

In the Council Chambers of the Showers City Hall on Wednesday, March 12, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Special Session of the Common Council.

COMMON COUNCIL  
SPECIAL SESSION  
March 12, 2014

Roll Call: Ruff, Sturbaum, Sandberg, Granger, Neher, Mayer, Rollo, Volan, Spechler  
Absent: None

ROLL CALL

Council President Neher gave the Agenda Summation

AGENDA SUMMATION

It was moved and seconded that Ordinance 14-02 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of do pass 9-0-0. It was moved and seconded that Ordinance 14-02 be adopted.

LEGISLATION FOR SECOND  
READING AND RESOLUTIONS  
Ordinance 14-02 To Amend Title 8 of  
the Bloomington Municipal Code  
Entitled "Historic Preservation and  
Protection" to establish a Historic  
District – Re: University Courts  
Historic District (Bloomington  
Historic Preservation Commission,  
Petitioner)

Hiestand briefly summarized the Historic District, saying that since the first city survey of historic structures in 1997, this area had been considered a specific district worth preserving. She said that a nomination was written to the Historic Register in 1990, and that in 2007 it was listed on the National Historic Register. She said that the national listing, however, did not provide protection against demolition. She noted that the brick streets that tied this district together were locally designated in 2004. She showed maps of the district, limestone walls and the overall district.

She outlined the summary of criteria that the district met. She said there were only two criteria (location of an historic event and material or detail considered to be an innovative item) that the district did not meet, similar to the situation in the Elm Heights District.

She said the district was tied together with thematic walls and streets, and was actually a planned area, with early apartment buildings and duplexes as well as single family homes. She noted that a more recent survey of the area showed more architect designed homes than originally estimated. She showed many examples of the homes, noted the architect and their firms. She noted the residents of the area and some of their accomplishments, noting that Elizabeth Sage, Professor of Home Economics at IU, was one of the first women to own her first home at that time.

She said that the Historic Preservation Commission had unanimously recommended the designation.

Spechler asked what percentage of the structures in this district belonged to IU and thus would not be protected from demolition. Hiestand said that there were 38 properties out of 65 owned by IU, with two of those owned by the IU Foundation rather than the IU Trustees. Spechler then clarified that 60% of the properties could be demolished if IU chose to do so.

Volan asked Hiestand if this was the most significant Historic District in Bloomington. She noted that there was a difference between history and architecture, but said that along with Elm Heights this was one of the two most architecturally important districts in the city. She noted that the Courthouse Square was not yet designated, but that would be significant also.

Sturbaum asked about covenants on deeds. Hiestand said that IU was not subject to the city zoning regulations. She added that she was not able to research the deed restriction question at this point.

Neher asked if there had been any communications from the Indiana University concerning this ordinance. Patty Mulvihill, Assistant City Attorney said there had not been.

Sturbaum said that the Delany and Delany findings from Indiana Landmarks contended that IU was not exempt from local demolition regulations.

Mulvihill said that the City Legal department did not agree with the opinion. She said in reading the memorandum she felt that the findings failed to consider some relevant case law that talked about exclusivity of state statutes when they occupy an entire field. She said that reading a case dealing with the Department of Natural Resources as well as an Attorney General opinion about red light camera enforcement made it clear that when the state had set up certain procedures, a locality could not add additional steps.

Elizabeth Cox-Ash from the McDoel Gardens neighborhood said she hoped the council would vote for this designation and hoped the university would take into account that the community wanted this area maintained and preserved. She said that one of the houses that IU slated to tear down was the only Prairie Style house in Bloomington, and to do that would be to destroy some city history.

Brandt Downey, former judge in Florida and current resident of Bloomington, said he considered himself a constitutional expert. He said he respected the work of preservation and believed the university could build a fraternity house in another area. He said, however, the ordinance would not and could not stop IU from tearing down houses in this district. He said IU would pay no attention to this ordinance, and to think otherwise would be to make a mistake in believing that their demolition could be stopped.

Jeannine Butler, member of the Historic Preservation Commission and resident of University Courts, said the commission did not bring this issue forward with the idealistic approach to stop IU from doing what they wanted to do with these houses. She said it was warranted to be a local historic district because it was a national and state historic district. She noted the local brick streets being on the local historic district list.

She asked if the local requirements should be higher than the National and State requirements. She said it followed that pattern and it was a no-brainer to designate the district.

Bill Milroy said he lived in the Old Northeast Neighborhood. He said that the development of the property in this neighborhood was a betrayal of IU's development of regional campuses rather than have the entire university infrastructure in Bloomington. He said the management of IU should review the board of trustees meetings and explain why they have gone away from this plan as outlined by Herman B Wells and the former trustees.

#### Council questions

Volan asked Patrick Shay, Planning Department staff member, if there was a zoning classification under the UDO that would not permit a fraternity to be built in University Courts. Shay said there was not. He said they were permitted in the institutional zoning district, but there were no classifications that would not recognize the overall exemption for the university.

Volan said that the fraternity was promised the ownership of the land under which they would build their structure, and that the minute the university transferred the property to the IU Foundation it would fall under city zoning code. Shay said that was correct. Volan asked if the property was zoned institutional. Mulvihill said it was not, but the university could own the property, demolish the houses, build the fraternity house and then transfer ownership. The fraternity would then be a grandfathered lawful non-conforming use. Mulvihill and Volan

agreed that the IU Foundation would be subject to zoning regulations while IU Trustees were not.

