

City of Fairview

BOARD OF COMMISSIONERS Special-Called Meeting

January 9, 2014

Beverly D Totty, Mayor
Stuart L Johnson, Vice-Mayor
Patti L Carroll, Commissioner
Allen Bissell, Commissioner
Toney R Sutton, Commissioner
Wayne Hall, Interim City Manager
Larry Cantrell, City Attorney
Brandy Johnson, City Recorder

Present: Totty, Johnson, Bissell, Carroll, Sutton
Others Present: Hall, Cantrell, Johnson, Griggs

1. Mayor Totty called the meeting to order at 7:00 p.m.

2. New Business –

Discuss and/or Take Action on Corrective Actions Needed for the Williamsport Estate Subdivision. Mayor Totty recuses herself and turns the meeting over to Vice-Mayor Johnson due to personal interest in the property. Vice-Mayor states that Item A was to Discuss and/or Take Action on the Subdivision in Question and the second item will be Discuss and/or Take Action on the Level of the Mayor's Involvement in Errors and Omissions in the Williamsport Estate Subdivision Approval and Building Process. Vice-Mayor Johnson turns the meeting over to Commissioner Bissell.

Bissell: Thank you Vice-Mayor Johnson. At the conclusion of the last special meeting we pretty much determined through the official records and testimony of former codes director, Donn Lovvorn, that the Williamsport Subdivision was recorded, constructed and then sold to third parties without the payment of any fees to the city, securing of the appropriate approvals from the Planning Commission, being reviewed by the City Engineer for deficiencies, or being inspected for adherence to regulations. The Board of Commissioners feels that it is important to the Fairview citizens that ultimately purchased these homes that they not be harmed by any actions of the developer, of our own Codes Department or by the Board of Commissioners in trying to fix this problem. So, to that end, I'm going to offer a motion which is to basically open the floor up, because we need it for Robert's Rules of Order to have discussion. I'm not married to these five things but it will give us some place to start as a way that we can move toward fixing the problems or taking whatever corrective actions we determine are necessary. So, I make a motion that: The codes department shall immediately issue to the developer the appropriate citations for failure to comply with the subdivision regulations. That would be under 1-113.201 Recording of Unapproved Plats, 1-113.202 Use of Unapproved Plats, 1-113.203 Construction of Illegal Buildings. I'm not the Codes Department and along with the City Attorney would have to figure out what the proper citations would be.

Vice-Mayor Johnson: asks if there are any other copies of what you read.

Bissell: I have one other copy here that we could make, I have one for the City Recorder. That appropriate fees and permit amounts be assessed and obviously then the developer would need to pay those fees. They could be plat fees, grading fees, demolition fees, bonds, whatever

would be appropriate in that particular subdivision. That an as built plat will be prepared by our city engineer with the cost being paid by the Developer. Once that as built plat is finished then the city engineer and the Planning Commission will review it against the current city codes for the subdivision and will make a recommendation to this Board within 60 days as to what is the necessary actions to bring the subdivision into compliance. The Board will of course then act on it. That no Certificate of Occupancy will be issued on the final house that is not occupied until the whole process is finished and whatever improvements or changes that are required are made. So that's my submission to get us started.

Johnson: We have that as a proper motion, is there a second?

Sutton: Second.

Johnson: We have a motion and a second. We will open the floor up for discussion. Mr. Totty, are you prepared to speak on behalf of the development and what the current motion is on the floor?

W. Totty: Yes, sir. Uh, I don't really agree with that and I'm going to tell you why. When I had my plat drawn I asked Donn Lovvorn, the Codes Director then, what I could do with the property. He told me and I had it drawn accordingly. What he told me was there could be the houses built on the easement and on the gravel easement 20' wide. So I had that drawn accordingly, got it to him and told him let me know where we are going next. A week or two, maybe three went by and I didn't hear anything until he notified me that it had been signed by the Planning Commission and it was ready to be recorded. Thus, I give him a check for the recording and it got recorded. From then on, we started pulling building permits to build the houses. I've probably called for inspection twenty times, guys coming out there checking and passing what we are doing. Nobody ever said the first word to me that anything was wrong. Two years go by we're over there working. Some of you folks driving up and down the road seeing the work going on over there. Nobody ever says a word. Now, what am I as a developer or a builder supposed to go on when I present a plat and it gets signed and back to me and recorded with me having the right at that point to go to work. What am I supposed to think? So, we went to work and we, like I said, worked there for two years and we're about done and all of a sudden, boom, here it is. I have a lot of questions about that myself. I got my own opinions as why it's here and now but as far as I don't know what your recommendations are to be done to the four lots over which is private property with a easement serving the homes. But, I really don't see how it's right or it could be forced on me in the end to change the development when nothing has been said through the entire process of this until now.

Johnson: Any other statement?

W. Totty: Not at this point.

Johnson: Okay, does anyone have any questions for Mr. Totty at this time?

Sutton: I've just got a couple. You've been building houses for how long?

W. Totty: Several years.

Sutton: How many times have you ever built houses in a subdivision that you only had to come before the Board on the approval of changing the zoning? Have you ever had to come back to Planning for anything else?

W. Totty: Um, in the past, everything we've done was 30 and 40 lot stuff and it was procedure, that was actually back in about 2000, 2001, up until this time. I didn't know what might have changed, this being a four lot development on an easement which I was told it was doable. I didn't really see the big problem.

Sutton: You didn't think you needed to come before the Planning Commission again after the rezoning was completed for anything?

W. Totty: Well, sure, that's why I told Donn Lovvorn, here's my plat, we've drawn according to what I was told we could, and I said let me know where we go from here. So if that means it was fixing to go to the Planning Commission, then okay.

Sutton: But we didn't go in front of the Planning Commission.

W. Totty: We did not go to the meeting, right.

Sutton: Since that time, the houses were completed and sold, correct?

W. Totty: Yes

Sutton: Without going in front of the Commission?

W. Totty: Right

Sutton: I don't have anything else right now.

Carroll: The only thing I have to ask is what about the fees. What you normally have to pay for the process, did you recall, did you pay all the fees, go through the process that you normally would have done on this subdivision?

W. Totty: We had a demolition permits that we got. The fees for the Planning Commission meeting to the best of my understanding from the past stuff the fee was to be paid before it went to the meeting but that never was brought to my attention. They never asked to bring a check, they never told me when I was to be on the agenda, I just was like, hanging, until I get the plat back signed by the Planning Commission good to go.

Carroll: Is it normal process for you to wait until they ask for fees when you've done other subdivisions or do you normally bring in the fees that are expected at the time?

W. Totty: Well, I think they would have normally called me and told me how much they were and at that point I would have known, it's time to go pay, but I never heard anything.

Johnson: Mr. Totty you spoke of you purchased a demolition permit. The City nor the Codes Department can find a record. Can you provide a record from your company for that?

W. Totty: Maybe, that's been back a couple of years so maybe but I'm almost certain that I got a permit to tear that old house down.

Johnson: We were told at the previous meeting by our former Codes Director that you did in fact get that permit. Nowhere in the Codes Department can it be found but a one \$25 grading permit they can find that. They cannot find even the \$200 fee where you brought the property in to have it rezoned by the Planning Commission and by the Board of Commissioners. Do you think you could find a record of that?

W. Totty: Well, I could look back and see but I don't know why I wouldn't have. If they asked me for it I would have paid it.

Johnson: You brought up the plat and you say it was signed by the Planning Commission but yet it did not go in front of the Planning Commission. Can you tell me who signed it?

W. Totty: I think it was Matt Beata.

Johnson: Matt Beata, and for the record, he would be the second secretary of the Planning Commission at that time. Do you know who else would have signed the plat? Would you have signed the plat? Would you have signed it yourself?

W. Totty: Would I have signed his name?

Johnson: No, no, would you have signed the plat with your name?

W. Totty: I did sign the plat.

Johnson: You signed the plat, Mr. Beata signed the plat, who else would have signed the plat?

