed first reading.

AMEND RESOLUTION 26413

On motion of Councilman Rico, seconded by Councilman Franklin,
**A RESOLUTION TO AMEND RESOLUTION NO. 26413, ENCAPTIONED, "A
RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO
EXECUTE A QUITCLAIM DEED TO RE-CONVEY PROPERTY ON ROSSVILLE
AVENUE, TAX MAP NO. 145M-H-018, TO JOE SLIGER," BY INCLUDING
TAX MAP NOS. 145M-H-008 THROUGH 145M-H-012 AND
AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO EXECUTE ANY
OTHER NECESSARY DOCUMENTS TO ACCOMPLISH SAID RE-
CONVEYANCE WITHOUT REVERSIONARY LANGUAGE**
was adopted.

PAYMENT AUTHORIZATION

On motion of Councilwoman Robinson, seconded by Councilman Franklin,
**A RESOLUTION AUTHORIZING PAYMENT TO THE UNITED STATES
CONFERENCE OF MAYORS FOR 2008 DUES IN THE AMOUNT OF
TWELVE THOUSAND TWO HUNDRED FORTY-TWO DOLLARS (\$12,242.00)**
was adopted.

CHANGE ORDER

On motion of Councilwoman Gaines, seconded by Councilman Franklin,
**A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER
NO. 1 (FINAL) RELATIVE TO CONTRACT NO. S-06-017-201, PRIVATE
SANITARY SEWER SERVICE LATERAL REPAIR (SEP), WITH ROTO ROOTER
PLUMBING COMPANY, WHICH CHANGE ORDER RELEASES THE
CONTRACT CONTINGENCY IN THE AMOUNT OF TWO THOUSAND FIVE
HUNDRED TEN DOLLARS (\$2,510.00), FOR A REVISED CONTRACT
AMOUNT NOT TO EXCEED TWENTY-FOUR THOUSAND FOUR HUNDRED
NINETY DOLLARS (\$24,490.00)**
was adopted.

CHANGE ORDER

On motion of Councilman Rico, seconded by Councilwoman Robinson,
**A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER
NO. 1 (FINAL) RELATIVE TO CONTRACT NO. S-07-008-201, PRIVATE
SANITARY SEWER SERVICE LATERAL REPAIR (SLAP), WITH STREET CUTS,
LLC, WHICH CHANGE ORDER RELEASES THE CONTRACT
CONTINGENCY IN THE AMOUNT OF THREE THOUSAND DOLLARS
(\$3,000.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED
TWELVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$12,250.00)**
was adopted.

CHANGE ORDER

On motion of Councilwoman Robinson, seconded by Councilman Rico,
**A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER
NO. 1 (FINAL) RELATIVE TO CONTRACT NO. S-07-002-201, PRIVATE
SANITARY SEWER SERVICE LATERAL REPAIR (SLAP), WITH ROTO
ROOTER PLUMBING COMPANY, WHICH CHANGE ORDER INCREASES
THE CONTRACT AMOUNT BY ONE THOUSAND FOUR HUNDRED FIFTY
DOLLARS (\$1,450.00), FOR A REVISED CONTRACT AMOUNT NOT TO
EXCEED SEVENTEEN THOUSAND NINE HUNDRED FIFTY DOLLARS
(\$17,950.00)**
was adopted.

TEMPORARY USE

On motion of Councilwoman Robinson, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING MIKE MOON TO USE TEMPORARILY A PORTION OF PROPERTY LOCATED AT 245 WALNUT STREET TO ERECT A TEMPORARY CONSTRUCTION OFFICE FOR AN ON-SITE PROJECT, AS SHOWN ON THE MAP AND DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

TEMPORARY USE

On motion of Councilman Rico, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING BRIAN MURPHY TO USE TEMPORARILY THE CITY'S RIGHT-OF-WAY AT 409 MARKET STREET TO INSTALL A SIGN THAT WILL PROJECT INTO THE CITY'S RIGHT-OF-WAY, AS SHOWN ON THE DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

CONTRACT RENEWAL

On motion of Councilman Franklin, seconded by Councilwoman Bennett,
A RESOLUTION AUTHORIZING THE CITY FINANCE OFFICER TO RENEW THE EXISTING CONTRACT WITH HAZLETT, LEWIS & BIETER, CERTIFIED PUBLIC ACCOUNTANTS, TO AUDIT THE BOOKS, RECORDS, AND ACCOUNTS OF ALL FUNDS OF THE CITY OF CHATTANOOGA FOR AN ADDITIONAL TWO (2) YEARS WITH AN AMENDED ESCALATOR OF FOUR PERCENT (4%) FOR FISCAL YEARS 2008, 2009 and 2010, WITH THE FEDERAL AND STATE PROGRAMS AND THE JOINTLY FUNDED AGENCIES PAYING A PRO-RATA SHARE OF THE COST
was adopted.

PRELIMINARY AND FINAL PUD

2008-060: Signature Investments, LLC

On motion of Councilman Benson, seconded by Councilman Franklin,
A RESOLUTION APPROVING A PROPOSED PRELIMINARY AND FINAL PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A

PRELIMINARY AND FINAL PUD (Continued)

PLANNED UNIT DEVELOPMENT, KNOWN AS ARTISAN PLANNED UNIT DEVELOPMENT, ON TRACTS OF LAND LOCATED AT 8310, 8312, AND 8316 IRIS ROAD, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

SPECIAL EXCEPTIONS PERMIT

2008-056: Andrew Lancaster

On motion of Councilwoman Gaines, seconded by Councilman Pierce,
A RESOLUTION APPROVING A PECIAL EXCEPTIONS PERMIT FOR A DUPLEX IN R-1 RESIDENTIAL ZONE ON A TRACT OF LAND LOCATED AT 1413 NORTH ORCHARD KNOB AVENUE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE
was denied.