Rollo said the neighborhood was an integral part of the city culture and history, and deserved to be preserved in its entirety. He hoped that IU would consider what Herman B Wells would do in this situation. He said any loss of the homes in this area would not be because of action of the City of Bloomington, but because of IU. He hoped they would not take that lightly.

Spechler questioned that the expansion of the enrollment of IU Bloomington was a betrayal of Chancellor Wells's ideas, and said it was wrong. He said he had tried to call attention to fact that this expansion of student population had gone beyond Wells's limit of 39,000. He said, as a professor at IU, it was not good for IU or Bloomington because the expansion of the number of students and staff was driving up rents and making it more expensive for students to come to the Bloomington campus. He said it put pressure on inner city neighborhoods and drove up the cost of rentals without increasing the quality and reputation of IU. He said that the president and provost wrongly think that the expansion was necessary for fiscal reasons.

Granger said this was the right thing to do for the community and would vote for the ordinance. She noted her appreciation for the beauty and history of the neighborhood.

Sandberg said she was not under the illusion that IU would be persuaded by the proceedings of this discussion, and that the university was not exempt from tearing down their homes. She said that IU would not be exempt from the rules, regulations and laws of the civil city. She cited a recent article in *The Atlantic* on *The Dark Side of Fraternities* and said that anything out of line of the city's ordinance on trash, noise, and behaviors should be reported as bad neighborliness. She hoped that the fraternity in question would reconsider the location of their house in a neighborhood where people wanted peace, quiet and civil behavior.

She said the question at this meeting was historic designation and that she supported it wholeheartedly.

Volan said a previous discussion on the ordinance brought forth the location of a fraternity in the neighborhood, and that his words may have been misinterpreted as an apology on the part of the fraternity. He said the area south of 10<sup>th</sup> Street was closer to classes and was as such desirable. He said having the fraternity closer to the center of campus increased the safety of that area, with more sets of eyes, more people in the area. He suggested the tennis courts near the area as a better place for the fraternity house, noting that when he suggested it to IU they said no. He said their decisions were arbitrary, and hoped the legislation would bring attention to the arbitrariness of the decisions made by IU Land Use and Planning.

Volan said it was time for people to ask the State Legislature to change the university's ability to annex land out from under the jurisdiction of municipalities. He also criticized the city Planning Department's action of several years before in zoning several properties in this area 'institutional' because someone believed that the university would want to acquire those properties someday in the future. He said this missed the council's attention at the time.

Volan said the city and IU should be thinking together about density of residents, the negative impact of planning and tax base. He quoted Spechler's statement of "what is bad for Bloomington is also bad for the University."

Mayer thanked the neighborhood and the Historic Preservation Commission for coming together on the ordinance. He also thanked IU for taking a good look at what they were planning and hoped they'd reconsider their proposal.

Sturbaum said that ideas changed over time and that IU acquired property in the University Courts area to have for future expansion of the campus. He said that former university master plans had included this but now people valued neighborhoods more. He said he hoped the university would look at this and recognize it as a contradiction and respect the neighborhood.

Noting differing legal opinions, Sturbaum read from Edward O Delany, an opinion requested by Indiana Landmarks on this issue:

*"It's important to note that any litigation in this matter would likely be contentious. IU will likely vehemently argue that the Home Rule Act and the exemption from state level historic preservation statutes keep IU from being subjected to local ordinances. The issues in this case are similar to those in Vincennes and it appears from our research that Historic Landmarks of Indiana would have a clear legal argument for the applicability of the local ordinance to the state owned property. In addition we have examined the ordinances of both Monroe County and the City of Bloomington. We have not found an exemption to demolition permits or similar permitting requirements for either state owned property or Indiana University. While it has been suggested that there is an exemption our research and discussions with sources in Bloomington indicate that there is no written exemption in the county and municipal ordinances."*

Sturbaum said he read the statement to get the attention of the university. He said legal authority was difficult, but the moral authority was clear. He encouraged the university to protect this neighborhood for the community but also for its own border and future interests. He said it grew up with the university and would be an asset in the long run. He said the destruction of homes there was careless, thoughtless and simply a mistake.

Ordinance 14-02 received a roll call vote of Ayes: 9, Nays: 0.

It was moved and seconded that Ordinance 14-03 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of do pass 3-1-5. It was moved and seconded that Ordinance 14-03 be adopted.

Patrick Shay, Development Review Manager from the Planning Department, gave a brief summary presentation of the area included in the ordinance. He said the request was to rezone the property to build attached as well as detached single family housing. He said the smaller than normal lots would allow an increase in density, and also required more tree removal.

Shay said the interests to be weighed in this case were the desire to have affordable housing closer to the downtown and the desire to preserve an area of green space to remain in the downtown area. He said the Plan Commission forwarded the proposal to the council with a vote of 5-3 with 11 conditions of approval.

For clarity in deliberations Neher said that questions and public comments would proceed as normal, but there would be a motion later in the evening to have a third reading of the ordinance on March 26<sup>th</sup>.

Spechler asked about tree removal. He asked if smaller trees were treated the same way as larger shade trees. He asked if replanting trees would be allowed as a replacement for trees that would be cut so the net removal would be 50% or less.