W. Totty: Well, I think the zoning, maybe that's Donn's signature is on that, Randy Chapdelaine's signature's on that, the people from 911, for the street addresses signature is on it and I guess that's about it and yours, and it's recorded.

Sutton: You say yours who are you indicating?

W. Totty: My, Beverly

Sutton: Okay.

Johnson: You say that 911 signed off on it and it is part of the county 911 system, it is on the grid. It is listed as a city street. You have stated that you think it is a private drive. The county has it recorded at the Register of Deeds office as a city street.

W. Totty: Well, I am unaware of that.

Johnson: But they are saying that is based on the plat that was taken to Sadie Wade's office. They said today that it actually should have a green sign instead of a blue sign and it should be a city street.

W. Totty: Well, there again, I am unaware of that.

Johnson: Yes, sir. Are there any other questions at this time.

Bissell: I apologize Mr. Totty, you know, you saw me at Fast Pace. Just to put it in the simplest form, here is my problem. I apologize for this, but I think as most everybody in here knows, I worked for the IRS for 30 years and if you had called me as a Senior Manager with the IRS and said, do I have to file a tax return? I've been filing tax returns for 40 years and so here it is it's another year, do I have to file a tax return? And I said, no, you don't have to file a tax return. Then, granted, I can understand the frustration with that, but there's a level of common sense that says for 40 years I've filed this tax return and then suddenly I don't have to do it. To my way of thinking a light bulb goes off and I at least double check that answer before I don't file my return. You seem to me to be a very good businessman, to be in control of what you are doing, and know how to do that sort of thing and I just can't get past that. That, as a businessman, that had been doing business this way for so many years, that even though Mr. Lovvorn may have told you that, then I can't get past that the light bulb wouldn't have gone off and you had a responsibility to make sure that was the right answer. So, I think from where I see it, you have a responsibility to make it right, for lack of a better term. That would mean that there is a penalty for recording those plats, for doing that, it's a small penalty I believe but it is a penalty. There are fees that didn't get paid that need to be paid. I don't know what improvements are required. I was not trying to say that. That will be left up to better minds than I have. The City Engineer and the Planning Commission will determine and make recommendations about what needs to be done. There may be nothing that needs to be done. So, I just don't know at this point, but I can't get behind the idea that somebody that's done this as their primary function most all of their adult life that it wouldn't dawn on them that there was something out of whack here. I think as a responsible developer, as a responsible person, I think we have a responsibility in something that we've done before to verify the information that we are given. That's why I believe that you are liable for this, not more than anybody else would be. I just want you to set it right. If that turns out from the Planning Commission they feel that variances are in order and that you don't need to do anything to those houses out there, great. Then you pay the fees, you get the proper plat recorded, you move on. But, I still believe, and I've put a lot of time and effort into thinking about this, I still believe that even though the Codes Director, and he admits to telling you it was his mistake, even though it was his mistake, you as a responsible long term developer, something should have told you to at least check on it and that's just where I come down on it.

Johnson: Are there any more comments from the Board at this time?

Cantrell: Mr. Vice-Mayor, May I say something?

Johnson: Are there any other comments here? Yes, sir.

Cantrell: I've got a concern about holding up on the occupancy permit for the house that's finished. I don't know if there's a signed contract on the house or not. If there is the people that's going to be punished are some of the people that we just said you did not want to punish and that would be the people that are going to buy the house. The second concern I have is that I think everybody here knows that the City has some problem with this. I don't know what all the problems are. I don't know who all the responsible parties are, but I think the City certainly intentionally or unintentionally has some culpability in this. The problem that I have is that if he has a signed contract for this house the City could be getting itself into an unconstitutional interference with a right to contract and if that is the case, you don't want to go there. I would suggest that in relation to that house that if it is finished and if it is ready for an inspection and if he actually has a buyer that you be allowed to proceed with that because it would be no harder to correct than the other three.

Bissell: Do you have a contract on that house with a closing date?

W. Totty: Well, it's done and it's ready to hand over to the owner. It's a family member, so....

Bissell: I mean, is it paid for, do you already have the money from them?

Johnson: Is there a written contract at this time that you could provide this board?

W. Totty: No, not at this time.

Bissell: Without a written contract, I think that the potential liability until we are assured that everything is in proper order there is potential liability there. We now have knowledge that this subdivision was built unapproved. To allow continuation puts us at liability, too. Since there is no written contract I would suggest that is not germane to the situation.

Cantrell: If he gets a written contract would you go ahead and consider the house then?

Bissell: He can certainly bring it back to us for consideration in the mean time.

Cantrell: That would put you in the position of, like I said, punishing people that are not parties to this at all.

Bissell: I'm not prepared to commit one way or another as to what I would vote to do at that particular time, but as of tonight, there is no written contract. There is no one standing so as far as I'm concerned it's really not part of the decision.

Cantrell: All I'm asking if you would consider, he could present that.

Bissell: He could go out and get a written contract that was made after this meeting and we could consider accepting that but he can't go present a written contract back dated.

Cantrell: No, I'm not asking you to do contract legislation either, I'm just saying if he has that, he could present that to the board.

Bissell: Right, and we then could make a decision as to whether or not we wanted to go ahead and allow the closing at that time. My decision on that would be predicated on how quickly everything is moving along. If it looks like we are headed to a reasonable conclusion in a very short period of time, I probably would vote, fine, close it, let the folks have it. But if we are dragging our feet, if we are not getting fees paid, we are not getting fines paid, if we are dragging our feet on it, then I don't see any need for the C.O. That's my opinion, that's how I see it.

Cantrell: That's all I have I just wanted to bring that up and be sure. Like I said, I'm not asking for any considerations or contract legislation and just want to make sure we are clear.

Sutton: Just for clarification from you, at this time there is no contract so it would not be any liability upon the City, am I correct, as far as hardship? Or is it going to be open for months to go, years.

Cantrell: Well, I don't know what your damages would be but once I produce a contract then you know what your damages would be.

Sutton: But there is no contract.

Cantrell: That is what I am hearing.

Sutton: So we don't have the liability at this point.

Cantrell: You don't have the threat of liability that you would if there was a contract.

Sutton: I just don't want us to be able to set a prerequisite for other builders and things to go finish projects that were not approved and then say well, I finished them so I don't want to have a hardship on who I am selling them to while possibly in full knowledge and knowing before the sale that they were not done properly and according to the rules and regulations of the Planning Commission.

Cantrell: Normally I would hope the City wouldn't be in this position.

Sutton: I would hope so, too.

Cantrell: And then we wouldn't have to bring that up.

Carroll: I think I would feel a little more comfortable with knowing what was actually the recommendations of the engineer before we determine the house. Because it is more about the subdivision versus letting them go ahead and finish the process of the house. Before we move forward, I think I would like to know what all the engineer has found. If there is anything with the houses that we need to know and that would help me make my decision better.

Johnson: Mr. Griggs with that being said you were sort of put on the spot at the last meeting you were here and didn't have much time to go over the plat and visit the site as well but you did come up with some figures and you shared those with us. Since then have any of those figures changed, have any gone up, have they gone down, do you have a different opinion, is there anything you need to add at this point?

Griggs: No, since that time we have not reviewed the plat, so the numbers we put together previously are still as good as we've got at this time.

Johnson: That being said, for you really to do anything further, to really and truly evaluate it, it would have to be part of Commissioner Bissell's motion for you to do the as-built drawings and see how it compares to what has been recorded, what that be correct?

Griggs: That's correct.

Johnson: So, at this time, at the last meeting, so I guess this needs to be part of the record, there was \$106,000 plus dollars, in I wouldn't say fees, but

Bissell: That was worst case scenario of improvements.

Griggs: Let me correct you slightly. The estimate we had was \$85,450 for the improvements. We were asked at that time to estimate what the bond would have been and the bond is the estimate plus 25% and when you do that you come out with \$106,812. There's a slight difference between bond and estimated cost.

Johnson: The \$106,000 covers everything that you found at that point, bond, even plus 25%.