SPECIAL EXCEPTIONS PERMIT

2008-057: Andrew Lancaster

On motion of Councilwoman Gaines, seconded by Councilman Pierce,
A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR A DUPLEX IN R-1 RESIDENTIAL ZONE ON A TRACT OF LAND LOCATED AT 1101 WHEELER AVENUE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE
was denied.

SPECIAL EXCEPTIONS PERMIT

2008-058: Andrew Lancaster

On motion of Councilwoman Robinson, seconded by Councilman Benson,
A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR A DUPLEX IN R-1 RESIDENTIAL ZONE ON A TRACT OF LAND LOCATED AT 901 WHEELER AVENUE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE
was denied.

SPECIAL EXCEPTIONS PERMIT

2008-059: Andrew Lancaster

On motion of Councilwoman Bennett, seconded by Councilman Benson,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR A
DUPLEX IN R-1 RESIDENTIAL ZONE ON A TRACT OF LAND LOCATED AT
1103 WHEELER AVENUE, MORE PARTICULARLY DESCRIBED HEREIN AND
AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART
HEREOF BY REFERENCE**
was denied.

SPECIAL EXCEPTIONS PERMIT

2008-060: Andrew Lancaster

On motion of Councilman Pierce, seconded by Councilwoman Gaines,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR A
DUPLEX IN A R-1 RESIDENTIAL ZONE ON A TRACT OF LAND LOCATED
AT 1409 NORTH ORCHARD KNOB AVENUE, MORE PARTICULARLY
DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE**
was denied.

SPECIAL EXCEPTIONS PERMIT

2008-061: Andrew Lancaster

On motion of Councilwoman Gaines, seconded by Councilman Pierce,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR A
DUPLEX IN R-1 RESIDENTIAL ZONE ON A TRACT OF LAND LOCATED AT
1411 NORTH ORCHARD KNOB AVENUE, MORE PARTICULARLY
DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE**
was denied.

AMEND RESOLUTION 25232

On motion of Councilman Rico, seconded by Councilwoman Robinson,
**A RESOLUTION REQUESTING THE CITY COUNCIL TO AMEND
RESOLUTION NO. 25232 FOR STEIN CONSTRUCTION COMPANY, INC.
RELATIVE TO CONTRACT NO. E-06-006-201, NORTHPOINT BOULEVARD
EXTENSION-PHASE 1, WHICH INCREASES THE AMOUNT OF THE
CONTRACT BY ONE HUNDRED FIFTY THOUSAND DOLLARS**

AMEND RSOLUTION 25232 (Continued)

(\$150,000.00) FOR A TOTAL AMOUNT NOT TO EXCEED ONE MILLION THREE HUNDRED SEVENTY FIVE THOUSAND THREE HUNDRED TWENTY DOLLARS (\$1,375,320.00)

was adopted.

OVERTIME

Overtime for the week ending April 4, 2008 totaled \$13,884.37.

PERSONNEL

The following departmental personnel matters were reported:

PUBLIC WORKS DEPARTMENT:

- **DONALD M. ARP** – Retirement, Chief Plumbing, Mechanical and Gas Inspector, Land Development, effective April 30, 2008.
- **MICHAEL T. PARDUE** – Promotion, General Supervisor, Sr., Street Maintenance, Pay Grade 16/Step 4, \$39,414.00 annually, effective March 28, 2008.
- **EDWIN T. SPENCE** – Retirement, Crew Worker Senior, City Wide Services, effective April 3, 2008.
- **JASON E. SILVERS** – New Hire, Office Assistant, City Wide Services, Pay Grade 3/Step 1, \$20,650.00 annually, effective April 7, 2008.

PARKS AND RECREATION DEPARTMENT:

- **LEXINE ALEXANDER** – Suspension (17 hours without pay), Recreation Facility Manager, effective April 2-3, 2008.

CHATTANOOGA FIRE DEPARTMENT:

- **CHRIS NEWELL** – Retirement, Lieutenant, effective April 18, 2008.

PERSONNEL (Continued)

- **DENNIS SCHIAVON, SR.** – Family Medical Leave, Facilities Superintendent, effective April 9 – July 2, 2008.

CITY COUNCIL:

- **CAROLYN L. MOORE** – Family Medical Leave, Council Secretary, effective April 1, 2008.

PURCHASES

On motion of Councilwoman Gaines, seconded by Councilman Rico, the following purchases were approved for use by the Public Works Department:

MALZ SALES COMPANY (Best bid)

R0107647/B0004996

Ebara Pump Parts

\$22,874.18

CIVIC ENGINEERING (Single source)

R0108129

Oracle Interface and Maintenance per TCA 6-56-304.2

\$17,180.80

ACCELA, INC. (Single Source)

R0108002

Land Development Software Annual Maintenance Subscription PER TCA 6-56-304.2

\$44,179.00

RECOGNITION FOR JOHN VANWINKLE

Adm. Leach acknowledged that Traffic Engineer John VanWinkle is the recipient of the "John F. Exnicious Government Employee Outstanding Service Award" for 2007, presented at the Southern District Institute of Transportation Engineers' annual meeting on April 1, 2008. He stated that this is only the third time the award has been given to a public employee. He stated that the Public Works Department is proud of him and noted that he has a hard job and works long hours.

