

City of Bloomington Common Council

Legislative Packet

Regular Session and Committee of the Whole Discussion

22 February 2006

Office of the Common Council P.O. Box 100 401 North Morton Street Bloomington, Indiana 47402

812.349.3409

council@bloomington.in.gov

City of Bloomington Indiana City Hall 401 N. Morton St. Post Office Box 100 Bloomington, Indiana 47402



Office of the Common Council (812) 349-3409 Fax: (812) 349-3570 email: <u>council@bloomington.in.gov</u> To:Council MembersFrom:Council OfficeRe:Weekly Packet MemoDate:February 17, 2006

Packet Related Material

Memo Agenda Calendar <u>Notices and Agendas</u>: *None* Legislation for Final Action:

None

Legislation and Background Material for First Reading and Discussion:

<u>Ord 06-02</u> To Vacate Two Public Parcels - Re: Portions of Right-of-Way Running East /West in Front of 1010 and 1014 West Cottage Grove (Housing and Neighborhood Development [HAND] Department, Petitioner)

- Maps of Surrounding Area; Map of Subdivided Lots; Old Site Plan; Memo to Council from Lynne Friedmeyer, Zoning and Enforcement Manager; Memo from Susie Johnson, (former) Director of the HAND department; Petition; Staff Report to the BZA; Letter of Application to BZA; Elevations; Letter to BZA from Neighbors

Contact: Lynne Friedmeyer at 349-3529 or friedmel@bloomington.in.gov Ord 06-03 Revising Participation Fees for Certain Businesses Located Within the Bloomington Urban Enterprise Zone and a Tax Increment Finance Area that Receive an Enterprise Zone Investment Deduction

- Attachment A (Map of Enterprise Zone and its Intersection with Three TIF Districts); Memo from Susan Clark, Controller

Contact: Susan Clark at 349-3416 or clarks@bloomington.in.gov Lisa Abbott at 349-3576 or abbottl@bloomington.in.gov

Material Regarding Ord 06-04 and Ord 06-05

Memo from Bond Counsel

<u>**Ord 06-04**</u> An Ordinance Amending <u>Ordinance 05-12</u> - Re: To Allow Sale of Waterworks Bonds Through The Indiana Bond Bank

Ord 06-05 An Ordinance Amending <u>Ordinance 05-35</u> - Re: To Allow Sale of Sewage Works Bonds Through The Indiana Bond Bank

Contact: Vickie Renfrow at 349-3557 or renfrowv@bloomington.in.gov

Minutes from Regular Session:

May 4, 2005

Memo

Chair of Meeting: Councilmember Ruff

Four Ordinances to be Introduced at the Regular Session and Discussed at the Committee of the Whole to be Held on Wednesday February 22, 2006

There will be a Regular Session immediately followed by a Committee of the Whole next Wednesday where the four ordinances found in this packet will be introduced and discussed. Please note that the Council will be considering a resolution regarding the proposed change in postal processing on March 1st.

<u>Items for First Reading and Discussion – Presented in Order of Introduction</u> (as Opposed to Order of Discussion)

<u>Ord 06-02</u> – Vacating Portions of Right-of-Way in Front of 1010 and 1014 West Cottage Grove at the Request of the HAND Department

<u>Ord 06-02</u> would vacate right-of-way in front of 1010 and 1014 West Cottage Grove at the request of the HAND department and on behalf of Habitat for Humanity of Monroe County, Inc., in order to build two affordable, owner-occupied, single-family residences.

General Vacation Procedures

Vacations of right-of-ways are governed by statutory procedures (I.C. 36-7-3-12) which require the Petitioner to file an application with the Council. In Bloomington, the Planning Department begins the process by taking a pre-petition application and reviewing the request, notifying all the utility and emergency services as well as the Board of Public Works of the proposed action. After receiving the responses and evaluating the proposal in terms of local criteria, they prepare a report and an ordinance for the Council Office.

At that point, the Council Office obtains a formal application from the Petitioner and the City Clerk commences notice procedures required by statute. Notice requirements include sending a certified letter to all owners of property abutting the right-of-way and advertising the statutorily-required public hearing which precedes final action on the ordinance and provides an opportunity for the public to address the Council on this action. That hearing is scheduled for March 1, 2006.

Please note that your decision to vacate a public right-of-way must be in the public good and extinguishes the City's interest in the property which, in most circumstances, has the effect of splitting the right-of-way between the adjacent owners. Should remonstrators want to challenge your decision to vacate the right-of-way in court, their grounds are limited to questions of access and the orderly development of the area. In the event the ordinance is adopted by the Council, then the Clerk must file a copy with the County Recorder and the County Auditor.

The following paragraphs summarize the application of the local criteria to this proposal as presented in reports and background material provided by Lynne Friedmeyer, Zoning and Enforcement Manager.

Petition and Approvals

Habitat has been working with the HAND department and a private property owner to create two lots on West Cottage Grove in order to build two 1-bedroom, single-family residences that will be purchased and sold to low-income households for a period of at least 15 years. Please note that low-income, in this case, means no more than 70% of median income.

In order to create those lots, Habitat needed to subdivide two parcels, receive variances from the Board of Zoning Appeals, and obtain a vacation of right-of-way from the Council.

The Plat Committee has approved the subdivision of two 50-foot wide lots which extend all the way from West 11th Street to Cottage Grove Avenue. These lots have houses on West 11th Street and an alley between them that will remain. Once divided, there would be four lots of that width and approximately 100 feet in depth, as long as the City agrees to give up 25 feet of right-of-way along Cottage Grove. This strip of land was purchased many years ago by the City for improvements, but is no longer needed for that purpose.

The Board of Zoning Appeals approved three variances based upon three conditions. The variances reduced:

- the minimum lot width from 60 feet to 50 feet;
- the minimum lot size from 7,200 to 5,000 square feet;

• the minimum parking from two to one space (given the availability of on-street parking).

The conditions required the Petitioner to:

- build the structures with architecture that is consistent with the submitted elevation drawings;
- o repair the existing sidewalk on West Cottage Grove; and
- o record the approved plat prior to issuance of the building permits.

Please note that neighbors signed a petition opposing the project for a number of reasons. Those reasons dealt with expected loss of property values and quality of life due to: increasing the density of housing, encouraging more low-income housing, lowering the minimum development standards, as well as increasing traffic, on-street parking, and noise. (See Letter included in the packet)

Description of Vacated Property. This ordinance would vacate the two 50.04' wide and 25' deep portions of West Cottage Grove described as follows:

two portions of right-of-way each of which are 50.04 feet long and 25 feet deep and run east/west in front of 1010 and 1014 West Cottage Grove.

Please note that the legal description of these right-of-ways is set forth in the ordinance and a map is enclosed with the materials.

Current Status - Access to Property.

The staff report indicates that this block is situated within an urban grid of public streets and this action will not close access to any alleyway, street, or property.

Necessity for Growth

Future Status (Utilities, Emergency Services, and Road Improvements) – I.C. 36-7-3-16 protects utilities who occupy or use all or part of the public way from losing their rights upon the vacation of the alley way unless they choose to waive those rights. No utility reported having services here.

Private Utilization - The staff report indicates that this action will provide longer lots for these affordable housing project.

Compliance with regulations – The staff report indicates that this project "will not create issues regarding compliance with local regulations" and that the BZA authorized variances that reduced lot width, lot size, and required parking spaces as long as three conditions were met. (noted above)

Relation to City Plans – The staff report indicates that "the proposal is consistent with City plans" for a Core area. You might remember that Core areas call for compatible infill projects and encourages affordable, single-family dwellings.

Approvals and Recommendation

Given the recommendation of the Board of Public Works, the variances granted by the Board of Zoning Appeals, its conformance with other City policies, the staff report favors this vacation of right-of-way.

<u>Ord 06-03</u> – Capturing Potential Lost TIF Revenues By Raising Certain Enterprise Zone Participation Fees and Transferring those Revenues to the TIF Funds

Some recent changes in State law offer automatic tax abatements that will dramatically alter our local tax abatement program, but of a more immediate concern, may also deprive some of our Tax Incremental Finance (TIF) districts of future anticipated revenues. The TIF districts would lose future revenues because one of the new tax abatement programs, known as the Enterprise Zone Incentive Deduction (EZID), taps the same revenue stream as the TIF district - property taxes on new investment to real estate after a base period of assessment. <u>Ord 06-03</u> would preserve some of the potential lost revenues by capturing them through the Bloomington Urban Enterprise Zone (Zone) and then transferring them to the TIF district funds in a process that is explained in the latter part of this memo.

Before discussing the particulars of this ordinance, I refer you to the memo from Susan Clark, Controller, which introduces the Council to the two tax abatement initiatives enacted by the State last year. Clark states that these initiatives "will replace much of the [City's] tax abatement program" with automatic tax abatements for qualified investments that are not subject to the usual review by the Economic Development Commission or Common Council. These initiatives are briefly noted below.

Investment Deduction (IC 6-1.1-12.4)

The Investment Deduction is an interim measure that will be in effect for four years (March 2005 – March 2009) and will establish a graduated, "three-year deduction for redevelopment, development or rehabilitation of real property and the purchase of personal property that creates or retains employment." (per Clark's memo) The amount of the deduction equals a declining percentage of the increase in assessed valuation - 75% in the first year, 50% in the second year, and 25% in the third year - but cannot exceed a total of \$2 million. Taxpayers may obtain the deduction for investments anywhere in the City except in a TIF District and Certified Technology Park (CTP), and may do so by filing notice with the Township Assessor for investments in real property and by filing the appropriate schedule with their tax return for investments in personal property.

Enterprise Zone Investment Deduction (EZID) (IC 6-1.1-45)

The EZID is the initiative that led the Administration to propose <u>Ord 06-03</u>. It provides for a non-graduated, 10-year deduction for eligible investments within an Enterprise Zone, without regard to the property's TIF status. These eligible investments include the purchase, construction and rehabilitation of buildings as well as the purchase and retooling of equipment. The amount of the abatement equals 100% of the assessed valuation for each year of the 10-year period of abatement. Tax payers may obtain the deduction by making a timely application with the County Auditor. The Auditor then determines whether the investment is eligible, without further review by another local entity.

Fiscal Impact of the EZID on Three TIF Districts

As mentioned in the opening paragraph of this summary, the Enterprise Zone Investment Deduction will deprive any intersecting TIF district of future revenues because the deduction is based, in part, on the same revenue stream – property taxes on new investment to real estate. The Thomson, Adams, and Downtown TIF districts all intersect with our Zone (see map in packet) and would, according to Susan Clark, lose about \$9.9 million in revenues over the duration of these districts as a result of the new deduction (see the chart in her memo). Approximately \$4.4 million of these revenues have already been included in the City's financial projections and about \$1.9 million (from the Hilton Garden Inn) would affect how the City pays for the two new downtown parking garages that have been constructed in the last few years. While recognizing the importance of this deduction as an incentive for development, the City wants to retain revenue from recent economic development projects that have already been negotiated by the City and are important to financial health of the underlying TIF district. <u>Ord 06-03</u> proposes a solution to the problem that can best be understood after a brief explanation of the Zone, its revenues and operations.

Role of Bloomington Urban Enterprise Association

Enterprise Zones offer a package of tax incentives that help revitalize and generate employment in distressed areas within a locality. They receive revenue from zone businesses, who are required to pay a portion of certain tax benefits to the zone in the form of a participation fee. This fee then funds Zone activities and projects.

The tax benefits and participation fee play a prominent part of the solution to the potential loss of TIF revenues. As noted above, the tax benefits to Zone businesses are the ultimate source of Zone revenues. These tax benefits include: deductions and credits such as the inventory tax (which is terminating next year), the gross income tax exemption, the wage tax credit, the investment cost credit, and the loan interest credit. According to the memo from Susan Clark, the combination of the recent investment in the downtown and the return of some of these tax benefits to the Zone, have resulted in a steady stream of income over the last two years, and this stream should increase even more once businesses can take advantage of the new Enterprise Zone Investment Deduction.

As stated above, the participation fee captures a portion of the tax benefits received by Zone businesses which is then used by the Zone for its activities and projects. The fee is currently set at 20%, which is one of the lowest in the State, and can be adjusted by the Common Council. In order to protect TIF funding, the BUEA Board recently approved a restructuring of those fees to capture potentially-lost TIF revenues and agreed to transfer those lost revenues to the City.

Proposal to Capture Tax Benefits for New Projects in 2005 and 2006 and Transfer Revenues to TIF Districts

Ord 03-06 would restructure the participation fee into two tiers. The first tier would apply to all properties in the Zone outside of a TIF district and would remain at 20%. The second tier would apply to owners: 1) of properties which are located in *both* the Zone *and* a TIF district; and 2) who seek an Enterprise Zone Investment Deduction for new improvements that will submitted for assessment in March of 2006 or March of 2007. The participation fee for the improvements that come on line in 2006 and

2007 will be set at 100%. That fee will then be transferred to the City for deposit in the respective TIF funds.

<u>Ord 06-04</u> and <u>Ord 06-05</u> – Amending Ordinances Authorizing Issuance of Water and Sewage Works Bonds to Allow Their Sale Through the Indiana Bond Bank and Include the Name of New Bond Counsel

The next two items amend ordinances adopted in 2005 authorizing issuance of Water and Sewage bonds to allow their sale through the Indiana Bond Bank and to include the name of the new Bond Counsel. <u>Ord 06-04</u> amends <u>Ord 05-12</u>, which authorized issuance of up to \$5.32 million of water works bonds and <u>Ord 06-05</u> amends <u>Ord 05-35</u>, which authorized issuance of up to \$18.93 million in sewage works bonds. According to the memo from our bond counsel, Sue Beesley of Bingham McHale, LLC, the existing ordinances allow for the sale of bonds through the State Revolving Loan Fund (SRF) program, which is suitable for some of the bonds, and the private financial markets, which is suitable for others. It appears that the sale bonds through the Indiana Bond Bank will be less costly than entering into the private financial markets. That is because the private financial markets may see more risk and charge more because of the recent unfavorable audit of the Utilities Department, while the Indiana Bond Bank looks willing to accept our bonds and pool them with others at a better interest rate.

