Passed 9-0

ORDINANCE 13-02

TO AMEND TITLE 2 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "ADMINISTRATION AND PERSONNEL" AND TITLE 20 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "UNIFIED DEVELOPMENT ORDINANCE"
- Re: Various Changes to Make the Local Code Consistent with Other Provisions of the Code, State and Federal Law, and Best Practice

WHEREAS, Bloomington Municipal Code Chapter 2.15 provides for the qualifications, terms, procedures and powers of the City's Advisory Board of Zoning Appeals; and

WHEREAS, Chapter 2.15 references the Areas Intended for Annexation which now falls under the jurisdiction of Monroe County making said references inapplicable; and

WHEREAS, Chapter 2.15 references sections of the Indiana Code which have been amended by the Indiana General Assembly making said references inapplicable; and

WHEREAS, Chapter 2.15 references sections of the Unified Development Ordinance which have been amended by the City of Bloomington Common Council making said references inapplicable; and

WHEREAS, the Indiana General Assembly during the 2011 spring session, via its passage of House Enrolled Act 1311, reduced the amount of time in which interested parties affected by a zoning decision have to file an appeal; and

WHEREAS, the Indiana General Assembly during the 2011 spring session, via its passage of House Enrolled Act 1311, increased the amount of time permitted for certain vesting rights of property owners;

WHEREAS, some portions of the Unified Development Ordinance provide a duration period of two (2) years and other portions provide a duration period of three (3) years and it is believed that these portions of the ordinance: 20.04.080(i)(1) abandonment of a Preliminary Plan; 20.09.120(h)(1)(A)&(B) expiration of a Development Standards Variance; 20.190.140(h)(1)(A)&(B) expiration of a Use Variance; 20.09.150(g)(1)(A)&(B) expiration of a Conditional Use; and 20.09.200(b)(1) reinitiation of a plat vacation) should provide the same duration period, said period being three (3) years;

WHEREAS, the Indiana General Assembly during the 2011 spring session, via its passage of House Enrolled Act 1311, created an alternate procedure for vacating a plat;

WHEREAS, because portions of Bloomington Municipal Code Sections 2.15.020, 2.15.030, 2.15.040, 2.15.050, 20.01.400(c), 20.04.090(e)(1)(D), 20.09.120(e)(2), 20.09.120(e)(3), 20.09.350(c)(1), 20.01.210(d), are now void as a result of the House Enrolled Act 1311, the City believes it is in the best interest of the public to specifically amend those portions of said sections which are no longer valid and enforceable;

WHEREAS, the United States Congress adopted H.R. 3630 on February 17, 2012 and was signed into law by the President on February 22, 2012; this new federal law created a prohibition against local governments from denying requests for a modification of an existing wireless tower or base station if the modification does not

substantially change the physical dimensions of the tower or base station—this new law requires changes to Bloomington Municipal Code Section 20.05.020(j); and

WHEREAS, in an effort to better ensure that required public right-of-way dedication actually occurs during a rezone or planned unit development, the City's Planning and Public Works Department wish to codify a requirement that all required public right-of-way dedication occur within 180 days of a rezone or approval of a planned unit development; and

WHEREAS, in light of recent water restrictions in the Bloomington area and the questions that the restriction raised, it was determined that use of greywater would violate what is commonly referred to as Indiana's Rule 13, 327 IAC 15-13, and the federal Clean Water Act—as such changes to Bloomington Municipal Code Sections 20.05.049(a)(2)(C) and 20.07.200(a)(2)(C) are needed.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 2.15.020(c) shall be deleted in its entirety.

SECTION 2. Section 2.15.030(a), shall be amended by deleting the phrase "IC 36-7-4-901, 906" and replacing it with the phrase "the Indiana Code".

SECTION 3. Section 2.15.040 (b), shall be amended by deleting the phrase "Section 20.03.04.00" and inserting the phrase "Title 20 of the" before the term "Bloomington Municipal Code" in the first sentence of that provision.

SECTION 4. Section 2.15.050, shall be amended by deleting the phrase "Chapter 20.03" and replacing it with the phrase "Title 20".

SECTION 5. Section 20.01.400(c), shall be amended by deleting the phrase "fourteen (14)" and replacing it with the phrase "five (5)".

SECTION 6. Section 20.04.090(e)(1)(D), shall be amended by deleting the word "fourteen " and replacing it with the phrase "five (5)".

SECTION 7. Section 20.09.120(e)(2), shall be amended by deleting the word "fourteen" and replacing it with the phrase "five (5)".

SECTION 8. Section 20.09.120(e)(3), shall be amended by deleting the word "fourteen" and replacing it with the phrase "five (5)".

SECTION 9. Section 20.09.350(c)(1), shall be amended by deleting the word "fourteen" and replacing it with the phrase "five (5)".

SECTION 10. Section 20.01.210(d), shall be amended be deleting the word "seven" and replacing it with the phrase "ten (10)".

SECTION 11. Section 20.04.080(i)(1), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)" wherever it appears in the provision as well as by deleting the word "ten" and replacing it with the phrase "twenty-one (21)".

SECTION 12. Section 20.09.130(h)(1)(A), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)".

SECTION 13. Section 20.09.130(h)(1)(B), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)".

SECTION 14. Section 20.09.140(h)(1)(A), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)".

SECTION 15. Section 20.09.140(h)(1)(B), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)".

SECTION 16. Section 20.09.150(g)(1)(A), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)".