Griggs: Correct

Bissell: Mr. Griggs, how long would it take for that process to happen. For y'all to go out and do an as built drawing, compare it to the plat, and then identify those areas where it didn't meet regulation?

Griggs: As-built drawing needs to be put together by a registered surveyor, that's a typical process for a plat. We do not have a registered surveyor in our house so we would sub-contract that out. So we would have to find a registered surveyor who could do it and fit into his schedule and I don't know what that would be right now.

W. Totty: Excuse me, what would be the problem with Randy Chapdelaine doing it? He's the one that drew the plat. He's familiar with it, he could go out there probably in a timely manner and draw it for you.

Bissell: If that would speed the process up I don't have any problem with that.

Johnson: Larry, would you have a problem with someone who did the work previous to come back and do the work the second time or would we need an outside

Cantrell: No, he'd just be coming back and doing an as built. When he did the one before was just a plat. As long as he's a registered surveyor I don't have a problem with it.

Bissell: I assume what you're offering here Mr. Totty, I'm not trying to put words in your mouth, but you would then contract with Mr. Chapdelaine to have that done?

W. Totty: Yes

Bissell: And once you provided us with that, Mr. Griggs, about how long would it take for you folks to do your work?

Griggs: We could do our work within a week.

Bissell: Within a week.

Griggs: We would want to do the measurement, paper measurement and paper calculations and then we would want to go on site and see it ourselves so it'd be about a week.

Johnson: Depending on the surveyors timetable it looks like it could happen within 60 days easily.

Bissell: Easily. If time is of the essence then that keeps everybody motivated to keep moving. I know that Griggs & Mahoney has been real responsive to us so I'm sure Mr. Chapdelaine would work as fast as he could.

Carroll: And who's responsible? You're gonna pay for this? Who's footing the bill?

W. Totty: To Mr. Chapdelaine? I will.

Griggs: We consider ourselves a city employee and it would be a conflict of interest for us to work for Mr. Totty in this case so we would be working for the City.

Bissell: But, when Mr. Totty submits that plat he has a fee that has to be paid with that plat.

Griggs: To the city

Bissell: To the city and that would go toward paying the engineers. Correct me if I'm wrong and John's not here tonight, I guess, but my understanding was that in most instances after y'all

review the plat, there is some fee that is passed back to the developer or am I misunderstanding that?

Griggs: We are not involved in that so I can't answer that.

Johnson: Mr. Griggs wouldn't be involved in that at all but that can be answered by the Codes Department, Mr. Hall.

Hall: Some fees are passed on to the developer for reviewing the plats and drawings.

Bissell: Whatever the standard procedure would be would need to be followed in this. If that meant there was part of Mr. Griggs fee got passed back then that needs to be passed back.

Sutton: I've got a question for Mr. Griggs while we've got your attention here and this would go back to the plat and when it was submitted to 911. One of the problems that we had on it was it being a street that you consider to be a private drive. Did 911 say anything to you about that when you went up and filed?

W. Totty: (indicates no)

Sutton: They just ignored that it was qualified as a street.

W. Totty: They never said anything to me about it.

Sutton: and that was part of the major cost of correction, am I right or wrong?

Griggs: I'm not sure I understand your question.

Sutton: The major part of the cost that you've arrived at is the completing of the street that should have been completed.

Griggs: Our cost estimate included as best we can tell complying with all subdivision regulations. As we read the subdivision regulations that should have been a paved street. So our cost estimate included paving a road that long and that wide but I think I pointed out to you last time and I will do it again tonight, the Planning Commission has a right to waive any of the subdivision regulations.

Sutton: Through variances.

Griggs: Through variances. So we assumed no variances. I emphasized last time and will emphasize again we feel like our cost estimate is on the high side, if there are no variances. It could well be acceptable to the Planning Commission, we just don't know, I can't predict that.

Bissell: That's what I'm trying to, maybe I'm not wording it correctly.

Johnson: No, that is exactly what your motion was.

Bissell: That item one issuing of the appropriate citations and those fines that are related to those citations. That's the punitive part of this. Once that's been done, then the rest of it is almost like it didn't exist, how would you bring it in and follow the process. So, you have to have an as built plat because now there's structures on it and then you compare that, the city engineer reviews it, gives the discrepancies. The Planning Commission looks at the discrepancies and says grant a variance here, don't grant a variance there, grant a variance here, don't grant a variance there. And then, it comes back and we either say yay or nay. And then if there's corrective actions, then the developer does the corrective actions. If there's not corrective actions then it stays as it is and the variances are granted by the Planning Commission or by the Board. The only punitive part of this is the fines, the tickets up front. The rest of it I'm just trying to put it back in and have it go through the process just as if it was brand new starting today.

W. Totty: Talk about the fees to the Planning Commission, I don't have a problem paying the Planning Commission fees, the review fee. But, to fine me for me being mislead, does that sound right? I mean, that sounds right to y'all, that's okay?

Johnson: Well, Mr. Totty, let me ask you this. This may sound a little far fetched but it's as simple as I can put it. If you were riding down Highway 100, let's say you were driving and I was riding with you and I told you the speed limit was 55 MPH but a cop stopped us and it was 40 (MPH) you think they're going to give you a ticket? Or you think they're going to say my well my buddy here said it was 55 MPH so I shouldn't get a ticket.

W. Totty: Well, that's not a comparable to me. You're talking about fining me for something I don't feel like I'm guilty of, period. I don't have a problem with the fees, but the fine I do. I just

don't think that's right, whether it's \$5 or \$50 or \$500. Right is right and wrong is wrong and that just ain't right.

Johnson: So ignorance to the law means that you should just walk away and the taxpayer should pay.

W. Totty: Well, this ain't the law. Nobody called me and told me that I owed "x" amount of dollars for the Planning Commission fee. Nobody never said anything.

Bissell: You're not being fined for the fees. The citations won't have anything to do with not paying the fees. The citations will be for recording an unapproved plat, building on an unapproved plat and constructing buildings that were not approved. Those are the citations and Tennessee Code says those are crimes, says they are misdemeanors. And as I was trying to explain earlier, I understand you followed the advice of the Codes Director. It was in error but ignorance is not a defense against the law. It is the law and as a responsible builder who has been in this business for quite some time, I have a hard time getting my hands around it wouldn't have dawned on you that this is not right. I need to follow up and make sure this is not right. That's what I think the fine is for. I don't think the fine is for not paying the fee.

W. Totty: So I'm getting fined for not telling Mr. Lovvorn his job.

Bissell: You're getting fined because you did not, and it has to pass first, but you're getting fined because you recorded an unapproved plat.

W. Totty: I didn't, Mr. Lovvorn recorded the plat, I didn't go over there.

Bissell: Yes, sir. Well, Mr. Totty, I'm trying to explain to you.

W. Totty: I'm getting fined for his actions now.

Bissell: I believe you are deserving of the citation for the reasons that I stated.

W. Totty: Does that mean that anybody that bypassed a Planning Commission meeting on anything that was supposed to have went there would be in the same shoes?

Bissell: Yes, sir. If they've failed to follow one of the statutes, one of the regulations.

W. Totty: If they was told they needed to go to the Planning Commission to have something reviewed and they chose not to do it, that's kind of the same thing we're talking about right now, isn't it?

Bissell: I would have to know more circumstances around. You're not being fined for not going to the Planning Commission. You're being fined for recording those plats and building on those plats. You're not being fined for not going to the Planning Commission. That's a procedure that you didn't follow that the City expects you to follow but you're not being, the citation is not for that.

W. Totty: So it's because I didn't follow up behind Mr. Lovvorn to make sure that the City of Fairview's employee was doing their job correctly, that's why I'm getting fined?

Bissell: No, sir. You're getting fined because you didn't follow the rules.

