In the Council Chambers of the Showers City Hall on Wednesday, July 16, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
July 16, 2014

Roll Call: Ruff, Sturbaum, Sandberg, Granger, Neher, Mayer, Spechler
Absent: Rollo, Volan. Sturbaum left at 10:50 pm, before the last vote was taken.

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

Marty Spechler said some eastern states charge five cents for plastic bags. He urged the city to take this action, too. He said small taxes or prohibitions work, and noted Ireland had eliminated plastic bags through these prohibitions.

Darryl Neher noted that applicants were sought for the Board of Housing Quality Appeals Board. He noted that the Citizens' Academy Class this fall had a few openings and asked citizens to sign up.

- The MAYOR AND CITY OFFICES

Caleb Ernest, intern with the Environmental Commission, gave the 2014 Green Space Trends Report completed by the commission.

Allison Leslie, a board member for the Monroe County Court Appointed Special Advocates, spoke of the mission of the organization. She urged citizens to be the voices of these children.

- COUNCIL COMMITTEES

There were no reports from council committees at this meeting.

- PUBLIC

President Neher called for public comment but there was none.

APPOINTMENTS TO BOARDS AND COMMISSIONS

It was moved and seconded that Derek Richey, Jeff Goldin, and Leslie Abshire be appointed as advisory members to the Historic Preservation Commission.

It was moved and seconded that Chad Pannucci and Darcie Fawcett be appointed to the Bloomington Urban Enterprise Association.

It was moved and seconded that Bruce Ervin be appointed to the Dr. MLK, Jr. Birthday Commission.

It was moved and seconded that Dorothia Purnell and Matthew Hanauer be appointed to the Commission on the Status of Children and Youth.

The appointments were approved by voice votes.

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 the recommendation was to move the hearing on this item to this meeting. She noted that the required public hearing on this item was held on June 18, 2014.

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 to consider Ordinance 14-09 in the following manner:

- Council members would have an opportunity to ask staff and the petitioners questions about the ordinance (and possible amendments);
- Council could entertain Amendment #1 to this ordinance and, if it did so, would proceed in the following manner;
    - Sponsor will introduce the amendment;
    - Council members could ask questions of staff and petitioner about the amendment;
    - Members of the public would have one opportunity to address the Council on the amendment for no more than 5 minutes;
    - Representative for the petitioner would have 5 minutes to address the amendment;
    - Members of the council would have an opportunity to raise further questions about the amendment, and
    - Members of the council would comment and vote on the amendment;
- Council could entertain the remaining amendment (Amendment #2) and would follow the above procedure if it chose to consider that amendment;
- The Council would entertain an appropriate motion (e.g. Motion to Adopt[As Amended]);
- Council members would have another opportunity to ask staff and petitioners questions about the legislation;
- Members of the public would have one opportunity to address the council on the legislation for no more than 5 minutes each;
- Representative for the petitioner would have 5 minutes to address the legislation; and
- Council members would then comment and vote on the motion.

The motion received a roll call vote of Ayes: 6, Nays: 0, Abstain: 1 (Spechler)

President Neher asked staff if there was any additional information before council questioned them. There was none.

Mayer asked if there was any additional information from the City of Bloomington Utilities Department. Patty Mulvihill, City Attorney, said their position was the same as in the past two meetings. They were opposed to a vacation of any portion of the rights-of-way.

Amendment #1 Ordinance 14-09

This amendment is sponsored by Councilmember Sturbaum and would remove the portion of the east/west alley way occupied by the City of Bloomington Utilities (CBU) water line from this request. It is supported by the petitioner and eliminates the only right of way that has any CBU interest due to their pipe in the ground.

It was moved and seconded to adopt Amendment #1 to Ordinance 14-09.

As sponsor of the amendment, Sturbaum said this proposal would take the area that had a water line out of the vacation proposal, which eliminated the only objection to this vacation. He noted each of the remaining alleys had an impact on a resident's ability to invest in the area. He also noted the Habitat for Humanity project that had been approved just across the trail. He said these neighbors did not complain about additional development and looked at that project as an improvement of the overall area.

He compared the historic platting and alleys built in Prospect Hill with those of this area where alleys were never actually built. He said this area had alleys platted over existing buildings in 1928 in error, and most likely the people were not paid for the takings of their properties for the alleys.

He noted that this would not really set a precedent of other areas wanting vacations of alleys because this was a very unique situation. He said this vacation would help the area grow and become a place for investment.

Sturbaum advocated for the vacation of this land which he said the city didn't even know it had, didn't need, and allowed trees to grow there for at least 86 years.

Ruff asked how many current structures in the area predated the 1928 overlaying of the plat. Micuda said his department had not researched that. He said it would be available on Sandborn Maps or other property-specific data. Sturbaum said one of the neighbors had done that research.

