

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Monday, November 29, 2006 at 6:00pm with Council President Chris Sturbaum presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
November 29, 2006

Clerk's Note: On November 27, 2006, the Common Council called to order a Special Session, which began the Council's consideration of Ordinance 06-24 to be completed over a series of meetings. Please refer to the minutes from that meeting for a description of the motion made in regard to the consideration of Ordinance 06-24.

Roll Call: Wisler, Diekhoff, Gaal, Rollo, Sturbaum, Mayer, Ruff, Sabbagh, Volan
Absent: None

ROLL CALL
[6:15pm]

Council President Chris Sturbaum gave a summary of the agenda.

AGENDA SUMMATION
[6:16pm]

Tom Micuda, Planning Director, stated that Chapter 8 was purposefully left blank.

Micuda explained that Chapter 9 codified procedures for determining when a lot, site, or structure must come into compliance with the standards of the Unified Development Ordinance (UDO). The chapter also discussed nonconforming lots, sites or structures.

Chapter 20.09: Nonconforming
Lots, Sites, Structures and Uses
[6:16pm]

Councilmember Brad Wisler asked if a change in use of property required the property's sign to be changed.

Council Questions:

Micuda said a use of property change did not require a change in signage. It did require compliance with parking, sidewalks, and other site improvements.

Wisler asked if that was an example of limited compliance.

Micuda said yes.

Wisler asked if there were any triggers that required signage compliance other than an actual change to the sign.

Micuda said that there were changes in Indiana's code regarding signage. He said that alterations to the sign in any way was a compliance trigger for the sign, but not for the site.

Wisler asked if that would include restoration of a sign.

Micuda said repairs were not a compliance trigger.

Councilmember Dave Rollo asked what happened if a structure received damage in a floodplain because of a rising river and the owners wanted to do repairs.

Micuda said that natural disasters were accounted for. The owner would have to raise the structure above the floodplain and it would require a permit process.

Councilmember Tim Mayer asked about the Department of Natural Resources' (DNR) hydrology requirements.

Micuda said there was a specific downstream flood elevation that could not be exceeded.

Mayer asked what happened to a business's sign if a used car lot turned into a donut shop.

Micuda explained that the code said to remove the pole sign and replace it with a ground sign.

Patricia Bernens, City Attorney, said that state law said municipalities were not allowed to require modification to a lawful nonconforming sign without compensating the owner.

There was no public comment.

Public Comment:

Micuda stated that Chapter 10 outlined procedural requirements for all processes and permits related to the UDO, which included applications, public notice, hearing procedures, pre-application requirements, schedule of fees, and commitments. Petitions could be considered a site plan review, a development standards variance, a use variance, conditional use, and an amendment to the zoning map. Subdivision control required preliminary platting, final platting, and waivers and modifications. He said that Chapter 10 also addressed permits, including certificates of zoning compliance, demolition delays, grading permits, certificates of occupancy, sign permits, and temporary use permits. Other processes included in the chapter were easements, surety standards, administrative interpretations, administrative appeals, and amendments to ordinances.

Chapter 20.10: Processes, Permits and Fees [6:30pm]

Councilmember Steve Volan asked if Chapter 10 represented the integration of other ordinances.

Council Questions:

Micuda said it represented the integration of zoning ordinance procedures, subdivision ordinance procedures, and standard rules and procedures that the Plan Commission and the Board of Zoning Appeals had.

Volan asked to clarify if a permit was required for any sign.

Micuda said that a political or protest sign did not require a permit.

Wisler asked for more detail about demolition delay and how it worked.

Micuda said in 2005 the City initiated a demolition delay ordinance. Demolition delay occurred when a structure was to be fully or partially demolished and was rated by a historic survey to be outstanding, notable, or contributing. The Historic Preservation Commission reviewed applications and determined whether the structure needed protection.

Wisler asked when that happened.

Micuda said the review by the Historic Preservation Commission was triggered by an application for a Demolition Permit. It would also be triggered by a pre-application conference. Those happened about five to six weeks before a petition went to a hearing.

Wisler asked if there were any current applications for demolition that were being delayed.

Micuda said no. He said there were only about 10-15 cases of full or partial demolition in the last two years.

