

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Wednesday, June 01, 2022 at 6:30pm, Council President Susan Sandberg presided over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
June 1, 2022

Councilmembers present: Matt Flaherty, Isabel Piedmont-Smith, Kate Rosenbarger, Susan Sandberg, Sue Sgambelluri, Jim Sims, Ron Smith, Stephen Volan (arrived at 6:37pm)
Councilmembers present via Zoom: Dave Rollo
Councilmembers absent: none

ROLL CALL [6:36pm]

Council President Susan Sandberg summarized the agenda.

AGENDA SUMMATION [6:37pm]

Rollo moved and it was seconded that the council suspend the rules to allow the council to consider the approval of minutes on the night's agenda in the ordinary course of business. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

APPROVAL OF MINUTES [6:39pm]

Rollo moved and it was seconded to approve the minutes of October 16, October 22, October 23, October 30, November 13, November 14, November 19, November 20, December 03, December 10, and December 18 of 2019. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

October 16, 2019 (Regular Session)
October 22, 2019 (Special Session)
October 23, 2019 (Special Session)
October 30, 2019 (Special Session)
November 13, 2019 (Special Session)
November 14, 2019 (Special Session)
November 19, 2019 (Special Session)
November 20, 2019 (Special Session)
December 03, 2019 (Special Session)
December 10, 2019 (Special Session)
December 18, 2019 (Special Session)

Volan reported on the population of Bloomington and its growth, and that the census was the lowest in 2020 and was inaccurate. The COVID-19 pandemic caused many students to return home prior to the census count, resulting in fewer federal dollars for Bloomington and Monroe County. Volan provided additional details on student housing, residence hall census blocks at Indiana University (IU), data from the 2010 census, and the idea that students should be counted where they lived.

REPORTS

- COUNCIL MEMBERS
[6:41pm]

Sims congratulated Sandy Kellar on the 2022 Human Rights Award. He mentioned the various topics that would better the community. Sims spoke about the increase in gun violence nearing endemic levels. He commented on the Future of Policing task force and the Citizens' Advisory on Public Safety commission (CAPS) and urged those groups to work towards a solution.

Sgambelluri extended an invitation to her upcoming constituent meeting.

Ryne Shadday, Chair of the Human Rights Commission, noted that it was the first day of Pride Month. He presented the recipient of the 2022 Human Rights Award, Sandy Kellar, Founder and Executive Director of My Sister's Closet. Shadday discussed the history of My Sister's Closet, as well as its goals, operations, and more. He noted that the authors of Kellar's nomination letter wished to remain anonymous, but that they were comprised of employees and volunteers of the organization. He read the nomination letter. He thanked Kellar for her tireless work in the community.

- The MAYOR AND CITY
OFFICES [6:54pm]

Sandy Kellar said that she lived in an amazing community that allowed her to help others. She spoke about the many messages women receive in their life including negative ones, and her efforts, along with all the volunteers and employees of My Sister's Closet, in making a small difference in women's lives. Kellar noted that the small differences made women feel like they mattered and were

able to make improvements in their lives and their children's lives. She said that the hopes and dreams of the women that wore the clothes and were now given to other women, passed along those hopes and dreams.

There were no council committee reports.

Marc Haggerty commented on the basketball goals at Switchyard park and some improvements that had been done, but also issues that still needed to be addressed. He spoke about the danger of the bolts on the poles that held the goals. He also commented on gun violence, especially as a threat to women.

Daryl Ruble spoke about potholes. He also spoke about his daughter, Sarah Elizabeth Ruble, who had passed away the previous year, and asked for a moment of silence. He commented on his disdain for traffic-calming structures around town, drugs, issues "at the border," and other concerns about some community members.

Greg Alexander spoke about the B-Line near the Johnson Creamery, new traffic signals and procedural concerns, engineering design, and the closure of sidewalks during construction. He also commented on the Manual on Uniform Traffic Control Devices.