W. Totty: I was following what I was told.

Bissell: And in my opinion, and how I will vote, is that I believe you had sufficient knowledge as a long term contractor to know better. That you should have known that regardless of what Mr. Lovvorn told you your past experience was you did go to the Planning Commission. And so, you at least should have contacted him twice and said wait a minute, Donn, this is a problem. Why am I not going this time? But you didn't do that. You liked the answer you got and so you went on and you built. And, I'm sorry, but from where I sit you have a responsibility as a developer before you take action to verify the information that you get. Whether it comes from a city official, whether it comes from an engineer, whether it comes from a sub-contractor. If I am doing roofing for you and I come out and quote you this amount of money to do roofing. And you look at the house, you just built another one last year the same size and I am going to charge you twice as much as you paid before, are you just going to say ok or are you going to question me on that because it doesn't meet your past experience?

W. Totty: It's hard to say. Every situation is different. I can't say what I would have said then or not. That's really neither here nor there. What you are doing is talking about assessing a fine to me over something I did not do.

Sutton: Commissioners, may I ask a question?

Bissell: We could go round and round all night long. I've said it every way I know how to say it.

Sutton: That point right there. Earlier when we first started this I got the impression that you hold no fault in this as far as correcting these matters, is that right?

W. Totty: As far as the fees to the City of Fairview for Planning Commission review I don't have a problem paying those fees.

Sutton: I'm talking about correcting what should have been done as far as building that subdivision that you and your company profited from.

W. Totty: It was presented to me that I could do exactly what I done and I was led to believe that over a process of two years. As the project or process went on nobody has ever told me anything to the contrary.

Sutton: How many subdivisions have you built here?

W. Totty: I don't know, two?

Sutton: Ten?

W. Totty: No, four, five, maybe

Sutton: Five. Did you ever have to go back before the Planning Commission?

W. Totty: We appeared before the Planning Commission depending on how many times they required us to before it got settled. But, it was big subdivisions.

Sutton: There's basic requirements on every one of them and I believe this subdivision is classified as a Large subdivision, am I right?

Johnson: Major Subdivision.

Sutton: Major Subdivision.

W. Totty: I don't know.

Sutton: It is with four buildings on it.

W. Totty: That's just not what I was told.

Sutton: My question is, I will repeat it again. Do you have any intentions of correcting these problems that should have been adhered to at the time the subdivision was built.

W. Totty: I don't know what problems you are talking about so I can't answer that yes or no.

Sutton: Well, our engineer has already described the streets are not built to standards what they should have been done. It's approximately eighty something thousand dollars worth of work, am I right, just in that phase?

Griggs: Yes, sir.

Sutton: Whether it's twenty thousand or fifty or eighty, you agree that it should have been done differently and that you should have been responsible for it.

W. Totty: I agree that I done exactly what I was told I could do on a private drive and that's what that is out there.

Sutton: Well, the 911 people don't say it is. They say it's a street.

W. Totty: Well, I didn't talk to them. It was recorded by Mr. Lovvorn when he went over there. I've never heard otherwise.

Sutton: You've built five or six....

W. Totty: It's on my plat as a easement. They signed the plat. It plainly shows a easement across a piece of property. Why would they put a city street on it when it plainly shows a easement on the plat?

Sutton: Well, Mr. Totty, they didn't put a city street on it, you did. When you submitted it as a Major Subdivision it was classified as a city street. And my question is, as many subdivisions and individual homes that you've built, you know the process. I don't have any doubt about your intelligence whatsoever. Is knowing the right process to go through and I believe you knew it and you didn't follow it.

W. Totty: Well, I disagree with that.

Sutton: That's your opinion, so that's mine. I'd like to see it all corrected is my goal, but apparently you state that you are not going to do it.

McCann: Mr. Johnson, I wonder if I might speak.

Johnson: Yes, sir.

McCann: My name is Russell McCann, I'm a real estate attorney. I've done a lot of work with a lot of different builders. I've done a little bit of work with the Totty's and I wanted to come to this meeting because

Johnson: Sir, you did tell us your name, could you tell us who you are representing?

McCann: Well, I wouldn't say I that represent anyone in particular. I work with the Totty's and I'm here basically to speak on their behalf.

Bissell: Then it would not be proper for him to speak.

McCann: I think that y'all are misinformed about a couple of the rules of your own city.

Johnson: Sir, let me ask you one more question. Are you here representing anyone tonight? Do you represent the Mayor, or her husband or both? If you do represent either one of them or both you will be allowed to speak. If you do not then I believe we are going to have to stop that because we can't allow people from the outside as part of this discussion.

McCann: Alright, may I speak on one of y'all's behalf?

W. Totty: Sure

Johnson: Now whose behalf are you speaking on sir?

McCann: Well, at the moment I'm going to speak on behalf of Mr. Totty. I will reserve the right of possibly the Mayor depending upon the rest of the agenda for the evening.

Johnson: Go ahead, sir.

McCann: The analogy that Mr. Bissell made, I think it's close but not quite. The analogy he made was somebody is supposed to file a tax return but didn't. What happened here, the analogy here would be this man filed a tax return, he received a tax clearance letter and then he went on about his business. And now, you guys are saying the tax clearance letter was issued in error and it's your fault for not questioning it.

Johnson: So you have this in writing?

McCann: I'm making an analogy right now. What I have in writing is I have a plat that was signed by the proper authorities of your city and was recorded. It doesn't say there is a city street, it says it's an easement. It's only a four lot subdivision with two lots fronting a main road. So, it's a Minor subdivision. It would be normal procedure for any Planning Commission in any city in Williamson County to provide a variance for something like this. So the fact that he didn't come back and question the Planning Commission is not out of order. In addition, your own subdivision regulations, Fairview City or Fairview Zoning Ordinance does allow for a plat to be approved without a meeting.

Sutton: Unless it's a Major Subdivision

McCann: This isn't a Major Subdivision, it's a Minor Subdivision if a subdivision at all.

Johnson: Our Codes Department told us that it is a Major Subdivision. The same gentlemen, that he's speaking of that gave him permission to do this thing. It is a Major Subdivision.

McCann: Okay

Johnson: Our engineer says it is a Major Subdivision.

McCann: That doesn't change the fact that your own rules allow for a subdivision to be approved without a meeting.

Sutton: It doesn't allow a Major Subdivision to be approved without a meeting.

McCann: There is no distinguishment between Major and Minor subdivisions in rule 2-108.4. So you've got a developer, an experienced builder with a good reputation who properly submitted the paperwork, was called and told it's recorded, go to work.

Johnson: You said properly, so you are saying on behalf of your client that he did pay the proper fees.

McCann: I don't know about that and I don't think he knows about that. This was two years ago.

Johnson: So we can't use the word proper.

McCann: What I'm saying is if you look at this on its face, it was approved and it's ready for development. On its face, any person who is in the habit of looking at plats and I look at a lot of them would say it's okay, let's go to work. There's nothing on here that talks about fees. There's

nothing on here that talks about whether a meeting was held. And like I said, under your own rules, it allows for a plat to be approved without a meeting. And like I say, the proper analogy is that a tax clearance letter has been issued, fine, let's go to work.

Sutton: Where's the tax clearance letter that you are referring to as far as him being given authority in writing to go ahead. Do you have that?

McCann: What I am making is an analogy. Mr. Bissell made an analogy that he didn't file a tax return when you were supposed to file a tax return.

Bissell: I'm with you except the point I would beg to differ is that it was an oral communication.

McCann: Well, no, it's not an oral communication. He has a plat that has been signed off and recorded so that effectively as an analogy is the same as getting a tax clearance letter. You're approved, you're clear to go forward.

Johnson: Is that the plat or the revised plat?

McCann: Well they were both signed off by the Planning Commission or by some, you can't read the name. I don't know whose name it is but it was signed by somebody with authority on behalf of the Planning Commission.

Sutton: Can you read the names?

McCann: I just said you can't read the signatures.

Johnson: You can't sit here tonight and tell us that was signed on behalf of the City you can just say someone signed it.

McCann: It's signed by the secretary of the Fairview Planning Commission.

Johnson: The secretary would be Ms. Lisa Anderson, is that what that name reads?

