

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Thursday, December 14, 2006 at 6:00pm with Council President Chris Sturbaum presiding over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
December 14, 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, Diekoff, Gaal (arrived late), Rollo, Sturbaum, Mayer, Ruff (arrived late), Sabbagh, Volan
Members Absent: None

ROLL CALL [6:00pm]

Council President Chris Sturbaum gave a summary of the agenda.

AGENDA SUMMATION [6:01pm]

It was moved and seconded to adopt Amendment 09.

CONTINUED CONSIDERATION OF
AMENDMENTS

Councilmember Dave Rollo presented the amendment.

Amendment 09 [6:02pm]

Tom Micuda, Planning Director, said that staff supported the amendment and that the Plan Commission originally exempted small parcels less than half an acre in size from needing a buffer. He said that staff agreed it was better to have some buffer than no buffer at all from water features.

Rollo asked if all future subdivisions would obviate the need for the amendment.

Council Questions:

Micuda said the amendment would only affect established lots. He said new subdivisions would already have the 75-foot buffer in place.

Rollo asked how many lots it would apply to.

Micuda said he did not have an exact number but he believed it was a small number of lots.

Councilmember Brad Wisler asked what the smallest width of an existing platted lot was.

Micuda said there were some 25-foot platted lots that were usually joined with others to make a 50-foot platted lot.

Wisler was concerned with someone not being able to build a home they wanted on a small lot.

Micuda did not see that as a potential consequence of the amendment. He said there might be a scenario where a water feature was located on a bad spot on the lot and it would warrant a petition for a variance at the Board of Zoning Appeals.

Mike Litwin, Environmental Commission, spoke in favor of the amendment.

Public Comment:

Councilmember Tim Mayer said there was a lot in Green Acres that had a water feature running through it but that the Utilities Department was dealing with it.

Council Comment:

Rollo thanked the Planning staff and the Environmental Commission for their help.

The motion to adopt Amendment 09 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 0.

Vote on Amendment 09 [6:13pm]

It was moved and seconded to adopt Amendment 22.

Amendment 22 [6:14pm]

Rollo said his intent with the amendment was to balance density with strong incentives for building green structures while also promoting affordable housing. He recommended postponing the vote on the amendment until December 20 due to the complicated nature of it.

Micuda said the amendment added a sustainable development goal that focused on exceptional use of energy efficient resources. Staff also reduced the density incentive from 75% to 50%. The amendment also included a waiver of fees in the affordable housing section.

Mayer asked if a development had to be within a quarter of a mile of one or more of the listed amenities in the transportation section. Council Questions:

Micuda said yes.

Mayer thought a quarter of a mile was restrictive and was worried about developable land.

Rollo said a quarter of a mile was the most practical.

Sturbaum asked if the amendment focused on sustainability.

Micuda said yes and explained that the name of the amendment was only green because the staff ran out of terms to use in the Unified Development Ordinance (UDO).

Sturbaum asked if there were any incentives to develop a percentage of affordable housing elsewhere in the UDO.

Micuda said, under Chapter 5 of the UDO, developers who enrolled in affordable housing programs were entitled to fee waivers, reduced set-backs, and reduced lot sizes.

Sturbaum asked if that rose to the level of a 75% or 25% density increase.

Micuda said that he did not know.

Sturbaum thought it was too easy for developers to opt out of affordable housing initiatives.

Micuda mentioned the affordable housing incentives in Chapter 5.

Sturbaum said he did not want affordable housing to be optional.

Rollo said his amendment led to a balanced system.

Rollo asked about the expenditure difference between affordable housing and a green incentive of grass roofs.

Micuda said he did not know if the two projects were exactly equivalent for receiving 75% density.

Sturbaum said he did not think the amendment was balanced.

Wisler confirmed that there was a section of the UDO that dealt with affordable housing.

Micuda said yes.

Wisler asked if developers saw affordable or green housing as the best incentive.

Micuda said, they preferred whichever incentive gave them the highest dollar amount.

Wisler asked Sturbaum if he wanted to amend the amendment.

