City of Bloomington Common Council

Legislative Packet

Wednesday, 09 December 2015

Special Session followed by a Committee of the Whole

For legislation and background material regarding Ordinance 15-26, Ordinance 15-27, and Ordinance 15-28 please consult the 02 December 2015 Legislative Packet.

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NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL
SPECIAL SESSION AND COMMITTEE OF THE WHOLE
7:30 P.M., WEDNESDAY, DECEMBER 09, 2015
COUNCIL CHAMBERS SHOWERS BUILDING, 401 N. MORTON ST.

SPECIAL SESSION

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR: March 27, 2013 (Special Session)
May 8, 2013 (Special Session)
April 23, 2014 (Regular Session)
June 18, 2014 (Regular Session)
June 25, 2014 (Special Session)
July 16, 2014 (Regular Session)

IV. LEGISLATION FOR SECOND READING AND RESOLUTIONS

1. Ordinance 15-28 To Amend Title 2 of the Bloomington Municipal Code Entitled "Administration and Personnel" - Re: Amending Chapter 2.21 Entitled "Department of Law" to Remove the Voluntary Nature of Investigation and Mediation of Complaints Based on Sexual Orientation Discrimination and Gender Identity Discrimination

Committee Recommendation: Do Pass 9-0-0

V. COUNCIL SCHEDULE

VI. ADJOURNMENT

to be followed immediately by a

COMMITTEE OF THE WHOLE

Chair: Tim Mayer

1. Ordinance 15-26 To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code - Re: Amending 20.05.020 ("CF-01 [Communication Facility- General]") and 20.09.320 ("Surety standards – Performance surety") to Reflect Changes in State Law; Revising the Definition of "Fraternity/Sorority House," and Correcting Minor Errors

Asked to Attend: Patty Mulvihill, City Attorney
Tom Micuda, Planning and Transportation Director

2. Ordinance 15-27 To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic" - Re: Stop, Multi-Stop, Yield, and Signalized Intersections; Turning Right on Red; School Speed Zones; Angled Parking, No Parking, Limited Parking, Loading, and Bus Zones; and, Accessible Parking for Persons with Disabilities

Asked to Attend: Patty Mulvihill, City Attorney
Tom Micuda, Planning and Transportation Director

Posted & Distributed: 04 December 2015

City of Bloomington
Office of the Common Council

To Council Members
From Council Office
Re Weekly Calendar – 07 – 11 December 2015

Monday, 07 December

4:30 pm Plat Committee, Kelly
5:00 pm Redevelopment Commission, McCloskey
5:30 pm Farmers' Market Advisory Council, Nick's English Hut, 423 E. Kirkwood Ave.

Tuesday, 08 December

4:00 pm Commission on Aging, Hooker Room
5:30 pm Bloomington Public Transportation Corp. Board of Directors, Transit
6:00 pm Bloomington Commission on Sustainability, McCloskey
7:30 pm Sister Cities International, Kelly

Wednesday, 09 December

9:30 am Tree Commission, Rose Hill Cemetery Office, 930 W. 4th St.
12:00 pm Bloomington Urban Enterprise Association, Chambers
4:30 pm Environmental Resources Advisory Council, Parks
5:00 pm Bloomington Arts Commission, McCloskey
5:30 pm Commission on the Status of Black Males, Hooker Room
7:30 pm Common Council – Special Session followed by a Committee of the Whole, Chambers

Thursday, 10 December

12:00 pm Housing Network, McCloskey
4:00 pm Bloomington Digital Underground Advisory Committee, Kelly
4:00 pm Monroe County Solid Waste Management District, Courthouse
5:00 pm Bloomington Historic Preservation Commission, McCloskey

Friday, 11 December

There are no meetings scheduled for today.

Posted and Distributed: Friday, 04 December 2015

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In the Council Chambers of the Showers City Hall on Wednesday, March 27, 2013 at 7:30 pm with Council President Darryl Neher presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
March 27, 2013

Roll Call: Mayer, Neher, Rollo, Ruff, Sandberg, Spechler, Volan, Granger, Sturbaum
Absent: None

ROLL CALL

Council President Neher gave the Agenda Summation.

AGENDA SUMMATION

It was moved and seconded that Ordinance 13-04 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of Do Pass 7-0-0.
It was moved and seconded that Ordinance 13-04 be adopted.

LEGISLATION FOR SECOND READING AND RESOLUTIONS
Ordinance 13-04 Revising Participation Fees for Businesses Located Within the Bloomington Urban Enterprise Zone and a Tax Increment Finance Area That Receive an Enterprise Zone Investment Deduction

Doris Sims, Assistant Director of Housing and Neighborhood Development, explained that an Enterprise Zone Investment Deduction (EZID) allowed a business located within an enterprise zone to take a deduction on taxes for a ten year period. She explained that an EZID within a Tax Increment Finance district (TIF) cancelled each other out because both deductions created an increase in assessed value on the property. She explained that the ordinance would increase the participation fee to the Bloomington Urban Enterprise Association (BUEA) if the property was within a TIF district in order to offset the funds lost for the TIF.

Council Questions:
Volan asked for clarification on who would be affected by the ordinance. Sims explained that businesses that sought an EZID within a TIF would need to go to the council for approval first.

Spechler asked what the BUEA did with the participation funds. Sims explained the programs the BUEA implemented: historic frontage, business reconstruction loans, and resident scholarships to attend local colleges. She said that grants were also given to local schools such as Tri-North Middle School and Fairview Elementary School.

Spechler asked who determined how the funds would be distributed. Sims said that a board of directors appointed by business owners, residents, a city council representative, and state representatives.

There were no public comments on this ordinance.
There were no council comments on this ordinance.

Ordinance 13-04 received a roll call vote of Ayes: 9, Nays: 0

It was moved and seconded that Ordinance 13-06 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of do pass 3-0-4.

It was moved and seconded that Ordinance 13-06 be adopted.

Ordinance 13-06 To Amend the Bloomington Zoning Maps from Commercial Arterial (CA) to a Planned Unit Development (PUD) to be Known as Patterson Park As Well As to Approve a Preliminary Plan and District Ordinance - Re: 445 S. Patterson Drive (Trinitas Ventures, LLC, Petitioner)

It was moved and seconded that Reasonable Condition #1 be adopted.

Reasonable Condition #1 This Reasonable Condition is sponsored by Councilmember Sturbaum. It provides for parallel parking on the internal "curvy" street that runs through Areas B and C as set forth on Page 22 of the Outline Plan for this PUD.

Sturbaum explained that the Reasonable Condition (RC) altered the primary street through the development to have parallel parking instead of perpendicular parking. He said he was concerned that without this condition the main thoroughfare would look like a parking lot.
Tom Micuda, Planning Director, said the administration supported RC#1.

Travis Vencel, petitioner, said the developers would accept the condition.

Council Questions:
Mayer asked how this change would affect ingress and egress onto old Third Street. Patrick Shay, Development Review Manager said the intersection would be realigned to fit the development, and it would create three entrances.

for approval

Reasonable Condition #1 *(cont'd)*

Mayer asked if people leaving and entering the site would be able to go east or west. Shay said they could go either direction.

Rollo asked if RC#1 would increase the amount of impermeable surfaces in the development. Shay explained that the condition would increase impervious surfaces but the amount would still not exceed the standard set by the PUD. Rollo asked what would happen to runoff water. Shay explained that it would be filtered into a retention pond on site.

Volan asked if parking would be lost through RC#1. Vencel said that parking would increase by at least six spaces.

Volan asked why the amount of impervious surface could not be reduced along with parking in order to match the original design. Shay said the condition changed the layout and opened up more surface area for parking. Micuda said the developer could drop parking spaces in favor of greenspace. Vencel explained that available parking was still below the standard set by the PUD.

Volan asked Sturbaum if he realized the consequence of RC#1 on impermeable surfaces and parking. Sturbaum said that the extra parking would serve the commercial component of the development.

Rollo asked how parking would affect bicycle traffic. Micuda said that either option would be hazardous for bicyclists, but he considered parallel spaces safer for them. Sturbaum said that the additional connectivity would be positive for bicycle and pedestrian traffic.

Rollo asked if parallel parking could be included in the rest of the development. Micuda said that there were too many constraints to require parallel parking throughout the entire development.

Volan asked how emergency services would recognize private streets within the development. Micuda said that the developer could name private streets if they chose to, but the code did not require it. He added that a separate committee would address the streets for 911 service. Vencel said the developer would be happy to name the private streets.

Volan asked the developer if addresses would reflect their location on a private street. Vencel said that addresses reflected the private streets they were on.

There was no public comment on Reasonable Condition #1.

Council Comments:
Rollo said that he thought this condition was an improvement on the development. He said he would support the condition.

Volan said the condition was the best solution to make the project more traditional. He said naming private streets and addressing buildings to reflect those street names would enhance the sense of place.

Reasonable Condition #1 to Ordinance 13-06 received a roll call vote of Ayes: 9, Nays: 0.

Reasonable Condition #3 This Reasonable Condition is sponsored by Councilmember Sturbaum. It requires that: 1) Building 1 and 9 have a commercial design character; 2) Building 1 line up with Building 2 along Patterson Drive; and 3) Building 9 be oriented parallel to Patterson Drive to the maximum extent possible

It was moved and seconded that Reasonable Condition #3 be adopted.

Sturbaum said this condition would move the commercial building back from Patterson Avenue to allow for a larger pedestrian sidewalk. He said that the Growth Policies Plan (GPP) set the area as a community activity center, and this would keep the buildings viable as commercial space.

Micuda explained this proposal would maximize sidewalk width between the building and parking. He said that the increased space would be inviting for pedestrians and the administration supported the condition.

Vencel said the developers were happy with the condition.

Council Questions:
Volan asked what the buildings would look like. Vencel said that the buildings would have entrances in the front and back and would mimic the design standards of the rest of the development.

Reasonable Condition #3 *(cont'd)*

Volan asked if the extra space created from moving the buildings back

for approval

would allow for a different building footprint. Vencel said that the developers were not ready to answer that question. Shay said that one of the buildings affected would have to be redesigned to have a more commercial feel, and the footprint did not have to be a rectangle. Sturbaum said that the most important change from this condition was the distance from Patterson Avenue, and he was less concerned about the shape of the building.

Spechler asked how deliveries would be made to the commercial space. Vencel said that the street design would allow lots of opportunity for delivery, and he made the comparison with downtown businesses that received deliveries easily.

Spechler asked if an alley would be added for a loading dock. Vencel said that he did not think that would be included in the design. Micuda said that a special truck delivery area would only be necessary if several buildings were combined into a single commercial space.

Spechler asked if buildings would be combined. Micuda said that it was an option as the development moved forward.

Public Comment:
Jennifer Mickel said that recent developments in the city were not creative, and she wanted developments to feel more like a small town. She expressed concern over delivery truck traffic on Patterson Drive.

Mark Cornett said he liked the wide sidewalk, but he was concerned that student housing on the ground floor would not be in demand. He said that no space south of the intersection would sell as retail. He said having public street life was not enough to create the community activity center that was desired.

Karen Knight, Prospect Hill Neighborhood Association, said that they felt the development would be an asset to the neighborhood. She praised the commercial space and the added parking.

Council Comment:
Volan asked about the specific use of Building 2. Vencel said that it would be office space for the developer initially, but it could be used by other retail businesses later. He said that the first floor of the building was larger than the floors above it.

Volan said that it was difficult to find space for a pub in Bloomington. Vencel detailed the buildings that could house a pub throughout the development, and he said there was potential in each of the buildings for a variety of uses.

Volan asked how committed the petitioner was to creating commercial space. Vencel used the example of Kirkwood and South Walnut that were designed as residential and later converted to retail, and he said that was what he hoped would happen with this development.

Sturbaum urged the council to be cautious when considering what Cornett had said, and that space could be remodeled easily as commercial needs were found. He said that the current economy was hard for commercial retail, but hoped that as it improved the buildings in the development could be remodeled to work for retail in the future.

Volan said that he was supportive of the effort behind the reasonable conditions. He said that his experience in retail made him aware of a lack of faith in commercial and retail investment. He said that the development would be dominated by several commercial retailers rather than numerous individual small businesses. He said he wanted to see Building 9 expanded to allow for more retail potential, and he encouraged the city to target a specific type of retail and pursue it.

Spechler said he supported the condition, but he felt that the commercial space was too small for the retail needs of the development. He said that the developer was creating demand for a specific kind of retail.

Reasonable Condition #3 to Ordinance 13-06 received a roll call vote of Ayes: 9, Nays: 0.

for approval

It was moved and seconded that Reasonable Condition #4 be adopted.

Sturbaum explained that the condition would limit the number of five bedroom units allowed. He said the original PUD allowed up to 40 five bedroom units, and he praised the developer for working to include more one and two bedroom units. He said the condition also allowed two areas within the development to be combined when counting units per acre.

Shay explained that the two areas mentioned in the condition were originally considered as two separate areas. He said the condition would not change the number of units in the buildings, but it would allow the petitioner to have more flexibility in design between them.

Vencel said that current zoning allowed the developer to put any variety of multi-bedroom units on the parcel. He said they hoped to have a variety of units in order to avoid shortages in parking and greenspace. He said all the units would be capped at one person per bedroom. He said he was not sure that this condition improved the project, but he understood the concern of the council and community.

Council Questions:
Sandberg asked who would be most likely to be in a five bedroom apartment. Vencel said that some graduate students would live in the larger units, but they would be more likely to gravitate to the one and two bedroom units. Sandberg asked if the fewer five bedroom units would attract more graduate students. Vencel said he didn't know.

Ruff asked if the one person per bedroom commitment would be binding. Shay said that one, two and three bedroom units were capped at three people, four bedroom units were capped at four, and five bedroom units were capped at five by city code.

Public Comment:
Richard Lewis, Prospect Hill Neighborhood Association, said that the association conducted a survey of their neighborhood. He said that the majority of respondents felt that three bedrooms should be the maximum. He said no respondents supported five bedroom units, and he added that he was personally against large units.

Jennifer Mickel spoke about students staying at one another's homes. She said that it would be hard to keep track of visitors staying overnight. She said she wished more limestone would be included in the development, and she hoped that enough room in greenspace would be left for tree roots.

Council Comment:
Spechler said he supported the condition, and he questioned the validity of the Prospect Hill survey. He said that allowing 20 five bedroom apartments was reasonable because it would be considerably cheaper for the students that would live there, and he said this was necessary for students that could not afford luxury apartments.

Granger said she supported the condition, and she appreciated that the developer was willing to work with the city.

Mayer thanked Sturbaum for bringing the condition forward.

Volan said that five bedroom units were a problem in his district. He said that the residents in his district despised five bedroom units and that they were the number one source of noise complaints. He said large units were a thing to be feared, and they were not cheaper than units with fewer bedrooms. He said that a five bedroom living situation encouraged students to be worse neighbors. He said that the council should amend the UDO again to prevent more five bedroom apartments from being constructed.

Ruff agreed with Volan that the UDO should be amended as long as it did not create an affordability crisis in housing. He said he would support the condition, but he felt the council should look at the larger picture of the community before moving forward with future developments.

Reasonable Condition #4 This Reasonable Condition is sponsored by Councilmember Sturbaum. It imposes a maximum of 20 5-bedroom units for the entire PUD. In order to keep the project viable whiles still preserving its character, the Reasonable Condition also requires that Areas B and C may not exceed a combined 15 net units per acre and must receive final plan approval concurrently.

for approval

Reasonable Condition #4 *(cont'd)*

Neher said he supported the condition, but he was concerned about the way students were characterized that evening. He said he had many students that were in five bedroom units because of the savings.

Spechler said Indiana University was on the verge of a strike because of the cost of education. He apologized for referring to students as kids and said he would call them young scholars in the future. He said allowing five bedroom apartments would make the rent of all the units cheaper.

Ruff said that no one on the council felt that all people who lived in five bedroom units were irresponsible. He said that these units tended to be more problematic than fewer bedroom units.

Volan asked Neher if his students lived in new housing. He said that housing that was preserved was more likely to be more affordable than new developments. He said students should be treated as adults and be given the opportunity to be part of the community.

Reasonable Condition #4 on Ordinance 13-06 received a roll call vote of Ayes: 9, Nays: 0.

It was moved and seconded to adopt Reasonable Condition #2.

Reasonable Condition #2 The Reasonable Condition sponsored Councilmember Sturbaum requires that, unless contradicted by traffic studies, the configuration of Patterson Drive and angled parking to be as shown on the exhibit known as "Patterson Drive Schematic 4" and the required stop light shall be located the intersection of Adams Street and Patterson Drive.

Sturbaum explained that this condition was meant to maximize the potential success of the commercial properties. He said that it aligned angled parking, eliminated a turn lane, and placed the stop light at the intersection between Adams Street and Patterson Drive that would create a clear entrance into the development. He said that this condition was dependent on pending traffic studies, and he did not want to force the condition if it would cause impeded traffic.

Micuda said that the administration supported the condition. He said it expressed the council's intent to have street parking, a clear access point with a stop light, and the desire not to create a massive intersection. He said all of this was subject to internal discussion of the pending study.

Vencel said that the developers intended to create a site that would work with the city's design of the area. He said they liked the condition because it allowed professionals to make the decision while allowing design of the development to continue.

Council Questions:
Rollo asked if staff could choose not to implement the condition if the study indicated it would not be workable. Micuda said the condition could be modified if the study indicated it needed to be. Sturbaum added that there would need to be compelling evidence from the study to allow staff to modify the condition. Rollo asked if the study would provide real-time data or projections. Micuda said that it would provide both.