McCann: You can't read the name, I mean, it could be your name, I don't know. It's impossible to read. My point is I just want to make sure that everybody understands. The people in this room understand, the TV cameras understand that this man didn't do anything that he knew was wrong. And for two years he's been building and no one ever said that he did anything wrong. And I think he's right that to penalize him for doing what he thought was right, this is not ignorance to the law. This is we've approved your plat, go to work. Oh, two years later, you know what, we didn't approve it, we messed up. But that's not his fault and he's willing to pay the expenses that it costs to go back and get things done right.

Sutton: Are you saying he is?

Johnson: Okay, that's what we wanted to hear.

McCann: He's paying for Chapdelaine but he's not agreeing to pay penalties.

Sutton: For what he should have done in the first place

McCann: He's agreeing to pay what he should have paid in the first place.

Sutton: So the street will be completed as it should have been done.

Johnson: If they require it you are saying he will pay for it.

McCann: If the Planning Commission in an unbiased, objective analysis would require that, I believe that he would.

Sutton: Well, he's standing right behind you, ask him.

McCann: However,

Sutton: Ask him, he's standing right there. He's told me no.

McCann: However,

Johnson: You just said he said yes.

McCann: And I'm not finished speaking.

Sutton: Just about, go ahead.

McCann: A normal, objective Planning and Zoning Commission would not require, at least two years ago, would not require this to be made a city road.

Johnson: How many people make up our Planning Commission?

McCann: I'm sorry?

Johnson: How many people make up our Planning Commission?

McCann: I don't know that.

Johnson: Then how do you know two years ago a normal Planning Commission?

McCann: Because you can drive all over Williamson County and see the green signs for the streets that were, or blue signs rather for streets that were approved under the old rules. And he's been building for a lot of years, he's used to the old rules. The rules changed literally right after this plat was approved. So, for you to say that it needs to be done to current standards when this is a two year old plat, or to say he should have known better when he got somebody with the proper authority to sign it, that's not right. And the people need to understand that's not right. This man did what a normal, responsible builder would do and you're saying that he didn't and he should have known better but I am telling you there was no way for him to know better. The people who are supposed to know better and sign it did so and he went forward on their authority.

Johnson: So you're saying with all certainty as that plat shows it should be signed by the secretary of the Planning Commission. You are going to tell us that the secretary of the Planning Commission signed that because Mr. Totty himself has said that she did not.

McCann: I don't know who signed this. What I'm saying is it's a plat signed that's signed by somebody who held themselves out to have the authority to sign it. It's not his fault if it wasn't the right person or if they didn't follow the rules because he was told that they followed the rules. He was under the impression that they followed the rules and he had the paperwork that makes it appear they followed the rules. That's called working under the color of authority. To the best of his knowledge, he had the authority to go forward and do the things that he did. He was issued permits, he's paid for Certificates of Occupancy. He's done all the normal things that a normal person does in this circumstance.

Sutton: Except come back in front of the Planning Commission.

McCann: And there was no reason for him to believe that he needed to per your own rules.

Sutton: He's built all these homes in this city and spending dozens of times in front of the Planning Commission, he all of a sudden didn't have to, or didn't realize he should have, or forgot that he should come up here again, for some reason it was okay. I disagree with you, I'm not going to insult his intelligence.

Bissell: If I could ask a question here, Mr. Hall, maybe you could help me on this. If we do issue the citations and if Mr. Totty wishes to contest the citations is there not a process that that goes through where it goes to the Board of Zoning Appeals or something to that effect?

Hall: Board of Zoning Appeals.

Bissell: Further, granted I understand what you are saying but you are not persuading me that, as a long term builder, that, Mr. Totty it didn't cross his mind hey something's not, this process is not following the same process as before. I might ought to check on it. I don't believe that if I was his roofer and I told him something different than the last time I told him he wouldn't ask it again. I don't believe that. And so I believe he would apply the same due diligence to every part of his business if he was going to do that and that's what I'm saying here so you and I will just have to agree to disagree. If I believe the citation should be issued. If he wishes to appeal the fine and go through that process then he certainly can do that and you can make your arguments there.

Johnson: Mrs. Carroll.

Carroll: I have a question for Mr. Hall. Can you tell us or have somebody look up the information when the last time the subdivision regulations were updated, what year? Cause I want to say it's been some time where I was on the Board.

Hall: I'd say more than five years.

Johnson: It's not been in the last two years.

Carroll: Not in the two. But you think it was while I've been a Commissioner?

Hall: I'd say it was more than five years.

W. Totty: I've got a question, when was the last time the new subdivision regulations went into effect or enforced with any development in Fairview?

Johnson: When was the last time?

W. Totty: What was the last subdivision approved that went under the new subdivision regulations? Which one was that?

Johnson: What would be the newest one, would it be Mitch Dowdy's four lot subdivision over on the corner of Fernvale Road and Hunting Camp Road? Would that probably be the last one?

Hall: Probably so.

Johnson: Would that be the last one that's considered a major subdivision with the same four houses and it came to the Planning Commission. See the thing is here, Mr. Totty, if you had come to the Planning Commission, you would have signed a development agreement for the subdivision and posted a bond. I guess you are saying that you didn't know the rules because you didn't sign the paperwork. Now whether he didn't ask you to sign the paperwork, I don't...

W. Totty: Well, I didn't sign any paperwork cause it never was presented to me.

Johnson: I understand.

Carroll: How much, I'm sorry,

Johnson: Yes, go ahead.

Carroll: How much would your wife have to do with your business? Would she drop off anything at City Hall, has she ever ran errands, is she an active part of the business. Can you just give me.

W. Totty: She handles the real estate paperwork primarily. Other than that she don't really keep up with what I do in the field.

Carroll: The only think I keep, it's clicking, but I'm trying to figure out as far as the Planning Commission, I don't know if it was my Planning Commission days, or as a Commissioner, but I remember in the last couple years that we sat down and we reviewed the subdivision regulations and we approved them so I'm just trying to figure out the time frame. So if somebody can look that up for me and let me know because even if you didn't know. 2011 we were in office so I was just trying to get a timeline.

Bissell: Commissioner Carroll, maybe I can help you. I served on the Planning Commission from 2006 to 2008. Mr. Lovvorn and I, actually I was the Planning Commission chairman, and Mr. Lovvorn and I worked on the rewrite of the subdivision regulations. Now, they were not completed until after I became a City Commissioner, but it was shortly after that. So, I was trying to look through my notes here, I want to say that at the earliest it would have been 2008 at the latest it would have been 2009. And, you were probably on the Planning Commission but I'm not sure you were a Commissioner yet.

Carroll: That's what I'm trying to figure out, okay.

Bissell: I believe they were passed before the you and the Mayor took office.

Johnson: Mr. Totty, Mrs. Carroll just asked you a question. You said that the Mayor does the real estate aspect of your business. Does that mean you do all of the bookkeeping and paperwork, you take in all the bills, you write out all the checks and everything so you would be responsible for...

W. Totty: That's correct.

Bissell: Does the Mayor have signature authority on your account? On your construction account?

W. Totty: Yes.

Bissell: And I couldn't find anything in the corporation records that indicated that it's W.C. Totty Construction, is that correct?

W. Totty: W.C. Totty Building

Bissell: Building, I'm sorry. But, I couldn't find anything under W.C. Totty that indicated it was a corporation, are you an LLC?

W. Totty: Sole Proprietor.

Bissell: Sole Proprietor, okay. So you file tax returns together.

W. Totty: Yes.

Bissell: Is the general way, and I guess I'm kind of using what little I know about this development y'all are starting out here on Horn Tavern. Is the way the business kind of works,

you mentioned the real estate part of it, is that Mrs. Totty will, in her business, she will run across a piece of property, either by listing it or by hearing about it or seeing somebody else's listing that might be something y'all are interested in and then y'all will buy that property together and then you will develop off of that. Is that generally the way it works or are you out looking for property the same as she's out looking for property or is she just not looking for property. How does that work? My understanding is the property on Horn Tavern kind of worked the way I described it but that may not be the...