Sturbaum said that competition between green and affordable development was inevitable if they were set up for the same incentives. He said he thought that the 25% and 50% reward should be more difficult to get.

Wisler said that he thought affordable housing would be a more attractive option if it was separate from green housing.

Rollo said that his original intention was to add the incentives to the affordable housing section of the UDO and keep the two separate. He said that affordable housing was already incentivized and the section was supposed to be about green development.

Sturbaum asked if affordable housing was originally in the amendment.

Amendment 22 (cont'd)

Micuda said that affordable housing was a menu option in the amendment that passed in the Plan Commission. He said the reason why affordability was separated out to the higher level of density was because the Council decided it was to be done for the common good of the community.

Rollo thought the affordable housing component was competitive in his amendment.

Heather Reynolds, Vice Chair of the Environmental Commission, spoke in favor of the amendment.

Public Comment:

Isabel Piedmont, Chair of Environmental Commission, spoke in favor of the amendment.

Wisler thanked Micuda for his work.

Council Comment:

Councilmember Steve Volan said that older housing was affordable housing.

Sturbaum thought the affordable housing section of the UDO was meagre and that the levels of the amendment were too easy to achieve. He asked if 100% density was too much to do as an incentive if someone did an affordable housing project which met all the other requirements of the amendment regarding green building.

Micuda said that one solution he would recommend to Sturbaum and Rollo was to increase the requirements for each level of density incentives and to isolate affordable housing for the top bonus.

Rollo thanked the Environmental Commission for its recommendations and Micuda and his staff for their work. Rollo said he thought his amendment deserved some debate and changes. He wanted the amendment to be balanced with the Council's goals and the needs of the city. He asked to postpone the vote on the amendment until December 20, 2006.

Wisler said that he would recommend the word commercial be struck from the amendment regarding the locations of schools and parks since they were not commercial areas.

It was moved and seconded to postpone Amendment 22 until December 20, 2006. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to postpone Amendment 22 [7:25pm]

It was moved and seconded to adopt Amendment 20.

Amendment 20 [7:25pm]

Volan said the amendment was about projecting signs.

Mayer asked if a store owner be able to go before the Board of Zoning Appeals and appeal for a sign if there was a business with a projecting sign on a block and the second store wanted one.

Council Questions:

Micuda said yes.

Councilmember Andy Ruff asked how long a typical block was.

Micuda said 275 feet.

Ruff asked how many businesses could have a sign.

Volan said maybe three.

Ruff asked how many signs there could be if the amendment passed.

Volan said one every 50 feet. He said ideally it would allow every business to have a sign.

Ruff asked what the reasoning was to have a sign every 50 feet and why it was then changed to a sign every 100 feet.

Micuda said staff proposed 50 feet of spacing based on the idea that projecting signs was desirable to merchants. The Plan Commission had concerns that there should be restrictions regarding projecting signs and proliferation with signs.

Ruff asked if merchants from downtown said they did not want those kinds of signs.

Micuda said that the downtown business community liked the original plan better than the Plan Commission's revisions.

Ruff asked Volan why his amendment only addressed spacing and not the size of signs.

Volan said he thought it was at least one thing he could fix easily.

Ruff asked about the likelihood of a business getting a variance for a projecting sign.

Micuda said that it was a case-by-case basis.

Wisler asked how big the Buskirk-Chumley Theater sign was.

Micuda said he did not know but it was the biggest projecting sign example he could think of.

Wisler asked how far it was from Ladyman's Cafe.

Micuda said 100 feet.

Wisler confirmed with Micuda that it was not possible for Ladyman's to put up a projecting sign.

Micuda said that was correct.

Wisler asked about an example where individual tenants in a large building might start putting up projecting signs if the amendment passed.

Micuda said that was a good example to think of when considering the amendment.

Sturbaum asked how all the current blade signs in the downtown originally got there and about the process the owners had to go through to get them.

Micuda said they were approved by the Board of Public Works (BPW) upon recommendation by the Planning Department regarding how they fit in the downtown.

Sturbaum asked if the signs were modified by the BPW.

Micuda said no but there was discussion on modifications for individual signs.

