

In the Council Chambers of the Showers City Hall on Wednesday, February 16, 2005 at 7:30 pm with Council President Andy Ruff presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
February 16, 2005

Roll Call: Banach, Diekhoff, Ruff, Rollo, Sturbaum, Volan, Sabbagh, Mayer
Absent: Gaal

ROLL CALL

Council President Ruff gave the Agenda Summation

AGENDA SUMMATION

There were no minutes to be approved.

APPROVAL OF MINUTES

Jason Banach announced that he and council members Diekhoff, Ruff and Volan would comprise a council bowling team to participate in the Bowl For Kids' Sake in March. He encouraged sponsors for their team and general participation in the event.

REPORTS:

- COUNCILMEMBERS

Mike Diekhoff announced that there had yet to be a county council challenge to the city's bowling team.

Chris Sturbaum announced that Bloomington Township residents over the age of 65 could get help with prescription drug costs with a new program. He read income guidelines and encouraged folks to contact the township for information.

Sturbaum noted he had a copy of the Downtown Vision Infill Strategy Plan for the city. He said a nationally known urban planner had researched the city's downtown, and had formulated a plan to guide how the downtown would be used in the future, how it would grow and how to deal with problems associated with that development.

He said a public workshop and meeting would be held on February 23 at the convention center to explain the plan. He encouraged folks to come.

Steve Volan noted that the meeting would be held just before the council meeting the following week, and hoped citizens would be able to attend.

Dave Rollo noted that the Kyoto Protocol was in effect on this day, and was supported by 141 countries, but not the US. He said the goal of this treaty was to reduce emissions that cause global warming by 5.2% by 2112, but that this, according to recently published scholarly scientific articles, may not be enough to prevent countries from vying to preserve natural resources decimated by abrupt climate change. He noted that the present federal administration continually refuses to acknowledge the scientific consensus and works to undermine the Protocol. Rollo concluded that global warming is an eminent threat and appealed to citizens to contact their representatives and urge them to act and join the rest of the international community to safeguard the future.

Tim Mayer noted an article in the day's paper regarding an elected official's referring to fellow elected officials and citizen appointees to the county plan commission as "left wing wackos." Mayer said he found this language offensive and counter productive. He noted the same paper called for newly elected city and county presidents, Andy Ruff and Mark Stoops respectively, to conduct meetings in open and civil manner. Mayer hoped that the paper would find the words and wisdom to call on this official to conduct public business in a civil manner.

Andy Ruff thanked Rollo for bringing up the Kyoto Protocol. He said he was disturbed that governmental policies would hand an environmentally uncertain future to our children.

Diekhoff announced the county council had just fielded a Bowl for Kids' Sake bowling team to challenge the city council. He said members would be Valerie Pena, Kevin Robling, Mark Kruzan and Sue West.

Reports from council member
(cont'd)

Maren McGrane, Council Liaison with the Mayor's Office, introduced Jeff Harlig, chair of the Human Rights Commission, to present the Commission's Individual and Organization Human Rights Award for 2005.

- MAYOR and CITY OFFICES
- Human Rights Commission

Doug Bauder was given the Commission's Individual Award and received a plaque. Upon accepting the award, Bauder said he appreciated this recognition in a community of award winning people. He said we all need to recognize citizens' participation, even though all don't win a plaque.

WFHB Community Radio Station Manager Ryan Bruce represented programmers, news reporters and engineers at the podium in receiving the Organization Award for their programming in Spanish, locally produced nightly news, programs for the GLBT community, live feeds of community programs and new projects planned to increase representation of all segments of Bloomington. Bruce thanked Jim Manion and Chad Carrothers who had accompanied him to the ceremony. He thanked the board, volunteers, city officials and CATS staff as well as supporters of the station. Chad Carrothers, said he was humbled to receive the award when he was just doing his job in empowering voices in the community. He asked volunteers to stand and be recognized.

President Ruff congratulated the honorees, adding that they contributed greatly to the quality of life in our community.

Steve Volan said it was wonderful experience to be a volunteer programmer (said he entertained on Thursday afternoons), welcomed everyone to take part, and also encouraged support at membership time.