Wisler asked what the Planning and Transportation department did if it became aware of a situation that warranted the process.

Micuda said that when the application came to Planning or the pre-application conference began, Planning had a three-day period where it notified the Historic Preservation Commission.

Rollo asked about grading permits and if Bloomington previously had pre-construction conferences.

Micuda said the requirement was added in 1998 in the Soil Erosion Ordinance and amended in 2001.

Rollo stated that he was glad it was in the new UDO. He asked if there was enough staff to ensure compliance.

Micuda said there were three staff members in charge of compliance. Micuda said there was an increase in staffing.

Rollo asked if Rick Alexander still inspected sites.

Micuda said that he oversaw engineering aspects of inspections.

Rollo asked about the extension process and if the Engineering Department consulted with the environmental planner on the site. He wondered if the Environmental Commission should be consulted in those cases.

Micuda said he would need to investigate further regarding consultations. He also said he would not want to increase the role of the Planning Department in the process.

Mayer asked how a developer got to the point where the Historic Preservation Commission would look at the developer's plan and would tell the developer what they must adhere to with a demolition delay.

Bernens said that the Historic Preservation Commission did not approve plans, but it decided if it wanted to pursue a historical designation of the property. If the Historic Preservation Commission agreed that a plan fit the historical nature of the property, the developer must stick with that plan.

Mayer wanted to know if the Historic Preservation Commission could withhold designation if it did not like the design.

Bernens said that the ordinance did not allow the Historic Preservation Commission to do that unless they did by designation. She said that was not a change from the existing ordinance and the change was that if the Historic Preservation Commission disliked a design, the recourse was to initiate a designation on that property that would trigger a design review process requiring a permit to make a change to the exterior. She said her understanding was that owners who went to the Historic Preservation Commission for advice usually appreciated the suggestions made.

Mayer said that his concern was that the Historic Preservation Commission might use that to control a certain aesthetic or limit design possibilities.

Bernens said there was a balance and limitation in how the Historic Preservation Commission approached those situations.

Wisler asked if it was possible for the Historic Preservation Commission to say it would pursue designation if a plan was not changed.

Bernens said it was possible.

Wisler wanted to know how era was defined.

Micuda said it was easy to determine a property's era based on information from the Housing and Neighborhood Development Department and Historic Preservation staff who were trained to do that kind of evaluation.

Wisler asked Sturbaum what it meant when a property received designation from the Historic Preservation Commission and how it affected a plan.

Sturbaum said the Historic Preservation Commission did not want anything on a historic property that did not fit the character of the area. He said the Historic Preservation Commission used national standards to make recommendations to owners.

Wisler then asked if the Historic Preservation Commission had absolute control after designation happened.

Sturbaum said yes.

Wisler asked if it had to be an entire neighborhood that was designated.

Sturbaum said it could be an individual site.

Wisler asked if the Council had final say.

Sturbaum said the Council had the power to turn down designation.

Sturbaum asked if Chapter 10 covered modeling.

Micuda said yes. He said the Plan Commission approved an amendment for the downtown zoning district that required modeling for site plans.

Sturbaum asked if the Plan Commission wanted a model or a video.

Micuda said it could be either one or both.

Sturbaum asked what part of the code would cover over-occupancy.

Micuda said Chapter 10 covered certificates of occupancy. Chapter 9 covered non-conforming uses.

Bernens said that HAND provided an occupancy permit that had a maximum number on it different from the zoning maximum.

Volan said he did not realize that the amendment said that the Plan Commission could ask for a 3-D model. He asked if it required the modeler to show surrounding properties.

Micuda said that was not specified in the ordinance. He said that Planning had always required that surrounding properties be shown.

There was no public comment.

Micuda explained that the Enforcement and Penalties section of the UDO added penalties for illegal demolition, added tree removal remediation requirements, increased maximum fines for violations, increased fines for "repeat offenders", and clarified the process for enforcement.

Mayer asked if a tree that was cut down would have to be replaced with the same kind of tree.

Micuda said it would need to be on the city's plant list and of the same species. He said the tree would need to have a similar amount of canopy coverage.

Mayer asked if the tree had to go in the exact same place upon being replaced.

Micuda said that if there was the opportunity to plant in a better location that avoided power lines, it would be possible to move the location so long as it was as close to the original spot as possible.

Rollo asked what the fine was if a grove of six high quality, protected caliper trees were removed.

Bernens thought that would equal six violations subject to \$2,500 each.

Rollo asked if high quality trees would be evaluated separately.

Bernens said yes.

Rollo wanted to remove the incentives for removing high quality trees just by being able to replace them. He asked if it was allowed to cut the drip line, essentially killing the tree.

Micuda said that was not allowed. He said that there was an amendment made by the Plan Commission that had been. It said a person could not cut beyond ten feet of the drip line.

Rollo asked for clarification on the standards for replacing a tree in the same place.

Micuda said that it might be difficult to plant a tree in an existing tree line or stand. The staff did not intend to make it so developers could remove trees that were inconvenient to their plans and plant them elsewhere on the property.

Rollo wanted the language to be more stringent so that trees could be better protected. He asked about the penalty for erosion and for explanations about the remediation for removing sediment.

Micuda said that a violator was responsible for remediation, which could include restoration.

Rollo asked if state agencies would come into play.

Micuda said yes.

Chapter 20.07: Design Standards
(cont'd)

Public Comment:

Chapter 20.11: Enforcement and Penalties [7:11pm]

Council Questions:

Chapter 20.07: Design Standards
(cont'd)

Wisler asked if the penalties for trees only began when an environmental standard was violated. He asked how often specific trees or groups of trees were protected versus a percentage of canopy.

Micuda said that with the existing ordinance there was no canopy percentage mentioned but that in an approved site plan, the developer would be told which trees needed protection. He said it was the removal of the protected trees that would trigger violations, not other trees that had been approved for removal.

Wisler asked if the current ordinance stated that all site plans mentioned which trees needed protection.

Micuda said it did.

Wisler asked if specific trees would make up the appropriate percentage for required canopy.

Micuda said that the way the ordinance was set up was to preserve a certain amount of vegetation while the developer was given allowances to preserve specific trees to make up that percentage.

Wisler asked if it was possible for a plan to be approved with no specific trees being flagged and only a requirement that a certain percentage be protected.

Micuda said no, Planning would always designate certain trees on the site that needed to be preserved. He said that specimen trees needed to be specified and to have a no disturbance area made around them.

Sturbaum asked how much CVS was fined for removing a tree it was not supposed to remove.

Micuda said CVS was fined \$500 and was required to replace the tree by providing the biggest possible caliper tree on that location.

Sturbaum asked if the caliper would be split amongst several trees if the tree were 100 years old.

Micuda said yes.

Sturbaum asked for an explanation about demolition delay fines.

Bernens said that a two year moratorium, plus fines, and a requirement for correction to the extent possible was possible.

Micuda said that one could be fined \$2,500 per day until the violation was corrected.

Volan asked what the fine would be for CVS under the new ordinance.

Micuda said it would be \$2,500.

Bernens said it probably still would have been \$500 because the construction company fixed the problem quickly and was remorseful.

Volan asked if the city could make a company stop work until the problem was rectified.

Micuda said yes.

Isabel Piedmont from the Environmental Commission was concerned about enforcement of environmental provisions and the awareness of the provisions by homeowners. She wanted repeat violator provisions.

Public Comment:

Micuda said the Plan Commission had approved an amendment to consider certain violators repeat offenders and subject them to appropriate fines and recourse. He said that homeowners were considered liable for the removal of trees in the same way that developers were.

Rollo asked if there was a better way to communicate to homeowners and Homeowner's Associations about the easements.

Council Questions:

Micuda said that it was required to post signs of easement areas.

Wisler asked what mechanisms were in place to make subsequent homeowners aware of trees that were to be protected in perpetuity.

Chapter 20.07: Design Standards
(cont'd)

Micuda said that the easements were a record of the property, part of the recorded plats, part of the physical documents the homeowner received, and there would be a physical sign.

Wisler asked if there was a process for removal of a protected tree if it became threatening in any way.

Micuda said the homeowner would need written approval from Planning.

Councilmember David Sabbagh asked how people were notified of a fine.

Micuda said that the City sent notice to the owner, the operator, and all parties involved with the property.

Sabbagh asked how the mail was sent.