Happy Birthday David Sabbagh

NOTICE AND AGENDA BLOOMINGTON COMMON COUNCIL REGULAR SESSION AND COMMITTEE OF THE WHOLE 7:30 P.M., WEDNESDAY, FEBRUARY 22, 2006 COUNCIL CHAMBERS SHOWERS CENTER, 401 N. MORTON

REGULAR SESSION

- I. ROLL CALL
- II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR:

Regular Session May 4, 2005

- **IV. REPORTS FROM:**
 - 1. Council Members
 - 2. The Mayor and City Offices
 - 3. Council Committees
 - 4. Public

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR SECOND READING

None

VII. LEGISLATION FOR FIRST READING

1. <u>Ordinance 06-02</u> To Vacate Two Public Parcels – Re: Portions of Right-of-Way Running East/West in Front of 1010 and 1014 West Cottage Grove (Housing and Neighborhood Development [HAND] Department, Petitioner)

2. <u>Ordinance 06-03</u> Revising Participation Fees for Certain Businesses Located Within the Bloomington Urban Enterprise Zone and a Tax Increment Finance Area that Receive an Enterprise Zone Investment Deduction

3. <u>Ordinance 06-04</u> An Ordinance Amending <u>Ordinance 05-12</u> – Re: To Allow Sale of Waterworks Bonds Through The Indiana Bond Bank

4. <u>Ordinance 06-05</u> An Ordinance Amending <u>Ordinance 05-35</u> – Re: To Allow Sale of Sewage Works Bonds Through The Indiana Bond Bank

VIII. PRIVILEGE OF THE FLOOR (This section of the Agenda is limited to a maximum of 25 minutes. Each speaker is allotted 5 minutes.)

IX. ADJOURNMENT

(Continued)

COMMITTEE OF THE WHOLE

Chair: Andy Ruff

<u>1. Ordinance 06-02</u> To Vacate Two Public Parcels – Re: Portions of Right-of-Way Running East West in Front of 1010 and 1014 West Cottage Grove (Housing and Neighborhood Development [HAND] Department, Petitioner)

Asked to Attend: Lynn Friedmeyer, Zoning & Enforcement Manager

2. <u>Ordinance 06-04</u> An Ordinance Amending <u>Ordinance 05-12</u> – Re: To Allow Sale of Waterworks Bonds Through The Indiana Bond Bank

Asked to Attend: Vickie Rentfrow, Assistant City Attorney

3. <u>Ordinance 06-05</u> An Ordinance Amending <u>Ordinance 05-35</u> – Re: To Allow Sale of Sewage Works Bonds Through The Indiana Bond Bank

Asked to Attend: Vickie Rentfrow, Assistant City Attorney

4. <u>Ordinance 06-03</u> Revising Participation Fees for Certain Businesses Located Within the Bloomington Urban Enterprise Zone and a Tax Increment Finance Area that Receive an Enterprise Zone Investment Deduction

Asked to Attend: Susan Clark, Controller Lisa Abbott, Director of HAND

City of	City Hall	
Bloomington	401 N. Morton St.	
Indiana	Post Office Box 100	
mutalla	Bloomington, Indiana 47402	

Office of the Common Council	To:	Council Members
(812) 349-3409	From:	Council Office
Fax: (812) 349-3570	Re:	Calendar for the Week of February 20-24, 2006
e-mail: council@bloomington.in.gov	Date:	February 17, 2006

Monday, February 20, 2006

4:00	pm	Council for Community Accessibility, McCloskey
5:00	pm	Utilities Service Board, IU Research-North Showers, 501 N. Morton Street 100B
5:30	pm	Bicycle and Pedestrian Safety Commission, Hooker Room

Happy Birthday to Councilmember, David Sabbagh!

Tuesday, February 21, 2006

- 12:00 pm Bloomington Industrial Development Advisory Commission, Hooker Room
- 3:30 pm Community and Family Resources Commission, Hooker Room
- 3:00 pm Board of Public Safety, McCloskey
- 5:00 pm Farmers' Market Advisory Council, Showers Building, Rom 250
- 5:30 pm Animal Control Commission, McCloskey
- 5:30 pm Bloomington Public Transportation Corporation, Transportation Center, 130 W Grimes Lane
- 5:30 pm Board of Public Works, Council Chambers
- 7:00 pm Metropolitan Planning Organization Long Range Transportation Plan, Public Workshop, Council Chambers

Wednesday, February 22, 2006

- 5:30 pm Traffic Commission, Council Chambers
- 6:30 pm Metropolitan Planning Organization, Citizen's Advisory Council, McCloskey
- 7:30 pm Common Council Regular Session *immediately followed by a*

Committee of the Whole discussion, Council Chambers

Thursday, February 23, 2006

- 10:30 am Addressing Coordination, McCloskey
- 7:00 pm Environmental Commission, McCloskey

Friday, February 24, 2006

12:00 pm Economic Development Committee, Hooker Room

ORDINANCE 06-02

TO VACATE TWO PUBLIC PARCELS -

Re: Portions of Right-of-Way Running East /West in Front of 1010 and 1014 West Cottage Grove (Housing and Neighborhood Development [HAND] Department, Petitioner)

- WHEREAS, I.C. 36-7-3-12 authorizes the Common Council to vacate public ways and places upon petition of persons who own or are interested in lots contiguous to those public ways and places; and
- WHEREAS, the petitioner, the Housing and Neighborhood Development (HAND) department, has filed a petition to vacate two parcels of City property on behalf of Habitat for Humanity of Monroe County, Inc., for the purpose of building two affordable, singlefamily homes;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Through the authority of I.C. 36-7-3-12, portions of City owned property shall be vacated. The properties, commonly known as two portions of right-of-way each of which are 50.04 feet long and 25 feet deep and run east/west in front of 1010 and 1014 West Cottage Grove and are more particularly described as follows:

Twenty-five (25) feet of even width off of the entire South side of Lot Number (10) and Eleven (11) in the Millen and Rice Addition to the City of Bloomington, as shown by the plat thereof, recorded in Plat Book No. 2 page, 41, in the office of the Recorder of Monroe County, Indiana more particularly described as follows:

Portion of 1010 West Cottage Grove - Lot 10 (b), Millen and Rice Addition

Beginning at a marked 5/8" rebar at the Southwest corner of said Lot 10; thence NORTH 00 degrees 00 minutes 47 seconds WEST along the West line of said Lot 25.00 feet to marked 5/8" rebar; thence NORTH 90 degrees 00 minutes 00 seconds EAST 50.04 feet to a marked 5/8" rebar on the East line of said lot; thence SOUTH 00 degrees 00 minutes 00 seconds EAST along said East line 25.00 feet to a marked 5/8" rebar; thence SOUTH 90 degrees 00 minutes 00 seconds EAST along said East line 25.00 feet to a marked 5/8" rebar; thence SOUTH 90 degrees 00 minutes 00 seconds EAST along said East line 25.00 feet to a marked 5/8" rebar; thence SOUTH 90 degrees 00 minutes 00 seconds WEST 50.03 feet to the Point of Beginning containing 0.029 acres, more or less.

Portion of 1014 West Cottage Grove - Lot 11 (b), Millen and Rice Addition

Beginning at a marked 5/8" rebar at the Southwest corner of said Lot 11; thence NORTH 00 degrees 01 minutes 34 seconds WEST along the West line of said lot 25.00 feet to an iron pipe; thence NORTH 90 degrees 00 minutes 00 seconds EAST 50.04 feet to a marked 5/8" rebar on the East line of said lot; thence SOUTH 00 degrees 00 minutes 47 seconds EAST along said East line 25.00 feet to a marked 5/8" rebar; thence SOUTH 90 degrees 00 minutes 00 seconds WEST 50.03 feet to the Point of Beginning containing 0.029 acres, more or less.

SECTION 2. Local utilities were contacted and indicated that they were neither occupying nor using all or part of these right-of-ways and, therefore, did not wish to preserve any rights pursuant to I.C. 36-7-3-16.

SECTION 3. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this ______ day of ______, 2006.

CHRIS STURBAUM, President Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of ______, 2006.

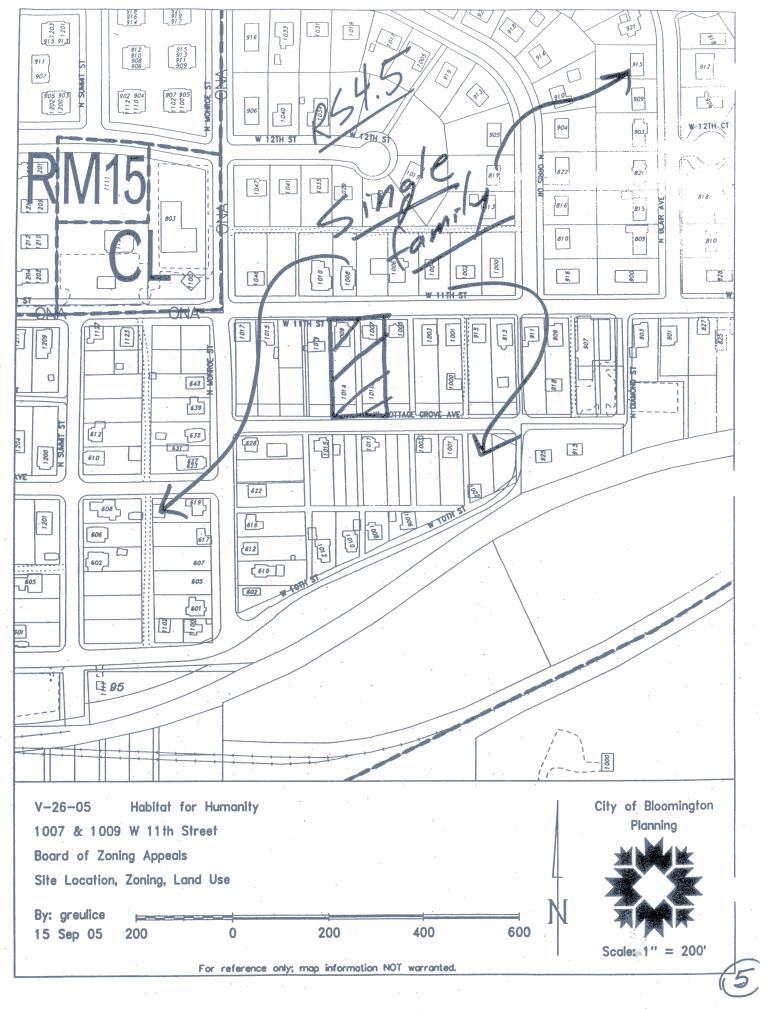
REGINA MOORE, Clerk City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2006.

MARK KRUZAN, Mayor City of Bloomington

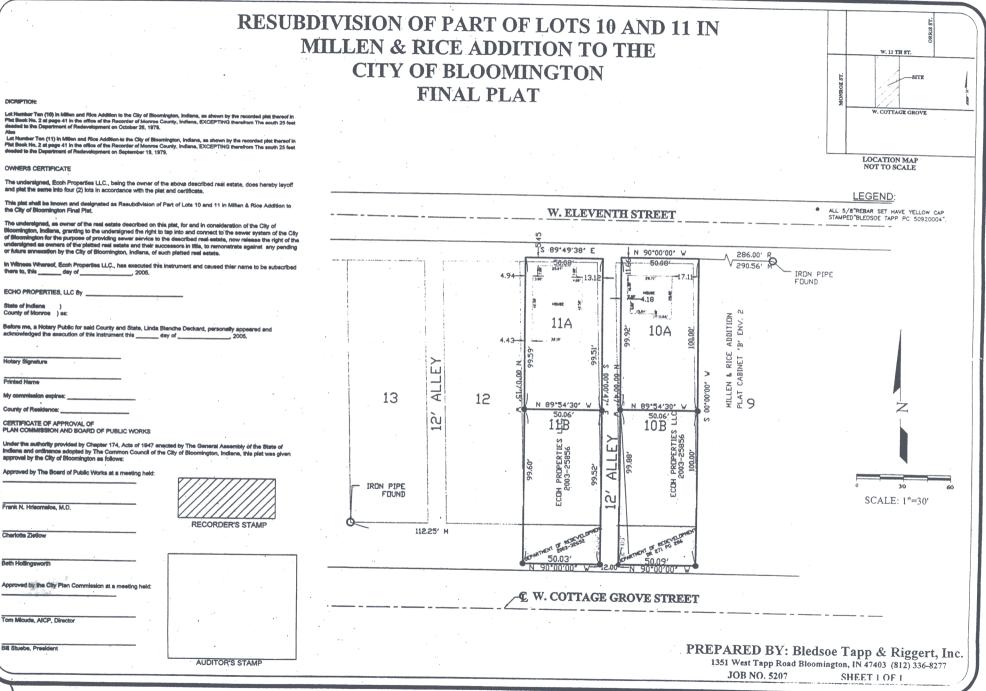
SYNOPSIS

The petitioner, the Housing and Neighborhood Development (HAND) department, requests vacation of two public parcels commonly known as rights-of-way running east/west along the southern portions of Lots 10b & 11b in the Millen and Rice Addition, specifically in front of 1010 & 1014 West Cottage Grove.

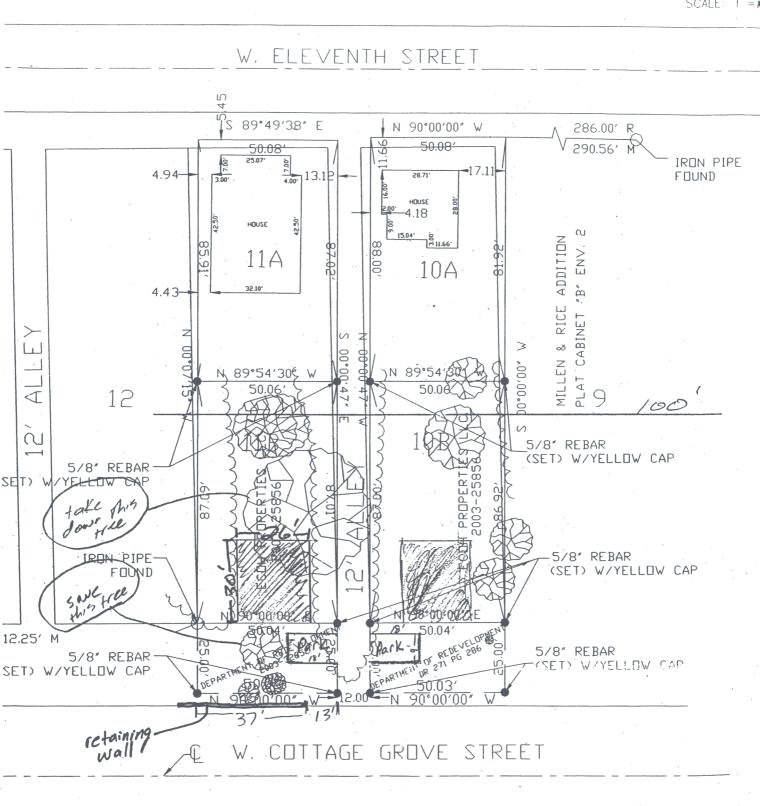




PLAT CABINET " D ", ENVELOPE



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Site Plan

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SCALE: 1"= 🕷





CITY OF BLOOMINGTON PLANNING DEPARTMENT MEMORANDUM

DATE:January 24, 2006TO:City of Bloomington Common Council MembersFROM:Lynne Friedmeyer, Zoning & Enforcement ManagerSUBJECT:Request for vacation of street right-of-wayPETITIONER:Habitat for Humanity for Monroe County, Inc.

LOCATION: The right-of-way that the petitioner is proposing to be vacated is located in front of two vacant lots at 1010 & 1014 West Cottage Grove Avenue. There is also an unimproved alley that runs north-south between the lots.

BACKGROUND: The lots located at 1010 and 1014 West Cottage Grove Avenue were recently created via subdivision approval of two single family parcels with houses that front along W. 11th Street. Specifically, these home addresses are 1007 and 1009 West 11th Street. In association with subdivision approval, these newly created lots were also granted variances from lot width, lot size, and parking requirements. The petitioner is proposing to build two Habitat homes on these two newly subdivided lots along the north side of Cottage Grove Ave.

Many years ago, the City's Redevelopment Department purchased 25 feet of right-of-way along the north side of Cottage Grove Ave. in order to make some future street improvements. The work is complete and the Redevelopment Department would now like to give the property to Habitat for Humanity in order for the two lots to have room for small front yards and driveways. In order to accommodate these yards and driveways, the right-of-way in question needs to be vacated.

The request for vacation was heard by the Board of Public Works (BPW) on June 14, 2005. The BPW voted to recommend vacation of the right-of-way. The Board of Zoning Appeals approved a request for variances from minimum lot size, minimum lot width, and off-street parking on September 22, 2005. The request for the subdivision was approved by the Plat Committee on October 17th.

UTILITY INTRESTS: The following utility and city service organizations have responded to this request with no objections for the vacation of the existing right-of-way:

- Bloomington Public Works Dept.
- Bloomington Utilities Dept.
- SBC Ameritech
- PSI Cinergy

- Insight Communications
- City of Bloomington Police Department
- City of Bloomington Fire Department
- Vectren

SBC, Cinergy, Insight Communications, and Vectren have no active lines in the area and have no future plans for future construction.

CRITERIA: The criteria utilized to review a public ROW or easement vacation request are as follows:

1. Current Status - Access to Property.

The lots at 1010 and 1014 West Cottage Grove Ave. are located within an area that has been constructed with a grid pattern of public streets. There is ample access to this and all surrounding properties. As previously stated, both the Fire and Police Departments find that they can adequately serve the area without the right-of-way in question. Current access to the lots occurs via Cottage Grove Avenue. This access will not be affected due to a reduction in City right-of-way.

2. Necessity for Growth of the City:

Future Status: No public utilization of this right-of-way is anticipated by the City. All public services can adequately be served through the remaining rights-of-way in the immediate area. No widening of Cottage Grove Ave. is anticipated in the future.

Proposed Private Ownership Utilization: The vacation of this right-of-way will allow the petitioner to move forward with their redevelopment project. The project can be constructed without the proposed vacation, but the future homes will have very little front yard.

Compliance with Regulations: The vacation of this alley will not create any issues regarding compliance with local regulations. The Board of Zoning Appeals has approved the required variances from Zoning Ordinance requirements.

Relation to Plans: Both the proposed development and right-of-way vacation are consistent with City Plans. This vacation will create the following benefits which are consistent with City planning policy: 1) affordable housing and 2) increased private yard space which can be landscaped by the property owners.

The GPP designates this area as Core residential. The GPP calls for compatible infill development and encourages single family homes, particularly affordable dwelling units.

RECOMMENDATION: Both staff and the Board of Public Works have recommended that the City vacate the street right-of-way in question.

HAND

Memo

Common Council
Susie Johnson
2/17/2006
W. Cottage Grove Right-of-Way Vacation

The Housing and Neighborhood Development is partnering with Habitat of Humanity to build two new single family homes that will be sold to low income families on West Cottage Grove. In order to facilitate this project, vacation of a remnant piece of right of way is necessary.

These two lots make an ideal location for affordable in-fill. Existing water and sewer are available at the street making the cost of bringing utilities to the sight much less expensive. Sidewalks are also already in place on the north side of the street. The lots have mature trees on them and vacation of the right-of-way will mitigate tree loss by allowing Habitat to place the houses forward on the lots. This will also create more of a back yard for any children that may live in these homes.

The Consolidated Plan has identified home ownership opportunities for low income families a high priority for the community. Bloomington's most apparent obstacle to homeownership is the cost of housing. Bloomington continues to suffer from comparatively low wages compromised further by challenging housing costs. At \$24,414, the per capita income is a full 21.7% below the national average, and the local per capita incomes are \$4,000 per year below the state average. 48.2% of the population spends more than 35% of their gross income on rent and the median house at \$126,000, would require approximately \$41,580 in income to purchase, using current assumptions of term of mortgage, insurance, taxes etc. This partnership and this in-fill project moves toward relieving some of the pressure on the affordable housing crunch.

I hope you will see fit to vacate this remnant piece of right-of-way. The street work that the land was originally purchased for is complete. This land will be put to new, great use by providing housing for our less fortunate.

PETITION FOR VACATION OF PUBLIC RIGHT-OF-WAY

CITY OF BLOOMINGTON ORD# 06-02 COMMON COUNCIL. 1st READING February 22, 2006 February 22, 2006 COMMITTEE FINAL HEARING March 1, 2006 Office of the Common Council P.O. Box 100, Showers City Hall Bloomington, IN 47402 (812) 349-3409 Address of Property: 1010 and 1014 West Cottage Grove The properties are two portions of right-of-way each of which are 50.04 Description: feet long and 25 feet deep and run east/west in front of 1010 and 1014 West Cottage Grove and are more particularly described in the ordinance. Applicant's Name: Housing and Neighborhood Development Department Address: 401 North Morton, Suite 130 Phone: 349-3401 P.O. Box 100 Bloomington, IN 47402 Counsel or Consultant: (None) Address: (None) Phone: (None)

This application must be accompanied by all required submittals as stated in the information packet for vacation of public right-of-way. Staff reserves the right to schedule hearing dates for petitions subject to complete submittals. Notices to adjacent property owners should not be mailed until hearing dates have been confirmed.

I (we) agree that the applicant will notify all adjacent property owners by certified mail at the applicant's expense.

I (we) further agree that the applicant will cause a legal notice of this application to be published in a paper having general circulation in Bloomington at the applicant's expense.

I (we) certify that all forgoing information is correct and that I (we) are the owners (legal agents for owners) of property adjacent to the proposed vacation of public right-of-way which is the subject of this

application. /16/06 Signature hnson

Please print name

ORDINANCE 06-02

TO VACATE TWO PUBLIC PARCELS -Re: Portions of Right-of-Way Running East /West in Front of 1010 and 1014 West Cottage Grove (Housing and Neighborhood Development [HAND] Department, Petitioner)

Additional Materials in the Council Office

Reponses from the Utility Companies and Emergency Services

BLOOMINGTON BOARD OF ZONING APPEALS STAFF REPORT LOCATION: 1007 & 1009 W 11th Street

CASE#: V-26-05 DATE: September 22, 2005

PETITIONER:	Habitat for Humanity
	PO Box 1441, Bloomington

REQUEST: The petitioner is requesting variances from minimum lot area, minimum lot width, and on-site parking standards.

Standard	Required	Proposed
Minimum Lot Area	7,200 square feet	5,000 square feet
Minimum Lot Width	60 feet	50 feet
Parking	2 spaces	1 space

REPORT SUMMARY: The sites in question are located at 1007 & 1009 W 11th Street and are zoned Single Family Residential (RS4.5). The site is surrounded on all four sides by single family residences The petitioner is proposing to subdivide each lot into two lots of equal size to allow the construction of two, one-bedroom single family residences. The new residences would be affordable housing units that would be constructed by Habitat for Humanity. The City of Bloomington receives Community Development Block Grants and HOME funds from the US Department of Housing and Urban Development to assist income eligible households to purchase new homes. The homes would then be sold to families that meet income eligibility requirements (not more than 80% of area median income). Covenants will be put on the lots ensuring that these homes remain affordable and owner occupied for not less than 15 years.

As part of a City road improvement project in the early 1980's on W Cottage Grove Ave., additional property was purchased from the southern sections of lots along Cottage Grove Ave. After completion of the project there remained 25' of right-ofway along the north side of Cottage Grove. These remnants are owned by the Department of Redevelopment (HAND) and are no longer needed by the City. With this project, the two remnant parcels that adjoin the subject lots would be given to Habitat to be combined with the existing parcels.

Several variances are required for this plan. The first is a minimum lot size variance to allow lots smaller than the minimum allowed in the RS4.5 zoning district, 7,200 square feet. After combining the right-of-way remnant parcels with the exiting lots, the two 10,000 sq. ft. lots would be subdivided to create four 5,000 square foot lots. In addition, a variance from minimum lot width is requested to accommodate the existing lot width of 50'. Lastly, a parking variance is requested to allow the lots to be developed with less than the required 2 parking spaces. The petitioner is proposing to provide one parking space on each lot to provide parking for the one-bedroom houses. On-street parking is available on Cottage Grove. The

new residences would meet all building setbacks and no variances from those standards are requested. Except for minor scrub brush in the alley that would be removed to provide access to the parking spaces, no other vegetation would be removed as part of this project. There is a large maple tree on the west lot that has some diseased and dying branches. The City's urban forester has recommended the tree be removed and the petitioner would be willing remove the tree if deemed necessary.

REVIEW ISSUES:

Growth Policies Plan: Several parts of the 2002 Growth Policies Plan (GPP) support this petition. The GPP encourages owner occupied development in core residential neighborhoods. The GPP also encourages compatible building types, alley access and subdivision of existing lots to increase densities.

- **Compact Urban Form:** ...denser infill development in areas that already contain city services must be encouraged. (pg. 6)
- **Conserve Community Character:** Neighborhood character can evolve in a gradual and compatible way to allow additional density through subdividing lots and the creation of granny flats and duplexes (pg. 17)
- **Core Residential:** Core Residential areas are characterized by a grid-like street system, alley access to garages, small street setbacks, and a mixture of owner occupants and rental units. The unique character, urban form and land use pattern of the near-downtown residential areas must be protected and enhanced. (pg. 30)
- **Core Residential:** [The Core Residential] district is designed primarily for higher density single family residential use. The existing single family housing stock and development pattern must be maintained... (pg. 30)
- **Core Residential:** [The City should] utilize targeted tax abatements and grant programs in specific neighborhoods to provide incentives for increased owner occupancy and affordable housing construction. (pg. 30)

Parking: The petitioner proposes that the lots be developed with only one parking space each, which is less than the required two on-site parking spaces. Since the proposed new residences are one-bedroom houses, this reduction is adequate for the expected needs. Installation of the required two parking spaces would require unnecessary removal of desired open space. These lots will be sold as affordable, owner occupied housing. This occupancy type often has lower parking demands than market rate or rental housing. On-street parking is available to provide for occasional visitor parking. The proposed on-site parking spaces will be accessed from an alley that splits the two properties. Parking for the existing residences at 1007 and 1009 W 11th St. is provided at the fronts of those houses. No existing parking for these residences will be affected.

Sidewalks: A sidewalk is already in place along Cottage Grove and there are several places that would need to be repaired to meet ADA guidelines. The petitioner has committed to making these necessary repairs.

Utilities: Existing utility (water and sewer) service is already in place along both 11th Street and Cottage Grove Ave.

Architecture: The petitioner has submitted schematic architecture for the lots. This architecture includes one story, 1 bedroom bungalows. This style of home is consistent and compatible with the existing homes in the area.

20.05.05.00 VARIANCES

Standards for variances. The regulations of this zoning ordinance shall not be varied unless findings based on the evidence are made in each specific case that affirm each of the following criteria:

Standards for granting variance from development standards: A variance from development standards may be approved only upon determination in writing that:

A. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the variance will relieve practical difficulties.

Staff's Findings for Minimum Lot Size and Minimum Lot Width Variance: Staff finds practical difficulty in meeting the minimum lot size. The minimum lot size requirement makes it difficult to subdivide lots in the core neighborhoods, an easy way to create additional opportunities for affordable, owner occupied housing. While the GPP encourages increased single family densities here, the existing zoning requirements make this difficult.

Staff's Finding for Parking Variance: Staff finds practical difficulty in requiring the petitioner to provide two off-street spaces. The petition is peculiar in that the owner occupied and affordable nature of the development, in addition to the low bedroom count, will produce a lesser demand for parking than a market rate or rental development. This petition is also peculiar due to the available on-street parking on Cottage Grove Ave.

B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

Staff's Findings for Minimum Lot Size and Minimum Lot Width Variance: Staff finds no adverse effects associated with these variances. To achieve the desired increase in single family densities for this area, the minimum lot sizes and width cannot be met. The proposed use of single family residences is consistent with the existing single family neighborhood. **Staff's Finding for Parking Variance:** Staff finds that this petition will not have a substantially adverse impact on the adjacent area. Potential impacts to the surrounding area are mitigated by presence of on-street parking and the owner occupied nature of the development, as well as by the fact that the proposed houses would only be one-bedroom homes.

C. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Staff's Findings for Minimum Lot Size and Lot Width Variance: Staff finds no injury in approving the proposed variances. The buildings will meet all required building codes, and will not create any unsafe conditions.

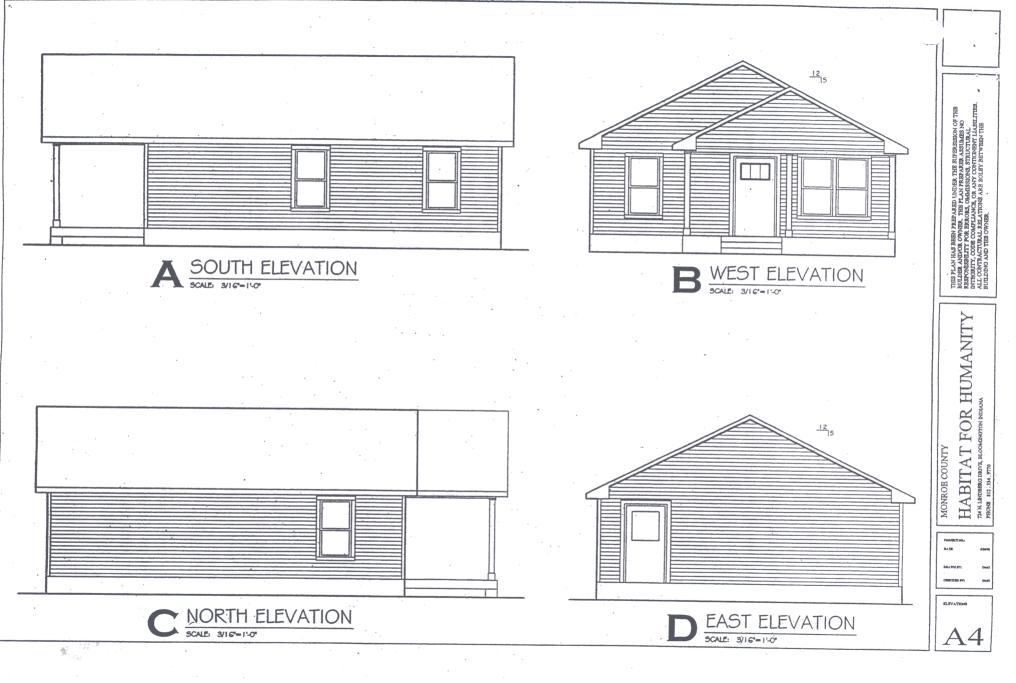
Staff's Finding for Parking Variance: Staff finds no injury from this petition. The petitioner is providing parking on a 1:1 ratio relative to the number of bedrooms. In order to maximize affordability, the petitioner has limited parking to what is necessary.

CONCLUSION: Although some surrounding property owners have expressed concern with this petition, staff finds the request to be warranted. The petitioner is attempting to supply much needed affordable housing units. The Growth Policies Plan strongly encourages more affordable housing, infill development, and reinvestment in core neighborhoods. Staff finds these long narrow lots with double street frontage provide an excellent opportunity for appropriate infill development. These subdivisions will allow for new single family homes to be constructed on lots that are similar in nature to many found throughout the Near West Side of Bloomington. Again, staff finds this project to fill many of the goals of the GPP by providing modest size houses that will have minimal impact through low bedroom count and low parking need.

RECOMMENDATION: Staff recommends approval of V-26-05 with the following conditions:

- 1. Architecture of the houses must be consistent with the submitted elevations.
- 2. The existing sidewalk on W Cottage Grove Ave. must be repaired to City Engineering and ADA standards.

3. A plat must be approved and recorded prior to issuance of any building permits.



1101 West Cottage Grove Bloomington, IN 47404 (812) 336-8455

September 13, 2005

As residents of West Cottage Grove between North Monroe and North Diamond, we are concerned with the proposed building of two Habitat for Humanity houses.

The rewriting of town zoning ordinances to allow for these homes will open a virtual Pandora's box.

- Lowering the minimum lot width and area standards, no longer requiring off street parking and allowing for a two lot residential subdivision will lower the standards of the neighborhood forever.
- The lowering of these fundamental housing standards will depreciate the value of existing homes.
- Bringing more low income housing into an already low income neighborhood will create an extension of Crestmont and as a side-effect, segregated neighborhoods.
- Housing people on top of people does not improve anyone's quality of living.
- The noise levels will be increased.
- The congestion of traffic will also increase on an already narrow street.
- The narrowness of the street leads to a parking problem.
- All parking will have to be restricted to the south side of the street.
- The quite green space will be completely destroyed on this short street.

We feel there must be other areas more suitable for these proposed homes. The larger lots on the eastside of Bloomington seem more accommodating and would help to integrate the community increasing the standard of living for all

V-26-85 Letter of Objection

concerned. If still wanting to remain on the Westside of Bloomington, the large vacant lot on the corner of 11th and Monroe is another alternative. This site is merely a block away from the proposed site and would not require any variances.

Our final objection is the city's notification procedure not including residents living on West Cottage Grove facing the proposed site. People that were included, living north of 11th street, will not be directly affected, yet were notified. Our list of signatures includes all residents that will be affected.

Sincerely,

V-26-05 Letter of Objection

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Signature Printed Name Address 628 N Monrue St Blgn Jrel. 41404... WENDY MCGuire Wendy McGuere Chris Foster 622 N. Montore SI Chris Foster B-Town IN 47404 635 N. Monvoe Larry Williams Jarry Williams bai N. Monroe Ruth Lydy Ruth Lydy Janguahyn Prise Jang very to Prose 1012 W, 12 = 1010 W IOTH ST Cuto month Cueios MCMAhan BIGMEN INS 47404 628 N. Monroe St. the finand Tina Sherrard Bloomington In 47404 616 N. Monroe St Bloomington IN 41404 690 Deer Mace Bloombryton IN 47404 Hannah Shuler Hannah Shuler Betty Brett 1/2/pp Cellium Alen William Alup Blanington IN, Marcal St. Bhanington IN, M2404 1_Mah 1001 W Cottage Grove Gina Brooks Bloommyton, Fn 47404 1001 W Cottage Grove Tony J Fig Tony LAY 1560minton In 47400 1008 W. Jora St Kat Neth Kat Neth Bloomington IN147404 BuyKader 1008 w loth SF. ANDREW A. RADER BLOOMINGTON, IN 47404 120.9 " = w. Cottage grouc Lussen ? Schuler Russelle. Schuyler Blogh. 1011 W COTTAGE Summe DIAN KRUMLAUF Mon Sumla Blaf 47404 V-26-05 [13

ORDINANCE 06-03

REVISING PARTICIPATION FEES FOR CERTAIN BUSINESSES LOCATED WITHIN THE BLOOMINGTON URBAN ENTERPRISE ZONE AND A TAX INCREMENT FINANCE AREA THAT RECEIVE AN ENTERPRISE ZONE INVESTMENT DEDUCTION

- WHEREAS, the Bloomington Urban Enterprise Zone ("Zone") and its administrative entity, the Bloomington Urban Enterprise Association ("BUEA"), were created in 1991 pursuant to IC 4-4-6.1 (now IC 5-28-15) to provide access to tax credits for zone businesses and develop programs to promote economic development within the designated zone boundaries; and
- WHEREAS, the BUEA obtains funding for its programs by assessing an annual participation fee from Zone businesses receiving tax credits and incentives in the amount of 20% of the credit or incentive; and
- WHEREAS, in 2005 the Indiana legislature passed IC 6-1.1-45 regarding the Enterprise Zone Investment Deduction (EZID), which allows taxpayers making qualified investments, as defined in IC 6-1.1-45-7, in an enterprise zone to obtain a 100% abatement on the investment for ten years; and
- WHEREAS, the Zone contains parts of several Tax Increment Finance (TIF) areas, as shown on the map attached hereto as Attachment A and incorporated herein by reference, in which TIF revenues have been included in revenue forecasts for City projects, and abatement of 100% of new assessed value could significantly impair existing long-term City agreements; and
- WHEREAS, IC 5-28-15-5(b) allows the legislative body of a municipality containing an Enterprise Zone to set participation fees for Zone businesses that receive incentives described in IC 5-28-15-3, which are tax credits or exemptions available under IC 5-28-15, IC 6-1.1-45, IC 6-3.1-7, IC 6-1.1-20.8, and IC 6-3-3-10 ("Incentives"); and
- WHEREAS, the Zone business participation fee, as established by the BUEA prior to enactment of IC 5-28-15-5(b), was 20% of the amount of the Incentive(s) received by the business, and it is desirable to maintain that participation fee except where an EZID would reduce TIF revenues from levels included in City revenue forecasts prior to enactment of the EZID legislation; and
- WHEREAS, if a Zone business is located within a TIF area and a taxpayer receives an EZID for such a Zone business for a qualified investment with a base year of 2005 or 2006, it is desirable to set the BUEA participation fee for such Zone business at 100% of the amount of the EZID; and
- WHEREAS, if a Zone business is located within a TIF area and receives an EZID for qualified investments for which the base year is any year other than 2005 or 2006, it is desirable to establish the Zone participation fee at 20% of the annual EZID amount; and
- WHEREAS, on February 14, 2006, the BUEA Board of Directors endorsed this ordinance and, thereby, approved the two tiers of Zone participation fees and the transfer of the higher tier to the City;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The Zone participation fee is 100% of the amount of the EZID for each year the EZID is in effect for each Zone business for which a taxpayer applies for and receives approval from the Monroe County Auditor that the taxpayer's proposed project is a qualified investment under IC 6-1.1-45-7 and the qualified investment is located in a TIF district and has a base year

of 2005 or 2006.

SECTION 2. The BUEA Board of Directors has agreed to transfer the participation fee authorized in Section 1 of this ordinance to the City and, once they have been received by the City, these fees shall be deposited by the Controller in the respective TIF district fund.

SECTION 3. If a taxpayer receives one or more Incentives other than an EZID for a qualified investment with a base year of 2005 or 2006 for a Zone business located within a TIF district, the Zone participation fee for each such Zone business is 20% of the amount of the Incentive(s) received for each year an Incentive is received.

SECTION 4. The map of the Zone and intersecting TIF districts, referred to in the fourth Whereas clause as Attachment A, shall be attached to the ordinance and incorporated by reference into the ordinance. In accordance with I.C. 36-1-5-4, two copies of this map are on file in the Office of the City Clerk for public inspection.

SECTION 5. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this ______ day of ______, 2006.

CHRIS STURBAUM, President Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2006.

REGINA MOORE, Clerk City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2006.

MARK KRUZAN, Mayor City of Bloomington

SYNOPSIS

This ordinance establishes the participation fee to the Bloomington Urban Enterprise Association for businesses located in the Enterprise Zone that receive an Enterprise Zone Investment Deduction (EZID). If the business is also located in a TIF district and the qualified investment has a base year of 2005 or 2006, the participation fee is 100% of the EZID; otherwise, the participation fee per year is 20%.



MARK KRUZAN MAYOR

SUSAN CLARK CONTROLLER

CITY OF BLOOMINGTON

401 N Morton St Post Office Box 100 Bloomington IN 47402 CONTROLLER'S OFFICE

p 812.349.3412 f 812.349.3456 controller@bloomington.in.gov

Memorandum

- To: Council Members
- From: Susan Clark and Lisa Abbott

cc: Mark Kruzan, Kevin Robling, James McNamara, Ron Walker and Susan Failey **Date:** February 7, 2006

Re: Ordinance 06-03: Revising Participation Fees for Certain Businesses Located Within the Bloomington Urban Enterprise Zone and a Tax Increment Finance Area that Receive an Enterprise Zone Investment Deduction

NEW PROPERTY TAX DEDUCTIONS

In 2005 the Indiana General Assembly amended Indiana Code in order to establish new property tax deductions for real and personal property improvements. **One of the changes will impact future Tax Increment Finance (TIF) revenues if the deduction is claimed, and could affect funding of public infrastructure improvements.** Together, the changes establish new tax abatement procedures that will replace much of the City of Bloomington's tax abatement program.

1. The Enterprise Zone Investment Deduction (EZID): IC 6-1.1-45

This establishes an abatement of up to 10 years for investments made in an enterprise zone. Eligible investments include the purchase of a building, new manufacturing equipment or production equipment; building improvement costs and new construction, among other items. If a taxpayer applies to the county auditor within the time limits and the auditor determines that the investment qualifies, the abatement takes effect without further action of any public bodies. The value of the abatement is 100 percent of the assessed value of the qualified investment each year, including both real and personal property, regardless of whether the investment is located within a TIF district.

2. The Investment Deduction: IC 6-1.1-12.4

This establishes a 3 year abatement for the redevelopment, development or rehabilitation of real property and the purchase of personal property that creates or retains employment. This deduction is <u>not</u> available for property located in a TIF district or in a Certified Technology Park (CTP). To obtain the abatement, the taxpayer files a notice with the Township Assessor if claiming a deduction on real property, or files a schedule with the annual personal property tax return to claim a deduction for personal property.

The amount of the deduction is the lesser of two million dollars or a percentage of the increase in assessed valuation resulting from the investment $(75\% - 1^{st}$ year, 50% - 2nd year or 25% - 3rd year).

Both changes to Indiana Code present new opportunities for tax abatement as well as new processes for obtaining approval of the abatement and maintaining annual compliance. In both cases, the City of Bloomington has no formal role in either approving or reviewing annual compliance.

Because the Investment Deduction (the 3-year abatement) is not available for property within a TIF or Certified Technology Park, and because it does not require any City review or approval, the remainder of this memorandum will focus solely on the 10-year EZID abatement.

BLOOMINGTON URBAN ENTERPRISE ASSOCIATION INVOLVEMENT

The EZID creates an additional (and significant) incentive for investment in the BUEA and a potential new source of revenue for it. Bloomington's enterprise zone covers most of downtown and near downtown, as shown on the attached map. Enterprise zones obtain revenue through the participation fee they receive when zone businesses receive enterprise zone tax credits. The process for enterprise zone tax credit revenues is as follows:

- A zone business claims a deduction for a particular year
- The business pays a percentage of the deduction (participation fee) to the UEA
- The business is required to reinvest a portion of their tax savings

The BUEA currently charges a 20 percent participation fee (the lowest in the state) for credits claimed by zone businesses. Historically, UEAs have relied upon the Inventory Personal Property Tax as its primary revenue source, but that has changed in recent years due to the elimination of the inventory tax effective with the year Pay 2007. Unlike most UEAs, which are facing declining revenues, the BUEA has experienced steady revenue in the past two years due largely to new investment in downtown Bloomington. (The BUEA gets 20% of the value of a tax credit based on interest income earned through loans made in the zone).

FISCAL IMPACT IF NO ACTION IS TAKEN

Although the EZID creates an attractive incentive for new investment in downtown Bloomington, a 10-year abatement property tax abatement may significantly affect revenues earmarked for public infrastructure improvement (as well as debt payments) vital to the continued improvement of our downtown area. This issue is of primary importance because of the existence of TIF districts within the enterprise zone.

Bloomington's enterprise zone contains portions of three existing TIF districts:

- Thomson/Walnut/Winslow TIF
- Adams Crossing TIF
- Downtown TIF

Known Projects	Estimated NAV Growth of Known Projects after Pay 2006		Conservative Estimate of TIF Revenue Lost Over the Life of the Abatement		Amount Already Included in Forecasts	
Thomson TIF	\$	31,800,000	\$	5,000,000	\$	2,500,000
Adams TIF		8,220,000		2,200,000		0
Downtown TIF		10,000,000		2,700,000		1,900,000
Grand Total	\$	50,020,000	\$	9,900,000	\$	4,400,000

The EZID could "cost" the City approximately \$9.9 million in TIF revenue over the life of the TIF districts. These estimates include all projects of which we are currently aware, although some of them are only in the planning stages.

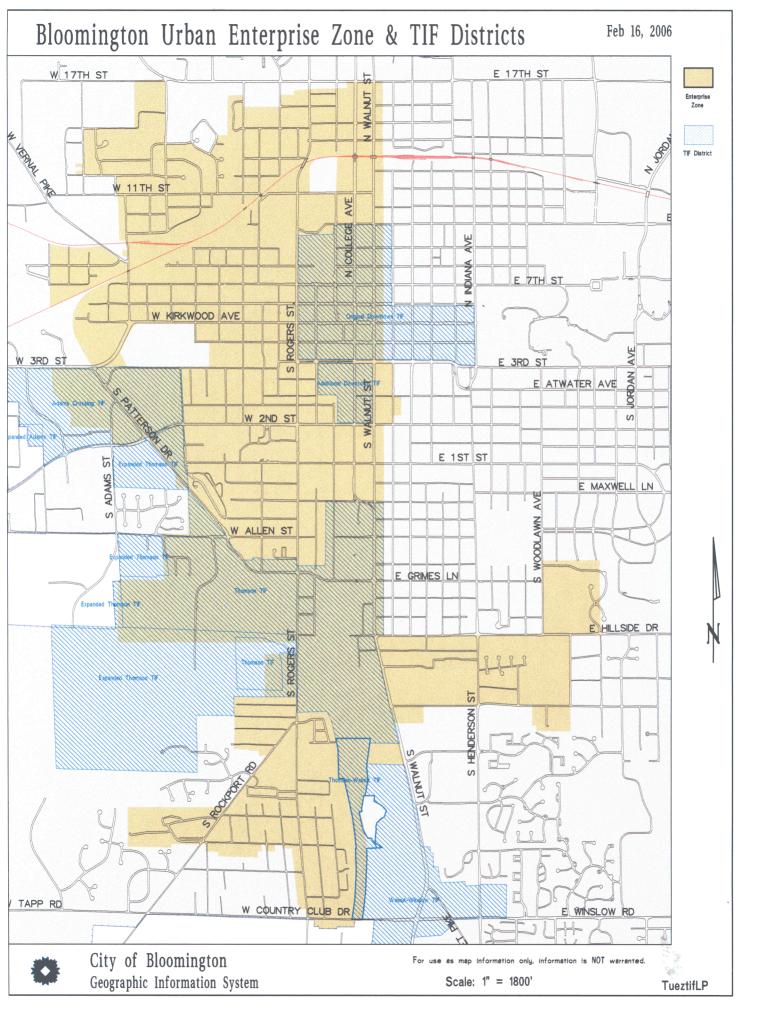
The \$4.4 million revenue forecast represented approximately \$2.5 million in revenues from Cook Pharmica in the Thomson TIF and \$1.9 million in revenues from Hilton Garden Inn in the Downtown TIF. The loss of \$2.5 million in funding in the Thomson TIF will not have a direct affect on any current debt service obligations.

However, the loss of \$1.9 million in Downtown TIF revenues (from the Hilton Garden Inn project) has a significant impact in funding for public improvements. Downtown TIF funds are currently forecast to subsidize lease payments for the Regester and 7th & Walnut Garages through 2023, the year that TIF funds are forecast to be depleted (the TIF actually expires in 2015). If revenues from the Hilton Garden Inn are excluded from the Downtown TIF, it is estimated that the fund will be depleted (and the garage subsidy ceased) in 2020. It should be noted, that revenues in the Downtown TIF fund were never expected to subsidize the garage leases through the entire terms of the leases. (The Regester lease ends in 2033 and the 7th & Walnut lease ends in 2030).

ORDINANCE 06-03

Ordinance 06-03 sets the participation fee to 100% for an enterprise zone business claiming the EZID if the property receiving the deduction is located within a designated TIF district and **<u>if the qualified investment has a base year of 2005 or 2006</u>.** Any participation fees received by the BUEA will be paid to the City of Bloomington within thirty (30) business days of receipt for deposit into the appropriate TIF fund. This essentially protects TIF revenue growth already projected for the years payable 2006 and 2007. Under the proposed Ordinance 06-03 participation fees for other property classes will remain at 20%.

Feel free to contact me by email at <u>clarks@bloomington.in.gov</u> or by phone at 349-3412 or Lisa Abbott by email at <u>abbottl@bloomington.in.gov</u> or by phone at 349-3576 at any time.



Ordinances 06-04 and 06-05

Bingham • McHale LLP attorneys at law MEMORANDUM

TO:	Vickie Renfrow, Assistant City Attorney		
FROM:	Sue Beesley		
DATE:	February 7, 2005		
SUBJECT:	Ordinances amending Ordinance Nos. 05-12 and 05-35		

In 2005, the Common Council of the City of Bloomington, Indiana adopted Ordinance No. 05-12 authorizing the issuance of waterworks revenue bonds in an amount not to exceed \$5,320,000 and Ordinance No. 05-35 authorizing the issuance of sewage works revenue bonds in an amount not to exceed \$18,930,000. At the time of adoption, it was contemplated that the bonds would be issued through the State of Indiana's Revolving Loan Fund (SRF) Program or sold at a competitive sale. It has now been determined that due to timing or because some of the projects may not qualify for the SRF Program, it may be in the best interest of the City, financially, to sell the bonds to the Indiana Bond Bank. The previous Ordinances did not authorize a sale to the Indiana Bond Bank and the amendments add the flexibility of authorizing such a sale as an option for the City.

Additionally, some technical changes were made since there has been a change in bond counsel since the adoption of the Ordinances in 2005.

ORDINANCE 06-04

AN ORDINANCE AMENDING <u>ORDINANCE 05-12</u> -Re: To Allow Sale of Waterworks Bonds Through The Indiana Bond Bank

- WHEREAS, the Common Council of the City of Bloomington, Indiana ("City") adopted Ordinance 05-12 ("Ordinance") on April 20, 2005, which Ordinance authorizes the construction of the Project (as defined in the Ordinance) and the issuance of waterworks bond anticipation notes ("BANs") and waterworks revenue bonds ("Bonds") to provide funds for the financing thereof; and
- WHEREAS, the Ordinance provided for sale of the bonds at a competitive sale or to the State of Indiana's DWSRF Program; and,
- WHEREAS, the Common Council has been advised by the financial advisor and legal counsel of the City that it may be in the best interest of the City to sell the Bonds to the Indiana Bond Bank and that such an option may be added to the Ordinance; and
- WHEREAS, the Common Council finds that the amendment of the Ordinance will not adversely affect the rights of the owners of any BANs previously issued pursuant to the Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

SECTION 1. Section III of the Ordinance shall be deleted and replaced with the following:

SECTION III. <u>Issuance of Bonds</u>. The City shall issue its waterworks revenue bonds, in one or more series, in the aggregate principal amount not to exceed Five Million Three Hundred Twenty Thousand Dollars (\$5,320,000) to be designated "Waterworks Revenue Bonds of 200__, Series _____," to be completed with the appropriate year and series designation ("Bonds"). The Bonds shall be issued for the purpose of procuring funds to apply on the cost of said Project, refunding the BANs, if issued, and issuance costs, including the costs of Bond Insurance and a Surety Bond, if acquired. If the Bonds are sold in more than one series, the sale and issuance of any series of Bonds which follows the issuance and sale of the first series of Bonds hereunder shall be subject to the requirements established by Section 24 and 25(f) of this ordinance.

The Bonds shall be issued in fully registered form, numbered consecutively from one (1) upward, shall bear interest at a rate or rates not exceeding seven percent (7%) per annum (the exact rate or rates to be determined by bidding, by negotiation with the SRF Program or by negotiation with the Indiana Bond Bank). For any series of Bonds sold to the DWSRF Program, said Bonds shall be (i) issued and sold at a price not less than the par value thereof; (ii) issued in denominations of \$1 or integral multiples thereof; and (iii) be originally dated as of the date of delivery thereof. For any series of Bonds sold to a purchaser other than the DWSRF Program, said Bonds shall be (i) issued and sold at a price not less than 98.5% of the par value thereof; (ii) issued in denominations of \$5,000 or integral multiples thereof; and (iii) be originally dated as of first day of the month in which delivered or sold, or the date of delivery thereof as determined by the Controller with the advice of the City's financial advisor. Interest on the Bonds shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Controller with the advice of the City's financial advisor. Principal of the Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined), and such Bonds shall mature semiannually on January 1 and July 1, or be subject to mandatory sinking fund redemption on January 1 and July 1, over a period ending no later than twenty years after substantial completion of the Project. Each series of Bonds shall mature in such amounts that will either (i) produce as level annual debt service as practicable taking into account the denominations of the Bonds; (ii) produce as level annual debt service as practicable taking into account the denominations of the Bonds and the annual debt service on the Outstanding Bonds

and any other series of Bonds previously issued hereunder; or, if the Bonds are sold to the DWSRF Program, (iii) produce such level of annual debt service as may be required by the DWSRF Program and as set forth in the FAA for the Bonds.

The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the waterworks of the City after deduction only for the payment of the reasonable expenses of operation and maintenance) of the waterworks of the City, on a parity with the Outstanding Bonds. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser of the Bonds. Such term bonds shall have a stated maturity or maturities of January 1 or July 1, on the dates as determined by the purchaser of the Bonds, but in no event later than the final serial maturity date of the Bonds as determined in accordance with the above paragraph of this Section 3. The term bonds shall be subject to mandatory sinking fund redemption and payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest, to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph of this Section 3.

Any reference herein to the DWSRF Program as the purchaser of any series of Bonds shall be deemed to include circumstances wherein the Indiana Bond Bank (or any other nominal owner of the Bonds) is the registered owner of the Bonds for the benefit of the DWSRF Program.

SECTION 2. Section XI of the Ordinance shall be deleted and replaced with the following:

SECTION XI. <u>Official Statement; Bond Insurance; Surety Bond</u>. (a) If any series of Bonds is sold to a purchaser other than the DWSRF Program or the Indiana Bond Bank, distribution of an Official Statement (preliminary and final) prepared by Crowe Chizek and Company, LLC, on behalf of the City, is hereby approved and the Mayor, the Controller or the Clerk is hereby authorized and directed to execute such Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor, the Controller or the Clerk is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission and as in effect on the date of issue of the Bonds ("Rule").

(b) If any series of Bonds is sold to the DWSRF Program or the Indiana Bond Bank, the City shall receive an investment letter from the Purchaser which satisfies any applicable state and federal securities laws. As an alternative to the preparation and distribution of an Official Statement as set forth in paragraph (a) above, the City may accept from any purchaser of the Bonds an investment letter which satisfies any applicable state and federal securities laws.

(c) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain Bond Insurance for any series of the Bonds, the City hereby authorizes the purchase of such Bond Insurance. In such case, the Mayor, the Controller, the Clerk and the Director of the City of Bloomington Utilities are hereby authorized to execute and deliver all agreements with the provider of the Bond Insurance to the extent necessary to comply with the terms of such Bond Insurance and the commitment to issue such Bond Insurance. The acquisition of Bond Insurance is hereby deemed economically advantageous if the difference between the present value of (i) the total debt service on the Bonds if issued without the Bond Insurance, is greater than the cost of the premium for the Bond Insurance. The cost of obtaining Bond Insurance shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

(d) A Surety Bond may be purchased by the City to satisfy, in whole or in part, the Debt Service Reserve Account for any series of Bonds issued under this ordinance. The Mayor, the Controller, the Clerk or the Director of the City of Bloomington Utilities is hereby authorized to execute and deliver the necessary agreements with the provider of the Surety Bond providing for, among other matters, the reimbursement to such provider of amounts drawn under the Surety Bond. Each of these officials are hereby authorized and directed to complete, execute and attest any agreement pertaining to such a Surety Bond on behalf of the City so long as its provisions are consistent with this ordinance. In the event the provider of the Surety Bond is not rated in the highest rating category by Standard & Poor's Corporation and Moody's Investors Service, the City shall obtain the consent of the DWSRF Program. The cost of obtaining a Surety Bond shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

SECTION 3. Section XII of the Ordinance shall be deleted and replaced with the following:

SECTION XII. Bond Sale Notice. If any series of Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of such sale in The Herald-Times, the only newspaper published in the City, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in The Herald-Times and the Court & Commercial Record, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the Court & Commercial Record, and a notice or summary notice of sale may also be published in The Bond Buyer in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check in an amount equal to 1% of the principal amount of the Bonds described in the notice and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default; that bidders for said Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 98.5% of the face amount of the Bonds will be The opinion of Bingham McHale LLP, bond counsel of Indianapolis, considered. Indiana, approving the legality of said Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted its bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to competitive sale, the Controller may negotiate the sale of any series of the Bonds to the DWSRF Program or the Indiana Bond Bank. The Mayor and the Controller are hereby authorized to (i) submit an application to the DWSRF Program or the Indiana Bond Bank, (ii) execute a purchase agreement with the Indiana Bond Bank

with terms conforming to this ordinance and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this ordinance

If any series of Bonds is sold to the DWSRF Program, the FAA for such Bonds and the Project shall be executed by the City and the State of Indiana. The substantially final form of FAA attached hereto as <u>Exhibit C</u> and incorporated herein by reference is hereby approved by the Common Council. The Mayor and the Controller are hereby authorized to approve, execute and deliver said FAA, and to approve any such changes in form or substance thereto which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

SECTION 4. Section XIII of the Ordinance shall be deleted and replaced with the following:

SECTION XIII. <u>Use of Proceeds</u>. The accrued interest received at the time of the delivery of the Bonds and premium, if any, shall be deposited in the Waterworks Sinking Fund ("Sinking Fund"). The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Bloomington, Waterworks Construction Account" ("Construction Account"). All funds deposited to the credit of said Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining the legal services of Bingham McHale LLP shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

With respect to any Bonds sold to the DWSRF Program, to the extent that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, the City shall, in consultation with the DWSRF Program, reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve the level of annual debt service as described in Section 3 hereof.

SECTION 5. Section XXVIII of the Ordinance shall be deleted and replaced with the following:

SECTION XXVIII. <u>Amendments with Consent of Bondholders</u>. Subject to the terms and provisions contained in this Section and Section 25(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the DWSRF Program or the Indiana Bond Bank, the City shall obtain the prior written consent of the State of Indiana or to the Indiana Bond Bank; and provided, further, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or
- (d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds issued pursuant to the provisions of this ordinance then outstanding, shall thereafter be determined exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

SECTION 6. The Common Council finds that the amendment of the Ordinance as herein authorized will not adversely affect the rights of the owners of any BANs previously issued pursuant to the Ordinance.

SECTION 7. The Utility Service Board is authorized to publish any notice of adoption of this ordinance as may be required by law.

SECTION 8. All other provisions of the Ordinance shall remain in full force and effect.

SECTION 9. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington on the _____ day of ______, 2006.

CHRIS STURBAUM, President Bloomington Common Council

Attest:

REGINA MOORE, Clerk City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this _____ day of _____, 2006.

REGINA MOORE, Clerk City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this _____ day of _____, 2006.

MARK KRUZAN, Mayor City of Bloomington

SYNOPSIS

This Ordinance amends <u>Ordinance 05-12</u> which authorized the issuance of waterworks revenue bonds by amending the language of <u>Ordinance 05-12</u> to allow more options in arranging the financing of such projects to include the Indiana Bond Bank.

ORDINANCE 05-12 Re: To Allow Sale of Waterworks Bonds Through The Indiana Bond Bank

AS AMENDED BY ORDINANCE 06-04

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SECTION III. <u>Issuance of Bonds</u>. The City shall issue its waterworks revenue bonds, in one or more series, in the aggregate principal amount not to exceed Five Million Three Hundred Twenty Thousand Dollars (\$5,320,000) to be designated "Waterworks Revenue Bonds of 200__, Series _____," to be completed with the appropriate year and series designation ("Bonds"). The Bonds shall be issued for the purpose of procuring funds to apply on the cost of said Project, refunding the BANs, if issued, and issuance costs, including the costs of Bond Insurance and a Surety Bond, if acquired. If the Bonds are sold in more than one series, the sale and issuance of any series of Bonds which follows the issuance and sale of the first series of Bonds hereunder shall be subject to the requirements established by Section 24 and 25(f) of this ordinance.

The Bonds shall be issued in fully registered form, numbered consecutively from one (1) up and upward shall bear interest at a rate or rates not exceeding seven percent (7%) per annum (the exact rate or rates to be determined by bidding, or by negotiation with the SRF Program or by negotiation with the Indiana Bond Bank). For any series of Bonds sold to the DWSRF Program, said Bonds shall be (i) issued and sold at a price not less than the par value thereof; (ii) issued in denominations of \$1 or integral multiples thereof; and (iii) be originally dated as of the date of delivery thereof. For any series of Bonds sold to a purchaser other than the DWSRF Program, said Bonds shall be (i) issued and sold at a price not less than 98.5% of the par value thereof; (ii) issued in denominations of \$5,000 or integral multiples thereof; and (iii) be originally dated as of first day of the month in which delivered or sold, or the date of delivery thereof as determined by the Controller with the advice of the City's financial advisor. Interest on the Bonds shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Controller with the advice of the City's financial advisor. Principal of the Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined), and such Bonds shall mature semiannually on January 1 and July 1, or be subject to mandatory sinking fund redemption on January 1 and July 1, over a period ending no later than twenty years after substantial completion of the Project. Each series of Bonds shall mature in such amounts that will either (i) produce as level annual debt service as practicable taking into account the denominations of the Bonds; (ii) produce as level annual debt service as practicable taking into account the denominations of the Bonds and the annual debt service on the Outstanding Bonds and any other series of Bonds previously issued hereunder; or, if the Bonds are sold to the DWSRF Program, (iii) produce such level of annual debt service as may be required by the DWSRF Program and as set forth in the FAA for the Bonds.

The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the waterworks of the City after deduction only for the payment of the reasonable expenses of operation and maintenance) of the waterworks of the City, on a parity with the Outstanding Bonds. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser of the Bonds. Such term bonds shall have a stated maturity or maturities of January 1 or July 1, on the dates as determined by the purchaser of the Bonds, but in no event later than the final serial maturity date of the Bonds as determined in accordance with the above paragraph of this Section 3. The term bonds shall be subject to mandatory sinking fund redemption and payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest, to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph of this Section 3.

Any reference herein to the DWSRF Program as the purchaser of any series of Bonds shall be deemed to include circumstances wherein the Indiana Bond Bank (or any other nominal owner of the Bonds) is the registered owner of the Bonds for the benefit of the DWSRF Program.

SECTION XI. Official Statement; Bond Insurance; Surety Bond.

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(a) If any series of Bonds issold to a purchaser other than the DWSRF Program or **the Indiana Bond Bank**, distribution of an Official Statement (preliminary and final) prepared by Crowe Chizek and Company, LLC, on behalf of the City, is hereby approved and the Mayor, the Controller or the Clerk is hereby authorized and directed to execute such Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor, the Controller or the Clerk is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission and as in effect on the date of issue of the Bonds ("Rule").

(b) If any series of Bonds is sold to the DWSRF Program or the Indiana Bond Bank, the City shall receive an investment letter from the Purchaser DWSRF Program which satisfies any applicable state and federal securities laws. As an alternative to the preparation and distribution of an Official Statement as set forth in paragraph (a) above, the City may accept from any purchaser of the Bonds an investment letter which satisfies any applicable state and federal securities laws.

(c) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain Bond Insurance for any series of the Bonds, the City hereby authorizes the purchase of such Bond Insurance. In such case, the Mayor, the Controller, the Clerk and the Director of the City of Bloomington Utilities are hereby authorized to execute and deliver all agreements with the provider of the Bond Insurance to the extent necessary to comply with the terms of such Bond Insurance and the commitment to issue such Bond Insurance. The acquisition of Bond Insurance is hereby deemed economically advantageous if the difference between the present value of (i) the total debt service on the Bonds if issued without the Bond Insurance and (ii) the total debt service on the Bonds if issued with the Bond Insurance shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

(d) A Surety Bond may be purchased by the City to satisfy, in whole or in part, the Debt Service Reserve Account for any series of Bonds issued under this ordinance. The Mayor, the Controller, the Clerk or the Director of the City of Bloomington Utilities is hereby authorized to execute and deliver the necessary agreements with the provider of the Surety Bond providing for, among other matters, the reimbursement to such provider of amounts drawn under the Surety Bond. Each of these officials are hereby authorized and directed to complete, execute and attest any agreement pertaining to such a Surety Bond on behalf of the City so long as its provisions are consistent with this ordinance. In the event the provider of the Surety Bond is not rated in the highest rating category by Standard & Poor's Corporation and Moody's Investors Service, the City shall obtain the consent of the DWSRF Program. The cost of obtaining a Surety Bond shall be considered as a part of the cost of issuance of the Bonds and may be paid out of the proceeds of the Bonds or out of other funds of the waterworks.

SECTION XII. <u>Bond Sale Notice</u>. If any series of Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of such sale in *The Herald-Times*, the only newspaper published in the City, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in *The Herald-Times* and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the *Court & Commercial Record*, and a notice or summary notice of sale may also be published in *The Bond Buyer* in New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice may

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provide, among other things, that each bid shall be accompanied by a certified or cashier's check in an amount equal to 1% of the principal amount of the Bonds described in the notice and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default; that bidders for said Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 98.5% of the face amount of the Bonds will be considered. The opinion of **Bingham McHale LLP** Sommer Barnard Attorneys, PC, bond counsel of Indianapolis, Indiana, approving the legality of said Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted its bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to competitive sale, the Controller may negotiate the sale of any series of the Bonds to the DWSRF Program or the Indiana Bond Bank. The Mayor and the Controller are hereby authorized to (i) submit an application to the DWSRF Program or the Indiana Bond
Bank, (ii) execute a purchase agreement with the Indiana Bond Bank with terms conforming to this ordinance and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this ordinance.

If any series of Bonds is sold to the DWSRF Program, the FAA for such Bonds and the Project shall be executed by the City and the State of Indiana. The substantially final form of FAA attached hereto as $\underline{\text{Exhibit C}}$ and incorporated herein by reference is hereby approved by the Common Council. The Mayor and the Controller are hereby authorized to approve, execute and deliver said FAA, and to approve any such changes in form or substance thereto which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

SECTION XIII. <u>Use of Proceeds</u>. The accrued interest received at the time of the delivery of the Bonds and premium, if any, shall be deposited in the Waterworks Sinking Fund ("Sinking Fund"). The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Bloomington, Waterworks Construction Account" ("Construction Account"). All funds deposited to the credit of said Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds or BANs. The cost of obtaining the legal services of **Bingham McHale LLP** Sommer Barnard Attorneys, PC shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

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With respect to any Bonds sold to the DWSRF Program, to the extent that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, the City shall, in consultation with the DWSRF Program, reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve the level of annual debt service as described in Section 3 hereof.

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SECTION XXVIII. <u>Amendments with Consent of Bondholders</u>. Subject to the terms and provisions contained in this Section and Section 25(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right, from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance or ordinances supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the DWSRF Program **or the Indiana Bond Bank**; and provided, further, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or
- (b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or
- (d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (f) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds issued pursuant to the provisions of this ordinance then outstanding, shall thereafter be determined exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds issued pursuant to this ordinance then outstanding.

ORDINANCE 06-05

AN ORDINANCE AMENDING <u>ORDINANCE 05-35</u> -Re: To Allow Sale of Sewage Works Bonds Through The Indiana Bond Bank

- WHEREAS, the Common Council of the City of Bloomington, Indiana ("City") adopted Ordinance 05-35 ("Ordinance") on December 21, 2005, which Ordinance authorizes the construction of the Project (as defined in the Ordinance) and the issuance of sewage works bond anticipation notes ("BANs") and sewage works revenue bonds ("Bonds") to provide funds for the financing thereof; and
- WHEREAS, the Ordinance provided for sale of the bonds at a competitive sale or to the State of Indiana's SRF Program; and,
- WHEREAS, the Common Council has been advised by the financial advisor and legal counsel of the City that the financing of the additional projects may be accomplished pursuant to the terms of the Ordinance or pursuant to additional financing terms that may be added to the Ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

SECTION 1. Section II(2) of the Ordinance shall be deleted and replaced with the following:

SECTION II.

(2) The City shall issue in one or more series its "Sewage Works Revenue Bonds of ______, Series ____," to be completed with the year in which the bonds are issued and series designation (the "Bonds") in an aggregate principal amount not to exceed \$18,930,000 for the purpose of procuring funds to be applied on the cost of the Project, funding a reserve for the Bonds, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project, including a premium for municipal bond insurance and a surety for the reserve. One or more series of Bonds may be issued on taxable basis if bond counsel determines that any such series cannot be issued on a taxexempt basis.

The Bonds shall be issued in the denomination of One Dollar (\$1) each if sold to the Authority through the SRF Program to finance Eligible Costs (as defined in the Financial Assistance Agreement) or Five Thousand Dollars (\$5,000) each or integral multiples thereof, if sold to finance other costs of the Project, numbered consecutively from 1 upward, dated as of the date of delivery (or, if sold to finance other costs of the Project, may be dated the first day of the month in which they are sold, if the City so elects, based upon the advice of its financial advisor) and interest shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or July 1 after interest on the Bonds shall begin to accrue as designated by the Controller of the City with the advice of the City's financial advisor, and for Bonds sold to the Authority through the SRF Program, as set forth in the Financial Assistance Agreement. The Bonds shall be sold to the Authority through the SRF Program at a price of 100% of the par value thereof and, otherwise, at a price of not less than 98.75% of the par value thereof (or such higher percentage of the par value of the Bonds as the Controller of the City, with the advice of the financial advisor to the City, shall determine prior to the sale of the Bonds). The Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall bear interest at a rate or rates not exceeding eight percent (8%) per annum (the exact rate or rates to be determined by bidding or as negotiated with the Indiana Bond Bank or with the Authority in conjunction with the SRF Program) and mature, or shall be subject to mandatory sinking fund redemption if term bonds are issued, annually on January 1 of each year over a period not to exceed thirty (30) years, or over a period not to exceed twenty (20) years from the date of substantial completion of the Project for Bonds sold to the Authority through the SRF Program, and in such amounts as will achieve as level annual debt service as practicable.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the successful bidder. Such term bonds shall have a stated maturity or maturities of January 1 in the years as determined by the successful bidder, but such years must correspond to the years and not extend beyond the final year of maturity ultimately established in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates in accordance with the payment schedule that is implemented in accordance with the above paragraph.

Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of Net Revenues under this ordinance.

SECTION 2. Section VIII of the Ordinance shall be deleted and replaced with the following:

Bond Sale Notice. If any series of Bonds will be sold at a SECTION VIII. competitive sale, the Controller shall cause to be published either (i) a notice of bond sale in the *Bloomington Herald-Times*, the only newspaper published in the City, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the Bloomington Herald-Times and the Court & Commercial Record all in accordance with IC 5-1-11 and IC 5-3-1. A notice of bond sale may also be published one time in the Court & Commercial Record, and a summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so The notice may provide, among other things, that each bid shall be advisable accompanied by a certified or cashier's check or a financial surety bond in an amount equal to 1% of the principal amount of the Bonds described in the notice to guarantee performance on the part of the bidder. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State of Indiana, and such bond must be submitted to the City prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit to the City a certified or cashier's check (or wire transfer such amount as instructed by the City) not later than 3:30 p.m. (Bloomington Time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for said Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 98.75% of the face amount of the Bonds will be considered. The opinion of Bingham McHale LLP, bond counsel of Indianapolis, Indiana, approving the legality of said Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities and adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further

advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Controller may negotiate the sale of any series of Bonds to the Authority in conjunction with the SRF Program or to the Indiana Bond Bank. The Mayor, Controller and Clerk are hereby authorized to (i) submit an application to the Authority or the Indiana Bond Bank, and (ii) sell such Bonds upon such terms as are acceptable to the Mayor, Controller and the Clerk consistent with the terms of this ordinance. The Financial Assistance Agreement for the Bonds and the Project shall be executed by the City and the Authority. The substantially final form of Financial Assistance Agreement attached hereto as <u>Exhibit B</u> and incorporated herein by reference is hereby approved by the Common Council and the Mayor, the Controller, and the Clerk are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

SECTION 3. Section IX of the Ordinance shall be deleted and replaced with the following:

SECTION IX. Use of Proceeds and Costs of Issuance. The proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Bloomington, Sewage Works Construction Account" (the "Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemental. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds. The cost of obtaining the legal services of Bingham McHale, shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

With respect to any series of Bonds sold to the SRF Program to finance Eligible Costs, to the extent that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, the City shall reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve as level annual debt service as practicable as described in Section II.(2).

SECTION 4. Section XXII of the Ordinance shall be deleted and replaced with the following:

SECTION XXII. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if any series of Bonds or BANs are sold to the Authority in connection with the SRF Program or the Indiana Bond Bank to finance Eligible Costs, the City shall obtain the prior written consent of the Authority or the Indiana Bond Bank, as applicable; and provided further, that nothing herein contained shall permit or be construed as permitting:

- (1) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or
- (2) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (3) The creation of a lien upon or a pledge of the revenues of the sewage works ranking prior to the pledge thereof created by this ordinance; or
- (4) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (5) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (6) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent $(66\ 2/3\%)$ in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

SECTION 5. The Utility Service Board is authorized to publish any notice of adoption of this ordinance as may be required by law.

SECTION 6. All other provisions of the Ordinance shall remain in full force and effect.

SECTION 7. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington on the _____ day of _____, 2006.

CHRIS STURBAUM, President Bloomington Common Council Attest:

REGINA MOORE, Clerk City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this _____ day of _____, 2006.

REGINA MOORE, Clerk City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this _____ day of _____, 2006.

MARK KRUZAN, Mayor City of Bloomington

SYNOPSIS

This Ordinance amends <u>Ordinance 05-35</u> which authorized the issuance of sewage works revenue bonds for wastewater and storm water projects. It amends the language of <u>Ordinance 05-35</u> to allow more options in arranging the financing of such projects to include the Indiana Bond Bank.

ORDINANCE 05-35 Re: To Allow Sale of Sewage Works Bonds Through The Indiana Bond Bank

AS AMENDED BY ORDINANCE 06-05

SECTION I. Issuance of BANs and Bonds; Definitions.

(1) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of said Project. The City shall issue its BANs, in one or more series, in an aggregate amount not to exceed Eighteen Million Nine Hundred Thirty Thousand Dollars (\$18,930,000) to be designated "Sewage Works Bond Anticipation Notes, Series ____," to be completed with the appropriate series designation. Said BANs shall be numbered consecutively from 1 upward, shall be in multiples of One Dollar (\$1) as designated in the purchase agreement for said BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 6% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs, which rate or rates may be variable, set in accordance with market standards), payable upon maturity. Each series of the BANs will mature no later than two (2) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 6% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs, which rate or rates may be variable, set in accordance with market standards). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to IC 5-1-14-5 and may be sold to the Authority through the SRF Program pursuant to IC 4-4-11 and IC 13-18-13, or to any other purchaser pursuant to IC 5-1-14-5. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act; provided, however, the City is hereby authorized to pledge Net Revenues of the sewage works to the payment of the principal of and interest on the BANs. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the sewage works of the City after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the City, on a parity with the Outstanding Bonds.

(2) The City shall issue in one or more series its "Sewage Works Revenue Bonds of ______, Series _____," to be completed with the year in which the bonds are issued and series designation (the "Bonds") in an aggregate principal amount not to exceed \$18,930,000 for the purpose of procuring funds to be applied on the cost of the Project, funding a reserve for the Bonds, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project, including a premium for municipal bond insurance and a surety for the reserve. One or more series of Bonds may be issued on taxable basis if bond counsel determines that any such series cannot be issued on a tax-exempt basis.

The Bonds shall be issued in the denomination of One Dollar (\$1) each if sold to the Authority through the SRF Program to finance Eligible Costs (as defined in the Financial Assistance Agreement) or Five Thousand Dollars (\$5,000) each or integral multiples thereof, if sold to finance other costs of the Project, numbered consecutively from 1 upward, dated as of the date of delivery (or, if sold to finance other costs of the Project, may be dated the first day of the month in which they are sold, if the City so elects, based upon the advice of its financial advisor) and interest shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or July 1 after interest on the Bonds shall begin to accrue as designated by the Controller of the City with the advice of the City's financial advisor, and for Bonds sold to the Authority through the SRF Program, as set forth in the Financial Assistance Agreement. The Bonds shall be sold to the Authority through the SRF Program at a price of 100% of the par value thereof and, otherwise, at a price of not less than 98.75% of the par value thereof (or such higher percentage of the par value of the Bonds as the Controller of the City, with the advice of the financial advisor to the City, shall determine prior to the sale of the Bonds). The Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall bear interest at a rate or rates not exceeding eight percent (8%) per annum (the exact rate or rates to be determined by bidding or as negotiated

with the Indiana Bond Bank or with the Authority in conjunction with the SRF Program) and mature, or shall be subject to mandatory sinking fund redemption if term bonds are issued, annually on January 1 of each year over a period not to exceed thirty (30) years, or over a period not to exceed twenty (20) years from the date of substantial completion of the Project for Bonds sold to the Authority through the SRF Program, and in such amounts as will achieve as level annual debt service as practicable.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the successful bidder. Such term bonds shall have a stated maturity or maturities of January 1 in the years as determined by the successful bidder, but such years must correspond to the years and not extend beyond the final year of maturity ultimately established in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates in accordance with the above paragraph.

Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of Net Revenues under this ordinance.

(3) The following words and phrases shall have the following meanings unless the context otherwise requires:

"Act" means the provisions of IC 36-9-23, as in effect on the date of delivery of the Bonds.

"Ambac" means Ambac Assurance Corporation, a Wisconsin domiciled stock insurance company.

"Authority" means the Indiana Finance Authority.

"Bond and Interest Account" means the account continued within the Sewage Works Sinking Fund of Section 15 of this ordinance.

"Financial Assistance Agreement" means the agreement between the City and the Authority pertaining to any series of Bonds sold to the Authority through the SRF Program and the portion of the Project financed with such series of Bonds.

"General Account" means the account continued in Section 14 of this ordinance.

"MBIA" means MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504.

"1999 Bonds" means Sewage Works Revenue Bonds of 1999, Series A, dated May 1, 1999, now outstanding in the principal amount of \$7,400,000.

"1999 Financial Guaranty Agreement" means the agreement between the City and MBIA pertaining to the 1999 Surety Bond.

"1999 Municipal Bond Insurance Policy" means the municipal bond insurance providing the guarantee of the payment of debt service on the 1999 Bonds.

"1999 Surety Bond" shall mean the debt service reserve fund surety bond held in the Reserve Account for the 1999 Bonds and purchased from MBIA.

"Qualified Surety Bond" means a surety bond issued by an insurance company rated in the highest rating category by Standard & Poor's and Moody's and, if rated by A.M. Best & Company, must also be rated in the highest rating category by A.M. Best & Company. If any series of Bonds is purchased by the Authority, the surety bond securing such series shall be obtained from a company, and in a form, acceptable to the Authority. Further, the City's reimbursement obligation to any such bond insurer shall be subject to the prior and superior interest of, and shall be subordinate to the payment obligations due, the holders of the Outstanding Bonds, the Bonds, and any Parity Bonds.

"Registrar and Paying Agent" means the financial institution selected to act as the registrar and paying agent for the Bonds.

"Reserve Account" means the account continued within the Sewage Works Sinking Fund in Section 15 of this ordinance.

"SRF Program" means the State Revolving Loan Fund Program administered by the Authority in accordance with IC 13-18-13, to which the City expects to sell one or more series of Bonds issued under this ordinance.

"Sewage Works Improvement Fund" means the fund continued in Section 16 of this ordinance.

"Sewage Works Sinking Fund" means the sinking fund continued in Section 15 of this ordinance.

"2000A Bonds" means the "Sewage Works Revenue Bonds of 2000, Series A," dated April 7, 2000, now outstanding in the principal amount of \$3,326,000.

"2000B Bonds" means the "Sewage Works Revenue Bonds of 2000, Series B," dated June 30, 2000, now outstanding in the amount of \$7,990,000.

"2000C Bonds" means the "Sewage Works Revenue Bonds of 2000, Series C," dated December 29, 2000, now outstanding in the principal amount of \$3,860,000.

"2000 Guaranty Agreement" means the agreement between the City and Ambac pertaining to the 2000 Surety Bond.

"2000 Surety Bond" shall mean the debt service reserve fund surety bond held in the Reserve Account for the 2000A Bonds and 2000B Bonds and purchased from Ambac.

"2003 Bonds" means the Sewage Works Refunding Revenue Bonds of 2003, dated March 27, 2003, now outstanding in the principal amount of \$16,955,000.

"2003 Financial Guaranty Agreement" means the agreement between the City and MBIA pertaining to the 2003 Surety Bond.

"2003 Municipal Bond Insurance Policy" means the municipal bond insurance providing the guarantee of the payment of debt service on the 2003 Bonds.

"2003 Surety Bond" shall mean the debt service reserve fund surety bond held in the Reserve Account for the 2003 Bonds and purchased from MBIA.

"2004 Bonds" means the Sewage Works Revenue Bonds of 2004, dated December 31, 2004, now outstanding in the maximum principal amount of \$5,800,000.

. . .

SECTION III. Bond Sale Notice.

If any series of Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of bond sale in the *Bloomington Herald-Times*, the only newspaper published in the City, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the Bloomington Herald-Times and the Court & Commercial Record all in accordance with IC 5-1-11 and IC 5-3-1. A notice of bond sale may also be published one time in the Court & Commercial Record, and a summary notice may also be published in The Bond Buyer in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check or a financial surety bond in an amount equal to 1% of the principal amount of the Bonds described in the notice to guarantee performance on the part of the bidder. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State of Indiana, and such bond must be submitted to the City prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit to the City a certified or cashier's check (or wire transfer such amount as instructed by the City) not later than 3:30 p.m. (Bloomington Time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for said Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and such interest rate or rates shall be in multiples of one-eighth (1/8)or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 98.75% of the face amount of the Bonds

will be considered. The opinion of Baker & Daniels LLP Bingham McHale LLP, bond counsel of Indianapolis, Indiana, approving the legality of said Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities and adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Controller may negotiate the sale of any series of

- Bonds to the Authority in conjunction with the SRF Program or to the Indiana Bond Bank. The Mayor, Controller and Clerk are hereby authorized to (i) submit an
- application to the Authority or the Indiana Bond Bank, and (ii) sell such Bonds upon such terms as are acceptable to the Mayor, Controller and the Clerk consistent with the terms of this ordinance. The Financial Assistance Agreement for the Bonds and the Project shall be executed by the City and the Authority. The substantially final form of Financial Assistance Agreement attached hereto as <u>Exhibit B</u> and incorporated herein by reference is hereby approved by the Common Council and the Mayor, the Controller, and the Clerk are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

<u>SECTION IX.</u> Use of Proceeds and Costs of Issuance. The proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Bloomington, Sewage Works Construction Account" (the "Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemental. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds. The cost of

obtaining the legal services of Ice Miller Bingham McHale, shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

With respect to any series of Bonds sold to the SRF Program to finance Eligible Costs, to the extent that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, the City shall reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve as level annual debt service as practicable as described in Section II.(2).

SECTION IIII. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if any series of Bonds or BANs are sold to the Authority in connection with the SRF Program **or the Indiana Bond Bank** to finance Eligible Costs, the City shall obtain the prior written

Indiana Bond Bank to finance Eligible Costs, the City shall obtain the prior written
consent of the Authority or the Indiana Bond Bank; and provided further, that nothing herein contained shall permit or be construed as permitting:

- (1) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or
- (2) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or

- (3) The creation of a lien upon or a pledge of the revenues of the sewage works ranking prior to the pledge thereof created by this ordinance; or
- (4) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (5) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (6) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

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In the Council Chambers of the Showers City Hall on Wednesday, May 4, 2005 at 7:30 pm with Council President Andy Ruff presiding over a Regular Session of the Common Council.

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

Council President Ruff gave the Agenda Summation

The minutes of February 2, 2005 were approved by a voice vote.

Jason Banach congratulated graduating students of Indiana University and spoke of the economic contributions the university makes to the community.

Chris Gaal announced that the annual letter carriers food drive will take place on Saturday May 14th. He noted that it is the largest food drive in the nation and that anyone interested in donating may leave non-perishable food items in their mailbox that day. Gaal said the Hoosier Hills Food Bank is the recipient of what is collected locally.

Gaal reported that Amy Goodman, host of the independent news show Democracy Now, will speak in Bloomington on Thursday May 5th at 7:30pm at the Buskirk-Chumley Theater. Gaal elaborated on the importance of independent, impartial media and announced that Democracy Now airs on community radio station WFHB (91.3 FM and 98.1 FM) and is also broadcast on CATS TV.

David Sabbagh reported that this is the final week of classes at Ivy Tech and that he has instructed a math course for the past three spring semesters. He congratulated all graduating students from Ivy Tech and Indiana University.

Tim Mayer thanked Gaal for announcing the postal workers food drive. He recalled volunteering at the Hoosier Hills Food Bank last year after the food drive and encouraged citizens to take advantage of volunteer opportunities.

Andy Ruff recalled a recent fundraiser at Suburban Lanes in which the City Administration's team competed against a city council team. Ruff presented an amusing brass bowling belt buckle to team member Steve Volan who was unable to attend the fundraiser.

Maren McGrane of the mayor's office introduced Laurie Ringquist, director of the animal shelter.

Ringquist announced that May 1st through the 7th was National Be Kind to Animals Week. She encouraged citizens to consider adoption. Ringquist also discussed the need for contributions and volunteers, including foster parents to care for animals. She noted that the shelter would host an open house Saturday May 7th from noon to 5:00PM in order to celebrate National Be Kind to Animals Week and the one year anniversary of the renovated shelter.

Banach inquired how citizens could make a cash donation to the shelter. Ringquist noted that contributions may be made payable to the Monroe County Humane Association and designated for the shelter fund.

There were no reports from council committees.

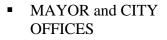
COMMON COUNCIL REGULAR SESSION May 4, 2005

ROLL CALL

AGENDA SUMMATION

APPROVAL OF MINUTES

REPORTS: • COUNCILMEMBERS



COUNCIL COMMITTEES

Marti Crouch, resident, talked about the potential herbicide treatment of Brazilian Elodea in Lake Griffy. She said that the decision to treat the lake chemically was rushed and encouraged the city to consider an alternative that would satisfy a larger number of residents. Crouch recommended that boat traffic in and out of Griffy be restricted. She pointed out that she has not found any evidence, nationwide, of herbicides eradicating water weeds and requested that this be considered.

Mike Andrews, resident, distributed handouts regarding Brazilian Elodea and argued that no evidence exists that supports the successful eradication of any plant with a chemical herbicide. He warned that once chemicals are applied, native species will be negatively affected and invasive species will only increase over time. In addition, Andrews stated that the toxicity of chemical herbicides may be harmful to animals and he urged the city to explore alternative remediation methods such as manual harvesting.

Marc Haggerty, resident, invited biology professionals at Indiana University to participate in developing alternative ways to treat Lake Griffy for invasive species. He also noted that the city environmental commission should be involved in the city's decision to treat the lake.

Jim Hart, resident, said that he lives near Lake Griffy urged the city to reconsider the use of chemicals to treat the lake. He spoke specifically about the potential unknown long-term effects of herbicides and asked the city to consider alternative methods.

Nick McGill, resident, reiterated that it is impossible to eradicate weeds from Lake Griffy and argued that the use of chemicals in the lake will do more long-term damage than good.

Cynthia Brethiem asked members of the public in attendance at the meeting to signal by raising their hands if they disagree with the use of chemical herbicides in Lake Griffy. She explained that this gesture would show the level of support without requiring everyone to speak.

Mike Diekhoff nominated Nicole Montembeault and Susie Hamilton for the Bloomington Housing Quality Appeals Board. The appointments were approved by a voice vote.

Mayer nominated Richard Burke, Karen Brosius and Robert Monroe for the Community and Family Resources Commission. The appointment was approved by a voice vote.

Gaal nominated Rachel Tolen for the Utility Service Board. The appointment was approved by a voice vote.

Sturbaum nominated Matt Reckard for the Historic Preservation Commission as an advisory member. The appointment was approved by a voice vote.

Ruff nominated Frank Motley for the Martin Luther King Jr. Birthday Commission. The appointment was approved by a voice vote.

All appointments were approved by a voice vote.

It was moved and seconded that <u>Ordinance 05-15</u> be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 4-0-3. It was moved and seconded that <u>Ordinance 05-17</u> be adopted.

PUBLIC INPUT

BOARD AND COMMISSION APPOINTMENTS

LEGISLATION FOR SECOND READING

Ordinance 05-15 To Amend Title 2 of the Bloomington Municipal Code

Entitled "Administration and Personnel" (Adopting Section 2.12.100 entitled "Bloomington Commission on Sustainability")

Amendment 01 to Ordinance 05-15

Ruff reported distributing Amendment 01 to <u>Ordinance 05-15</u> to council members and briefly explained that the amendment emphasizes the importance of the Sustainability Commission coordinating and cooperating with other city boards and commissions. Ruff read aloud the portions of <u>Ordinance 05-15</u> that would be amended by Amendment 01.

Jason Banach offered a friendly amendment that would insert the word "boards" in conjunction everywhere city commissions are mentioned in Parts (8)(c), (8)(d) and (8)(e).

Dave Rollo reiterated concerns from the Environmental Commission that this amendment be codified in order to help prevent redundancy among city boards and commissions. Rollo voiced his support of the amendment.

Public Comment on the Amendment:

Deb Backhus, Environmental Commission member, voiced support for the amendment and said that that the Sustainability Commission should have this language in its enabling legislation that requires it to cooperate with other boards and commissions.

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

Rollo introduced <u>Ordinance 05-15</u> and gave a presentation, featuring a summary of sustainability challenges and opportunities.

Ruff thanked Rollo for this presentation on sustainability and said that it is humbling to feel that while Bloomington is on the leading edge in Indiana, other municipalities are leading the way in sustainability measures nationwide.

David Sabbagh asked for clarification on local sustainability and asked to what extent a community can provide goods for itself, using the purchase of a new computer as an example.

Rollo said that the local production of goods and services has advantages due to decreased transportation costs. In addition, he said it is economically healthier for a community to diversify its economy and supply its needs locally. While addressing some negative ramifications of globalization, Rollo said the concept of sustainability supports free trade.

Sabbagh asked how the members of the commission will be chosen, adding that diversity is very important. In addition, he spoke about benchmarking and a sunset provision.

Rollo confirmed that the commission members will represent a wide cross section of the community. Regarding a sunset provision, Rollo said that it is likely the commission will be needed in the future. However, he pointed out that if the commission proves to be ineffective, the council has the ability to dissolve the commission at any time.

Mike Diekhoff asked why other city boards and commissions are unable to do the work of the sustainability commission. Rollo noted that some boards and commissions are trying to do some of the work, such as the Environmental Commission, but that a component of city-wide



coordination is lacking. He added that the economic perspective in particular is missing from other boards and commissions. Diekhoff asked if the council committee which reviews applications had been established yet. Rollo noted that the council president would help determine which council members would sit on the committee and coordinate with the administration to work out the details of the application review process.

Diekhoff asked where the commission will start and asked if it will be advisory only. Rollo confirmed that the commission would be advisory and recommended that the commission might begin by establishing a set of sustainability indicators for Bloomington and look at other communities with best practices in sustainability.

Steve Volan asked how the Sustainability Commission might address the issue of population growth in Bloomington, especially if the commission is successful in enhancing the community's quality of life and attracting a higher population. Rollo recognized that a goal of the Sustainability Commission is to enhance the livability and desirability of the community, which could effectively increase population growth.

Volan asked if the Sustainability Commission might someday serve more than an advisory role. Rollo reiterated that the commission would serve an advisory role and make recommendations much in the same way that the Environmental Commission does. He noted that the commission was intended to coordinate and collaborate with other city boards and commissions as oppose to play an adversarial role.

Public Comment:

Lucille Bertuccio spoke about the <u>Sand County Almanac</u> by Aldo Leopold and said the establishment of the Sustainability Commission was a step in the right direction. She also asked that chemicals not be used in Lake Griffy.

Jim Hart spoke about the community's responsibility for overseeing resources. He suggested that sustainable thinking would allow the community to be more aware of production processes, working conditions, and how and where money is spent.

Catherine Stafford urged the council to vote to establish the Sustainability Commission. As a lifelong resident of Bloomington, Indiana University Graduate, resident of a core urban neighborhood and proud business owner, she said she knows how much the city needs the commission. Stafford specifically highlighted the need for the commission to address small business and core neighborhood concerns.

Carril Mills said she was excited by the comprehensive nature of the Sustainability Commission and said it will be a great opportunity for the community to position small businesses more effectively. She also underscored the need for diversity on the commission.

Council Comments:

Sturbaum complimented Rollo for coordinating the creation of the Sustainability Commission and for accepting so much input.

Gaal seconded Sturbaum's comments. He also stressed that there will be an ongoing need for the commission due to the overwhelming complexity and longevity of the challenges it will address. He noted that the commission will not be able to solve all of the city's problems, but said it is an important movement that will play a vital role.

Banach offered his services to be a member of the council interview

Amendment 01 to <u>Ordinance 05-15</u> (*Cont'd.*)

committee in order to help promote diversity within the membership of the commission. He said he plans to support the commission, describing it as the right thing to do, and thanked Rollo for working with him on the issue.

Sabbagh noted that while most of the goals of the commission are a nobrainer, he has some reservations regarding circulation of money and the global economy. He also spoke to the importance of a diverse commission in order to promote a good, broad community discussion. Sabbagh announced that he plans to vote in favor even though the sunset provision was not approved.

Volan said that the commission was very much needed and suggested that the commission will address questions that have not been asked, including population growth in Bloomington. He reminded Sabbagh that the council has the ability to abolish any commission at will and said a sunset provision is not necessary.

Mayer thanked Rollo for bringing the proposal forward and said that he is heartened that the issue of sustainability seems to be embraced by the current generation. Mayer closed his comments by citing the quote, "We have met the enemy, and he is us."

Rollo said that sustainability, to him, was accountability and internalization of costs. He said that Bloomington has potential to be a regional supplier of sustainable resources and thanked everyone that was involved with developing and supporting the idea, specifically Mayor Mark Kruzan, members of the Center for Sustainable Living, Heather Reynolds, Paul Schneller, Steve Howard, Jason Banach and fellow council members.

Ruff said the recognition and thanks that Rollo received regarding the Sustainability Commission was well deserved. He described the development of the commission as a collaborative and educational process for the council, administration and community as a whole.

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

It was moved and seconded that <u>Ordinance 05-14</u> be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation (As Amended) of 6-0-1. It was moved and seconded that <u>Ordinance 05-14</u> be adopted.

Justin Wyckoff, Manager of Engineering Services, gave a presentation on the Azalea Lane traffic calming proposal.

Sabbagh asked if emergency services officials have given their approval of this proposal. Wyckoff indicated that with the exception of a couple of conditions that have been addressed, city fire and police officials have verbally agreed to support the project.

Sabbagh asked how Azalea is categorized as a road. Wyckoff indicated that Azalea is a local street. Sabbagh asked if traffic calming is being proposed based on the city's twelve step process that measures the need for traffic calming. Wyckoff responded affirmatively.

Sabbagh said that while he is not agreeable with the process of developing traffic calming, he is reluctant to bring his amendment forward which will conflict with the current, accepted process.

Mayer asked if the process and procedure developed by the city has

Amendment 01 to Ordinance 05-15 (Cont'd.)

Ordinance 05-14 To Amend Chapter 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic" (Amending Chapter 15.26 "Neighborhood Traffic Safety Program" in Order to Authorize Traffic Calming Devices on East Azalea Lane between Wylie Farm Road and Highland Avenue) been followed by previous neighborhoods requesting traffic calming. Wyckoff confirmed Mayer's statement and said the process has been unchanged.

Mayer asked where the funding originates for traffic calming. Wyckoff said the Council's Discretionary Fund covers this type of project.

Sturbaum asked for an approximate cost for the Azalea Lane traffic calming project. Wyckoff said the traffic calming initiative would cost about \$12,000 to \$13,000, leaving about \$10,000 to \$12,000 in the fund.

Sturbaum asked if signs would be erected notifying drivers of upcoming traffic calming along with a reduced speed limit. Wyckoff said the city does make use of signs to notify drivers in those situations.

Volan asked for clarification on what a speed table is and inquired how decisions are made on what type of traffic calming devices are to be used. Wyckoff said a speed table is a twenty-two foot long traffic calming device that is less obtrusive than a speed hump and that the city tries to find the best fit when matching calming devices to different streets and neighborhoods. He said that what works to slow traffic on one street might not work well on another.

Rollo reiterated some citizen concerns that he received regarding emergency vehicle access and parking. Wyckoff expressed that it is the city's desire to minimize impact on normal operation of emergency vehicles. In addition, he said that safe and ample parking will be established once the calming devices are installed and tried.

Public Comment:

Resident Jeffrey Cochran voiced opposition to the traffic calming proposal. He said he drives on Azalea every day and does not feel like traffic calming is needed or fiscally responsible.

Resident Donna Dayton said that traffic calming is needed and emphasized that residents who attended neighborhood meetings were in agreement and urged approval traffic calming.

Resident Craig Howerton cited safety concerns on Azalea Lane and strongly urged approval of the project.

Resident Andy Szakaly presented a couple of photographs taken at Azalea Drive and expressed concern about the width of the road if a traffic island was installed. He said he supports traffic calming but is concerned about the method that will be utilized and how it will affect the flow of traffic, particularly the delivery of a modular home to a property of his.

Mayer asked if there was a conflict between the timing of the delivery of Mr. Szakaly's modular home and installation of a traffic island. Wykoff said that even after the island is installed, a large vehicle with an oversized delivery could pass by if a sign was temporarily removed.

A resident who lives on the corner of Azalea Drive and Wylie Farm Road said she was opposed to traffic calming on Azalea Drive now since the amendment to place traffic calming devices on Wylie Farm Road was withdrawn. She voiced opposition to traffic calming since the proposal involves speed bumps when many residents said they did not want them. In addition, she said delivery drivers do not support traffic calming and that some mailboxes will have to be moved away from the road. She also predicted additional parking problems if the proposed type of traffic calming is implemented. Ordinance 05-14 (cont'd.)

Resident Joanne Bunnage offered her support for traffic calming and noted that the majority of neighbors who participated in the process and provided input do support traffic calming. She noted a recent observation of vehicles traveling too fast around a curve by her house and crossing over to the other side of the street. Bunnage said this happens several times a day.

Council Comment:

Rollo asked Wykoff if residents on Wylie Farm Road were surveyed. Wykoff responded that of the 68 residents surveyed, two households on Wylie Farm Road were included due to their corner lot position; the remainder live on Azalea Drive.

Rollo asked Sabbagh if he intended to propose traffic calming on Wylie Farm Road. Sabbagh said he would support and start the process of a traffic calming proposal on Wylie Farm Road if residents requested it.

Rollo asked if the position of mailboxes will be a problem. Wykoff indicated that this was the first he heard of the need to move mail boxes, but that they can be moved if necessary and still remain on the owner's property.

Banach said that he takes traffic calming issues very seriously. He said he is, personally, not a big fan of traffic calming but that he plans to support the ordinance due to the overwhelming support within the neighborhood. He noted that the neighborhood has made a good case for traffic calming and that the cost, at approximately \$13,000, is affordable compared to past traffic calming estimates in other neighborhoods.

Diekhoff said he intends to support the ordinance based on the number of telephone calls he received from residents.

Sturbaum complimented the neighborhood for their efforts and said not supporting the ordinance would be a disrespect to the majority of people who participated in the process and support the traffic calming proposal. He said that traffic calming will help drivers be respectful to people who live in the neighborhood.

Mayer said he will support the ordinance and believes that traffic calming will be the way of the future. He said that drivers are removed from the environment in which they traveling through and, whether intentionally or not, often times drive too fast.

Sabbagh said he will support the ordinance and hopes someone comes forward to request additional traffic calming near Azalea Drive and Wylie Farm Road.

Volan suggested that if drivers perceive that they can drive fast on a certain road, they will. He said the installation of traffic calming should change that perception on Azalea Drive.

Rollo said the traffic calming has significant support from residents and should be carefully implemented and that he will support it. He voiced support for Wykoff and his ability to work with residents in the neighborhood and thanked him.

Ruff announced that he will support the ordinance in order to help improve safety and livability of the neighborhood. He also noted that he does not believe it is fiscally irresponsible to perform this type of project, as a member of the public had suggested earlier. Ordinance 05-14 (cont'd.)

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

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.

<u>Appropriations Ordinance 05-03</u> To Specially Appropriate From the General Fund, Risk Management Fund, Telecom Fund, and Municipal Arts Fund Expenditures Not Otherwise Appropriated (Appropriating Funds from the General Fund for the Animal Care & Control Division and the Community & Family Resources Department for Various Purposes; from the Risk Management Fund for Increased Hours for the Assistant City Attorney; from the Telecom – Infrastructure Fund for expansion of the Bloomington Digital Underground (BDU) and Wireless Internet Access in City Hall; and from the Municipal Arts Fund to Reimburse the General Fund for a Percent for the Arts Project)

John Zody applauded the council for anonymously approving the Commission on Sustainability and offered materials that he had from the President's Council for Sustainable Development.

The meeting was adjourned at 10:38.

APPROVE:

ATTEST:

Andy Ruff, PRESIDENT Bloomington Common Council Regina Moore, CLERK City of Bloomington Ordinance 05-14 (cont'd.)

LEGISLATION FOR FIRST READING

APPRORIATIONS ORDINANCE 05-03

PUBLIC INPUT

ADJOURNMENT