

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Thursday, December 11, 2006 at 6:00pm with Council President Chris Sturbaum presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
December 11, 2006

Clerk's Note: On November 27, 2006, the Common Council called to order a Special Session, which began the Council's consideration of Ordinance 06-24 to be completed over a series of meetings. Please refer to the minutes from that meeting for a description of the motion made in regard to the consideration of Ordinance 06-24.

Roll Call: Wisler, Diekoff (left at 7:15pm), Gaal, Rollo, Sturbaum, Mayer (left at 10:20pm), Ruff, Sabbagh (left at 10:20pm), Volan (arrived at 9:15pm)
Members Absent: None

ROLL CALL
[6:06pm]

Council President Chris Sturbaum gave a summary of the agenda.

AGENDA SUMMATION [6:06pm]

Dan Sherman, Council Attorney, explained the process regarding written objections to the Unified Development Ordinance (UDO). He also gave a summary of the objections previously submitted.

HEARING ON WRITTEN
OBJECTIONS TO THE UDO
[6:08pm]

There was no public comment.

Public Comment:

Tom Micuda, Planning Director, and Patricia Bernens, City Attorney, gave the presentation. Sexually-oriented businesses were defined as a specific land use and were restricted to the Industrial General and Commercial Arterial districts. No such business could be within 500 feet of a church, school, daycare center, park, library, residential zoning district, and any other sexually-oriented business.

SPECIAL FINDINGS IN REGARD TO
THE REGULATION OF SEXUALLY
ORIENTED BUSINESSES
[6:10pm]

Bernens stated that sexually oriented material was a form of speech protected by the First Amendment. She said that government could not ban it but could place restrictions on it based on the time, place, and manner of speech as long as it was done in a content-neutral manner. She discussed federal constitutional regulations regarding zoning for sexually-oriented businesses.

Councilmember Dave Rollo asked if some of the existing sexually-oriented businesses would not be allowed where they were at that time.

Council Questions:

Bernens said yes but clarified that the businesses would be grandfathered in because of the regulation.

Rollo asked what happened if a grandfathered business closed.

Bernens said that if there was no intention to continue the business then that use would not be allowed to resume.

Rollo asked about book stores that sold sexually-oriented books.

Bernens said sexually-oriented material had to be the predominant kind of items sold at the store.

Councilmember Andy Ruff asked if other similar communities were doing the same thing.

Bernens said more communities were moving towards the zoning approach that was proposed as opposed to creating red light districts.

Sturbaum asked if it would be appropriate to add cemeteries to the list of spaces sexually-oriented businesses could not be near.

Bernens said she could see his reasoning but that it was difficult to come up with enough locations sexually-oriented businesses could be near to meet the constitutional requirements.

It was moved and seconded to adopt Amendment 23.

CONTINUED CONSIDERATION OF
AMENDMENTS

Micuda explained the amendment corrected textual errors in the UDO.

Amendment 23 [6:30pm]

Rollo asked who recommended the additional plants to the “do not plant” list.

Council Questions:

Micuda said Linda Thompson, Senior Environmental Planner, and Kelly Boatman of the Environmental Commission did.

Councilmember Brad Wisler asked Micuda to talk about the specifics of the change of use table.

Micuda said that Planning staff proposed to cross out some of the land uses. The table was meant to identify equivalent or similar uses for ones that had eliminated.

Wisler asked what happened to Category 8.

Micuda said Category 8 was crossed out because staff felt that the uses in Category 8 needed more attention.

Wisler asked about change of ownership.

Micuda said that change of use dictated site plan compliance as opposed to change of ownership.

Wisler asked why staff removed Convenience Store with Gas, Drive-Through, and Theater from Category 6.

Micuda said they took the three uses out because they had difficult site plan challenges and staff wanted to make sure there were site plan reviews for all of those uses.

Travis Vinsaw, City of Bloomington Plan Commission, said he did not want to take single-family off of Column 8 of the use table.

Public Comment:

Rollo said the Brazilian water weed should be added to the “do not plant” list and offered a friendly amendment.

Council Comments:

Wisler asked if Brazilian water weed was a common weed.

Rollo explained that Brazilian water weed had been a problem for the Department of Natural Resources in Griffy Lake the past few years and that it was for sale in some aquatic nurseries. He said it was very expensive to remove.

It was moved and seconded to adopt Amendment 01 to Amendment 23.

Amendment 01 to Amendment 23

The motion to adopt Amendment 01 to Amendment 23 received by a roll call vote of Ayes: 8, Nays: 0, Abstain: 0.

Vote on Amendment 01 to
Amendment 23 [6:54pm]

Sherman asked for clarification on the type of plant.

Rollo said it was an invasive aquatic plant.

Micuda said that staff would consult their environmental planner to see which category the plant would go in.