Micuda said regular mail or certified mail.

Micuda presented Chapter 12. He explained that the Planning Department consolidated all definitions into a single chapter and it included the definitions for all the uses listed in Chapter 2 and illustrative graphics for certain terms. The chapter was meant to cover the gaps in definitions from the previous ordinance.

Chapter 20.12: Definitions
[7:48pm]

Mayer asked if auto repair was defined in the chapter.

Micuda said the definition was under vehicle repair.

Mayer asked if auto lube was defined.

Micuda said that was under oil change facility.

Council Questions:

Councilmember Chris Gaal asked if the definitions were simply defined or if the definitions referred to another plan's definitions.

Micuda said that the Plan contained both. Planning had added terms associated with alternative transportation and then referred to the Alternative Transportation and Greenways Plan.

Gaal then asked if the ordinance was on the same level as the Alternative Transportation and Greenways Plan.

Micuda said yes and that it was also on par with the Master Thoroughfare Plan.

Rollo asked about a definition for invasive species.

Micuda said invasive species was defined on page 20.

Sturbaum asked how accessory dwelling units were defined even though they were removed from the plan. He asked if anything had been changed when someone had a legitimate request for an accessory dwelling unit.

Micuda said nothing had changed. One would need to request a use variance approval from the Board of Zoning Appeals. The Plan Commission would need to review the use variance.

Sturbaum asked if a definition needed to be made or if it was up to staff discretion.

Micuda said he thought it would need to be up to staff discretion.

There was no public comment.

Public Comment:

Micuda said the proposed zoning map had fifteen zoning districts, six downtown overlay districts, and significant land under Planned Unit Development (PUD) designation. Changes in zoning were minimized.

Appendix: Zoning Maps [7:59pm]

Rollo asked about a violation of a riparian area on the Howard Young site.

Council Questions:

Micuda said he had walked the property and believed it had been remediated but wanted to investigate further before he could tell Rollo the status of the situation.

Rollo asked about the corner of Henderson Street and Hillside Drive. He wanted to know if the property owner was notified of the zoning change.

Micuda said the individual property owner was not notified but zoning maps were made available.

Wisler asked if there were any amendments made in the northwest quadrant.

Micuda said no.

Wisler asked where the lines were defined.

Micuda said most of the lines were drawn at property lines.

Wisler asked for the reasoning behind where the line was drawn from the business park zone to single family zone at the area north of Kinser Pike.

Micuda said the lot patterns were larger and different from the rest in that zone, which made it difficult to cut on the property lines.

Wisler asked if that area could be subdivided.

Micuda said that would be contradictory to the purpose of the area, which was for businesses.

Wisler asked how to propose an amendment to a map.

Micuda said Wisler should give Planning and the Council office his idea and they would create a map amendment form for him.

Wisler asked if Lower Cascades Park was zoned as Commercial Arterial.

Micuda said yes.

Piedmont was concerned with the change in zoning for the Howard Young property.

Public Comment:

Doug Horn, President of the Old Northeast Downtown Neighborhood Association, asked for a section of his neighborhood to be rezoned because it was adjacent to Indiana University.

Gaal commented that zones were to reflect what was on the ground and that spot zoning was not a typical practice. He said Planning had to deal with some extremely complicated areas.

Council Comment:

Volan thanked Doug Horn and Chris Gaal for their comments.

Wisler asked if there was privately owned multi-family property.

Micuda said yes.

Wisler asked if a change in ownership changed zoning in any way.

Micuda said that change in ownership did not force the property to conform to the zone.

Rollo thanked the staff for all of their work.

Dan Sherman, Council Attorney, reviewed the Council schedule.

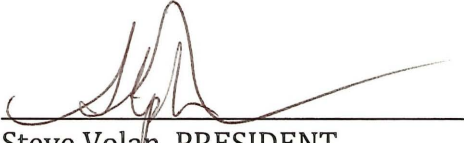
COUNCIL SCHEDULE [8:46pm]

The meeting went into recess at 8:56 p.m.

RECESS

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 5th day of February, 2020.

APPROVE:



Steve Volan, PRESIDENT
Bloomington Common Council

ATTEST:



Nicole Bolden, CLERK
City of Bloomington