

In the Council Chambers of the Showers City Hall on Wednesday, August 4, 2010 at 7:30 pm with Council President Isabel Piedmont-Smith presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
August 4, 2010

Roll Call: Mayer, Piedmont-Smith, Rollo, Ruff, Sandberg, Satterfield, Sturbaum, Volan, Wisler
Absent: none

ROLL CALL

Council President Piedmont-Smith gave the Agenda Summation

AGENDA SUMMATION

The minutes of March 3, 2010 and July 14, 2010 regular session meetings were approved by a voice vote.

APPROVAL OF MINUTES

Tim Mayer noted the recent passing of former city council member Sherwin Mizell.

REPORTS:
COUNCILMEMBERS

He commented that the temperature on his thermometer was 100 today, and advised citizens to make sure any outdoor pets were attended to.

Mike Satterfield noted that the air conditioning was working well in City Hall.

Andy Ruff reminded citizens that it was time for citizens to make their feelings about the proposed I-69 highway known to INDOT. He said the portion that would go through western Monroe County was particularly problematic locally, adding that when the community had car washes to fund public education programs while billions of dollars were spent on an unneeded highway, a travesty was committed. He noted that there were major corridors and bridges in the state that were closed because of lack of funding for repairs and maintenance. He advocated upgrading US 41 at a fraction of the cost and with less negative impact, and use the remaining money to repair roads and bridges in need of repair.

He also said, that despite his practice of biking everywhere, even in the summer, the recent heat wave made him more aware of what people around the world who have no access to air conditioned environments must feel.

Susan Sandberg congratulated Tina Peterson, Executive Director of the Foundation of the Monroe County Community Schools for work on the All for All campaign that helped restore the extra curricular activities in the school system. She said the campaign was a monumental effort of the entire community. She noted that extra curricular activities were not "extra," but basic to teaching critical thinking skills, working in groups, finishing projects and putting imaginations to work.

Sandberg noted Arts Week 2011 was accepting grant applications for innovative collaborative projects with a deadline of September 10, 2010. She said the theme for 2011 was Arts Teach and noted the irony of speaking of this in the same report as the All for All campaign mentioned above. She gave the website: artsweek.indiana.edu.

Brad Wisler noted that Bloomington was the hot spot for technology and start-up culture in the Midwest, because 'geeks' from across the country would be in town from September 9th – 12th to attend The Combine, an event that would bring together folks in creativity, community, culture, capital and code to learn, network and be inspired with talks and workshops related to entrepreneurship, product development, design, marketing, social media, blogging, coding, personal branding, business development and community. He said tickets were available as well as sponsorships and volunteer opportunities. He said the website was: thecombine.org.

Dave Rollo reported that global petroleum resource limits, peak oil and many more limits are becoming apparent, so it was not enough just to switch to alternative energy, because there would ultimately be failure unless the human impact on the biosphere was reconciled with global limits.

He said there were several articles which illustrated this: The Impending Peak and Decline of Petroleum Production: an Underestimated Challenge for Conservation of Ecological Integrity in Conservation Biology, was a call to ecologists to include peak oil within their analyses that said, "presently most widely used global scenarios of environmental change do not incorporate resource limitations including those of millennium eco assessment and the IPPC on climate change... the development of resource constraint scenario should be addressed immediately. We urge politicians, corporate chief executives, thought leaders, and citizens to consider this problem seriously because it is likely to develop into one of the key environmental issues of the 21st century."

Also, he said that Lloyds of London reported Sunday, July 11, 2010 in The Guardian Newspaper that Lloyds insurance market and highly regarded Royal Institute of International Affairs known as the Chatham House said "Britain needs to be ready for peak oil and disrupted energy supplies at a time of soaring fuel demand in China and India." It repeated warnings from professor Paul Stevens, a former economist from Dundee University that "lack of oil by 2013 could force the price of crude above \$200 per barrel." It is currently about \$80.

Finally, Rollo said that Bill McKibben in the journal *Nature*, determined that a 40% decline in phytoplankton over the past century was attributable to global warming and that there was an urgency for policy makers, and provided the context for decisions that were made here in this body as well as every level of government. Phytoplankton is the basis of the food chain, and 40% decline is hugely significant. It was attributed to stratification of the ocean, meaning there was not adequate mixing, therefore there were not enough nutrients upwelling from the deep ocean. He said he was sure there would be more about this in the future. It seemed to jive well with the policies of interest to the council regarding sustainability, peak oil, and climate change.

There were no reports from the Mayor or other city offices.

It was moved and seconded to adopt the report from the Rules Committee.