The motion to adopt Amendment 23 as amended received a roll call vote of Ayes: 8, Nays: 0, Abstain: 0.

Vote on Amendment 23 as
amended [6:56pm]

It was moved and seconded to adopt Amendment 24.

Amendment 24 [6:56pm]

Bernens explained that the amendment was drafted by the Legal Department and clarified language in several parts of the UDO.

There was no public comment.

Public Comment:

The motion to adopt Amendment 24 received a roll call vote of Ayes: 6, Nays: 0, Abstain: 0 (Diekhoff left at 7pm, Mayer out of room). Vote on Amendment 24 [7:03pm]

It was moved and seconded to adopt Amendment 26. Amendment 26 [7:04pm]

Micuda explained that the amendment modified a map of a Planned Unit Development (PUD). 13 acres of the PUD in question were to be absorbed into a country club and the rest were zoned as RS.

Wisler asked how the owners of the country club and the church in the PUD in question felt about the rezoning. Council Questions:

Micuda said he had not reached out to them. He said he did not think that either group would want to execute the PUD.

Rollo asked if the small parcel to the north was developable. Micuda said a small portion of it might be developable but some of it was unusable. It functioned as a yard for the church.

There was no public comment. Public Comment:

The motion to adopt Amendment 26 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 0. Vote on Amendment 26 [7:09pm]

It was moved and seconded to adopt Amendment 27. Amendment 27 [7:09pm]

Micuda explained that the amendment rezoned a parcel of land from RH to RM because it had not been developed and had a low density.

Rollo asked if the rezoning would increase traffic activity on the street and wondered if of the street had reached its traffic capacity. Council Questions:

Micuda explained that the rezoning would lessen density.

Councilmember Tim Mayer asked if Bloomington Transit served that area.

Micuda said no because the parcel needed to be annexed by the city.

Sturbaum asked if the entire portion of the parcel was anticipated to be annexed.

Micuda said that staff was considering it.

Councilmember David Sabbagh asked if that area was part of the five-year annexation plan.

Micuda said yes.

Rollo asked what the road in the commercial area would connect to.

Micuda said Kimball Way and Business Park would be linked if the city was able to improve the right-of-way. He said it was possible to have several linkages in the rezone.

There was no public comment. Public Comment:

The motion to adopt Amendment 27 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 0. Vote on Amendment 27 [7:18pm]

It was moved and seconded to adopt Amendment 16.

Amendment 16 [7:19pm]

Councilmember Chris Gaal said the purposed of the amendment was to promote diversity of demographics in the Commercial Downtown area. Micuda said that staff was in favor of the amendment.

Wisler asked when the statements of purpose had the most impact.

Council Questions:

Micuda said staff and the Legal Department would always be cautious of how purpose statements were used.

Wisler asked if the statement could create a new point of authority in the UDO.

Micuda said no.

Sturbaum asked if some projects would get favorable treatment with special variances if it furthered the goal of diversity in the downtown.

Micuda said yes.

Eve Corrigan spoke in favor of the amendment.

Public Comment:

Gaal said the language for the amendment came from the downtown plan.

Council Comments:

The motion to adopt Amendment 16 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 0.

Vote on Amendment 16 [7:30pm]

It was moved and seconded to adopt Amendment 29.

Amendment 29 [7:46pm]

Micuda explained that the amendment required an entrance per 66 feet of property on the B-Line trail.

Sabbagh asked what kind of uses Sturbaum envisioned along the trail.

Council Questions:

Sturbaum said he expected the trail to develop much like the downtown.

Sabbagh was worried the amendment focused too much on retail businesses and did not take professional buildings into account.

Sturbaum said the professional buildings would have the option to waive the requirement by speaking with the Plan Commission.

Sabbagh was not in favor of adding more meetings.

Sturbaum thought it was better to set the default for entrances on the trail at a higher limit rather than a lower limit.

Sabbagh said he was concerned about the amendment for certain types of uses.

Rollo asked where the standard for 200 feet per building entrance came from.

Micuda said it was a compromise constructed by the Plan Commission based on one of its amendments. The original proposal was for one entrance per tenant, which was defeated.

Rollo asked if the entrance would always be accessible or if it was possible to lock the entrance.

Micuda said the accessibility of the building and the hours of operation would be controlled by the owner.

Rollo asked if a building could meet the 66-foot requirement and leave an additional door locked most hours.

Micuda said yes as long as it was open during some part of the day for pedestrian use.

Gaal asked what staff thought of the amendment.

Amendment 29 (cont'd)

Micuda said he believed that 200 feet between entrances was too much and thought one entrance per tenant was too restrictive. He felt that 66 feet was a good compromise.

Gaal asked if the back of the Showers building would be along the trail.

Micuda said yes.

Sturbaum asked Micuda to speak on the process a developer would need to complete to opt out of the extra entrances.