Chairman Page asked that the Council's congratulations be conveyed to Mr. VanWinkle.

PROPERTY ON FOURTEENTH STREET

Councilman Pierce stated that Mr. Leach came before the Council approximately six months ago about property on Fourteenth Street that should have been declared surplus. He stated Mr. Leach asked that the property be donated for an extension of National Cemetery. He asked if that is still a request from Mr. Leach's perspective as he has noticed new houses are being built next door and does not see why the city is holding onto property that could be used and put back on the tax roles to donate to something as speculative as the National Cemetery expanding.

Adm. Leach acknowledged remembering and stated that that request did not come from a public works standpoint; that the Cemetery was going to expand at one point in time and there was an effort by the city to acquire the property and was asked to hold it in anticipation of the National Cemetery expanding to the south. He stated that he frankly could not tell the Council if the Cemetery still has a concern or not as that is not what he does. He stated that he had knowledge there was some interest in the Cemetery expanding toward the south.

Councilman Pierce stated that is something that was raised by Carl Levi and he knows of his connection with the military. He stated the other property adjacent has been put back on the tax roles and sold by his (Levi's) office, yet we have one piece that needs to be disposed of if we possibly could.

Adm. Leach stated that he would think Mr. Levi should be consulted; that he (Leach) is not part of that process yet very familiar with what he is trying to do.

Councilman Pierce suggested that Mr. Levi be present at the next Council meeting to justify his reason.

PROPERTY ON FOURTEENTH STREET (Continued)

Chairman Page suggested that the city's real estate department make a review and come back with a recommendation.

Councilman Pierce suggested that Mr. Levi be conferred with to see what can be worked out.

PURCHASE

On motion of Councilwoman Bennett, seconded by Councilwoman Gaines, the following purchase was approved for us by the Chattanooga Fire Department:

CERTIFIED GENERATOR SERVICE
R0106617/B0004974

Furnish and Install Generator

\$66,751.00

PURCHASE

On motion of Councilman Rico, seconded by Councilwoman Bennett, the following purchase was approved for use by the Chattanooga Police Department:

AURORA TACTICAL (Lowest and best bid)
R0107656/B0005021

ITT Night Vision Monocular

\$21,536.00

CONGRATULATIONS!

Chairman Page congratulated Chief Williams on behalf of the Council on the award he recently received.

BREAK-INS AT WOODMORE ELEMENTARY

Councilman Franklin stated there have been several break-ins at Woodmore Elementary and asked if one of the pole cameras could be installed. He stated each time there is a break-in five-to-ten computers are taken and it is difficult to replace them. He asked for assistance with this problem.

Chief Williams stated he would follow-up on the request tomorrow and get back with Councilman Franklin.

PURCHASE

On motion of Councilman Rico, seconded by Councilman Franklin, the following purchase was approved for use by the Finance Department, Air Pollution Control Bureau:

STEVENS INSURANCE ASSOCIATES, LLC (Best proposal)
R107547/B0004979

Directors and Officers Liability Insurance

\$4,047.00

PURCHASE

On motion of Councilwoman Robinson, seconded by Councilman Franklin, the following purchase was approved for use by the Mayor's Office, Information Services Division:

INSIGHT PUBLIC SECTOR (Single source)
R0107958

Panasonic Tough Books per TCA 6-56-304.6

\$23,805.42

PURCHASE

On motion of Councilwoman Gaines, seconded by Councilwoman Robinson, the following purchase was approved for use by the Mayor's Office, Office of Multi-Cultural Affairs:

PURCHASE (Continued)

FIRE EYE PRODUCTIONS

Criminal Justice Video Production

\$ 9,680.00 – Initial Payment per P0028675
1,300.00 – Remaining balance
\$10,980.00

PURCHASE

On motion of Councilman Rico, seconded by Councilman Franklin, the following purchase was approved for use by the Mayor's Office, General Services Division:

PERISCOPE HOLDINGS, INC. (Sole source)
R0108177

Renewal Agreement for Annual Software Maintenance and Support Services of the Buy Speed Procurement Software System per TCA 6-56-304.2

\$29,270.00

DENY REQUEST

City Attorney Nelson stated that the Council heard a presentation by Mr. Tidwell in Legal and Legislative and a motion is needed or further discussion.

On motion of Councilwoman Bennett, seconded by Councilman Benson, the request by Mr. Tidwell was denied.

Councilman Benson stated that this is done with regret but it is a necessity.

COMMITTEES

Councilwoman Bennett stated that Mrs. Madison and Mrs. O'Neal are working on a schedule to hear further departmental budget presentations.

Councilman Pierce asked Mrs. Madison when the budget is to be finalized.

COMMITTEES (Continued)

Councilwoman Bennett stated that they are "ahead of the curve".

Adm. Madison stated that it is okay to continue the presentations before they actually bring the budget document and are continuing to work on areas already talked about.

Councilman Rico scheduled a meeting of the **Public Works Committee for Tuesday, April 15 beginning at 3 p.m.**

BUDGETARY CONCERN

Councilman Benson stated that the Council has found itself in a position on more than one occasion needing independent legal counsel and asked whether it would have to be "carved out" of the budget someplace.

Adm. Madison stated that the budget is not held line-item-by-line-item, only on the total budget.

Councilman Benson referenced the need for legal counsel and asked if it would come from the Council's budget.

Adm. Madison stated that it would be up to the Council or taken from someplace else.