Rollo asked what part of the study still needed to be completed. Micuda said that analysis of the data was not completed. He said he needed to see the analysis before making decisions on on-street parking and signalization.

Neher asked if previous developments were considered in the traffic study. Micuda said that the study began with a previous development, but the development in question created a need to extend the study to consider the growth of the whole area.

Volan asked why the intersection would need a turn lane. Micuda said that the council would declare intent through RC#2 that they did not want a turn lane, but he could not ignore the potential data from the traffic study.

Volan asked for specific criteria that would contradict the condition. Micuda said he would not cite the exact criteria for studies, he said the administration wanted to avoid being locked into a design that was proven to be detrimental.

Spechler asked if southbound emergency vehicles would be able to bypass standing traffic at the light. Micuda said that the road would shrink with the development, but would still meet the standards for emergency traffic.

for approval

Reasonable Condition #2 *(cont'd)*

Rollo asked Micuda if he would give a formal presentation on the findings of the traffic study. Micuda said the request was not common practice, but he would be happy to do it if the council asked for it.

Neher asked Dan Sherman, Council Attorney, if Rollo's request needed to be in the amendment. Sherman said that an amendment needed to be in writing, but he felt that a motion after the ordinance, at any time, would fulfill the request just as easily.

Mayer asked who paid for the traffic study, the traffic light, and intersection changes. Micuda said that it would be all paid for by the developer at first and then maintained by the city thereafter.

Mayer asked if the changes needed to be contiguous to the developer's property. Micuda said that if the changes were not contiguous it would be a separate discussion, but all the changes considered this evening were contiguous to the property.

Sturbaum said that the light would keep motorists and pedestrians safe. Vencel shared a schematic that demonstrated the loss of parking if a left turn lane were added on Patterson Drive. Sturbaum pointed out that the sidewalk was much smaller in the turn lane schematic. Micuda said that a left turn lane would eliminate 12 parking spaces.

Ruff asked what guidelines were used for the study. Shay said that traffic studies were normally used to provide a recommendation, but this study was going to be used to determine the feasibility of the proposed plan. Vencel said that the traffic study was delayed because of Indiana University's Spring Break when traffic was significantly lower than usual. He said that the desire of the council would be included in the analysis of the study.

Sturbaum asked if the administration's concern was that RC#2 could create an unsafe environment. Micuda said that the administration wanted to get traffic staff involved in the discussion, they wanted the opportunity to review the analysis of the traffic study, and ensure public safety.

Sturbaum asked if changing the language to "safety issues" instead of "traffic study" would be amenable to the council and administration. Micuda said the administration would not object to that change.

Mayer asked why the council was addressing it this evening. Micuda said that normally the council would hear the issue after the traffic study, but he said that the administration was seeking the council's input earlier in this issue. He added that the administration typically used studies to determine the need for a signal light and not for design of a roadway. Vencel said that he needed an approved rezone before he could go to an engineer to do an accurate traffic study.

Amendment to Reasonable Condition #2 This Reasonable Condition is sponsored by Councilmember Sturbaum. It requires that, unless contradicted by safety issues, the configuration of Patterson Drive and angled parking to be as shown in the exhibit as Patterson Drive Schematic 4 and the required stop light shall be located at the intersection of Adams Street and Patterson Drive.

It was moved and seconded that Reasonable Condition #2 be amended.

Rollo explained that the amendment would change the language of the condition to replace "traffic study" with the phrase "safety issues," and it would instruct planning staff to present the findings of the traffic study and the decisions reached from that information.

Council Questions:
Neher asked Sherman if the new language would allow more things to be considered than the traffic study. Sherman said that "safety issues" were essential in the consideration, but it would likely only allow the planning and engineering staff to determine what data was valid in the decision making.

Sturbaum said that his intent was to narrow staff decisions to safety issues indicated by the traffic study.

Micuda said that the administration had some reservations to the amendment: scheduling, the petitioner's ability to obtain a site plan review, and the possible need to return to the council if there were no changes.

for approval

Amendment to Reasonable Condition #2 *(cont'd)*

Vencel said that the developers were concerned about timing and scheduling. He said that they needed to be able to move forward with obtaining permits to build a necessary traffic light, and the presentation to council could hinder that process.

Sturbaum asked why reporting to the council would slow the process. Micuda said that other legislation on the council's agenda could make it difficult to schedule the presentation, and the council could object to the administration's decision. He said that the resulting discussion could delay the developer's ability to get necessary permits.

Rollo asked Sherman how the council could schedule the report. Sherman explained that the amendment did not establish timing of the report, and it could be given after the developer had already taken action. Sturbaum said that engineers determined safety issues, not the council. Micuda withdrew his concern when he learned it would be a report to council and not an item for consideration.

Granger asked why it was necessary to have a report on the decision. Rollo said that the condition was integral to the development, and he felt that the decision needed to be presented in a public forum.

Sturbaum asked if Micuda was comfortable with the amendment. Micuda said he was.

Public Comment:
Marc Cornett said that the development should not eliminate a turn lane in favor of more parking. He used examples from the "Complete Streets" guidelines produced by the city: easing congestion, safety for everyone, sparking economic development, creating livable communities, and lowering transportation costs to support his argument.

Council Comment:
Volan expressed his concern that neither "traffic study" nor "safety issues" were specific enough. He said the council should be discussing place making rather than just automobile traffic.

The amendment to Reasonable Condition #2 received a roll call vote of Ayes: 8, Nays: 1 (Mayer)

Reasonable Condition #2 as amended to be known as Reasonable Condition #2e

Public Comment:
Marc Cornett said that the area was unsafe for pedestrians. He said that traffic should be slowed and "tamed" to support the commercial aspect of the development.

Richard Lewis said he appreciated the developer engaging the neighborhood association in the process. He said the survey indicated that the majority of the neighborhood supported angled parking and safe pedestrian crossings.

Council Comment:
Sturbaum said that the conversation revolved around streets and traffic, and he felt that the review was more integrated. He said the council was asking the right questions in order to create places. He said the council should plan ahead to build infrastructure near targeted development areas.

Volan said that the nearby Landmark Road was wide enough to allow emergency vehicles to reach the hospital. He said he was concerned about the condition because he was unsure it met engineering standards, the "Complete Streets" guidelines, and the Growth Policies Plan. He thanked Sturbaum for his work on the reasonable conditions brought forward. He encouraged his colleagues to support the condition.

Rollo said the project was very important, and he expressed his appreciation that the council was focusing on creating a sense of place. He told a story about the Plan Commission making decisions based solely on how fast automobile traffic could pass through an area.

for approval

Reasonable Condition #2e *(cont'd)*

Spechler said he was in favor of slower traffic and supporting access to the commercial areas. He said he was still concerned about emergency vehicle traffic to the hospital.

Neher said that he hoped that neighbors in McDoel Gardens would be considered in the future discussion about safety and traffic.

Ruff said that the issue was really about policy and not about expert engineering data. He said that the council should not use engineering data to avoid implementing a larger community vision. He said he was more comfortable with the condition after the presentations from staff.

Sturbaum said that he wished that affordable housing and bicycle pathways were included in the development. He said he considered these issues as another reasonable condition.

Reasonable Condition #2e received a roll call vote of Ayes: 8, Nays: 0, Abstain: 1 (Mayer).

Ordinance 13-06 with attached Reasonable Conditions # 1, 2e, 3 and 4

There were no questions from council regarding the ordinance as amended.

Public Comment:
Marc Cornett said that the council could not legislate retail without setting up the framework for positive commercial development. He said the debate was not just about traffic and engineering, and the discussion needed to include all the pieces necessary to create a sense of place.

Richard Lewis thanked planning staff for their work on the project. He once again referenced the survey and said that the majority of neighborhood residents supported a mixed use development.

Council Comment:
Volan said he hoped Building 9 would be enlarged to give retail a better chance. He said that the development was a compromise. He said he would work to limit four and five bedroom apartments in the future.

Ordinance 13-06 with attached Reasonable Conditions # 1, 2e, 3 and 4 received a roll call vote of Ayes: 9, Nays: 0

Ordinance 13-07 To Vacate Public Parcels - Re: Two Segments of a Seminary Lot Alley which are 16.5 Feet Wide and a Total of 1,180 Feet Long with One Segment Running East to West through the Patterson Pointe PUD and the Other Running in the Same Direction Through the Proposed Patterson Park PUD (Adam's Crossing, LLC and Rogers Group, Inc. Petitioners)

It was moved and seconded that Ordinance 13-07 be introduced and read by title and synopsis in accordance with BMC 2.04.420 (b). Clerk Moore read the legislation and synopsis, giving the committee recommendation of do pass 3-0-0.

It was moved and seconded to postpone Ordinance 13-07 until April 3, 2013 due to an error in advertising and notice of a public hearing.

There were no questions from council on postponement.

The motion to postpone Ordinance 13-07 received a roll call vote of Ayes: 8, Nays: 0 (Volan out of the room).

COUNCIL SCHEDULE

Neher indicated that there would be no council and staff meeting on the coming Monday.

ADJOURNMENT

The meeting was adjourned at 10:45 pm.

APPROVE: ATTEST:

Darryl Neher, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington

for approval

In the Council Chambers of the Showers City Hall on Wednesday, May 8, 2013 at 7:32 pm with Council President Darryl Neher presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
May 8, 2013

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

ROLL CALL

Council President Neher gave the Agenda Summation

AGENDA SUMMATION

It was moved and seconded that Resolution 13-08 be introduced and read by title and synopsis. Deputy Clerk Wanzer read the legislation and synopsis, giving the committee recommendation of Do Pass 2-0-6.
It was moved and seconded that Resolution 13-08 be adopted.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Resolution 13-08 To Approve An Enterprise Zone Investment Deduction (EZID) in the Downtown Tax Increment Financing (TIF) District - Re: Springhill Suites (501 North College Avenue)

Doris Sims, Assistant Director of Housing and Neighborhood Development and staff liaison for the Bloomington Urban Enterprise Association (BUEA), explained the process of approval for an investment deduction incentive within the Downtown Tax Increment Financing (TIF) District.

She noted the proposed project was a 158 suites hotel with a pool and fitness room. She said that 39 new jobs would be created, noted 7 of those would be management positions, and added that the annual payroll for these would be over $1 million. She said value of new improvements would be $18M. She said the tax savings to the developer would be $349,000 per year. She said the following payments would be made each year in the way of participation and registration fees:

- $69,822 to the BUEA (20% of savings)
- $31,000 to the Redevelopment Commission (9% of savings)
- $3490 to the State of Indiana

She said that the usual process for claiming the deduction was for the developer to file with the county Auditor by May 15 of each year.

Sims noted a previous discussion on this issue brought questions from council member Rollo about annual contributions to the Downtown TIF. She said it was estimated at $2.4M per year. She also answered the question about projects within the TIF that were funded by proceeds of the TIF. She said the Buskirk-Chumley operations and maintenance, the Certified Tech Park plan that had been completed, and the S. Walnut Street Streetscape project were funded with TIF funds.

She added the developer, Paul Pruitt, owner of Urban Hospitality One, was available for questions.

Spechler asked Pruitt if he intended to apply for a tax abatement for this project. Pruitt said he did not.

Rollo asked Sims if this would negatively affect the income of the TIF fund. She said there were ongoing projects that would be funded but reiterated the revenue at this point averaged $2.4M per year.

Rollo also asked if other hotels would come forward to seek the same deduction. Sims said they could just apply for the deduction with the Auditor if they were within the BUEA district, but if they were within the TIF as well, they would have to seek approval from the council.

Volan asked whether this question was more about the interplay between the two districts and the funds related to them than the actual applicant or project. Sims reiterated her previous statement, adding that EZIDs could just be applied with no council approval.

Neher asked Dan Sherman, Council Attorney/Administrator, if the legislation creating the EZID was done in 2005. He asked if the section

for approval

regarding council approval when the two zones overlapped was created more recently. He asked if the legislative intent was to protect a revenue source for a municipality given the nature of the property tax caps at that time.

Sherman agreed with that characterization of the legislation and said it created an opportunity for a fiscal check on the potential of draining TIF funds.

Volan asked what the total impact to the TIF fund would be with this approval. Sims said the amount of the deduction was based on the investment of $18M based on value of the hotel. She said that $349,000 of the taxes on the improved property would not go into the TIF.

Neher said the TIF fund would recapture a 9% participation fee so that the loss would be $31,000 less than that.

Spechler asked how much was in the TIF fund. Denise Alano-Martin, Director of the Economic and Sustainable Development Department said that at the end of 2012, the balance in the Downtown TIF fund was $6M. She noted that any EZID granted would not affect current revenues, but would affect future new revenue to that fund.

Volan asked if this deduction meant that $349,000 that would have gone to TIF each year would now not go into that fund. Sims noted that this was the yearly savings to the taxpayer.

Sturbaum asked for additional info on this project, how the EZID would help the project be successful.

Alano-Martin said that the Enterprise Zone existed to support and encourage redevelopment in the zone, and the EZID was one tool that could be used to do that. She said the administration had been working with the developer for several months to determine how the hotel project could be supported. She said the project would redevelop an underutilized and partially unused site downtown, adding to the tourism and hospitality market. She said studies showed Bloomington was the second destination in Indiana after Indianapolis for conventions. She said larger conventions couldn't be booked because of the lack of large blocks of hotel rooms. She noted the hotel would create jobs.

Alano-Martin noted that the BUEA board was in support of the EZID, and had even discussed the possibility of the 9% participation fee as a deterrent to the development. Sturbaum asked whether this deduction helped build something that otherwise might not have been built. Alano-Martin said it was a help in that area.

Mayer noted just two of the development objectives stated in the Amended Economic Plan for the Downtown TIF (2010):

- *Strengthen the ties between the city and the community's higher education institutions and improve the physical linkages between the downtown and the IU campus.*
- *Construct additional hotel and meeting space within the downtown, and support an expanded convention center complex.*

He asked if this was fulfilling those objectives. Alano-Martin said that it was.

Sandberg asked about precedence and what approval of this EZID would mean for other requests of this nature. Alano-Martin said criteria was set in statute, but the council had the discretion to approve or deny the request. She said each case was judged on its own merits as aligned with the economic goals of the city and she didn't think a precedent was being set.

Neher asked Sherman about precedence since that was a reason thatconsideration of this resolution had been delayed. He asked Sherman to summarize the findings of research on this issue. Sherman said action

for approval

now doesn't limit actions in future. He added that because of the good discussion at this meeting and the previous one, it would provide a good record for a court to review should there be a challenge to the decision. He said if the council developed criteria to review with their consideration of these cases, it would show that the council was not relying on previous decisions. He said the council could act as they wished in this instance and decide differently on future applications.

Rollo said if other hotels applied for the EZID and the council didn't grant it, the decision could be viewed as being an arbitrary granting of the benefit. He noted that TIF funds could be used for infrastructure in an area to benefit several businesses and citizens in the city, while the EZID was used by the developer specifically to improve one property but with no restrictions on the type of use. Alano-Martin said she couldn't speak to how the developer would use the tax savings, but said that TIF funds had been used for training to benefit downtown technology business.

Spechler asked about the BUEA, noting that it was costing the city money to give incentives for development that might not be actually needed as incentives. Alano-Martin noted the BUEA had many programs that fostered the revitalization that Spechler noted in the downtown.

Spechler noted the EZID was a ten year 100% tax deduction, with a small amount being paid for fees. He said that was a lot of money lost from the downtown revenue and said it was probably no longer justified. Alano-Martin said there should always be investment in the downtown central business district. She said the BUEA continued to support the vibrancy of the downtown and other areas in the zone further north and south of the downtown with its programs. She said this incentive was a valuable tool to promote and support revitalization.

There were no comments from the public.

Council comments:

Sturbaum said there were still areas within the Enterprise Zone that needed to be redeveloped. He added that as the city was asking more of the developers in meeting city goals, this was a way to help them do those things.

Sandberg said she was supportive of this request, and was confident that there could be different decisions in the future based on the merits of each case.

Granger said this helped the city continue to focus on the downtown, and liked the fact that there was a local investor on the project.

Spechler said he understood that the benefit was not promised to the developer, liked the idea that the project was from a local owner and would be managed by a reputable, local company. He noted his agreement with Rollo that this did set a precedent and hoped that the council would create criteria with which to judge future requests. He was not in favor of giving up revenue to the TIF.

Volan concurred with colleagues but primarily supported this because of the goal to bring more hotel space to the downtown. He said the tax deduction helped to incentivize new types of building use in the downtown. He added it was worth remembering that there were no rights or obligations with the EZID program. He said previous councils had been less scrutinizing with requests, and that this council may decide in the future not to incentivize hotels, but some other building use.

for approval

Rollo said he would not support this because it struck him as arbitrary, forcing the council to make the same decision in the future for any other hotel. He added the deduction would help deplete the TIF fund which was needed for infrastructure, and that the hotel was not needed. Resolution 13-08 *(cont'd)*

Mayer said there were a number of reasons to support this request including it was an improvement to the property, it had local investment and ownership of the facility, the proposal was amended to include retail space, and met the criteria of the Economic Development Plan of 2010.

Neher spoke about the original delay and that it had nothing to do with the project, but rather the process, and what the legal implications were for future decision. He said he was very comfortable with the legal opinion that this decision would not bind the council to any future decision. He noted his intention to pursue criteria for consideration of EZIDs in the future.

Resolution 13-08 received a roll call vote of Ayes: 7, Nays: 1 (Rollo).