W. Totty: It works both ways. If she sees a piece of property she lets me know and vice versa and we take it from there whether or not we are interested in it or not. She handles the real estate end and I stay in the field. So, it's, I mean, I run my own business as far as what Commissioner Johnson was talking about. She handles the real estate and that's about it.

Bissell: But all the financial documents and everything since everything seems to be in both of your names, she, any money that is borrowed against it, any deeds that have to be issued, she also signs those things because it's in both of your names.

W. Totty: Closing documents and that sort of thing, yes.

Bissell: Okay, thank you.

Carroll: Mr. Totty, was any of this done through email, any of your communication or was it all verbal with Mr. Lovvorn?

W. Totty: With me, everything was verbal. Now, I can't say past that. I talked to him from time to time about this. I would ask him questions. It might be a week, it might be two weeks he would give me an answer and we'd go from there.

Sutton: When I first asked Donn Lovvorn about this, this was about two and a half months ago, almost three months ago now. And his response back to me was everything looked okay until he looked into it again. Did you have any communication with Donn Lovvorn after the point that I called him?

W. Totty: I haven't talked to Donn.

Sutton: Okay.

Carroll: So after the subdivision started and you started building, all communications were with John Bledsoe?

W. Totty: Well, I wouldn't say for absolute sure every word that was passed was between me and John Bledsoe, I'm sure probably somewhere along the line I probably did talk to Donn, but I don't know what specifically it would have been. I know one time he said we had to put a fire hydrant out there. We talked about that and of course we done it and most of the conversations actually between me and John over inspections.

Sutton: But there's no documentation of the approval to move forward.

W. Totty: Excuse me?

Sutton: There's no documentation of approval to move forward with the subdivision?

W. Totty: Well, my plat was. It was platted at the county and recorded and it was presented to me that was my okay to start work. I guess if it wasn't proper for me to start work they never would have sold me four building permits.

Carroll: Is it common practice for your wife to sign the plat or did she do it as a city representative?

W. Totty: She signs documents that I have to sign periodically from time to time. It's legal documents wherever we're at, whether it's at a closing table, a bank, or whatever.

Carroll: So she was owner of this property also for her to sign or active in the business.

W. Totty: Yes.

Carroll: I'm just trying to wrap my hands around the fact that as far as what you're stating is you went in, asked Donn what you needed to do, he reviewed the plans and from that point on, no longer was it, he didn't come back and say okay, you're going to need a fee for this or he pretty much you're saying he said nope, you don't need to go in front of the Planning Commission.

W. Totty: No, he didn't say no you don't need to go. It just didn't happen. I got the plat back signed and he said everything was going to be recorded and everything was good. I was under

the understanding originally when I give it to him that it probably would be going because that is the typical process. Why it didn't actually make it to the meeting, I could not tell you, I don't know.

Carroll: That's really scary to me to think of the process, it did not, and no one caught this from our part and if Donn is taking blame as he did in the last meeting, it just, without having him here to answer the questions, I don't know.

Sutton: You just said it was strange to you that you didn't have to.

W. Totty: It did pass my mind of how it was actually passed because that wasn't normal but I rolled on because it was signed and recorded and wasn't nothing really telling me that I couldn't.

Johnson: Mr. McCann, do you have both plats with you here this evening?

McCann: I do, I've got these little shrunken copies, you can't read much.

Johnson: You say you can't read the secretary of the Planning Commission's signature.

McCann: I will let you look at it.

Johnson: Are all of the other signatures on that document recognizable?

McCann: Really almost none of them are recognizable. If it was blown up to full size it might be more recognizable.

Carroll: We have that elbow that you can show, it will blow it up and put it on the screen. If you want to give that to, somebody will take that back there. Donn may be the only one who knew how to use it, I'm not sure. We'll see, hang on, I think we can.

Johnson: It may have to be done up here.

Sutton: No, it should be able to be done back there, it's an overhead projector.

Bissell: Vice-Mayor, I know, I talked with Matt Beata and that's Matt's signature on there, the second secretary. He says that he was contacted by Donn and asked to come by and sign it. I'm not sure where you are going with this but it's not going to be Lisa's signature for sure because Matt already says it's his.

Carroll: Did Matt give any indication of, cause typically Lisa would have signed it. Did he give any indication on why he was called to sign it?

Bissell: He said that he only contacted the second secretary when Lisa is not available. He said it's rare and that he typically just comes by and Sharon Hall has it ready for him with it starred as to where he's supposed to sign it on behalf of the Planning Commission.

Carroll: Well, I would like to know if he thought it was odd, he is a builder. If he reviewed it or if he was under the impression it went through the Planning Commission.

Bissell: Well, I can only tell you what he told me and that was that he didn't remember it going through the Planning Commission but he wasn't really paying that much attention to it. Because, I think, he does miss some of the Planning Commission meetings he didn't feel confident to say one way or another.

Cantrell: Mr. Vice-Mayor, while we're waiting to get that up may I say something.

Johnson: Yes, sir.

Cantrell: I haven't heard any indication that anyone has alleged or thinks that this is a forgery. Apparently, it is a valid document and my concern is that if it is a valid document, I don't believe there's anybody can show you, this may not make me very popular but it's very true, can show me any case law that says if that if I've got a government document I don't have some actual knowledge that would prompt me to think this is an invalid document or forged document or illegally procured document there is no case law that says I as an individual have to look behind that document to see that it's valid.

Bissell: Just for the record, Larry, I believe it happened just like Mr. Totty said it happened. I just don't believe that relieves him of the responsibility to follow the law, that somebody told him that.

Cantrell: I don't have any doubt about that, I've been hearing this stuff about whose signature it is.

Bissell: I want to be clear where I am on it. I am not disputing Mr. Totty's story, I believe that's what happened. He doesn't think he should be held accountable. I think he should be held accountable.

Cantrell: That's probably to be held at another time.

Bissell: But I don't dispute what he says. I've come to the conclusion that's probably what happened. Donn told him it was okay and he built houses.

Cantrell: I just wanted to get that in the record for everybody to consider it if that is the case, if I have no reason to believe that a document I get from the government is invalid, I have no legal requirement to look behind that document. I get a birth certificate, I don't have to look behind it. I get a death certificate, I send it off to the life insurance company and unless there's something to make them think that person is not actually deceased and this document is invalid, you can proceed on the document and that is the only point I wanted to make.

Johnson: Can we get the screen turned back on? Mr. McCann could you put it on there where the signature side down the left hand side both of them can be seen on the screen at the same time? Can you overlap them?

McCann: The initial plat was filed on 10/14 the second one was filed in December. The second one widened the easement from 20' to 30'.

Johnson: Could you tell us where the Planning Commission approved that variance?

McCann: Well, it's signed by someone who,

Johnson: Mr. Beata

McCann: Someone who's holding themselves out to have authority on behalf of the Planning Commission. I think if you read the form, it says that they certify that this plat has been approved.

Johnson: What are all the x's? Can you explain what the x's are in your dealings in this in your profession?

McCann: The x's are where those particular signature blocks have been deemed to not apply for this particular case. These are for water and sewer and the water and sewer on this is from Dickson County so my belief would be that Fairview Planning did not deem it necessary to have that signed off by someone from another department, from another county.

Johnson: Dickson Water didn't sign either plat. The Water Authority of Dickson County signed neither plat.

McCann: Right, and I'm not saying that they should have.

Johnson: So we have, above Beata's signature on both plats, we do have some signatures in one box. The same box on the other document there are no signatures, can you explain that?

McCann: Yeah, because the second plat was done solely to just expand or widen the easement.

Johnson: What happens to the first plat at that point?

McCann: Well, it's modified.

Johnson: Does it go away or does the second plat replace it?

McCann: Well, sometimes it replaces it, sometimes it's just an amendment to it.

Johnson: Have you signed either of those documents at any time?

McCann: Not these. I don't normally sign on the plat. It always has to be the owners, it has to be approved by the Planning Commission and then the other signature blocks are only signed when they are required.