Councilman Pierce stated that he did not see any reason why we have to jeopardize what we have in place to create a fund for independent counsel; that if that is the wish of this Council it is just a matter of putting it into the budget and he is certain she (Madison) would find money. He stated that he did not think any sacrifices have to be made with money allocated for travel; that the Council needs to go ahead and decide what we want and put it in the budget.

Chairman Page stated that he knows Councilman Benson is interested in money being placed in the budget for independent legal advice and it is his understanding from what is being said that the Council has money that is not a line item and has not been spent that can be used for an emergency way of getting additional money.

Councilman Benson stated in years past, and it is the Council's fault, the budget comes and it is pretty well much "in concrete" and it is felt it should be sent back through. He stated he does not want to do that and it is not too late; we will have to do it.

BUDGETARY CONCERN (Continued)

Chairman Page reminded the Council that a new chairperson would be coming in next week and the Chairman is responsible for developing the budget for the Council; that Councilwoman Bennett will be in that position and will hear all Council members' comments.

REQUEST RPA TO UPDATE ALTON PARK LAND USE PLAN

Councilman Rico requested that a resolution be added to next week's agenda requesting the Regional Planning Agency to update the Land Use Plan for the Alton Park Community.

AMY BLEVINS

Amy Blevins addressed the Council and stated she and three others are creating a documentary on Ordinance 12009 which addresses groups of fifteen (15) gathering in parks and the need to have a permit. She stated they are looking into the ordinance and are looking for the best way to obtain an objective and accurate statement from those that crafted it. She asked for an opportunity to speak with a Council member following the meeting.

Councilman Rico suggested that the City Attorney speak with Miss Blevins.

Councilman Franklin stated as Chairman of Parks and Recreation he suggested that Miss Blevins and Mr. Zehnder get together.

Miss Blevins stated that the project is due this Monday.

It was noted that the City Attorney responded to this issue a few months ago.

Councilwoman Robinson stated that the City Attorney talked about the Supreme Court's decision in a similar case, as well.

It was suggested that the Clerk of Council provide Miss Blevins with the minutes of the meeting when the matter was discussed for use in her project.

ADJOURNMENT

Chairman Page adjourned the meeting of the Chattanooga Council until Tuesday, April 15, 2008 at 6:00 p.m.

CHAIRMAN

CLERK OF COUNCIL

**(A LIST OF NAMES OF PERSONS IN ATTENDANCE
IS FILED WITH MINUTE MATERIAL OF THIS DATE)**

From: Don Shoemaker [dfs2428@gmail.com]
Sent: Tuesday, October 04, 2011 1:42 PM
To: Benson Jack
Subject: RE: IHOP

Jack, I will speak to some of our residents and see if I can bring some to attend the meeting. We do support your stand and hope you prevail. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Tuesday, October 04, 2011 11:02 AM
To: Don Shoemaker
Subject: RE: IHOP

Yes, maybe a car full would be helpful. You will have time to speak. The basic issue is "we don't want our land use plan broken; if we break it here it will weaken it everywhere. We don't mind it being revised if done professionally in the same way it was formulated (by professional Planners)". Don, you could see the benefits of the Land-use Plan Friday evening when efforts were made to violate the Plan next door to you. Mike Price knew it was hopeless because of the Plan. See you next Monday the 10th at 1:00 on the 4th floor at the Hamilton County Courthouse. Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Monday, October 03, 2011 10:11 PM
To: Benson Jack
Subject: IHOP

Jack,
Would it help if I could get some of my neighbors to come to the court housed on October the 10th?
Don



DOC_0000792

From: Benson Jack
Sent: Tuesday, October 11, 2011 9:55 AM
To: 'Don Shoemaker'
Subject: RE: Speaking at the meeting tomorrow.

Due By: Tuesday, January 02, 1601 2:00 PM

Don; At next month's meeting, we need you to speak again. The neighbors would be welcome but you and the other speakers are really needed. IHOP HAS CALLED A MEETING FOR THIS THURSDAY AT 7:00pm. AT THE YMCA. We really need you there and bring Bernie. They are trying to destroy the Land-Use Plan. Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

—Original Message—

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Monday, October 10, 2011 8:47 PM
To: Benson Jack
Subject: RE: Speaking at the meeting tomorrow.

Thanks Jack, will do my best to be there. Would it help if I tried to bring a few neighbors? Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Monday, October 10, 2011 7:51 PM
To: Don Shoemaker
Subject: RE: Speaking at the meeting tomorrow.

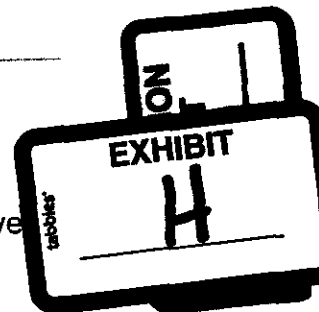
Do: You did a great job today. If they had voted today it would have been denied. Hope you can speak next month prior to the vote. Thanks, Jack

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Mon 10/10/2011 5:09 PM
To: Benson Jack
Subject: RE: Speaking at the meeting tomorrow.

Thanks. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Monday, October 10, 2011 10:24 AM
To: Don Shoemaker
Subject: RE: Speaking at the meeting tomorrow.

Just come up to the speakers stand when invited and you will have up to 3 minutes. See you at 1:00



49-1

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]

Sent: Sunday, October 09, 2011 7:35 PM

To: Benson Jack

Subject: Speaking at the meeting tomorrow.

Jack,

I will be glad to speak at the meeting tomorrow if you like.

What do I have to do to in order to be able to do so?