Micuda said that if building owners proposed fewer entrances, the Planning staff would tell them that they were at a deviation with the UDO and the Plan Commission would determine whether the deviation was acceptable as part of the site plan review.

Sturbaum asked if Parks and Recreation would be involved in the process.

Micuda said yes.

Travis Finsel, City of Bloomington Plan Commission, spoke against the amendment.

Public Comment:

Jim Murphey, President of CFC, spoke against the amendment.

Buff Brown spoke in favor of the amendment.

Eve Corrigan spoke in favor of the amendment.

Gaal asked Sturbaum to comment on the numbers of 100-132 feet being suggested by staff and the public.

Council Comment:

Sturbaum said he thought 66 feet was the right number. He said that 66 feet would make the trail lively. He said exceptions could always be made by going through the site review and variance process via the Plan Commission.

Wisler said the process would be discouraging for developers to build on the trail and would be confusing. He said that the B-Line trail was being over engineered.

Mayer said the cost of real estate should determine the number of entrances a building had.

Gaal said he wanted to legislate for the rule instead of the exception.

Sabbagh said that the amendment did not leave room for creativity.

Ruff said he hesitated to support the amendment because he wanted to see the trail develop more organically.

Gaal asked if he would support the amendment if the limit were for 100 feet rather than 66.

Ruff said he thought 100 feet might be arbitrary.

Gaal asked about 132 feet.

Ruff said he would support the amendment if it were amended to 132 feet.

Ruff said that if a developer wanted to modify what the Council set, it could be dealt with on a case by case basis.

The motion to adopt Amendment 29 received a roll call vote of Ayes: 4, Nays: 3 (Wisler, Ruff, Sabbagh), Abstain: 0. FAILED. Vote on Amendment 29 [8:54pm]

It moved and it was seconded to adopt Amendment 02.

Amendment 02 [8:55pm]

Sturbaum said that the amendment mandated a ten foot set-back on the B-Line trail. He thought the city would have to get rid of green space to provide for businesses without a set-back in place. He mentioned that owners could apply for a variance through the Plan Commission if they had a reason to be directly on the trail.

Micuda said that the Planning staff originally proposed the set-back allocated through the amendment, but the Plan Commission revised the set-back to say that at least 70% of the building could go up to the property edge so that there would be 30% space left to create plaza space within a property. He was skeptical of the Plan Commission's proposal because he thought developers would want to be able to build up to the property line to utilize as much space as possible due to the high cost of real estate.

Mayer asked if a developer would have to ask for encroachment if the developer built to the property line and wanted outdoor seating.

Council Questions:

Micuda said yes and approval would need to come from the Board of Public Works and the Parks and Recreation Department.

Mayer asked if the Council could pass an ordinance that would not allow encroachments at all. He thought encroachment had gotten out of control with outside seating in the downtown and wanted better means of control against it.

Micuda thought that language belonged in the Bloomington Municipal Code instead of the UDO.

Sabbagh asked if a developer could seek approval from the Plan Commission if the developer wanted to build to the property line and the amendment passed.

Micuda said it was the same process as asking the Plan Commission for any kind of variance.

Rollo asked if any structure was allowed in the set-back area without a variance from the Plan Commission.

Micuda said that the Plan Commission would have to approve a deviation from the 10 foot set-back line if the Council adopted the amendment.

Rollo asked if there were any set-backs for vegetation for the trail.

Micuda said no. He said landscaping could be planted up to the property line.

Ruff asked Rollo if he thought the B-Line would accommodate rail use.

Rollo was not sure if it could accommodate a rail but he did not want to make it impossible.

Ruff said that if a trail with a rail were to exist next to one another, there would need to be more space.

Rollo said that he agreed with Mayer that they should not allow any encroachment onto the city's right of way.

Micuda said that there was a stretch of the B-Line between 6th Street and 7th Street where the city's ownership shrunk dramatically from 60 feet to 22 feet. He said other than that the ownership of the city was 60 feet in the downtown area.

Rollo said that the city owned the rail bed but asked about the rail bed south of the city.

Micuda said he would get back to him with an answer.

Amendment 02 (cont'd)

Volan asked about a taller building that had the base built to set-back requirements but the top was built with an overhang.

Micuda said the set-back would be for the entirety of the building so no overhang could occur. He mentioned that as a building got taller it would have to be set back even further at a certain maximum height.

Volan said that the amendment did not require the set-back, it just required Plan Commission approval.

Micuda clarified that the amendment set the base standard at ten feet back from the right-of-way line.

Christy Steele, Greater Bloomington Chamber of Commerce, spoke against the amendment.

Public Comment:

Jim Murphey spoke against the amendment.

Travis Finsel, City of Bloomington Plan Commission, spoke against the amendment.

Eve Corrigan spoke in favor of the amendment.