Sandberg asked how the City of Bloomington Utilities (CBU) felt about this. Mulvihill said they still objected to this amendment. She said CBU would prefer to access pipes and utilities from more than one linear direction.

Ruff asked how unique the situation really was. Micuda showed a map with multiple detached structures that encroached on rights-of-way that were never built out. He said there were pockets on the Near Westside, Elm Heights, Green Acres, and Bryan Park neighborhoods.

Neher asked Sturbaum for his reactions to these comparisons. Sturbaum said this was a unique triangular area that couldn't be developed with the alleys in place. He said the CBU opposition didn't take into consideration that there were trees and very steep slopes in these areas, and that vehicles couldn't be driven in to service this area. He added that the old lot proportions did not work with today's setbacks and standards, and adding the alleys to the lots would make them more buildable. He added that there were multiple issues that made this a unique case.

Ruff asked staff to address Sturbaum's assertion that the proportion of alleys to lot size made the area undevelopable. Mulvihill said this was on the list of areas for the Bloomington Digital Underground. She said that the administration was opposed to giving away land that they might have to buy back for a future project or service. She said that CBU would service the lines in that area, moving trees or whatever they needed to do to repair service.

Micuda said certain lots in the area were tricky to develop based on their original configuration. He spoke of some lots where buildings were flush onto the alley at present, noting that even if this alley were vacated, there might not be much room for additions to the structure.

Mayer noted there were other lots in areas of the city that were only 25 feet wide and had been combined with other lots for development or used by themselves. Micuda described these as 'a lot of record' saying the owner had a right to build on them with a variance entitled to them. Micuda said that variances were typically granted unless the request was out of scale.

Spechler asked if the garages that were encroaching on the rights-of-way had been built after 1928. Sturbaum said he'd been in them and they were characteristic of buildings before that date. He said these were outbuildings not necessarily built for cars, but for horses or other uses.

Sturbaum asked Micuda if he felt there was benefit to the property owners if the alleys were vacated. Micuda said there was.

Neher asked if there were other mechanisms available to the property owners. Micuda noted the administration would support granting encroachments for owners. As an example of commercial encroachment, he noted that the Hilton Garden Inn had been allowed to have their foundation encroach in the right-of-way of 7th Street.

Sturbaum asked staff to speculate on why the same staff had recommended the vacation in a similar case in 1994, while

Amendment #1 to Ordinance 14-09 *(cont'd)*

recommending the opposite now. Micuda noted that recommendation was 20 years before this request. He added that the last time the council dealt with a residential encroachment for a property owner was 1996. He said since that time, the council had asked more questions regarding a demonstrable and obvious public benefit to the city before alleys were vacated.

Public comment:
Solomon Lowenstein, Jr. said he owned 1006 W. 10th Street, lot 15, in the addition. He said he would like to add to his house and the vacation would allow him to do that. He noted he purchased lot 17 in a tax sale, but the topography and setback issues would not allow him to add to the house that was now extending into the right-of-way. He said he agreed with this amendment.

He said the neighborhood was turning from rentals into owner occupied homes. People wanted to invest in their homes and become compatible with the nearby Habitat neighborhood. He rejected the notion that granting this request would be setting precedent. He said several structures were built before 1920.

Lowenstein said that the council did not require alleys between the homes in the Habitat neighborhood, and said the Lone Star neighbors were asking for the same consideration.

Carol Gulyas, President of the Near Westside Neighborhood Association, said the group supported this vacation for their neighbors to the west. She said this old neighborhood existed long before modern planning and some structures were built in the 1890s. She noted residents wanted to improve their properties and had a hard time getting building permits. She noted a 1991 vacation of public property adjacent to 1011 W. Cottage Grove where the steep incline of the alleys prohibited utility use and "neither any current or planned public use of the alley was on the table." She said the neighbors would allow easements for utilities. She said this was a unique case with a quirky history of the area and should not be a test case for rigid policies regarding alley vacations.

Ruth Beasley, 1012 W 10th Street, said she had researched construction and tax records related to her home and adjacent homes built in 1899, 1900 and 1920, predating the 1928 plat maps that showed alleys for the first time. She said the alleys were obviously platted incorrectly and added that she didn't know if the homeowners were notified of this change. Beasley said that growing families and those aging in place could not modify their homes because of current building codes relating to these alleys that had actually never been used as alleys.

Marc Haggerty said this was his neighborhood and asked that the council acknowledge Ms. Beasley's research and knowledge of the area. He called the city process flawed. He asked that council members approach this with open minds and not in any way indicate they had already made up their minds. He said not to do so was to be dis-respectful of those who were making statements before the body. He noted in the past, two residents had gone to jail to prevent the street from being widened into what he called a "two lane drag strip." He said the platting was an obvious mistake, and vacation was an easy way to benefit the residents of the neighborhood.