Sturbaum asked if the Planning Department would see signs first and then the signs would be directed to BPW.

Micuda said yes.

Sturbaum asked if people would be asking for larger signs more frequently if the amendment failed.

Micuda said that, because the sign area and projection limits were tight, he expected that occasionally there would be a request for a variance but that it was hard to tell what the business community would do.

Amendment 20 (cont'd)

Mayer asked whether plans for signs went before the Board of Public Works was because projecting signs were in the public right of way.

Micuda said yes.

Mayer said that it was important to stress that projecting signs were encroaching on the public right of way.

Volan asked what the city was concerned with regarding signs projecting into the public right of way. He asked if there was a concern that a sign might fall down.

Micuda thought that was one reason.

Volan asked if there would be any change in the process for getting a sign because of his amendment.

Micuda said no.

Christy Steele, Greater Bloomington Chamber of Commerce, spoke in favor of the amendment.

Public Comment:

Volan spoke against objections to signs downtown.

Council Comment:

Councilmember Chris Gaal thought that the review process had value in itself. He said that the signs in the downtown were better products because of the process and blade sign downtowns should be limited.

Ruff said he appreciated he staff's position and what came from the Plan Commission. He felt the signs were something that merchants deserved by right and was in support of the amendment.

Mayer said during the discussion of the UDO there had been a lot of talk about public right to review what Bloomington looked like. He felt the City also had a right to exercise discretion about the signs in the downtown. He opposed the amendment.

Wisler said he understood the concern about clutter in the downtown and supported the amendment.

Rollo said he liked blade signs but he was concerned about a potential arms race for signs in the downtown.

Sturbaum said he watched the Plan Commission talk about the topic. He said it went from not allowing blade signs to allowing them subject to more review.

Volan said that there had been blade signs on the square since its beginnings. He then gave several examples and said a sign was essential for business. He said the amendment did not prevent review or change the size of signs.

Mayer said that the amendment was a regressive action.

The motion to adopt Amendment 20 received a roll call vote of Ayes: 3 (Wisler, Ruff, Volan), Nays: 6, Abstain: 0. FAILED. Vote on Amendment 20 [8:19pm]

It was moved and seconded to adopt Amendment 17.

Amendment 17 [8:20pm]

Ruff presented the amendment and explained that Indiana Code allowed the Council to make final decisions on Planned Unit Developments (PUDs).

Councilmember David Sabbagh asked Ruff if he could give an example of a change the Council could make to a PUD frontage road.

Council Questions:

Ruff recalled a PUD where the Council wanted to see a connector path to an adjacent park. When the PUD went to Plan Commission that part was left out and he said that the PUD had to go back to the Plan Commission. He said there was an additional cost to the petitioner and to the city.

Dan Sherman, Council Attorney, said the amendment would allow the Council three powers when considering PUD ordinances: conditioning the issuance of a certificate of zoning compliance, imposing reasonable conditions, and requiring a written guarantee for the completion of the project. He said a PUD must be considered by the Council in the same way the Council considered a map amendment or a rezone.

Sturbaum asked if the law was contradictory.

Sherman said yes and that the two conditions would have to be reconciled.

Sturbaum asked how the Council could impose reasonable conditions without amending the PUD.

Sherman said it would work if the Plan Commission and Council were not in conflict.

Ruff said that the Council could envision a scenario coming up, an environmental area they wanted to protect for example, that was not addressed by the Plan Commission. He asked if that example could be added to a PUD provided it did not conflict with the Plan Commission.

Sherman said if the Plan Commission simply looked over an area needing protection and it did not impose a serious economic burden on the petitioner then it could be done with a reasonable condition.

Sturbaum asked if the Council could change a PUD measure it disagreed with that had already been approved by the Plan Commission.

Sherman said yes.

Sturbaum asked if there was any amending power at that stage.

Sherman said that was in direct conflict with what the Plan Commission recommended.

Wisler asked Sherman if he would advise the Council on its authority in PUD cases.

Sherman said that he shared that responsibility with Patricia Bernens, city attorney.

Wisler asked if they were comfortable with it.

Bernens said they were.

Wisler asked about the ability to eliminate conditions imposed by the Plan Commission.