Johnson: The plat on the right, is it not dated?

McCann: It is dated.

Johnson: Is it dated by the two property owners?

McCann: No.

Johnson: Looking at those signatures of the two property owners would you say those were signed by exactly the same person? They look awfully different on the two separate documents.

McCann: There's no way of knowing. I'm not a handwriting expert and I don't know if they're the right signatures or not.

Johnson: Does anyone else have any questions for Mr. McCann or for Mr. Totty? We have a motion on the floor, we have a second. All those in favor signify by saying aye. All were in favor.

Motion passes. We will now move on to the second part of the meeting here and it is to discuss and/or take action on the Mayor's

Mayor: I will take the meeting as I discussed with you earlier

Johnson: Okay.

Mayor: I discussed with Vice-Mayor earlier that he would turn B over to me. B is discussion and/or Take Action on level of Mayor's involvement in errors and omissions in the Williamsport Estate Subdivision Approval and Building Process. I guess we'll have questions. We'll start with you Commissioner Sutton.

Sutton: I'm still reading, if you'll start down there it will be alright. Appreciate it.

Mayor: Vice-Mayor Johnson.

Johnson: At any point during, you say you do have involvement in the business but you don't have involvement in the business. Could you differentiate how you do and how you don't?

Mayor: I guess the best way to say is if he needs errands run I may run them but I don't involve myself in his business as far as the process or the bill paying.

Johnson: And you do not sign checks?

Mayor: On occasion, if directed, yes.

Johnson: That's all I have right now.

Mayor: Commissioner Sutton?

Sutton: Do you have anything to do with the accounting process whatsoever?

Mayor: Accounting process. If he's asked to write a check I might but as far as his books, no sir.

Sutton: So you don't review them at the end of the year before taxes or anything like that.

Mayor: He brings his box to the CPA and they do his taxes.

Sutton: And you just sign off on it?

Mayor: umm-hmm.

Sutton: I'll go ahead and ask another question on it. There again, it's not a question of intelligence here or indicated either way. You have been on the Planning Commission, you were on the Planning Commission when this was done, correct?

Mayor: When the subdivision was built?

Sutton: Yes

Mayor: I've been on the Planning Commission since November of '11, yes, sir.

Sutton: And you recused yourself each and every time, which was several times.

Mayor: Anything that has anything to do with interest I will, yes, sir.

Sutton: And you are fully aware of the rules and regulations and the requirements of the Planning Commission.

Mayor: I would not say fully aware, no sir. It's a book about this big (indicates about 6 inches) that I study as needed and as asked.

Sutton: Ok, but you had access to all the rules and regulations.

Mayor: I had the Planning Commission book, yes sir.

Sutton: The big book, alright. So, by recusing yourself every one of those times and never seeing it come back to the Planning Commission did you not have a question about that?

Mayor: I didn't ever question whether his subdivision was or was not in the right or wrong but I've never been asked a question about if it was or it wasn't.

Carroll: Do you think it was in the right or wrong?

Mayor: I don't know if he was following along with what Lovvorn said he was acting under what they said for him to do. I do know he did everything the city asked him to do.

Johnson: Let me ask you another question, Mayor.

Mayor: Let's (looks around at other Board members), did you finish your questions?

Sutton: Yes I'm through.

Mayor: Go ahead, finish, sorry.

Johnson: Your husband has spoke that he doesn't necessarily think that he needs to fix the problems. The attorney thinks that he probably would if the Planning Commission was

unbiased. Do you think it's a fair thing to do if the Planning Commission reviewed it and said you should do this, you don't have to do that, do you think that y'all should make it right?

Mayor: I think my answer would be presumptuous not knowing exactly what the Planning Commission would require and exactly how that could or could not be addressed. So, I think that would be premature and it would never be anything that I would be discussing or anything I would make decision on. That would be between the developer and his knowledge and the Planning Commission and the engineer.

Johnson: Alright, then a follow up question to that would be if your company decided they were not going to do it but the Planning Commission said this is what has to be done. Do you think the burden should be passed on to the Fairview taxpayers to pave the city street? If your company was unwilling to do it do you think it would be fair for the taxpayers to have to bring it up to standard?

Mayor: I understand your question and I believe the information of it being an easement is a very big subject that needs to be discussed.

Johnson: I understand your answer but you didn't answer the question. I'm just saying if, the Planning Commission may be completely fine with it being an easement. If the Planning Commission says no, it is a Major subdivision, it is a city street, it needs to be built to certain standards and you say my company is not going to do it, my husbands' company is not going to do it, is it fair for the Fairview taxpayers to have to pay for it?

Mayor: Again, I understand your question but I think it's presumptuous to have a question, much less a full set answer that would be said yes, anything that's said because I believe it needs to be discussed by the proper people.

Johnson: Okay.

Bissell: Mayor, if I could word the question a little different way because I don't think it's presumptuous at all. I think it's the core issue that we have to decide as it pertains to serving with you and that is if the Fairview Planning Commission tells W.C. Totty Builders build the road, where do you stand? Are you going to, as Mayor of this City, stand with build the road or are you going to say as a sole proprietor, no, I'm standing with W.C. Totty, my husband, and we're not building the road.

Mayor: Mr. McCann would you speak?

McCann: I think the questions are presuming number one that she hasn't recused herself, which she did, so she's not part of the decision that's being made.

Bissell: She did not recuse herself from this conversation.

McCann: No, but when the plat was approved or wasn't approved or voted on or not voted on, she was recused.

Bissell: I'm simply asking her a question - is she going to follow her oath of office or is she going to side with her husband?

McCann: Well, the construction company is her husband it's not her. She's not a part of the construction company.

Bissell: Yes, she is. She is a sole proprietorship, she has a financial interest in that company because they file a tax return together, they share joint bank accounts, they live in the same residence, they own the property together.

McCann: Sir, as an IRS agent, you should know that a Schedule C applies to the income of one party.

Bissell: No, not under the law. It is a joint, non-severable liability. If you file a tax return together, both people are responsible for the income and/or the taxes generated from that. She has a financial interest in that, she said she signs checks, that's not the point here. The tail we're chasing is very simple. You took an oath of office that you would support and uphold the laws of the City of Fairview. Now, if the laws of the City of Fairview determine that that company owes either money or owes something where are you going to stand? That's what I need to know because that's the essential question to me. It's I get everything that's happened. I don't disbelieve anything that I've been told. Where I want to know is what is my Mayor, because my

Mayor is quoted as saying some things in the paper that would make me believe that in retrospect looking at this, part of her value system is that if it looks bad then you extricate yourself from that and you haven't done that. This did occur. This subdivision was built. These plats were filed. Everything did occur, so the part I'm trying to get my hands around because it's a very important decision that has to be made is where is your integrity in all of this. Yes, maybe you're not on a day to day actively in that business but I disagree with this gentlemen that you have a financial interest in that business and you are involved in it because you sign. So, if it boils down to the City or you, where do you come down? That's what I want to know. That's my only question.

Mayor: I feel like you're asking me to answer a question that hadn't been decided yet. That's my opinion and I feel very uncomfortable saying, whatever it is, when we have to discuss what has happened, why it has happened, what can be done and what needs to be done to do as right in where we sit right now in a finished, well, practically finished subdivision.

Carroll: Mayor, while you were on the Planning Commission, have you ever given variances to subdivisions? Have you seen it happen, not have you personally, just while you've sat on the board? Have subdivisions come in front of the Planning Commission where you would give some kind of variance to the builders?

Mayor: I would have to look at records of minutes of when those were presented but that's the proper procedure as we sit on the board, to look at things, yes.

Carroll: And then sometimes determine what we are going to require them to do and if we want to give a variance as the Planning Commission we would vote that in, right?

Mayor: The Planning Commission has that authority, yes.

Carroll: So, y'all could have gone and got a variance if you thought you needed to. It would have been the process if you thought you needed to widen the road or make changes, you know you that could have done that. You could have gone in front of the Planning Commission and requested variances.

