In the Council Chambers of the Showers City Hall on Wednesday, June 25, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
June 25, 2014

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

ROLL CALL

Council President Neher gave the Agenda Summation

AGENDA SUMMATION

REPORTS

- Annual Tax Abatement Report

It was moved and seconded to accept the Annual Tax Abatement Report.

Danise Alano-Martin, Director of Economic and Sustainable Development, noted Jason Carnes, Assistant Director for Small Business, would help present the compliance report for the active tax abatement projects. She said the Economic Development Commission met on June 6, 2015, reviewed the report and recommended the council find these projects in substantial compliance.

Alano-Martin reviewed the state statute regarding tax abatements and changes in state laws in the past year. She summarized the abatement process including initial reviews of applications, legislation included, the role of the common council, and reporting requirements. She showed economic impacts from the real and personal property investments, jobs retained and created, salaries, and increased assessed values of properties that had tax abatements awarded.

Carnes then went through each tax abatement describing the petitioner, the status of the project, statement of benefits and recommended findings of compliance of each project. He also gave updates on projects in progress that had not yet been completed, and the status of each project. He noted one abatement had expired within the year and one reporting document had not been received.

Council questions:
Mayer asked if the assessed value had diminished from previous years. Carnes said it was the same as previous years. Mayer asked if the flooding issues in the Evergreen Village area had been addressed. Carnes said that Public Works was addressing the issue, although he couldn't say exactly what measures were being taken.

Spechler asked if new assessed valuation was an official figure on which tax payments were based. Carnes said it was. Spechler asked if wage numbers were deflated by cost of living increases over the life of the project. Carnes said the figures used were those reported on the CF-1 reporting forms. Spechler said the wage increases were influenced by general wages and prices for the last 8-10 years. Carnes said he wasn't sure of that assertion as the report was structured on data given to the council and not projected or altered in any way. Spechler said that reporting increases in wages due to the increases in the general price level was somewhat deceptive.

Alano-Martin said that instructions were to compare the original statement of benefits in an application for tax abatement to the compliance form. She said she understood Spechler was asking for a greater context, but that statute required the comparison of those two documents.

Sandberg asked if there had been any communication about the CF-1 not received. Carnes said he had not heard back from them. Sandberg asked the number of years of this project, to which Carnes noted this was the 5th year of a 5 year abatement.

There was no public comment on this report.

Council comments:
Sturbaum said it was surprising that a little contribution from the public side of issues brought forth much contribution from the private part of economic development. He said this actually stimulated investment.

Spechler said the basic unanswered question was if the project would have been built without the tax abatement. He said in a recent abatement process

there was careful consideration of that issue although he could not speak to those of the past. He said it was a critical question to ask.

Sandberg said she was glad to have this tax abatement tool in the city tool box to work with the private sector in development. She said she was gratified that some were on the end of their abatement period and would be paying full taxes, which she called the fruits of the process. She said they were good investments and that the council was good about reviewing these in good faith, but with good understanding of what would happen if the project did not meet expectations.

It was moved and seconded to accept the 2014 Tax Abatement Report. The motion received a roll call vote of Ayes: 7, Nays: 0.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

It was moved and seconded that Ordinance 14-09 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, noting that this item was continued to this Special Session by a vote of 6-0.

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 Ordinance 14-09 be adopted.

MOTION to limit debate

It was moved and seconded that Ordinance 14-09 be considered in the following manner:

- Tom Micuda, Director of Planning, and Patty Mulvihill, Assistant City Attorney, would provide answers to questions raised last week and take further questions from Council members;
- Representatives of the petitioners would have an opportunity to make a 15 minute presentation;
- Councilmember Sturbaum, District 1, would be allowed 5 minutes to present a slideshow and speak in favor of this request;
- Members of the pubic would have one opportunity to address the Council for no more than three or five minutes;
- Representatives of the petitioners would have an opportunity to make a 5 minute concluding 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.

The motion received approval with no dissent from any council member.

Ordinance 14-09 *(cont'd)*

Tom Micuda said he and Patty Mulvihill, City Attorney, were present to respond to five issues and questions that arose in the first meeting on this ordinance.

Micuda said there were two utilities that had lines in the areas that were requested to be vacated. He said the City of Bloomington Utilities (CBU) had a 1954 six inch water line that ran along one of the east/west rights-of-way. He said because of the age of this pipe it would need to be replaced at some point, and repairs may be needed at any time. He said CBU opposed this vacation even if the petitioners would grant an easement for the utility. He noted objections were that easements were granted to existing utilities only, and CBU would rather deal with one entity, the city, in getting big equipment into the 12 foot area. He said that in an easement, the right was to the line itself, but not to the entire 12 foot area.

