COMMON COUNCIL
SPECIAL SESSION
November 6, 2013

In the Council Chambers of the Showers City Hall on Wednesday, November 6, 2013 at 9:00 pm (after the Committee of the Whole that began at 7:30) with Council President Darryl Neher presiding over a Special Session of the Common Council.

ROLL CALL

Roll Call: Mayer, Rollo, Ruff, Sandberg, Volan, Granger, Sturbaum, Neher, Spechler
Absent: Rollo

AGENDA SUMMATION

Council President Neher gave the Agenda Summation

LEGISLATION FOR SECOND READING AND RESOLUTIONS
Ordinance 13-21 To Amend Title 8 of the Bloomington Municipal Code Entitled "Historic Preservation and Protection" (Changes to Chapter 8.02 – Definitions, Chapter 8.08 – Historic Districts and Standards, Chapter 8.12 – Demolition and Public Safety, Chapter 8.16 – Administration and Enforcement and Chapter 8.20 – List of Designated Historic Districts

It was moved and seconded that the tabled Ordinance 13-21 be removed from the table for consideration. Neher noted that this motion was un-debatable, un-amendable and required a simple majority approval. The motion to remove the ordinance from the table was approved by a roll call vote of Ayes: 6, Nays: 2 (Sturbaum, Spechler).

It was moved and seconded that Ordinance 13-21 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of do pass 6-0-0. It was moved and seconded that Ordinance 13-21 be adopted.

Patty Mulvihill, Assistant City Attorney, said the ordinance made three types of changes: language changes to comply with state statutes, language to give the Historic Preservation Commission more guidance with recent problems and fixing citations, and references to make them consistent and correct.

She said the first change was to mirror the state's requirements that conservation district designation automatically be elevated to a full historic district designation three years after it was created unless a majority of the property owners objected in writing. She also said language would be changed to match state statute in the limited conditions where historic structures could be demolished without a certificate of appropriateness. She said that removal of dedicated structures or entire districts were set out in state statute and our code needed to match that language.

She noted the second change allowed repairs to foundations to be done on a historic structure without a certificate of appropriateness. She said that 'substantial removal' would now be defined in the local ordinance. She also noted that enforcement provisions were changed to keep the enforcement and penalties section consistent, and to increase fines to reduce the demolition of structures.

Volan asked why a couple of council members voted not to consider this ordinance. Neher asked that the council members address this question during their comments.

Spechler asked if there were references to a conservation district in the current ordinance. Mulvihill asked Spechler if he didn't really mean state law. She said according to state law historic districts could be established in two phases, but did not name those two phases. She said most units of government referred to the first phase as a Conservation District.

Spechler asked if a procedure had been included for establishing the limits and nature of the conservation district in the City of Bloomington. Mulvihill said that when a conservation district was established guidelines for work on the structures within the district was present in the ordinance.

Spechler asked the procedure for taking and delimiting a conservation district. Mulvihill said this was done by legislative action, the same way

a historic district would be established. She explained the process that would lead up to the recommendation of the Historic Preservation Commission to the Common Council, including the process of having interim protection until actual council action.

Spechler said he assumed that there would be a public meeting of the people whose property rights would be infringed on. Mulvihill said there was a public hearing at the Historic Preservation Commission level review. She noted that there were usually three initial open meetings before the aforementioned public hearing.

Spechler stated that the interim protection was done without the council's approval and without a public hearing. Mulvihill said the public hearing was at the Historic Preservation Commission level.

Spechler asked what a property owner could do to remove the interim protection. Mulvihill said that if the property owner desired to do something to their property while the interim protection was in effect, they could apply for a certificate of appropriateness.

Spechler asked if there was a provision to call for a real public hearing, and council consideration. Mulvihill said an individual could ask a council member to place the issue on the agenda earlier rather than later, but she disagreed with Spechler's assessment that there was not a real public hearing during the process. She noted that there was a significant turnout for the Historic Preservation Commission's public hearing.

Spechler speculated that there was a method for an appeal to the council to stop the process. Mulvihill said the council vote would end the interim protection.

Sandberg said she was a resident of Matlock Heights, and said the prospective conservation district of that area had been working through the process for quite a while. She said there had been notification of all property owners and noted that the minority of people who were opposed were those who had rental property in the area. She said the neighborhood association communicated well with all affected stakeholders. She said this was about property rights of the neighborhood to prevent intrusion of the area in any way that might damage property values.

Sturbaum asked what the interpretation of state law meant for the existing conservation districts. Mulvihill said that the ordinance before the council did not change anything. She said that under state law, the city's interpretation is that those two conservation districts have elevated to full historic districts. Upon being asked, Mulvihill said it was correct that this was the interpretation of the legal department of the City.

There were no comments from the public on this ordinance.

Council comments continued.

Spechler said he didn't mean to criticize existing operations, but that neighborhoods did not have property rights, property owners did. He said he would support the ordinance, but had a conflict. He said that neighborhoods did not like multifamily housing, even if they were zoned for that. He said the city was gaining over 1000 new residents per year, and needed to accommodate those people. He noted a conflict between the goals of preserving the amenities of a small town, and the assurance of participation in the community. He said flexibility should be kept in mind when accommodating new residents.