Chair of the Rules Committee Tim Mayer summarized the charge of the committee along with providing the outline of the meetings, names of committee members and the overall activities of the committee. He said the main topic was to explore how the council might regulate public comment during regular session meetings on non-agenda items. He noted that Bloomington was a very forward thinking community and that government officials wanted to hear from the public, and valued public comment and first amendment rights. He said that staff researched what other city councils in the state and nation do with regard to non-agenda public comments. He said about half have comments at the end of the meeting only. He noted that there was no statute that would require public non-agenda comments at meetings, but it had been the Bloomington city council's intention to provide for comments at both early and later parts of the meeting. He said the proposal of the rules committee was that the council would continue the practice of allowing the public to speak at the beginning or at the end of the meeting. He added that there would be only one opportunity per person, either at the beginning or the end, and the time would be apportioned by the council president.

COUNCILMEMBER Comments
(cont'd)

MAYOR and CITY OFFICES

COUNCIL COMMITTEES

- Rules Committee

Rules Committee Report (cont'd)

He asked Council Attorney/Council Administrator Dan Sherman to discuss "Reports from the Public: Making Comment on Non-Agenda Items" and some of the reasoning and statutes that formed the basis for that document. Sherman said the document would be available online and to the public at meetings and would articulate existing practices for public comment. He asked that the council adopt the guide to public comment. He said it would prohibit disruptive behavior that would prevent the orderly conduct of council business. He noted staff suggestions were incorporated into the guide, which included the standard of 'matters of community concern,' an explanation of what was meant by disruptive speech, noted that the comment section was not a give-and-take session and the consequences of not following these rules. He noted that there was no mention of profanity, as he said that profanity coupled with political speech was protected speech, but said that the chair could guide the speaker. He noted, too, that threats that were focused toward the future were not immediate and therefore not a basis for prohibition.

It was moved and seconded that the council accept the guidelines for public comment as presented at this meeting.

Piedmont-Smith asked for questions for the rules committee members or Sherman.

Mayer asked if the Report was enforceable at the meeting where it would be adopted. Sherman said that a few minor changes would need to be made to the Bloomington Municipal Code, but the majority could be enforced at that meeting.

Rollo said that he was surprised that profanity was protected speech. Sherman said it was protected when coupled with political speech. He said that members of the public could address the council on matters of community concern and that was inherently political speech. Rollo asked about the fact that the meeting was broadcast live. Sherman said that the meeting was a limited public forum, and that the comment from the public was part of that agenda, and that if there was a need to make profane statements in that regard, they could. He said it could not be prohibited, but the chair could guide the person into another way of phrasing the comment.

Sandberg was concerned about pejorative language against any group and asked if that was protected speech. Sherman said it was protected.

Sturbaum asked about a statement, "I don't like what you're doing and I'm going to shoot you." Sherman noted questions to be asked as to protection: Is it going to disrupt the forum? Does it amount to a clear and present danger? Is it likely to occur? Is it imminent? He said that public officials have to have a thick skin, and unless a threat as Sturbaum stated was likely to occur or imminent, it was considered protected. Sturbaum inferred that it was a judgment call. Sherman said that the elements of that judgment were 'likely' and 'imminent.'

Ruff asked if the rules were intended to prevent disruption, how speech that could be disruptive might be considered protected. He specifically asked about comments that might be directed against a group of people. He also asked why, when trying to create a safe, comfortable, civil environment to conduct business, the council had to wait until a disruption happened to take action. Sherman said that the purpose of the rules was to balance the council's interest in conducting efficient, orderly and dignified meetings with the rights of those who wish to speak before the council. Sherman added that the barring of speech only could happen when it was actual, and not just anticipated.

Rules Committee Report
 REPORTS FROM THE PUBLIC:
 MAKING COMMENT ON NON-
 AGENDA ITEMS

Ruff asked if, when speech led to an actual disruption, at a subsequent meeting the same situation started to devolve, did the council have to wait for the actual disruption to occur before taking action. Sherman said yes. He said that speakers could not be barred from speaking based on a past disruption and it was considered a form of prior restraint.

Ruff noted that other communities' public comment segments allowed much less than five minutes to speak. Sherman said that was correct. Ruff noted also that the major change of substance considered in this report and guide was the limiting of one period with a maximum of five minutes to any one speaker per meeting. Sherman agreed.

Piedmont-Smith asked if a person was removed from the chambers for violating the rules in the scenario that Ruff had described, and the next week the same person started along that same path, the council had to wait for the actual disruption before action could be taken. She said she thought that was overly cautious. Sherman said that unless the council was presented with a clear and present danger, the speech would be protected. He said that the disruption could trigger the chair asking for the removal of the person. He said that if this continued for a number of times, the chair might consider offering the opportunity for the police to arrest the speaker for the crime of 'disrupting a lawful assembly.' He said he didn't think that crime had been applied to a city council meeting, but that would be shifting the issue to the courts. He said the basis for the arrest would be a Class B Misdemeanor.

