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Public Not Welcome

Two important public hearings were held in Memphis on Wednesday, January 12, public hearings on matters which are crucial to health care in the Mid-South. It was startling, therefore, to find less than twenty-five people at the Shelby County Quarterly Court hearing on a proposed interim contract between Shelby County and the University of Tennessee. The contract provides for the transfer of management of City of Memphis Hospital from the County to the University. It also requires that the County provide much needed long-range capital improvements, which include the contruction of a twenty-five million dollar accute care facility to replace John Gaston.

The contract raises serious questions about the future health care in the Memphis area. For instance, what effect will it have on delivery of health services to area indigents, the great majority of whom are now served by City of Memphis Hospital? Indeed, one of the University's main objectives in negotiating this contract is to change City of Memphis Hospital from an indigent hospital to one serving both private and public patients and to manage it primarily as a teaching facility.

One of the two speakers at the hearing complained that it was difficult for many people to attend at 10:00 a.m. on a work day. The poor attendance at such an important hearing calls into question the adequacy of a tiny small-print notice buried in local newspapers.

That question was raised at a public hearing held at 4:00 p.m. that same day to consider the application of Mid-South Medical Center Council to continue operating as the Health Systems Agency for this area. The Health Systems Agency is a locally constituted, federally sanctioned agency which serves as a data gathering and planning body for health systems in the area. The MMCC wields immense power through its authority over allocation of health service funds and its authority to issue certificates of need, which are required prior to any improvement or expansion of health service facilities.

A public hearing on such an important issue certainly calls for more than a small print (nearly illegible) notice buried on the sports page of a local paper. Also, the application of MMCC is long and complex yet it was not made available until the day before the hearing and then only for examination at MMCC offices; it was impossible to take copies away for study in preparation for the hearing.

The adequacy of such notice was questioned at the hearing and a postponement requested so that the plan might be adequately reviewed and responsibly critiqued in preparation for a true public hearing. The issue was debated for more than an hour before the MMCC Board voted against postponement, arguing that they were operating under temporal restrictions which dictated the short notice. An appeal will be made to HEW on the issue of MMCC's compliance with federal regulations governing adequate notice.

The debate was an indication that there is vital public concern about the future direction of health care in the community and in the Health Systems Agency which will dictate, in large measure, that future – this notwithstanding the statement by Board member and City Councilman Fred Davis, who said that poor people had neither the ability nor the inclination to prepare for such a hearing even if they were given the application and six months to review it. Is such an assumption grounds to preclude the public's right to participate in deliberations on the future of health care in their community as guaranteed by federal regulations and HEW guidelines.

– Harry Sayle

Zeroing In On Zoning

Few rituals at City Hall are more arcane than the Planning Commission's hearings on zoning changes. Citizens are met with an alphabet soup of R-1-A, R-5-P, R-TH, M-1, C-3, O-2, SC-1, AG, F, and so on, each with its own highly defined characteristics made enforceable by law. What happens in these hearings ultimately affects the quality of life in every neighborhood in town.

Zoning is supposed to be a rational way of protecting property values and isolating residential uses from obnoxious commercial and industrial uses. But we're slowly coming to see how closely land values are tied to re-zoning; as a recent case showed, some Germantown developers can lose about $315,000 on six acres of land if it is 'downzoned' from commercial to residential use. The alphabet soup really spells out BIG MONEY.

The money difference shows up clearly in the thirteen different residential classifications: they determine how many dwelling units can be developed on a piece of land. Single-family districts, for example, may require 15,000 square foot lots (R), 10,000 (R-1), 8,500 (R-1-A), or 6,000 (R-2). Duplex districts (R-3) require 6,000 square feet, while townhouses (R-TH) require only 3,500. Garden-type apartments (R-3-A) may have densities of 17 units per acre, multiple dwellings of 22 units (R-4-A), 36 units (R-4) or 57 units (R-5). There are other restrictions on amounts of front yard, side yard, parking-space requirements, and building heights (from 35 feet for single family up to 125 feet for multiples). But it all comes to the same thing – maximizing the dollar-return per unit of land. That is why lawyers appearing at re-zoning cases are paid so handsomely; considerable amounts of money may ride on their success or failure.