Sturbaum responded to Volan's question about his position on the issue. He said he voted to not remove the ordinance from the table because he wanted a little more time for the community to understand the city's interpretation of the state law.

He said he did not disagree with the city's interpretation, but the unfortunate outcome was that existing conservation districts that were adopted years ago under the understanding of the law would be impacted by the interpretation. He said that people who had selected the conservation district designation for their neighborhoods did not want a historic district, but wanted to protect their neighborhood with the lightest kind of restriction on property changes. He said the city's current interpretation of state law changed that.

He noted that in the past votes for continuing the conservation districts considered the percentage of participating property owners who wanted to continue the district designation rather than the percentage of all property owners who did not want elevation to a historic district.

Sturbaum stated that the districts have now elevated to full districts. As a way to remedy this 'accidental elevation' he would like the Historic Preservation Commission to interpret with the neighbors, to their satisfaction, the guidelines in such a way that the elevation of the district becomes a friendly elevation. He said the guidelines can be a moderating way of interpreting the rules within each historic district. He wanted more time for the word to filter out into the community. He said that adopting the legislation called that into question and would bring the issue to light. He said that he did not want to withhold the information from the community.

Sandberg said that the latest neighborhood to go through the process is Matlock Heights, where she lived. She added that they knew the process and what they needed to do to keep the conservation district status in the future.

Volan thanked the council members who explained their positions. He said he had misunderstood that the ordinance would change the rules so that the district designated as a conservation district did not elevate automatically.

Sturbaum clarified that the McDoel Conservation District vote was tabulated on the percentage of participants, even though all property owners had been notified. He noted that the new ordinance set the bar higher so that 50% of all owners must oppose the elevation to historic district, which he said was fairly high for both participation and consensus.

Volan said that a concern with historic districts was that the full historic district was a much higher bar and more restrictive. He said the conservation district was popular across the city. He wanted to make sure for future districts and Matlock Heights that the problem would be remedied. He asked if the city could remedy the elevation of those conservation districts that wanted to maintain themselves at that level.

Neher said that this legislation would remedy the situation, especially since the HAND Department was working closely with the Garden Hill Neighborhood on their conservation district designation. He said they had aligned their process with state code to ensure the balloting process moved forward with no ambiguity or confusion.

Neher said conversations had started with former conservation districts that are now considered historic districts to address their concerns.

Addressing Volan's request to hear concerns of other council members, Sturbaum noted that the council and administration wanted to make sure this legislation was in place to ensure that actions taken in the Garden Hill Conservation District were clearly understood, secure and legal.

Spechler said he first felt that Ordinance 13-21 was not yet 'mature' legislation as he was not clear what legislation changes were allowed at various stages of the process and between different districts.

Ordinance 13-21 *(cont'd)*

Sturbaum said that there was a line between the proposed legislation moving ahead and what had happened in the past. He said the implications on the old districts came from the state enabling legislation; the city was out of line with the state regarding the status of existing districts. He said that the same legislation was driving both issues, past districts and future districts. He said he understood that uncertainties existed, but the Historic Preservation Commission and neighborhoods would work this out with individual district criteria.

Volan said he appreciated the clarification from the council members. He stated his understanding of the impact of the legislation and the impact of the previous districts. He said he wanted neighborhoods to have the protection they needed, while keeping the wishes of the neighborhood.

He noted the great influx of students and new residents, and said Spechler was correct in addressing conflicting concerns, noting the city had room to grow, but also had the means to protect neighborhoods from expansion and development that were not in keeping with their form.

Sandberg said Matlock Heights had some rental properties and the conservation district would not preclude students from moving into the neighborhood.

Sturbaum noted the state legislation did not undermine the full historic districts; that McDoel and Prospect Hill Conservation Districts were the ones that had been elevated to full historic districts and now needed to adjust to that. He talked about the necessity of preserving the form of neighborhoods – streets, trees, alleys, tree plots, and rhythm of structures – and that they were valuable and susceptible to destruction when parts of that form were destroyed or altered by out of scale forms. He said the regret or worry was what had been done to the tool of preserving the neighborhood's forms while allowing a certain amount of growth and change. He said he envisioned talks with the state about enabling legislation to help with this. He promised that he would work with and for the neighborhoods to make this work for them.

Ordinance 13-21 received a roll call vote of Ayes: 8, Nays: 0

COUNCIL SCHEDULE

Dan Sherman, Council Administrator/Attorney, noted that the next council work session would be on November 18, 2013 with topics being EZID deductions and a traffic ordinance.

DISCLOSURE OF CONFLICT OF INTEREST

Stephen Volan, having filed a Disclosure of Conflict of Interest as required by state statute, asked that the council accept the disclosure that he had applied for $1200 scholarship money from the Bloomington Urban Enterprise Association.

It was moved and seconded that Volan's Disclosure of Conflict of Interest be accepted.

The motion to accept the Disclosure of Conflict of Interest received a roll call vote of Ayes: 6, Nays: 0, Abstain 2 (Volan, Mayer).

ADJOURNMENT

The meeting was adjourned at 9:46 pm.

gray highlights indicate changes made after publication of unapproved minutes

APPROVE:

Darryl Neher, PRESIDENT
Bloomington Common Council

ATTEST:

Regina Moore, CLERK
City of Bloomington