Julia Beerman, 1006 W 10th Street, had pictures of the house Mr. Lowenstein bought at the tax sale. She noted that the house on the property had deteriorated to the point it needed to be demolished. She said that this property had served as a dumping ground, but she and Lowenstein continued to repeatedly haul trash and brush from the area to keep it clean. They would like to improve it by rebuilding the house. She asked that the alleys be vacated.

Amendment #1 to Ordinance 14-09
(cont'd)

Sophia Hauserman, a member of the Commission on Aging, said she advocated for policies that created neighborhoods that were good to grow up in and good to grow old in. She quoted from Phil Stafford's blog regarding aging in place: *"places need the people as well. When people stay put, places benefit."* She said this amendment would allow people to age in place, and 'benefit the place.'

Neher called for the petitioner's representative to comment.
David Ferguson said the amendment presented the opportunity to do some good for the neighborhood and remove the invisible lines that probably wouldn't be used, but wouldn't be given up by the city. He gave council members the city form for requesting public right-of-way vacations. He argued that if the city's policy was not to give up public land, they should get rid of this form. He noted that from the tax records, no structure had been built in this area since 1940.

Ferguson said the question was: what was in this vacation for the city. He said it would increase the tax base. He said the neighborhood needed to be strengthened so that tax sales on these properties didn't happen again. He said the council should consider the factors of the unusual development with laborers cottages, the 1928 plat done without regard for the construction already in place, the fact that this was an 86 year old problem that needed to be corrected, the terrain was not suitable for construction and there were no utilities located in the alleys. He said they also should consider the anticipated improvements, not the unanticipated improvements. He asked for passage of this amendment and the underlying ordinance.

Additional council questions:
Ruff asked staff their position on the assertion that all but three of the fourteen structures were in place before the 1928 platting of the alleys and if it affected the previous opposition to the vacation. Mulvihill said that not all 14 of the properties involved had an encroachment issue resulting from the 1928 platting. She said that all structures could expand in areas other than alleyways or ask for reasonable variances that would be granted. She said the information about the 1928 platting wouldn't necessarily change the administration's position.

Spechler asked Ferguson why the petitioners wanted a blanket vacation of all alleys rather than pursuing individual requests for encroachments when needed. Ferguson said the usual scenario was for the Board of Public Works to allow encroachments until such time as the city had a need for the land, which he called arbitrary. He said that did not encourage development or enhancement of a property. He said banks would not gamble on lending money for development in encroachments.

Ferguson said vacating the alleys would solve the problem except for one garage that was located partly on a neighbor's property. He said the setbacks would still be problematic.

Ruff asked why a predated structure wouldn't be grandfathered and have the right to be in the later drawn alley. Mulvihill said she would have to do research on the issue of grandfathering in this case.

Granger asked if it was true that ramps into homes could not be built if the alleys were not vacated. Micuda said it would depend on the lot and the request. He said that ramps for accessibility could be built anywhere, without regard to setback restrictions, but would need approval from the Board of Public Works to be built in the public right-of-way.

Council comments:
Sturbaum 'begged' council members to support the neighbors and right the wrong done in 1928. He said if this were coming forth as an affordable housing project for elderly, with small homes and shared green space, it would be eagerly accepted. He said the alley ways had not been used for over 80 years, and the city would benefit from this

Amendment #1 to Ordinance 14-09 *(cont'd)*

vacation with a new neighborhood association, the reuse of an abandoned building, and a cleaner neighborhood. He said the neighbors chose the complete vacation method because they felt stymied by asking for individual variances. Sturbaum noted that this vacation would send the message that government could listen to the citizens and work in their benefit.

Sandberg said this amendment addressed her only concern with the overall vacation request. She said affordable housing was her number one priority for the future and this was a neighborhood transitioning from rentals to affordable retirement and starter homes. She said this was the public good in the vacation. She said that the individual merits of this case should be considered, and the council should not give that judgement away to rigid public policy.

Spechler said he was in favor of keeping the east/west alley for use by the city. He said the newer garages had been built on public land without permits and speculated that they were built within the last 20 years or so. He said the laws were in place to protect neighboring property owners. He said he supported a compromise that would allow the encroachments, but not on a permanent basis. He said this would also preserve rights-of-way for future use. He noted that the council had been patient in hearing this issue at least three times.

Granger said this was not an easy decision because it was more complex than it appeared. She said if the petitioners had been dissuaded from the regular process, it concerned her. She wished that this proposal had gone through that process considering the substantial amount of time that staff, petitioners and council members had spent on this.

Ruff said he, in general, agreed with the staff position. He felt that the vacations of these rights-of-way did not increase the ability to develop the majority of the lots in ways that couldn't be reasonably done in other ways. He said he was offering a second amendment to address the few situations that didn't fit that category.