The procedure in each of the public-hearing cases is to hear from the applicant – while showing the parcel and its surroundings on the overhead projector – then hear from anyone objecting to the re-zoning, then hear from the professional planning staff as to their recommendation to the citizen-panel Planning Commission, who make the actual decision.

At the recent hearings of January 6, the most interesting cases on the calendar (printed in full in *The Daily News* of January 5) came at the end.

One case (Z-2992) concerned some land Memphis Housing Authority

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Why Memphis Is So Obscene

The problem with obscenity is that one person's pecadillo is another's crime. Whether the medium in question is speech or an image, obscenity in the judicial sense has been narrowed to sexual expression. We can and do have the prerogatives of denying minors access to pornographic material, of using zoning laws and city ordinances to define the manner of distributing pornographic material, of employing societal mores to judge the material or to socially contemn those who produce or sell it.

With these local sanctions at our disposal, why has Memphis become the focus of national publicity with regards to obscenity? Why has a local assistant US attorney spent an estimated $4 million of the taxpayer's money to prosecute obscenity trials of dubious constitutionality? Are these trials being staged in Memphis because of its Bible-belt location and its conservative reputation? Are these trials being conducted to execute the law, to further a young prosecutor's career or to extend a personal sense of morality onto the public, whether that public is willing or not? Are these trials the result of a politically motivated campaign against pornography by the Nixon and Ford administration? Or are they simply the result of a legal if not social ambiguity towards pornography: i.e., our mores have changed but not our laws?

The legal history of obscenity in America can only be called tortured. It wasn't until 1957 that the first federal standards with regards to obscenity were established as Constitutional laws applicable to states. In *Roth v. US* Justice Brennan in his majority opinion wrote that obscenity was not protected by the First Amendment and that illegal obscenity exists when "to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest . . . and is . . . utterly without redeeming social importance." Justices Douglas and Black dissented; in their opinion the Constitution delegates no power of government over the free expression of ideas. Laws contend with actions, not ideas. Since that time no majority of the Court has been able to agree on what constitutes the obscene.

The imprecise wording of *Roth* was a harbinger of things to come. Who is the average person? What is a community? Also the burden of proof, that a work 'utterly' lacks redeeming value, falls upon the prosecutor. Hence a porn film could run subtitles of Voltaire's *Candide* and not be illegal.

With a plethora of obscenity cases before its bench and time consumed reading and viewing a multiplicity of erotica, the Supreme Court was in danger of becoming the Supreme Censor. Thirty-one obscenity cases were determined simply by head count. The President's Commission on Obscenity and Pornography was instigated by Johnson in 1967-68 to provide legislative relief for the courts. In September 1970, with 12 out of 18 members in agreement, the massively documented and researched report (over 1000 pages) recommended repeal of federal law "which prohibits or interferes with consensual distribution of 'obscene' materials to adults." Also recommended were three 'positive approaches' to the problems of porn: industry self-regulation, organized citizen action groups and sex education. A stunned Nixon and Senate rejected the Commission's report and recommendations.

In 1973 in *Miller v. California* the Court changed the standard for obscenity; now the work in question must lack "serious literary artistic, political and scientific value" to be obscene–a long way from 'utterly' without value. The rephrasing allows a lesser burden of proof for the prosecution, but what is serious value (no one can smile?) and what about educational, philosophical, historical or religious criteria? What the Court did was clearly charge local government with the responsibility for applying local community standards to obscenity cases.

