

From: Kim Roney <mskimroney@gmail.com>
Sent: 10/9/2018 8:57:41 AM
To: Sheneika Smith, Keith Young, Brian Haynes
Cc:
Subject: Re: Notes on Council Agenda 10/9/2018

As an update, here's the email I got from Joe regarding the Maxwell St. properties:

"Hello All:

Many of us have been incensed by what has happened in Washington recently. But here in Asheville, the government we're all directly responsible for has, for 15 years, has had a problem on Maxwell Street. I am writing to ask you to support fairness for Reid Thompson and his Maxwell Street neighbors. It'd mean a lot to him to see community support on Tuesday night (Oct 9th) at the City Council meeting, after his 15 year long nightmare.

This is not a problem which originated with this Council, but they have a chance to fix it. Fifteen years ago staff approved plans for Greenlife that were based on a buffer between the loading dock and the Maxwell St. neighborhood and no commercial traffic on the street, and then eliminated the buffer. Greenlife essentially received numerous variances (without a hearing or notice, through a weekend signature by staff). This removed the buffer entirely, and allowed commercial traffic on the residential street. In 2006, Dr. David Owens (UNC-CH Institute of Government zoning expert) validated that the approvals exceeded Staff's authority. In 2007, after more neighborhood complaints, Council asked Greenlife to proceed with a promised correction of the dock to remove traffic from the street **OR** the City would construct impediments to keep the trucks off the street. Neither Greenlife **nor** the City followed through on those promises. The constant nuisance of commercial traffic, diesel trucks idling near bedroom windows, and the constant noise of truck backup alarms, all at all hours, was a nightmare for the residents, particularly for tenants trying to sleep in Mr. Thompson's houses directly across from the loading dock. Constant complaints to the City and the police about the truck traffic resulted in no action being taken against Greenlife or the commercial drivers. Mr. Thompson lost tenant after tenant because no one would put up with the noise and traffic. He was forced to sell 3 houses to defend his remaining property and personal home. With commercial traffic somewhat less on the weekends, he turned to short term rentals, while continuing to try and get the problem solved.

Now the City is choosing to enforce its short term rental ban against Mr. Thompson (to the tune of \$1 million in fines) even though, for 15 years, it has chosen not to enforce the planning ordinances which would have prevented this or the traffic ordinances which forbid commercial traffic. Commercial trucks are regularly allowed to park straddling the residential sidewalk across the street, but Mr. Thompson was recently cited for his shrubbery extending 8" over the sidewalk. He has wanted a fair hearing on this matter for over 15 years. He (and his neighbors) were finally was able to tell their story at P&Z a month and a half ago. After seeing photographs and videos of the situation and hearing from a number of the neighbors, the Commission voted 5-2 in Mr. Thompson's favor, over the staff's recommendation for denial, and after Staff altered plans to suit their case (see below/attached).

Now, on Tuesday night, by following P & Z's lead, Council has the opportunity to correct some of the problems by letting Mr. Thompson operate short-term rentals (agenda below). He is only asking to turn the 'lemons' that the City inaction has given him into 'lemonade', and, ironically, he is being threatened with penalties far beyond anything

Greenlife has faced after causing the problems in the first place and repeatedly promising to correct them.

I've just stated the gist of the situation above, should you want more details, read on below. I am sending this email because you are a friend of mine and you care about our City. Mr. Thompson has had to deal with a tremendously punitive process for trying to stand up for his rights under our law, and he's paid a huge price. I promised Reid that I'd reach out to you all and ask for your participation in the Council meeting. If you can come and speak yourself or cede your time to another or write to Council, any of those would be great. Reid will probably be in Pack's Tavern until the case is heard, if you want to join him and wish him well. I have faith in this Council to do the right thing, and get to a fair resolution on this matter, particularly with your help. Hope to see you there.

Cheers,
Joe

1. Greenlife Interrelatedness:

I have heard from our City that they didn't feel that it is relevant to discuss Greenlife as part of the reason for Mr. Thompson's request. Ignoring the interrelatedness of issues is against our standards of practice as certified planners. It's also not reasonable to ignore the ongoing 15 year nuisance, especially the obvious nature of the conflict of having unbuffered tractor trailers on a residential street. One side of the street is connected to the issues of the other side of the street, especially when the protective buffer has been removed. This is a nuisance which costs all Asheville residents to have police show up, only to continually deliver verbal warnings to Greenlife, never to deliver a violation. In 15 years, zero violations! This costs all of us, and takes police away from doing critical police work. Also, it is in conflict with our laws, and harms the citizens on Maxwell Street. I have never found a public record of decision to allow our officers to ignore the law and shrug off the continued nuisance. This record and conflict is notably absent in the case on the Council Agenda that the City puts forward.