He said his original assumptions regarding the platting had been challenged with new assertions that these homes, not just any homes, existed before the platting took place.

He noted that council members could vote for this amendment, and if the vote on Amendment #2 passed, it would take precedent. He said he didn't believe that this vacation was the only key to development, investment, and improvement of this neighborhood as one person had stated in public comment.

Mayer attempted to clarify the date of photos shown by noting the characteristics of early photography, and said the pictures shown were from the early 1920s. He also noted that he was a long time member of the Utilities Service Board, and in that capacity he heard regular reports from the Transmission and Distribution workers. He said they knew every corner of the city, including this one, and knew how the areas were served.

He reiterated that there were encroachments in many undeveloped alleys in the city and that Lone Star was not unique in that respect. He said this vacation would set a precedent, not only because it came directly to the city council rather than the planning process, but also because it was asking for a wholesale vacation in one particular area. He said that was not good public policy. He said this should be done on a case by case, lot by lot, basis.

Mayer read the following from the planning manual:

> *The prospective petitioner approaches planning requesting a vacation. During the meeting with the prospective petitioner, Plan staff describes the documents the petitioner will need to produce to initiate a vacation process. A letter justifying the proposal specifically how the proposal addresses criteria for vacating rights-of-way, a legal description of the request of rights-of-way, a site plan showing the subject rights-of-way and adjacent*

Amendment #1 to Ordinance 14-09
(cont'd)

property, and names and addresses of all abutting property owners. After assembling this information, petitioner submits the above material from city planning, files for a vacation and pays the fees of $500.

After petitioners successfully completes the above steps, city staff assembles all information and transmits this information to all city and non-city utilities and emergency city service providers. The transmission from planning requests that utility and emergency service providers respond regarding their interest in the rights-of-way. It usually takes these stakeholders 2-3 weeks to issue a response. If a utility or emergency service provider expresses an interest in the right-of-way, they provide the city with further information about the nature of their interest in the property.

In some instances where is problem or conflicts, staff tries to work through these issues with utilities and emergency service providers to arrive at a mutually agreeable solution. In some circumstances a resolution is not possible. In those cases staff communicates this to the petitioner. Where the utilities and emergency service providers do not express concern at the requested vacation, the request goes to the board of public works. The board makes the determination about whether a requested vacation affects or does not affect the city of Bloomington.

Where the board makes the determination that the vacation does not affect the city's interest, the staff prepares an ordinance and background materials for the council and the matter proceeds through council for review.

Mayer said that the key to him was the whole process of obtaining the information as to what the alley vacation would or would not do for the community. He said that by coming directly to the council with this petition, the council was learning bits and pieces of information continually through the process instead of learning all the information at the outset. He said there was a remedy in place for this petition and didn't think the council should be considering the petition at this time.

Neher posed a question of judging the issue as to which option - the ordinance as it was written or the ordinance as amended - would be the better policy. He said the amendment mitigated some concern he had with the original ordinance, and expressed his support of it. He said this would end up being better policy for the city, but noted he may not support the whole ordinance when the time came.

The motion to adopt Amendment #1 Ordinance 14-09 received a roll call vote of Ayes: 5, Nays: 2 (Granger, Mayer).

It was moved and seconded to adopt Amendment #2 to Ordinance 14-09.

Amendment #2 to Ordinance 14-09

This amendment is sponsored by Councilmember Ruff and would vacate segments of two north/south alleyways. The one lies between Lots 4, 5 & 6 on the west and Lot 8 on the east. The second lies between Lot 11 on the west and Lot 12 on the east. The vacation of these two alley segments addresses significant encroachment issues of existing structures. The history of the encroachments is difficult to document and may predate the plat.

Ruff said this amendment was a way to address the blanket 'all or nothing' provision of the ordinance. He said all the lots were not impacted the same way, and this proposal vacated the rights-of-way only when needed for existing encroachments or inconsistencies in data.

He listed reasons for vacating only these two alleys saying that Lot 8 had a property line going through the garage and Lot 11 had a structure on a property line there. He said since Lot 15 was unusual in shape, he was confident that expansion of the structure would get a variance because of the shape, and a vacation did not eliminate all the issues with development. He said he felt issues with Lot 18 had more to do with the ramshackle condition of the house, and it was one of the larger lots in the group. He noted Lots 16 and 14 didn't need additional space to develop either.

In summary Ruff said that this amendment addressed the underlying concern of the plat issue, using that history to justify the vacation. He further noted that the vacation done in the 90s over the same issue did not justify vacating all the alleys because it didn't include a blanket vacation of the whole neighborhood, just one alley segment upon which a house was erroneously built.

Spechler asked if this meant that only the structures with substantial encroachment issues would trigger alley vacations. Ruff said he also wanted to take into consideration that the history of the area was not

complete and the creation of the existing encroachments was difficult to determine. He said he wouldn't be in support of vacating them if it was clear that they were built after 1928.

Spechler asked if he thought the structures as they stood now were in place in the 1920's. Ruff said he was unqualified to make that determination.

Sturbaum asked if Ruff would support the addition of two more segments of alleys because one was adjacent to the property with the ramshackle house and it deserved to be fixed. He said another lot would be greatly enhanced by being enlarged by the vacation. He stated he would support the amendment if those two additions were made.
Ruff said this was a balancing test, and Lot 18 not only had a dilapidated house, but it was the largest lot with a long street frontage and the only one with two street frontages. He said Lot 15, a triangular lot, would not really benefit from the addition of six feet of land, although he did acknowledge that the owner wanted to buy an adjacent lot to combine with this one. He asked Micuda to give his view.

Micuda said if the property owner at 1006 wanted to expand to the west or east, and either expansion was in the right-of-way, that would be a clear and obvious case for variance given the unusual dimension of the lot being a triangle.

Neher asked Micuda for his opinion on the amendment. Micuda said the administration opposed the amendment because there was a viable encroachment option; and from the precedent setting standpoint, because there were other neighborhoods with encroachment issues.

Sturbaum asked if Ruff could add the two alleys he mentioned previously into this amendment in an attempt to compromise. Ruff said he didn't want to change this amendment, but he didn't think it would close the door on that option as Sturbaum could propose that amendment himself. Sherman said that the amendment needed to be in writing, and only one amendment to an amendment was allowed by the code. Sturbaum said that Ruff was proposing something that addressed two problems but didn't address the petitioner's issue of a right-of-way directly behind Lot 15. He said if Ruff would not support the addition he proposed, he wouldn't waste time bringing it up separately.
Ruff declined to change the amendment. Sturbaum dropped his request.

Public comment:
Ruth Beasley said in her research, the first time her garage was referenced in the tax role was in 1940. She said that the assessor at the time gave it a grade of "F" and noted "it's in bad condition now" which made her think the garage or outbuilding there in 1928 eventually fell down and the current garage was built in its place.

Lowenstein said he had tried to solve the alley problem behind 1006 W. 10th Street for the last seven years. He said that was the only parcel he owned until he bought 1008 and Lot 18 at a tax sale and went to the plan staff again. He said he provided a detailed letter with a vacation request but didn't have a meeting. He said the response, in writing from the plan staff, was "You do not have a redevelopment plan. We're not going to consider it."

He said he was blocked until he discovered that Indiana law allowed the lot owners to come before the council directly. He said he wasn't trying to avoid the procedures, but tried to comply with the procedural requirements. He said he had verbal commitment from the owner of Lot 14 and Lot 16 that if the alley behind 1006 was vacated, he would consider selling Lowenstein his six feet of alley.

He said the house at 1002 was on the best part of the lot to build on; because of setbacks, access issues and low ground, he preferred to save the house there. He supported Amendment #1, but not Amendment #2

Amendment #2 to Ordinance 14-09
(cont'd)

which he said would not solve the neighbors' problems.
Neher asked the petitioner's representative to speak to the amendment. Ferguson said the amendment didn't help all of his clients and he was conflicted. He noted appreciation for Sturbaum's attempt to help the situation and said that Amendment #1 solved the encroachment problems better for all. He noted that the question of whether public vs private ownership was better for the city was answered in that private ownership of these few alleys would be better for the city than public ownership and neglect. He said that additional benefits to the city would be larger lot sizes, fewer regulatory issues, fewer variance issues for the owners, would allow the lot sizes to comply with city code by increasing the size of the lot, increased taxes and greater investment in the rest of the neighborhood.

Sturbaum asked Ruff to consider one more time to help all the petitioners rather than just a few, stressing this would solve the most problems in the area. Ruff said he wouldn't, and explained that if the amendment failed, he would vote yes on the ordinance as amended by Amendment #1.

Sturbaum asked staff who would be responsible if an 84 year old tree fell on someone's house. Mulvihill said the Indiana Tort Claims Act gave immunity from liability to local units of government and state government for, among other things, unimproved property that had been in its natural condition, which she said the alley was. She said there would not be liability on the part of the city if a tree fell that caused damage. Sturbaum asked if that was fair. Mulvihill said that she could only answer from a legal standpoint that there would be no liability on the part of the city.

Mayer asked Micuda if all property owners in the addition had the opportunity to petition for alley vacation. Micuda said they did. Mayer noted that the CBU wanted the city to maintain certain rights-of-way. Micuda said that was also correct.

Neher noted that the petitioner was told that his petition would be looked down upon and wouldn't be approved without a redevelopment plan. Micuda said the department had been contacted by Lowenstein in 2008 and 2013. He read from the response sent to Lowenstein in 2013:

> *Thank you for your letter and supporting materials you submitted in pursuit of a right of way vacation in the Lone Star addition. As a general rule city staff and the Bloomington Common Council rarely support right-of-way vacation requests unless the vacation is absolutely needed to facilitate a redevelopment project that has significant public benefit to the community.*
>
> *The rights-of-way you are requesting to be vacated are adjacent to single family homes and portions of the rights-of-way have utilities located in them. In researching the request, I found a similar request submitted to our office on January 2, 2008. At this previous time we did not support the request due to the need to relocate utilities as well as the lack of an accompanying redevelopment project that could provide public benefit to the city. With the current request city staff would not be supportive because of the lack of the redevelopment project as well as the complications with utilities. We know if local utility companies were contacted about this request, they would prefer relocation of lines rather than simple combination by easement.*
>
> *Although we do not support this request, please do not hesitate to contact me if you have questions about the right-of-way vacation process.*

Neher asked what constituted a redevelopment project. Micuda said for him it meant information at any time from the petitioner that indicated what he wanted to do on the property – an expansion or new construction – that would allow the staff to see the impact of the project on the property and the right-of-way.

Council comments:
Ruff said he took city policy seriously in this issue, and it was complicated by the history of the area. He said this amendment did a decent job of balancing the guiding policies and responsibilities with the ability to allow investment and improvement in the area. He said this

Amendment #2 to Ordinance 14-09 *(cont'd)*

was a hard decision for him personally.
Sandberg said she could not support this amendment as it did not go far enough and felt there was no attempt for a little more compromise.

Spechler noted the petitioner's representative was against the amendment. He said he would also be against the amendment and wanted an up or down vote on the request of all alleys being vacated.

Neher asked Sherman to verify that this amendment, if passed, would replace Amendment #1. Sherman agreed with this interpretation.

Sturbaum noted he would vote to keep Amendment #1, referencing Ruff's statement on his preferences.

Neher noted that comments about a possible denial of the right-of-way vacation petition precluding opportunities for investment in the neighborhood weren't true. He cited the letter written to the petitioner that noted that the public benefits and plan were required for a vacation process. He said there was an illusory promise of a greater good to the neighborhood in the petition, but without a tangible plan, project or timeline. He said it was difficult to vote in favor of this for that reason. He said he would support a vacation if this was resubmitted with more tangibility.

The motion to adopt Amendment #2 Ordinance 14-09 received a roll call vote of Ayes: 2 (Ruff, Granger), Nays: 5, and thus failed.

Ordinance 14-09 as amended by Amendment #1

The discussion returned to Ordinance 14-09 as amended by Amendment #1.
Neher asked for questions from the council members.

Sturbaum noted that 18 lot owners who would have the opportunity to make improvements over time in itself was the 'project', albeit not a specific project. He said the whole point of the vacation request was so that people could improve their properties. He asked if there was a legal way to 'contain' the opportunity issue, or if it was too abstract to fit into regulations. Micuda said that if a group of property owners, or a single property owner, came forth with ideas for what they wanted to do with their structures, outlined the barriers associated with the improvements (lot by lot) with ideas for alleviating barriers, it would be received.

Sturbaum asked if this wasn't the current case except that the petitioners used the council process instead of the planning process. Micuda said that no one from his department had ever met with the petitioners. He noted that staff could have fleshed out ideas for the entire area, even if they were less specific to begin with. Sturbaum noted that if that had been the reaction the petitioners had gotten initially, they might have engaged the planning department instead of bypassing them in favor of the council procedure. Micuda noted there were no conversations other than the two written statements with no other communication from the petitioner.

Mayer asked what would happen if a petitioner wanted to just rectify the encroachment that already existed. Micuda said that they would work with that person, help them through the process, and help them get the legal documentation needed. Mayer asked if, in this instance, the petitioner could ask to vacate just their portion of the alley. Micuda said they could.

Neher asked for public comment:
Beasley said she had a plan for 1012 because when she bought the house, the inspector gave her an idea of the costs of improvements for her home and garage. She said she wanted to know, when her garage falls down, if she could rebuild it whether the alley was still there or not.

Lowenstein reiterated his plans for 1006 and 1002. He said he wanted to add a room to 1006 but was prevented because of the public right-of-way and severe setback restrictions. He also said that he had verbal commitments from the property owners of two lots to sell him their alley portions so that he could build this addition and one other. He said he planned to rehab the house at 1002 to make it habitable and compatible with the other houses that faced W. 10th Street.

Ferguson clarified that banks would not lend money for a project within an encroachment, because they couldn't put a lien on city property. He said the same condition would not apply in the instance of setbacks, as variances could be awarded. He also said that it made no sense to invest in a property that had an encroachment if at any time the city could need the property and then the structure would have to be removed. He said there would be more investment in these properties if the alleys were vacated than if they were not. He said this was the third meeting on this issue, and the neighbors had shown up each time. He said that to ask them to come back for a different, piecemeal process was expensive for them and asking too much.

Spechler said if this had started with a legitimate proposal in a normal procedure the issue would have been solved a long time ago. He said all the facts would have been known ahead of time instead of bringing new information in the 11th hour. He said chances for approval would have been better and shorter.

Sandberg said that she felt comfortable making the decision, but what was missing from the evening's statements were stories from the families to flesh out the neighborhood that she heard in the previous meeting. She said she didn't need to see a specific proposal to support this petition, despite the fact that some steps were skipped. She said this was a contribution to the health of the neighborhood, and not giving up a public good.

Sturbaum said that alleys had recently been vacated for hotels and student apartments. He said it was time they were vacated for the good of a neighborhood. He noted Micuda said that individuals could be granted variances with individual petitions, and the whole petition was therefore supportable and in the public interest. He said letters from city officials saying that something could not be done were taken differently from a more informal note or a conversation. He said perhaps these could have been resolved differently.

He said this council should rectify the mistake made by the 1928 council. He said it would not wreck policy or ruin the city by vacating these areas. He said the neighbors had spent time, pled their case well, and all the little problems could be cleaned up with this one ordinance. He asked the council to help make this a neighborhood where people could prosper.

Ruff said he didn't like the process used for this ordinance. He said the way the petitioner interpreted communications contributed to the situation at hand. He said he was in agreement with staff's position, and believed that these neighbors could invest or improve their properties without the vacations. He said that most of the entire list of properties would not be significantly affected by the vacation.

He said he respected the research of the petitioners on the history of the area, and was greatly troubled by the 1928 decision, which he said was not appropriate. He said that was an important fact in the discussion and caused him to reluctantly, and not happily, vote for the proposal. He said he felt his amendment, #2, would have been a good compromise, but acknowledged that he respected the vote on that. He pointed out that he voted against the last two hotel requests for right-of-way vacations because they would not honor a living wage, and he could not see the public benefits in those proposals.

Ordinance 14-09 as amended by Amendment #1 *(cont'd)*

Granger said she would not support the proposal because she didn't want to give up the city property. She said the neighbors still had the opportunity to improve their properties without the vacation.

Mayer said this was a difficult vote. He said he was convinced that remedies were available for the issues to be resolved without the wholesale vacation of the alleys. He said giving up the rights-of-way within a whole block was too far a reach and the nature of the request disturbed him. He thanked Ruff for his efforts to try to find a remedy for the properties that needed help the most. He said he found inequity there because if anyone else wanted to make a proposal later, they would have to go through the regular process, including paying city fees. He noted the passage of this ordinance did not include those fees for the process.

Neher said his thoughts had been expressed in the discussion about Amendment #2, and said very general plans were problematic. He said some of the tension noted earlier had come from the choice of the petitioner to not use the normal process, and then asked the council to ignore the normal process, too, by considering the blanket vacation instead of a case by case evaluation.

Ordinance 14-09 as amended by Amendment #1 received a roll call vote of Ayes: 3 (Ruff, Sturbaum, Sandberg), Nays: 4 (Neher, Mayer, Spechler, Granger) and thus FAILED.

Ordinance 14-14 – To Amend Ordinance 13-16 WHICH FIXED THE SALARIES OF APPONTED OFFICERS, NON-UNION AND A.F.S.C.M.E. EMPLOYEES FOR ALL THE DEPARTMENTS OF THE CITY OF BLOOMINGTON MONROE COUNTY, INDIANA, FOR THE YEAR 2014 – Re: Adding a Position in the Office of the City Clerk (Records Archivist)

It was moved and seconded that Ordinance 14-14 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do Pass recommendation of 6-1-1. It was moved and seconded that Ordinance 14-14 be adopted.

Clerk Regina Moore said the mission of the new position was to create an accessible collection of council legislative records. She noted that in the past she had attempted to do this project with interns and part time staff, but the nature of the project needed a more continuous and concentrated effort. She said this was the optimal time to take a complete picture of the legislative work of the council for the last 170 years.

Moore said there were no grants from the state for digitization at this time. She said resources were dedicated to the upcoming state bicentennial in 2016 where there were stories to be told. She said there was not priority for the wholesale digitization of legislative collections.

She noted all intern salary money budgeted for the rest of the year would be put towards this part time position and an additional $11,000 to $12,000 would be needed in an end of the year additional appropriation to round out the salary for the regular part-time Records Archivist to plan and manage this work.

Spechler asked that the request be postponed until the new controller could update the council on the budgetary implications of the proposal. Neher asked if that was a formal motion. Spechler said it was, and it was unusual to have a unilateral proposal of this sort without a response from the administration.

Spechler formally moved that consideration on this proposal be postponed until August 27, 2014. Ruff seconded the motion. There were no questions for Spechler on his motion.