Marjorie Hudgins, acting chairman of the Historic Preservation Commission read an encomium honoring Jeanine Butler and her actions for her contributions to the Commission's work. Mayer thanked Butler for her contributions and congratulated her on this award.

- Historic Preservation Commission

There were no council committee reports at this meeting.

- COUNCIL COMMITTEES

Margaret Speer and Janna Brancolini represented the Bloomington North High School Habitat for Humanity Chapter by reporting to the council that their recent fundraiser netted over \$23,000 for the house the group hopes to build. They thanked the community for their support.

- PUBLIC INPUT

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

BOARD AND COMMISSION APPOINTMENTS

Sarah DeLone	Animal Control Commission
David Walter	Redevelopment Commission
Pam Warren	Tree Commission
Cathi Crabtree	Commission on the Status of Women

The reappointments were approved by a voice vote.

It was moved and seconded that the Mayor's appointment of Rebecca Webb-Burchart to the Historic Preservation Commission be confirmed by council as required by statute. This confirmation was approved by a voice vote.

It was moved and seconded that action on Ordinance 05-05 be postponed until March 2, 2005, so that legal notice could be made in a timely fashion. It was noted that the petitioner could not be present at the March meeting, but was comfortable with this postponement.

The motion to postpone action on Ordinance 05-05 received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that the Ordinance 05-04 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 6-0-2. It was moved and seconded that Ordinance 05-04 be adopted.

James Roach, Senior Zoning Planner, announced that the zoning change was recommended by Plan Commission with a vote of 8-0. He said the vacant property was located on West Third between Landmark and Patterson Drive.

He noted the plan commission found that the site was not really suitable for industrial uses any longer, noting the changing nature of uses in the area, and that the site plan assurances would provide compliance with the Growth Policies Plan.

Roach related the site plan commitments would include controls on architecture, access control to Third Street, site layout and building placement, streetscape improvements along Third Street (landscaping and sidewalks), dedication of right-of-way and easements, and connectivity to adjacent to unbuilt and undeveloped property.

Mike Carmin, representative of the petitioner, said that it was not often that zoning commitment would be attached to the deed of the property for a future owner. He said this may be the first of many commitments for this corridor, and asked the council's support of the petition.

There were no council questions, no public comment or council comments on the item.

Ordinance 05-04 received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that the Ordinance 05-06 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 8-0. It was moved and seconded that Ordinance 05-06 be adopted.

Nancy Hiestand, Program Director for Historic Preservation in the Department of Housing and Neighborhood Development, and staff for the Bloomington Historic Preservation Commission reviewed the property location and history. She described the property as a 19th Century farmstead with six structures with two houses and four agriculture accessory buildings, a unique situation within the city limits. Hiestand showed slides of the buildings pointing out architectural details, giving some history of the buildings.

She noted that the buildings would be preserved by local designation and also by covenants placed on it by Bloomington Restorations, Inc.

Rollo asked about a time line for a museum on the property. Elizabeth Cox-Ash, President of BRI, noted that the contents of drawers and boxes of the house were being unpacked and cataloged, and that some immediate repairs to plaster and wiring were needed. She expected this part of the project to take at least two years to complete.

Banach said he would be pleased to support this historic designation.

LEGISLATION FOR SECOND READING

Ordinance 05-05 To Vacate a Public Parcel - Re: A Right-of-Way Located at 600 West 6th Street which Runs North/South between 6th Street and 7th Street (Fairview United Methodist Church, Petitioner)

Ordinance 05-04 To Amend the Bloomington Zoning Maps from IL/IS to CG - Re: 1615 West 3rd Street (Ken Nunn, Petitioner)

Ordinance 05-06 To Amend Title 8 of the Bloomington Municipal Code, Entitled "Historic Preservation and Protection" to Establish a Historic District - Re: "The Garton Farm" at 2820 - 2920 East 10th Street (Bloomington Restorations, Inc., Petitioner)

Sturbaum noted that looking into the past necessitated looking into the future, and mused about how this little farmstead would look and be used in fifty years. He praised the commission and the Garton family.