Tom Micuda, Director of Planning, said the ordinance referred to tree canopy, but not the diameter of the tree trunks. He said the PUD was based on the greater removal of trees that were considered a disturbance

Ordinance 14-03 To Rezone a 6.96 Acre Property from Residential Core (RC) to a Planned Unit Development to be Known as the B-Line Neighborhood and Approve a Preliminary plan and District Ordinance – RE: 901 W Cottage Grove Avenue (Habitat for Humanity of Monroe County, Petitioner)

in the canopy cover and the nature of the invasive trees. He said there were code requirements for replacing trees, but not increasing the number of them or their canopy.

Ruff asked about the central green space that was proposed, and asked if any member of the public could play there. Shay said the area would be owned in common by the home owners in an association, and that their rules would dictate use. He doubted if there would be gates to the area. He affirmed Ruff's assertion that the association could be exclusive if they wanted to be.

Ruff asked what could be gained if the houses were clustered in the middle of the proposed area in order to leave more trees and a buffer to the north and south of the homes. Shay said that there were several iterations of the plan, but that the planning staff, commission and the petitioner agreed that this proposal was preferred over a cul-de-sac model. He said that the trail itself would create more than the normal setback in current subdivision situations.

Mayer asked if the street would be built to city standards and if they would be owned by the city after development. Shay said that the streets would be built to city standards and maintained by the city.

Rollo asked about uses for the green space.

Kerry Thomson, Executive Director of Habitat for Humanity, said that she had traveled to 15 affiliates across the country that had built long term neighborhoods and found that the most successful ones had homeowner associations. She explained that it was a legal entity that would collect dues and maintain the common area according to the wishes of the homeowners. She said that was part of the model for this project, as well as one other one in Bloomington.

Volan asked if this development was a part of the neighborhood to its north or a new neighborhood. Shay said that the ideal situation would be both. Volan asked if a resident to the north would be welcome to use the common green space. Thomson said the space would be owned by the homeowners and it was up to them to determine how the space would be used. She said she hoped it would be part of the greater neighborhood, and part of building communities.

Sandberg said neighbors were concerned about property values, drainage and density. She asked Thomson to speak about the quality of the homes, low maintenance materials and the standards of repair.

Thomson said that the quality question was a good one especially for someone who had never seen Habitat construction. She said the houses were built to an exceedingly high quality and that the materials were those that were easy to maintain.

Sandberg asked about property values of neighboring homes. Thomson said Habitat had actually increased the value of the homes in Cedar Chase, and city infill projects had slightly increased the value of properties. She said the new Habitat houses appraised for between \$110,000 and \$120,000.

Mayer asked for Thomson to discuss the environmental report on the property and for her to speak about PCBs. Thompson said they had the property tested and there were no PCBs on the site according to soil sample tests that had been done. She said the area was clean to IDEM standards for residential properties. She said there were two areas in question – under some foundations and under some railroad ties – that may need some additional testing. She said these areas were not where the houses would be built. She said if there were problems with the area, it would be remediated professionally.

Rollo asked if the stormwater plan would handle run off from impervious surfaces and asked how runoff would or would not affect neighbors. Shay said the utilities department reviewed plans to make sure that there was no increase in the rate of run off, and referred the question to Steve Smith, engineer on the project. Smith said that there was runoff from the north that flowed to the east of the project. He said that two-thirds of the runoff from the project site would flow that same way and would be held in a detention basin before it went into the channel at the pre-development rate for the 2, 10, 25 and 100 year storm rate by city utilities standards. He said the southwestern third of the runoff would flow to the south west of the project into a culvert that would go under the railroad tracks. He said the same standards would be in effect in that area. He said no water flowed across the site or would be pushed from this site to other places except the two locations he noted above. He noted that there also would be water quality features in those areas to augment the flow issue, and that this met all the detention standards.

Micuda said there was a pre-existing trouble spot north east of the project. He said he walked the area, talked to people in the area and it was his opinion that there was a pipe that had a significant amount of drainage and sediment where debris and leaves could periodically back up the flow. He noted that the development was not contributing to that issue.

Rollo asked if properties to the north that were being affected by inadequate run-off would not be adversely affected by this development. Micuda agreed. Smith noted that a 36" relief sewer pipe was installed in this area in conjunction with the B-line construction. He said it probably had more capacity than the original channel and might have already helped by causing less saturation in low lying areas.

Mayer asked Smith if the homeowners' association would have responsibility for the ongoing maintenance of the stormwater basin. Smith said that the ordinance would require that a maintenance plan be submitted.

Sturbaum asked who was responsible for the drainage pipe under the tracks. Smith said that the inlet to the pipe (which was clogged with rock) would be cleaned out as part of the site preparation as requested by Utilities. Smith said he was not sure about ongoing maintenance since it was on railroad property. In answering a question about the appropriateness of the size of the pipe, Micuda said if the problem was unusual or excessive, the city would be notified and would notify the homeowners' association and would have right of entry as a form of an easement and would be able to rectify the problem.

Sturbaum asked about any inadequacies or needs regarding the streets that serve as access to the site that would add higher use. Shay said that a site visit to Diamond Street and Cottage Grove found that widths of streets, lines of sight, sidewalks and other infrastructure were adequate. He said that there was a low volume of traffic in the area. Sturbaum asked if there was an expectation that the streets would have to be repaired after construction, and what would be needed to prepare Diamond Street for heavier use. Shay said that when a street was degraded during construction the public works department required that to be brought up to standard. Sturbaum asked if there would be signage to indicate a trail entrance. Shay said that there had been a number of recommendations and considerations for the end of the process and that would also include the Bicycle and Pedestrian Safety Commission and engineers.