At the present time I expect 8-12 to come with me.

Don

49-2

From: Benson Jack
Sent: Friday, October 14, 2011 12:59 PM
To: 'Don Shoemaker'
Subject: RE: Speaking at the meeting tomorrow.

Due By: Tuesday, January 02, 1601 2:00 PM

Don: Your assessment of Sam Issa is on target. He will not take No for an answer and he will "do anything" to turn the No into a Yes. He came from a country where negotiations with government officials are successful with greedy actions which are illegal in the United States. We can't be a party to his methodology. Thanks to you and others like you, we are able to resist his methods.

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Friday, October 14, 2011 11:49 AM
To: Benson Jack
Cc: beejaybernard@aol.com
Subject: RE: Speaking at the meeting tomorrow.

Jack,
Pleased to hear your thought about the meeting.

I talked with David Reller (IHOP franchiser) for quite awhile after the meeting also and suggested a number of locations both along Gunbarrel and other nearby locations that he might consider. Stressed that we really would like to see his business in the area and the problem had nothing to do with IHOP, they were very welcome and could be a real asset to the area but to please consider choosing a location that was already zoned commercial. He was a very pleasant and likeable gentleman and I got the impression that he was embarrassed by the owner's unbelievable antics at the meeting. That lady wasn't a lot better, I resented her attitude and disrespectful and condescending comments.

The owner came to where Phillip and I were talking and injected himself, ask Phillip about our talk. Couldn't say two words without him jumping in your face and ranting. Finally told him to back off and let me talk. Tried and he started again doing it again and I said I had no interest in trying to talk to him because he was not interested in listening, only talking.



I thought you did well both in your comments and your restraint.

See you at the meeting on November 14th at 1:00 at courthouse.
(If it gets that far and isn't withdrawn beforehand)

Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Friday, October 14, 2011 11:22 AM
To: Don Shoemaker
Cc: beejaybenard@aol.com
Subject: RE: Speaking at the meeting tomorrow.

Don and Bernie: I really appreciated your attendance and support at last evening's fiasco. I would have been overwhelmed without your presence. Whether it is apparent or not, I believe the meeting was a "turning point" in the IHop relationship with Sam Issa. The IHop people came to me after the meeting and they were very contrite. They said that Sam Issa was the most difficult and hard headed developer they had encountered in their entire experience. I think they want to get out of their contract with him and look for some other place in East Brainerd. Thanks again for coming, see you again at the courthouse on November 14. Thanks, Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Tuesday, October 11, 2011 10:09 AM
To: Benson Jack
Subject: RE: Speaking at the meeting tomorrow.

Jack, will try and be there Thursday evening and at next month's commission meeting. Will tell Bernie also. His e-mail is beejaybenard@aol.com if you want to communicate with him. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Tuesday, October 11, 2011 9:55 AM
To: Don Shoemaker
Subject: RE: Speaking at the meeting tomorrow.

Don; At next month's meeting, we need you to speak again. The neighbors would be welcome but you and the other speakers are really needed. IHOP HAS CALLED A MEETING FOR THIS THURSDAY AT 7:00pm. AT THE YMCA. We really need you there and bring Bernie. They are trying to destroy the Land-Use Plan. Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Monday, October 10, 2011 8:47 PM
To: Benson Jack
Subject: RE: Speaking at the meeting tomorrow.

Thanks Jack, will do my best to be there. Would it help if I tried to bring a few neighbors? Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Monday, October 10, 2011 7:51 PM
To: Don Shoemaker
Subject: RE: Speaking at the meeting tomorrow.

Do: You did a great job today. If they had voted today it would have been denied. Hope you can speak next month prior to the vote. Thanks, Jack

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Mon 10/10/2011 5:09 PM
To: Benson Jack
Subject: RE: Speaking at the meeting tomorrow.

Thanks. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Monday, October 10, 2011 10:24 AM
To: Don Shoemaker
Subject: RE: Speaking at the meeting tomorrow.

Just come up to the speakers stand when invited and you will have up to 3 minutes. See you at 1:00

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402

423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]

Sent: Sunday, October 09, 2011 7:35 PM

To: Benson Jack

Subject: Speaking at the meeting tomorrow.

Jack,

I will be glad to speak at the meeting tomorrow if you like.

What do I have to do to in order to be able to do so?

At the present time I expect 8-12 to come with me.

Don

From: Don Shoemaker [dfs2428@gmail.com]
Sent: Monday, October 17, 2011 1:37 PM
To: Benson Jack
Subject: RE: Property at Shallowford & Ogle Streets.

Thank you for an excellent response. Should have known you were on top of it.
I agree that we can't allow this type thing to happen. It is a crying shame we have
People that totally disregard rules and regulation and push the system to the brink.
Thanks again. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Monday, October 17, 2011 11:00 AM
To: Don Shoemaker
Subject:

Don: He and the owner, Ying Hau Beens, have been cited to City Court on October 27 at 8:00 a.m. for zoning and blight violations. Ms. Beens has been a problem ever since I got into office. She has been cited to court several times. She wants to turn her property into a Commercial Zone for fast foods, etc.. She lives on Signal Mountain and I understand she speculates on buying residential property she thinks she can sell at a commercial price. She and Balsm Issa bring the same operational style that their previous culture condoned. We can't let them ravage our planned growth. Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346



From: Don Shoemaker [dfs2428@gmail.com]
Sent: Tuesday, November 15, 2011 6:11 PM
To: Benson Jack
Subject: RE: IHOP Rezoning Issue...