Mayor: You're speaking about properties that I've been involved in or are you speaking....

Carroll: No, I'm saying you have that knowledge that builders can do that.

Mayor: When told by the Codes Director or the Codes Department as needed, yes.

Carroll: Okay

Mayor: Any other questions?

Johnson: So, still you're not going to answer the question on what.

Mayor: I did answer the question, sir.

Johnson: No, officially you didn't answer the question, but that's fine if..

Mayor: To the best of my knowledge I answered the question, sir.

Johnson: That's the answer you choose to give that you don't want to tell the public how you will represent them.

Mayor: To the best of my knowledge I answered the question, sir.

Carroll: Did Mr. Lovvorn ever call you when Commissioner Sutton started questioning the subdivision and maybe when he realized that there might be something wrong?

Mayor: I didn't know that there was anything wrong.

Carroll: So, you've never gotten a call from Mr. Lovvorn addressing when Commissioner.

Mayor: No one's ever said there's a problem with the subdivision and brought that to my attention, no.

Carroll: So the first you heard about it was the special meeting?

Mayor: The special meeting called on December 17.

Mayor: Other questions? What are the wishes of the Board?

Bissell: I have a motion. Mayor, you're probably not going to believe me when I tell you it's not with any pleasure that I make this motion. This is amongst the hardest thing that I think I've ever had to do sitting in this office. But, I think we have a responsibility to take this to the next level which is a formal hearing where a decision is rendered as to whether or not you did something that was right or wrong. I therefore make a motion that the City Attorney, from the direction of

the City Manager, prepare a formal notice of charges that you did willfully participate in the building of a subdivision and it was not built in accordance with the City of Fairview regulations and those constituting misdemeanors under Tennessee law and the City Attorney will have to provide us with the necessary wording for that once that is prepared that it be served on you and that we call a special meeting for next Thursday at 5:30 pm at which time we will conduct a formal hearing and then make a final decision as to whether or not there's any culpability here on your part.

Sutton: Second.

Mayor: In discussion I will note that I will not be available that particular day.

Bissell: Okay, how about the 23rd at 6:30?

Mayor: I will be available after the 25th. After the 25th.

Bissell: I'm sorry?

Mayor: After the 25th.

Bissell: Then I make the motion that we do it on the 30th, the night of the Town Hall, instead of the Town Hall at 7:00.

Carroll: I would like to amend that motion that we have an independent investigation done prior to this meeting or hearing.

Johnson: I'll second that for discussion.

Mayor: Discussion?

Carroll: I just don't know that there's enough information here. I would like an outside person to come in and give a legal opinion on the whole situation.

Sutton: Can I ask a question? Larry, under this right here that we're discussing, a formal, could subpoenas be issued for that?

Cantrell: The Board would have the authority to issue subpoenas if they deemed necessary.

Sutton: Okay, I just want to make sure. At what point do we need to do that?

Cantrell: You'd have to get them out in time for them to be served and get them back if you're going to have a and I'm not opposed to a outside investigation but if you do that you need to set your meeting after you get the report back cause I don't know how quickly you get that back, it might be two weeks, it might be ten days, it might be three weeks.

Carroll: I just, okay, go, I'm sorry.

Cantrell: The important thing being the investigation be done properly rather than something quick. You want something that's accurate.

Carroll: I just believe due process should occur. We need a professional, outside agency to come in before we determine in a hearing whether or not the Mayor.

Sutton: I don't have a problem with that at all. Leave to the City Manager to choose someone to come in from the outside.

Cantrell: I think you would have to get the minutes from tonight's meeting, the minutes from the meeting with Mr. Lovvorn and have those available for the outside investigator.

Carroll: Do you have any opinions on the process if you think this is a necessary process

Cantrell: Well, if you are going to initiate the process I think it's necessary that you have the investigation. The problem that you are going to have as I understand it, you're talking about two different hearings. You're talking about a hearing to determine if you want to proceed on further and the other process is that under the Charter for fitness for office you have a hearing on that. Any findings on that is not mistakes. Even if it is a mistake, inadvertently I violated a statue or I violated an ordinance. It is a situation, the only way you can remove an elected official from office, and I have not heard anyone say that but that's the reason for having the hearing when you say go forward. People are elected to office and courts are very, very slow to remove someone from office whom the people have elected, as they should be. The process involves, it has to be something that is sufficient to be a crime and not just a misdemeanor type crime. It has to be something that you could be indicted for today or under the old common law. And it can't be something that I just did out of inadvertence. I got a traffic citation, I was speeding down the road. Yes, that's an offense I could be indicted for but it's not going to rise to

an offense that I could be removed from office for. There is one other thing the Board could do after it has this hearing. You may have to, may not have any choice, depending on what the result of the hearing is. You may have to report this to the State of Tennessee Comptroller's office and they can appoint whom they want to do an investigation, TBI, anybody they want to appoint. Or, they can take the information this board has assembled, the independent investigation, etc, look at it and say, there's no point in going forward. This Board itself may do that. May look at the results of the independent investigation and say this has been thoroughly investigated by an independent firm that has no connection with the City and this is no reflection on any city official, any city staff member, myself or anyone else connected with the City. Anytime you get into this type of situation, you desperately need someone who is not connected with the City to conduct that investigation. Number one, it sets up a situation where this person they don't work here, they don't work with any of the people here, they don't work with any of the staff here. They come in, they take the facts, they do their investigation and then they're gone. It has instant credibility, as it should. They are being paid to do a job, they aren't being paid to find a result. It is not differential equations where you get the answer and work back to find the question. You are given a set of circumstances and say go investigate this, talk to whomever you need to talk to, bring me a written report with recommendations supported by evidence. That's the way it should be, that's how the person I'm sure the City Manager will be getting will be that type of individual. But I would suggest to the Board that if you want to adopt that and I do think that's the smart way to go if you're going to go a route on this, is to get that independent investigation and then set your meeting because you don't want the meeting driven by the report. You want the report finished to be able to proceed to your meeting. Have a logical conclusion to this issue because if there's not anything out there to be garnered, and I'm not making aspersions either way, if there's not anything to be garnered, you want this thing over with because it hurts the City, it hurts the function of this Board, it hurts the function of people trying to deal with the public and if it's baseless, then get it over with. If it is not baseless, then go do what you got to do. At any rate, you can't win anything by dragging this on. That's not fair to the person you are investigating, it's not fair to you as Board members, it's not fair to the staff that has to deal with the public and it's not fair to the public. That's more than I've talked in the last three days because I couldn't talk.

Carroll: I appreciate it, thank you.

Sutton: My goal is just to get all the answers to all the questions that we're asking, them not be averted and the opportunity for having the Codes Department here under oath to be able to answer questions that need to be asked so they can be duly documented so I agree with the amendment.

Carroll: Is it your suggestion to go ahead and proceed with the hearing and then determine an investigation. I mean, I know you said we want to do the...

Cantrell: No, ma'am. My suggestion would be to get your independent investigation first. Because then you've go a hearing and you want to have that investigation report back, have a chance for it to be disseminated to you, be able to read it, digest it and then have your hearing.

Mayor: Any other discussion? All those in favor of the amended motion? I'm will not vote. All those in favor...

Bissell: You're not going to take nay's?

Mayor: Oh, all those in favor of the amended motion? Sutton, Johnson & Carroll in favor. Bissell against. The original motion does it still stand or did that negate it? You have three for the amended for the investigation.

Bissell: I think that would negate the original motion.

Mayor: I think so, too.

Cantrell: The amended motion would actually in this instance would take the place of the first one. You won't need to vote on the original motion.

Bissell: We won't know when to set the meeting for and we're going to need a meeting.

Sutton: Mayor, if I could, one more thing. City Manager if you could get back with us as soon as possible to let us know that you have assigned someone to do this and as rough as possible get a time frame so we can set another meeting for it.

Mayor: Need a motion for adjournment.

Bissell: Moved

Sutton: Second

All were in favor. The meeting adjourned at 8:40 p.m.

Brandy Johnson
City Recorder