Sturbaum asked about the trees -- prospective paths, use and development. Thomson said that the woods were a tree preservation area and may be made a conservation area. She said that there would be

a cut-through trail between two houses but nothing else. She said the grade on that west side of the property was steep and that people were enjoying the wooded atmosphere. She said Habitat would have some consideration about whether it would be owned by the HOA or given to a local conservation agency. She noted that Habitat intended to preserve all the woods around the proposed area and noted that the project would be preserving more than 50% of the trees.

Sturbaum asked if the area was tested for PCBs. Thomson said again that they had tested for PCBs and there were none.

Volan asked how the street would be named and numbered. Micuda said after rezone approval, the next stage in the process would be review of the subdivision plat. That review included an analysis by the E911 Addressing Committee which would approve numbering, naming, and nomenclature. Shay said the preliminary discussion concerned the internal street being really an alley, not normally numbered, and the need for street numbers to be on both sides of the homes for clarity. Volan pressed for numbering schemes, and Shay said there would most likely be even numbers on the north side with additional signage needed.

Spechler, saying his concern was for the safety of the children, asked if two parking spots per house were really necessary, and if there would be a sidewalk for safe walking to Fairview school. He said walking in the street was dangerous for children.

Thomson said that there would be extensive sidewalks in the neighborhood. Micuda said there were sidewalks on a portion of Fairview Street. Thomson said that it was Habitat's position to have two parking spots for each home for visitors and for residents.

Ruff said he had heard concerns that when cars were parked on both sides of Cottage Grove, there was little room for travel. Shay said he didn't know of any formal restriction with signage in that area. He said that on-street parking actually slowed traffic down, and created a better streetscape. He noted that the streets in this development were designed to meet requirements for emergency access even with parking on both sides of the street. Ruff said this was his concern: that there be adequate space in width for city services to those streets.

Ruff said people in the area felt that there had not been adequate testing in the area for any environmental contamination. He asked if the reports were available to allay these concerns. Micuda said there were two Phase I reports; the city had access to both reports and they were considered public documents. Micuda said they were not put in the Plan Commission packet per se, but were available for the public to view if requested. Ruff asked if there was any reason to believe that the site could not be used for residential construction. Thomson said the testing on the residential site was completed and the site was clear of all environmental concerns. She said the testing and any clean-up that Habitat planned for other than the residential areas was not required, but voluntary on their part. She added that there was no chance that there would be contamination found that would prevent the building of the homes.

Ruff, referring to the density of the project, asked if the density change was actually ideal and integral to the project.

Shay said that 'ideal' was not the intent of this process, but appropriateness. He said the PUD was a negotiation with the council whereby the appropriateness of the project for the specific property was decided. He added that if the project met density requirements, tree preservation or lot size, there would not be a need for a PUD to determine appropriateness. He said the opportunity to have affordable housing in the near downtown was an aspect of this negotiation.

Sandberg was concerned about the impact on the local elementary school. She asked about the types of families who would live in the project and the permanence of home ownership for Habitat homes.

Thomson said that the families meet the criteria of having the ability to pay for a home mortgage while meeting their basic needs. She said this group earned between 25% and 70% of the area's median income. She noted that they may not be able to get conventional financing, but the families included parents with children, adults older than 50 and couples in their 20s – a true spectrum of the population.

Thomson said homeowners stay in their houses and don't treat it as a starter home, but the end of a pattern of moving, which was especially important to the children. She said stability in housing was a trajectory into a better life for the homeowners.

Sandberg asked about a waiting list. Thomson said that they called it a working list because everyone was working sweat equity for their homes.

Sturbaum asked Micuda to compare the PUDs that the council was reviewing: this one and the Co-Housing one in density and lot size. Micuda said the Co-Housing was for 25 units similar to Habitat. He said the density was 10.9 units per acre, denser than Habitat. He said they both had a focus on central common space, and combination of attached and detached units.

Mayer asked Micuda if the PUD process was becoming the norm. Micuda said that because of the economy there had not been a lot of single family development lately. He said about half of the residential development through the course of history had been done through the PUD process. He said developers had different products that they wanted to develop, and the PUD process allowed more flexibility than codes.

Public comment was called for:

Rusty Peterson said he lived two blocks northwest of the proposed development. He was concerned that the proposal might not have been considered if Habitat was not the petitioner because the notion of affordable homes was prominent in the PUD. He said a previous informal plan for 15 houses was rejected by the Planning Department. He was skeptical if the planned homes would remain affordable, and said that should be considered if the goal was affordable housing. He wished if there was a mechanism in place to insure the perpetual affordability. He said he preferred woods to a housing development.

Doug Hazen said he worked for Shelter Insurance. He said that the average Habitat residence housed 3.5 people, and that this development would impact the lives of 122.5 people. He said his mom was a school teacher, single mother in Colorado, who got wise advice about buying a home rather than renting one. He said he had the benefit of a stable home and breaking the cycle of poverty, which had implications for school and future success. He explained the education on home ownership that Habitat prospective homeowners get before they purchase their houses and added that they didn't sell their homes, but tended to stay in them for a long period of time. He said this development would impact lives.