There were no amendments to the council schedule. COUNCIL SCHEDULE

The meeting was adjourned at 7:43 pm. ADJOURNMENT

APPROVE: ATTEST:

Darryl Neher, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington

for approval

COMMON COUNCIL
REGULAR SESSION
April 23, 2014

In the Council Chambers of the Showers City Hall on Wednesday, April 23, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Regular Session of the Common Council.

ROLL CALL

Roll Call: Ruff, Sturbaum, Sandberg, Granger, Neher, Mayer, Rollo, Volan, Spechler
Absent: None

AGENDA SUMMATION

Council President Neher gave the Agenda Summation

APPROVAL OF MINUTES

There were no minutes for approval at this meeting.

REPORTS

- COUNCIL MEMBERS

Dave Rollo asked the council to accept his Disclosure of a Possible Conflict of Interest due to his partnership in Stranger's Hill Organics, a vendor at the Farmers' Market.
It was moved and seconded that Rollo's Disclosure of a Possible Conflict of Interest be accepted.
The motion was approved by a voice vote.

Dorothy Granger said she was happy that spring had arrived.

- The MAYOR AND CITY OFFICES

It was moved and seconded to amend the regular time limits for the mayor's report to the council.
The motion was approved by a voice vote.

Mayor Mark Kruzan said that the alleged illegal action by city employees was ultimately his responsibility as was creating rigorous controls to prevent these actions. He said that 2011 and 2012 State Board of Accounts (SBOA) audits had found cash discrepancies that had been shown to be a computer error instead of misuse of funds. The SBOA had recognized that action had been taken to correct the errors they had found. He outlined a plan to implement sound fiscal controls:

- Structural reorganization that gave the Legal and Controller Departments citywide policy authority which afforded greater accountability
- Legislative oversight that would be integral to managing the budget and creating fiscal policy
- Creation of a new financial policies manual to detail the required steps in fiscal management

John Whikehart, Deputy Mayor, detailed the history of fiscal control in the city with purchasing agents and a de-centralized financial structure. He said the new financial policies manual would bring all financial expenditures under the authority and review of the city controller. He added that separation of duties was a fundamental internal control that had been made a central point of the manual. He reviewed the policies of revenue management, debt service, and procurement of services and contracts. He detailed the creation of a purchasing manager position, reorganization of city departments, and approval of electronic payments for services rendered through an ordinance that would come before the council. He said he hoped that the council would formally adopt the financial policy manual and review it every year during budget hearings.

Neher asked if the new policies would have prevented the alleged embezzlement of funds that had occurred earlier in the year. Kruzan explained that there were three investigations and reviews occurring simultaneously into the alleged theft. He said he believed these policies would have prevented or detected the malfeasance by having more individuals involved in the approval of expenditures, and it would have prevented upfront approval of appropriation of funds. He said the theft was an isolated incident that, unfortunately, called into question the work of every city employee.

Granger asked how long the financial policy manual had been worked on. Kruzan explained that the process had begun eleven years prior with approved vendors.

for approval

Report from the Mayor *(cont'd)*

Granger asked how many employees were engaged in creating the financial policies. Kruzan said that all department heads were involved in the process. He estimated that there were a dozen people at the minimum and upwards of a hundred at the maximum.

Granger asked if employees were given the opportunity to weigh in on the new controls and their viability in day to day work. Kruzan said that each department head worked with their staff in order to get feedback on the policies. He said that accountability trumped convenience in the new policies.

Spechler asked what the reorganization would cost the city. Whikehart said that the realignment of the controller's office would not create additional cost. Whikehart said that the new position that was created replaced an eliminated position and had a lower salary grade.

Spechler asked if Tax Increment Financing (TIF) funds would be affected by the new financial policies. Kruzan said that all funds would be affected by the new policies.

Volan asked how the administration would offset the challenge of relying on purchase orders. Sue West, Controller, said that purchase orders would be done electronically instead of using physical paper.

Volan sought to confirm that the new manual would integrate several policy documents. Whikehart said that it would; it was the creation of new policies and integration of previous policies.

Volan asked if more consolidation of policies would be worked on. Whikehart said that both an IT policy manual and personnel policy manual would be created.

Volan asked how the council should adopt the policies. Whikehart said that the policy was still in progress, but he felt that the council should have input on the writing process. He said that he hoped the council would remain involved in reviewing and amending the manual.

Volan asked if large appropriations should be broken down into smaller pieces in order to reduce the risk of money being misused. Whikehart said both physical and financial progress of projects would be reviewed quarterly, and he believed this would be sufficient in keeping track of expenditures.

Volan said that he felt that one bad apple had damaged the reputation of all city employees. He said the policies were to ensure that one person did not have to keep track of every dollar spent by the city.

Sandberg asked about the state of employee morale and how employees were handling the policy changes. Kruzan said that he could not speak to the morale of all 700 employees of the city, but said he, himself, would feel heartbroken and angry if a colleague had systematically stolen from the city. He said he hoped that staff felt that the administration was working to restore their reputation.

Neher asked if this policy would create mutual accountability with the administration and council. Kruzan said that the mayor could propose ideas but only the council could enact them into law. He said that the intent was to formalize and institutionalize these policies to prevent any future errors or malfeasance.

- COUNCIL COMMITTEES

There were no reports from council committees at this meeting.

- PUBLIC

President Neher called for public comment.

Scott Wells spoke about Indianapolis Public Schools and lagging graduation rates. He said that charter schools were dangerous for public education because they siphoned state funding from public, accountable schools.

Karen Heminger spoke on behalf of two hundred volunteers who would support a low barrier shelter for homeless individuals in the summer months. She called out Spechler for saying that the homeless population

for approval

Public Comment *(cont'd)*

was "unattractive, dirty, problematic, and unwilling to seek help." She dared the council to care and recited a poem she wrote on the issue.

Aaron Rincon spoke against Rape Culture and protests from IU TradYouth. He asked for the council to issue a declaration against fascism and racism.

Glenn Carter spoke in favor of a low barrier homeless shelter during the summer months. He said that homeless individuals who suffered from addiction were unable to find housing at many shelters in the community. He spoke in favor of establishing a detox center and shared his personal experience with such a center.

Marc Haggerty spoke about the partisan history of Bloomington government and PCBs in the community. He said that necessary testing for PCBs was not done for a recent Habitat for Humanity development.

APPOINTMENTS TO BOARDS AND COMMISSIONS

It was moved and seconded that the following appointments and reappointments be made:

- Sue Sgambelluri appointed to the Redevelopment Commission
- Ryan Strauser reappointed to the Board of Housing Quality Appeals
- Carrie Albright reappointed to the Environmental Commission
- Jacob Clough appointed to the Traffic Commission
- Scott Wickersham appointed to the Traffic Commission
- Giancarlo Huapaya appointed to the Commission on Hispanic and Latino Affairs
- Joseph Kieler appointed to the Commission on Sustainability

The appointments and reappointments were approved by a voice vote.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Ordinance 14-04 To Amend Title 14 of the Bloomington Municipal Code Entitled "Peace and Safety" Re: Amending Chapter 14.20 (Firearms – Deadly Weapons) to Allow for the Discharge of Firearms at the Griffy Lake Nature Preserve for the Purpose of Deer Reduction via Sharpshooting

It was moved and seconded that Ordinance 14-04 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, noting the history of the legislation as:

- Committee Recommendation (4/2): Do Pass 5-0-4
- Final Action (4/9): Passed 6-2-1
- Veto (4/11)

Clerk Moore read Mayor Kruzan's veto message that had accompanied Ordinance 14-04 when the mayor returned it to her unsigned.
It was moved and seconded that Ordinance 14-04 be adopted overriding the mayor's veto.

Motion to limit debate

It was moved and seconded that the council limit debate on this issue to allow the public three minutes to speak one time, and then return to the council after public comment for additional questions.

Volan said there were more attendees the last time the ordinance was discussed, and he proposed that the public be given more time to speak and that the council be limited to five minutes of final comments.

Spechler said that he supported the motion because allowing a full five minutes per member of the public would cause the meeting to go until 1:00 am. He said that the council did not think as well at 1:00 am as they did earlier in the evening.

Sandberg said she would support the motion because the ordinance was a well vetted issue. She said three minutes was adequate time for people to speak their piece.

Sturbaum suggested the councilmembers limit their comments voluntarily.

The motion received a roll call vote of Ayes: 7, Nays: 1 (Volan), Abstain, 1 (Rollo)

Second motion to limit debate

It was moved and seconded that final comments by councilmembers be limited to five minutes each.

for approval

Ordinance 14-04 *(cont'd)*

Ruff said he intended to limit his comments, but he wanted to have leeway to answer questions during his final comments.

Neher explained to Ruff that the second time for council questions would allow him to answer questions from the public.

Volan said that if someone wanted to speak for longer they could appeal to 2/3 of the council.

Granger said she hoped that suggestion would be unnecessary.

The motion received a roll call vote of Ayes: 4 (Sturbaum, Granger, Neher, Volan), Nays: 3 (Ruff, Sandberg, Mayer), Abstain: 2 (Rollo, Spechler), and therefore was not approved.

Presentation on Ordinance

Rollo said that the argument at hand was that the Griffy Lake Nature Preserve (GLNP) was in danger due to deer overabundance. He said this was first noted in 2008 and further study was recommended. He detailed the damage that had been discovered in the area over the course of the study, and he said that the woodland ecosystem could be altered permanently. He said the Deer Task Force (DTF) found that lethal control of deer populations was the only feasible way to protect the GLNP. He detailed the process the DTF and council used to ensure that the public had the opportunity to share their thoughts on the legislation.

Ruff explained that an offer to process the venison of the deer and give the meat to the Hoosier Hills Food Bank had been made to the Parks Board. He asked the coordinator of Farmers and Hunters Feeding the Hungry to speak on the offer.

Ian Munnoch, Farmers and Hunters Feeding the Hungry, explained that the organization was a national organization that provided over 100,000 high quality protein meals to Hoosiers in the previous year. He said that in Bloomington alone, 106 deer were processed and the meat was donated to the Hoosier Hills Food Bank (HHFB). He said that hunters across the state were limited to three bucks and one doe each year, but he said most hunters only took one or two deer. He said that his organization was committed to working with the Department of Natural Resources to ensure that the deer hunted in the cull would be processed and given to the local foodbank.

Council Questions

Council Questions:
Volan asked staff if a vetoed ordinance could be amended. Dan Sherman, Council Attorney, said that unless the council voted in favor of the ordinance with a 2/3 majority, it would be defeated. He said it could not be amended.

Public Comment

Public Comment:
Daniel McMullen spoke against the ordinance and asked the council to vote no. He said he supported the mayor's veto.

Christine Linnemeier thanked the council for supporting the ordinance before the veto. She said she was at Griffy earlier that day and saw a multitude of deer footprints.

Timothy Baer spoke against the ordinance. He said that problems could not be solved by killing, and he accused the sharpshooters of targeting fawns and does. He said that the ordinance had no way to measure if the cull was successful.

Thomas Visnius spoke in favor of the ordinance. He said that the deer population needed to be managed because the deer no longer had predators.

Scott Wells shared a Powerpoint Presentation demonstrating the foliage damage that deer had done to his property. He included pictures that showed trees cleared of leaves within a deer's reach. He said if something was not done the deer would starve to death.

for approval

Richard Linnemeier said he was born and raised in Bloomington, and he said that culling the deer was necessary to prevent the deer population from doubling. He said that deer predators such as coyotes and pumas had been seen in residential neighborhoods. He said a yes vote on the ordinance represented the triumph of reason over sentiment.

Jennifer Mickel said the media had not reported that the ordinance had nothing to do with deer in the city. She said that the DTF had not created an annual deer control plan and said she hoped the council would vote no on the ordinance.

Larime Wilson said she lived near the GLNP, and she saw a recent decline in deer population. She said that the study driving the ordinance was outdated and disputed by other scientists. She said there was not a proven need for sharpshooting, and she asked the council to vote against the ordinance.

Roger Beckman urged the council to override the mayor's veto. He said that diversity in foliage had been reduced by the deer, and he said that sharpshooting was a proven method for controlling deer populations.

Don Berry called for the council to override the mayor's veto. He said the mayor's statement said that science backed up the decision to cull the deer, but he relied on emotion to make a decision. Berry said that the entire ecosystem of Griffy could be destroyed by the deer.

Bruce Bundy gave a Powerpoint Presentation on the history of deer hunting in the area. He asserted that the majority of apex predators had gone extinct, and humans must fill that role in their absence. He said that plants that were not ordinarily in a deer's diet were being consumed by the deer which was sound evidence for overpopulation.

Zak Szymanski spoke against the council's process in discussion of the ordinance.

Maria Heslin said the extensive public input from all sides of an issue strengthened the community character. She said that a vibrant quality of life was not assisted by killing healthy animals as a first step in controlling population. She said that the city should use the experts in the community to find a different solution to deer population. She asked for a no vote.

Sandra Shapshay read a prepared statement. She asserted that no one wanted to eliminate all of the deer in GLNP, but she said that the current deer population was unknown. She said that immediate lethal action was not mandated by a dire overpopulation. She said that funding should be found for an aerial count of the deer population before moving forward with a cull.

Anne Sterling continued reading Shapshay's statement. She said a deer population management program should be implemented in order to measure the success of the cull. She reiterated the need for an aerial count of deer.

Andrea Singer encouraged the council to overturn the mayor's veto and said that blueberry plants used to be abundant in the area before the deer overpopulation.

Eric Ost read excerpts from the DTF study and called on the council to research population trends of deer across the state. He asked for all the data and assessment associated with the DTF to be made available to the public. He said he agreed with the mayor's veto.

Dennis O'Brien said that Bloomington should find a unique way to solve the deer problem. He said there were other methods, such as birth control, that could be used.

for approval

Andrew Moisey said that humans were the biggest threat to biodiversity and ecosystems. He said that firearms were the least humane way to kill deer.

Claudia Giles said that Bloomington was the perfect place to raise a family, and she shared her daughter's elementary school's statement against the deer cull.

Suzanne Halvorsen said that all life was sacred and her family was against hunting. She encouraged alternative methods to control the deer population.

Marc Haggerty said most of the council had been employed by Indiana University and therefore were too trusting of the IU study on GLNP. He said that we were culturally inclined to solve problems with high powered weapons.

Danna Jackson spoke against the ordinance. She said the deer cull was a short term fix for a long term problem.

Michelle Powell said that long term community members were not listened to by the council because they were not scientists. She said that science was never perfect, as it was always changing and improving with new evidence.

Aaron Rincon spoke against the ordinance.

Jeremy Schott said that GLNP was not the Garden of Eden and the city should not engage in stewardship of the open system. He said that ongoing lethal force should not become part of the ecosystem at Griffy.

Marta Shocket said the ordinance was a matter of competing rights and values. She said that prioritizing deer over the rest of the ecosystem was the wrong approach, and she supported the ordinance.

Armin Moczek said that humane control of animal populations was not for fun but for the necessary protection of ecosystems. He said that deer were evasive and difficult to get an accurate count of their populations. He added that alternative approaches did not work as well as lethal control, but he felt that the science behind a cull was strong, powerful, and consistent. He said the ordinance would correct decades of poor stewardship of GLNP.

Melody Inabinette said she hoped the council would override the mayor's veto. She said there was a serious problem with deer throughout the city of Bloomington.

Oriane Robinson said that biological regrowth of the GLNP after a cull needed to be measured in order to judge success. She expressed her concern that if biological regrowth did not occur, a second cull would be implemented. She said that she hoped that money would not be thrown at a project that did not work, and she was opposed to the ordinance.

Council Comments:
Neher said his decision to support the ordinance was difficult, but he highlighted his concern that killing the deer was considered irrational. He said it was heartening that commenters expressed 'beautiful' passion that evening. He said that ultimately this was a decision to kill the deer, and he valued the stewardship of GLNP. He said he would be in attendance on the first night of the cull to witness it, and he would keep an eye on the effectiveness of the cull.

Spechler said GLNP was essential to human welfare. He said that there was no way to get a competent count on deer population in an open area. He said that birds were just as important as deer to the preserve. He said he would vote to override the mayor's veto because the reasoning behind it was not at all convincing to him.

for approval

Ordinance 14-04 *(cont'd)*

Sandberg said that there was an abundance of misinformation about the issue. She said that labeling people during discussions of issues facing the community did not benefit the community character, and she said that many people were working for the greater good. She said the GLNP would not heal without intervention, and it was not acceptable to do nothing while the ecosystem continued to be damaged. She said the council's job was to make the best possible decision for the long term public good, and she would support the veto override.

Sturbaum said he considered the deer as a sustainable herd not as individual animals. He said they would be healthier as a herd if the ecosystem was managed. He said it was a human responsibility to balance the preserve, and his constituents had called on the council to restore the preserve. He said he did not want to kill any animal but, every once in a while, he had to kill a mouse in his pantry. He said he would support the veto override.

Mayer said there was a lot of discussion about what had occurred in state parks in parallel with Griffy. He said it was clear that vegetation had diminished because of deer overpopulation, but any method of controlling deer would have to be recurring. He said that the DNR could keep the public out of the parks during a hunt, and hunters paid for any associated costs through hunting licenses. He said that the city would have to pay for this hunt and would have no way to recoup those costs. He was also concerned about the effect on the parks system's reputation. He said the community had a deer problem, but he did not think the city was ready to solve it yet.

Volan said he voted against the ordinance initially because he felt the council did not deliberate openly enough to support it, not because of the arguments against the ordinance. He said that opponents of the ordinance had not been convincing in their arguments, and he would support the veto override.