Sherman it would be a close call.

Wisler asked how much legal authority the amendment really let the Council have.

Sherman said that the Council would be able to get assurances from PUD developers rather than good faith efforts.

Amendment 17 (cont'd)

Wisler asked if that would work the same as the amendment procedure.

Sherman said it should be in writing. He said to treat it like an amendment.

Mayer said he was concerned the amendment would create a bad planning process for the Council.

Sherman said that PUDs inherently were dangerous due to their flexibility.

Gaal said that there was inherent value on voting up or down on a PUD but in other cases there was good reason for being able to impose conditions before passing it. He wanted to hear more discussion on the procedure.

Sherman said that there were examples he could think of where the Council could have gotten written agreements from property owners but in other cases an amendment of the PUD would have been the only way to proceed.

Volan confirmed with Sherman that in some cases the old procedure of voting down a PUD and turning it back to the Plan Commission would still be necessary, even if the amendment passed.

Sherman said yes.

Sturbaum asked Bernens about imposing reasonable conditions for petitioners.

Bernens said her concern was whether the condition would constitute an amendment to the PUD or not. She was not concerned that the petitioner would be affected rather than the public. She said the process was not simple and that the amendment process would invite more legal challenges.

Mayer asked if the mayor had the power to veto PUDs.

Bernens said yes.

Sturbaum asked if that was something the mayor could do for any decision the Council made.

Bernens said yes, but by statute the Council could take that power away.

Volan asked if the Council had the power to take away the mayor's veto power regarding a PUD in the same way the Council could use an amendment to change a PUD.

Bernens said it was true of zoning changes.

Micuda said that there was a case regarding Kinser Pike where the Council approved a PUD and it was vetoed by the mayor.

Volan asked Ruff and Sherman if they were actually talking about amending PUDs and if not, why they were using the word amend.

Sherman said he referred to the word amend based on the powers that would be authorized in the amendment.

Volan asked if it would impose reasonable conditions.

Sherman said yes.

Volan said that they were having trouble defining reasonable conditions.

Micuda said the Council only had the ability to accept, reject, or through an amendment, impose reasonable conditions.

Volan asked how the Council could impose reasonable conditions without amending.

Micuda said it would require a written commitment and it would be added to the PUD. He said it was procedurally like an amendment.

Amendment 17 (cont'd)

Volan confirmed that the Council could not subtract a commitment.

Micuda said that was the guidance Sherman was giving.

Ruff said that if the Council were to remove something from the PUD it would be removing something proposed by the Plan Commission. If the Council were to add to a PUD it would be adding something that was not previously addressed.

Wisler asked about a hypothetical situation where three Council members supported a PUD the way it arrived to Council and one member wanted to add a restriction supported by the rest of the Council, leading to the PUD failing. He asked if the Council could go back and pass the PUD in its original form.

Sherman said that during the same meeting the Council could reconsider and it would have to be a motion from the prevailing side.

Sturbaum asked if the Council could remove small, reasonable parts of a PUD brought to them.

Sherman said yes.

Mayer asked if staff supported the amendment.

Micuda said they did not oppose the amendment.

Sabbagh asked if the Council could put the city in risk for litigation based on the amendment.

Micuda said it was possible if the Council did not listen to legal and planning recommendations.

There was no public comment.

Public Comment:

Volan said he was ambivalent about the amendment.

Council Comment:

Rollo said he supported the amendment.

The motion to adopt Amendment 17 received a roll call vote of Ayes: 7, Nays: 2 (Wisler, Sabbagh), Abstain: 0. Vote on Amendment 17

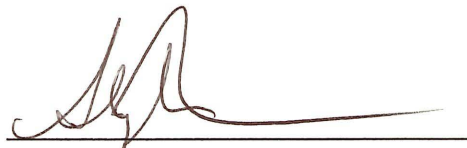
The meeting went into recess at 9:24pm.

RECESS

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 8th day of February, 2020.

APPROVE:

ATTEST:



Steve Volan, PRESIDENT
Bloomington Common Council



Nicole Bolden, CLERK
City of Bloomington