Spechler commented on his motion that the administration should be consulted as to their priorities, and if the city could afford the proposal. He added it was no secret that he was against this on the grounds that he had higher priorities for expenditures. He asked the council to insist on proper procedure, which he felt was to hear the opinion of the administration with regards to the real costs.

Ordinance 14-14 *(cont'd)*

Granger said she didn't want to postpone this issue, as there was no time line for a new controller to be named. She said that although she was not an economist, she felt the salary for this position would not break the bank. She said she wanted to vote on this now.

Ruff said he appreciated the essence of Spechler's concern, but added that the council made final decisions on the budget. He said given the nature of the request and the size of the request, he was comfortable without hearing from the administration on the proposal.

Neher noted again the fiscal responsibilities of the council and noted Moore was also elected to run the Clerk's office. He said the mayor did not have direct authority over the office, although he could provide input, but this decision was independent of the administration.

The motion to postpone consideration of this ordinance until August 17, 2014 received a roll call vote of Ayes: 1 (Spechler), Nays: 5. Sturbaum left the meeting before this vote was taken.

Council questions:
Granger asked Moore to clarify the work of the office towards digitization up to this point. Moore said that with part time staff, records back to the late 1970s had been scanned and digitized. She added that more recent legislation had been scanned and posted on the Clerk's page on the city website. Moore noted that this allowed city staff in other departments to search for old records without coming to the office, or disassembling old books of records.

Spechler asked how many years it would take for the project to be completed. Moore said it could be completed in two years. Spechler asked if she would commit to only the current year and reexamine the proposal for the 2015 budget. Moore said she would not as she had already prepared the Clerk's 2015 budget with the position, and the proposal at hand was to get a head start on that work.

Neher asked about general staffing issues. Moore noted that a recent request from another department took a staff member's time for three hours in helping this person with the protocol for using old records, determining the nature of the request, and directing the search to the appropriate segment of the records. She said with accessible digitized files, a simple search would have produced the results within a much shorter period of time, with less actual staff time used.

There were no public comments on this proposal.
Council comments:
Spechler said there was value in this proposal, and said he had confidence in the clerk. He added when he asked his constituents if they preferred this valuable but postponable project or spending the money on social service needs, they said uniformly and universally they would prefer the latter. He expressed his agreement with that sentiment and said he would be voting against the proposal. He said this was expanding the bureaucracy and the council should take pause. He added that his estimate was that this project would take ten years, but said he was no more confident in that estimate than in Moore's. He noted this vote was not personal and the project was worthwhile.

Sandberg said she disagreed with Spechler and noted that this was such a modest proposal for such an important purpose. She said both this position and social services could be funded and to make it a choice between those two was proposing a false choice and not a responsible way to manage affairs. She said funding for this position would not be

taken from the social service funding lines, and Spechler's argument didn't please her. She thanked Moore for stewarding this project with a staff member whose full attention would be devoted to the proposed task.

Ordinance 14-14 *(cont'd)*

Mayer said the funding for the Jack Hopkins Social Service Fund was reaching its upper limits. He said Bloomington was one of very few cities in the state that awarded taxpayer money to social services. He noted this was not an either/or situation and that care needed to be taken when talking about that funding.

Granger read from the ordinance:

WHEREAS the City Clerk is required by both state and local law to maintain custody of records of the common council in perpetuity.

She said the oldest records were fragile and they needed to be attended to immediately.

Granger added that she appreciated Moore's attempts to create the project and get it underway without asking for additional money. She noted that the city as a whole needed to think about records management.

Ruff agreed it was an important project and appreciated Moore's understanding and vision in protecting these records, calling it historic preservation. He said he wished Sturbaum were still at the meeting to give his perspective on it. He added that in seconding Spechler's motion to postpone this ordinance, he was acknowledging that issues important to a council member should be discussed and not dismissed outright.

Neher noted the earlier discussion and said it would have been easier for all if the records of the city and county were available, digitized, and online for searches. He added that minutes and supporting documents could be added to give greater insight and would allow council to legislate more effectively and efficiently.

Ordinance 14-14 as amended received a roll call vote of Ayes: 5, Nays: 1 (Spechler).

LEGISLATION FOR FIRST READING

There was no legislation for introduction at this meeting

PUBLIC COMMENT

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

COUNCIL SCHEDULE

Dan Sherman, Council Attorney/Administrator, noted that at the conclusion of this meeting the council would recess until an internal work session on August 13, 2014. He also noted the 2015 Budget Hearing would commence on August 18, 2014.

ADJOURNMENT

The meeting was adjourned at 11:25 pm.

APPROVE:

Darryl Neher, PRESIDENT
Bloomington Common Council

ATTEST:

Regina Moore, CLERK
City of Bloomington