

In the Council Chambers of the Showers City Hall on Wednesday, October 7, 2009 at 7:30 pm with Council President Andy Ruff presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
October 7, 2009

Roll Call: Mayer, Piedmont-Smith, Ruff, Sandberg, Satterfield, Sturbaum, Volan, Wisler
Absent: Rollo

ROLL CALL

Council President Ruff gave the Agenda Summation

AGENDA SUMMATION

There were no minutes to be approved at this meeting.

APPROVAL OF MINUTES

There were no committee reports at this meeting.

REPORTS:

Tim Mayer reported that he attended the Indiana Association of Cities and Towns Municipal Day in West Baden on October 5th. He said he attended several seminars, and added that Adam Wason, Assistant Director of Economic Development for Small Business and Sustainable Development made a presentation there as well. Mayer said that this was National Adopt a Shelter Dog month and invited folks to a movie at the Monroe County Public Library on Saturday, Oct 10. He praised the local animal shelter for their work and the administration for their support of the shelter.

COUNCILMEMBERS

Mike Satterfield said he also attended the IACT Municipal Day. He noted that the Census 2010 was searching for workers for the upcoming census.

Chris Sturbaum talked about the two native Indiana fruits, pawpaws and persimmons. He had samples of each and talked about each.

Steve Volan said he recently adopted a cat, and noted Mayer's adoptable dog opportunity.

Susan Sandberg promoted "There's No Place Like Home" an affordable housing and emergency shelter town hall meeting to take place in council chambers on October 20, 2009. She said it was hosted by the Community and Family Resources Commission.

Isabel Piedmont-Smith noted a National Equality March would take place on October 10th and 11th in Washington DC and in Bloomington. She said they would demand equality for all citizens, and would urge the federal government to protect equal rights for all.

Andy Ruff noted he had received a copy of a recent report from the Bureau of Labor Statistics of Metropolitan Employment and Unemployment for the summer months. He said that Bloomington, Evansville and Indianapolis were the three lowest in unemployment in the state. He said that the Interstate from Indy to Evansville was being touted on the pretext of unemployment and said he found this ironic compared to this finding. He said resources should be carefully invested and real interests driving this project should be noted.

Mayor Mark Kruzan introduced Mary Jane Hall, Bloomington INbloom, who briefly discussed the awards for the Fall 2009 Commercial, Municipal and Multifamily Curb Appeal Contest. Hall thanked everyone who participated in making Bloomington a prettier city.

MAYOR and CITY OFFICES

- Mayor Kruzan presented the winners with their plaques. For multi family properties, the winners were broken down into four categories.
- For individual doorways, the winner was Mark Kranner.

- For less than 10 units, the winner was Nora Liell.
- For 11 units or more, the winners were Max and Gilda Lauchi; Nora Liell was the runner-up.
- For entrance areas, the winner was John Burnham of Burnham Rentals; the runner up was Redbud Hills.
- The not-for-profit winner was Jean Gunning of WonderGarden; Bloomington Hospital was the runner up.
- The Municipal/Publicly owned winners were Mia Williams and Mike Crowe, who won for Bryan House; the runners up were Hoagy Carmichael Plaza and the Whittenberger Auditorium Entrance to the Indiana Memorial Union, both of which were also done by Mia Williams and Mike Crowe.
- The Commercial-Large installation winner was Robin Walls/CFC for Fountain Square; the runners up were Deer Park, 400 S. Landmark, and Cook Pharmica.
- The Commercial-Small installation winner was Mike Hayes for German-American Group; the runner up was Jerry Neely for Rogers Investment Group.

Mayor Kruzan thanked the Council for their time and everyone who participated.

Ruff thanked the Mayor and everyone in the community who helped to make Bloomington a better place.

There were no council committee reports at this meeting.

COUNCIL COMMITTEES

Dee Hope Sanders thanked Piedmont-Smith for reminding people about the LGBT Equality Event that was to take place on Sunday. She said that the event was open to everyone, and that it was meant to be a celebration.

PUBLIC INPUT

Erin Kessler was the co-organizer for the Equality Event and wanted to stress that the group was very involved in the community, and that the group was really excited about the event. He also stressed that he really wanted to see council members at the event.

There were no appointments to boards or commissions at this meeting.

BOARD AND COMMISSION APPOINTMENTS

It was moved and seconded that Appropriation Ordinance 09-08 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do Pass Recommendation of 8-0.