Ruff spoke about the removal of invasive species from the community to promote biodiversity. He said the issue was complex and interrelated, and lethal means were not the first resort of the DTF for deer control. He said other methods were found to be unfeasible. He said another study had been released that supposedly contradicted the data behind the ordinance, but the study actually confirmed what the ordinance tried to accomplish. He reiterated that the ordinance did not allow continued hunting in the GLNP, but it was purely for management of the deer population. He said the ordinance would be seen as a good thing because it considered all life in GLNP instead of just deer.

Rollo said that a national study indicated that there was no specific number of deer in the preserve to balance the ecosystem. He said that the destruction of vegetation indicated an overabundance of deer, and the ecosystem needed intervention in order to preserve it. He said an expert told him that waiting to get a count of deer was a waste of time and resources. He said he had empathy for all the organisms in the preserve, and he said that deer could not be held above all else. He said that overriding the veto would maintain community character by protecting the preserve, and it was unfortunate that lethal methods were the most viable method of population control. He reiterated Ruff's statement that lethal methods of deer control were the last resort, and they were the only viable method in an open system. He said the problem was not going to go away and acting at that time would prevent future disasters in the ecosystem.

Granger said that humans were the biggest threat to biodiversity, and the city had a huge population of thinking, caring individuals on both sides of the issue. She said she would vote against lethal methods, but she understood the need to tackle the problem at hand.

Vote on Ordinance 14-04 veto override

Ordinance 14-04 received a roll call vote of Ayes: 7, Nays: 2 (Granger, Mayer)

for approval

LEGISLATION FOR FIRST READING

Ordinance 14-07 An Ordinance to Amend Ordinance 13-16 which Fixed Salaries for Certain City of Bloomington Employees for the Year 2014 and to Amend Title 2 of the Bloomington Municipal Code Entitled "Administration and Personnel" – Re: To Centralize City Accounting and Purchasing Functions by Moving Positions to the Office of Controller and to Authorize the Controller to Appoint a Deputy

Ordinance 14-07

Ordinance 14-08 To Amend Title 2 of the Bloomington Municipal Code Entitled "Administration and Personnel" – Re: Amending Chapter 2.26 Entitled "Controller's Department" to Authorize Procedures Necessary for the Fiscal Management and Operations within that Department

Ordinance 14-08

There was no public comment at this portion of the meeting.

PUBLIC COMMENT

Spechler said that the earlier accusation about his statements on the homeless population was libelous and false. He said that emotion was involved in the discussion of the issue, and it was that emotion that clouded people's understanding of his statement.

Dan Sherman, Council Attorney/Administrator, noted that there was an Internal Work Session scheduled for Friday, April 25, 2014.

COUNCIL SCHEDULE

The meeting was adjourned at 11:33 pm.

ADJOURNMENT

APPROVE:

ATTEST:

Darryl Neher, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington

for approval

In the Council Chambers of the Showers City Hall on Wednesday. June 18, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
June 18, 2014

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

ROLL CALL

Council President Neher gave the Agenda Summation.

AGENDA SUMMATION

There were no minutes for approval at this meeting.

APPROVAL OF MINUTES

REPORTS

- COUNCIL MEMBERS

Chris Sturbaum stated that he recently attended the Congress for New Urbanism Conference in Buffalo, NY, and looked forward to reporting on what he learned.

Tim Mayer warmly welcomed the summer season.

- The MAYOR AND CITY OFFICES

There were no reports from the mayor or city offices.

- COUNCIL COMMITTEES

There were no reports from council committees at this meeting.

- PUBLIC

President Neher called for public comment.
Kirk White, First United Methodist Church Council member, gave special recognition to the firefighters at Station #1 for going above and beyond the call of duty during a crisis situation at the church on January 7, 2014. After confirming that there was no fire danger, the firefighters voluntarily assisted with the extensive clean up from a broken water line. Mr. White presented the certificate of appreciation to Battalion Chief Mark Webb.

Antonia Matthew expressed concern that there was an inadequate supply of mulch around the trees in public parks, which left the trees vulnerable to injury from mowers. Matthew asserted that it would cost less to provide more mulch than it would to replace the damaged trees. She hoped that the 2015 Parks budget would include funds for this project.

There were no appointments to Boards or Commissions at this meeting.

APPOINTMENTS TO BOARDS AND COMMISSIONS

**NOTE:* *A motion from the meeting of 6-11-14 reordered the agenda to have First Readings before final review of two items of legislation.*

LEGISLATION FOR FIRST READING

Ordinance 14-09: To Vacate a Public Parcel - Re: Five, 12-Foot Wide Right-of-Ways in the Lone Star Subdivision Within a Triangular-Shaped Block Bordered by West Cottage Grove on the North, West10th Street on the South, and North Monroe Street on the West (Solomon L. Lowenstein, Jr., Rhonda L. Rieseberg, Dian S. Krumlauf-Hildenbrand, Nathaniel and Michelle Dodson, Ruth A. Beasley, and Kiron and Rachel M. Mateti, Petitioners)

Ordinance 14-09

Ordinance 14-10: An Ordinance to Amend Ordinance 13-16, Which Fixed Salaries for Certain City of Bloomington Employees for the Year 2014 - Re: To Centralize Planning and Transportation Functions of the City by Eliminating the Engineering Division of the Public Works Department, Shifting Engineering Functions to Planning, and Replacing the Planning Department with a “Planning and Transportation Department;” To Create a New Position in the Public Works Administration Division of the Public Works Department entitled "Assistant Director of Operations”; and To Better Facilitate Strategies Associated with Community Policing by Eliminating the Parking Enforcement Division of the Public Works Department and Moving Parking Enforcement Duties to the Police Department.

Ordinance 14-10

LEGISLATION FOR SECOND READING AND RESOLUTIONS

It was moved and seconded that Resolution 14-10 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, and said that there was no committee recommendation on this item.
It was moved and seconded that Resolution 14-10 be adopted.

Resolution 14-10 Authorizing the Allocation of the Jack Hopkins Social Services Program Funds for the Year 2014 and Other Related Matters

for approval

Resolution 14-10 *(cont'd)*

Tim Mayer reported on the activity of the Jack Hopkins Committee, beginning with the organizational meeting on February 26, 2014. On May 1, 2014, the Committee reviewed 40 applications. The amount available for allocation was $266,325; the amount requested was over $658,600. Mayer identified the members of the 2014 Jack Hopkins Social Services Funding Committee, including councilmembers Sandberg, Spechler, Ruff, Neher, two citizens and himself. After thorough review and deliberation, a public meeting was held on May 22, 2014 to announce the recommended allocations.

Sandberg read the recommendation to award funds to Amethyst House, the Downtown Outreach Committee, Boys and Girls Club, Court Appointed Special Advocates Program, Catholic Charities, Community Kitchen, First Christian Church, Hoosier Hills Food Bank, Life Designs, Martha's House, My Sisters Closet, New Hope Family Shelter, New Leaf New Life, Planned Parenthood, Rhino's, Salvation Army, Shalom Community Center, South Central Community Action Program, Stepping Stones, and Volunteers in Medicine.

Mayer read an email from Brad Wilhelm, Director of Rhino's Youth Center, which thanked the council for their work and dedication to supporting local social service agencies.

There were no council questions on Resolution 14-10.

Public Comment:
Josh Congrove asked the council not to fund Planned Parenthood. He objected to allocating tax dollars to a cruel, evil organization that killed our fellow citizens.

Adam Spaetti, MD, discouraged support of Planned Parenthood. He said that he was dedicated to women's health and that abortions were not good medicine for women. He encouraged supporting women's health services in other ways.

Carol Canfield opposed funding for Planned Parenthood because of the abortion services they provided. She quoted President Ronald Reagan: "I've noticed that everybody who is for abortion has already been born."

Scott Tibbs objected to funding for Planned Parenthood. He asserted that Planned Parenthood's request was more about a political endorsement than it was about money. He repeated that it was time for the city to stop funding Planned Parenthood.

Council Comment:
Sandberg resented the characterization that local nonprofit organizations came to the Jack Hopkins Committee for a handout. In defense of the difficult decisions made by the Committee, she explained the process of allocating Jack Hopkins funds to the most deserving, hard-working agencies that provided assistance to the most needy and vulnerable. She said the process was thorough, transparent, public and well intentioned. Sandberg encouraged councilmembers to support the recommendations.

Granger pointed out that this was a community process, and she thanked the committee for their careful review of thousands of pages of documented requests. She appreciated the message being sent that the city cares about what is going on in the community and about the citizens served by these agencies.

Spechler said the committee voted unanimously to support the agencies recommended in Resolution 14-10. He expressed regret that even more organizations could not be funded. He defended his vote to fund Planned Parenthood because of the valuable health services they provided to persons with limited resources. He said he was saddened that any woman would be in a situation to need an abortion, but pointed out that abortions were legal, and that women had the right to choose. He believed that support of Planned Parenthood was a political statement that most citizens of Bloomington would endorse.

for approval

Resolution 14-10 *(cont'd)*

Mayer said that these were local tax dollars going to local social service agencies, and that the Jack Hopkins Social Services Program Fund was a unique program in the state. He added that as the federal government was stepping back from supporting those in need, the city felt it important to fill that gap. He thanked the committee members, council staff, and HAND staff.

Sturbaum endorsed the committee recommendation, and reiterated that the need was great and the resources were limited.

Neher said it was unfortunate that the media focus regarding the allocations would be about Planned Parenthood, which received less than 1.2% of the Jack Hopkins Program funding. He emphasized that great innovative work was being done by many social service agencies in our community, and encouraged citizens to take a look at the other worthwhile programs that were funded. He added that the JHSSF allocations were a drop in the bucket compared to the financial help that these organizations needed. He stated that private funding was essential and encouraged everyone to "dig deeper" and increase their financial support.

Resolution 14-10 received a roll call vote of Ayes: 6, Nays: 0

Ordinance 14-09 To Vacate a Public Parcel – Re: Five, 12-Foot Wide Right-of-Ways in the Lone Star Subdivision Within a Triangular-Shaped Block Bordered by West Cottage Grove on the North, West 10th Street on the South, and North Monroe Street on the West (Solomon L. Lowenstein, Jr., Rhonda L. Rieseberg, Dian S. Krumlauf-Hildenbrand, Nathaniel and Michelle Dodson, Ruth A. Beasley, and Kiron and Rachel M. Mateti, Petitioners)

It was moved and seconded that Resolution 14-09 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, saying that there was no committee recommendation on this topic. *She noted that public comment on this legislation at this meeting constituted the statutory Public Hearing per IC 36-7-3-12.*

It was moved and seconded that Ordinance 14-09 be adopted.

It was moved and seconded that the council consider Ordinance 14-09 in the following manner:

- Representatives of the petitioners would have an opportunity to make a 15-minute presentation followed by questions from council members;
- Councilmember Sturbaum, District 1, would be allowed 5 minutes to present a slideshow and speak in favor of this request followed by questions from council members;
- Tom Micuda, Director of Planning, and Patty Mulvihill, Assistant City Attorney, would be present to answer any questions the council members had regarding their memo in opposition to this request and other matters relevant to this proposal;
- Members of the public would have one opportunity to address the council for no more than 5 minutes;
- Representatives of the petitioners would have an opportunity to make a 5 minute concluding/rebuttal statement;
- Members of the council would have an opportunity to raise further questions; and
- Members of the council would then make concluding comments and entertain a motion to schedule the ordinance for further deliberation, which could be as soon as the Special Session on June 25, 2014.

The motion was approved by a voice vote.

Petitioner Comment:

Solomon Lowenstein, Jr., 1006 W 10th Street, spoke for all the petitioners in the Lone Star Addition, which he said was platted in 1928. He said that if the ordinance was approved, the city would benefit by no longer having responsibility for maintenance of the vacated parcel. Other benefits would include increased green space, strengthening of the neighborhood, and improvements that would be made by property owners and residents. He stated that vacation of the rights-of-way would not hinder access by public utilities, and that there was no need for pedestrian, emergency or vehicular traffic to use these public rights-of-way due to the adjacent streets.

for approval

He cited four statutory grounds for the petition: the vacation would not hinder any growth or development of the neighborhood; would not make access to any of the properties in the Lone Star Addition difficult or inconvenient; would not hinder public access to any church, school or other public building; and would not hinder the use of these unimproved alleyways by area neighborhoods.

He asked the council to approve the ordinance which he believed would contribute to the vibrancy of the neighborhood.

Attorney David Ferguson referenced the city zoning code regarding residential core districts. He pointed out that the Lone Star neighborhood had been developed over the 86 years since the alleyways were given to the city and acknowledged that development had occurred in those alleys. He noted the planning code restriction that stated the city would not build on grades steeper than 8%. The sloping in the hilly rights-of-way exceeded 8%.

He stated that the city's retention of these alleyways was preventing people from investing and from making the neighborhood stronger and better. He also repeated that the vacation of the rights-of-way did not affect any utilities currently in the rights-of-way.

Sturbaum gave a presentation based on his visit to the neighborhood. He showed a map with all of the alleys erased because he said they really didn't exist. He described a triangular community with small houses around the perimeter. He said they were built as railroad workers' homes. He said that the co-housing project and the B-Line project matched this configuration, but in a more modern form. He showed pictures of the houses, saying they were surprisingly similar to the Habitat homes being built across the way. He noted that this was a steep sloped area, and showed more images of the neighborhood to point out the trees growing in the areas that were considered to be the alleys on the map. He also showed pictures of driveways with the owners standing where the property lines actually were – in the middle of the driveway. He showed the diagram of the Habitat neighborhood to compare the two sites.

He said he was making a plea for common sense, and that there was no reason to ever put alleys in this neighborhood. He said the green space was needed by the neighborhood, and if the alleys were vacated, there could be easements for potential city use.

Council Questions:
Granger asked Micuda how it was that people were able to build garages on the public right-of-way. Micuda said that most likely there were no permits sought for these old structures.

Mayer asked why the petition went to council and not Plan Commission. Micuda said alley right-of-way vacations do not go to Plan Commission for comment, and that many right-of-way projects come to council along with development projects that are also reviewed by the Plan Commission.

Spechler asked if these alleys were in the public record going back a hundred years. Micuda said they have existed since 1926. Spechler asked if it were the choice of the city whether or not to develop the alleys. Micuda said it was, and there were hundreds of rights-of-way scattered throughout the city that were never turned into paved or graveled alleys. Spechler asked Patty Mulvihill, City Attorney, if all the properties were owned by individuals or organizations. She referred to the staff report where the landowners were listed. He asked if it were possible to sell the rights-of-way to adjacent property owners. She said she was fairly sure it could not be sold as other property that was not right-of-way. Spechler wanted verification that the only two options were to give it away or do nothing.

Sandberg noted that of the utilities contacted, Vectren, Bloomington Digital Underground (BDU) and City of Bloomington Utilities (CBU) had concerns. She asked if a vacation would have a negative impact on their operations. Micuda said that because this was not a normal vacation process, the utilities were not contacted in the normal way, and he had not

for approval

had a conversation with them. He said the first contact was usually about their underground or over ground line, and when that was established they were asked if they would support the right-of-way vacation with an easement and with terms satisfactory to them. He said the typical easement would allow the utilities to do what they needed to do in the future.

Sandberg asked if the petitioners would be amenable to having this easement granted for the alleys. Lowenstein said that they would allow that, and that state statute allowed for repair, modification and expansion of utilities in rights-of-way. He read: *The statute does not deprive the public utility of the use of all or part of the public way or the public place to be vacated.*

Granger asked Micuda about building on the alleys if they were vacated. Micuda said the 12 foot wide alleys would be split between the two adjacent home owners. He said there were still setbacks on the property; home owners may not be able to build on the lot unless they got variance.

Neher noted that Lowenstein claimed the vacation would spur investment, but the additional land might not be enough for additions. Neher asked him to reconcile this. Lowenstein said the vacation of one right-of-way would allow him to build on a room to his house that he wouldn't be able to do even with a variance. He said his other property, bought at a tax sale, had a house that sat right on the property line, and the driveway was currently in the right-of-way. He said without a variance he could do nothing with the dilapidated house, and he wanted to renovate it.

Neher asked if the property owners knew of these encroachments when they purchased their properties, and if not, why. Lowenstein said all the properties were sold by the same person. Lowenstein asked for a survey of the property, and the seller would not give him the information. He said he and another purchaser had the property surveyed and then found out about the encroachments and the rights-of-way.

Sturbaum asked if there could be some language added to this vacation that would cover the concerns of the utilities. Sherman said it would not have legal effect because when the city vacated a property, it gave up any rights to it. Sturbaum said that the attorneys should work this out so that the council wouldn't have to worry about this factor in the proposal.

Granger asked if there could be a building or addition at 1006 W. 10th St. even with an alley vacation. Micuda said that the lots were very small, very shallow like 1006, or long and narrow. He said even if six feet were added to the side or the rear of these properties by a vacation, the owners would still need to deal with setback issues. He said that the house at 1006 was in the setback already, and an addition to the house would need a setback variance.

Sandberg asked about the public interest in the vacation of these pieces of land. Lowenstein said that some garages could not be remodeled at all because they currently sat in the right-of-way. He said at least one property had been taken off the market because of this. He said people weren't able to sell their properties or use them as they wanted to. Lowenstein added that one inhabitable house, if torn down, could not be rebuilt on the same footprint because it was built in what became the public right-of-way, speculating that this laborer cottage was built prior to the area being platted.

He said the public good was enhanced by improving the neighborhood. He said the residents were anxious to fix up the area and be a greater neighborhood with the new Habitat housing being built. He said residents may have felt slighted by the city before this with no funds to improve the rights-of-way in the last 86 years. He said another public good would be that the city would not have to pave or gravel these areas for use.

Neher asked why Lowenstein didn't get a survey of the property prior to purchase. Lowenstein said he wasn't aware of any issue with the property at the time but the seller was aware of the issue and didn't disclose it in the sale. He said he purchased the properties because of the affordable price, and he had invested in his home and wouldn't leave even if he didn't get a

for approval

variance to build, or if the alleys were not vacated.

Neher asked about other vacation processes and accompanying development plans. He asked if a vacation was conditional on investments taking place. Micuda said this was noted in the memo accompanying the ordinance. He said in other requests there were tangible benefits and commitments by the petitioner that were to be considered in the vacations.

Sturbaum said another unique condition was what was already on the ground. He said that the project was a market affordable, green, sustainable little triangle of a neighborhood where the residents wanted to stay. He said the alleys threatened the vision of the neighborhood and created problems. He said this really was a backward look at a project rather than looking at a future project.

Neher asked about the vacation from 1991 and the allusion to this request being equivalent. He asked Micuda and Mulvihill if that were true. Micuda said he would have to research that case but thought that the case might have had a more tangible proposal for development. Micuda noted for the record that no other property owner had approached his office with a tangible project at this time.

Neher asked if there was an impact on process if the decision to vacate the rights-of-way based on the present hearing took place. Micuda said there would be. He said that the request was based on a statutory allowance that citizens could directly petition the council. He also added that this request was unusual because it did not have a tangible plan for use of the right-of-way.

Spechler said he went to the neighborhood that afternoon. He asked Sturbaum why this was being discussed. Sturbaum said there were three property line problems that, after being discovered, made neighbors aware that one property couldn't be sold due to the encroachment, and one that needed repair was actually on the property boundary line. He said that made people aware that the alleys existed, and yet were not used by the city. By advocating for this ordinance, he said he was trying to advocate for a neighborhood that was already built, but needed enhancement and protection.

Mayer wondered how a structure could be built in a public right-of-way without a survey or without a permit. He asked Mulvihill if there was another remedy that could be used besides the blanket alley vacation, a way that the city could give the property owners with encroaching structures permission to keep them there without vacating the alleys. She said the city could grant a right of encroachment as it had done with some businesses and with the university.

Sandberg asked about an alternate plan for the BDU to reach Tri-North Middle School from a different corridor. Mulvihill said she spoke to Rick Routon from ITS who told her this was one of the highest contenders for the corridor, but a decision had not yet been made on that route.

Public Comment:
Dian Krumlauf of 1011 W. Cottage Grove said the houses being discussed were behind her residence. She said she brought forward the alley vacation case from 1991, and she said there was no actual plan to build in the right-of-way at that time, and that they ended up adding to their house in a different direction. She said that the home behind her had an alley and part of a house in the area where the unimproved alley existed, and it was an easy vacation. She said she favored the ordinance.

Nathaniel Dodson of 1003 W. Cottage Grove said he purchased the property the previous fall. He said he bought two properties and found that the right-of-way split these two properties. He said an alley vacation would allow him to add to his 775 square foot house as his family grew. He said this area was attractive to him because of its proximity to the city center and the B-Line. He said there were dead and dying trees that existed in the right-of-way and wondered if the city would maintain that area.
Kiron Mateti of 628 N. Monroe St said his house was adjacent to one on

for approval

Cottage Grove. He talked about the community and comradeship that had developed in the neighborhood. He talked about the convenient location of the neighborhood. He said the trees in the alleys supported a robust bird habitat that was unique to city life, and supported the vacation for these reasons.

Ruth Beasley asked what would be involved in using the rights-of-way for the BDU to run to Tri-North. She said the loss of trees and green space would be substantial if the rights-of-ways were used for real alleys. She said the city should do a better job of preserving this greenery.

Petitioner's closing comments:

David Ferguson spoke for the petitioners. He said it was confusing that there was a six foot side yard setback, and that if alleys were vacated, the owner would be just owning that setback, but it really didn't solve the problem of what would happen to the existing structures. He said that there were also houses right on that property line that really should be six feet back from the line, a pre-existing 'non-conforming existing use.' He said they should be allowed to stand, but their use could not expand unless the alleys were vacated. He acknowledged there were different situations for these lots.

Ferguson noted this was a residential core neighborhood that should be protected and enhanced, and there would not be a project there in the sense of the past vacations, and in fact there never would be. He said that alleys were the exception and not the rule as many neighborhoods did not have them. He said the terrain of the rights-of-way made them unsuitable for use as alleys, and they had existed this way for 86 years and nothing had been done by the city. He said utilities that used the areas would still remain. He said the benefit to the city would be a stronger neighborhood, which in turn would make for a stronger city.

Council Questions:

Mayer asked which utilities were located in the easements. Micuda said Vectren had a gas line and CBU had a water line.

Neher asked who had responsibility for dying trees in the rights-of-way. Micuda said he would research that in a general sense and get back to the council. Neher asked if there was an answer to Beasley's question about the nature of the BDU use. Micuda said he would talk to Routon about this and report back.

Sherman said that there was a missing sentence from the 1991 vacation minutes. He read: *"Tim Mueller said that the petitioner's house encroaches into the right of way. They wish to build an addition to their house. It's extremely unlikely that the alley would likely be used for any purpose."*

Sherman noted a key point from the report and minutes. He noted the director of planning said the petitioner intended to expand their house, and the vacation request was part of a project. Sturbaum said it was the same case as three of the properties included in this petition.

Sherman said that the second sentence of what he read was key in that it tied the decision of the council in 1991 to current policy, which tied the vacation of right-of-way to a future project. Sturbaum said they were correcting a property that was over its boundary, a relevant fact, too.

Sandberg asked if this petition would be voted on at this meeting.

Neher said that he was anticipating a motion to forward the final action to a special session of the council to be held on June 25, 2014. She said she still had questions about how the BDU line would disrupt the neighborhood and was glad for a possible postponement.

Spechler said he wasn't convinced that giving away the land was right. He said that the property owners had built in the right of way and ignored the need for a survey. He said the garages could be demolished and the property could be freed up to be sold. He said giving public property to private individuals for their use seemed to be wrong, but selling it to them or selling the right to encroach would be better. To that end he would favor selling the land for $1.00.

for approval

Ordinance 14-09 *(cont'd)*

Sturbaum said the easy way to address this would be to go by the book and not grant the petition for vacation. He said the council functioned differently, looking at all the facts and, perhaps, making an exception for unique cases. He said this was such a unique case. He said that building without permits had happened a long time ago. He added that straightening out the mess was to affirm a project that had developed in the past, over time. He said if this was a new housing project proposal with the same configuration and affordability, he was sure the council would approve. He advocated for making a decision, not by the book, but as an affirmation of the neighborhood values.

Granger said she had questions that could be answered with another hearing.

Sandberg said her values fell in line with this neighborhood: she felt the intangible plans were natural to the area, and that the garages were a relic from past times. She noted other alley vacations and thanked staff for continuing to recognize that there needed to be a public benefit in giving away public land. She said she did see a benefit in the maintenance and modest development in the neighborhood. She noted her only problem was with the BDU plans and wanted to hear more about that.

Mayer said he took pause with talk of what was above ground and not what was under the ground. He said gas and water mains were in the right-of-way, but wanted everyone to think about what would happen if those utilities were on private property, especially with emergency repairs. He said heavy equipment would clear the way to make the repairs. He noted that Vectren was clearing trees, brush, abandoned structures and the like from public easements in the community now. He said that he knew first hand that people built fences over water lines and that those fences needed to be removed to get large equipment in to repair breaks, and then replaced after repairs. He said the easements were present for these reasons.
He said to vacate all the alleys was an over-reaction and that the alleys needed to be maintained responsibly.

Neher said there were as many questions as answers at this session. He said in one instance, a survey before a purchase of land could have avoided a problem. He added that a vacation of the right-of-way to solve that problem was difficult for him. He said this decision would set a precedent for vacation requests. He said to have the standard be 'unlikely to be used for any use,' any other vacation in the city or neighborhoods should be able to expect the same treatment.

MOTION TO CONTINUE HEARING ON Ordinance 14-09

It was moved and seconded that council continue deliberations on Ordinance 14-09 at the Special Session already scheduled for June 25th.

The motion to continue Ordinance 14-09 to June 25, 2014 received a roll call vote of Ayes: 6, Nays: 0.

PUBLIC COMMENT

There was no public comment at this portion of the meeting.

COUNCIL SCHEDULE

Dan Sherman, Council Attorney/Administrator, noted that there was an Internal Work Session scheduled for Friday, June 20, 2014.
Not enough council members could attend that session and it was moved and seconded that the session be cancelled.
The motion to cancel was approved by a voice vote.

ADJOURNMENT

The meeting was adjourned at 9:55 pm.

APPROVE: ATTEST:

Darryl Neher, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington

for approval

In the Council Chambers of the Showers City Hall on Wednesday, June 25, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
June 25, 2014

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

ROLL CALL

Council President Neher gave the Agenda Summation

AGENDA SUMMATION

REPORTS

- Annual Tax Abatement Report

It was moved and seconded to accept the Annual Tax Abatement Report.

Danise Alano-Martin, Director of Economic and Sustainable Development, noted Jason Carnes, Assistant Director for Small Business, would help present the compliance report for the active tax abatement projects. She said the Economic Development Commission met on June 6, 2015, reviewed the report and recommended the council find these projects in substantial compliance.

Alano-Martin reviewed the state statute regarding tax abatements and changes in state laws in the past year. She summarized the abatement process including initial reviews of applications, legislation included, the role of the common council, and reporting requirements. She showed economic impacts from the real and personal property investments, jobs retained and created, salaries, and increased assessed values of properties that had tax abatements awarded.

Carnes then went through each tax abatement describing the petitioner, the status of the project, statement of benefits and recommended findings of compliance of each project. He also gave updates on projects in progress that had not yet been completed, and the status of each project. He noted one abatement had expired within the year and one reporting document had not been received.

Council questions:
Mayer asked if the assessed value had diminished from previous years. Carnes said it was the same as previous years. Mayer asked if the flooding issues in the Evergreen Village area had been addressed. Carnes said that Public Works was addressing the issue, although he couldn't say exactly what measures were being taken.

Spechler asked if new assessed valuation was an official figure on which tax payments were based. Carnes said it was. Spechler asked if wage numbers were deflated by cost of living increases over the life of the project. Carnes said the figures used were those reported on the CF-1 reporting forms. Spechler said the wage increases were influenced by general wages and prices for the last 8-10 years. Carnes said he wasn't sure of that assertion as the report was structured on data given to the council and not projected or altered in any way. Spechler said that reporting increases in wages due to the increases in the general price level was somewhat deceptive.

Alano-Martin said that instructions were to compare the original statement of benefits in an application for tax abatement to the compliance form. She said she understood Spechler was asking for a greater context, but that statute required the comparison of those two documents.

Sandberg asked if there had been any communication about the CF-1 not received. Carnes said he had not heard back from them. Sandberg asked the number of years of this project, to which Carnes noted this was the 5th year of a 5 year abatement.

There was no public comment on this report.

Council comments:
Sturbaum said it was surprising that a little contribution from the public side of issues brought forth much contribution from the private part of economic development. He said this actually stimulated investment.

Spechler said the basic unanswered question was if the project would have been built without the tax abatement. He said in a recent abatement process

for approval

there was careful consideration of that issue although he could not speak to those of the past. He said it was a critical question to ask.

Sandberg said she was glad to have this tax abatement tool in the city tool box to work with the private sector in development. She said she was gratified that some were on the end of their abatement period and would be paying full taxes, which she called the fruits of the process. She said they were good investments and that the council was good about reviewing these in good faith, but with good understanding of what would happen if the project did not meet expectations.

It was moved and seconded to accept the 2014 Tax Abatement Report.
The motion received a roll call vote of Ayes: 7, Nays: 0.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

It was moved and seconded that Ordinance 14-09 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, noting that this item was continued to this Special Session by a vote of 6-0.

Ordinance 14-09 To Vacate a Public Parcel – Re: Five, 12-Foot Wide Right-of-Ways in the Lone Star Subdivision Within a Triangular-Shaped Block Bordered by West Cottage Grove on the North, West 10th Street on the South, and North Monroe Street on the West (Solomon L. Lowenstein, Jr., Rhonda L. Rieseberg, Dian S. Krumlauf-Hildenbrand, Nathaniel and Michelle Dodson, Ruth A. Beasley, and Kiron and Rachel M. Mateti, Petitioners)

It was moved and seconded that Ordinance 14-09 be adopted.

MOTION to limit debate

It was moved and seconded that Ordinance 14-09 be considered in the following manner:

- Tom Micuda, Director of Planning, and Patty Mulvihill, Assistant City Attorney, would provide answers to questions raised last week and take further questions from Council members;
- Representatives of the petitioners would have an opportunity to make a 15 minute presentation;
- Councilmember Sturbaum, District 1, would be allowed 5 minutes to present a slideshow and speak in favor of this request;
- Members of the pubic would have one opportunity to address the Council for no more than three or five minutes;
- Representatives of the petitioners would have an opportunity to make a 5 minute concluding statement;
- Members of the council would have an opportunity to raise further questions; and
- Members of the council would then make concluding comments and entertain a motion.

The motion received approval with no dissent from any council member.

Ordinance 14-09 *(cont'd)*

Tom Micuda said he and Patty Mulvihill, City Attorney, were present to respond to five issues and questions that arose in the first meeting on this ordinance.

Micuda said there were two utilities that had lines in the areas that were requested to be vacated. He said the City of Bloomington Utilities (CBU) had a 1954 six inch water line that ran along one of the east/west rights-of-way. He said because of the age of this pipe it would need to be replaced at some point, and repairs may be needed at any time. He said CBU opposed this vacation even if the petitioners would grant an easement for the utility. He noted objections were that easements were granted to existing utilities only, and CBU would rather deal with one entity, the city, in getting big equipment into the 12 foot area. He said that in an easement, the right was to the line itself, but not to the entire 12 foot area.

Mulvihill said two other city attorneys pointed out that by keeping the rights-of-way rather than vacating them, the city would be able to keep all options open. She gave the example of the B-Line trail which no one would

for approval

have considered wanting 40 or 50 years ago. She said that if the property was needed in the future, the city would have to buy it back.

Micuda noted the Bloomington Digital Underground (BDU) question about their future use of the rights-of-way for running fiber to Tri-North Middle School, and the sewer lift station at 17th Street, Monroe Street and Arlington Road. He said BDU most recently said this was the line that would run from a special manhole, a vault, on the B-line, north to Cottage Grove and then west to Monroe Street. He showed a map and noted that while this plan would not place fiber in the rights-of-way in question, it was much more expensive to bore into streets than unimproved areas. It was the position of the BDU to not lose the option to use the alleys entirely.

Micuda noted questions regarding what property owners could do on their own lots given that they may have structures that exist in the rights-of-way, and what the vacation would allow them to do.

He showed a map of a cluster of properties that gave a schematic of structures that were encroaching into the right-of-way, and stepped through each instance of what could happen with the addition of six feet of former alleyway. He said there were still setback issues and noted that the owners would still have to go through the variance process even if the alleys were vacated.

Mulvihill noted Mayer's question of another solution to the encroachment issues rather than the blanket vacation requested by this petition.

She said the first option would be to remove the structure from the right-of-way, which was clearly not what the petitioners wanted.

She said the next option was to ask the Board of Public Works for permission to encroach on the right-of-way. She said the administration would be willing to help the petitioners through the process, and would be willing to support the petition to encroach. She noted that there would be included language that said that the city had the right to take back that permission if they needed to use the land. She said this would legitimize the encroachment, legally recognize it on the part of the city. She said they would support this option instead of vacating all the rights-of-way.

Mulvihill had been asked who was responsible for the trees that had been allowed to grow in the rights-of-ways. She said that this was considered to be an 'unimproved natural condition of property.' She said that under the tort claim act the city would not be responsible for a tree that fell as this 'unimproved natural condition of property' was covered in that act.

Mulvihill noted she researched the question about selling the land to adjacent property owners. She noted there were different opinions on this. She cited a case where a petitioner asked for a vacation of right-of-way in Brown County and the commissioners asked what would be given in return—a quid pro quo situation. She noted the request was denied and the petitioners appealed on the grounds that they were being asked to give something in return for the vacation. She said the court said that quid pro quo was fine, that the petitioners shouldn't expect the government to give up public land and not get something in return. Mulvihill said the legal department interpreted that as meaning that when a public right-of-way was vacated, the government had the right to reasonable conditions on it so that the public would get something back in exchange for giving up a right. She noted Council Attorney Dan Sherman might have a different opinion.

Council questions:
Sturbaum asked Micuda if there were water lines in all the rights-of-ways surrounding the addition. He said he knew that some of the property owners had connected their lines to one running in the street. He said this indicated there was an alternate supply line for the homes in this area. Micuda said he hadn't asked the CBU staff if the line was obsolete. Sturbaum said the early development was served by the waterline in the right-of-way, but now there were other options.

Sturbaum asked if CBU just didn't want to give up an easement. Micuda said he tried to distinguish between right-of-way vs. easement in his communications with the CBU. He said they distinguished between these

for approval

two options saying that the right-of-way provided the utility with more rights than an easement would. Sturbaum asserted it was a preference. Micuda said the preference was based on the ability to serve CBU interests. Sturbaum said this one length of pipe was the only utility in this whole subdivision. Micuda said that Duke Energy had power poles, and he added that the water line was hundreds of feet long.