Sherman noted that the chair had responsibility for preserving decorum and in the above instance could tell the speaker their words could lead to violence and to stop. He said it should then be announced that if they continued on that line, the chair would ask the sergeant-at-arms to remove them from the chamber. Piedmont-Smith clarified that there didn't have to be an actual fight to say something that would incite an immediate breach of the peace. Sherman agreed, but again reiterated that there had to be likely and imminent, a clear and present danger.

Mayer added that the comparative review of public comment indicated that some communities only allowed three minutes of public comment, asked speakers to sign in at the beginning of the meeting, or pre-register ahead of time. He said Bloomington offered ample opportunity for citizens to address the council, with respect to first amendment rights.

Sandberg noted the council had always had a call for respectful discourse. She wanted to make sure that citizens understood this change was not about not criticizing the council, decisions made by the council or problems in the city. She reiterated that what was being changed at this meeting was that a person speaking on non-agenda items would get one and only one opportunity to do so, even though there were still two comment periods during the meeting.

Sherman said she was correct on the change. He reiterated again that the council meetings were considered a limited public forum, a classification by the law that determined what type of speech was allowed and what regulations applied. He said when defining the boundaries of the forum or rules of the council, they must be viewpoint neutral and reasonable in light of the purpose of the forum.

Sandberg noted that the council expected speakers to be courteous and respectful of the opinion of others, and asked if that was not part of the new guidelines. Sherman said that the rules called for a civil forum and also at what point speech would be prohibited, and that there was a difference between the two issues.

It was moved and seconded that Item 6 in the document REPORTS FROM THE PUBLIC: MAKING COMMENT ON NON-AGENDA ITEMS be amended.

Piedmont-Smith read changes to guidelines for speaking at council meetings she would like considered.

Sturbaum asked if Piedmont-Smith would consider putting in the words 'threatening language.' She said that would need to be another amendment to be addressed separately.

Satterfield asked Sherman if he removed the words "threatening language" for a reason. Sherman said he did. Satterfield asked if that reasoning would apply to the word "obscenity." Sherman said it wouldn't.

Piedmont-Smith said that obscenity was defined as (1) language that the average person, using the standards of the community in which the expression is made, would find that it appealed to a morbid or shameful interest in sex, (2) language that depicted or described sexual conduct in a patently offensive manner and (3) language that lacked serious literary, political, artistic or scientific value. She added that this had been determined by the Supreme Court as something that can be limited. Sherman agreed.

Wisler asked if each clause should begin with a verb. Piedmont-Smith suggested adding a semicolon and re-read the amendment.

Mayer asked if undue repetition would include a repetition of a website address within one comment period or in repeated meetings. Piedmont-Smith said it would have to be repetitive within one comment period.

Piedmont-Smith asked if comments on reports were subject to the same time limits as public comment on legislation. Sherman noted that some other reports such as the sidewalk report or the Jack Hopkins funding came from committee reports and had public comment, but said it was the call of the chair, and suggested that due to the nature of the report, it might be warranted.

Volan said, while it might not be in order to take public comment on a report, it would be ironic to not have comment on a report about public comment. He suggested opening the floor to public comment on the amendment and the report.

Piedmont-Smith called for public comment on the amendment to the REPORTS FROM THE PUBLIC: MAKING COMMENT ON NON-AGENDA ITEMS. She asked the clerk to make copies of this change to distribute to the public.

Marc Haggerty said he didn't mind signing in. He said that the wording 'encouraging' and 'requesting' was fine with him.

The amendment received a roll call vote of Ayes: 9, Nays: 0.

Piedmont-Smith called for public comment on the document REPORTS FROM THE PUBLIC: MAKING COMMENT ON NON-AGENDA ITEMS as amended.

Marc Haggerty spoke of the history of the council public comment period during meetings. He spoke of *Hess v. Indiana*, 414 U.S. 105 (1973) in which a City of Bloomington court decision was overturned by the US Supreme Court in an issue of free speech, although the speech

Amendment to REPORTS FROM THE PUBLIC: MAKING COMMENT ON NON-AGENDA ITEMS. The City Council encourages civility in public discourse and requests that speakers refrain from language which would incite an immediate breach of the peace; refrain from undue repetition, extended discussion of irrelevancies, obscenities and personal attacks against private individuals unrelated to the operation of the City.

occurred on the street, not in the council chamber. Haggerty said he had been a victim of some charges made by citizens in the public comment segment of the council meetings, but preferred to not prohibit speech. He spoke of the PCB discussions of the 1980s and said the discussion was swayed considerably by citizen disruptions during meetings of the Bloomington City Council.