Ordinance 05-06 (cont'd)

Mayer said this was a unique opportunity and thanked the Historic Preservation Commission and BRI for bringing this forward. He said this was a wonderful opportunity for collaboration and community building with a number of other organizations also.

Ordinance 05-06 received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that the Ordinance 05-07 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 3-1-3. It was moved and seconded that Ordinance 05-07 be adopted.

Ordinance 05-07 To Amend Title 8 of the Bloomington Municipal Code, Entitled "Historic Preservation and Protection" to Establish a Historic District - Re: "The Fleener Building" at 112 East 3rd Street (Bloomington Historic Preservation Commission, Petitioner)

Nancy Hiestand, Program Director for Historic Preservation in the Department of Housing and Neighborhood Development, and staff for the Bloomington Historic Preservation Commission presented a map which oriented council to the area and uses of buildings in the area.

She pointed out architectural features and details giving some historical perspective to the brickwork styles. She also showed other buildings built in the same area, noting similarities and differences especially in complexity and brickwork designs. She noted that this type of mixed use building is now being imitated in buildings now.

She reported that the Commission voted to pass this recommendation with one abstention and one nay vote.

President Ruff asked for comments from the owner of the building.

Thomas Densford, representative of owners Shannon and RJ Phelps, said they remained resolute in their objections to the historic designation and take exception to conclusions reached by the Historic Preservation Commission. He said the owners believed that the building neither imparted a distinct aesthetic quality to the city nor served as a visible reminder of the historical heritage of the community as the subjective standards of the ordinance established.

Densford said that the council was being asked to establish a standard and to establish meaning to the ordinance requirements of "aesthetic qualities" and "visible reminders." As an example he said that the Garton Farm petition was one of the best examples of historic preservation presented. He added that the same characteristics would place this farm at the high end of the measurable standard of historic significance while the Fleener building would be at the opposite end of the spectrum, if on it at all. He said that the Fleener structure was not extraordinary for the time period and was, in fact, quite common, and could not take any credit for architectural trends in the city. He said it actually had not even been noticed until the application to demolish the building was filed with the county.

Densford said the standard developed should be consistent and applicable from one property to the next and should not be based on nostalgia or a passion for preservation. He added that the standard should be based on the assumption that a future project there would be less significant to the community than the Fleener building had been over the last seven years. Again, he reiterated that the council was being asked to define "historically significant" in the community, from an architectural standpoint, and it was the position of the owners that the highest and best use of the property was not historic preservation but the removal of the building and involvement of the area as part of the

downtown revitalization and a much larger project. He asked that the council deny the request that the property be designated historic.

Ordinance 05-07 (cont'd)

Densford concluded by adding that the council had been given incorrect information regarding a deed restriction on the property with regards to possible contamination. He said that his recent recheck of the deed did not indicate such a restriction had been placed on it and he had no specific information about the presence or level of any kind of contamination from the dry cleaning business that used the building for the last forty five years.

Sabbagh asked about the demolition permit. Michael Flory, Assistant City Attorney, outlined the process of application and granting of demolition permits under the interlocal agreement between the city and county. Sabbagh asked for timing and Flory said the request was submitted prior to the action of the Historic Preservation Commission, but he did not know the actual dates at that moment.

Densford said the application was filed with Monroe County Building Services on November 18, 2004, approved by the county on November 29, 2004. He noted that the permitting process was a ministerial task and not a policy decision, and so applications are granted as a matter of course. He noted that Tom Micuda received the application for review during the last week of November, and the petition was then routed to the Historic Preservation Commission and is in the 'pending' status. The application had not been approved or denied at the time of this meeting.

Sabbagh asked if this was the normal speed with which the city dealt with such matters.

Flory noted that this matter was currently under litigation, and parts of the questions asked are being dealt with in court right now.

Sabbagh said because he was an elected official he felt even more strongly that he shouldn't vote on a matter that might put the city at some financial risk.

Flory said that there was not any legal reason for the council not to act on legislation before it. He noted that the city legal department would be careful to say just because litigation has been filed in a matter it did not mean that the council shouldn't act on matters before it.