On April 30, 1976, in Memphis, a jury of the US District Court convicted twelve individuals and four corporations on charges of conspiring to transport obscene materials (the film *Deep Throat*) across state lines. Only three defendants were convicted on the second count of actively transporting obscene material from Fort Lauderdale to Memphis. The Court has not pronounced sentence because there is now a case before the Supreme Court, *Marks v. US*, pertinent to the Deep Throat trial. The Supreme Court must decide if the standards of *Miller* are applicable to material produced before 1973 when those standards were determined. If so, would this be a violation of ex post facto? *Deep Throat* was filmed in January 1972.

The trial lasted nine weeks; there were 76 prosecution witnesses and 16 for the defense. The trial was heavily reported in the national press because the obscene material was *Deep Throat*, the most popular and publicized of the porn chic films, because for the first time an actor, Herbert Streicher, was prosecuted for his role in a film and because conspiracy laws were being applied to obscenity.

Federal conspiracy laws were written in the '60s to obtain arrests of civil dissidents and political activists. It takes two to make a conspiracy and no matter at what point a person enters or leaves the conspiracy, he is responsible for its every consequence. Hence Streicher, who is a member of Actor's Equity and received $100 for one day's work and who had no editorial, production or distribution control over the film, faces five years in prison and a $10,000 fine. There were 101 unindicted co-conspirators. So not only are the makers, producers and distributors liable to prosecution but the camermen, the developers of the film, the ad copywriters, the theatre owner, the woman who sold tickets, the guy who took the tickets, the concessionaire who sold the popcorn and the janitor who swept up after-

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WHY MEMPHIS IS SO OBSCENE

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wards come under the long arm of the law.

Can a film produced with money from New York and New Jersey, made in Florida by Americans from many states be prosecuted in Memphis for obscenely violating this community's standards?

Let's apply the prosecuting censor's law. If an officer in Erewhon, Tennessee, adjudges a new *Ulysses* or *Lady Chatterly's Lover* or *Sanctuary* to be obscene, no matter if the book were composed in Montana, printed in Massachusetts and distributed from Minnesota, everyone connected with the venture would be liable to prosecution. The author, the editor, the publisher, the ad agency, the distributors, the bookstore and the clerk who rings up the sales – all could face prison and fines. Repression anyone?

Words and ideas are everyone's business and are guaranteed by the First Amendment with no if's, and's or but's. Would you trade your right to see the film and read the book of your choice, or to walk out of the theatre and close that book if they were distasteful, for all the peep shows in Memphis? Can it be presumed that a court, an attorney, an officer or an 'expert' who sees porn an a matter of course is any more or less immune to the porn than you or I? The burden of the censor is that while he recognizes corruption and wants to remove it at its source, he alone must remain pure in the presence of what corrupts others.

Perhaps Justice Douglas, in an opinion he wrote in 1971 (*Dyson v. Stein*), should have the final word:

> **Whatever obscenity is, it is immeasurable as a crime and delineable only as a sin. As a sin, it is present only in the minds of some and not in the minds of others. It is entirely too subjective for legal sanction. There are as many different definitions of obscenity as there are men; and they are as unique to the individual as are his dreams.**

– Pat Waters

ZEROING IN ON ZONING

(Continued from front page)

had sold to Massey-Ferguson; MHA requested that it be re-zoned from R-4 to M-2. MHA's spokesman Drue Birmingham stated his case, showed where the parcel was (just west of Kansas School near other light-industrial zoning); then John Dugan, principal planner for current planning, recommended that the application be rejected, in favor of re-zoning to parking, as a buffer between the Massey-Ferguson plant and some anticipated new multi-family dwellings. Commissioner George Dobbins agreed: "I don't think we want any more M-2 zoning in that area...." The Commission voted 4-3 to reject MHA's request.

The next case (Z-2995) requested re-zoning on Harbert just west of Cooper from R-3 to O-1 for a small office. This time residents of the neighborhood objected, arguing that the precedent would be set for uses that would defeat the area's attempts to revitalize itself as Central Gardens (immediately west of it) had done. The application was denied.