Your welcome Jack. Keep me posted of when it will come before the City Council and if I am in town I will be there. Glad that the vote was unified against the rezoning. Let me know if there is anything particular or special button that if pushed would help. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Tuesday, November 15, 2011 5:50 PM
To: Don Shoemaker
Subject:

Don: I want to thanks you for attending and speaking at the RPA. It made a difference and helped us to get a unanimous vote opposing the zoning request. When he comes to the City Council next month, we will need you again. I'm sorry to burden you with this but we are dealing with a very determine developer. In fact he said he would take me to Court if it wasn't approved. I hope he does and maybe he might learn a lesson. He comes from another culture and he can't seem to adjust to ours. Thanks, Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346



From: Benson Jack
Sent: Monday, November 21, 2011 1:53 PM
To: Don Shoemaker
Subject: RE: Round a bout at Jenkins and Shallowford

Thanks! Do just what you did at the courthouse and say about the same thing. Let them know that this is the EAST BRAINERD LAND USE PLAN for smart and balanced growth throughout all the community. If we violate the plan in the heart of the district it will destroy the strength and guidance of the plan everywhere. Thanks again. Jack

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Mon 11/21/2011 12:44 PM
To: Benson Jack
Subject: RE: Round a bout at Jenkins and Shallowford

Jack, will do what I can to support you at the meeting. Should I plan on speaking? Thanks for the information. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Monday, November 21, 2011 11:17 AM
To: Don Shoemaker; Roger A Meyer; Beejaybenard@aol.com
Subject: RE: Round a bout at Jenkins and Shallowford

I have just found out that the City Council meeting for the IHOPS issue will be heard on Tuesday, December 20 @ 6:00. It was moved up a week because 2 council members had to be out of town on the 13th. PLEASE TELL any others you can bring. We need a good showing because the developer is telling others that I am the only opposition and that all the neighbors are for it. All East Brainerd residents are the "neighbors" in the Land Use Plan. We need a good show of hands even if there is not room for all to speak.

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Sunday, November 20, 2011 1:17 PM
To: Benson Jack
Subject: RE: Round a bout at Jenkins and Shallowford

Jack, Will do. As always I can count on you. Thank you very much. Don



From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Sunday, November 20, 2011 9:59 AM
To: Don Shoemaker
Subject: RE: Round a bout at Jenkins and Shallowford

Call Lee Norris at 643-6011. He is the Chief Deputy of Chattanooga Public Works. He will probably tell you that is is dependent on when the utilities can be moved. There are many independent utility companies involved and none but the EPB answer to the City or its citizens. The City is responsible for the round -about construction. Lee should be able to give you a time frame for this part of the construction. Jack

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Sat 11/19/2011 11:49 PM
To: Benson Jack
Subject: Round a bout at Jenkins and Shallowford

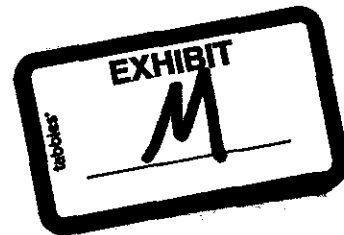
Jack,
I have a board meeting Monday evening. Can you tell me who to contact to get an estimated completion date for the roundabout at Shallowford & Jenkins?
Thanks,
Don Shoemaker

From: Benson Jack
Sent: Thursday, December 15, 2011 11:13 AM
To: Roger A Meyer; 'Bernard & Elizabeth O'Brien'
Subject: IHops

Due By: Tuesday, January 02, 1601 2:00 PM

: We really need you this Tuesday evening at 6:00 at the City Council chamber to voice opposition to the IHops zoning request. It is first on the agenda so it would be wise to arrive early. Issa is saying we have broken the Land Use Plan several times in the past. We have not **BROKEN** it any . We did make some minor adjustments when recommended by the Regional Planning Commission and when approved by the neighbors. But none of these adjustments involved **COMMERCIAL ZONES** and most of these changes were on the outer borders of the Plan. The IHOPS proposal is in the heart of an area restricted to only offices and it would break, not adjust, the Plan. Hope to see you Tuesday at 6:00.

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346



Date: Oct 9, 2011; Section: Perspective; Page: 1

Land use, not IHOP, at issue in East Brainerd dispute

Jack Benson

Chattanooga City Council

Developers are attempting to bring an IHOP restaurant into an office-zoned area, violating the East Brainerd Land Use Plan, and they are trying to promote their cause by a change in the zoning or by the gaining of a special exceptions permit. The IHOP restaurant is not the issue. It is a fine place to eat, and the citizens of East Brainerd would love the availability of the restaurant in any of the many commercially zoned properties within our East Brainerd Land Use Plan.

The real issue is that developers want the zone changed from "office" to "commercial," which is in violation of the land use plan. The developers are advocating their zoning request with "slants" that are not fully truthful; therefore, you should be intellectually prepared for these slanted contentions.

Some examples are: They are saying the present office zone would enable them to put a restaurant on the bottom floor if they chose to build a four-story office building; this is a half-truth. Office zone permits a supporting "coffee shop-type" business in a four-floor building, not a Hooters or an IHOP.

They will tell you there are commercial properties on all sides, which is not the full truth. The commercial zones near their property were grandfathered in prior to the land use plan, and the properties on both sides are restricted to only office zone.

Nearly everything they tell you is embellished with partial facts. The developer will tell you that his traffic engineer reports that an IHOP will increase traffic congestion by less than 2 percent. However, if this zoning is changed, the precedent has been established for changing all office zones to commercial zones around Erlanger and south to East Brainerd.

