In the Council Chambers of the Showers City Hall on Wednesday, June 11, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
June 11, 2014

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

ROLL CALL

Council President Neher gave the Agenda Summation

AGENDA SUMMATION

Minutes for Special Session of May 28, 2014 were approved by a voice vote.

APPROVAL OF MINUTES

It was moved and seconded that Resolution 14-11 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, saying that there was no committee recommendation on this item.
It was moved and seconded that Resolution 14-11 be adopted.

LEGISLATION FOR SECOND READING AND RESOLUTIONS
Resolution 14-11 To Approve an Interlocal Cooperation Agreement Between the City of Bloomington and Monroe County, Indiana In Regard to 2014 Edward Byrne Memorial Justice Assistance Grant (JAG)

Patty Mulvihill, Assistant City Attorney, noted this Interlocal Agreement was an annual occurrence whereby the federal government, through the Department of Homeland Security allocated grant money based on violent crime statistics for the area as reported through the Uniform Crime Report. She said this year's allotment was $28,826, and was divided according to the location of the crimes: 82% in the city, and the remainder in the county. The BPDs $23,637.32 portion would be used towards the purchase of four iRecord digital video systems for four new interview rooms in the police station. She said the Monroe County Sheriff's award of $5,188.68 would go towards the purchase of in-car videos for police vehicles.

There were no council questions or public comments on this issue.

Marty Spechler said this was an example of how the city and county cooperate. He said he was impressed that the county and city were augmenting the grant money with government funds to complete the purchases needed.

Resolution 14-11 received a roll call vote of Ayes: 8, Nays: 0

It was moved and seconded that Ordinance 14-05 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of do pass 4-0-2.
It was moved and seconded that Ordinance 14-05 be adopted.

Ordinance 14-05 To Amend Title 20 of the Bloomington Municipal Code Entitled "Unified Development Ordinance" (Defining "Standardized Restaurants" and Treating Them as a Conditional Use in the Courthouse Square and University Village Overlay Districts of the Downtown)

Tom Micuda, Planning Director, said that the Plan Commission suggested a conditional use process for 'standardized restaurants' in two overlay districts. He said the ordinance created a definition for the term and created three conditional use criteria to evaluate them for appropriateness. He said two were use-based criteria centered on overconcentration and balance of national/regional/local offerings, and one was design-based. He said there were several plan commissioners and council members who had questions, and the amendment offered in the committee meeting was a result of trying to resolve these questions.

It was moved and seconded to adopt Amendment #1 to Ordinance 14-05 which had some formatting and typographical problems corrected over the last week.

Amendment #1 to Ordinance 14-05 (as corrected).
This amendment is sponsored by Councilmember Neher and increases the scope of the Plan Commission's recommended ordinance to include a Conditional Use review process for

Neher said that 'standardized restaurants' was changed to 'standardized businesses.' He also said that the three criteria for conditional use were balance, visual appearance and design as criteria for the conditional use

were changed to focus on the design element. He read a paragraph from the amendment that highlighted its essence:

> *The proposed use shall be designed and constructed in a style that visually complements its surroundings, especially the existing buildings on both sides of the same block the business is to be located, as well as the character of the particular overlay district. Visual complementation shall include, but may not be limited to: architecture, scale, facade, and signage. If the use is proposed for a site which contains an existing building of special historical, cultural, or architectural significance, with or without official historic designation, the proposed use shall seek to preserve and reuse as much of the existing building as possible, particularly the building's facade. Visual complementation may also include interior décor. Elements of interior décor such as displays of public art, photos or memorabilia of Bloomington or Indiana University, may be considered, but should not be viewed as sufficient to meet this criterion*

There were no questions from council members on this amendment.

Jeb Conrad, President and CEO of the Chamber of Commerce noted that despite the initial concerns of their members, the Advocacy Committee, which met that day, was in support of the spirit of this ordinance. He said the Chamber believed in maintaining the integrity, the uniqueness, the historic value of the overlay districts that made downtown a unique location for visitors, residents and others. He expressed appreciation for the council's willingness to listen to the business community's concern on the original language of this amendment to the UDO.

Dave Harstad, said his office was on the second floor of a building on College Avenue, had windows but no sign, and would be considered a Standardized Business. He said that was silly. He noted his agreement with preserving the character of downtown Bloomington, and that first floor retail chain sign packages should be regulated. He said the definition as written was overly broad, and needed to be narrowed to eliminate small businesses that would be harmed by going through this process. He said that filing fees, time and uncertainty combined with a possible need for attorneys to work through lease agreements contingent upon approvals, and hiring of architects could all become overwhelming and daunting to a person who wanted to open a second branch of their business. He asked that the ordinance be more narrowly tailored to cover the businesses that it's really meant to cover. He asked for exclusions to the process for his business and others like his.

Harstad said he cared about the historic nature of the community and lauded the Historic Preservation Commission, and said it might be the appropriate body to deal with these issues of community character instead of the BZA. He also noted that this process seemed too quick for him and others to really digest the implications and impacts. He added that the courthouse square should have an historic designation.

Spechler said he was glad for the amendments being proposed. He said he was in favor of expanding the definition to all businesses rather than restaurants and was in favor of concentrating on the exterior of the buildings as well. He urged the Plan Commission to keep a watch for small businesses that could be spared a lengthy process, and could be instrumental in spurring economic development. He said this Amendment #1 eliminated the objectionable and legally offensive parts of the previous document.

Sturbaum said this was the right direction for the downtown. He said it would maintain the livelihood and character over the life of the buildings downtown, and maybe enliven some of the areas that needed attention. He said that the Historic Preservation Commission had studied the University Village Overlay, the architecture, use, and the unique building types. He said he liked the amendment that dealt with a light touch.

Sandberg said she was pleased with the current configuration of the amendment, and hoped that the process would not be unwieldy for those

what are known as "Standardized Businesses." The proposed amendment regulates not only restaurants, but all commercial businesses that provide standardized products and services. This amendment also modifies the Conditional Use criteria to be utilized by the Board of Zoning Appeals so that the Board's review focuses on steps a petitioner may pursue to assure that the project visually complements the surrounding area and the particular overlay district rather than on conditions largely beyond their control.

Note: Am 01 was revised with corrections after its Do Pass recommendation at the Committee of the Whole on June 11, 2014. The revisions: corrected one citation, made some changes to formatting, added an instruction to the codifier to reflect the new conditional use in the table of contents, and clarified that "convenience store" is an excluded use in the University Village Overlay district.

Amendment #1 to Ordinance 14-05 (as corrected) *(cont'd).*

going through the process. She said this would not prevent the city from progressing and adding new energy, but would help maintain the best of the city. She did not want the process to interfere with economic development, business, or people's ability to put interesting things in the downtown to add to the success of the area.

Granger reiterated her support of the amendment adding that it supported business and community character. She also said that this might actually encourage more creative character.

Neher thanked the administration and council staff for their work on this amendment. He said the collaboration over concerns led to this product.

Amendment #1 received a roll call vote of Ayes: 7, Nays: 0

Amendment #2 to Ordinance 14-05

This amendment is sponsored by Councilmember Neher. It adds the Title, Whereas clauses, and Synopsis to Ordinance 14-05 as amended by Am 01, to reflect the procedural history and intent of the legislation.

It was moved and seconded to adopt Amendment #2 to Ordinance 14-05.

Neher said that the amendment added "Whereas:" clauses that would put the ordinance into context. He said it went through a lengthy history of downtown economic development, overlays, and actually didn't change the content of the amendment. He noted the title and synopsis would also be changed by amendment #2.

Spechler asked if Restaurant Row would be part of the Overlay. Mulvihill said it already was.

There were no public comments on this amendment.

Sturbaum complemented the people who put this information together and said it was an important step in preservation of the downtown.

Amendment #2 received a roll call vote of Ayes: 7, Nays: 0

Amendment #3 to Ordinance 14-05

This amendment is sponsored by Councilmember Sturbaum. It adds a final whereas clause stating that the ordinance does not preclude the subsequent designation of the Courthouse Square as a historic district.

It was moved and seconded to adopt Amendment #3 to Ordinance 14-05.

Sturbaum said this added one clause that affirmed the adoption of the ordinance did not preclude the subsequent designation of the courthouse square as an historic district. He said that if people from 100 years ago were on the square today, they would recognize where they were. He said this was the most significant district in our city and it was our responsibility to preserve it.

He said he had been on the Historic Preservation Commission for a long time and the designation of the square has been discussed for all that time. He said that they had been waiting until it was not a controversial action rather than a obvious action. He said it was on the HPC agenda again for this year.

Mayer asked if a building would be reviewed in an historic district. Mulvihill said it would. She said that many buildings do have a protection now, even if they are not in an historic district.

There were no public comments on this amendment.

Spechler said he would leave the historic designation of the courthouse square to a subsequent discussion.

Granger said that this was an important amendment and opened up the discussion to happen next.

Amendment #3 received a roll call vote of Ayes: 7, Nays: 0

It was moved and seconded to adopt Amendment #4 to Ordinance 14-05.

Sturbaum said that this amendment would add a line to the definition of standardized business to exclude ones that do not have building frontage on the street. He said it was in response to Mr. Harstad's statements and concerns.

Mayer asked for the staff view on this amendment. Micuda said that the administration supported the amendment.

Sturbaum asked about the Hearing Officer option in the review process. Micuda said that conditional use reviews in the state of Indiana could be done through the BZA or through a Hearing Officer. He said the BZA met once a month and had a more formal process. The Hearing Officer, by state law, is appointed by the Plan Commission who could preside over simple variance and simple conditional use requests. He added that the Hearing Officer met with petitioners every two weeks. Micuda said he envisioned more requests and that they would be handled by both processes.

Dave Harstad said he wondered how the words "devoid of building frontage which is visible to the street" would be interpreted. He suggested the wording be changed to "not including business/professional offices located above the ground floor and any other commercial businesses located in such a manner." He said business/professional office was a defined term in the code. He said it would make clear that these businesses did not need a conditional use permit.

Sturbaum asked the staff to respond to Mr. Harstad's suggestion. Mulvihill said if the language was changed according to the suggestion, no business/professional office on the second floor would have to go through the conditional use process, window or not. Sturbaum asked if there were examples of businesses that had no windows or exterior doors. Mulvihill cited Fountain Square as the best example of this. She added that larger buildings had tenants that didn't have store frontage and would have no impact on the outward appearance of the overlay.
Sturbaum asked if there was a downside to the suggestion. Mulvihill said that one day there would be a business/professional office on the second or higher floor that might have a negative impact on the street frontage or appearance of these two overlays.

Mulvihill responded to a question by Neher regarding the second floor windows, saying that if Mr. Harstad's wording was adopted, those businesses would be exempt from the process.

Spechler said that the amendment was not mature, and asked the Plan Commission to think about this. Neher asked Dan Sherman, Council Attorney/Administrator to explain the process of this amendment to the UDO for clarification.

Sherman said that the process was in progress, and the ordinance was amended. If it were adopted, it would go back to the Plan Commission. Their options would be to approve, reject or fail to act on the changes. He said to amend the product of the night's work was not an option at this time.
Spechler thanked him for his explanation and said he could not accept this change. He said it could be better.

Sandberg asked if the upper floor businesses with windows would go through the Hearing Officer process. Micuda said it might not alleviate

Amendment #4 to Ordinance 14-05

This amendment would revise the definition of "standardized business" to exclude commercial business establishments "located in such a manner as to be devoid of any building frontage which is visible to a street." The intent of this amendment is to exclude businesses from the new conditional use review which do not have visible presence from the street.

Amendment #4 to Ordinance 14-05 *(cont'd)*

Harstad's concerns but it would be a simpler and quicker process. He said that the Hearing Officer process, from filing to final outcome, could take as little as two weeks.

Spechler questioned if cases could go to the Hearing Officer if the proposal was not adopted at this session. Micuda said that was correct.

Sandberg commented that she was comfortable with the process of review, and believed that being straightforward was a better path than making exceptions to the rule. She said this was not burdensome and the city was not looking to shut down businesses or discourage business. She said this would ensure that this would protect what we have and what we want to continue to encourage.

Granger said she supported this amendment as written, adding that second floor windows visible from the street are adequately covered here.

Mayer said the amendment was well considered and well written. He thanked staff for their work.

Sturbaum said he was sorry that all of Mr. Harstad's concerns were not addressed. He said we could change things if needed in the future.

Amendment #4 received a roll call vote of Ayes: 6, Nays: 1 (Spechler).

Ordinance 14-05 as amended by four amendments.

There were no council questions at this point in the deliberation, nor any more public comments.

Sturbaum thanked Neher for cleaning up the wording and pulling a lot of people together who were contentious about the issue. He thanked the staff and Mulvihill for their work, saying that this was a significant action that would matter to the city for a long time.

Sandberg said she was pleased with this work. She said she found the 'Whereas:' clauses rich and valuable and urged people to read them.

Spechler said this was a great example of community democracy that connected the Plan Commission, the public comments, the Chamber of Commerce, the council and developers, and that Darryl Neher put it in a package that the community could live with. Spechler said he was pleased to be a part of that.

Ruff noted the proposal really began with Mayor Kruzan. He said he had tremendous respect for that original proposal which he called bold and as progressive as possible in the state of Indiana so that we could work to preserve the special parts of the community.

Mayer noted his comments were what Sturbaum actually stated.

Neher said that when the process started there was concern about the necessity of the product. He had noted at the time that "the ordinance that the mayor brought forward deserved a debate." He said that now the debate and discussion was finished, and that the proposal to be voted on was different in language, but was centered on the downtown overlays as worthy of protection. He said the mayor and staff could not be thanked enough.

Ordinance 14-05 as amended received a roll call vote of Ayes: 7, Nays: 0

Neher polled the council on probable attendance at the Internal Work Session scheduled for Friday, June 13, 2014. Enough members said they would attend, and Neher said the session would be held as planned. COUNCIL SCHEDULE

It was moved and seconded that the council amend the regular order of business on the agenda for the Regular Session on June 18, 2014 by switching Part VI (Legislation for Second Reading and Resolutions) with Part VII (Legislation for First Reading). Dan Sherman, Attorney Administrator/Attorney explained that change would allow the request for a vacation of right of way to be introduced and heard within the statutory time frame.
The motion to change the agenda was approved by a voice vote.

The meeting was adjourned at 8:38 pm. ADJOURNMENT

APPROVE:

Darryl Neher, PRESIDENT
Bloomington Common Council

ATTEST:

Regina Moore, CLERK
City of Bloomington