In the Council Chambers of the Showers City Hall on Wednesday. June 18, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
June 18, 2014

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

ROLL CALL

Council President Neher gave the Agenda Summation.

AGENDA SUMMATION

There were no minutes for approval at this meeting.

APPROVAL OF MINUTES

REPORTS

- COUNCIL MEMBERS

Chris Sturbaum stated that he recently attended the Congress for New Urbanism Conference in Buffalo, NY, and looked forward to reporting on what he learned.

Tim Mayer warmly welcomed the summer season.

- The MAYOR AND CITY OFFICES

There were no reports from the mayor or city offices.

- COUNCIL COMMITTEES

There were no reports from council committees at this meeting.

- PUBLIC

President Neher called for public comment.
Kirk White, First United Methodist Church Council member, gave special recognition to the firefighters at Station #1 for going above and beyond the call of duty during a crisis situation at the church on January 7, 2014. After confirming that there was no fire danger, the firefighters voluntarily assisted with the extensive clean up from a broken water line. Mr. White presented the certificate of appreciation to Battalion Chief Mark Webb.

Antonia Matthew expressed concern that there was an inadequate supply of mulch around the trees in public parks, which left the trees vulnerable to injury from mowers. Matthew asserted that it would cost less to provide more mulch than it would to replace the damaged trees. She hoped that the 2015 Parks budget would include funds for this project.

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

APPOINTMENTS TO BOARDS AND COMMISSIONS

**NOTE: A motion from the meeting of 6-11-14 reordered the agenda to have First Readings before final review of two items of legislation.*

LEGISLATION FOR FIRST READING

Ordinance 14-09

Ordinance 14-09: To Vacate a Public Parcel - Re: Five, 12-Foot Wide Right-of-Ways in the Lone Star Subdivision Within a Triangular-Shaped Block Bordered by West Cottage Grove on the North, West10th Street on the South, and North Monroe Street on the West (Solomon L. Lowenstein, Jr., Rhonda L. Rieseberg, Dian S. Krumlauf-Hildenbrand, Nathaniel and Michelle Dodson, Ruth A. Beasley, and Kiron and Rachel M. Mateti, Petitioners)

Ordinance 14-10

Ordinance 14-10: An Ordinance to Amend Ordinance 13-16, Which Fixed Salaries for Certain City of Bloomington Employees for the Year 2014 - Re: To Centralize Planning and Transportation Functions of the City by Eliminating the Engineering Division of the Public Works Department, Shifting Engineering Functions to Planning, and Replacing the Planning Department with a "Planning and Transportation Department;" To Create a New Position in the Public Works Administration Division of the Public Works Department entitled "Assistant Director of Operations"; and To Better Facilitate Strategies Associated with Community Policing by Eliminating the Parking Enforcement Division of the Public Works Department and Moving Parking Enforcement Duties to the Police Department.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Resolution 14-10 Authorizing the Allocation of the Jack Hopkins Social Services Program Funds for the Year 2014 and Other Related Matters

It was moved and seconded that Resolution 14-10 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, and said that there was no committee recommendation on this item.
It was moved and seconded that Resolution 14-10 be adopted.

Resolution 14-10 *(cont'd)*

Tim Mayer reported on the activity of the Jack Hopkins Committee, beginning with the organizational meeting on February 26, 2014. On May 1, 2014, the Committee reviewed 40 applications. The amount available for allocation was $266,325; the amount requested was over $658,600. Mayer identified the members of the 2014 Jack Hopkins Social Services Funding Committee, including councilmembers Sandberg, Spechler, Ruff, Neher, two citizens and himself. After thorough review and deliberation, a public meeting was held on May 22, 2014 to announce the recommended allocations.

Sandberg read the recommendation to award funds to Amethyst House, the Downtown Outreach Committee, Boys and Girls Club, Court Appointed Special Advocates Program, Catholic Charities, Community Kitchen, First Christian Church, Hoosier Hills Food Bank, Life Designs, Martha's House, My Sisters Closet, New Hope Family Shelter, New Leaf New Life, Planned Parenthood, Rhino's, Salvation Army, Shalom Community Center, South Central Community Action Program, Stepping Stones, and Volunteers in Medicine.