Sabbagh asked if the planning department usually gets these types of documents, and if they usually forward them to the areas of the city that might have some interest in the project. Flory answered that this was correct. Sabbagh asked the timeline to which Flory agreed that the end of November was the date during which these actions took place.

Hiestand noted that the Historic Preservation Commission never receives the demolition permit application they are just informed that the application exists and is filed in the Planning Department.

Rollo asked about the element of subjectivity asking specifically about the economic significance. Hiestand noted that she had previously mentioned that the whole area developed during the progressive era and represented the construction and the culture of the time.

Hiestand noted that the term 'aesthetics' did not appear in the criteria but terms such as architectural style, unique location and physical characteristics, exemplifying the built environment are all academic issues.

Flory noted that state enabling legislation spelled out the criteria and these are adopted in the local ordinance.

Ordinance 05-07 (cont'd)

Questioning from Volan precipitated Hiestand's statement that the Fleener building was surveyed before the publication of the City of Bloomington Historic Sites and Structures Inventory in 2001. She said the inventory was a resource or reference of every building in the survey for planning department petitions, or demolition petitions, and was required by state law. Volan asked if owners of the properties listed could assume that their properties would be affected by a decision by the HPC, to which Hiestand said that percentage would be fairly slim.

Questioned by Volan, Densford said that the current owner purchased the building in 2002 and had no knowledge of the 2500 property inventory. Densford noted the length of the survey, noting that in the 100 pages, the Fleener building was at the end of the list and it took him over an hour to find it. He further said that until Hiestand contacted the owner on the Friday before the HPC meeting he no idea of the historic designation, and in fact was contacting the county continually during the weeks between the demolition application and the phone call to determine the status of the application.

Volan asked why, if the owner intended to demolish the building when it was purchased in June 2002, they waited until November of 2004 to apply for a demolition permit. Densford said that the owner was on no pressing timeframe and had no plans to develop the property at the time.

Volan asked if it was a reasonable assumption that the owner applied for a permit when he found out that the city was deliberating a demolition delay ordinance. Densford agreed it was a reasonable assumption.

Volan inquired about the HPC's process for deciding the historic designations, specifically if the decisions could be made at one meeting. Flory noted that the commission could decide at a meeting that it did not want to pursue historic designation at a meeting and it would go no further. Hiestand noted that if the HPC wanted to pursue historic designation after that initial meeting, a hearing would be called, legal notifications would be made to the public and property owners, and that would take two meetings of the HPC.

Sturbaum asked Densford if there was a current proposal for the property at this time. Densford said there was not. Sturbaum asked if the petitioner owned property on both sides of the existing alley, to which Densford said he did. Sturbaum asked if the property owner would consider alley vacations in the scheme of a large scale project. Densford said any concept of development he had heard of at this point would maintain the alley as a thoroughfare through the development to a courtyard in the center, and said that a plan would involve the entire city block.

Sturbaum asked Hiestand to comment on the statement that the Historic Preservation Commission's Hearing ruling was based on nostalgia, subjective criteria and opinion.

Hiestand said the HPC report structure was always the same. She said the commission reviewed the criteria in general and then identified which of the criteria the building or district fulfills. She said the report also contained a history of the property. She added that the commission often listens to the owner's statement and the ideas that the owners have about the property although it is not admissible in the decision. She said that this decision was a 45-60 minute long discussion and therefore indicated the fact that the commissioners took the task seriously and

understood the gravity of their decision. She said the commissioners were interested in redevelopment of the community with appropriate preservation and that their decisions were not based on nostalgia.

Ordinance 05-07 (cont'd)

Hiestand noted the five historical and architectural criteria regarding the Fleener building and reiterated findings regarding these criteria.

Mayer asked attorney Flory what would happen if the council would designate the building and the city would not prevail in the pending litigation. Flory said that if the city did not prevail in litigation, it would be the result of the court determining that a demolition permit be issued for the property. He said one step further would be for a court to determine whether or not the historic designation trumped the demolition permit approval. Flory added that this could all be done in one two-step process.