This would add 50-plus new curb cuts to the present traffic problems, which would mean many additional traffic problems.

The developer will tell you that he has a few neighbors who approve his zoning request. That is correct in that a few neighbors in very close proximity see this as a possibility of commercial sprawl for their properties.

The developer will tell you how many jobs IHOP will bring; however, in comparison with what many offices would bring, this falls as an incentive. In fact, most of the surrounding offices are medical support services to the Erlanger complex with better work benefits and job opportunities.

The developer bought the land after Brick Oven Grille's request for a commercial zone was denied. He paid an office price on a speculation that he could get it zoned for a commercial price. The present owner has attempted "speculative zoning" moves at other places in East Brainerd. I can understand his financial motivation. It is a quick way to make a profit if you can rezone land for a more profitable use. However, he knew prior to his purchase of the land that the Brick Oven Grille had been denied the very zoning change he is now requesting.

Our citizens know this operational style, and they strongly object to avaricious attempts to break the land use plan for personal gain. We need understanding of the facts on this issue, as well as your support of the land use plan.

Pancake service is great for most people, but the general good for all the people is served best when we insist on orderly land development as directed by smart land use planning. IHOP development is not the real issue; the real issue is the IHOP effort to violate the orderly and controlled growth as directed by the East Brainerd Land Use Plan.

Jack Benson represents District 4 on the Chattanooga City Council. His district includes East Brainerd. He can be reached at benson_j@mail.chattanooga.gov.



41-1

Bridger John

From: Benson Jack
Sent: Monday, September 19, 2011 11:32 AM
To: CouncilAndStaff
Cc: Bridger John; Littlefield Ron
Subject: I-Hops

Basam Issa, a developer wanting to bring I-Hops Restaurant into an office area violating our Land Use Plan, is trying to contact each of you for purposes of securing your vote to change the zoning or gain a Special Exceptions permit. Basam(Sam) does not take "no" for an answer. I have told him No and the Friends of East Brainerd has told him No. He will tell you things with a "slant" that is not fully the truth. Therefore, I think you should be prepared for his slanting contentions prior to meeting with him. Some examples are: He will say he could put a restaurant on the bottom floor if he would build a 4-story building—this is a "half truth", an O-Zone permits a supporting "coffee-shop" type business in a 4+floor building, not a HOOTERS or I-Hops. He will tell you there are commercials on all sides which are not the full truth. The C zones near him were grandfathered in prior to the Land Use Plan and the properties on both sides of his are restricted to only O-Zones. Nearly everything he will tell you is embellished in partial facts. HE BOUGHT THE LAND AFTER BRICK OVEN GRILL' S REQUEST FOR A C-ZONE WAS DENIED. He paid OFFICE PRICE on a speculation that he could get it zoned for a commercial price. SAM has attempted "speculative zoning" moves throughout East Brainerd. Our citizens know his operational style and they will strongly object to any of his attempts to break the Land Use Plan for his own personal gain. We need your understanding of the facts on this issue as well as your support of our LAND USE PLAN. Thanks, Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346



From: Don Shoemaker [dfs2428@gmail.com]
Sent: Wednesday, December 21, 2011 4:57 PM
To: Benson Jack
Subject: RE: Denial of rezoning for IHOP

Thanks jack. If you need us again please let me know and I will do what I can. We had 7 or 8 people there last evening from here. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Wednesday, December 21, 2011 1:50 PM
To: Don Shoemaker
Subject: RE: Denial of rezoning for IHOP

Don, thanks for speaking and doing a great job. I'm not surprised that McGary voted for it but I was shocked that Murphy and Scott joined him. However, Murphy told me today that if we voted again that he would vote against it. Sam Issa has complained to the Chairman that he didn't get the normal 2 minutes rebuttal time, She told him that he could come before the Council and have his 2 minutes at 9:00a.m. Friday. I don't think it will change a vote. He is relentless and a real "headache". Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Wednesday, December 21, 2011 12:48 PM
To: Benson Jack
Subject: Denial of rezoning for IHOP

Jack,
Congratulations on getting the rezoning denied.
You did an excellent job in responding to Issa, I think that may have turned the table.
I was surprised that any council members supported him. 5 to 3 ain't bad thought.
Thought Bernie did a good job keeping his piece short and to the point.
Again, congratulations, and great work.
Don



39-1

From: Don Shoemaker [dfs2428@gmail.com]
Sent: Tuesday, October 04, 2011 1:42 PM
To: Benson Jack
Subject: RE: IHOP

Jack, I will speak to some of our residents and see if I can bring some to attend the meeting. We do support your stand and hope you prevail. Don

From: Benson Jack [mailto:benson_j@chattanooga.gov]
Sent: Tuesday, October 04, 2011 11:02 AM
To: Don Shoemaker
Subject: RE: IHOP

Yes, maybe a car full would be helpful. You will have time to speak. The basic issue is "we don't want our land use plan broken; if we break it here it will weaken it everywhere. We don't mind it being revised if done professionally in the same way it was formulated (by professional Planners)". Don, you could see the benefits of the Land-use Plan Friday evening when efforts were made to violate the Plan next door to you. Mike Price knew it was hopeless because of the Plan. See you next Monday the 10th at 1:00 on the 4th floor at the Hamilton County Courthouse. Jack

Jack Benson
Councilman, District 4
1000 Lindsay Street
Chattanooga, TN 37402
423.757.5346

-----Original Message-----

From: Don Shoemaker [mailto:dfs2428@gmail.com]
Sent: Monday, October 03, 2011 10:11 PM
To: Benson Jack
Subject: IHOP

Jack,
Would it help if I could get some of my neighbors to come to the court housed on October the 10th?
Don



46 - 1

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA

ANT GROUP, LLC,)
)
 Plaintiff,)
)
 - versus -)
)
 THE CITY OF CHATTANOOGA,)
 THE CHATTANOOGA CITY)
 COUNCIL,)
)
 Defendants.)