There were no appointments to boards or commissions.

Rollo moved and it was seconded that Ordinance 22-15 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Deputy Clerk Jennifer Crossley read the legislation by title and synopsis giving the do-pass recommendation of Ayes: 0, Nays: 2, Abstain: 3.

Rollo moved and it was seconded that Ordinance 22-15 be adopted.

Eric Greulich, Senior Zoning Planner, presented Ordinance 22-15 and explained the alley vacation request. He highlighted the concerns regarding the smokestack, overall site plan, proposed rendering of the multifamily building, and the Plan Commission's approval which included three conditions.

Beth Cate, Corporation Counsel, urged council to seek public benefit in exchange for the right of way vacation. She said that the administration recommended between \$250,000-300,000 to celebrate the historic district of the Johnson Creamery smokestack, as well as an easement for the installation, and a donation of bricks. She described the mechanism for the agreement between the petitioner and city and noted that Peerless had not responded to outreach from staff regarding the request and said that an additional week would be ideal for the negotiation. Cate provided reasons warranting the request to Peerless Development since the vacation provided substantial commercial benefit to them while relinquishing a public asset. She spoke about the permissibility of the request and referenced some goals and policies within the 2018 Comprehensive Plan. Cate stated that staff had been in contact with

- The MAYOR AND CITY OFFICES (*cont'd*)
- COUNCIL COMMITTEES [7:10pm]
- PUBLIC [7:10pm]

APPOINTMENTS TO BOARDS AND COMMISSIONS [7:23pm]

LEGISLATION FOR SECOND READING AND RESOLUTIONS [7:23pm]

Ordinance 22-15 - To Vacate a Public Parcel – Re: A 12-Foot Wide Alley Segment Running East/West between the B-Line Trail and the First Alley to the West, North of 7th Street and the South of 8th Street (Peerless Development, Petitioner)

Peerless regarding the proposed request for public benefit for a long time, though the exact dollar amount was new. Ordinance 22-15 (cont'd)

Michael Cordaro, Peerless Development (Peerless), had been corresponding with the title company because they had not been told of the alley when they purchased the property. They had a claim with the title company and could not enter into an agreement with the city. Peerless was requesting additional time in order to obtain feedback from the title company to then negotiate with staff. He noted the need for additional housing and stated that was a public benefit, as well as tax revenue for the city.

Sims asked whose responsibility it was to research the right of way. Council questions:

Cate stated that it was the purchaser's responsibility.

Sims asked for clarification on how the purchaser, such as Peerless, was not told about the alley.

Cate responded that it was possible that Peerless was relying on an agent that was supposed to diligently research the property, and that Peerless could be a victim in that case. That did not imply that the city was responsible and that Peerless could not negotiate with the city regarding the public benefit request.

Sims asked for staff to weigh in on the proposed postponement.

Cate said staff preferred one week instead of two. She reiterated that staff did not want the dollar amount that Peerless would donate for public benefit to be based on the claim to the title company. Those were two separate items and council should dictate the dollar amount requested of Peerless.

Piedmont-Smith stated that alley vacations were normally judged on their own merit and if the right of way might be needed for public good in the future. She was concerned about putting a dollar figure on the alley vacation, possibly as a quid pro quo.

Cate said that there were a number of things to consider like public benefit and future use of the right of way. She said that case law discussions on right of way vacations included public benefit as well as how the legislative body evaluated a vacation request in exchange for a public asset. A private company was asking council to give up a public asset and council needed to consider the historic district and a proposed brand new, luxury building.

Piedmont-Smith noted that Peerless had stated they would install a plaque honoring the historic district. She acknowledged that it was a problem that the title company did not know of the alley. She asked if they would have adjusted the budget if they had known.

Cate stated that Peerless had been very reluctant in doing anything to honor the historic district, and that the suggestion of a plaque was new. She reiterated that the city had been reaching out many times to Peerless without a response and that the public benefit request was not a surprise. Staff had shown examples of other public benefit artwork with very little interest from Peerless, who made it clear that they would not be increasing their budget.

Flaherty asked if the recent Graduate Hotel public art installation was similar, in that it was in exchange for a right of way vacation.

Alex Crowley, Director of Economic and Sustainable Development (ESD) department, stated that there was not a right of way vacation, but that the scale of the project was large enough that the Graduate Hotel and the city agreed that a contribution to public art would help with the development. He clarified that the commitment had been \$300,000.

Flaherty said that there needed to be a logical and reasonable nexus for a vacation and public benefit request. He asked about the history of the city's vacations.

Cate stated that since she was new to the administration, she was not an expert. She understood that there were not many right of way vacation requests and referenced the consideration of another alley vacation that evening. Cate noted that the goal was to commemorate and celebrate the historic district and commented on the process and discussions. The proposal was of public concern in connection with a project that had a footprint containing a historic district. She did not see a concern with nexus since the request was for the location where the smokestack stood, with significant private benefit.

Flaherty commented on the other proposed right of way discussion which included a better and stronger connection. His concern was with connecting a public benefit with a right of way vacation that could otherwise not occur. He did not see the vacation of the right of way as dependent on the contribution of the public good. He discussed other right of ways and public benefits.

Cate responded that state code did not place a restraint on the right of way and public good, so it was council's discretion. She explained that council could read the guidelines and determine what would be commensurate with the city's values and plans. She said that based on the conversations with Peerless, there was not another way.

Volan commented on alleys and the possibility of adding the alleys to the Hopewell petition. He asked staff about the impact on the building if the alley was not vacated.

Greulich explained that the building would be shortened and provided additional details on the footprint.

Volan asked when Peerless was first made aware of the alley.

Cordaro said it was when they first presented the proposal to the Plan Commission, with the presumption that the alley had already been vacated. He said that Peerless was first made aware that there was not a vacation in October 2021, and explained the process from Peerless's point of view regarding the contribution for public good.

Volan asked when the title company would have an answer for Peerless.

Cordaro said it would be by the end of the following week.

Volan asked Cate if staff objected to postponing the discussion to the next regular session.

Cate said that would be fine.

Sgambelluri appreciated the discussion and asked Cordaro if the units would be market rate and none would be affordable.

Cordaro confirmed that was correct.

Sgambelluri asked Cate if she was aware of the timeline Cordaro described regarding the alley.

Cate stated that she did not have a reason to question the timeline, but that she may not be the best person to answer. She described her interaction with Peerless since her time with the city.

Sgambelluri said that the alley vacation and the public good request were two separate items, but that Peerless appeared to view the items as one. She asked what would occur in the event of a delay.

Cate said that it would delay the entire process. She provided information as to why the two items were separate and options on the table.

Cordaro stated that Peerless could not agree to something with Bloomington without finishing the claim with the title company.

Ordinance 22-15 (cont'd)

Sgambelluri asked what happened if the title company rejected the claim.

Cordaro said they might still be able to negotiate and dialogue.

Rollo asked Cate about the city's priority and if requiring affordable housing as a condition had been explored, given the location.

Cate stated that she was not sure, but she imagined that it was explored.

Robinson explained that Indiana clearly delineated that municipalities could not require inclusionary zoning, per state law. Affordable housing could not be mandated. He provided additional details, including that the petitioner voluntarily chose to include sustainability incentives.

Rollo asked if vacating public property could not be used to manifest affordable housing. He understood state restrictions but stated that the proposal was an exchange.

Robinson said that was not permitted, from a zoning and planning perspective. The alley vacation was a separate process and was not contingent on what the Plan Commission approved. He commented on the title company's error regarding the alley.

Rollo asked who would maintain the artwork in perpetuity and if the city had the ability to provide input on the art.

Cate stated that the city would maintain the art and provided additional details, and would be involved in the process.

Flaherty asked if Peerless would have designed the building differently had they known that the alley was not vacated. He also asked about the process and timeline for redesigning if the alley was not vacated.

Cordaro confirmed that the design would have been different. He said that it would likely take another year, and around \$400,000 to redesign.

Flaherty asked about the level of harm pertaining to the alley, and Peerless's claim with the title company.

Cordaro said one harm was a two year bar on bringing the request back to council. He described other possible harms.

Piedmont-Smith asked when city staff had learned the alley was not vacated.

Robinson understood that it was during the review process in preparing the proposal for the Plan Commission, and that staff had been pressing Peerless for clarity on the alley.

Piedmont-Smith said it was in October of 2021.

Robinson confirmed that was correct.

Piedmont-Smith asked if there would be a pedestrian path between the old and new buildings to get to the B-Line.

Robinson stated that depended on the alley vacation and an easement, for perhaps public art. Legally there was no connection from the alley to the B-Line most likely due to the former train track on the B-Line.

Piedmont-Smith asked what the benefit of the alley was, since there was no connectivity.

Robinson explained that historically the city did not give up right of ways and alley vacations were rare. He reiterated that the alley in question did not connect to the B-Line.

Piedmont-Smith asked Cordaro if the proposal included a connection for pedestrians and bicycles.

Cordaro stated that there would be connection, north of the alley, right up to the B-Line but that there were restrictions with connecting to it. He said there was a space of about six inches.

Sgambelluri asked what the rent per bedroom would be.

Ordinance 22-15 (cont'd)

Cordaro said that studio units would be around \$1100-1200 and the other units would be that price per bedroom.

Sgambelluri asked what the implications would be if Peerless had to redesign. She understood it was possibly about four units fewer.

Cordaro said that he did not know for sure, but that the design would have been different, with possibly the same number of units. He said it was hard to say in hindsight.

Greg Alexander commented in favor of the proposal by Peerless and the alley vacation.

Public comment:

Michael Carmin spoke about the process, zoning, alley vacation, and his experience with rights of way.

Rollo moved that council lay Ordinance 22-15 on the table to allow the Petitioner additional time to consider and respond to the administration's request. *Clerk's Note: The motion was not seconded.*

Council comments:

Sandberg withdrew the motion without objection.

Volan commented on the history of the alley and the process that had taken place. He spoke about the petitioner's request to delay and the city's request to approve, the proposed amount for public good art, waivers, and Peerless's claim against the title company. He saw no harm in extending the discussion until the next regular session. Volan discussed the process and asked for clarification.

Lucas stated that the petitioner was interested in the delay and delineated detailed actions that council could take.

Sandberg asked if it was better to name a date to which the discussion was postponed.

Lucas confirmed that was correct.

There was additional council discussion regarding postponement.

Cordaro added that postponing until June 15, 2022 would be fine.

Flaherty asked for clarification on potentially amending Ordinance 22-15 with updates according to the discussion.

Cate described possible options. She clarified that the difference she mentioned earlier was regarding the negotiation process. The ordinance pertained to vacating the alley, with a reference to the agreement only.

Lucas added that the whereas clauses could note the agreement. He provided additional considerations.

Cate agreed and clarified that the agreement was contingent on the ordinance passing.

Flaherty asked about the cost of committing to public art versus redesigning the building with the existing private property. He asked for clarification if the claim was successful, too.

Cordaro said that Peerless had submitted the cost of the artwork as damages to the title company. He said they did not have additional information at the time.

Smith asked if the negotiation included affordable housing in lieu of payment for an art installation.

Cate explained that the negotiation had not even started because Peerless was unwilling to do so until the claim was finished. Staff could look at legal restraints on requiring affordable housing.

Cordaro added that Peerless had explored affordable housing through the tax abatement process but that it did not make sense financially.

Ordinance 22-15 (cont'd)

Piedmont-Smith appreciated the discussion and process and stated that she did not take right of way vacations lightly. The city needed to consider the benefits before vacating because it was a permanent surrender of property. She commented on the need for connectivity, and alleys. She said that the alley did not provide connectivity. She would be in favor of vacating the alley without the public art factor. She noted that the public art requirement appeared to her as potentially being a quid pro quo agreement. Piedmont-Smith commented on process and said that Peerless had been surprised with the need for a right of way. Then was being asked for another quarter million dollars. She valued fairness and did not believe the process had been fair and had been unpredictable.

Flaherty commented that the unknowns made the process difficult. His preferred outcome was that council not approve the right of way vacation and that Peerless build housing on the lot that they owned. He wished that Peerless had designed the proposal that way but understood they believed the alley had been vacated. He noted additional benefits of alleys and stated that he was generally against vacating right of ways. He was undecided at the time and provided reasons. He compared other right of way vacations in the city.

Rollo said that large monolithic buildings were a blight in Bloomington and he was concerned with vacating a right of way for another large structure. He would be voting against the vacation.

Sims reminded everyone that the Plan Commission sent the proposal to council with a positive recommendation. He commented on the discussion regarding the proposal, artwork, and the process. He agreed that housing was needed, but not just more at market rate. He noted that more time would be useful but he did not appreciate the messiness of the process.

Smith explained the Plan Commission's process which had occurred before knowing about the alley. He commented on affordable housing. He did not like the appearance of a quid pro quo agreement and preferred approving the vacation.

Sandberg commented on her recent conversation with a builder of affordable housing units in the city. She said it softened her stance on wanting to require developments to have affordable housing. She appreciated the views of all nine councilmembers in the discussion.

Volan commented on council's agreement on needing more affordable housing. He wondered if Peerless would be able to revisit the design with minimal difficulty. He also commented on the negotiation process.

Flaherty noted that adding housing was always beneficial to public good but that alone was not enough to justify the alley vacation. The reason council was considering it was due to the missteps in identifying that the alley was not vacated.

Rollo moved and it was seconded that council postpone deliberations on Ordinance 22-15 until the June 15, 2022 Regular Session.

The motion to postpone Ordinance 22-15 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to postpone Ordinance 22-11 [9:22pm]

Rollo moved and it was seconded that Ordinance 22-05 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Crossley read the legislation by title and synopsis.

Rollo moved and it was seconded that Ordinance 22-05 be adopted.

Andrew Cibor, City Engineer, summarized the update to Ordinance 22-05 since it was first presented to council in April 2022. He noted the importance and serious nature of right of way vacations. Cibor explained Phase 1 East and provided details of the area including zoning, structures, and the referencing of city guides, like the Transportation Plan and the Unified Development Ordinance (UDO). He also explained the reasoning for the alley vacation request and its impacts if approved or not.

Flaherty asked who owned the northwestern lot on the property.

Cibor said that the Redevelopment Commission acquired the lot approximately three weeks ago. He discussed alleys and connectivity on the lot.

Flaherty asked if staff's preference was to not extend the alley on that lot.

Cibor said that it could still be considered but was not ideal due to environmental concerns, and limiting drive cuts on Rogers Street close to a traffic signal.

Rollo thanked Cibor and asked about the time frame of the overlay district.

Robinson referenced the staff memo including questions for council that would help determine staff's next steps. Knowing what council wanted with the overlay would guide staff's planning. He said realistically, it would take at least around six months.

Volan thanked Cibor too, and spoke about the alleys on the lot. He questioned why staff believed it was not ideal to extend one alley, due to concerns about proximity to a traffic signal, when there were many other alleys near traffic signals already there on other roads.

Cibor stated that the alley could be extended. He described the differences with the other streets, like on-street parking, and that they were used differently than Rogers Street.

Volan discussed the garage on the hospital site. He said that the development at Hopewell might have on-street parking.

Cibor said he would need to refer to the Transportation Plan.

Volan said that there were not details in the Transportation Plan because when it was drafted, the Hopewell development was not under consideration. He still wondered why the preference would be to not extend the alley.

Cibor said that there were concerns that limited the commitment that the alley would be extended.

Volan understood that staff was not comfortable including the alley extension without first exploring the concerns.

There was no public comment.

Volan asked if the platting would need to be updated to include the alley in the future.

Cibor confirmed that the platting would be updated.

Volan said that it might be easiest to plan for the alley extension and then vacate at a later date.

Cibor said that it would be discussed during the replatting process. There would be further revisions and evaluations.

Ordinance 22-05 - To Vacate Public Parcels – Re: Two 16.5-Foot Wide Alley Segments Located Between West 1st Street, West 2nd Street, South Rogers Street, and South Morton Street (City of Bloomington Redevelopment Commission, Petitioner) [9:24pm]

Council questions:

Public comment:

Council comments:

Volan asked how council could be involved in the discussion. Cibor said that councilmembers could email him and they would be included in the discussion and process.

Ordinance 22-05 (cont'd)

Sandberg appreciated Cibor and Robinson for listening to councilmembers and responding to their questions.

Flaherty also expressed his appreciation.

The motion to adopt Ordinance 22-05 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to adopt Ordinance 22-05 [9:53pm]

LEGISLATION FOR FIRST READING [9:54pm]

Rollo moved and it was seconded that Ordinance 22-17 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Crossley read the legislation by title and synopsis.

Ordinance 22-17 – An Ordinance to Amend Ordinance 21-36, as Amended by Ordinance 22-03, Which Fixed Salaries for Officers of the Police and Fire Departments for the Year 2022 - Re: Incentives for Police officers and increasing Probationary Officer base pay instead of providing retention pay [9:55pm]

Sandberg referred Ordinance 22-17 to the Committee of the Whole to meet on June 08, 2022 beginning at 6:30 pm.

Rollo moved and it was seconded that Ordinance 22-18 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Crossley read the legislation by title and synopsis.

Ordinance 22-18 - To Amend Title 8 of the Bloomington Municipal Code, Entitled "Historic Preservation and Protection" to Establish a Historic District – Re: 200 E Kirkwood Ave. (Bloomington National Savings and Loan Association) (Bloomington Historic Preservation Commission, Petitioner) [9:57pm]

Sandberg referred Ordinance 22-18 to the Committee of the Whole to meet on June 08, 2022 beginning at 6:30 pm.

There was brief council discussion regarding the introduction of Ordinance 22-19. Lucas explained council's option to move to introduce and read the legislation which required a majority of the council to pass. If the motion passed then council would consider reading the legislation by title and synopsis, with unanimous consent without council objections.

Sgambelluri moved and it was seconded that Ordinance 22-19 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 7, Nays: 2 (Rollo, Smith), Abstain: 0. Sandberg asked if there were any objections to the reading of Ordinance 22-19 by title and synopsis only. Crossley read the legislation by title and synopsis.

Ordinance 22-19 - An Ordinance Authorizing the Entering Into of a Conditional Project Expenditure Agreement of the City of Bloomington, Indiana (Meridiam Project), and the Disposition of the Proceeds Thereof to Meridiam, and Authorizing and Approving Other Actions in Respect Thereto [10:01pm]

Sandberg referred Ordinance 22-19 to the Committee of the Whole to meet on June 08, 2022 beginning at 6:30 pm.

There was no additional public comment.

ADDITIONAL PUBLIC COMMENT [10:02pm]

Lucas reviewed the upcoming council schedule. There was brief council discussion.

COUNCIL SCHEDULE [10:04pm]

Sims moved and it was seconded to adjourn. The motion was approved by voice vote.

ADJOURNMENT [10:06pm]

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 07 day of June, 2023.

APPROVE:

ATTEST:



Sue Sgambelluri, PRESIDENT
Bloomington Common Council



Nicole Bolden, CLERK
City of Bloomington