Volan asked what date the motion was filed against the city, and Mr. Densford noted that it was January 12, 2005. Volan asked if the owners had any plan on paper for this property, to which Densford said that they had a concept for a project that would encompass the majority of the city block.

Upon questioning from Ruff, Flory noted that the Historic Preservation Commission had put a protective order on the property when they recommended it be designated historic, and that protective order would remain until the council completed its action, to either pass the designation, or to deny the request for historic designation. He noted that if the latter occurred, the demolition permit would be issued without delay.

Ruff asked if the City of Bloomington's ordinance was more or less subjective than other ordinances across the nation or state. Flory said that the state legislature had laid out specific criteria and that our ordinance adopted them verbatim. Ruff asked how the inventory was arranged noting the length of time Densford took in finding the specific property in the listing. Hiestand said that the template was created by Historic Landmark Foundation of Indiana, and that some districts are easier to search. She said that the property in question was individually listed in a "scattered sites" section. Densford produced the eighty page document saying the Fleener building appeared on page seventy eight saying that finding it was like finding a needle in a haystack. Hiestand said the web version was not as easy to manage as the bound copy of the survey.

Sabbagh noted that the criteria could be interpreted in a subjective manner and likened it to Olympic Figure Skating judging using criteria, but interpreting them individually. He said he took exception to the issue that there could not be any subjectivity to the deliberation.

Public comment statements by citizens attending the meeting:

Jordan Shiffriss noted environmental concerns and said there might be some economic aspects of clean up and some areas of public health and safety concerns that may have to be dealt with whether the building is demolished or not.

Elizabeth Cox-Ash asked that the council vote for this designation. She said that tearing down the building would not mediate any environmental concerns. She specifically mentioned that this was the only building in the city block which had a demolition permit pending, even though the owners wanted to develop the entire block. She said it was important to preserve this part of our historic business district.

Sandy Clothier, Historic Preservation Commission member, said she had a copy of the Interim Report and that the Fleener property was on page 139. She said that employing individual human perspectives in the commission's job of carefully analyzing a situation and making a critical decision was not 'subjectivity.' She said the commissioners took their job very seriously and did not like to designate against anyone's wishes and that for someone to insinuate otherwise was a little insulting to the commissioners. She said the building was part of the history and the subtle architecture was a contribution to the city's history and its future. She asked the council's support for the ordinance.

Duncan Campbell said that an aesthetic evaluation would be the answer to the question, "Do you like my jacket?" He said that with 10 reasons to like it or not it would stop being an aesthetic decision, noting that it may be subjective but with rationale and criteria. He added that these regulations and rules regarding historic preservation commissions and how they act are adopted from federal guidelines which are adopted by the states, taught in preservation and history schools.

Campbell said that history is no longer about George Washington and the Taj Mahal, but now considers public history, a people's history, to be important. He said that preservation is following this trend, and that the notion that the district of workers' houses on the near west side fits this trend. He noted that the philosophy of revitalization of a town using historic preservation as a tool was exemplified in the Showers building, and added that the building stood as a warehouse for many years and then had many years of talk and negotiation before it came into the use it has today. He added that until there is an alternative to a building, the determination to preserve it or demolish it should be preserved. He noted the Inventory was a list of resources for this type of revitalization and said that its preface and introduction were particularly helpful.

Rollo noted that this matter had become a little clearer to him in the last week because he had time to think about the city being petitioned by developers and land owners seeking to enhance the value of properties by rezoning and added that there was a lot of economic speculation in the community right now. He stated that he was generally not in favor of designating against the wishes of the property owner. He said he was comfortable having the historic preservation commission decision upheld by the council. On the issue of the decision and timing of the demolition permit, he said he was comfortable having this matter decided in court. He concluded by thanking Hiestand for presenting the criteria for designations, noting that new imitations do not really match the historic in terms of aesthetics.

Sabbagh said he didn't intend for his comment about subjectivity to be insulting to anyone. He said that historic preservation should not be the only part of redevelopment as new development was the best way to get new investment into developments, and gave the new Bloomington Paint and Wallpaper building as an example. He said not everything old needed to be preserved, and that really good projects can be designed if one has an entire city block. He said he was not convinced that this ordinance was a case where the building needed to be preserved, and that some other good thing could be developed there without the existing building.