Sturbaum asked if it were possible for neighbors to purchase part of another neighbor's vacated alley land. Micuda said "exchange of lot lines between owners" was permissible when structures encroached, but no lot could end up being smaller than the code allowed, 60 feet. Micuda said that the lots in this area were 50 feet wide to begin with. He said zoning variances could be requested in this instance.

Sturbaum asked if the city would be responsible if a tree from a tree plot fell on a car. Mulvihill said the tree plot was developed land and didn't fall under the same provision of 'natural condition' she mentioned earlier. Sturbaum asked if a water line was in the ground, could the land be called 'natural condition.' Mulvihill said it was in natural condition.

Ruff asked if the administration's acceptance of existing encroachments was something that was recordable and would go with the property. Mulvihill said generally the Board of Public Works would pass a standard resolution that would approve the encroachment. She said a copy went to the property owner and a copy was kept in the city. She said the resolutions made it clear that the encroachment goes with the property, not based on the owner. She said a property owner could record the action with the County Recorder but most people were satisfied with the resolution that allowed them to encroach. She noted she couldn't address the question of problems with title work for the sale of property.

Sandberg referred to possible future uses of a right-of-way. She asked if the city could hold this vacation up for some unspecified future project like a future B-Line trail. Mulvihill said that previous vacations of rights-of-way contained a specific public good, a tangible product. She said that the city was supposed to be looking forward in planning and be good stewards of the property owned. She said the CBU said they needed the property and it was more important to them than to have just a small easement; BDU wanted to keep the option to use the corridor in play for the future. She said the risk was in giving away land that the city may want to use in 20-30 years and then having to buy it back, or perhaps purchase something more expensive. She noted it might not be the best use of public resources if something was not obtained for the public in the exchange. She said the administration didn't see an overall good given back to the community.

Sandberg asked about the 'right to encroach' until or if the city needed that land. Mulvihill said the permission to encroach wasn't a vacation, but it legitimizes the structures to be in the encroachment and takes away the illegality of the presence. She said it was not a solution to every situation, but it was better than an illegal encroachment.

Granger asked how many homes would be affected by the request. Micuda said there were 8 petitioners with five of those lots that had setback or encroachment issues. Granger asked if these homes were owner-occupied. Micuda said that there were 5 rentals and 3 owner occupied homes.

Mayer asked how many of those properties were purchased after the encroachment occurred. Micuda said there would be a way to figure that out. Mayer wondered if this would have an effect on the salability of the property. Micuda said he couldn't answer that question.

Spechler said a compromise was to allow existing structures to encroach. Mulvihill said that the administration was in support of that request. Spechler asked if there was a charge for the resolution. Mulvihill said she didn't know. Spechler posited that the legal encroachment would make it easier for these lots to be sold. Mulvihill said she didn't know what lending institutions and title insurance companies would do with this information.

Sturbaum noted that there was no guarantee that the Board of Public Works would grant this right of encroachment. Mulvihill said there wasn't a 100%

for approval

guarantee, but said staff recommendations were usually taken. Sturbaum said that the council had experience otherwise.

Neher asked about unintended consequences on possible future projects. Mulvihill said staff were worried about precedent regarding vacating rights-of-way without a discernable public good in return. She said some of the rights-of-way included in this petition did not have any encroachments on them, which took the vacation to an "I just want it" level. She said she would have concerns that the situation would encourage people to encroach in the public right-of-way so that they could later ask for a vacation so they could enlarge their property without paying for it.

Neher asked for an example of a problematic project. Mulvihill noted one property owner had six lots adjacent to each other, and wanted alleys that ran between them to be vacated to build houses for his own purposes. She said the administration had repeatedly denied this request because there would be only one beneficiary of this vacation – the property owner. She said there was an equity issue with that instance and the one at hand.

Neher asked if the request for permission to encroach could be a group application to the Board of Public Works. Mulvihill said the administration tried to make accommodations for those circumstances. She noted in that instance it would be brought forward in one petition, but each property owner would get their own right of encroachment issued for their property.

Neher asked Sherman his perspective on the city selling rights-of-way. Sherman said he and Mulvihill looked to Home Rule for guidance. He said that meant that the city could exercise powers as long as they were not expressly granted to someone else, denied to the city, or necessary or desirable for municipal purposes. He said the vacation of rights-of-way statutes do not deny the city compensation for the land. He said he questioned if the vacation would be considered 'disposal of real property' for which there was a statute. He said Home Rule said power should be exercised in the manner specified by statute, and he would have to study that real property provision to see if the vacations would apply. He added if it didn't apply, an ordinance would have to dictate the manner in which the property would be disposed. He said the city did not have anything of that sort at this time.

Ruff asked why the request for vacation was appearing at this point in time. Micuda said that one property owner had contacted the city in 2007 or 2008 about a vacation. He said the department responded noting that there was not a tangible project associated with the vacation and therefore it would be difficult to approve the vacation. He noted a similar request came to the department in the last year, with similar response, then this petition came forward.

Solomon L. Lowenstein, Jr., said he was one of the petitioners who lived at 1006 W. 10th Street. He said he was looking for a house for his daughter-in-law to live in while she went to graduate school. He found this home, but said he was advised not to buy in the area. He now decided he wanted to retire in that home, and has lived there for the last three years. He said three other homes in this addition had become owner occupied. He said he watched a home in disrepair deteriorate and two years ago bought it at a tax sale. He said he found out that the entire west wall of the house encroached into the public right-of-way.

He said his concern was that because the decision to grant a right of encroachment was at the sole discretion of the Board of Public Works, they could terminate the encroachment authority with a 30 day notice, even after he had spent tens of thousands of dollars to improve the home. He said that others in the neighborhood were in a similar situation, investing without a guarantee that the investment would not be lost.

He noted chronology of the neighborhood, especially with regard to the 1991 vacation of a right-of-way. He said he had researched underground utilities through the 811 underground utilities locater service and only found the water line.

Lowenstein noted a new owner with a family who wished to expand his home, and couldn't because of the alley that he could not encroach into.

for approval

He said keeping the public right-of-way without city improvements or the ability to improve personal property hindered the improvement overall for the neighborhood. He said that a 'subjective whim' could remove an improvement to his home, and that was not an incentive to improve his property.

For the record, he noted his thanks to council member Sturbaum who had been a strong advocate for this petition. Lowenstein said Sturbaum took a lot of time with the neighbors to understand all the issues involved, and he appreciated his common sense position in the petition request.

Lowenstein asked for the approval of the petition. He said structures would be improved and the rights-of-way would be kept green and this would be a public good.

David Ferguson spoke as the attorney for the petitioners. He said that the neighbors had been working on this issue for a number of years, and said that long process would not really encourage others to ask for vacation of alleys.

He noted a cover page of a packet of instructions that the planning department issued to people who were requesting alley vacations. He said the second page indicated criteria that should be of concern. Among those items he said one criteria, 'necessity for growth of the city,' would be present as the development and refurbishing of this neighborhood was a way to grow this area. He said the city wasn't doing anything with this land to that end, and so the neighbors should have it.

He noted the question of public good, and said that the lots, which were 'substandard' in width now, could be upgraded to the city's standard with the addition of the alley land to their lot size.

He noted a map of the area and said there were no published plans for the BDU. He noted other utilities could stay in the alleys and noted the age of the water pipe that was there now. He said the neighborhood was completely surrounded by other water pipes that could service the area. He noted the gas company had no lines in the alleys, that there were just access lines to each house, but Ferguson said they would not be used, as the company usually accesses the homes from the street line, not an alley line.

He noted the city was not going to do anything with the alleys and for the sake of the city's growth, it would be better if the neighbors were taking care of the alleys than the city.

Sturbaum said the public good in this request was the revitalization of the small neighborhood and the help the city could contribute to that. He related the Prospect Hill history to the one of this neighborhood. He said the neighborhood was moving from rentals to owner occupied housing, a good sign for the future of the area. He talked about meeting Lowenstein for a walk through the neighborhood which he found to have a central wooded green space surrounded by small, affordable houses.

He said if this were to come to the council for a PUD approval, it would be approved in a second. He showed slides of the homes, garages which sat on alley lines, and noted the streetscape was much like the Habitat project that had been approved for the other side of the street. He showed a slide of both neighborhoods, side by side. He reiterated that by vacating the alleys the neighbors would receive the encouragement to improve their properties, and he felt that was a tremendous public good.

He said a bureaucracy could become so paralyzed that it couldn't act because it was trying to second guess all the future vacations that might be needed. He said it was the job of the council to listen to appeals for help and to judge things on a case by case basis. He asked for help for these homeowners.

Public comment:

Jim Tolen asked the council to approve the vacation of the alleys that might have been 80 years ago, but weren't even alleys now. He also commended Sturbaum for going to bat for 'little people' noting that this was not a vacation for the Hyatt, or a corporation, or well-established influential local person. He said as he had watched the process unfold, he concluded that this was a plea for common sense. He said it would be good for everyone watching to see that the council could deliberate with common sense.

for approval

Ruth Beasley, 1012 W. 10th Street, said she researched county tax records to find the history of her home. She said the house was noted as existing in 1899, and in 1900 was listed as owned by Mr. and Mrs. Harris who owned it until 1984. She said the first tax listing of a garage was noted in 1940 with a note from the assessor that said it was in bad shape with an "F" rating. She said this was evidence of one garage that had existed before the alleys were platted. She said she didn't believe that people were being nefarious in not getting building permits, and said the areas just grew up quickly and people didn't know that the alleys existed because they had never been used as such.

Beasley said she bought the house and garage in February of 2013 with a respected realtor, and had a title search and inspection done. She said she found out two months previously that the seller and his realtor purposely withheld the information about the alley right-of-way line being under the garage. She wanted to know if the alleys were not vacated, if the city would remove her garage, or if they would honor a building permit request to build another garage when this one needed to be replaced.

Dian Krumlauf, 1011 W. Cottage Grove, said her property backed up to the properties on W. 10th Street, noting that once the property was vacated, the owner paid taxes on it every year. She said the property was thus, not free. She said it was not bringing in any taxes while owned by the city. She also noted that the hotel for which an alley was vacated did not pay for the land, and she asked the same for individual homeowners.

She said she had petitioned for a vacation of alley in 1991 and read from that statement what was considered at the time to be a common good:

> *…..purpose of the alley will benefit the city by upgrading the area. The small size of the house limits its desirability as a residence. By adding on it will create a residence that will promote long term ownership. It could also encourage others in the area to invest and upgrade their own properties knowing their neighbors have an interest in remaining in and promoting the neighborhood. It would also promote the city's interest in rehabilitation which is evidenced by the redevelopment grant program.*

She added that houses in this area were small, fine for one or two people, but families needed to enlarge the homes.

Krumlauf noted in her own case of vacation, she ended up building the addition in a different direction, but in the vacated area created a large garden of day lilies and bee balm which she said beautified the area and could also be considered a public good.

Julia Beerman said she lived with Lowenstein at 1006 W. 10th Street. She said the house was purchased for his daughter-in-law to attend graduate school, and that Lowenstein also intended to retire there. She said the property at 1002 W. 10th Street was purchased at a tax sale, and they had since cleaned up the property, but discovered that the house was uninhabitable. She asked that the alleys be vacated to allow them to tear down the building and build a new home there.

Rachel Mateti, one of the petitioners, said she and her husband had purchased their home in August of 2012. She said vacation of alleys would allow them to expand their yard for their child and would also make the property and area attractive for other families whose children could play in good sized spaces without worrying about traffic. She added the space, as it existed, served to unite the neighborhood and provided safety in the area.

David Ferguson summed up the arguments for alley vacation. He said the action would improve the neighborhood as a whole, it would encourage investment in all the properties in the neighborhood, would bring the lot sizes up to code specifications, would increase the amount of taxes paid to the city, and would increase the viability of owner occupied homes. He noted the elevation fell over 8% in grade which would not be within code standards for any future alley use, and the city had already vacated some portions of alleys in this very neighborhood. He added this would also solve the problems of setbacks and encroachments that had existed for these homeowners. He acknowledged that some would still need to seek variances, but this this measure would expedite the process. He used the 1991 alley vacation as a precedent for vacations in this area.

for approval

Ordinance 14-09 *(cont'd)*

Ferguson said there was purposely no specific project proposed for these alleys and it was good that there wasn't one, because the whole idea was to enhance the neighborhood and home ownership by allowing these homeowners to be able to invest in their properties with no alleys dividing up the area. He also noted that no alleys were required for the nearby Habitat project, and this was a similar area.

Lastly, regarding the plans of the Bloomington Digital Underground for using the alleyways, he said that *'we can't just hold things out in the future for people who won't publish their plans or tell them what they are.'*

MOTION TO CONTINUE DISCUSSION

Sturbaum said that there had been a lot of new information introduced at this session and wanted council members to have time to digest that. He asked for a motion to continue the discussion to July 16, 2014. The motion was seconded by Granger.

The motion to continue the discussion of Ordinance 14-09 to the July 16th meeting received a roll call vote of Ayes: 7, Nays: 0.

LEGISLATION FOR FIRST READING

Ordinance 14-11

Ordinance 14-11 To Amend Various Chapters of the Bloomington Municipal Code Located in Title 2 (Administration and Personnel), Title 6 (Health and Sanitation), Title 10 (Wastewater), Title 11 (Lakes and Reservoirs), Title 12 (Streets, Sidewalks and Storm Sewers), Title 14 (Peace and Safety), Title 15 (Vehicles and Traffic), and Title 17 (Construction Regulations) – (Codifying Departmental Reorganization Proposed in Ordinance 14-10 and Using this Occasion to Fix Typographical Errors and Reflect Actual Practices and Policies in Affected Sections)

COUNCIL SCHEDULE

There were no changes to the upcoming council schedule.

ADJOURNMENT

The meeting was adjourned at 9:57 pm.

APPROVE:

ATTEST:

Darryl Neher, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington

for approval

COMMON COUNCIL
REGULAR SESSION
July 16, 2014

In the Council Chambers of the Showers City Hall on Wednesday, July 16, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Regular Session of the Common Council.

ROLL CALL

Roll Call: Ruff, Sturbaum, Sandberg, Granger, Neher, Mayer, Spechler
Absent: Rollo, Volan. Sturbaum left at 10:50 pm, before the last vote was taken.

AGENDA SUMMATION

Council President Neher gave the Agenda Summation.

APPROVAL OF MINUTES

There were no minutes for approval at this meeting.

REPORTS

- COUNCIL MEMBERS

Marty Spechler said some eastern states charge five cents for plastic bags. He urged the city to take this action, too. He said small taxes or prohibitions work, and noted Ireland had eliminated plastic bags through these prohibitions.

Darryl Neher noted that applicants were sought for the Board of Housing Quality Appeals Board. He noted that the Citizens' Academy Class this fall had a few openings and asked citizens to sign up.

- The MAYOR AND CITY OFFICES

Caleb Ernest, intern with the Environmental Commission, gave the 2014 Green Space Trends Report completed by the commission.

Allison Leslie, a board member for the Monroe County Court Appointed Special Advocates, spoke of the mission of the organization. She urged citizens to be the voices of these children.

- COUNCIL COMMITTEES

There were no reports from council committees at this meeting.

- PUBLIC

President Neher called for public comment but there was none.

APPOINTMENTS TO BOARDS AND COMMISSIONS

It was moved and seconded that Derek Richey, Jeff Goldin, and Leslie Abshire be appointed as advisory members to the Historic Preservation Commission.

It was moved and seconded that Chad Pannucci and Darcie Fawcett be appointed to the Bloomington Urban Enterprise Association.

It was moved and seconded that Bruce Ervin be appointed to the Dr. MLK, Jr. Birthday Commission.

It was moved and seconded that Dorothia Purnell and Matthew Hanauer be appointed to the Commission on the Status of Children and Youth.

The appointments were approved by voice votes.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Ordinance 14-09 To Vacate a Public Parcel – Re: Five, 12-Foot Wide Right-of-Ways in the Lone Star Subdivision Within a Triangular-Shaped Block Bordered by West Cottage Grove on the North, West 10th Street on the South, and North Monroe Street on the West (Solomon L. Lowenstein, Jr., Rhonda L. Rieseberg, Dian S. Krumlauf-Hildenbrand, Nathaniel and Michelle Dodson, Ruth A. Beasley, and Kiron and Rachel M. Mateti, Petitioners)

It was moved and seconded that Ordinance 14-09 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, noting that the recommendation was to move the hearing on this item to this meeting. She noted that the required public hearing on this item was held on June 18, 2014.

It was moved and seconded that Ordinance 14-09 be adopted.

for approval

MOTION to limit debate

It was moved and seconded to consider Ordinance 14-09 in the following manner:

- Council members would have an opportunity to ask staff and the petitioners questions about the ordinance (and possible amendments);
- Council could entertain Amendment #1 to this ordinance and, if it did so, would proceed in the following manner;
    - Sponsor will introduce the amendment;
    - Council members could ask questions of staff and petitioner about the amendment;
    - Members of the public would have one opportunity to address the Council on the amendment for no more than 5 minutes;
    - Representative for the petitioner would have 5 minutes to address the amendment;
    - Members of the council would have an opportunity to raise further questions about the amendment, and
    - Members of the council would comment and vote on the amendment;
- Council could entertain the remaining amendment (Amendment #2) and would follow the above procedure if it chose to consider that amendment;
- The Council would entertain an appropriate motion (e.g. Motion to Adopt[As Amended]);
- Council members would have another opportunity to ask staff and petitioners questions about the legislation;
- Members of the public would have one opportunity to address the council on the legislation for no more than 5 minutes each;
- Representative for the petitioner would have 5 minutes to address the legislation; and
- Council members would then comment and vote on the motion.