Jane Goodman thanked the council for expanding discussion and thanked Sturbaum and Ruff for meeting with neighbors. She said the discussion was not about the merits of Habitat, but rather to discuss this particular development proposal. She outlined the development of the B-Line trail on her neighborhood north of the railroad tracks, and the prospect of future development of the tech park, the lumber yard and the



scrap metal yard properties. She said this part of the trail would be used by hundreds more people, and the site of the proposed development would be important in that regard. She asked the council to consider asking the development to use to fiber cement siding rather than aluminum siding for sturdiness and enhancement of outward appearance. She hoped that the pitch of the roofs would match the surrounding neighborhood structures which may necessitate the use of professional roofers rather than volunteers. She asked that the tree canopy and underbrush be kept intact. She said she was also concerned about a variety of fencing choices that might be used by homeowners and how the differences would look from the B-line. She said the project was about more than 35 families; it was about the future of downtown Bloomington, public trails, and hoped that Habitat could fully integrate the proposal into the beauty of the area.

Deborah Morrow, president of the Broadview Neighborhood Association, talked about Habitat homes in her neighborhood and the role that those families play in her neighborhood. She said that the homes were welcome along with the families that own them. She said Habitat's communication was excellent and that neighbors were invited to the home dedications. She said the new neighbors brought creativity and volunteer experience into the neighborhood.

Ruth Beasley said she lived on 10<sup>th</sup> Street and didn't have a Neighborhood Association in her area. She said the UDO required that Neighborhood Associations be contacted about developments, but that didn't work for dissemination of information about this nearby project. She asked for the site's environmental testing reports to be made public. She had numerous concerns about the suitability of the site environmentally, and how the wildlife habitat would fare. She said that she had amassed the documents relating to the project, and had many questions that she posed regarding the environmental concerns, wildlife, staff reports, environmental reports, parking and traffic. She examined the packet and asked numerous questions about the above issues during her statement.

Beasley suggested notifications go to more than registered neighborhood associations in the future. She asked about what was considered a public good. She said the woods were making a contribution to the air and water quality of the city, the impact of the surrounding areas and retained the feeling of walking through a rocky gorge and yet being in a city. She said there was the public good of providing affordable housing but said it would only cover housing needs for Habitat for three years and then they would need to look for more places for homes. She counseled the council saying that the effects of this change would last for a long time.

Emily Nehusenhus said she just qualified for a Habitat Home, and was hoping that her family would be part of this neighborhood and part of its larger family. She said she and her husband came to the IU School of Music in 1994 to study and become teachers. She said over the past 20 years they had paid over \$140,000 in rent. She said they were in no hurry to leave Bloomington, and their son was diagnosed with a rare congenital brain disorder, and then autism. She said the last ten years had been very different than the plans they had initially made. She said her son would never be able to drive, cook a meal, or support himself financially. She said the changes in their lives, insurance, therapy, distractions from professional level work had changed their focus in life. They know that they will not be able to be employed full time in their professions, but would like to participate and contribute to the community.

She said they would be responsible home owners, and they wanted permanency in their lives. She said that this Habitat neighborhood would fulfill those needs.

Amanda Mosier said she was a Cedar Chase Habitat home owner. She told of her life before getting the home -- living in a mobile home, with three children and an unsafe neighborhood. She said the experience of home ownership was life changing. She cited the encouragement of other homeowners, volunteers and neighbors restored her faith in humanity and gave her a new understanding of community. She said she now dreams of her family's future.

Ashley Held recent Habitat homeowner talked about the hospitality of her neighbors who do not own Habitat houses. She said her daughter now had a playhouse in the back yard, safe environment, and caring neighbors.

Gretchen Clearwater said she lived on W 7<sup>th</sup> Street and often used the 9<sup>th</sup> Street Reverend Butler Park, walked through the woods to the Opportunity House and was familiar with the Habitat process. She wondered why there should be so many homes on this tiny piece of land. She asked if there could be more trees at the park in the land that Habitat might give to the city to serve as a buffer for protection of the park, homes and for shade. She said at some point we had to say 'no' to removing trees.

Marc Haggarty lived in the area that will be affected by the development, not to the south where he said there would be a chain link fence, and where the trees would buffer the neighborhood. He said that the neighborhood to the north feels that it's futile to come to talk about this, and that they don't have power in this, even though it will be adjacent to their neighborhood. He said this site is the prettiest place on the B-Line. He said he wondered why his friends on the council had not been able to stop the barrage of ugly development in the downtown.

Haggarty said his neighborhood had lost time and time again, and the only thing they had won was one traffic calming issue. He said that this development would permanently remove the woods from the area, and suggested another place on Rogers Street for the development adding that the wooded area would suffer from a high density neighborhood.

Haggarty said the location of the development between Lemon Lane and Fell Ironworks, served by railroad tracks gave him concern about the possible presence of PCBs and nearby Superfund sites. He asked for the environmental report on the property. He asked that this project be delayed.

Bobby Hall said this was a change for the neighborhood and it wouldn't be known if was good or bad for at least 20 years. He spoke of a time of 'urban renewal' that he said was supposed to upgrade housing in this area, adding that some old houses were torn down and newer ones were built, but they weren't so nice now. He expressed concern for the lack of trees left after the preparation of the site. He asked the council to give it a long hard look, an honest look, and determine what we'd be giving up for 35 homes, and what it will mean several years from now.

Nancy Baldwin, thirty year Bloomington resident, former child welfare worker who worked with the building association, said she had a good perspective on the Habitat issue. She said she worked with the Habitat Builder's Blitz, and has volunteered regularly with Habitat. She said she's watched families and children flourish in these homes and the families would not move out in three years. She added that this could have a wonderful community impact, and said she didn't understand the problem with this decision. She said it was imperative that this happen for the families that were waiting for homes.

Ordinance 14-03 (cont'd)

Tim Clougher, resident of the near west side, said he had lived across from Banneker Center for 12 years. He said this was one of the last opportunities to have affordable housing close to the downtown. He said prices on the near west side were escalating and that a lot next to his house is listed at \$60,000 -- what he paid for his house. He also said that an older home, not restored, was priced at \$270,000. He said access for everyone was important. He said balancing the woods and environmental questions were answered, said that the density, like the Dunn St. project, made sense.

It was moved and seconded that Reasonable Condition #1 to Ordinance 14-03.

Before he made any other statement about this Reasonable Condition, Rollo made the statement that he was a part owner in a farm that primarily grew produce, but also propagated and sold native plants. He clarified that he had made no arrangement to provide plants for this project, nor would he. He said there were many excellent vendors in the community and that the Environmental Commission had a list of these to provide.

Rollo said he was sensitive to the loss of trees, especially in this instance where there would be more loss than the code would normally allow. He said that this dilemma was of concern. He said that there were small caliper trees, and the site had degraded ecologically with non-native invasive species. He said he wanted to compensate for the tree loss by ecologically enhancing the site with native plantings and with removal of invasives. He said this would be a richer ecological habitat than would otherwise be developed. He read the Reasonable Condition and noted he had discussed this with the planning staff and Habitat.

Neher asked Rollo if he had heard any questions, concern or feedback from the Environmental Commission regarding the proposal. Rollo said that the Environmental Planner was notifying the EC about the issue, but there was no formal statement at this point.

Mayer asked if it was unusual to require a tree preservation plan with developments. Micuda said the plan was already in the Plan Commission Condition of Approval, and only the planting of the natives was a new condition.

Mayer asked if the Common Green area would provide a play surface and the planting of grass there. Micuda said points of emphasis were the areas around the trees, the perimeter plantings, and that the details for the ground cover were not yet determined.

Rollo said that the residents would determine what to do with the common area. He said this common area was something that would bind the development together. Mayer said he was concerned that it would not be a viable play area.

Sturbaum said he was concerned about the giant fence that would be visible from both neighboring areas. He asked if this was an attempt to buffer the fence along the rail. He also asked if native evergreens of any kind were possible. He said the fence could use screening as well as the B-line side. He also asked whose right-of-way was the 10 foot clearance along the fence.

Micuda said his suggestion about a perimeter buffer was to provide the tree species some protection, not screening the development but the protection of the existing trees and thickening up the area in general. Rollo said native Holly and Hemlocks could work as evergreen.

## Reasonable Condition #1

Sponsored by Council member Rollo would modify Condition of Approval 9 of this ordinance, which called for the petitioner to:

“Work with planning staff at the final plan stage to develop a detailed tree preservation and landscaping plan focused most specifically in creating maximum perimeter vegetation buffers and planting new larger caliper plant species (on this site)”

The change calls for the petitioner to work with the Planning Staff in consultation with the Environmental Commission and to develop a “native planting” rather than a “landscaping” plan. The native planting plan would focus on: 1) Reclaiming the Forest Understory in the conservation easements on the east and west ends of the site; 2) Adding native hardwoods along the perimeter of this site where feasible; 3) Supplementing the Common Green with native grasses, bushes, and other plant material while still preserving its usability; 4) planting native hardwoods in the Tree Plot Areas and consider planting native grasses and other plant material as well; and, 5) Providing home owners with “access to native plant species in order to enable homeowners to establish yards more suitable for wildlife.”

The change also acknowledges that the planting and landscaping plans are “to be created within reason for the petitioner’s budget, understanding the petitioner will be seeking donations and partnerships from community organizations to exceed the standard landscape plan required.”

Lastly, the change calls for Planning staff to submit report to Council along with final tree preservation and planting plans prior to presentation at Plan Commission.

Sturbaum said he would like to see green between the houses. He wondered if the railroad would do cutting before they built the fence, and wondered if it would be behind big trees along Butler Park or be exposed to the park.

Thomson said that the condition of sale of the property was that Habitat would build the fence. She said that what would be on the Habitat side would be the tree preservation area. She said the railroad could do what it wanted on their side of the property, but on the Habitat side there was no intention of clearing 10 feet from the fence.

Spechler said that this proposal served to impose on a neighborhood what vegetation should be in Bloomington. He asked if the concept of native vegetation changed with environmental changes and he asked why ornamentals and fruit trees were excluded.

Micuda said the ordinance is already tilted towards the planting of natives as opposed to non native tree species, and was consistent with the ordinance. He said there were native ornamentals -- crabs, pears, forage ornamentals -- that were supportive of wildlife. Spechler asked if the range of species that was considered native would change with the changing climate in our area as it has with fauna.

Rollo said climate change was here and it was not known how it would manifest, but the natives have adapted to the soils and climate and there was interdependency of other organisms, and therefore had a high value in maintaining ecological diversity. He said this was a degraded site, but this is a restoration effort, and could make it a more ecologically healthy place. He said it was bold move that Habitat was willing to enrich this area, as well as creating a common garden space in the community setting. He summed up by saying that native species most likely would adapt to climate changes in this area.

Sandberg asked for a response from the petitioner with regards to the recommendation. Thomson said that a plan would be created within the budget, and that Habitat would be seeking donations and partnerships for the project. She said it was an acknowledgement of their intention to do better than minimum but this proposal surpassed their resources to accommodate the Reasonable Condition. Thomson said there had already been a pledge of a donation of one native tree for each household that came about as a result of the donor watching the council discussion. She noted that was 35 trees that the neighborhood would not have to purchase on their own.

There were no public comments on Reasonable Condition #1.

Volan said since this vote would, in effect, amend the proposal as a whole, and since the council was leaning towards a third reading, he wanted to think about this for a while. He said he was generally supportive of the ordinance, but intended to propose a second Reasonable Condition at that third reading.

Spechler thanked for all presentations, adding that he was glad to hear that climate change was not here yet. He added that he understood that what was native to Bloomington would change from time to time. He said he'd happily go along with Rollo's expertise.

Sturbaum said it wouldn't harm the proposal to wait a couple of weeks. He said new ideas may come forth in the next weeks that might make the project better. He said he believed the entire council supported the project, and asked that both the Reasonable Condition and the ordinance be continued to another meeting.

Granger thanked Rollo for the Reasonable Condition because the concerns that she had been hearing were within the realm of this statement. She said it was a reasonable approach and something that Habitat was willing to try to accommodate.

Ruff asked for Sturbaum to elaborate on his reasons to continue the discussion. Sturbaum said he thought there might be a couple of better ideas and that the council might hear from the community in the interim. He said the wait would not harm the proposal and might actually improve it.

Neher asked Dan Sherman, Council Attorney/Council Administrator, since the motion to accept RC#1 was on the table, if there was a mechanism by which the council could forward the discussion and vote for final approval or rejection of this RC#1 until March 26<sup>th</sup>.

Sherman said if the motion were tabled, it would stop discussion on the entire ordinance. He said it could appear on the next agenda via the power of the President of the council to set the agenda, rather than a vote of the council to forward it to the next meeting. Sherman said the other approach would be for the sponsor to request withdrawal, have a second, vote on withdrawal and perhaps reintroduce it at the next meeting.

Rollo requested to withdraw the motion to adopt Reasonable Condition #1. The request was seconded.

Motion to withdraw Reasonable Condition #01:

The motion to withdraw Reasonable Condition #1 received a roll call vote of Ayes: 8, Nays: 1 (Mayer)

Volan thanked the council for being willing to send this discussion to a third reading, and strongly encouraged that practice in the future. He said that Reasonable Condition #1 was worthy of consideration. He said that Habitat had not been criticized for this initiative and had been doing the community a wonderful service.

Additional discussion on Ordinance 14-03

He said that this was actually competition between two public goods – increasing affordable housing in Bloomington and or increasing common space in Bloomington, and wondered “which was the greater public good?” He said he had a bit of a problem with the insufficiently public nature of the common in the middle of the project, but that was not a deal breaker for him. He said some of the woods would be taken for the use of the neighbors in the development which was not conducive to neighborliness to surrounding areas. He said the project should not take more public space than needed. He suggested a spur of the B-Line that would cut through the property as there were already plans for foot paths into and out of the area. He said he was in favor of parking on the internal street.

Volan noted he had reviewed the drafts for the development with the architect and now understood the challenges of the property bounded entirely by public rights-of-way. He said he felt the common was actually part of the front yards of the duplex units. He said this prompted him to come up with a Reasonable Condition #2 that would have three basic conditions: 1) a visible delineation of duplex’s property lines such as an 18-24 inch high picket fence to indicate private and public space; 2) a ceremonial sculpture at the east apex to indicate the entrance to the public green, with possibly a sundial in the turnaround on the west end of the property; 3) and the path between the northeast entrance through the footpath back to the trail be marked as an alternate path to the B-Line. He wanted the common to be a true common, even if the city Parks Department had to maintain this “B-Line Spur” instead of the Home Owners Association of the Habitat project. He said this would truly integrate the project with the adjoining neighborhoods.

Volan said that the neighbors to the north of this project should take this opportunity to get organized into an association so that they can speak to issues and be heard. He said that he hoped his ideas would be taken in the spirit with which they were intended. He said that without changing the development dramatically, it could change the perception of the development in the eyes of those concerned.

Speaking of the future, Volan noted the notion of 'transit oriented development' should be considered. He said this project was an example of that as it used the trail as a form of foot and bike transit. He said as we run out of space downtown, we would need to rethink how new neighborhoods are built around higher density transit services than neighborhoods were used to. This is especially important in areas further away from the center of the city. He thanked those listening for their attention and hoped that his new Reasonable Condition would be considered reasonable as it was brought forward.

Sandberg said the discussion was about balancing competing interests: economic viability, environmental stewardship and social equity. She said she was particularly sensitive to the last issue and was particularly struck by the comments of Nancy Baldwin. She said the concept of affordable housing within the urban core was important. She said she was appreciative of Rollo's Reasonable Condition, but might be uncomfortable with Volan's upcoming proposal.

She said it bothered her that the neighbors to the north didn't have a formal neighborhood association to speak about the project, but hoped that in the future they might be able to form one.