LEGISLATION FOR SECOND READING

It was moved and seconded that Appropriation Ordinance 09-08 be adopted.

Appropriation Ordinance 09-08 To Specially Appropriate from the Electronic Map Generation Fund Expenditures Not Otherwise Appropriated (Appropriating Funds to Retain Consultant for the City's Geographic Information System)

Rick Dietz, Director of Informational and Technology Systems Department noted that the synopsis explained the Appropriation Ordinance and asked if there were any questions about the request for an appropriation to provide for strategic planning assistance regarding the GIS system and how it will be used in the coming years.

There were no public comments or final council comments on this item.

Andy Ruff noted, as he did in the previous committee meeting on this item, that a good friend of his was employed by the firm that might get the consultancy on this project, but said that he could deliberate and vote on this item without prejudice.

Appropriation Ordinance 09-08 received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that Appropriation Ordinance 09-09 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do Pass Recommendation of 8-0.

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

Laurie Ringquist, Director of Animal Care and Control, noted that the appropriation was for \$16,498 from PetSmart to improve the shelter kennels.

There was no public comment on this item.

Wisler noted that sometimes national companies don't invest in the community and encouraged folks to donate an extra dollar when they purchase items in pet food stores adding that the money they donate stays in the community.

President Ruff asked Parliamentarian Volan to explain to the students in the chambers why there was so little discussion on the legislative items at this meeting.

Volan briefly explained the three meeting legislative cycle and also clarified the purpose of the Committee of the Whole discussion.

Appropriation Ordinance 09-09 received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that Resolution 09-08 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do Pass Recommendation of 9-0.

It was moved and seconded that Resolution 09-08 be adopted.

Vickie Renfrow, City Legal Department attorney, explained that the protection plan was meant to help prevent identity theft, and that it needed to be approved by November 1, 2009.

Renfrow said that this resolution was needed to bring the city, specifically the Utilities, in compliance with the Red Flag Rule. She said that this refers to regulations that were issued jointly by the Federal Trade Commission, the National Credit Union Administration, and the Federal Bank Regulatory Agencies to implement the Fair Accurate Credit Transaction (FACT Act) of 2003. She explained that this was intended to prevent identity theft as defined as a fraud attempted or committed using identifying information of another person without authority. She said that the regulations require a creditor who handles covered accounts to adopt a written program for identification, detection, prevention and mitigation of identity theft. She further explained that these programs must identify practices or specific activities known as Red Flags that could indicate identity theft and have responses to those Red Flags. She also noted that the program must be approved by the governing body, and that compliance must be achieved by the beginning of November of 2009.

Renfrow explained that the accounts to be monitored are Utilities accounts that are maintained for personal, family, and household purposes and involve multiple recurring transactions. She said that if identity theft is suspected, the policy articulates specific steps for the Utilities personnel to follow for prevention and mitigation, including monitoring an account for suspicious activity, contacting the customer, closing the account, or contacting law enforcement. She noted that the policy that was developed by Utilities, the IT Department and the Legal

Appropriation Ordinance 09-09 To Specially Appropriate from the General Fund Expenditures Not Otherwise Appropriated (Appropriating a PetSmart Charities Grant for Use by the Animal Care and Control Department)

Resolution 09-08 Approving the City of Bloomington Utility Identity Theft Protection Program

Department follows the sample published in the Federal Register. Renfrow noted that the rule was more focused on entities that provide credit, however the accounts at Utilities fall within the rule. The director of finance at Utilities would be in charge of administering the program and would work with staff to monitor the accounts. She said that after the initial approval of the common council, any modifications to the plan would be approved by the Utilities Service Board.

Volan asked what the Utility user needed to know about this. Renfrow said that the users would know that their information was being protected, and that the staff would be looking out for any documents presented to open accounts that were altered or didn't look right. She said that this wasn't a big problem with Utility accounts but that awareness was important.

There was no public comment on this item.

Mayer noted that as representative on the Utilities Service Board, the board had reviewed and approved the protection program.

Piedmont-Smith said that her initial response was to ask how customer information was protected, and thanked Vicki Renfrow for her list of 26 ways that the Utilities protects that information. She added that the information discussed and the procedure authorized by this resolution was to detect if fraudulent information was being used to set up an account.

Ruff said that he had been assured there would be no hardship or undue burden for ratepayers or staff, or use/abuse by any other governmental agency. He thanked Renfrow for her response and said that this resolution formalized things that were already being done in an informal way.

Resolution 09-08 received a roll call vote of Ayes: 8 Nays: 0.

It was moved and seconded that Ordinance 09-17 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do Pass Recommendation of 7-0-2. It was moved and seconded that Ordinance 09-17 be adopted.

Clerk Moore noted that the public comment portion of this ordinance deliberation would serve as the legally advertised public hearing on the legislation.

Lynn Darland, Zoning & Enforcement Manager in the Planning Department, noted that this request was for the City to vacate four segments of right-of-way and showed the area on a map. She said that Upland, the petitioner would like to expand their business. She added that the City of Bloomington Utilities and Vectren were working on a blanket easement until the second phase of the business expansion. She added, too, that the city would need to maintain the wall of the bridge that was on Rogers Street and needed access to maintain the wall.

She noted that some council members had questions about the timing of notification of adjacent property owners and said that the rule was that the notice had to be done before the final vote. She said that in future projects, the planning department would create a process to notify adjacent property owners of right-of-way vacation requests earlier than the law required.

She noted that during the committee meeting, some council members had questions about the concerns and comments of adjacent property

Ordinance 09-17 To Vacate Four Public Parcels - Re: A Portion of North Madison Street, West 12th Street and Two Alleys Located Between North Rogers Street, the Indiana Railroad, 350 West 11th Street and West 11th Street. (Doug Dayhoff, Upland Brewing Company, Inc., and Middle Court Real Estate, LLC [together "Upland"], Petitioners)

owners. She noted that she had spoken with the attorney for the Indiana Rail Road who had no objections to the vacations. She said that the Indiana Rail Road had been working with Upland to maintain a fence along the rail road property, but that agreement could not be finalized until after the vacation at hand.

Ordinance 09-17 (cont'd)

She noted that Mr. Baugh's concerns about access were addressed in conversations with Upland. She said that the southern alley to their property would remain open, although this would be an indirect access due to sight issues in using the alley to access Rogers Street. She said Baugh also was concerned that his sewer lateral would be able to be connected to a new sewer main. Darland said she had been assured by the project engineer that during phase two of the construction the lateral would be connected to the main at Upland's expense.

Volan asked about the value of the land being vacated. He asked if the city should be compensated for the fair market value of the land, even though it is oddly shaped.

Vickie Renfrow, Assistant City Attorney said that there was no case that she could find in Indiana where a city had been compensated for vacating a right-of-way. She said that the law in this area did not say anything about the criteria or form of benefit that the city could expect upon vacation. She said that she could find no reason that under Indiana law, on a case by case basis, we couldn't have a policy that would contemplate requiring compensation. She noted that in this case not all the land was going to be received by Upland, and that receivers would have to be considered, also. She stated that value of land is a function of a willing buyer and a square foot value could be calculated from assessment records, but the reality of the situation would also have to be considered.

Volan used the example of a business owner approaching the city for a vacation of right-of-way with the statement that they needed the land to make their business profitable. He asked if the city was setting a precedent in giving up such a lot of land.

Renfrow said no. She said that the judgment of the council as a legislative body would be given deference as the pros and cons of each case was weighed, each case being looked at separately and that one decision would not bind the council to a previous decision. She gave an example of a case in Seattle where the law allowed compensation but that the City Council did not require it in a vacation to another municipal authority. She said that it would require some study, but that even if there was no charge for vacation now, it did not mean that it couldn't be required in another case.

Volan reiterated that granting the vacation at this meeting was not setting precedent and that it would not preclude the council from creating a compensation ordinance and asking for compensation at a later date. Renfrow agreed.

Sturbaum noted that if there was public harm, the council would not vacate the land, and asked about the order in which this project was progressing. He said that the Plan Commission and BZA hearings had not yet happened and asked Tom Micuda, Planning Director, if this was being done in the right order.

Micuda said he understood the question to be about a commitment on the part of Upland to develop the property as was stated at this meeting. He said it was not a commitment unless it was made a condition of the vacation of right-of-way. He said the petitioner was showing intent in

this case. He said that it was more usual to have the vacation legislation come after the plan review process. He said that the Planning Department stance was that there was not a public use for this land in its existing form or proposed form that would cause concern for vacation. He added that it was up to the council to delve more deeply into the issues or attach conditions to this vacation. He also said that the plan review process was rigorous and that there was a council representative on the Plan Commission, and that the council might have faith that a good product would come out of the vacation. Ordinance 09-17 (cont'd)

Micuda said that the petitioner had given reasons why he wanted to deal with the right-of-way issue before the design issue and said the council may want that on the record.