2. The Alteration of City Plans:

The City Staff utilize the Comp Plan maps as their case in the Agenda, even though that map was changed mid-way through our application hearing process. I've attached the side-by-side maps of the Comp Plan Map that was in the public record when we went before Planning and Zoning in May (left), which we were continued to July, and in June, Staff brought forward map changes which gerrymandered the lines beyond the properties which were being heard, but also included Mr. Thompson's house (right). Note the change in the yellow color, which foresees a 'residential' district, in spite of Greenlife operations. Bear in mind, the standard for practice of review is to utilize the rules at the time of application, not on altered plans that were amended "after" the application process. It's tantamount to changing the rules of a game after the game started. From a clinically planning perspective, I cannot think of any reason to advance to the future of a street toward residential, when open/unbuffered commercial intrusion exists in conflict with known nuisance calls to the police. Once could see this as retribution toward Mr. Thompson, or it is a practice of planning that falls well short of our best professional practice standards. I can't think of a third option. There is clearly an open conflict of enforcement and commercial traffic, and to move to suggest that the future of Maxwell Street should remain primarily residential runs counter to the American Planning Association's rules of Comprehensive Planning to "solve for known conflicts." Regardless, this should give a citizen pause that government officials would attempt this, and not maintain an unbiased review of the facts of the case. Finally, we (the applicant) were never made aware of these changes to the Comp Plan until we read them online. Think of the efficacy of that; Staff never let a case in continuance know about part of their evidence being altered in their case while the case was still in hearing, until I raised the issue. Additionally, there was no mention in the minutes to Council, nor the Planning and Zoning Commission that this alteration was happening and the resulting conflict.

3. The Alteration of the Public Record to Mask Ownership Conflict:

Absent from the minutes of the record is the evidence of ownership that several members of Maxwell Street raised during public comment as a point of conflict. The owners of Greenlife property are Merrimon Avenue Investments, who receive revenue from the property and would be the receivers of the Notice of Violation for the operations of their tenant. The City refuses to follow through with Notice of Violation of the loading bay or other zoning inconsistencies. Merrimon Avenue Investments is owned by the James and Pamela Turner, though their son Rep. Brian Turner also receives revenue (tax disclosure attached). Aside from the obvious politics of this, it is a fact of the record. I have asked for a copy of the Notice of Violations for Greenlife and have received no records of violations from the City, yet Mr. Thompson has been receiving numerous violations, including his shrubs extending over the sidewalk by 8 inches. It is clear from the record that laws do not apply consistently on Maxwell Street, and Mr. Thompson is bearing the full force of the City in spite of the numerous violations across the street. This should give us all great pause as citizens. Would we be supportive if the owner were Charles Taylor, Pat McCrory, Hillary Clinton, Trump or even my Mom (though my mother would never do such a thing!); to receive similar 'get out of the law' cards? The owner should not matter, when the laws are in black and white. After all, John Adams said it best when he said we are "a republic of laws, not of men." The record is the record and the laws are the laws. If we're going to bend the laws, we need the record to reflect that. If this is too uncomfortable a matter, then let's rezone the whole darned area to solve for this loading issue once and for all, rather than pretending that it isn't a problem. A citizen should enjoy the equal protection of our UDO or the equal relaxation of enforcement."

On Mon, Oct 8, 2018 at 3:09 PM Kim Roney <mskimroney@gmail.com> wrote:

Good morning, Councilpersons Smith, Young, and Haynes!

Here are my notes on this week's agenda:

1. Consent Agenda:

B. Regarding the Tuk It franchise agreement: Endorsement at the MMTC passed with only my vote as a nay. Staff noted that these agreements are a way to regulate, and that without the agreement, the company *may* be able to operate regardless. We suggested that the language of the agreement include bikes as well as not impeding vehicular traffic. **I voted against it because it is another company offering tours that uses our traffic lanes for profit, and having experienced issues with the pub cycle and grey line trolley, I don't think we need more. I hear many concerns about the pub cycle, and I don't know how adding more, similar tours for tourists on our roads is going to help us address issues on our roads.

D. Glad to see the tactical urbanism project moving forward!

G. This was brought forward at the MMTC. Once again, I add that we can call it an "equity-based" group, but if the membership of the task force doesn't reflect the people of Asheville, we cannot move this forward responsibly. Let me know if you'd like more notes on other cities findings, especially on how vision zero is being used for racial-bias during traffic stops for cyclists and pedestrians. We do not have a good track record. Design, yes; enforcement, very carefully.

H. Oh my. The additional expense is small. The original expense seems high, and it'd be encouraging to see a number that reflected an actual expense. I hope there are receipts for consultant company travel expenses.

2. Presentations and Reports

A. EMT update: This may be a great next step in getting folks the help they need without increased APD presence. Given the 117 interactions, that means the 4% of concerned citizens were at least 4, and I hope the presentation goes into detail. It also looks like at least 2 of the interactions were farther down Patton, so if it's not addressed in the presentation, it may be good to ask if those were solicited interactions.

3. Public Hearings

C. As a general rule: please, please, please vote "no" for all zoning changes that move from density housing to lodging, even if it is conditional. It does not set a solid precedent, and until there is comprehensive overhaul of

STR policy, constantly moving the line to rezone for lodging is going to weave a map of micro hotels across the whole city. I find it surprising the Joe, an advocate for Smart Towns and density housing, is the contact for this. I know the Greenlife/Whole Foods grocery situation has totally screwed over home owners on that block, and understand that may earn your vote of approval. Keep in mind that they have *not* agreed to ensure that at least one unit will remain available for long-term use.

D. This location is across the bridge from the neighborhood side of Brevard, but a hotel will have an impact on the neighborhood side. Once again, we need housing density. The transit, pedestrian, and greenway infrastructure seem appropriate. As a general rule, it would be great to have a draft motion to both approve and deny on every conditional zoning item.

4. Board and Commissions: Looks like you've got a couple good folks for Public Art! I'll put the word out about the West Asheville seat for NAC.

Peace and health,
Kim

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Kim Roney - Pronouns: She/Her/Hers
Piano Teacher
Asheville City Multi-Modal Transportation Commission & Transit Committee Member

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