Volan said he appreciated the candor of the representative of the petitioner, especially in regard to potentially toxic materials. He said that while the building was common when it was built, it was far from common now, and that may be a reason for preservation. He noted that the application for demolition was winding its way through the normal process when the owner filed suit on January 12. He said that the question before the council was whether or not the council supported the

finding of the HPC that the property was significant to Bloomington's built environment and therefore worthy of preservation.

Ordinance 05-07 (cont'd)

Volan said he was interested in seeing area south of Third Street being developed to increase the usability, walkability and livability of the city, and also hoped the Convention Center could be expanded, but added that he could not condone the destruction of the building in the interest of a speculator, even though the owners vision marginally coincided with his own, and that he was against the destruction of a building only to replace it with asphalt.

He said that absent any proposal for redevelopment on this property, he would support the HPC's recommendation for designation.

Mayer thanked the HPC for their work, said they used subjective and objective criteria in reaching their decision and that he agreed with it. With regards to demolition delay, Mayer noted that the purpose of the ordinance was to give the community some time to look at a building that had some historic significance. He said that part of the decision at the council level would be to balance the proposal of what would replace the older building. He noted that in this particular case, there was not a proposal, but a concept about how the property would be used. He added that this was unfortunate, because if there was a concrete proposal the owner would have a better case for demolition. He concluded by saying this may even challenge the developer to be more creative with their proposal for development.

Sturbaum noted the changing concepts of history, and that time has shown that history of the community doesn't belong to just the big homes with columns, but also to the working people and even in commercial buildings that created the fabric of the community. He noted the Encore Café, the Johnson Creamery, the Frosted Foods building and even the Showers building were all at one time at this same critical juncture, and yet they were restored and reused.

Sturbaum said that this action that this action of the council would actually challenge and encourage better uses and development of the property in a creative way that reflected the community, its character, and the vision of the downtown plan with benefit for the entire community. He noted that this was the collision of property rights and community interest, and that when a building had existed for so long, and was significant in the history and fabric of the community, the owner of only the last two years should, in fact, take into consideration the community's interest in the buildings. He said the decision should be made in public, at the council level, for everyone's best interest. He added he would be supporting this decision.

Ruff noted he would like more information about the environmental concerns that citizen Shifriss offered. He said he believed that the structure met the legitimate criteria and trusted the experts on the HPC to make these determinations and advise the council. Ruff noted that it was quite a different situation from the Garton Farm designation, and that the decision was not an easy one to balance with property rights claims and community interests. He said that while council members may vote either way on this particular issue, it was with the acknowledgment, understanding and respect of the legitimacy of the opposite perspective. He noted Sabbagh's argument of pushing the envelope with this building because it wasn't on the square, but he said that the best use for this building was yet to come, and that in the future we would be glad that we saved the building.

Ordinance 05-07 received a roll call vote of Ayes: 6 (Diekhoff, Sturbaum, Ruff, Mayer, Rollo, Volan), Nays: 2 (Banach, Sabbagh).

It was moved and seconded that the following legislation be introduced and read by title and synopsis only. Clerk Moore read the legislation by title and synopsis.

LEGISLATION FOR FIRST READING

Appropriation Ordinance 05-02 To Specially Appropriate from the Alternative Transportation Fund Expenditures not Otherwise Appropriated (Appropriating Funds from the Alternative Transportation Fund for Projects Recommended by the Common Council Sidewalk Committee)

Appropriation Ordinance 05-02

It was moved and seconded to cancel the committee meeting of February 23, 2005 due to lack of legislation to consider. The motion received a roll call vote of Ayes: 7. Nays: 0. (Sturbaum was out of the room during this vote.)

Other Business

There was no public statement in this portion of the meeting.

PUBLIC INPUT

The meeting was adjourned at 10:00 pm.

ADJOURNMENT

APPROVE:

ATTEST:



Andy Ruff, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington