COMMON COUNCIL
REGULAR SESSION
April 22, 2015

In the Council Chambers of the Showers City Hall on Wednesday, April 22, 2015 at 7:30 pm with Council President Dave Rollo presiding over a Regular Session of the Common Council.

ROLL CALL

Roll Call: Rollo, Ruff, Sandberg, Sturbaum, Neher, Spechler, Mayer
Absent: Granger, Volan

AGENDA SUMMATION

Council President Rollo gave the Agenda Summation

APPROVAL OF MINUTES

There were no minutes to be approved at this meeting.

REPORTS

- COUNCIL MEMBERS

Andy Ruff read a letter from the Bloomington Environmental Resource Advisory Council regarding the cull of deer at the Griffy Lake Nature Preserve. ERAC noted the health of Griffy had been their priority since 2008 and this was an important issue in preservation of the park. (Attached to these minutes.) He noted that if the deer cull was not held because there were actually no deer, it would be the case in the future as well. He said there was no reason to be concerned if that happened. For those who were still concerned, he noted he would continue to uphold the policy to reduce the herd to a more natural level that would allow the whole ecosystem to sustain itself at a healthy balance.

Marty Spechler noted the day as the 67th birthday of the Democratic State of Israel. He said President Truman was the first to acknowledge the independent Jewish State of Israel. He said the country had grown and prospered, was multilingual, multiethnic and vigorously contesting its future.

Chris Sturbaum read the following statement:

I wish to be excused from voting, deliberating, or taking action on Resolution 15-13 as provided for under our code. I am President of the Board of the Farmer House Museum. The Museum and Petitioner, as owners of adjacent properties, have worked together on aspects of this project and the Petitioner has agreed to help with some fund-raising. Rather than raise the appearance of impropriety, I am declaring this relationship under BMC 2.04.150, and intend to remove myself from these deliberations.

Because the Sturbaum recusal was covered under local code, there was no need for a vote of acceptance on his statement.

Dave Rollo announced the Letter Carrier's Food Drive would take place on May 9th, a Saturday. He said that letter carriers would pick up donated food for the Hoosier Hills Food Bank on that day. He noted that April 22nd was Earth Day, and said he actually remembered the very first Earth Day from his grade school days where they picked up trash in neighborhoods. He noted the climate crisis, water crisis and species extinction, adding that we had lost half of the world's wildlife in the last 40 years. He said he was still optimistic because there was an awakening consciousness. He noted that the Eco Awards were being presented to school children on Saturday, 10:00am. Rollo said he would be handing out those awards with the Environmental Commission as a sponsor.

- The MAYOR AND CITY OFFICES
  Lemonade Day

Danise Alano-Martin, Director of the Department of Economic and Sustainable Development and member of the advisory committee of Lemonade Day, showed a video about young entrepreneurship with Lemonade Day, and told of the history of Lemonade Day in Bloomington. She noted that last year over 400 kids participated and introduced Jeff Baldwin, Executive Director of the Boys and Girls Club.

Baldwin spoke of the May 2nd Lemonade Day and its impact on young kids who work with mentors, develop a business plan, negotiate loans if needed, and thanked the council for their support. They passed out buttons that showed support for Lemonade Day.

Lemonade Day *(cont'd)*

Alano-Martin made special note that the Board of Public Works had granted blanket approval for all Lemonade Day stands to operate in the public right-of-way on May 2.

- COUNCIL COMMITTEES

There were no reports from council committees at this meeting.

- PUBLIC

Daniel McMullen spoke about biking on the roads with relation to pot holes and bike lanes.

Tonia Matthew read a portion of *Dreams Before Waking* by Adrienne Rich in honor of National Poetry Month and provided copies of the whole poem for council members.

Marc Haggerty talked about Indiana University as a local college and also as a corporation that took over the hospital and made decisions far from the city and its residents. He expounded on social ills in Bloomington.

APPOINTMENTS TO BOARDS AND COMMISSIONS

There were no appointments to Boards or Commissions at this meeting.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Ordinance 15-07 - To Amend the Planned Unit Development District Ordinance and Preliminary Plan to Revise the Approved List of Uses Within the Shortstop Food Mart Planned Unit Development (PUD) - Re: 901 N. Smith Road (Eastside Investments, LLC, Petitioner)

It was moved and seconded that Ordinance 15-07 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Do Pass committee recommendation of 4-0-5. It was moved and seconded that Ordinance 15-07 be adopted.

Patrick Shay, Development Services Manager in the Department of Planning and Transportation, noted that this ordinance would amend the approved list of uses originally approved in 1982 for this property's PUD. He said the petitioner would like to include a 'restaurant' use for this PUD. He said Staff added the Commercial Limited (CL) uses to the PUD. He said this category was intended for 'neighborhood activity zones,' and added that all the uses listed under that designation would be appropriate for this area.

He said most of the discussion was centered on smoke for the BBQ portion of the use. He said this actually was a broader and separate issue than just this petitioner's request. Shay said that this change might reduce the amount of smoke emanating from the site, but certainly would not increase it. He noted the petitioner would be willing to purchase an indoor smoker by the end of the year and might be willing to not add any grills over the 4-5 that they used at this time.

Shay said that a denial of this petition would not remove smoke from this site, but would allow the existing accessory uses to continue on the site, which included the BBQ.

Chris Smith, the petitioner, said he would answer any questions the council had.

Sturbaum wanted to know if Smith had additional conversations with adjoining property owners. Smith said he would do that after the process was finished, but didn't want any discussions or attempts to work with neighbors to be codified in this petition.

Spechler noted that Mr. West, the neighbor mentioned above, told him that Smith did not have time to discuss the issue. He asked Smith when he would talk with West about his concerns regarding alleviating smoke throughout the week's cooking. Smith said he had traded emails with West, but stopped communicating with him when the council was copied on the conversations. He said he stopped his part of the conversation at that point, but told Mr. West after the council meeting the previous week, that after the process had finished, he would be willing to talk with him about and alleviate his concerns. He reiterated

again, he didn't want that conversation to be part of the process of this PUD amendment. Smith said, in answer to a question from Spechler that he didn't want to make a public commitment one way or another, but hoped to speak with West within five days.

Rollo noted that Shay said a denial of this ordinance would not remove the previous uses of the site or the smoke as a consequence of that use. He asked if the expansion of the facility would increase production and thus the smoke. Shay said he understood that there would be additional catering off site, and the preparation and smoke would change very little from the 2 hours for 3 or 4 days per week. He said the expansion would actually change where people would sit and how often they would come to the restaurant. He said Smith planned remodeling of the store whether or not this petition was approved.

Smith said the operations were variable, and clarified that the grills were fired with natural lump charcoal and lit with a propane torch. He said he didn't use lighter fluid or briquettes. He said the wood portion of the process occurred within the first two hours and the smoke was present only during that time. He noted that he didn't use as much wood as he did three years ago as he had modified the technique over time. He said there was no hard fact about increase or decrease of smoke, but he had already decreased in the last two years and he noted that with the addition of an indoor smoker, he wanted to continue to evolve that process. He said his goal was not to be a restaurant with 100 seats, but to be a neighborhood serving convenience store and serve good food as well. He said he understood the Wests' issue, would work with them, and had the ability to be flexible with his process.

Rollo asked for specifics. Smith said the grills were lit 3-4 days a week. Rollo asked, with increased indoor seating, if the smokers would run additional days. Smith said no because the technique was more efficient now, the management of catering was more efficient, and the grills were fired less and were more full when fired.

Rollo asked about Smith's employment practices, employees and their histories. Smith said he had reached out to organizations with special needs kids from 18-25 years old and employed one as a dishwasher. He added that he employed people from the drug court when allowed, and had also included people who had been incarcerated, but was more careful with those hirings. He said he worked to help people, retrain them, and get them the help they need. He also mentioned he offered a dental plan with employment.

Spechler asked Smith if, with the expansion of the restaurant, he would be cooking outside six or seven days a week. Smith said it was theoretically possible, but that action would produce more food than he would need. He said taking advantage of full capacity of all his grills, he could smoke 5000 pounds of meat at one time. He committed to not buying another trailer grill, and said his next purchase would be an indoor smoker with a hood.

Spechler said that success of the venture would cause the scenario he described above. He asked Shay why he did not consider the effect of smoke and increased operation of the restaurant on the neighbor.