Mulvihill said two other city attorneys pointed out that by keeping the rights-of-way rather than vacating them, the city would be able to keep all options open. She gave the example of the B-Line trail which no one would

have considered wanting 40 or 50 years ago. She said that if the property was needed in the future, the city would have to buy it back.

Micuda noted the Bloomington Digital Underground (BDU) question about their future use of the rights-of-way for running fiber to Tri-North Middle School, and the sewer lift station at 17th Street, Monroe Street and Arlington Road. He said BDU most recently said this was the line that would run from a special manhole, a vault, on the B-line, north to Cottage Grove and then west to Monroe Street. He showed a map and noted that while this plan would not place fiber in the rights-of-way in question, it was much more expensive to bore into streets than unimproved areas. It was the position of the BDU to not lose the option to use the alleys entirely.

Micuda noted questions regarding what property owners could do on their own lots given that they may have structures that exist in the rights-of-way, and what the vacation would allow them to do.

He showed a map of a cluster of properties that gave a schematic of structures that were encroaching into the right-of-way, and stepped through each instance of what could happen with the addition of six feet of former alleyway. He said there were still setback issues and noted that the owners would still have to go through the variance process even if the alleys were vacated.

Mulvihill noted Mayer's question of another solution to the encroachment issues rather than the blanket vacation requested by this petition.

She said the first option would be to remove the structure from the right-of-way, which was clearly not what the petitioners wanted.

She said the next option was to ask the Board of Public Works for permission to encroach on the right-of-way. She said the administration would be willing to help the petitioners through the process, and would be willing to support the petition to encroach. She noted that there would be included language that said that the city had the right to take back that permission if they needed to use the land. She said this would legitimize the encroachment, legally recognize it on the part of the city. She said they would support this option instead of vacating all the rights-of-way.

Mulvihill had been asked who was responsible for the trees that had been allowed to grow in the rights-of-ways. She said that this was considered to be an 'unimproved natural condition of property.' She said that under the tort claim act the city would not be responsible for a tree that fell as this 'unimproved natural condition of property' was covered in that act.

Mulvihill noted she researched the question about selling the land to adjacent property owners. She noted there were different opinions on this. She cited a case where a petitioner asked for a vacation of right-of-way in Brown County and the commissioners asked what would be given in return—a quid pro quo situation. She noted the request was denied and the petitioners appealed on the grounds that they were being asked to give something in return for the vacation. She said the court said that quid pro quo was fine, that the petitioners shouldn't expect the government to give up public land and not get something in return. Mulvihill said the legal department interpreted that as meaning that when a public right-of-way was vacated, the government had the right to reasonable conditions on it so that the public would get something back in exchange for giving up a right. She noted Council Attorney Dan Sherman might have a different opinion.

Council questions:
Sturbaum asked Micuda if there were water lines in all the rights-of-ways surrounding the addition. He said he knew that some of the property owners had connected their lines to one running in the street. He said this indicated there was an alternate supply line for the homes in this area. Micuda said he hadn't asked the CBU staff if the line was obsolete. Sturbaum said the early development was served by the waterline in the right-of-way, but now there were other options.

Sturbaum asked if CBU just didn't want to give up an easement. Micuda said he tried to distinguish between right-of-way vs. easement in his communications with the CBU. He said they distinguished between these

two options saying that the right-of-way provided the utility with more rights than an easement would. Sturbaum asserted it was a preference. Micuda said the preference was based on the ability to serve CBU interests. Sturbaum said this one length of pipe was the only utility in this whole subdivision. Micuda said that Duke Energy had power poles, and he added that the water line was hundreds of feet long.

Sturbaum asked if it were possible for neighbors to purchase part of another neighbor's vacated alley land. Micuda said "exchange of lot lines between owners" was permissible when structures encroached, but no lot could end up being smaller than the code allowed, 60 feet. Micuda said that the lots in this area were 50 feet wide to begin with. He said zoning variances could be requested in this instance.

Sturbaum asked if the city would be responsible if a tree from a tree plot fell on a car. Mulvihill said the tree plot was developed land and didn't fall under the same provision of 'natural condition' she mentioned earlier. Sturbaum asked if a water line was in the ground, could the land be called 'natural condition.' Mulvihill said it was in natural condition.

Ruff asked if the administration's acceptance of existing encroachments was something that was recordable and would go with the property. Mulvihill said generally the Board of Public Works would pass a standard resolution that would approve the encroachment. She said a copy went to the property owner and a copy was kept in the city. She said the resolutions made it clear that the encroachment goes with the property, not based on the owner. She said a property owner could record the action with the County Recorder but most people were satisfied with the resolution that allowed them to encroach. She noted she couldn't address the question of problems with title work for the sale of property.

Sandberg referred to possible future uses of a right-of-way. She asked if the city could hold this vacation up for some unspecified future project like a future B-Line trail. Mulvihill said that previous vacations of rights-of-way contained a specific public good, a tangible product. She said that the city was supposed to be looking forward in planning and be good stewards of the property owned. She said the CBU said they needed the property and it was more important to them than to have just a small easement; BDU wanted to keep the option to use the corridor in play for the future. She said the risk was in giving away land that the city may want to use in 20-30 years and then having to buy it back, or perhaps purchase something more expensive. She noted it might not be the best use of public resources if something was not obtained for the public in the exchange. She said the administration didn't see an overall good given back to the community.

Sandberg asked about the 'right to encroach' until or if the city needed that land. Mulvihill said the permission to encroach wasn't a vacation, but it legitimizes the structures to be in the encroachment and takes away the illegality of the presence. She said it was not a solution to every situation, but it was better than an illegal encroachment.

Granger asked how many homes would be affected by the request. Micuda said there were 8 petitioners with five of those lots that had setback or encroachment issues. Granger asked if these homes were owner-occupied. Micuda said that there were 5 rentals and 3 owner occupied homes.

Mayer asked how many of those properties were purchased after the encroachment occurred. Micuda said there would be a way to figure that out. Mayer wondered if this would have an effect on the salability of the property. Micuda said he couldn't answer that question.

Spechler said a compromise was to allow existing structures to encroach. Mulvihill said that the administration was in support of that request. Spechler asked if there was a charge for the resolution. Mulvihill said she didn't know. Spechler posited that the legal encroachment would make it easier for these lots to be sold. Mulvihill said she didn't know what lending institutions and title insurance companies would do with this information.

Sturbaum noted that there was no guarantee that the Board of Public Works would grant this right of encroachment. Mulvihill said there wasn't a 100%

guarantee, but said staff recommendations were usually taken. Sturbaum said that the council had experience otherwise.

Neher asked about unintended consequences on possible future projects. Mulvihill said staff were worried about precedent regarding vacating rights-of-way without a discernable public good in return. She said some of the rights-of-way included in this petition did not have any encroachments on them, which took the vacation to an "I just want it" level. She said she would have concerns that the situation would encourage people to encroach in the public right-of-way so that they could later ask for a vacation so they could enlarge their property without paying for it.

Neher asked for an example of a problematic project. Mulvihill noted one property owner had six lots adjacent to each other, and wanted alleys that ran between them to be vacated to build houses for his own purposes. She said the administration had repeatedly denied this request because there would be only one beneficiary of this vacation – the property owner. She said there was an equity issue with that instance and the one at hand.

Neher asked if the request for permission to encroach could be a group application to the Board of Public Works. Mulvihill said the administration tried to make accommodations for those circumstances. She noted in that instance it would be brought forward in one petition, but each property owner would get their own right of encroachment issued for their property.

Neher asked Sherman his perspective on the city selling rights-of-way. Sherman said he and Mulvihill looked to Home Rule for guidance. He said that meant that the city could exercise powers as long as they were not expressly granted to someone else, denied to the city, or necessary or desirable for municipal purposes. He said the vacation of rights-of-way statutes do not deny the city compensation for the land. He said he questioned if the vacation would be considered 'disposal of real property' for which there was a statute. He said Home Rule said power should be exercised in the manner specified by statute, and he would have to study that real property provision to see if the vacations would apply. He added if it didn't apply, an ordinance would have to dictate the manner in which the property would be disposed. He said the city did not have anything of that sort at this time.

Ruff asked why the request for vacation was appearing at this point in time. Micuda said that one property owner had contacted the city in 2007 or 2008 about a vacation. He said the department responded noting that there was not a tangible project associated with the vacation and therefore it would be difficult to approve the vacation. He noted a similar request came to the department in the last year, with similar response, then this petition came forward.

Solomon L. Lowenstein, Jr., said he was one of the petitioners who lived at 1006 W. 10th Street. He said he was looking for a house for his daughter-in-law to live in while she went to graduate school. He found this home, but said he was advised not to buy in the area. He now decided he wanted to retire in that home, and has lived there for the last three years. He said three other homes in this addition had become owner occupied. He said he watched a home in disrepair deteriorate and two years ago bought it at a tax sale. He said he found out that the entire west wall of the house encroached into the public right-of-way.

He said his concern was that because the decision to grant a right of encroachment was at the sole discretion of the Board of Public Works, they could terminate the encroachment authority with a 30 day notice, even after he had spent tens of thousands of dollars to improve the home. He said that others in the neighborhood were in a similar situation, investing without a guarantee that the investment would not be lost.

He noted chronology of the neighborhood, especially with regard to the 1991 vacation of a right-of-way. He said he had researched underground utilities through the 811 underground utilities locater service and only found the water line.

Lowenstein noted a new owner with a family who wished to expand his home, and couldn't because of the alley that he could not encroach into.

He said keeping the public right-of-way without city improvements or the ability to improve personal property hindered the improvement overall for the neighborhood. He said that a 'subjective whim' could remove an improvement to his home, and that was not an incentive to improve his property.

For the record, he noted his thanks to council member Sturbaum who had been a strong advocate for this petition. Lowenstein said Sturbaum took a lot of time with the neighbors to understand all the issues involved, and he appreciated his common sense position in the petition request.

Lowenstein asked for the approval of the petition. He said structures would be improved and the rights-of-way would be kept green and this would be a public good.

David Ferguson spoke as the attorney for the petitioners. He said that the neighbors had been working on this issue for a number of years, and said that long process would not really encourage others to ask for vacation of alleys.

He noted a cover page of a packet of instructions that the planning department issued to people who were requesting alley vacations. He said the second page indicated criteria that should be of concern. Among those items he said one criteria, 'necessity for growth of the city,' would be present as the development and refurbishing of this neighborhood was a way to grow this area. He said the city wasn't doing anything with this land to that end, and so the neighbors should have it.

He noted the question of public good, and said that the lots, which were 'substandard' in width now, could be upgraded to the city's standard with the addition of the alley land to their lot size.

He noted a map of the area and said there were no published plans for the BDU. He noted other utilities could stay in the alleys and noted the age of the water pipe that was there now. He said the neighborhood was completely surrounded by other water pipes that could service the area. He noted the gas company had no lines in the alleys, that there were just access lines to each house, but Ferguson said they would not be used, as the company usually accesses the homes from the street line, not an alley line.

He noted the city was not going to do anything with the alleys and for the sake of the city's growth, it would be better if the neighbors were taking care of the alleys than the city.

Sturbaum said the public good in this request was the revitalization of the small neighborhood and the help the city could contribute to that. He related the Prospect Hill history to the one of this neighborhood. He said the neighborhood was moving from rentals to owner occupied housing, a good sign for the future of the area. He talked about meeting Lowenstein for a walk through the neighborhood which he found to have a central wooded green space surrounded by small, affordable houses.

He said if this were to come to the council for a PUD approval, it would be approved in a second. He showed slides of the homes, garages which sat on alley lines, and noted the streetscape was much like the Habitat project that had been approved for the other side of the street. He showed a slide of both neighborhoods, side by side. He reiterated that by vacating the alleys the neighbors would receive the encouragement to improve their properties, and he felt that was a tremendous public good.

He said a bureaucracy could become so paralyzed that it couldn't act because it was trying to second guess all the future vacations that might be needed. He said it was the job of the council to listen to appeals for help and to judge things on a case by case basis. He asked for help for these homeowners.

Public comment:

Jim Tolen asked the council to approve the vacation of the alleys that might have been 80 years ago, but weren't even alleys now. He also commended Sturbaum for going to bat for 'little people' noting that this was not a vacation for the Hyatt, or a corporation, or well-established influential local person. He said as he had watched the process unfold, he concluded that this was a plea for common sense. He said it would be good for everyone watching to see that the council could deliberate with common sense.

Ruth Beasley, 1012 W. 10th Street, said she researched county tax records to find the history of her home. She said the house was noted as existing in 1899, and in 1900 was listed as owned by Mr. and Mrs. Harris who owned it until 1984. She said the first tax listing of a garage was noted in 1940 with a note from the assessor that said it was in bad shape with an "F" rating. She said this was evidence of one garage that had existed before the alleys were platted. She said she didn't believe that people were being nefarious in not getting building permits, and said the areas just grew up quickly and people didn't know that the alleys existed because they had never been used as such.