The motion received a roll call vote of Ayes: 6, Nays: 0, Abstain: 1 (Spechler)

President Neher asked staff if there was any additional information before council questioned them. There was none.

Mayer asked if there was any additional information from the City of Bloomington Utilities Department. Patty Mulvihill, City Attorney, said their position was the same as in the past two meetings. They were opposed to a vacation of any portion of the rights-of-way.

Amendment #1 Ordinance 14-09

This amendment is sponsored by Councilmember Sturbaum and would remove the portion of the east/west alley way occupied by the City of Bloomington Utilities (CBU) water line from this request. It is supported by the petitioner and eliminates the only right of way that has any CBU interest due to their pipe in the ground.

It was moved and seconded to adopt Amendment #1 to Ordinance 14-09.

As sponsor of the amendment, Sturbaum said this proposal would take the area that had a water line out of the vacation proposal, which eliminated the only objection to this vacation. He noted each of the remaining alleys had an impact on a resident's ability to invest in the area. He also noted the Habitat for Humanity project that had been approved just across the trail. He said these neighbors did not complain about additional development and looked at that project as an improvement of the overall area.

He compared the historic platting and alleys built in Prospect Hill with those of this area where alleys were never actually built. He said this area had alleys platted over existing buildings in 1928 in error, and most likely the people were not paid for the takings of their properties for the alleys.

He noted that this would not really set a precedent of other areas wanting vacations of alleys because this was a very unique situation. He said this vacation would help the area grow and become a place for investment.

for approval

Amendment #1 to Ordinance 14-09
(cont'd)

Sturbaum advocated for the vacation of this land which he said the city didn't even know it had, didn't need, and allowed trees to grow there for at least 86 years.

Ruff asked how many current structures in the area predated the 1928 overlaying of the plat. Micuda said his department had not researched that. He said it would be available on Sandborn Maps or other property-specific data. Sturbaum said one of the neighbors had done that research.

Sandberg asked how the City of Bloomington Utilities (CBU) felt about this. Mulvihill said they still objected to this amendment. She said CBU would prefer to access pipes and utilities from more than one linear direction.

Ruff asked how unique the situation really was. Micuda showed a map with multiple detached structures that encroached on rights-of-way that were never built out. He said there were pockets on the Near Westside, Elm Heights, Green Acres, and Bryan Park neighborhoods.

Neher asked Sturbaum for his reactions to these comparisons. Sturbaum said this was a unique triangular area that couldn't be developed with the alleys in place. He said the CBU opposition didn't take into consideration that there were trees and very steep slopes in these areas, and that vehicles couldn't be driven in to service this area. He added that the old lot proportions did not work with today's setbacks and standards, and adding the alleys to the lots would make them more buildable. He added that there were multiple issues that made this a unique case.

Ruff asked staff to address Sturbaum's assertion that the proportion of alleys to lot size made the area undevelopable. Mulvihill said this was on the list of areas for the Bloomington Digital Underground. She said that the administration was opposed to giving away land that they might have to buy back for a future project or service. She said that CBU would service the lines in that area, moving trees or whatever they needed to do to repair service.

Micuda said certain lots in the area were tricky to develop based on their original configuration. He spoke of some lots where buildings were flush onto the alley at present, noting that even if this alley were vacated, there might not be much room for additions to the structure.

Mayer noted there were other lots in areas of the city that were only 25 feet wide and had been combined with other lots for development or used by themselves. Micuda described these as 'a lot of record' saying the owner had a right to build on them with a variance entitled to them. Micuda said that variances were typically granted unless the request was out of scale.

Spechler asked if the garages that were encroaching on the rights-of-way had been built after 1928. Sturbaum said he'd been in them and they were characteristic of buildings before that date. He said these were outbuildings not necessarily built for cars, but for horses or other uses.

Sturbaum asked Micuda if he felt there was benefit to the property owners if the alleys were vacated. Micuda said there was.

Neher asked if there were other mechanisms available to the property owners. Micuda noted the administration would support granting encroachments for owners. As an example of commercial encroachment, he noted that the Hilton Garden Inn had been allowed to have their foundation encroach in the right-of-way of 7th Street.

Sturbaum asked staff to speculate on why the same staff had recommended the vacation in a similar case in 1994, while

for approval

Amendment #1 to Ordinance 14-09 *(cont'd)*

recommending the opposite now. Micuda noted that recommendation was 20 years before this request. He added that the last time the council dealt with a residential encroachment for a property owner was 1996. He said since that time, the council had asked more questions regarding a demonstrable and obvious public benefit to the city before alleys were vacated.

Public comment:
Solomon Lowenstein, Jr. said he owned 1006 W. 10th Street, lot 15, in the addition. He said he would like to add to his house and the vacation would allow him to do that. He noted he purchased lot 17 in a tax sale, but the topography and setback issues would not allow him to add to the house that was now extending into the right-of-way. He said he agreed with this amendment.

He said the neighborhood was turning from rentals into owner occupied homes. People wanted to invest in their homes and become compatible with the nearby Habitat neighborhood. He rejected the notion that granting this request would be setting precedent. He said several structures were built before 1920.

Lowenstein said that the council did not require alleys between the homes in the Habitat neighborhood, and said the Lone Star neighbors were asking for the same consideration.

Carol Gulyas, President of the Near Westside Neighborhood Association, said the group supported this vacation for their neighbors to the west. She said this old neighborhood existed long before modern planning and some structures were built in the 1890s. She noted residents wanted to improve their properties and had a hard time getting building permits. She noted a 1991 vacation of public property adjacent to 1011 W. Cottage Grove where the steep incline of the alleys prohibited utility use and "neither any current or planned public use of the alley was on the table." She said the neighbors would allow easements for utilities. She said this was a unique case with a quirky history of the area and should not be a test case for rigid policies regarding alley vacations.

Ruth Beasley, 1012 W 10th Street, said she had researched construction and tax records related to her home and adjacent homes built in 1899, 1900 and 1920, predating the 1928 plat maps that showed alleys for the first time. She said the alleys were obviously platted incorrectly and added that she didn't know if the homeowners were notified of this change. Beasley said that growing families and those aging in place could not modify their homes because of current building codes relating to these alleys that had actually never been used as alleys.

Marc Haggerty said this was his neighborhood and asked that the council acknowledge Ms. Beasley's research and knowledge of the area. He called the city process flawed. He asked that council members approach this with open minds and not in any way indicate they had already made up their minds. He said not to do so was to be dis-respectful of those who were making statements before the body. He noted in the past, two residents had gone to jail to prevent the street from being widened into what he called a "two lane drag strip." He said the platting was an obvious mistake, and vacation was an easy way to benefit the residents of the neighborhood.

Julia Beerman, 1006 W 10th Street, had pictures of the house Mr. Lowenstein bought at the tax sale. She noted that the house on the property had deteriorated to the point it needed to be demolished. She said that this property had served as a dumping ground, but she and Lowenstein continued to repeatedly haul trash and brush from the area to keep it clean. They would like to improve it by rebuilding the house. She asked that the alleys be vacated.

for approval

Amendment #1 to Ordinance 14-09
(cont'd)

Sophia Hauserman, a member of the Commission on Aging, said she advocated for policies that created neighborhoods that were good to grow up in and good to grow old in. She quoted from Phil Stafford's blog regarding aging in place: *"places need the people as well. When people stay put, places benefit."* She said this amendment would allow people to age in place, and 'benefit the place.'

Neher called for the petitioner's representative to comment.
David Ferguson said the amendment presented the opportunity to do some good for the neighborhood and remove the invisible lines that probably wouldn't be used, but wouldn't be given up by the city. He gave council members the city form for requesting public right-of-way vacations. He argued that if the city's policy was not to give up public land, they should get rid of this form. He noted that from the tax records, no structure had been built in this area since 1940.

Ferguson said the question was: what was in this vacation for the city. He said it would increase the tax base. He said the neighborhood needed to be strengthened so that tax sales on these properties didn't happen again. He said the council should consider the factors of the unusual development with laborers cottages, the 1928 plat done without regard for the construction already in place, the fact that this was an 86 year old problem that needed to be corrected, the terrain was not suitable for construction and there were no utilities located in the alleys. He said they also should consider the anticipated improvements, not the unanticipated improvements. He asked for passage of this amendment and the underlying ordinance.

Additional council questions:
Ruff asked staff their position on the assertion that all but three of the fourteen structures were in place before the 1928 platting of the alleys and if it affected the previous opposition to the vacation. Mulvihill said that not all 14 of the properties involved had an encroachment issue resulting from the 1928 platting. She said that all structures could expand in areas other than alleyways or ask for reasonable variances that would be granted. She said the information about the 1928 platting wouldn't necessarily change the administration's position.

Spechler asked Ferguson why the petitioners wanted a blanket vacation of all alleys rather than pursuing individual requests for encroachments when needed. Ferguson said the usual scenario was for the Board of Public Works to allow encroachments until such time as the city had a need for the land, which he called arbitrary. He said that did not encourage development or enhancement of a property. He said banks would not gamble on lending money for development in encroachments.

Ferguson said vacating the alleys would solve the problem except for one garage that was located partly on a neighbor's property. He said the setbacks would still be problematic.

Ruff asked why a predated structure wouldn't be grandfathered and have the right to be in the later drawn alley. Mulvihill said she would have to do research on the issue of grandfathering in this case.

Granger asked if it was true that ramps into homes could not be built if the alleys were not vacated. Micuda said it would depend on the lot and the request. He said that ramps for accessibility could be built anywhere, without regard to setback restrictions, but would need approval from the Board of Public Works to be built in the public right-of-way.

Council comments:
Sturbaum 'begged' council members to support the neighbors and right the wrong done in 1928. He said if this were coming forth as an affordable housing project for elderly, with small homes and shared green space, it would be eagerly accepted. He said the alley ways had not been used for over 80 years, and the city would benefit from this

for approval

Amendment #1 to Ordinance 14-09 *(cont'd)*

vacation with a new neighborhood association, the reuse of an abandoned building, and a cleaner neighborhood. He said the neighbors chose the complete vacation method because they felt stymied by asking for individual variances. Sturbaum noted that this vacation would send the message that government could listen to the citizens and work in their benefit.

Sandberg said this amendment addressed her only concern with the overall vacation request. She said affordable housing was her number one priority for the future and this was a neighborhood transitioning from rentals to affordable retirement and starter homes. She said this was the public good in the vacation. She said that the individual merits of this case should be considered, and the council should not give that judgement away to rigid public policy.

Spechler said he was in favor of keeping the east/west alley for use by the city. He said the newer garages had been built on public land without permits and speculated that they were built within the last 20 years or so. He said the laws were in place to protect neighboring property owners. He said he supported a compromise that would allow the encroachments, but not on a permanent basis. He said this would also preserve rights-of-way for future use. He noted that the council had been patient in hearing this issue at least three times.

Granger said this was not an easy decision because it was more complex than it appeared. She said if the petitioners had been dissuaded from the regular process, it concerned her. She wished that this proposal had gone through that process considering the substantial amount of time that staff, petitioners and council members had spent on this.

Ruff said he, in general, agreed with the staff position. He felt that the vacations of these rights-of-way did not increase the ability to develop the majority of the lots in ways that couldn't be reasonably done in other ways. He said he was offering a second amendment to address the few situations that didn't fit that category.

He said his original assumptions regarding the platting had been challenged with new assertions that these homes, not just any homes, existed before the platting took place.

He noted that council members could vote for this amendment, and if the vote on Amendment #2 passed, it would take precedent. He said he didn't believe that this vacation was the only key to development, investment, and improvement of this neighborhood as one person had stated in public comment.

Mayer attempted to clarify the date of photos shown by noting the characteristics of early photography, and said the pictures shown were from the early 1920s. He also noted that he was a long time member of the Utilities Service Board, and in that capacity he heard regular reports from the Transmission and Distribution workers. He said they knew every corner of the city, including this one, and knew how the areas were served.

He reiterated that there were encroachments in many undeveloped alleys in the city and that Lone Star was not unique in that respect. He said this vacation would set a precedent, not only because it came directly to the city council rather than the planning process, but also because it was asking for a wholesale vacation in one particular area. He said that was not good public policy. He said this should be done on a case by case, lot by lot, basis.

Mayer read the following from the planning manual:

> *The prospective petitioner approaches planning requesting a vacation. During the meeting with the prospective petitioner, Plan staff describes the documents the petitioner will need to produce to initiate a vacation process. A letter justifying the proposal specifically how the proposal addresses criteria for vacating rights-of-way, a legal description of the request of rights-of-way, a site plan showing the subject rights-of-way and adjacent*

for approval

Amendment #1 to Ordinance 14-09
(cont'd)

property, and names and addresses of all abutting property owners. After assembling this information, petitioner submits the above material from city planning, files for a vacation and pays the fees of $500.

After petitioners successfully completes the above steps, city staff assembles all information and transmits this information to all city and non-city utilities and emergency city service providers. The transmission from planning requests that utility and emergency service providers respond regarding their interest in the rights-of-way. It usually takes these stakeholders 2-3 weeks to issue a response. If a utility or emergency service provider expresses an interest in the right-of-way, they provide the city with further information about the nature of their interest in the property.

In some instances where is problem or conflicts, staff tries to work through these issues with utilities and emergency service providers to arrive at a mutually agreeable solution. In some circumstances a resolution is not possible. In those cases staff communicates this to the petitioner. Where the utilities and emergency service providers do not express concern at the requested vacation, the request goes to the board of public works. The board makes the determination about whether a requested vacation affects or does not affect the city of Bloomington.

Where the board makes the determination that the vacation does not affect the city's interest, the staff prepares an ordinance and background materials for the council and the matter proceeds through council for review.

Mayer said that the key to him was the whole process of obtaining the information as to what the alley vacation would or would not do for the community. He said that by coming directly to the council with this petition, the council was learning bits and pieces of information continually through the process instead of learning all the information at the outset. He said there was a remedy in place for this petition and didn't think the council should be considering the petition at this time.

Neher posed a question of judging the issue as to which option - the ordinance as it was written or the ordinance as amended - would be the better policy. He said the amendment mitigated some concern he had with the original ordinance, and expressed his support of it. He said this would end up being better policy for the city, but noted he may not support the whole ordinance when the time came.

The motion to adopt Amendment #1 Ordinance 14-09 received a roll call vote of Ayes: 5, Nays: 2 (Granger, Mayer).

It was moved and seconded to adopt Amendment #2 to Ordinance 14-09.

Amendment #2 to Ordinance 14-09

This amendment is sponsored by Councilmember Ruff and would vacate segments of two north/south alleyways. The one lies between Lots 4, 5 & 6 on the west and Lot 8 on the east. The second lies between Lot 11 on the west and Lot 12 on the east. The vacation of these two alley segments addresses significant encroachment issues of existing structures. The history of the encroachments is difficult to document and may predate the plat.

Ruff said this amendment was a way to address the blanket 'all or nothing' provision of the ordinance. He said all the lots were not impacted the same way, and this proposal vacated the rights-of-way only when needed for existing encroachments or inconsistencies in data.

He listed reasons for vacating only these two alleys saying that Lot 8 had a property line going through the garage and Lot 11 had a structure on a property line there. He said since Lot 15 was unusual in shape, he was confident that expansion of the structure would get a variance because of the shape, and a vacation did not eliminate all the issues with development. He said he felt issues with Lot 18 had more to do with the ramshackle condition of the house, and it was one of the larger lots in the group. He noted Lots 16 and 14 didn't need additional space to develop either.

In summary Ruff said that this amendment addressed the underlying concern of the plat issue, using that history to justify the vacation. He further noted that the vacation done in the 90s over the same issue did not justify vacating all the alleys because it didn't include a blanket vacation of the whole neighborhood, just one alley segment upon which a house was erroneously built.

Spechler asked if this meant that only the structures with substantial encroachment issues would trigger alley vacations. Ruff said he also wanted to take into consideration that the history of the area was not

for approval

Amendment #2 to Ordinance 14-09
(cont'd)

complete and the creation of the existing encroachments was difficult to determine. He said he wouldn't be in support of vacating them if it was clear that they were built after 1928.

Spechler asked if he thought the structures as they stood now were in place in the 1920's. Ruff said he was unqualified to make that determination.

Sturbaum asked if Ruff would support the addition of two more segments of alleys because one was adjacent to the property with the ramshackle house and it deserved to be fixed. He said another lot would be greatly enhanced by being enlarged by the vacation. He stated he would support the amendment if those two additions were made.
Ruff said this was a balancing test, and Lot 18 not only had a dilapidated house, but it was the largest lot with a long street frontage and the only one with two street frontages. He said Lot 15, a triangular lot, would not really benefit from the addition of six feet of land, although he did acknowledge that the owner wanted to buy an adjacent lot to combine with this one. He asked Micuda to give his view.

Micuda said if the property owner at 1006 wanted to expand to the west or east, and either expansion was in the right-of-way, that would be a clear and obvious case for variance given the unusual dimension of the lot being a triangle.

Neher asked Micuda for his opinion on the amendment. Micuda said the administration opposed the amendment because there was a viable encroachment option; and from the precedent setting standpoint, because there were other neighborhoods with encroachment issues.

Sturbaum asked if Ruff could add the two alleys he mentioned previously into this amendment in an attempt to compromise. Ruff said he didn't want to change this amendment, but he didn't think it would close the door on that option as Sturbaum could propose that amendment himself. Sherman said that the amendment needed to be in writing, and only one amendment to an amendment was allowed by the code. Sturbaum said that Ruff was proposing something that addressed two problems but didn't address the petitioner's issue of a right-of-way directly behind Lot 15. He said if Ruff would not support the addition he proposed, he wouldn't waste time bringing it up separately.
Ruff declined to change the amendment. Sturbaum dropped his request.

Public comment:
Ruth Beasley said in her research, the first time her garage was referenced in the tax role was in 1940. She said that the assessor at the time gave it a grade of "F" and noted "it's in bad condition now" which made her think the garage or outbuilding there in 1928 eventually fell down and the current garage was built in its place.

Lowenstein said he had tried to solve the alley problem behind 1006 W. 10th Street for the last seven years. He said that was the only parcel he owned until he bought 1008 and Lot 18 at a tax sale and went to the plan staff again. He said he provided a detailed letter with a vacation request but didn't have a meeting. He said the response, in writing from the plan staff, was "You do not have a redevelopment plan. We're not going to consider it."

He said he was blocked until he discovered that Indiana law allowed the lot owners to come before the council directly. He said he wasn't trying to avoid the procedures, but tried to comply with the procedural requirements. He said he had verbal commitment from the owner of Lot 14 and Lot 16 that if the alley behind 1006 was vacated, he would consider selling Lowenstein his six feet of alley.

He said the house at 1002 was on the best part of the lot to build on; because of setbacks, access issues and low ground, he preferred to save the house there. He supported Amendment #1, but not Amendment #2

for approval

Amendment #2 to Ordinance 14-09
(cont'd)

which he said would not solve the neighbors' problems.
Neher asked the petitioner's representative to speak to the amendment. Ferguson said the amendment didn't help all of his clients and he was conflicted. He noted appreciation for Sturbaum's attempt to help the situation and said that Amendment #1 solved the encroachment problems better for all. He noted that the question of whether public vs private ownership was better for the city was answered in that private ownership of these few alleys would be better for the city than public ownership and neglect. He said that additional benefits to the city would be larger lot sizes, fewer regulatory issues, fewer variance issues for the owners, would allow the lot sizes to comply with city code by increasing the size of the lot, increased taxes and greater investment in the rest of the neighborhood.

Sturbaum asked Ruff to consider one more time to help all the petitioners rather than just a few, stressing this would solve the most problems in the area. Ruff said he wouldn't, and explained that if the amendment failed, he would vote yes on the ordinance as amended by Amendment #1.

Sturbaum asked staff who would be responsible if an 84 year old tree fell on someone's house. Mulvihill said the Indiana Tort Claims Act gave immunity from liability to local units of government and state government for, among other things, unimproved property that had been in its natural condition, which she said the alley was. She said there would not be liability on the part of the city if a tree fell that caused damage. Sturbaum asked if that was fair. Mulvihill said that she could only answer from a legal standpoint that there would be no liability on the part of the city.

Mayer asked Micuda if all property owners in the addition had the opportunity to petition for alley vacation. Micuda said they did. Mayer noted that the CBU wanted the city to maintain certain rights-of-way. Micuda said that was also correct.

Neher noted that the petitioner was told that his petition would be looked down upon and wouldn't be approved without a redevelopment plan. Micuda said the department had been contacted by Lowenstein in 2008 and 2013. He read from the response sent to Lowenstein in 2013:

> *Thank you for your letter and supporting materials you submitted in pursuit of a right of way vacation in the Lone Star addition. As a general rule city staff and the Bloomington Common Council rarely support right-of-way vacation requests unless the vacation is absolutely needed to facilitate a redevelopment project that has significant public benefit to the community.*
>
> *The rights-of-way you are requesting to be vacated are adjacent to single family homes and portions of the rights-of-way have utilities located in them. In researching the request, I found a similar request submitted to our office on January 2, 2008. At this previous time we did not support the request due to the need to relocate utilities as well as the lack of an accompanying redevelopment project that could provide public benefit to the city. With the current request city staff would not be supportive because of the lack of the redevelopment project as well as the complications with utilities. We know if local utility companies were contacted about this request, they would prefer relocation of lines rather than simple combination by easement.*
>
> *Although we do not support this request, please do not hesitate to contact me if you have questions about the right-of-way vacation process.*

Neher asked what constituted a redevelopment project. Micuda said for him it meant information at any time from the petitioner that indicated what he wanted to do on the property – an expansion or new construction – that would allow the staff to see the impact of the project on the property and the right-of-way.

Council comments:
Ruff said he took city policy seriously in this issue, and it was complicated by the history of the area. He said this amendment did a decent job of balancing the guiding policies and responsibilities with the ability to allow investment and improvement in the area. He said this

Not approval

was a hard decision for him personally.
Sandberg said she could not support this amendment as it did not go far enough and felt there was no attempt for a little more compromise.

Amendment #2 to Ordinance 14-09 *(cont'd)*

Spechler noted the petitioner's representative was against the amendment. He said he would also be against the amendment and wanted an up or down vote on the request of all alleys being vacated.

Neher asked Sherman to verify that this amendment, if passed, would replace Amendment #1. Sherman agreed with this interpretation.

Sturbaum noted he would vote to keep Amendment #1, referencing Ruff's statement on his preferences.

Neher noted that comments about a possible denial of the right-of-way vacation petition precluding opportunities for investment in the neighborhood weren't true. He cited the letter written to the petitioner that noted that the public benefits and plan were required for a vacation process. He said there was an illusory promise of a greater good to the neighborhood in the petition, but without a tangible plan, project or timeline. He said it was difficult to vote in favor of this for that reason. He said he would support a vacation if this was resubmitted with more tangibility.

The motion to adopt Amendment #2 Ordinance 14-09 received a roll call vote of Ayes: 2 (Ruff, Granger), Nays: 5, and thus failed.

The discussion returned to Ordinance 14-09 as amended by Amendment #1.
Neher asked for questions from the council members.

Ordinance 14-09 as amended by Amendment #1

Sturbaum noted that 18 lot owners who would have the opportunity to make improvements over time in itself was the 'project', albeit not a specific project. He said the whole point of the vacation request was so that people could improve their properties. He asked if there was a legal way to 'contain' the opportunity issue, or if it was too abstract to fit into regulations. Micuda said that if a group of property owners, or a single property owner, came forth with ideas for what they wanted to do with their structures, outlined the barriers associated with the improvements (lot by lot) with ideas for alleviating barriers, it would be received.

Sturbaum asked if this wasn't the current case except that the petitioners used the council process instead of the planning process. Micuda said that no one from his department had ever met with the petitioners. He noted that staff could have fleshed out ideas for the entire area, even if they were less specific to begin with. Sturbaum noted that if that had been the reaction the petitioners had gotten initially, they might have engaged the planning department instead of bypassing them in favor of the council procedure. Micuda noted there were no conversations other than the two written statements with no other communication from the petitioner.

Mayer asked what would happen if a petitioner wanted to just rectify the encroachment that already existed. Micuda said that they would work with that person, help them through the process, and help them get the legal documentation needed. Mayer asked if, in this instance, the petitioner could ask to vacate just their portion of the alley. Micuda said they could.

Neher asked for public comment:
Beasley said she had a plan for 1012 because when she bought the house, the inspector gave her an idea of the costs of improvements for her home and garage. She said she wanted to know, when her garage falls down, if she could rebuild it whether the alley was still there or not.

for approval

Lowenstein reiterated his plans for 1006 and 1002. He said he wanted to add a room to 1006 but was prevented because of the public right-of-way and severe setback restrictions. He also said that he had verbal commitments from the property owners of two lots to sell him their alley portions so that he could build this addition and one other. He said he planned to rehab the house at 1002 to make it habitable and compatible with the other houses that faced W. 10th Street.

Ferguson clarified that banks would not lend money for a project within an encroachment, because they couldn't put a lien on city property. He said the same condition would not apply in the instance of setbacks, as variances could be awarded. He also said that it made no sense to invest in a property that had an encroachment if at any time the city could need the property and then the structure would have to be removed. He said there would be more investment in these properties if the alleys were vacated than if they were not. He said this was the third meeting on this issue, and the neighbors had shown up each time. He said that to ask them to come back for a different, piecemeal process was expensive for them and asking too much.

Spechler said if this had started with a legitimate proposal in a normal procedure the issue would have been solved a long time ago. He said all the facts would have been known ahead of time instead of bringing new information in the 11th hour. He said chances for approval would have been better and shorter.

Sandberg said that she felt comfortable making the decision, but what was missing from the evening's statements were stories from the families to flesh out the neighborhood that she heard in the previous meeting. She said she didn't need to see a specific proposal to support this petition, despite the fact that some steps were skipped. She said this was a contribution to the health of the neighborhood, and not giving up a public good.

Sturbaum said that alleys had recently been vacated for hotels and student apartments. He said it was time they were vacated for the good of a neighborhood. He noted Micuda said that individuals could be granted variances with individual petitions, and the whole petition was therefore supportable and in the public interest. He said letters from city officials saying that something could not be done were taken differently from a more informal note or a conversation. He said perhaps these could have been resolved differently.

He said this council should rectify the mistake made by the 1928 council. He said it would not wreck policy or ruin the city by vacating these areas. He said the neighbors had spent time, pled their case well, and all the little problems could be cleaned up with this one ordinance. He asked the council to help make this a neighborhood where people could prosper.

Ruff said he didn't like the process used for this ordinance. He said the way the petitioner interpreted communications contributed to the situation at hand. He said he was in agreement with staff's position, and believed that these neighbors could invest or improve their properties without the vacations. He said that most of the entire list of properties would not be significantly affected by the vacation.

He said he respected the research of the petitioners on the history of the area, and was greatly troubled by the 1928 decision, which he said was not appropriate. He said that was an important fact in the discussion and caused him to reluctantly, and not happily, vote for the proposal. He said he felt his amendment, #2, would have been a good compromise, but acknowledged that he respected the vote on that. He pointed out that he voted against the last two hotel requests for right-of-way vacations because they would not honor a living wage, and he could not see the public benefits in those proposals.

for approval

Ordinance 14-09 as amended by Amendment #1 *(cont'd)*

Granger said she would not support the proposal because she didn't want to give up the city property. She said the neighbors still had the opportunity to improve their properties without the vacation.

Mayer said this was a difficult vote. He said he was convinced that remedies were available for the issues to be resolved without the wholesale vacation of the alleys. He said giving up the rights-of-way within a whole block was too far a reach and the nature of the request disturbed him. He thanked Ruff for his efforts to try to find a remedy for the properties that needed help the most. He said he found inequity there because if anyone else wanted to make a proposal later, they would have to go through the regular process, including paying city fees. He noted the passage of this ordinance did not include those fees for the process.

Neher said his thoughts had been expressed in the discussion about Amendment #2, and said very general plans were problematic. He said some of the tension noted earlier had come from the choice of the petitioner to not use the normal process, and then asked the council to ignore the normal process, too, by considering the blanket vacation instead of a case by case evaluation.

Ordinance 14-09 as amended by Amendment #1 received a roll call vote of Ayes: 3 (Ruff, Sturbaum, Sandberg), Nays: 4 (Neher, Mayer, Spechler, Granger) and thus FAILED.

Ordinance 14-14 – To Amend Ordinance 13-16 WHICH FIXED THE SALARIES OF APPONTED OFFICERS, NON-UNION AND A.F.S.C.M.E. EMPLOYEES FOR ALL THE DEPARTMENTS OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, FOR THE YEAR 2014 – Re: Adding a Position in the Office of the City Clerk (Records Archivist)

It was moved and seconded that Ordinance 14-14 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do Pass recommendation of 6-1-1. It was moved and seconded that Ordinance 14-14 be adopted.

Clerk Regina Moore said the mission of the new position was to create an accessible collection of council legislative records. She noted that in the past she had attempted to do this project with interns and part time staff, but the nature of the project needed a more continuous and concentrated effort. She said this was the optimal time to take a complete picture of the legislative work of the council for the last 170 years.

Moore said there were no grants from the state for digitization at this time. She said resources were dedicated to the upcoming state bicentennial in 2016 where there were stories to be told. She said there was not priority for the wholesale digitization of legislative collections.

She noted all intern salary money budgeted for the rest of the year would be put towards this part time position and an additional $11,000 to $12,000 would be needed in an end of the year additional appropriation to round out the salary for the regular part-time Records Archivist to plan and manage this work.

Spechler asked that the request be postponed until the new controller could update the council on the budgetary implications of the proposal. Neher asked if that was a formal motion. Spechler said it was, and it was unusual to have a unilateral proposal of this sort without a response from the administration.

Spechler formally moved that consideration on this proposal be postponed until August 27, 2014. Ruff seconded the motion. There were no questions for Spechler on his motion.

Spechler commented on his motion that the administration should be consulted as to their priorities, and if the city could afford the proposal. He added it was no secret that he was against this on the grounds that he had higher priorities for expenditures. He asked the council to insist on proper procedure, which he felt was to hear the opinion of the administration with regards to the real costs.

for approval

Ordinance 14-14 *(cont'd)*

Granger said she didn't want to postpone this issue, as there was no time line for a new controller to be named. She said that although she was not an economist, she felt the salary for this position would not break the bank. She said she wanted to vote on this now.

Ruff said he appreciated the essence of Spechler's concern, but added that the council made final decisions on the budget. He said given the nature of the request and the size of the request, he was comfortable without hearing from the administration on the proposal.

Neher noted again the fiscal responsibilities of the council and noted Moore was also elected to run the Clerk's office. He said the mayor did not have direct authority over the office, although he could provide input, but this decision was independent of the administration.

The motion to postpone consideration of this ordinance until August 17, 2014 received a roll call vote of Ayes: 1 (Spechler), Nays: 5. Sturbaum left the meeting before this vote was taken.

Council questions:
Granger asked Moore to clarify the work of the office towards digitization up to this point. Moore said that with part time staff, records back to the late 1970s had been scanned and digitized. She added that more recent legislation had been scanned and posted on the Clerk's page on the city website. Moore noted that this allowed city staff in other departments to search for old records without coming to the office, or disassembling old books of records.

Spechler asked how many years it would take for the project to be completed. Moore said it could be completed in two years. Spechler asked if she would commit to only the current year and reexamine the proposal for the 2015 budget. Moore said she would not as she had already prepared the Clerk's 2015 budget with the position, and the proposal at hand was to get a head start on that work.

Neher asked about general staffing issues. Moore noted that a recent request from another department took a staff member's time for three hours in helping this person with the protocol for using old records, determining the nature of the request, and directing the search to the appropriate segment of the records. She said with accessible digitized files, a simple search would have produced the results within a much shorter period of time, with less actual staff time used.

There were no public comments on this proposal.
Council comments:
Spechler said there was value in this proposal, and said he had confidence in the clerk. He added when he asked his constituents if they preferred this valuable but postponable project or spending the money on social service needs, they said uniformly and universally they would prefer the latter. He expressed his agreement with that sentiment and said he would be voting against the proposal. He said this was expanding the bureaucracy and the council should take pause. He added that his estimate was that this project would take ten years, but said he was no more confident in that estimate than in Moore's. He noted this vote was not personal and the project was worthwhile.

Sandberg said she disagreed with Spechler and noted that this was such a modest proposal for such an important purpose. She said both this position and social services could be funded and to make it a choice between those two was proposing a false choice and not a responsible way to manage affairs. She said funding for this position would not be

for approval

taken from the social service funding lines, and Spechler's argument didn't please her. She thanked Moore for stewarding this project with a staff member whose full attention would be devoted to the proposed task.

Ordinance 14-14 *(cont'd)*

Mayer said the funding for the Jack Hopkins Social Service Fund was reaching its upper limits. He said Bloomington was one of very few cities in the state that awarded taxpayer money to social services. He noted this was not an either/or situation and that care needed to be taken when talking about that funding.

Granger read from the ordinance:

WHEREAS the City Clerk is required by both state and local law to maintain custody of records of the common council in perpetuity.

She said the oldest records were fragile and they needed to be attended to immediately.

Granger added that she appreciated Moore's attempts to create the project and get it underway without asking for additional money. She noted that the city as a whole needed to think about records management.

Ruff agreed it was an important project and appreciated Moore's understanding and vision in protecting these records, calling it historic preservation. He said he wished Sturbaum were still at the meeting to give his perspective on it. He added that in seconding Spechler's motion to postpone this ordinance, he was acknowledging that issues important to a council member should be discussed and not dismissed outright.

Neher noted the earlier discussion and said it would have been easier for all if the records of the city and county were available, digitized, and online for searches. He added that minutes and supporting documents could be added to give greater insight and would allow council to legislate more effectively and efficiently.

Ordinance 14-14 as amended received a roll call vote of Ayes: 5, Nays: 1 (Spechler).

There was no legislation for introduction at this meeting

LEGISLATION FOR FIRST READING

There was no public comment at this portion of the meeting.

PUBLIC COMMENT

Dan Sherman, Council Attorney/Administrator, noted that at the conclusion of this meeting the council would recess until an internal work session on August 13, 2014. He also noted the 2015 Budget Hearing would commence on August 18, 2014.

COUNCIL SCHEDULE

The meeting was adjourned at 11:25 pm.

ADJOURNMENT

APPROVE: ATTEST:

Darryl Neher, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington

for approval