Shay said the concern was raised. He said the city had smoking rules, but the petition was about the indoor seating. He added that it was appropriate for the PUD and added uses. He said that the portion of the code that regulated smoke was the appropriate place to address any changes in the allowance of smoke.

Spechler asked if there was consideration of extra-normal effects of a particular PUD on its neighbors. Shay said there was. He said it would be a more applicable question if an approval or denial would make a difference between no smoke and the smoke that already existed. He

said the smoke existing now would still be there, and it would still be allowed under code, even to more of an extent than occurring now.

Spechler asked if Shay or any member of the Plan Commission actually visited the site during operation of the smokers. Shay said he had, and would be surprised if there hadn't been Plan Commission members there during the time, but didn't know for sure.

Ruff asked about the remark of the restaurant growing into a large scale restaurant. He asked if that would be allowed at all since the restaurant part was just an accessory use to the convenience store primary use. Shay said that the argument could be made that adding indoor seating would not change the use, because they already served take-out food. He said the original use did not include a restaurant with seats -- it was carryout pizza. He noted that the proposed use went over that threshold and actually took the most conservative approach to that use. He said there was no code classification of 'restaurants with smoke' or 'restaurants without smoke,' there were just restaurants, and this was the use requested. He noted that this proposal was still an accessory to what the petitioner did at that site.

Ruff asked Smith if the commitment to purchase indoor smoking equipment planned by the end of the year would be just as firm if the petition was denied. Smith said the indoor smoker had been in the plan for some time, even before he knew of his neighbor's issue.

Public comment:

Hank West noted that there were student ecology projects about air pollution displayed in the hallway outside the council chambers, and that it created an interesting juxtaposition with the discussion inside the chambers.

He said he originally understood there would be two meetings of the Plan Commission on the PUD issue. He couldn't attend the first one and thought he'd have another chance to speak to the issue. He noted that because he was not there to speak against the proposal, the Plan Commission voted for approval because there was no remonstration against the plan. He said he was caught off guard.

West said he really understood that there were two separate issues. He noted that he worked and lived at the property and it was an issue for him all the time. He said the problem was that a denial of the petition would not take away the smoke from the cookers, and might actually increase it if more cookers were added. He said that without an amendment to this proposal, he would still have to deal with smoke. He asked what would happen if every new restaurant had a smoker, or used an outdoor grill.

West said that Bloomington was one of the first smoke-free cities in the state and he was surprised that in this issue of smoke, people were acting like it wasn't smoke with toxins that could damage lungs. He said the city of Austin, Texas, a BBQ capital, changed their city ordinance to not allow smokers within a hundred feet of another person's residence. He said that cooking would be done outside the city limits and trucked into the eating areas. West asked the council to look at smoke and fire issues in general to require hoods and scrubbers.

Daniel McMullen said that the problem was not the smoke but the control of the smoke. He said the pollutants needed to be addressed.

Rollo asked Shay to clarify that the change was a permitted use under Commercial Limited zoning. He noted that when the original PUD had been granted, it had demonstrated a public good as required. He asked if an amendment had to do the same. Shay said that was correct.

Rollo asked about permitting of open burning, asking if it was different at home with a grill than for commercial use. He asked Shay if

this was an oversight of the code. Shay said he didn't think this PUD would fall under the open burning section of the code. He said that these were enclosed grills which contained the flame and sparks. Rollo noted the systems did not contain particulate smoke.

Ruff asked if the city had looked at other communities to see about what they regulate in regards to open burning, and if there were similar exceptions. Shay said most city ordinances were the same, didn't have much to do with BBQ grills but dealt with smoke from wood stoves. Ruff asked if the Austin ordinance was more about buffering than the actual activity of burning. Shay said that it was a very recent change and that the impact had not yet been determined.

Rollo asked Dan Sherman, Council Attorney/Administrator if greater stringency than the Indiana Department of Environmental Management (IDEM) requirements in smoke particulate emissions were allowable in our code under home rule. Sherman said that if the council wanted to regulate burning and smoke, it would need approval from the state fire and safety commissions. Sherman said the process could be started at a local level, but the outcome was an unknown.