REPORTS FROM THE PUBLIC:
MAKING COMMENT ON NON-
AGENDA ITEMS (cont'd)

Mayer thanked the committee for its work. He specially thanked the staff for their considerable work and extensive research. He said the first amendment and freedom of speech was a prickly issue as some may be offended by any speech.

The motion to adopt the guidelines REPORTS FROM THE PUBLIC:
MAKING COMMENT ON NON-AGENDA ITEMS as amended
received a roll call vote of Ayes: 9, Nays: 0.

It was moved and seconded that the report from the Rules Committee be accepted.

Adoption of the Rules Committee
Report.

Marc Haggerty noted that this might be a question to continue to another meeting given interest by the public.

Ruff noted he had always voted against the limiting of public comment when instances arose during controversial issues. He said he was confident that the adoption of this report and guidelines would not unduly limit the public's ability to speak at council meetings.

Mayer noted that at one time there was only one comment period at council meetings, either at the beginning or at the end of the meeting. He said that two periods were now the norm, but that this rule change would not affect the number of opportunities for the public to speak, but limit the number of times a person could speak at one meeting. Piedmont-Smith thanked Haggerty for his recall of the social justice issue. She said that the rules would not be a hindrance to the exercise of free speech in Bloomington.

The motion to accept the Rules Committee report was approved by a voice vote.

David R Grubb spoke of his long time interest in community growth and protection of the environment.

PUBLIC INPUT

Marc Haggerty suggested that the Criminal Justice Coordinating Council have public comment at their meetings. He said at present they did not, and there was no way to speak to judges in a public manner at this time such as the city council. He said they should listen to citizens' concern about running the jail and the justice system.

It was moved and seconded that Chad Roeder and Michael Wallis be appointed to the Bloomington Platinum Bike Task Force. The motion was approved by a voice vote.

BOARD AND COMMISSION
APPOINTMENTS

It was moved and seconded that Kent McDaniel be reappointed to the Public Transportation Corporation.

Volan moved and it was seconded that the above appointment be tabled. Piedmont-Smith asked Volan to explain his motion. Volan said he had talked to Mr. McDaniel earlier in the day, but that at least one other committee member had not had time to talk with him about his work on the Public Transit Board. Volan also said he had more questions and concerns to discuss.

APPOINTMENTS (cont'd)

Council Attorney Sherman, when asked, said this motion was not in violation of the rules of the council and that it was not debatable. The motion to table received a roll call vote of Ayes: 4 (Wisler, Ruff, Piedmont-Smith, Volan), Nays: 5 (Rollo, Sandberg, Satterfield, Sturbaum, Mayer) and was not tabled.

Volan moved and it was seconded that the appointment of Kent McDaniel be postponed until the next council meeting.

Council Attorney Sherman said, when asked, that there was a difference between postponing and tabling. He said this motion was to defer to a certain time, the next meeting. He said this was enough of a difference to warrant a vote.

Volan asked Sherman if the motion to postpone was debatable, to which Sherman replied that it was, but on the issue of postponement, not on the merits of the appointment.

Volan said he felt the reappointment should not be done at this time, and as a member of the interview committee for the Public Transit Board, he asked the other members tonight at their meeting to postpone the decision. He said he moved to postpone to have more time to explain his reasons more clearly.

Rollo said he would like to hear from other members of the committee.

Sturbaum, another member of the committee, said that members of the committee had a month to comment on the appointment, but had received no communication from council member Volan on this issue. Sturbaum noted that there were two other applicants, but Volan had not commented on them either.

Sturbaum said he and Mayer had discussed this over email with no response from Volan, so they thought there was consensus on this appointment. He further said that had Volan wanted to, they could have set up interviews, but that they did not hear the objection until the interview committee meeting that was held immediately before the council meeting. Sturbaum said that the process and appointees were disrespected by Volan's silence. Sturbaum said that the rest of the committee didn't think Volan's objection was important enough to hold up the reappointment process.

Mayer said he heard from Volan at 7:15 pm. He said that applications had been reviewed by email and there had been no response by council member Volan. He said that the candidate was extremely qualified.

After being cautioned that the debate should be limited to the issue of appointment and not the merits of the candidate, Sturbaum noted that Mayer's extensive work in asking for a review of a concern regarding this candidate indicated that there had been enough time and effort taken on the issue to warrant a reappointment at the meeting.

Mayer said questions had been asked and answered to his satisfaction from staff and the candidate.

Piedmont-Smith asked the date of the expiration of the current term. Volan said that the date was July 31, 2010, which had already passed.

Piedmont-Smith asked Clerk Moore if the default for later appointments was that the incumbent continue to serve on the board or commission until an appointment was made. Moore said that was the practice in the past but that Sherman could speak to the legalities of the issue. Moore added that in anticipation of the expiration of this term, and according to

the code, a press release was issued and applications sought. She said the closing date for applications was July 29th with the news release sent out on July 15th.

Sherman said that appointments could be made no sooner than 15 days after the submission of the notice to the media, which had occurred.

Volan said he had not had enough time to fully understand the impact of this nomination, and noted that he had three interview committee meetings before the council meeting. He said the issue was complicated, and that he didn't make the motion to postpone lightly. He asked consideration from other council members.

Satterfield asked about the interview committee vote on the nomination of McDaniel. Mayer said that he and Sturbaum voted to nominate the candidate, while Volan did not. Mayer said that tradition was that the majority ruled on forwarding nominations to the council. Satterfield noted that unanimity was not required and the majority opinion was respected. Sherman agreed.

Volan asked Sherman if the council had an obligation to accept the vote of the interview committee. Sherman said no. Volan asked if the interview committee's recommendation was ever not taken by the council. Sherman said he didn't remember any instance. Moore said she didn't recall one either.

Mayer said he could remember only one instance in the mid-1980s when a recommendation was challenged.

Wisler asked what would happen if the appointment was postponed. He asked if the incumbent would stay on the board until the appointment or reappointment was made. Sherman said he would. Wisler reiterated that there would be no change in the commission whether an appointment was made immediately or next month.

Ruff said that with that information, and while respecting traditions of the council, the respect he had for the legitimate concerns of one council member outweighed the traditional procedure in this instance. He said it was not whether he agreed with or shared Volan's concerns, but rather that he wanted more time to carefully consider an action that might be taken. He said despite his high regard for this citizen nominee, he would vote against making the reappointment at this meeting.

Sturbaum reminded the council that two council members reviewed the applications, weighed the opportunity to make a reappointment and decided that there was no need to interview the two new applicants. He said they did not have the intention of wasting council time and wanted to streamline the process. He suggested making the reappointment, noting the excellent credentials of the nominee. He said the nominee had been on the Transit Board for a long time, and that he had a positive influence. He said he saw no reason to continue the discussion.

Volan wanted to make sure if council members had any questions that they could still ask them. Piedmont-Smith noted that the questioning and comment periods were comingled for this procedural discussion.

Rollo, saying he understood and respected their position, asked Sturbaum and Mayer what hardship would exist if the reappointment was postponed.

Sturbaum said schedules were busy and that they didn't think it was necessary to interview candidates in this case. He said it would take

APPOINTMENTS (cont'd)

personal time to come back to go over this again. He said that he and Mayer had judged that it wasn't necessary to do that, and stand by that position. He said Volan would like to ask McDaniel questions and the reappointment would not preclude him doing so.

Mayer said he reviewed the applications for the three candidates (that included the incumbent) and said clearly McDaniel was the best candidate for the position. He also said he spoke to McDaniel who told Mayer he had a 45 minute conversation with Volan by telephone. Mayer said that there had been a lot of opportunity to discuss issues, and felt that an interview had been conducted with the candidate by Volan.

Volan said that other interview committees had interviewed candidates. He said his conversation with the nominee had raised questions that he wanted to bring to the attention of the council and that they dealt with larger issues that the Public Transit Board and the council faced. He said he was simply asking for more time to make the decision and to look at the larger issues that this seat opening raised. He said he didn't really want to get into details, but said he thought the issue transcended the current holder of the seat, the applicants, and concerned questions that the council needed to think about before making another appointment to this board. He emphasized that none of the three applicants were interviewed, but said it would be easy to do so. He also encouraged other members of the council to attend any interviews that might be set up. He said it was his respect for the nominee that caused him to delay the decision, but, he said, his colleagues were forcing the issue. He said that it was irresponsible to not speak up about the issues that this open seat and the greater issues involved. He said it would harm nothing to have more study and more eyes on the issue and postpone the appointment until the next meeting in September. He said there was no disrespect to anyone in the postponement.

Ruff noted that Wisler had an interest and had taken a step in meeting with McDaniel, but had been traveling on business and was unable to arrange this. Wisler said he had just gotten back into town, and had gotten an email from McDaniel a couple of weeks ago with a request to meet. He said he would vote in favor of postponement, and said he would like to talk to the other applicants as well.

Sandberg asked if the vote was to postpone to a specific date. Sherman said the motion was to postpone to the next meeting, September 1, 2010.