Sandberg reviewed emails received by the council, noting that one said Reverend Butler himself would approve of the Habitat project. She added one other person sent this message to Sandberg:

*"I one hundred percent support this project  
because it would be selfish of me not to support it."*

In all, Sandberg said it wasn't hard for her to support this proposal in total.

Ruff noted his concerns about the general public having access to the 'public green' especially with the location being on the B-Line Trail. He said he was looking for ways that this project could be less of an enclave in the way it's configured and bounded. He said he was not sure about Volan's proposal for another Reasonable Condition, but was interested to hear it, adding that he shared the sense that little things may make it more integrated to the over all area.

Ruff said he hoped to see the petitioner and concerned neighbors get together in the next two weeks to make the proposal more acceptable for everyone. He talked of the possibility of using cementitious siding noting that although it took more skill to install, it would allow for more creativity by owners to use custom paint. He said the idea of different vegetation and trees would also help to engage neighbors. He noted that this parcel was not a public forest or park land that belonged to the community, but a piece of privately owned property and if Habitat didn't develop here, someone else would be doing it.

Mayer said after the former discussion on this topic, he had talked with HAND, about the possible improvement of sidewalks on Diamond and Cottage Grove. He said that Public Works, HAND, and the Utilities Department would be looking at this area, and he would like to see council Sidewalk Committee funds be used for this improvement. He noted he had been questioned by a citizen about the issue of sewer and water infrastructure, and that he assured that person and the general public that this cost was borne by the developer and must be done to the City Utilities Department specifications. He added that the structure was then inspected by the CBU and connected by permit. He noted that before the previous council meeting on this issue, it had been

determined (by a phone call by Councilmember Ruff to the local Department of National Resources) that any issue regarding a habitat for bats was not in question. He said it was agreed at that time that this issue be forwarded to March 26<sup>th</sup>.

Mayer noted developments in this area from slides that had been shown by the Habitat presenters. He said an aerial photo from 1961 showed a grid pattern and tree canopy in the neighborhood north of 11<sup>th</sup> Street. He said there was no vegetation on the Habitat site at that time. 1967 slides showed that the houses on what is now North Blair and Orris were being erased. In a 1972 photo there was a new subdivision in that place with curved streets and no trees at all. Between then and now, 42 years, trees have come and gone. He said that what was now Brown County State Park was, at the turn of the 20<sup>th</sup> century, barren hills; now we treasure those trees. He noted a tree in his present yard was a small sapling in the '50s when his house was built and now its circumference could not be encircled by two people holding hands! Lastly he reminded listeners that trees were a renewable resource.

Sturbaum said he would like to see sketches of houses with a higher pitched roof, and added that the concept of tax abatement might compensate for the increase in cost and give the homeowner more equity in the end. He said that would be more compatible with the west side style. He added that he was willing to be convinced that it's too expensive but wants to have another look. He thanked the council and the petitioner for taking extra time.

Spechler said he viewed the common space as a community property not private property. He said the neighborhood association would have the incentive and funds to take care of this. He believed that if it was open to the general public it would make maintenance and security more difficult and therefore favored the proposal as is. He said the objections to the plan were not strongly convincing, and was strongly favorable to the project as Thomson had assured that the preservation and increase of tree cover would be done. He said that people need a place to stay, but that trees could be relocated.

Rollo said that for years the council had lamented the lack of affordable housing and that all were aware that there was a demographic tug of war downtown which had resulted in the tilting of the residential demographic. He added that a mixed demographic was desirable. He added that this was the best proposal for affordable owner occupied housing within walking distance of downtown, trail, city and markets that allowed people to do without a car. He said that the increase in home values that Clougher mentioned was pushing affordability away from this area.

Rollo noted that the city had purchased hundreds of acres of green space. He talked about the project's "Public Green." He said that the homeowners would be invested in this space, and that it would be more likely to bind the community by sharing it and living there in a way that they may not do so otherwise. He thanked everyone for comments, and thanked Thomson and Micuda for their responsiveness.

Neher said that the common space would allow the neighborhood to define itself and shouldn't be predefined as it would take away their agency to define themselves. He added he didn't want to change that defining process.

With respect to a possible amendment by council member Volan, Neher asked to see a draft well before the evening of 3/26/14, adding that there needed to be time to digest the complexity of an explanation for it.

Neher spoke of a proposal for swapping land and using land in the Certified Tech Park instead of this parcel. He noted that the Tech Park land was actually owned by the Redevelopment Commission and was envisioned as place for workforce housing with interaction with businesses that would be in the Park.

Discussion on Ordinance 14-03  
(Cont'd)

Volan pointed out that the street within the project would be a public street and that the trail was a public park. He said the term 'public green' could be misleading and urged people not to think of this as a separate neighborhood, but part of the neighborhoods around it.

It was moved and seconded that the Council forward Ordinance 14-03 for a third evening of discussion at the Regular Session of March 26, 2014.

MOTION to forward Ordinance 14-03 to a third evening of discussion.

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

Neher noted that there was an Internal Work Session scheduled for March 14<sup>th</sup> at noon. Three members said they would be attending and he announced that it would be kept on the schedule.

COUNCIL SCHEDULE

It was moved and seconded to cancel the Internal Work Session for March 21, 2014. The motion was approved by a voice vote.

The meeting was adjourned at 11:57 pm.

ADJOURNMENT

APPROVE:

ATTEST:



Darryl Neher, PRESIDENT  
Bloomington Common Council

Regina Moore, CLERK  
City of Bloomington