Beasley said she bought the house and garage in February of 2013 with a respected realtor, and had a title search and inspection done. She said she found out two months previously that the seller and his realtor purposely withheld the information about the alley right-of-way line being under the garage. She wanted to know if the alleys were not vacated, if the city would remove her garage, or if they would honor a building permit request to build another garage when this one needed to be replaced.

Dian Krumlauf, 1011 W. Cottage Grove, said her property backed up to the properties on W. 10th Street, noting that once the property was vacated, the owner paid taxes on it every year. She said the property was thus, not free. She said it was not bringing in any taxes while owned by the city. She also noted that the hotel for which an alley was vacated did not pay for the land, and she asked the same for individual homeowners.

She said she had petitioned for a vacation of alley in 1991 and read from that statement what was considered at the time to be a common good:

> *.....purpose of the alley will benefit the city by upgrading the area. The small size of the house limits its desirability as a residence. By adding on it will create a residence that will promote long term ownership. It could also encourage others in the area to invest and upgrade their own properties knowing their neighbors have an interest in remaining in and promoting the neighborhood. It would also promote the city's interest in rehabilitation which is evidenced by the redevelopment grant program.*

She added that houses in this area were small, fine for one or two people, but families needed to enlarge the homes.

Krumlauf noted in her own case of vacation, she ended up building the addition in a different direction, but in the vacated area created a large garden of day lilies and bee balm which she said beautified the area and could also be considered a public good.

Julia Beerman said she lived with Lowenstein at 1006 W. 10th Street. She said the house was purchased for his daughter-in-law to attend graduate school, and that Lowenstein also intended to retire there. She said the property at 1002 W. 10th Street was purchased at a tax sale, and they had since cleaned up the property, but discovered that the house was uninhabitable. She asked that the alleys be vacated to allow them to tear down the building and build a new home there.

Rachel Mateti, one of the petitioners, said she and her husband had purchased their home in August of 2012. She said vacation of alleys would allow them to expand their yard for their child and would also make the property and area attractive for other families whose children could play in good sized spaces without worrying about traffic. She added the space, as it existed, served to unite the neighborhood and provided safety in the area.

David Ferguson summed up the arguments for alley vacation. He said the action would improve the neighborhood as a whole, it would encourage investment in all the properties in the neighborhood, would bring the lot sizes up to code specifications, would increase the amount of taxes paid to the city, and would increase the viability of owner occupied homes. He noted the elevation fell over 8% in grade which would not be within code standards for any future alley use, and the city had already vacated some portions of alleys in this very neighborhood. He added this would also solve the problems of setbacks and encroachments that had existed for these homeowners. He acknowledged that some would still need to seek variances, but this this measure would expedite the process. He used the 1991 alley vacation as a precedent for vacations in this area.

Ordinance 14-09 *(cont'd)*

Ferguson said there was purposely no specific project proposed for these alleys and it was good that there wasn't one, because the whole idea was to enhance the neighborhood and home ownership by allowing these homeowners to be able to invest in their properties with no alleys dividing up the area. He also noted that no alleys were required for the nearby Habitat project, and this was a similar area.

Lastly, regarding the plans of the Bloomington Digital Underground for using the alleyways, he said that *'we can't just hold things out in the future for people who won't publish their plans or tell them what they are.'*

MOTION TO CONTINUE DISCUSSION

Sturbaum said that there had been a lot of new information introduced at this session and wanted council members to have time to digest that. He asked for a motion to continue the discussion to July 16, 2014. The motion was seconded by Granger.

The motion to continue the discussion of Ordinance 14-09 to the July 16th meeting received a roll call vote of Ayes: 7, Nays: 0.

LEGISLATION FOR FIRST READING

Ordinance 14-11

Ordinance 14-11 To Amend Various Chapters of the Bloomington Municipal Code Located in Title 2 (Administration and Personnel), Title 6 (Health and Sanitation), Title 10 (Wastewater), Title 11 (Lakes and Reservoirs), Title 12 (Streets, Sidewalks and Storm Sewers), Title 14 (Peace and Safety), Title 15 (Vehicles and Traffic), and Title 17 (Construction Regulations) – (Codifying Departmental Reorganization Proposed in Ordinance 14-10 and Using this Occasion to Fix Typographical Errors and Reflect Actual Practices and Policies in Affected Sections)

COUNCIL SCHEDULE

There were no changes to the upcoming council schedule.

ADJOURNMENT

The meeting was adjourned at 9:57 pm.

APPROVE:

Darryl Neher, PRESIDENT
Bloomington Common Council

ATTEST:

Regina Moore, CLERK
City of Bloomington