Z-2996 involved locating a new truck terminal at Getwell and Shelby Drive. The application was approved.

The next case (Z-2998-SC) involved re-zoning from AG (agricultural) to C-1 (neighborhood commercial) at the corner of Austin Peay and Mudville Road. The applicants were represented by William Farris, whose firm may be the best zoning lawyers in town. Neighbors' objections were that the proposed grocery store would attract undesirable elements. The application was approved.

It is said that the Planning Commission agrees with its staff recommendations about nine-tenths of the time. The applications then go to the City Council for approval; it sides with the Commission's recommendations most of the time, but there is always the significant exception, usually presented by a good lawyer, where the Commission's decision is overrruled.

Anyone following zoning decisions here and elsewhere begins asking some obvious questions: Are re-zonings ever used as a means towards perpetuating racial discrimination? Are the cash values of re-zonings apparent to the people involved in deciding such matters? Should real estate people be members of the Planning Commission as they are in Memphis? Is the classification system presently in force the best one? Is the present zoning ordinance doing its job? How much 'overzoning' to commercial and industrial uses has been done here? Should the City Council be spending so much of its time on zoning matters? Is there any way for citizens to become informed about the multitude of ways zoning affects them?

– David Bowman

earthly delights

DOWNTOWN ACTIVITIES

B-1 BOMBER MEETING*
January 21 – Main Street in front of the Federal Building–Noon to 3 p.m.

LECTURES/DIALOGUE

JEWISH COMMUNITY CENTER*
January 26 – Frank Williams, Executive Director of National Committee Against Repressive Legislation–8 p.m.

UNITED NATIONS ASSOCIATION*
January 31 – Highland Branch of MPL – 7:30 p.m.

RAWLINGS' RENEGADES*
January 20 – First Thursday Non-Meeting – Pinch – 7:30 p.m. – Sorry you missed it!

EXHIBITS

COMMERCE SQUARE*
Through January 30 – paintings by Kenneth Williamson
January 31 - February 18 – paintings /designs by Ken Shen Huang

COURT HOUSE – First Floor*
Andrew Jackson Statue – carved from life

MUSIC

BEETHOVEN CLUB*
January 23 – Resident Artist Recital – 4 p.m.

DANCE

LOOSAHATCHIE FOLK DANCERS*
January 27 and each Thursday – Newman Foundation – 7:30 p.m.

THEATRE

'BELLE OF AMHERST'
January 24 & 25 – Auditorium South Hall – 8 p.m.

PLAYHOUSE ON THE SQUARE
Through January 22 – 'Hay Fever'
January 28-February 27–'A Thurber Carnival'

CIRCUIT PLAYHOUSE
January 27-February 13 – 'Tooth of Crime'

FILM

CENTER FILM SOCIETY – UT Student Center Auditorium–7:30 p.m.
January 21 – 'King of Hearts'
February 4 – 'The Hospital'

FRIDAY FLICS – 4 & 7:15 p.m. – Peabody Library Auditorium*
January 21 – 'Georgi Zhukov – Marshal of the Soviet Union
January 28 – 'Isoroku Yamamoto – Grand Admiral, Imperial Japanese Navy'

ON THE AIR

THE BEST OF TV MOVIES*
January 24 – (EM-WREG) 'Sirocco' for Bogart freaks
January 26 – (EM-WREG) 'Morgan' –'60s madness with David Warner as the Marxist gorilla
January 28 – (LLM-WREG) 'John and Mary' – mores on the move with Hoffman and Farrow
January 29 – (AT-WREG) 'San Quentin' – Bogart and the Oomph girl
January 31 – (EM-WREG) 'White Cargo' – Hedy Lamarr steams up the jungle – (LLM-WREG) 'A Woman's Face' – Joan Crawford's face, etc.

*FREE

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