Mayer read an email from Brad Wilhelm, Director of Rhino's Youth Center, which thanked the council for their work and dedication to supporting local social service agencies.

There were no council questions on Resolution 14-10.

Public Comment:
Josh Congrove asked the council not to fund Planned Parenthood. He objected to allocating tax dollars to a cruel, evil organization that killed our fellow citizens.

Adam Spaetti, MD, discouraged support of Planned Parenthood. He said that he was dedicated to women's health and that abortions were not good medicine for women. He encouraged supporting women's health services in other ways.

Carol Canfield opposed funding for Planned Parenthood because of the abortion services they provided. She quoted President Ronald Reagan: "I've noticed that everybody who is for abortion has already been born."

Scott Tibbs objected to funding for Planned Parenthood. He asserted that Planned Parenthood's request was more about a political endorsement than it was about money. He repeated that it was time for the city to stop funding Planned Parenthood.

Council Comment:
Sandberg resented the characterization that local nonprofit organizations came to the Jack Hopkins Committee for a handout. In defense of the difficult decisions made by the Committee, she explained the process of allocating Jack Hopkins funds to the most deserving, hard-working agencies that provided assistance to the most needy and vulnerable. She said the process was thorough, transparent, public and well intentioned. Sandberg encouraged councilmembers to support the recommendations.

Granger pointed out that this was a community process, and she thanked the committee for their careful review of thousands of pages of documented requests. She appreciated the message being sent that the city cares about what is going on in the community and about the citizens served by these agencies.

Spechler said the committee voted unanimously to support the agencies recommended in Resolution 14-10. He expressed regret that even more organizations could not be funded. He defended his vote to fund Planned Parenthood because of the valuable health services they provided to persons with limited resources. He said he was saddened that any woman would be in a situation to need an abortion, but pointed out that abortions were legal, and that women had the right to choose. He believed that support of Planned Parenthood was a political statement that most citizens of Bloomington would endorse.

Resolution 14-10 *(cont'd)*

Mayer said that these were local tax dollars going to local social service agencies, and that the Jack Hopkins Social Services Program Fund was a unique program in the state. He added that as the federal government was stepping back from supporting those in need, the city felt it important to fill that gap. He thanked the committee members, council staff, and HAND staff.

Sturbaum endorsed the committee recommendation, and reiterated that the need was great and the resources were limited.

Neher said it was unfortunate that the media focus regarding the allocations would be about Planned Parenthood, which received less than 1.2% of the Jack Hopkins Program funding. He emphasized that great innovative work was being done by many social service agencies in our community, and encouraged citizens to take a look at the other worthwhile programs that were funded. He added that the JHSSF allocations were a drop in the bucket compared to the financial help that these organizations needed. He stated that private funding was essential and encouraged everyone to "dig deeper" and increase their financial support.

Resolution 14-10 received a roll call vote of Ayes: 6, Nays: 0

Ordinance 14-09 To Vacate a Public Parcel – Re: Five, 12-Foot Wide Right-of-Ways in the Lone Star Subdivision Within a Triangular-Shaped Block Bordered by West Cottage Grove on the North, West 10th Street on the South, and North Monroe Street on the West (Solomon L. Lowenstein, Jr., Rhonda L. Rieseberg, Dian S. Krumlauf-Hildenbrand, Nathaniel and Michelle Dodson, Ruth A. Beasley, and Kiron and Rachel M. Mateti, Petitioners)

It was moved and seconded that Resolution 14-09 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, saying that there was no committee recommendation on this topic. *She noted that public comment on this legislation at this meeting constituted the statutory Public Hearing per IC 36-7-3-12.*

It was moved and seconded that Ordinance 14-09 be adopted.

It was moved and seconded that the council consider Ordinance 14-09 in the following manner:

- Representatives of the petitioners would have an opportunity to make a 15-minute presentation followed by questions from council members;
- Councilmember Sturbaum, District 1, would be allowed 5 minutes to present a slideshow and speak in favor of this request followed by questions from council members;
- Tom Micuda, Director of Planning, and Patty Mulvihill, Assistant City Attorney, would be present to answer any questions the council members had regarding their memo in opposition to this request and other matters relevant to this proposal;
- Members of the public would have one opportunity to address the council for no more than 5 minutes;
- Representatives of the petitioners would have an opportunity to make a 5 minute concluding/rebuttal statement;
- Members of the council would have an opportunity to raise further questions; and
- Members of the council would then make concluding comments and entertain a motion to schedule the ordinance for further deliberation, which could be as soon as the Special Session on June 25, 2014.

The motion was approved by a voice vote.

Petitioner Comment:

Solomon Lowenstein, Jr., 1006 W 10th Street, spoke for all the petitioners in the Lone Star Addition, which he said was platted in 1928. He said that if the ordinance was approved, the city would benefit by no longer having responsibility for maintenance of the vacated parcel. Other benefits would include increased green space, strengthening of the neighborhood, and improvements that would be made by property owners and residents. He stated that vacation of the rights-of-way would not hinder access by public utilities, and that there was no need for pedestrian, emergency or vehicular traffic to use these public rights-of-way due to the adjacent streets.

He cited four statutory grounds for the petition: the vacation would not hinder any growth or development of the neighborhood; would not make access to any of the properties in the Lone Star Addition difficult or inconvenient; would not hinder public access to any church, school or other public building; and would not hinder the use of these unimproved alleyways by area neighborhoods.

He asked the council to approve the ordinance which he believed would contribute to the vibrancy of the neighborhood.

Attorney David Ferguson referenced the city zoning code regarding residential core districts. He pointed out that the Lone Star neighborhood had been developed over the 86 years since the alleyways were given to the city and acknowledged that development had occurred in those alleys. He noted the planning code restriction that stated the city would not build on grades steeper than 8%. The sloping in the hilly rights-of-way exceeded 8%.

He stated that the city's retention of these alleyways was preventing people from investing and from making the neighborhood stronger and better. He also repeated that the vacation of the rights-of-way did not affect any utilities currently in the rights-of-way.

Sturbaum gave a presentation based on his visit to the neighborhood. He showed a map with all of the alleys erased because he said they really didn't exist. He described a triangular community with small houses around the perimeter. He said they were built as railroad workers' homes. He said that the co-housing project and the B-Line project matched this configuration, but in a more modern form. He showed pictures of the houses, saying they were surprisingly similar to the Habitat homes being built across the way. He noted that this was a steep sloped area, and showed more images of the neighborhood to point out the trees growing in the areas that were considered to be the alleys on the map. He also showed pictures of driveways with the owners standing where the property lines actually were – in the middle of the driveway. He showed the diagram of the Habitat neighborhood to compare the two sites.

He said he was making a plea for common sense, and that there was no reason to ever put alleys in this neighborhood. He said the green space was needed by the neighborhood, and if the alleys were vacated, there could be easements for potential city use.

Council Questions:
Granger asked Micuda how it was that people were able to build garages on the public right-of-way. Micuda said that most likely there were no permits sought for these old structures.

Mayer asked why the petition went to council and not Plan Commission. Micuda said alley right-of-way vacations do not go to Plan Commission for comment, and that many right-of-way projects come to council along with development projects that are also reviewed by the Plan Commission.

Spechler asked if these alleys were in the public record going back a hundred years. Micuda said they have existed since 1926. Spechler asked if it were the choice of the city whether or not to develop the alleys. Micuda said it was, and there were hundreds of rights-of-way scattered throughout the city that were never turned into paved or graveled alleys. Spechler asked Patty Mulvihill, City Attorney, if all the properties were owned by individuals or organizations. She referred to the staff report where the landowners were listed. He asked if it were possible to sell the rights-of-way to adjacent property owners. She said she was fairly sure it could not be sold as other property that was not right-of-way. Spechler wanted verification that the only two options were to give it away or do nothing.

Sandberg noted that of the utilities contacted, Vectren, Bloomington Digital Underground (BDU) and City of Bloomington Utilities (CBU) had concerns. She asked if a vacation would have a negative impact on their operations. Micuda said that because this was not a normal vacation process, the utilities were not contacted in the normal way, and he had not

had a conversation with them. He said the first contact was usually about their underground or over ground line, and when that was established they were asked if they would support the right-of-way vacation with an easement and with terms satisfactory to them. He said the typical easement would allow the utilities to do what they needed to do in the future.

Sandberg asked if the petitioners would be amenable to having this easement granted for the alleys. Lowenstein said that they would allow that, and that state statute allowed for repair, modification and expansion of utilities in rights-of-way. He read: *The statute does not deprive the public utility of the use of all or part of the public way or the public place to be vacated.*

Granger asked Micuda about building on the alleys if they were vacated. Micuda said the 12 foot wide alleys would be split between the two adjacent home owners. He said there were still setbacks on the property; home owners may not be able to build on the lot unless they got variance.

Neher noted that Lowenstein claimed the vacation would spur investment, but the additional land might not be enough for additions. Neher asked him to reconcile this. Lowenstein said the vacation of one right-of-way would allow him to build on a room to his house that he wouldn't be able to do even with a variance. He said his other property, bought at a tax sale, had a house that sat right on the property line, and the driveway was currently in the right-of-way. He said without a variance he could do nothing with the dilapidated house, and he wanted to renovate it.

Neher asked if the property owners knew of these encroachments when they purchased their properties, and if not, why. Lowenstein said all the properties were sold by the same person. Lowenstein asked for a survey of the property, and the seller would not give him the information. He said he and another purchaser had the property surveyed and then found out about the encroachments and the rights-of-way.

Sturbaum asked if there could be some language added to this vacation that would cover the concerns of the utilities. Sherman said it would not have legal effect because when the city vacated a property, it gave up any rights to it. Sturbaum said that the attorneys should work this out so that the council wouldn't have to worry about this factor in the proposal.

Granger asked if there could be a building or addition at 1006 W. 10th St. even with an alley vacation. Micuda said that the lots were very small, very shallow like 1006, or long and narrow. He said even if six feet were added to the side or the rear of these properties by a vacation, the owners would still need to deal with setback issues. He said that the house at 1006 was in the setback already, and an addition to the house would need a setback variance.

Sandberg asked about the public interest in the vacation of these pieces of land. Lowenstein said that some garages could not be remodeled at all because they currently sat in the right-of-way. He said at least one property had been taken off the market because of this. He said people weren't able to sell their properties or use them as they wanted to. Lowenstein added that one inhabitable house, if torn down, could not be rebuilt on the same footprint because it was built in what became the public right-of-way, speculating that this laborer cottage was built prior to the area being platted.

He said the public good was enhanced by improving the neighborhood. He said the residents were anxious to fix up the area and be a greater neighborhood with the new Habitat housing being built. He said residents may have felt slighted by the city before this with no funds to improve the rights-of-way in the last 86 years. He said another public good would be that the city would not have to pave or gravel these areas for use.

Neher asked why Lowenstein didn't get a survey of the property prior to purchase. Lowenstein said he wasn't aware of any issue with the property at the time but the seller was aware of the issue and didn't disclose it in the sale. He said he purchased the properties because of the affordable price, and he had invested in his home and wouldn't leave even if he didn't get a

variance to build, or if the alleys were not vacated.

Neher asked about other vacation processes and accompanying development plans. He asked if a vacation was conditional on investments taking place. Micuda said this was noted in the memo accompanying the ordinance. He said in other requests there were tangible benefits and commitments by the petitioner that were to be considered in the vacations.

Sturbaum said another unique condition was what was already on the ground. He said that the project was a market affordable, green, sustainable little triangle of a neighborhood where the residents wanted to stay. He said the alleys threatened the vision of the neighborhood and created problems. He said this really was a backward look at a project rather than looking at a future project.

Neher asked about the vacation from 1991 and the allusion to this request being equivalent. He asked Micuda and Mulvihill if that were true. Micuda said he would have to research that case but thought that the case might have had a more tangible proposal for development. Micuda noted for the record that no other property owner had approached his office with a tangible project at this time.

Neher asked if there was an impact on process if the decision to vacate the rights-of-way based on the present hearing took place. Micuda said there would be. He said that the request was based on a statutory allowance that citizens could directly petition the council. He also added that this request was unusual because it did not have a tangible plan for use of the right-of-way.

Spechler said he went to the neighborhood that afternoon. He asked Sturbaum why this was being discussed. Sturbaum said there were three property line problems that, after being discovered, made neighbors aware that one property couldn't be sold due to the encroachment, and one that needed repair was actually on the property boundary line. He said that made people aware that the alleys existed, and yet were not used by the city. By advocating for this ordinance, he said he was trying to advocate for a neighborhood that was already built, but needed enhancement and protection.

Mayer wondered how a structure could be built in a public right-of-way without a survey or without a permit. He asked Mulvihill if there was another remedy that could be used besides the blanket alley vacation, a way that the city could give the property owners with encroaching structures permission to keep them there without vacating the alleys. She said the city could grant a right of encroachment as it had done with some businesses and with the university.

Sandberg asked about an alternate plan for the BDU to reach Tri-North Middle School from a different corridor. Mulvihill said she spoke to Rick Routon from ITS who told her this was one of the highest contenders for the corridor, but a decision had not yet been made on that route.

Public Comment:
Dian Krumlauf of 1011 W. Cottage Grove said the houses being discussed were behind her residence. She said she brought forward the alley vacation case from 1991, and she said there was no actual plan to build in the right-of-way at that time, and that they ended up adding to their house in a different direction. She said that the home behind her had an alley and part of a house in the area where the unimproved alley existed, and it was an easy vacation. She said she favored the ordinance.

Nathaniel Dodson of 1003 W. Cottage Grove said he purchased the property the previous fall. He said he bought two properties and found that the right-of-way split these two properties. He said an alley vacation would allow him to add to his 775 square foot house as his family grew. He said this area was attractive to him because of its proximity to the city center and the B-Line. He said there were dead and dying trees that existed in the right-of-way and wondered if the city would maintain that area. Kiron Mateti of 628 N. Monroe St said his house was adjacent to one on

Cottage Grove. He talked about the community and comradeship that had developed in the neighborhood. He talked about the convenient location of the neighborhood. He said the trees in the alleys supported a robust bird habitat that was unique to city life, and supported the vacation for these reasons.

Ruth Beasley asked what would be involved in using the rights-of-way for the BDU to run to Tri-North. She said the loss of trees and green space would be substantial if the rights-of-ways were used for real alleys. She said the city should do a better job of preserving this greenery.

Petitioner's closing comments:

David Ferguson spoke for the petitioners. He said it was confusing that there was a six foot side yard setback, and that if alleys were vacated, the owner would be just owning that setback, but it really didn't solve the problem of what would happen to the existing structures. He said that there were also houses right on that property line that really should be six feet back from the line, a pre-existing 'non-conforming existing use.' He said they should be allowed to stand, but their use could not expand unless the alleys were vacated. He acknowledged there were different situations for these lots.

Ferguson noted this was a residential core neighborhood that should be protected and enhanced, and there would not be a project there in the sense of the past vacations, and in fact there never would be. He said that alleys were the exception and not the rule as many neighborhoods did not have them. He said the terrain of the rights-of-way made them unsuitable for use as alleys, and they had existed this way for 86 years and nothing had been done by the city. He said utilities that used the areas would still remain. He said the benefit to the city would be a stronger neighborhood, which in turn would make for a stronger city.

Council Questions:

Mayer asked which utilities were located in the easements. Micuda said Vectren had a gas line and CBU had a water line.