Volan asked staff for an approximate width of Kirkwood Avenue between Walnut Street and Washington Street.

Council Comments:

Micuda said it was 82 feet for the property and the street was 48 feet.

Volan asked if buildings would have to relocate because of the trail or if they would be grandfathered.

Micuda said that some buildings in the corridor between 6th and 7th Street were the only ones in question.

Volan asked if there was a retailer who would only want an entrance on the trail and not on the street as well.

Jim Murphey said that was possible.

Volan asked what percent of a lot a building was built on in the downtown.

Murphey said 100%.

Volan asked if the city could put in sidewalks in the right of way.

Micuda said dual paths had been contemplated.

Wisler said that he was glad that they were talking about the possibility of rail but he did not want to use the UDO to make the trail of lesser value.

Rollo said he did not anticipate using eminent domain for the properties in question. He said if a building was built up to the property line it would pose problems for a future rail. He said he supported the amendment.

Ruff said he would have preferred a measure of six or seven feet rather than ten but that he was going to support the amendment.

Sabbagh said that whether the amendment passed or not he felt that the Plan Commission's original compromise was the right decision. He also stated he was not going to introduce his amendment. He was worried about suppressing creativity and said he was going to vote no.

Mayer said he agreed that the Plan Commission had the right idea with its original 70%/30% plan. He said he liked canyon effect.

Gaal said that eminent domain was not an issue. He said that the best public policy was the amendment on the floor.

Volan apologized for leaving earlier. He thought the public viewed the canyon effect negatively. He said the amendment would make development less predictable but he believed the set-back was better.

Amendment 02 (cont'd)

Sturbaum said he did not want to give away the city's green space.

The motion to adopt Amendment 02 received a roll call vote of Ayes: 5, Nays: 3 (Wisler, Mayer, Sabbagh), Abstain: 0 (Volan arrived at 9:15pm).

Vote on Amendment 02 [10:04pm]

It was moved and seconded to adopt Amendment 25.

Amendment 25 [10:05pm]

Micuda explained that the properties in the area affected by the amendment were analyzed to consider which zone fit the area best. He said the Planning Department saw that a majority of the properties in the area were owned by Indiana University (IU) and were zoned institutional. The minority of properties were privately owned and all of them were overwhelmingly multi-unit or split between multi-unit and single-unit properties. He said the Planning Department recommended leaving the RM zoning in place.

Volan asked why the area was zoned institutional instead of residential when IU bought the properties to house people.

Council Questions:

Micuda said it could be zoned residential. He said when the dominant ownership of an area was an institutional entity the area would be zoned to reflect that ownership.

Volan compared the situation to if Bloomington Hospital bought properties for people to live in. He asked if those properties would still be zoned institutional.

Micuda said that when Bloomington Hospital had bought properties for its campus in the past, the city had zoned it institutional.

Volan said none of those properties were for long term residential use.

Micuda said that the hospital did own some life-estate properties.

Volan said he was trying to make a distinction. He said that IU housed people on its property for long-term use. Even though the properties he was referring to were in an area which was all residential, the area was vastly zoned as institutional. He asked why houses were not spot zoned.

Micuda said Planning did not spot zone the area because there was a distinct pattern happening. He agreed that zoning institutional in the area was not a perfect approach.

Volan asked what staff thought about the way the public in the Old Northeast neighborhood felt about zoning.

Micuda said there was an argument they made about seeing a loss of structures with RM zoning versus RC zoning. He said his only counter argument was that some of the area had protection via either designation or demolition delay review.

Volan asked if the city would have saved the bricks on Fess Avenue if the the state had ownership of all the properties.

Micuda said that the city owned the streets.

Volan asked if IU owned 7th and 10th Street.

Micuda said IU owned the streets within its campus proper but not the streets in question in the area being considered in the amendment.

Volan asked if the state could take ownership of the streets by eminent domain.

Bernens said they could but could not envision a situation in which it would.

There was no public comment.

Amendment 25 (cont'd)

Public Comment:

Volan said District 6 was his district and thought the entire district would be Residential Core. He said he trusted the judgement of the residents of the Old Northeast neighborhood.

Council Comments:

Rollo said he also trusted the judgement of the residents of the Old Northeast neighborhood. He thanked Volan for crafting the amendment.

Sturbaum said he liked the amendment and that the neighborhood suggested it.

The motion to adopt Amendment 25 received a roll call vote of Ayes: 4, Nays: 2 (Wisler, Gaal), Abstain: 0 (Mayer and Sabbagh left at 10:20). FAILED. Vote on Amendment 25 [10:23pm]

The meeting went into recess at 10:24pm.

RECESS

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 5th day of February, 2020.

APPROVE:

ATTEST:



Steve Volan, PRESIDENT
Bloomington Common Council



Nicole Bolden, CLERK
City of Bloomington