The motion to postpone the appointment to the next council meeting received a roll call vote of Ayes: 6, Nays: 3 (Satterfield, Sturbaum, Mayer).

It was moved and seconded that Resolution 10-13 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of Do Pass 8-0. It was moved and seconded that Resolution 10-13 be adopted.

Patricia Mulvihill, Assistant City Attorney, noted that the county sheriff and Bloomington Police Department share the money in this grant, but it was decided that this expenditure to purchase two 15 passenger vans to be used by the Critical Incident Response Team (CIRT) would be funded entirely by the Bloomington Police Department. She said that the local sheriff's department was a member of the CIRT and would be able to use them too. She added that in order to get the money from the federal government, the city had to enter into an agreement with county government about how the funds would be used. She said that the commissioners had already approved the agreement, and that the county council would consider it on August 10th.

LEGISLATION FOR SECOND READING

Resolution 10-13 To Approve an Interlocal Cooperation Agreement between the City of Bloomington and Monroe County, Indiana in Regards to 2010 Edward Byrne Memorial Justice Assistance Grant (JAG) (To Purchase Two Vans for the Critical Incident Response Team)

Mulvihill addressed two questions that had been raised at the committee meeting. One had questioned the cost of \$43,446 for two vans. She said that that number would be about \$2500 short. She said that municipal pricing was being used to purchase each van for \$23,000. She said the police department was making up the shortfall. In noting the other question of fuel efficiency of the new vans she said that the present van got 6.8 mpg, where the new vans will get 14 mpg. She said the current van was lacking air conditioning and heat, was burning oil and antifreeze, and sometimes would not start.

There were no questions from the council members and no comments from the public.

Mayer thanked Mulvihill for her work on this issue.

Resolution 10-13 received a roll call vote of Ayes: 9, Nays: 0.

It was moved and seconded that Ordinance 10-08 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of Do Pass 0-3-5. It was moved and seconded that Ordinance 10-08 be adopted.

Ordinance 10-08 To Amend the Bloomington Zoning Maps from Quarry (QY) to Residential Medium-Density (RM) – Re: 3020 and 3040 S. Rockport Road (Rockport Road Trust LLC, Petitioner)

James Roach, Senior Zoning Planner, and Patrick Shay, Development Review Manager, Planning Department, presented the ordinance and background information that would rezone the property in the Area Intended for Annexation (AIFA). Shay said that the main reason for the request was to resolve two outstanding zoning violations and record a zoning commitment concerning future site development constraints on the property that contained a historic house, a barn with apartment and a three unit structure. He noted that the barn apartment was done without zoning approval and the three unit structure was actually approved for a single family residence under a use variance. Shay noted that the Plan Commission reviewed the request in March and June of 2010 and voted 10-0 to forward a negative recommendation on this item to the Council.

Shay addressed questions raised in the committee meeting.

In answering a previous question concerning 'concurrency' and the Growth Policies Plan (GPP), Shay said that the term itself was not used in the GPP, but the policies of services being provided to properties prior to their development was a policy of the GPP. He gave some particulars about the property that would include agreements about new septic systems, the density of units being less than that allowed in a general RM district, commitments for right-of way connections through the property and along Rockport Road, water main easements, sidewalk construction, and preservation of trees and karst features with a conservation easement. He also had a schema of development on the property.

In answering a question about nearby sanitary sewers he showed a map with that information highlighted along Country Club Road.

In answering a question about future connectivity to Adams and the driving range, he again showed a map with this information.

In summation, Shay said that the property had been developed without the proper permits, approvals and sanitary sewer service, that the petition made no commitment to provide sanitary sewer to future units and the continuation of septic systems in a heavy karst area with multifamily use was most undesirable.

Ordinance 10-08 (cont'd)

Piedmont-Smith questioned the use of the term Residential Medium-Density, saying that it was not a category in our code. Dan Sherman, Council Attorney/Administrator, said that this amounted to a clerical error and that the courts would read it correctly should it come to that. Piedmont-Smith said she would contemplate a change in wording.

Mayer asked about sewer and road connectivity from the site to surrounding infrastructure. Maps were shown with this information.

Volan asked how much it would cost to install sewers in this area. Shay said it would be more than average cost because of the karst area, and considering that it had a small number of family units.

Volan asked if the staff would have supported the change in zoning if the petitioner had offered to install the sanitary sewers. Shay said that was not the only service missing from the proposal. Jim Roach said that it would be a much different discussion as there was a substandard road at Rockport, a substandard intersection at Country Club, but the GPP did not rule out multifamily in this area.

Volan asked the petitioner's representative if they had looked into putting a sanitary sewer on this property. Mike Carmin, the attorney for the petitioner said that they had not, and he had not seen this done on a property with less than twenty dwelling units. Volan asked if this project would be in the six figure range. Carmin said it would because it was almost guaranteed to encounter rock excavation costs.

Wisler asked if there was a quarry on this property. Roach said it did not have a quarry near there, but was at one time part of a large quarry holding by the Borland family. Roach added that the zoning had included Rockport Road to 37 to Gordon Pike to Allen Street. He asked why the council wasn't considering a PUD for the property. Roach said it wasn't brought to the Planning Department, but that the petition would bring forth the same issues. Shay said that some of the development had already occurred, and that it was part of the issue, also.

Wisler asked what would happen if the petition was denied. Roach said the apartment above the barn would be removed, and the structure with three units -- with three kitchens and three entrances -- would need to be converted back to one single family house. Shay said it wasn't an unusual situation.

Piedmont-Smith asked if there had been fines levied, and at what level. She asked if there had been no fines levied to this point, what fines could be levied. Shay said that the planning department informed owners of issues and what they needed to do to be in compliance or approval. He said that the fines were not levied during the period of seeking approval. He said the fines varied depending on the issue involved. Piedmont-Smith asked if the petition was not granted, and the owner did not come into compliance with the barn and three-unit apartment building, what the fine would be. Shay said the legal department would determine what the fine would be and remedy the situation through the court system if necessary. He said there was a table that listed fines, but the maximum fine was not usually sought. Piedmont-Smith noted that the object was working towards compliance more than fining. Shay agreed.

Sandberg asked about the current tenants and what time frame they would have to leave the property. Carmin said that not all units were currently occupied; the units were leased month to month and occupants had been alerted to the situation.

Wisler said there was a difference between having three units on a septic system and having thirteen units on the system. He asked if there was a way to allow the current use without additional units. Roach said that the proposal was that the existing five units would be on septic and the sewer wouldn't be built until the additional eight units were built. He noted that 56 units were permitted by the RM district. He said that just keeping the existing five units on septic and never building any more was not the proposal, and that if it was proposed, it would need to be reviewed by the Plan Commission.

Piedmont-Smith asked if there were water lines on the property. Roach noted that the historic house and the barn used a well, while the three-unit structure was connected to the public water system. He added that part of the commitment would include an easement for a 16 inch water main along Rockport Road. Carmin added that a stub for future water connections along with a meter for the historic house would be added. Piedmont-Smith asked if the easement would still be granted if the petition was denied. Carmin said the issue had been discussed, but he could not report a definitive answer to her question.

Piedmont-Smith asked staff if the developer to the south of the area in question would need to put in the water line if this petition was not granted. Roach said he would want to continue negotiations in the future no matter what. He said those negotiations would be between Richland Development, the county highway department and the City Utilities Department. Piedmont-Smith asked how many mature trees would be affected by this. Roach said there would be about a dozen considerably sized trees that were very close to the roadway.

Ruff asked where the units fell on the scale of affordability. Carmin said that depended on what costs the developer incurred including waterlines and roads. He said the current units were rented by divorced fathers who were able to be close to their children.

Volan asked if the petitioner would sell the easement area to another developer. He asked if there was benefit to other property owners if the easement was granted in the petition. Carmin said the water line would go in no matter what. If the easement was granted it would go behind the trees at the edge of the roadway. If it was not granted, the trees in the public right of way at the edge of the road would have to be removed. Roach said the last option would be to place the water main in the roadway itself, and that was a decision that the county highway department would make.

Piedmont-Smith asked if the karst conservancy area and tree preservation areas were more than required by the UDO. Roach said that the UDO required 2.86 acres and the petition was proposing 4.08 acres.

Piedmont-Smith asked about the possible road extension to the west, and wondered if it would cut through the karst conservancy area. Roach showed a map that indicated the road was south of the karst.

Carmin added some comments regarding the petition. He said the surrounding properties were going to be developed more densely than the petition for this property asked for, and that the GPP supported the density here. He said the right-of-way dedication and water line easements were agreed to, and that the sewer could be connected in the future. He noted the argument regarding public transportation in the area was not as persuasive as the lack of it, but didn't stop 400 other units from being developed. He used the same argument for the substandard nature of the intersection near the petition site, and added that improvements would be made in the area within the next two years.

Ordinance 10-08 (cont'd)

He reiterated that the GPP supported this petition, although this was in a slightly different manner. He asked the council to think of this in the perspective of concurrency tied to development that was there. He said that this was a development petition where the development was a known factor, rather than something to be imagined in the future. He reiterated that the three unit structure had the look of a single family style home. He said the petition provided exactly what the GPP asked for and asked for approval of the council for the petition.

Wisler asked if there was a reason given as to why the development took place before approvals. Roach said it was hard to answer because the person who did most of the work was now deceased. Carmin said that the current owner's former husband had approval for a single family home, got divorced and then began to convert the home to three apartments, one for himself and two to lease. He subsequently left the area. The present owner finished the conversions of the house and apartments. He said the original owner chose to ignore the requirements and the current owner assumed that the appropriate permits had been granted.

Piedmont-Smith asked if the commitments would remain if the property was sold. Roach said the commitments would be recorded with the deed and would stay with the property in the future. Piedmont-Smith asked about the commitment to build a sidewalk on Rockport Road. Roach said it was one of the commitments that would need to happen sooner rather than later, after the waterline was built. Piedmont-Smith asked if they had considered a side path rather than a sidewalk. Roach said the issue didn't come up with the bicycle and pedestrian planner or in consultation with the Greenways Plan.

Volan asked if there was precedence for this petition. Roach said illegal apartments had been created out of houses frequently. Shay said there was a possibility that others may also ask for forgiveness rather than permission. Volan asked if there were similar cases to this. Shay said that there were Board of Zoning Appeals cases where the petitioner had sought approval and received it after the fact. He said that it was a little different here, because this wouldn't have been approved in the first place. Volan asked if the petitioner had the option to go to the BZA if the petition was not approved. Roach said they would have the option to appeal.

It was moved and seconded to adopt Amendment #1 to Ordinance 10-08.

There were no council questions, public comments or council questions regarding this amendment.

Amendment #1 to Ordinance 10-08 received a roll call vote of Ayes: 8, Nays: 0 (Volan out of room).

There were no comments from the public on Ordinance 10-08 as amended.

Sturbaum noted that the Plan Commission had voted against the petition, and that he would, too.

Ruff said he respected the positions of the Planning Staff, Plan Commission, and the Environmental Commission on this petition. He noted that the council's role in this issue was broader than any of those above. He said that he had no sympathy for scofflaws, and this was a violation of so many code requirements and regulations, and said he had no motivations for any spirited defense of the petition. He added that while the road was substandard at this point, he was confident that at

Amendment #1 This amendment is sponsored by Councilmember Piedmont-Smith and corrects the name for the Residential Multifamily (RM) designation throughout the ordinance.

Ordinance 10-08 as amended

sometime in the future it wouldn't be an issue. He said he disagreed, but barely disagreed, with the findings of the Plan Commission. He said that unless persuaded by other council members' comments, he would support this petition.

Ordinance 10-08 as amended
(cont'd)

Volan said that he was glad for the time between the committee meeting and the present meeting to more fully understand the details of the petition. He noted that the merits of the case included that there would be over an acre of land preserved above and beyond what the UDO called for, that trees would be preserved, but that the precedent set by the approval of this petition was not a good one. He said the council should reject the petition, but that the BZA should hear the case, as it was charged to deal with exceptions such as this one. He noted the unusual circumstances, and said it was not unusual or precedent setting if the BZA approved the issue.

Wisler said he came to the meeting with the opinion of not rewarding behavior that went against codes. He noted Ruff's mention of the broader scope of the council decision, and added that even if the petition was approved, he felt that the petitioner should be fined for past violations. He said the proposal was an acceptable use of the property with an appropriate density, although problematic septic arrangement. He said there was nothing so out of place that it should be torn out. He said he agreed with Andy and said he didn't understand what was so out of place that it should be removed. He said he would vote yes.

Piedmont-Smith said she discussed this at her monthly constituent meeting where the gathering said the only thing they cared about was preserving trees on Rockport Drive. She said she listed the pros and cons which she read. There were more pros in her list than cons. However, the biggest con was that the property owner had been in violation for ten years. Even so, she said she agreed with Wisler and Ruff that the Council was not in the enforcement business. In the best interest of the community she said she would support the ordinance.

Ordinance 10-08 as amended received a roll call vote of Ayes: 3 (Wisler, Ruff, Piedmont-Smith), Nays: 6 (Rollo, Sandberg, Satterfield, Volan, Sturbaum, Mayer). The motion failed.

There was no legislation to be introduced at this meeting.

LEGISLATION FOR FIRST
READING

There was no public input.

PUBLIC INPUT

Piedmont-Smith announced that upon adjournment of this meeting, the Council would enter its August recess and would not reconvene until September 1st.

ANNOUNCEMENTS

The following meetings were scheduled to be held during the recess: The Council Sidewalk Committee on Friday, August 6th at 10:00 am and an Internal Work Session on Friday August 27th at noon.

The meeting was adjourned at 10:55 pm.

ADJOURNMENT

APPROVE:

ATTEST:

Isabel Piedmont-Smith PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington