

In the Council Chambers of the Showers City Hall on Wednesday, February 25, 2004 at 8:20 pm with Council President Diekhoff presiding over a Special Session of the Common Council. (Held after the Committee of the Whole meeting which began at 7:30 pm.)

COMMON COUNCIL
SPECIAL SESSION
February 25, 2004

Roll Call: Banach, Diekhoff, Ruff, Gaal, Rollo, Sturbaum, Volan, Sabbagh, Mayer

ROLL CALL

Council President Diekhoff gave the Agenda Summation.

AGENDA SUMMATION

It was moved and seconded to appoint the following persons to the following boards and commissions:

BOARD AND COMMISSION
APPOINTMENTS

- Environmental Commission: Kelly Boatman, Keith Clay, Heather Reynolds
- Housing Quality Appeals Board: Jonna Marie Risher
- Human Rights Commission: Pam Huggins
- Tree Commission: Tom Coleman
- Commission on the Status of Black Males: Genevieve M. Williamson
- Commission on the Status of Women: Dorothy Saltzman

It was moved and seconded to confirm the following mayoral appointments to the Historic Preservation Commission: Lois Sabo-Skelton, Jeannine Butler, Rosemary Miller, Sue Zabriskie.

It was moved and seconded that Duncan Campbell and Henry Glassie be reappointed to serve as advisory members to the Historic Preservation Commission.

All appointments and reappointments were approved by a voice vote.

It was moved and seconded that the following rules be adopted for this meeting.

MOTION TO LIMIT DEBATE:

- 20 minutes be allocated to the Petitioner to make a statement.
- 15 minutes be allocated to Planning staff to discuss the Petitioners statement.
- Council questions and answers with petitioner and Planning Staff as needed with unlimited time limit.
- 10 minutes for Bloomington Hospital to present a statement.
- Council questions and answers with Bloomington Hospital as needed with unlimited time limit
- 3 minutes for any citizen to make a statement. Citizens should not speak more than one time.
- 10 minutes for the petitioner to make a rebuttal statement.
- An indefinite time period for any council questions, council comments and vote.

The rules were adopted by a roll call vote of Ayes: 9, Nays: 0.

It was moved and seconded that Ordinance 04-04 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 0-5-4. It was moved and seconded that Ordinance 04-04 be adopted.

LEGISLATION FOR SECOND
READING

Andy Ruff repeated his previous disclosure of financial interest as required by local code. He said the mother of his daughter has worked at the Bloomington Hospital for twenty years, that the Code states that after disclosing this 'interest' and after declaring that, in his judgment that he can perform his duties fairly and in the public interest, he was eligible to participate in the deliberations and vote on this item.

Ordinance 04-04 To Amend the Bloomington Zoning Maps from Q to PUD and to Adopt the Preliminary Plan for the Southern Indiana Medical Park II Planned Unit Development – Re: 2401 West Tapp Road (Southern Indiana Medical Park II, LLC, Petitioners)

Dan Neubecker read prepared statement:

Ordinance 04-04 (cont'd)

First I'd like to thank those here in support of Dr. Tiwari's proposal, the efforts of those writing supporting letters and emails and those responsible for an over-1300 signature petition in support of his proposal that was submitted to the council office yesterday.

For the last several days we have been trying to work out a compromise that the entire community could support and the city council would be comfortable voting for tonight. We believe that we have arrived at that compromise. We had hoped to handle this through a deed restriction, however, we understand that several council members, on the advice of council attorney, are not comfortable with this type of land use control and prefer a PUD based control. It is our understanding that this compromise is supported by a majority of city council and by Bloomington Hospital.

With that understanding we formally request that the City Council deny this petition so that we can take it back to the Plan Commission for the purpose of removing the in-patient use.

As he has all along, Dr. Tiwari continues to demonstrate an unprecedented effort at accommodation and compromise. As we make this request, we encourage the following supportive actions:

- We encourage the city council as a legislative body to give clear direction to the Plan Commission regarding their intent in this case.
- We encourage the city council members as they vote for denial to publicly express their support of this petition as proposed but with inpatient use removed.
- With the removal of inpatient use, we encourage Bloomington Hospital to publicly state their lack of any further objections to this proposal.
- We ask that the revised petition be expedited through the hearing process as quickly as possible.

We believe that this is a compromise that the entire community can embrace. It will secure the 66 acre green space; we do not intend to change that commitment. The right of way of the frontage road will be secured. The two acre fire station dedication will be secured. It will also remove the possibility that this site will be timbered or quarried as it could be under the existing zoning.

Finally I want to reassure Dr. Tiwari's patients that this compromise will not keep a new pain management center from being built on this site. It just won't have an in-patient facility.

This concludes my comments and I would be happy to answer questions now or later.

Tom Micuda, Director of Planning, said that Jim Roach would present background information on other issues and questions that arose in the discussion. Roach referred to Rollo's questions about figures in the COBERI report (City of Bloomington's Environmental Resource Inventory put together by the Planning Department and the Environmental Commission which ranks sensitivity levels on properties based on environmental features). He said that 28 acres of the land on the property discussed were ranked at a level five or above (eight being the highest ranking and the most sensitive environment).

Roach said that new information from the petitioner indicated that 65 acres of the property (64% of the total project) would be preserved from development as part of this proposal. He said that there was not a recipient for this gifted acreage and that the Planning Department would like guidance in that respect. He said that this proposed reserve area was a 71% increase from this petitioner's previous proposal and included 46% of the developable area on the property (area that was not ranked as five or above on the COBERI report).

Roach discussed the frontage road proposed to connect Bloomfield Road to Fullerton Pike by saying that the engineering department was

Ordinance 04-04 (cont'd)

working to align and improve the Weimer Road junction. He said the majority of the road would be built by the public sector through a new or expanded TIF district and would like direction from the council on this also. Roach, in answering the question about the cost of this road, said that today's base cost of \$750,000 would escalate with inflation in future years.

Roach stated that there was no recommendation from the Plan Commission on this project and that if there was no action on the item during this session as requested by the petitioner, the Planning Department would like some guidance on the issues of frontage road, preservation, the outpatient care facility and its definition. He added that the earliest the Plan Commission could hear this petition would be in April.

Sabbagh asked what was meant by an outpatient facility. Micuda said a stay of less than 24 hours would generically be considered outpatient. He continued, saying this term should be defined with the petitioner and hospital in the event the Plan Commission would hear the petition again as it was not defined in present zoning code.

Mayer asked how many of the 65 acres that the petitioner is willing to set aside, could be developed under current zoning. Roach said about 26 acres did not have steep slopes, wetlands or karst and could be developed. Mayer established that by switching the cost of building a frontage road on the property to the public, the future cost would actually be almost equal to the cost of the land that was being donated by the petitioner and therefore would not financially benefit the public. Roach agreed that it was reasonable to link the tradeoff of public infrastructure funding to greenspace acquisition.

Mayer noted that the dedication of land to a future fire station would be dependent on the building of the frontage road. Roach said that the fire department agreed to the need for closer proximity to the area west of highway 37, but, Roach said that the road also benefited the concept of connectivity in Tapp and Fullerton Pike areas.

Gaal said his questions would be framed in the vein of assuring that the public would actually be getting what they thought they would be getting. He asked if there were any other state laws or regulations that would pre-empt our local code with regards to inpatient or outpatient facilities. Micuda said he would need to consult with the City Legal Department on that matter, adding there was some general authority within the zoning provisions to define land use.

Gaal restated advice from Dan Sherman, Council Attorney; the condition of approval within the zoning ordinance was more enforceable than an outside covenant such as a deed restriction. He asked about the type of enforcement mechanisms in place to monitor conditions of approval. Micuda said that he would need to know more about the nature and the definition of the outpatient facility before he would say how the enforcement staff would make sure it would meet that particular land use. Gaal said he had concerns about the complaint driven or monitoring driven systems to which Micuda replied that it would be fleshed out in the Planning Commission phase.

To Gaal's question regarding a recipient for the conservation easement, Micuda said discussions were held with the Community Foundation and the Parks Department (with links to the Park Foundation and Community Foundation). Micuda said that after the decision is made on the Plan Commission and Council level, he would recontact these groups with a more clear proposal. He added that this was a large gift

and an agency would have to consider it carefully. He also added that the development could not take place until the gifting of the property was completed.

Volan asked the amount of acreage the frontage road would take out of the 65 acres of easement. Dan Neubecker said approximately three acres would be needed for the road. Volan asked if a specific site had been chosen for a fire station, to which Neubecker said the fire department preferred a site closer to Tapp Road.

Ruff said he was interested in exploring further relationship of the cost of the road and public value of the gifted parcel and asked Micuda if he knew the value of the timber that could be harvested on the land slated for the conservation easement, adding that that he was confident it would be in the six figure range. Ruff also asked if Micuda knew the tax liability of the land under the State Classified Forest Program or the Certified Wildlife Habitat Program. Micuda said he did not know either figure.

Sturbaum asked Micuda to discuss what would happen if the proposed frontage road was not built. Micuda said the interruption of the land by the construction of a road would destroy the intrinsic value of the property in terms of a large greenspace landholding. He said the alternative solution would be to use Adams street as a parallel corridor to function as a frontage road, but that it was really too far away from the area to serve that purpose. He added that there was a newer program of feeder streets in the state right of way for highway access but didn't know enough about those programs to say it was a clear alternative in this case.

Mayer asked, should the petitioner be found responsible for the road construction, would the road be built to city specifications at the time of development or if the petitioner could bond for that road for future construction. Micuda said if the roadway was deemed to be in the city's best interest, it would be part of the zoning change process, but that the petitioner might negotiate the timing of the roadway construction, along with less dedication of greenspace. Mayer asked if the property immediately to the south of this parcel was situated within the city limits. Micuda said it was and was zoned for similar use.

Diekhoff asked about the timing of the dedication of land, to which Roach said that the land would be subdivided and the gift would be given to an organization prior to construction on the site. Diekhoff asked if there had been a similar size gift of property to the city in which a roadway was involved. Micuda said that the Thompson Park was a donation that was part of the overall Thompson development, but not specifically linked to infrastructure. When Diekhoff asked about the TIF money used for the road, Micuda said that it would depend on the expansion of the Tapp Road TIF or the creation of a new TIF district. He added that legislation would be needed for this to happen.

Diekhoff questioned the length of time needed to amass the TIF funds needed for the road. Micuda said that the present money in the TIF was to be used for the Tapp Road widening, and that the cash on hand just met that obligation. He said that TIF revenues could keep pace with road construction in the area, but that new revenues would be needed to create anything beyond that, mentioning two newer properties (Cassady property and the public property north of Tapp Road) as two projects that would generate TIF funds.

Diekhoff asked when the frontage road might be needed, to which Micuda estimated between five and ten years, depending on the development of the Brown property and need for frontage road for SR 37.

Ordinance 04-04 (cont'd)

Mark Moore, President CEO of Bloomington Hospital and Health Care Systems, while thanking the council, community and medical staff, said that the hospital's position during this process was in opposition to an inpatient specialty hospital use. He said if there was a firm assurance of this use being removed; the hospital had no opposition to the rest of the proposal. He added that the hospital believed that the definitions of "hospital", "ambulatory outpatient surgical center" should be reviewed and well established.

Moore said that he would like to work with local governmental officials to ensure that such proposed projects in the future discussions in city and county go through public debate, discussion and approval.

Frank Villardo, Professor of Public and Environmental Affairs, said he teaches health policy, said that he had already delivered a statement on why competition in health care won't work. He said that purchasing health care was different than purchasing other goods, thanked the council for support of public health in the community rather than economic gain.

Jerry Neely, Chairman of Bloomington Hospital and Health Care Systems, thanked the council for its reflection and actions with regards to this proposal and asked that any future deliberations reflect a conscious choice to protect the hospital, its values and its oversight, and protect it as the place for all of Bloomington's inpatient health care. He added that the community discussion surrounding this petition indicated that while the hospital was the major health care provider, it needed to do a better job in seeking out more input from and reporting back to the community on major healthcare decisions and initiatives. To this end, he announced that Judge Marc Kellams, a board member would be a leader in this process.

Duncan Campbell, owner of an adjoining historic property, stated he was glad for the hospital's remonstrance against this petition. He asked that the council carefully consider the building of a frontage road that would bisect the proposed greenspace preserve, questioning how this could actually 'preserve' the land for anything but cars. He cautioned council that there were enormous drainage issues on this land because of continued development with little regard for environmental restrictions and little enforcement of the ones that have been made. He thanked Rollo for his willingness to work with all of the participants on this issue.

Owen Slaughter, Chief of Staff at Bloomington Hospital, noted that this discussion had been vital and exciting and had also made a difference in the community as to how medical care is viewed. He thanked all who participated in the discussion regardless of their views; and thanked the council members for staying late for meetings, fielding emails and phone calls. He apologized for appearing late in the process and specifically thanked Rollo for his dedication. He said this decision was made for the best of the community, and hoped that any future discussions about a second hospital would be made before a public body and not be a by-right development of a new hospital.

Joel Griffiths, MD, said that definitions of inpatient and outpatient should also include a review and definition of the terms "observation status" and "residential."

Petitioner's rebuttal statements were made by Dan Neubecker. He stated that they didn't intend to change the commitment of the land gift, had been continually asking for direction on who the land could be gifted to, and asked that it not be held against them that this information had not been worked out.

Neubecker said that the definition of "outpatient" should probably start with the standard medical definition, and that the petitioner was not trying to slip in an inpatient facility. He concluded by saying that the petitioner could not both build the frontage road and dedicate the land to preservation, and if this were the condition of approval, the petitioner would insist on reverting the agreement to the original Plan Commission approval.

Rollo thanked the hospital and petitioner for defining health care in Bloomington. He said the gifting of the land to a particular organization was frozen when the controversy came to light, and said there was good reason that a conservancy or an organization receiving this property would not want to be involved until the controversy was settled. He added that because of the delicate and valuable nature of the site, it would be a real asset to which ever group would receive it.

Rollo commented on infrastructure problems in the area that resulted in flooding and drainage issues. He said that those problems should be addressed before infrastructure in the area is considered, and that the sensitive nature of this parcel should carry the utmost priority. To the argument of future generations paying for the road in this area, he said there was also a considerable cost to the continual loss of greenspace in this community that would impact both today and in the future.

Rollo stated that because of his membership on the Plan Commission, he had witnessed Dr. Tiwari's repeated amendment of his proposal to meet with various requirements, including the preparation of studies that included inventories of the area. Rollo noted Tiwari had agreed to meet challenges concerning stormwater runoff from both this site and the existing Southern Indiana Medical Park I.

He added that after several meetings, a decision was made to uphold the Environmental Commission's request that the road alignment be changed to one that presented the least risk to the wetland. He said that this alignment was nearby an historic building owned by Campbell, whereby the Plan Commission recommended the road be moved back to an alignment that would actually encroach on the wetland.

Rollo said that the sensitive environment on this site, a rare woodland community that doesn't exist in many places in our city any longer, was the largest part of the problems in this development. He said that the GPP spoke about preserving the environment in this area as well as building a north/south connector along the highway, but that this represents two conflicting principles.

Rollo went on to make the following statement regarding the denial of this legislation:

Several ideas were presented to the petitioner after they had the original petition approved, as to how to achieve the 63 acres of preservation.

They were advised by our council attorney and the planning director that the best means was requesting a denial, which they did before they came before the city council last December.

The new proposal contained the same uses as the former petition that gifted the 63 acre preserve, maintained the 2 acre fire station dedication to the city and together with tree buffers and non-inline storm water detention areas, rendered 33 acres of developable land of the total 102. This was a reduction in the built footprint by 44% compared with the original plan.

It was at this time in early January that we fully knew of the concerns of Bloomington Hospital that now, tonight, have been met by Dr. Tiwari, who, once again is offering to request another denial of this plan in order to remove the inpatient use. Because of his request for denial, and in order to follow process that will require the petitioner to re-file and go before the plan Commission, I think it's important that the city

council provide some direction to the Plan Commission.

Ordinance 04-04 (cont'd)

This petition is a much improved version over that which was passed in November and with the current concern of inpatient care resolved, I would urge passage of the resubmitted petition minus the inpatient care without further amendments to this petition. I would add that this is a precedent setting case, because I cannot recall a proposal that provides such generosity in terms of its public benefits. It demonstrates that the development community can establish a proposal that is a win/win when it comes to meeting development goals as well as environmental ones.

Sabbagh said health care is important as one gets older, and is glad that the community wants and needs a full range of medical services at the cutting edge, but that this will cost money. He added that he was happy that the inpatient aspect of this was removed from the petition. As to answering the question of direction of the council he offered the fact that he:

- Would want a good definition of outpatient consistent with current community standards with hours of operation noted, not a definition of stay as 23-24 hours;
- Would need an entity to accept this gift of land; and
- Noted that he was a supporter of frontage road.

He said when this petition came back, he would continue to think and say, 'Above all else, do no harm.'

Volan read the following statement:

The flight attendant says, "put your oxygen mask on yourself before helping others." You can't be helpful for very long if you don't take care of yourself first. This is as true for groups of people organizations and corporations as it is for individuals. Every organization or corporation, profit or not-for-profit has a mission, however explicitly stated. But the mission, unless in a cynical, empty and morally bankrupt way, simply calls for increasing shareholder value (which is not really a mission statement) usually does not explicitly say, 'to survive and thrive so that we may serve in the following ways.' The presence of oxygen is something that most people just assume.

I do not have anything necessarily against Bloomington Hospital, nor do I have any particular preference for the petitioner over the Hospital; in fact I would resent any such suggestion. It is incumbent upon me to take in to account all of the facts to the best of my ability, to gather and analyze them on behalf of all of the people of the city of Bloomington. I love Bloomington as much as anyone else here, and it is with that in mind that I say to you that what is good for the organization called Bloomington Hospital and Health Care Systems, is not necessarily, not automatically, good for all the people of Bloomington. Not-for-profit is not necessarily synonymous with "for the public good." Just because the hospital says that the sky is falling" does not make it so. Just because the petitioner claims to be good for the community does not make it so either. I have reason to believe and appreciate both sides.

You'll forgive me for continuing to ask questions of both parties, to ask for objective data to support any assertion, any assumption like the existence of oxygen made by any petitioner, no matter how well regarded that party is in the community. To David Sabbagh, 'first do no harm.' The question I have to you is: "to whom are we talking about doing harm, for what reasons and for how long?" It's not simple enough to say "first do no harm;" "ask the question, "Who are we taking about?"

I'm looking forward to seeing this come back from the plan commission. I have a modest concern about the road going through the property, as Duncan said, I don't look forward to having that green space split up. I look forward to having a solution from the plan commission that alleviates the reason to split this otherwise pristine property.

Banach, said he agreed with the Rollo and Sabbagh and appreciated the history of the petition as it refreshed memories. He said this petitioner had been raked through the coals and had been very cooperative and that the bigger issues must include a clear definition of inpatient and outpatient services and also that issues surrounding the road should be

worked out. He concluded by saying this was a really educational issue for him, and said he did his best to respond to more emails and messages than he had ever received on an issue before the council, apologizing to those he couldn't respond to.

Ruff said he was mainly concerned about the road issue saying that to think that the road would not dramatically alter this ecosystem was an error. He said the road would open up the preserve to easy invasion of plants and exotic species and would reduce the value of the land as habitat. He said the discussion that the community needs to have surrounds the assumptions and models that were in place when the original decision about the road was made and an assessment if these still hold true today.

He reminded folks that former council member Patricia Cole often talked about single payer universal health care as a right. He said that, believing the numbers given by Dr. Vilardo, we should all be ashamed there were folks in our country who do not have health care. He urged those with influence in the health care industry to get active on the issue. He concluded saying that 65 acres of quality woodland was of significant value to the landowner and added that earnings from timber harvest on this land would help the landowner pay for the road, but would result in a loss of a significant natural woodland.

Gaal stated that it was a credit to us as a community that so many people have shown concern for this issue. He commended Rollo for working to get the best possible product for the public. He said it was important to have clear definitions and iron clad wording in the zoning ordinance to ensure that we get what we think we're getting with careful attention to both intended and unintended consequences. He said further discussion was needed on the definition of inpatient/outpatient stays, other state laws and definitions that would preempt our code definition, the 23 hour hold or other things that could potentially blur the definitions. He asked that enforcement be discussed along with actions to ensure compliance. He said health care in this country is less about providing health care and more about business and our local discussion is only a symptom of that. He noted 25% of health care dollars go for marketing and administration rather than direct patient care. He said that it is in the interest of doctors, patients and the whole community to address the quality of health care in this community and at a higher level.

Sturbaum thanked presenters and said that their sincerity was demonstrated by the staying of folks until 1:30 am for the committee meeting on this item. He said this demonstrated democracy as he heard from sincere people on both sides of this issue and is pleased that this compromise had been made by Dr. Tiwari. His direction to the Plan Commission was to adopt the proposal so that it could be brought back to the common council as soon as possible. He said he would help support and guide that action with Rollo.

Ruff asked that as soon as the definitions were worked out that the Plan Commission pass this back to the council as soon as possible.

Mayer said he came to discuss health care but ended up talking about a road. He said the hidden blessing in this petition is that the community is now talking about health care in a meaningful way and he is encouraged by Neely's comments that the hospital is moving forward on that initiative. Mayer said this project hinges on the decision about the road and it cannot be put off to the future. He said that infrastructure is paid for by the developer and to not do that would cost shift infrastructure improvements to the public and would delay other roads and sidewalk projects. He added that the road decision should take into account the location of a fire station (which he would like to see located

Ordinance 04-04 (cont'd)

further to the east nearer the Clear Creek Trail and Summit School). He questioned preserving the woods and steep slopes by asking what if there was no organization to take stewardship of the land, what would happen if the city took over maintenance of the land, would it be passive parkland, and how could the city afford this without considering deferment of other current park improvements.

Mayer said he thanked the petitioner for their new plan and directed them to come forward with a plan that includes their commitment to build the road. He would also like to see a definition, a community standard, of an outpatient clinic. He said he would also like to see building elevations with notes as to what materials will be used to show how the land, new, and current buildings would work together. He restated that it was crucial that a willing partner be found to accept the responsibility to preserve the sensitive land.

Diekhoff said his concern all along was what is best for the community. He said he appreciated the concerns of all involved and thanked everyone for all their contacts through letters, calls and emails. He outlined his concerns regarding the land preserve, road expense and layout and said he would like to see a definition of an acceptable community standard for the clinic function.

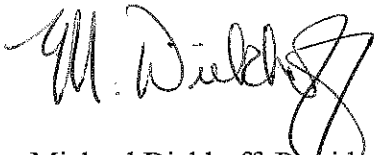
Parliamentarian Mayer clarified that the motion was for approval of the petition and said a yes vote would be to approve the petition as outlined.

Ordinance 04-04 received a roll call vote of Ayes: 0, Nays: 9.

The meeting was adjourned at 9:55 pm.

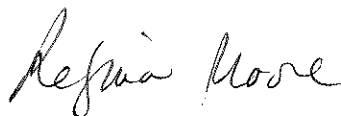
ADJOURNMENT

APPROVE:



Michael Diekhoff, President
Bloomington Common Council

ATTEST:



Regina Moore, CLERK
City of Bloomington