Neher asked who had responsibility for dying trees in the rights-of-way. Micuda said he would research that in a general sense and get back to the council. Neher asked if there was an answer to Beasley's question about the nature of the BDU use. Micuda said he would talk to Routon about this and report back.

Sherman said that there was a missing sentence from the 1991 vacation minutes. He read: *"Tim Mueller said that the petitioner's house encroaches into the right of way. They wish to build an addition to their house. It's extremely unlikely that the alley would likely be used for any purpose."*

Sherman noted a key point from the report and minutes. He noted the director of planning said the petitioner intended to expand their house, and the vacation request was part of a project. Sturbaum said it was the same case as three of the properties included in this petition.

Sherman said that the second sentence of what he read was key in that it tied the decision of the council in 1991 to current policy, which tied the vacation of right-of-way to a future project. Sturbaum said they were correcting a property that was over its boundary, a relevant fact, too.

Sandberg asked if this petition would be voted on at this meeting.

Neher said that he was anticipating a motion to forward the final action to a special session of the council to be held on June 25, 2014. She said she still had questions about how the BDU line would disrupt the neighborhood and was glad for a possible postponement.

Spechler said he wasn't convinced that giving away the land was right. He said that the property owners had built in the right of way and ignored the need for a survey. He said the garages could be demolished and the property could be freed up to be sold. He said giving public property to private individuals for their use seemed to be wrong, but selling it to them or selling the right to encroach would be better. To that end he would favor selling the land for $1.00.

Ordinance 14-09 *(cont'd)*

Sturbaum said the easy way to address this would be to go by the book and not grant the petition for vacation. He said the council functioned differently, looking at all the facts and, perhaps, making an exception for unique cases. He said this was such a unique case. He said that building without permits had happened a long time ago. He added that straightening out the mess was to affirm a project that had developed in the past, over time. He said if this was a new housing project proposal with the same configuration and affordability, he was sure the council would approve. He advocated for making a decision, not by the book, but as an affirmation of the neighborhood values.

Granger said she had questions that could be answered with another hearing.

Sandberg said her values fell in line with this neighborhood: she felt the intangible plans were natural to the area, and that the garages were a relic from past times. She noted other alley vacations and thanked staff for continuing to recognize that there needed to be a public benefit in giving away public land. She said she did see a benefit in the maintenance and modest development in the neighborhood. She noted her only problem was with the BDU plans and wanted to hear more about that.

Mayer said he took pause with talk of what was above ground and not what was under the ground. He said gas and water mains were in the right-of-way, but wanted everyone to think about what would happen if those utilities were on private property, especially with emergency repairs. He said heavy equipment would clear the way to make the repairs. He noted that Vectren was clearing trees, brush, abandoned structures and the like from public easements in the community now. He said that he knew first hand that people built fences over water lines and that those fences needed to be removed to get large equipment in to repair breaks, and then replaced after repairs. He said the easements were present for these reasons.
He said to vacate all the alleys was an over-reaction and that the alleys needed to be maintained responsibly.

Neher said there were as many questions as answers at this session. He said in one instance, a survey before a purchase of land could have avoided a problem. He added that a vacation of the right-of-way to solve that problem was difficult for him. He said this decision would set a precedent for vacation requests. He said to have the standard be 'unlikely to be used for any use,' any other vacation in the city or neighborhoods should be able to expect the same treatment.

MOTION TO CONTINUE HEARING ON Ordinance 14-09

It was moved and seconded that council continue deliberations on Ordinance 14-09 at the Special Session already scheduled for June 25th.

The motion to continue Ordinance 14-09 to June 25, 2014 received a roll call vote of Ayes: 6, Nays: 0.

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, June 20, 2014.
Not enough council members could attend that session and it was moved and seconded that the session be cancelled.
The motion to cancel was approved by a voice vote.

ADJOURNMENT

The meeting was adjourned at 9:55 pm.

APPROVE:

Darryl Neher, PRESIDENT
Bloomington Common Council

ATTEST:

Regina Moore, CLERK
City of Bloomington