SECTION 17. Section 20.09.150(g)(1)(B), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)".

SECTION 18. Section 20.09.200(b)(1), shall be amended by deleting the word "two" and replacing it with the phrase "three (3)".

SECTION 19. Section 20.09.200(c)(1), shall be amended to read as follows:

(1) Final Plat:
- (A) The owner of land in a Final Plat may file with the Plan Commission a petition to vacate all or part of the Final Plat pertaining to the land owned by the petitioner.
- (B) In a case in which not all the owners of land in a Final Plat are in agreement regarding a proposed vacation, one (1) or more owners of the land in the Final Plat may file with the Plan Commission a petition to vacate all of the Final Plat or only that part of the Final Plat that pertains to land owned by the petitioner or petitioners. A petition under this subsection must:
  - (i) State the reasons for and the circumstances prompting the request;
  - (ii) Specifically describe the property in the Final Plat proposed to be vacated; and
  - (iii) Give the name and address of every other owner of land in the Final Plat.

SECTION 20. Section 20.05.020(j)(2) shall be amended to read as follows:

(2) Any request for the modification of an existing wireless tower or base station that involves collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment which does not substantially change the physical dimensions of such tower or base station shall be approved as required by federal law.

SECTION 21. Section 20.04.080(g)(2)(B) shall be amended to be labeled as 20.04.080(g)(2)(C).

SECTION 22. Section 20.04.080(g)(2)(C) shall be amended to be labeled as 20.04.080(g)(2)(D).

SECTION 23. A new Section 20.04.080(g)(2)(B) shall be created to read as follows:

For PUD's located adjacent to existing public streets, all required right-of-way for such public streets shall be dedicated in compliance with the Thoroughfare Plan. Such dedication shall take place within 180 days of approval of the PUD District Ordinance. The 180 day time limit may be extended by the Planning Director, but not unless the requirement is clearly specified in a Recordable Zoning Commitment approved by the City.

SECTION 24. Section 20.09.160 (f) shall be amended to read as follows:

(f) Effect of Approval of the Amendment.

(1) When an amended of the Official Zoning Map is approved, such amendment shall be incorporated into the Official Zoning Map in the geographic information system maintained by the City.

(2) For Zoning Map amendments located adjacent to public streets, all required right-of-way shall be dedicated in compliance with the Thoroughfare Plan. Such dedication shall take place within 180 days of approval of the Zoning Map amendment. The 180 day time limit may be extended by the Planning Director, but not unless the requirement is clearly specified in a Recordable Zoning Commitment approved by the City.

SECTION 25. Section 20.05.049(a)(2)(C) shall be amended to read as follows:

Use of stormwater systems to capture and reuse at least fifty percent of stormwater for common and public space irrigation.

SECTION 26. Section 20.07.200(a)(2)(C) shall be amended to read as follows:

Use of stormwater systems to capture and reuse at least fifty percent of stormwater for common and public space irrigation.

SECTION 27. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 28. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 16th day of JANUARY, 2013.

DARRYL NEUBEKER, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 17th day of JANUARY, 2013.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 17th day of January, 2013.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

Generally speaking this ordinance seeks to clean-up inconsistencies in the current Unified Development Ordinance with other portions of the municipal code, the State code and the U.S. Code. For example, Title 2 of the municipal code references incorrect Title 20 provisions and Indiana Code provisions, this ordinance corrects those mistakes. With the passage of new zoning regulations at the State level, an aggrieved party's right to an appeal was reduced from 14 days to 5 days, as such the local municipal code must also be changed. The State's new zoning regulations also increased the vesting rights of property owners from 7 years to 10 years. Since the adoption of the Unified Development Ordinance, City staff has noticed that the duration times for certain approvals differ from one another and these differences are nonsensical. In order to remedy these differences, this ordinance streamlines the duration periods throughout Title 20 so that all duration periods are for three years. With the new Indiana zoning regulations, the City was provided with a new procedure for plat vacating, this new procedure allows for a plat vacation even if not all owners of land in the Final Plat are in agreement regarding the vacation. Because of this new change, the Unified Development Ordinance must also be changed. In February of 2012 the President signed into law H.R. 3630, which prohibits local units of government from denying requests for modifications of existing wireless towers or base stations if the modifications do not substantially change the physical dimensions of the tower base stations. This new law conflicts with the City's Unified Development Ordinance and this ordinance fixes that conflict in order to ensure compliance with federal law. Over the last several years the City has experienced difficulty in having required right-of-way dedicated when a PUD or a rezoning request is proposed. As the Unified Development Ordinance does not contain specific language indicating when the right-of-way is to be dedicated, some owners have sat on this requirement until the property is subdivided—making obtaining the right-of-way difficult if not impossible at times. In an effort to alleviate this problem from occurring in the future, City staff is asking that the Unified Development Ordinance be amended to that right-of-way dedications are required to occur within 180 days of a PUD Ordinance. Finally, two sections of the Unified Development Ordinance, both pertaining to green development incentives, permit a development to use greywater. The recent water restrictions caused the City to investigate a multitude of issues and during the course of that investigation City staff discovered that allowing the use of greywater in the Unified Development Ordinance violates Section 327 IAC 15-13 of the Indiana Administrative Code (commonly referred to as Rule 13) and the United States Clean Water Act. In order to remedy these violations, staff suggests deleting any reference to the use of greywater in the Unified Development.

Signed copies to:
legal
controller
planning
utilities
public works
DA/CA
clerk (2)
BMC (2)