NO. 12-0107
PART II

JANUARY 9, 2013
DEPOSITION OF COUNCILWOMAN PAM LADD

CONNIE CARPENTER, CCR, LCR
HALL & ASSOCIATES
DIRECT: (423)227-6613
carpwriter@comcast.net



1 Q To make sure I understand, the quoted
2 terms of Mr. Issa were Mr. Issa saying, Mr.
3 Benson, is there anything I can do?

4 A Is there anything else I can do.

5 Q Okay.

6 A And I may be paraphrasing it. Those
7 are the words that I recall. That's the way I
8 recall it being said.

9 Q okay. You don't recall any discussion
10 about money being exchanged?

11 A No, sir.

12 Q Do you know when this meeting that you
13 had with Mr. Benson occurred?

14 A I don't.

15 Q Do you know why Mr. Benson brought
16 this to your attention?

17 A well, he wanted to -- definitely
18 wanted me to know his opinion about this upcoming
19 zoning.

20 Q Mr. Benson wanted to know your
21 opinion?

22 A He wanted me to know his.

23 Q Oh, okay. So Mr. Benson discussed it
24 with you?

25 A Those words, and then I stopped the

1 Q Okay. When was another occasion?

2 A I'm thinking it was during a time --
3 the council, prior to us going in at 6:00 for our
4 meeting where we actually read the ordinance
5 resolutions and take our vote, a lot of times we
6 will gather together for a few minutes. It's
7 supposed to be for fellowship. Some individuals
8 eat their dinner during that time. There's
9 various talk at that table, and Mr. Benson was
10 relaying the story again at that time.

11 Q Do you know who he was relaying it to?

12 A I don't recall who all was sitting at
13 the table, but I know it was -- Chief of Staff Dan
14 Johnson was there at the time and then various
15 members of the council. I don't think the full
16 council. It's rare that everyone is in that
17 meeting at that time or at that table.

18 Q This occasion that you're referencing
19 here, did this occur before a vote was taken on
20 the ANT application?

21 A It was before the vote but not the
22 night of the vote. It was sometime before the
23 vote.

24 Q Okay. Do you know how long this
25 discussion lasted at this fellowship gathering?

1 A I got up and left, so I don't know
2 what all occurred after I left.

3 Q Is it typical for the council members
4 to discuss matters that are on the agenda?

5 A It's not typical. During that time
6 it's not typical.

7 Q Okay. Do you know what provoked Mr.
8 Benson to bring it up during this meeting?

9 MR. BOBO: Object to the form.

10 A I don't.

11 Q Did anyone else bring it up during
12 this meeting?

13 A I came in and there was already some
14 discussion going on prior to my coming into the
15 room, so I don't know if a question had been asked
16 of him. But there was just some discussion
17 already, and that was a piece that I heard. And I
18 left the room.

19 Q Other than -- have you ever heard of
20 any other discussion -- or let me rephrase this.

21 Other than these two occasions, are
22 you aware of any other time that Mr. Benson has
23 stated that Mr. Issa tried to bribe him?

24 A Those are the only two that I recall
25 off the top of my head.

1 Q Other than hearing the discussion at
2 that time, has anyone else ever approached you to
3 ask you if Mr. Issa bribed Mr. Benson?

4 A No.

5 Q Do you know if he told other members
6 of the council?

7 A There were other members present when
8 I heard it repeated in that meeting.

9 Q To the extent that a bribe -- let me
10 rephrase the question.

11 Do you have any reason to believe
12 sitting here today that Mr. Benson stated that a
13 bribe had occurred for the purpose of trying to
14 advocate opposition to the rezoning?

15 A No. I don't know. If you're asking
16 his intent, I wouldn't know his intent.

17 Q Well, I'm just asking do you have an
18 opinion as to one way or the other.

19 A I don't think it was as much of the
20 zoning as he was just trying to paint Mr. Issa in
21 a more unpleasant light.

22 Q What light does he want to paint, Mr.
23 Issa in an unpleasant light?

24 A Just a more shrewd business-type
25 person, someone that might not always play

1 REPORTER'S CERTIFICATION

2 STATE OF TENNESSEE)

3 COUNTY OF HAMILTON)
4

5 I, Connie F. Carpenter, LCR #331,
6 Licensed Court Reporter, Certified Court Reporter,
7 for the State of Tennessee, do hereby certify that
8 the above proceeding was reported by me and that
9 the foregoing pages of the transcript is a true
10 and accurate record to the best of my knowledge,
11 skills, and ability.

12 I further certify that I am not
13 related to nor an employee of counsel or any of
14 the parties to the action, nor am I in any way
15 financially interested in the outcome of this
16 case.

17 I further certify that I am duly
18 licensed by the Tennessee Board of Court Reporting
19 as a Licensed Court Reporter as evidenced by the
20 LCR number and expiration date following my name
21 below.

22 IN WITNESS WHEREOF, I have hereunto
23 set my hand and affixed my notarial seal this 28th
24 day of January, 2013.

25

Connie F. Carpenter, LCR, CCR
License No. 331
Expiration date 6/30/2012