Council comments:

Spechler said there were two legitimate interests in this issue. He said the lack of regulations should not color the issue, particularly because it would take a long time to create legislation for regulating smoke. He added that he felt that Smith didn't know what kind of equipment he really needed, that Smith had been evasive about his commitments and hadn't had enough conversation with the Wests. He proposed a 'compromise' and said he would vote against the ordinance, but would invite Smith to resubmit his PUD proposal when the council could be assured that the proper equipment to alleviate smoke to a reasonable degree would be installed. He said he would vote for it at that time. He said the Plan Commission didn't pay attention to health issues in their deliberation. He said compromises were the way of the world, and public health was more important to him than commercial profit and the approval of this petition.

Ruff agreed with Spechler that the right thing to do was to address the petition in terms of quality of life of the long term residents. He said there was no reason to believe that voting 'no' on this proposal would achieve that aim. He said denying the petition would not reduce smoke and particulates. He added that he did find it ironic that the first smoke free city had this to deal with now. He said the smoke issue would be a difficult problem to address, especially when local governments were hampered by state law. He hoped that a way could be found to address smoke particulate issues on a larger scale as it could become a problem that affected more people.

Sturbaum said that regional centers with commercial and residential interests close to each other were a 'collision of interests.' He said outdoor smoke regulations would need to be developed in the future, and the council should have it on their 'to do' list. He said the growth of this business was responsible, and believed that over time the smoke would be diminished.

Mayer noted that this business owner wanted to expand his business for longevity. He noted, too, that however this issue would be decided, it would not terminate the use of food smokers. He said that he heard from Smith a verbal commitment to seek a solution to the issue in the near future, and that Spechler's compromise failed to recognize that Smith would have to submit another application, with associated fees, hearings

Ordinance 15-07 *(cont'd)*

and time. He said that was not a good compromise situation. He said that the control of smoke and cookers should be examined in the future, not at this point.

Sandberg said she heard a reasonable commitment to solve the issue between the parties and she had faith it would occur. She noted that the particulate and smoke issue could not be solved at this meeting. She said she would support the petition but noted that there needed to be more attention to the smoke and health issue and hoped to study it in the near future.

Neher said that Ruff outlined the issue well. He noted other cities' legislation focused on restaurants, not just mobile cooking. He noted the focus, also, on installation of diffusers, addressing smoke and particulates, grease vapors, distance from residences, and restrictions of hours of smoking. He said that some restaurants in Austin smoked food for 12-15 hours a day, we might see more of that here. He said this may be an issue that intersects with food trucks as they move around the city.

Rollo said that the issue was a difficult one. He noted the decision to allow take-out, carry-out pizza, did not include a foreshadowing of this – noxious emissions leaving the site created by the smokers. He said because the original PUD was a neighborhood activity center, the first amendment to the PUD that granted the permission of take-out use addressed the issue of a demonstrated public good.

He said he would like to pursue greater stringency for a smoke emission ordinance, but had little hope that it would be granted in a state that was, for the most part, opposed to greater regulation. He said it was uncertain that this would be able to be 'taken care of later.'

Rollo said because he heard the petitioner say the change in the PUD could cause smoking of food to increase from three or four days a week to six or seven days, he could not vote in favor of this petition of amendment. He said he could not vote for an increase in smoke emissions.

Ruff said that he did not feel, as Rollo noted, that there would be a doubling or significant increase of emissions and smoke from this change in PUD. He said his understanding was that the increase in activity might have happened due to increase in demand for the product, whether or not there was additional seating.

Ordinance 15-07 received a roll call vote of Ayes: 5, Nays: 2 (Rollo, Spechler)

PUBLIC COMMENT

There was no public comment at this portion of the meeting.

COUNCIL SCHEDULE

Dan Sherman, Council Attorney/Administrator, noted that there was an Internal Work Session scheduled for Friday April 24, 2015. He listed items for discussion. Five council members noted they would be available to attend.

Rollo announced that there was no council meeting scheduled for the following week.

ADJOURNMENT

The meeting was adjourned at 9:17 pm.

APPROVE:

Dave Rollo, PRESIDENT
Bloomington Common Council

ATTEST:

Regina Moore, CLERK
City of Bloomington