Ruff asked the petitioner to step to the podium and state his intentions.

Doug Dayhoff said that what was presented so far was, indeed, the intention in development of his business. He said that he wouldn't do anything with the site that would not enhance the public's view of his business. He said that a large corporation would have no trouble funding the site engineers, architects and other professionals required to support a project coming before the Plan Commission, but as a small business, a \$50,000 expense would be difficult to manage when those funds should be used to build his business. He said that an insistence on the other sequence of events would put money into the administrative activities and process instead of allowing him to build the business so that it would need the expansion.

Dayhoff showed sketches of his plans and said he wanted to build a larger wholesale brewery business not a larger restaurant. He added that without a vacation of N. Madison this could not be done because relocation of the sanitary and storm sewer needed to be located to the west, and that they would be building over that area. Dayhoff spoke of the nature of his business as well as his personal philosophy of business.

Sturbaum said he was satisfied with the answers and said he understood that the design shown at this meeting was not a commitment.

Piedmont-Smith asked if the reason Dayhoff had not created a site plan before asking for the right-of-way vacation was to make sure that he had the ability to build in the area before investing in the engineering and site plans. Dayhoff said that it was one of the issues.

Satterfield asked staff if there had been problems with vacations in the past. Micuda said he would need to do further research, but that the right-of-way vacation for the Hotel Indigo was tied to that particular development and it hadn't been developed yet.

Volan asked if there was a precedent for a claw-back provision for a project like the Hotel Indigo. Micuda said that the question was investigated internally and said that a reversion clause would not be the best way to proceed legally. It would be better to delay an effective date of the vacation.

Volan said in some cases the petitioner could simply want to consolidate the value of the land for future sale, and wondered what would happen in that case.

Micuda said he was not arguing against the merits of getting the land back, but reiterated that the reversion was not the best legal way to proceed.

Ordinance 09-17 (cont'd)

Renfrow said that reversions are not advisable in real estate laws. She said that having a reversion in granting right-of ways was not permitted in Indiana. She said a better way would be to use a Memorandum of Understanding or make the vacation delayed or contingent on something happening. She said that to become effective then, a particular action would need to take place.

Volan asked if there were conditions for this proposal.

Renfrow said that the only condition in this instance was a 'grant back' of the blanket easement for Vectren Gas and the city's use. She said that document was ready to be recorded after the 30 day appeal period.

Volan asked if the city could get the land back if the petitioner didn't do what they said they were going to do.

Dan Sherman, Council Attorney/Administrator said that the Hotel Indigo right-of-way ordinance delayed the effective date of the ordinance until the Planning Department provided the City Clerk with a Certificate of Zoning Compliance for the project, and the City Clerk filed that ordinance and the certificate with the County Auditor and County Recorder Offices.

Satterfield asked what could be done in the future to deal with Volan's concerns. Micuda said that the Legal and Planning Departments were present to provide recommendations to the council. He said that these recommendations would reflect the individuality of each case.

Satterfield explored the scenario in which a developer would ask for vacation of city property in order to add to his land holding to increase the value of the land. Micuda said that the issuance of a Certificate of Zoning Compliance indicated that the developer brought forward plans for development which was different from the scenario of land assembly. He said that a Certificate of Occupancy would indicate a building was ready for use.

The only public comment on this item came from Larry Jacobs, government relations manager for the Chamber of Commerce. He said that Upland epitomized both local business and the spirit of Bloomington, and it was evident from their presentation that Upland was committed to the community. He also said that he didn't believe the property in this case had public use and advocated for it to be vacated. He acknowledged Volan's concern saying it could be an issue in other cases, but he didn't believe it was a concern in this case.

Wisler said that the greatest public good should be examined rather than just any public good coming from a vacation of right-of-way. He asked if there was a greater good in the city holding the land or someone in the private sector holding the land. He said if there was a city plan for the land, this discussion would be quite different. He said the public good in having Upland Brewery hold this land would be significantly served by allowing them to set a tone for the Certified Tech Park, to build a development that would allow them to create jobs, create a walkable area, expand the downtown, and promote the right type of economic development. Wisler noted that there were ways of determining fair market value of land, but was cautious of selling public lands adding that perhaps a municipality might want to sell its streets. He noted that we were looking for the most public good rather than the greatest financial gain to the city. He noted his support for the vacation.

Satterfield said he fully supported the vacation and thanked the staff for reexamining the notification process. He said that even though the law was followed, it did not allow a practical time frame for all parties and

appreciated the change in policy. He said that Volan's concerns of someone getting an undue profit from a city vacation of right-of-way should be examined in the future.

Sturbaum said Wisler's story about a city selling streets, while sounding implausible, was actually similar to Indiana's governor selling the toll road in the northern part of the state.

Sturbaum said that he had discussed granting the vacation with added conditions with the council attorney and the developer, and decided that it would cause potential problems for the development. He said the phasing of the project would add complications, too. He noted that with a different petitioner the council might want different assurances. He said that this was actually a "faith based" vacation and he was in support of the vacation.

Volan noted that "trust, but verify" was a model to consider in these deliberations. He noted that the number one issue of importance in his district was parking and asked what would happen to the current on-street (Madison) parking in the area. He noted that this was a public use of land, and a public amenity. He said that his question of a reversion of land to the city in the case of the development not being built was a legitimate one and part of the responsibility of his role as council member.

Piedmont-Smith said she appreciated the staff's action on a new notification process for the vacation procedure as it would increase communication. She said she was also pleased that neighbor's concerns about being able to use the alley for access to their property and utility lines had been addressed and resolved. She said that in the question of vacations of rights-of-way in general, the council, legal department and planning department should investigate the concept and particulars of asking for compensation. She said a working group or on going discussions should take place on the concept of reversions, also. She said that in this case she was confident that the planning process and review at the Plan Commission would adequately vet the petitioner's proposal. She said she supported the petition to vacate the right-of-way.

Sandberg said she was pleased to support this vacation, also. She said Dayhoff would be enhancing the area and the Certified Tech Park where further development was desired. She said that this was the public benefit in this vacation.

Mayer said that vacations of this type in the downtown had not been unheard of in the past, and noted that the Fountain Square Mall had several alleys vacated in the 80's and noted the west side of the square alley had been vacated for pedestrian use, the Mercury, Hilton Gardens and Princess theater developments all had alley vacations.

Mayer said that the brewery employed more people than the printing plant that was in the building and that was a justification for approving this proposal. He said the brewery use fit with the vision of the neighborhood, and added that the business's commitment to sustainability and green business practices was of benefit. He supported the vacation.

Volan said that Piedmont-Smith crystallized his position on the revision and compensation issues surrounding vacations of rights-of-way. He said he was happy to hear that this would be an ongoing discussion and agreed that it should not be considered in this particular vacation issue. He said he supported the vacation on the assumption that Phase 2 will be built. Lastly he said his concern was what the city could do to insure that what a developer presents, the reason the right-of-way vacation is

granted, will actually happen. He said he appreciated Renfrow's comments on this matter and apologized for what may have been sharp comments or questioning on his part.

Ordinance 09-17 (cont'd)

Wisler pointed out the difference between the sale and lease of public roads in defense of his earlier statement and the toll road long term lease.

Sturbaum requested that the Planning Department bring this type of legislative action to the council later in the process. He said he would rather see a proposal after it had been through the planning and BZA hearings.

Ruff said that he totally disagreed with the notion that there was no public or future public value on the property to be vacated. He said that a value of a parking space had been determined, but felt that this was a higher best use of the property. He said it was a good local business and there would be public benefits to the development.

He added that we should make sure that a project is built out before the city gives up a public right-of-way. He added that in the future he would be reluctant to support any significant vacations of rights-of-way without some way to deal with not having the vacation proceed if the project does not go through, regardless of the intention of the developer. He said that the vacation adds value to the property and it shouldn't just stand empty and not be developed.

Ordinance 09-17 received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that the following legislation be introduced and read by title and synopsis only. Clerk Moore read the legislation by title and synopsis.

LEGISLATION FOR FIRST READING

Ordinance 09-18 To Amend Title 2 of the Bloomington Municipal Code Entitled "Administration and Personnel" – Re: Responsible Bidding Practices and Requirements to Perform Construction Work on City of Bloomington Projects

Ordinance 09-18

Ordinance 09-19 To Amend Title 7 of the Bloomington Municipal Code Entitled "Animals" – Re: Numerous Changes Resulting from a Periodic Review of Title 7 and Also Responding to HEA 1468 which Regulates "Puppy Mills"

Ordinance 09-19

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

PUBLIC INPUT

The meeting was adjourned at 9:57 pm.

ADJOURNMENT

APPROVE:

ATTEST:



Andy Ruff, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington