

In the Council Chambers of the Showers City Hall on Wednesday, October 1, 1997 at 7:30 PM with Council President Pizzo presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
OCTOBER 1, 1997

Roll Call: Banach, Mayer, Cole, Pizzo, Service, Sabbagh, Sherman, Pierce.
Absent: Young.

ROLL CALL

Council President Pizzo gave the Agenda Summation.

AGENDA SUMMATION

The minutes for September 10 and September 17, 1997 were approved by a voice vote.

APPROVAL OF
MINUTES

Cole reported that she, Councilmembers Pierce, Sabbagh and City Clerk Pat Williams attended the IACT Annual Conference in Ft. Wayne, IN. While the three day conference is exhausting there are always interesting and informative workshops and the opportunity to meet other elected officials is important. She also supported the fairly recent installation of "Share the Road" signs put in place by the county and reminded motorists that the law states they must share the road with cyclists who do have a right to be there.

MESSAGES FROM
COUNCILMEMBERS

Service urged people to consider applying for the many and different city boards and commissions that advertise vacancies and especially the Martin Luther King Birthday Commission that is looking for applicants. It really is a good opportunity to get involved.

Sabbagh reminded everyone about the wonderful the diversity that exists in Bloomington and the pride we have in that quality and said that this is an issue that he might come back to tonight when one of the ordinances is discussed.

Sherman wished everyone a Happy Rosh Hashannah (circa 5758) and promised that in two weeks he would inform us of how the lunar and solar calendars differ, in case we needed to know.

Mayor Fernandez introduced Coach John Smith and congratulated him for his involvement and support of the the Solar Bike Team that recently returned from a world championship race in Japan in which they placed second! Smith introduced all the members of the team and the mayor said that this is a wonderful example of a good and positive teen activity and the good things they are doing.

MESSAGES FROM THE
MAYOR

The mayor also announced that Fire Prevention Week is coming up and he said that he had issued a proclamation regarding the special week. Chief Saunders gave a short presentation and slide overview of some of the activities that the firefighters will be involved in as Fire Prevention Week is emphasized in the community.

Mike Carmin, new Chamber of Commerce President, gave a brief review of some of the more recent business success stories, particularly the coming of Transcom to our community, and how the chamber hopes to offer more assistance and support for the small businesses who are already here and make up a large segment of our business community.

MESSAGES FROM THE
PUBLIC

It was moved, seconded and approved by a voice vote that Byron Bangert be appointed to the Human Rights Commission, filling the unexpired term of Commissioner Jack Hopkins (January 1998).

APPOINTMENTS TO
BOARDS &
COMMISSIONS

It was moved and seconded that Ordinance 97-32 be introduced and read

LEGISLATION FOR

by title only. Clerk Williams read the ordinance by title only. It was moved and seconded that Ordinance 97-32 be adopted. The synopsis and committee recommendation of Do-Pass 5-0-2 with one amendment (Amendment #1) receiving a Do-Pass recommendation 4-2-1.

SECOND
READING/VOTE
ORDINANCE 97-32

Pierce, as sponsor of the ordinance, said that after talking with members of the construction industry the ordinance he drafted still needed some revision and "fine tuning" and therefore the amendments were drafted.

Pierce moved and it was seconded that Amendment #1 be introduced. He then read the amendment synopsis in its entirety. In essence the amendment expands the exemption time for construction operations from 6 am to 10 pm; extends the summer month construction time from May 1 to September 1; exempts transportation equipment, limits pile driving operations; reduces the number of holidays, drops specific references to governmental entities and changes the effective date to 1/1/998.

James McNamara, Deputy Mayor, said the administrations was concerned from the beginning, that all the ramifications be understood by everyone. He wondered if the special permitting process was not a way of bypassing the specifications of this ordinance and that the code does allow the mayor to issue special exempting permits upon request. The mayor has delegated that authority to the Public Works Director. The policy that has been established is for requests to be forwarded to the Board of Public Works and he reminded people that the process will take about 3 weeks to complete, and will come forward to the board with a negative recommendation from staff. It is then up to the board to consider the request for an exemptions.

Pierce said he tried to shape the compromise to avoid this kind of exemption process for construction and thought we should stay with the existing exempting process that we know already works. If there is a problem we might have to come back at a later time and tweak the regulations a bit.

Cole asked if there was a distinction between residential and commercial noise and Pierce said no. Dan Sherman said the original ordinance does distinguish between the various zones, but this ordinance does not affect those designations by this language. During the times of 6am to 10pm construction operations are exempt from the noise level limits. What is on the books now is that constructions operations are exempt around the clock and this ordinance/amendment is trying to narrow the times that constructions operations can occur.

Pierce said it is easy to get confused and we need to remember that we already have a noise ordinance on the books, we are not creating something completely new and it isn't as if everyone and everything has to stop at 10pm. They just have to shift into something that does not violate the existing ordinance.

Cole said that she preferred the ordinance without the amendment. There is just too much leeway and flexibility and did not believe that she could support the ordinance if amended. Pierce said that during the hot summer months work crews try to start early to avoid the excessive heat of the day. There are also times when crews need to double shift workers in order to meet deadlines. Pierce said that a lot of compromises have occurred in order to reach this point.

Amendment #1 received a roll call vote of Ayes:6, Nays:2 (Cole, Service)

Sabbagh moved that Amendment #2 that would strike Sunday in the ordinance and wherever it appears so as to address the needs of do-it-yourselfers who would be exempt from the Sunday construction operations and regulations.

Sabbagh said that he has had a lot of calls about this "Sunday exemption" and the hardship it would create for people and he wondered, going back to his earlier "diversity statement" - why Sunday, why not another day in this diverse ethnic community.

Service defended the work week-non work days like Sunday as being part of a very long standing societal tradition that is not necessarily religious in nature and steady loud noise is not in the best general interest of the community. The whole point of the ordinance is to allow some respite from the construction noise that prompted the ordinance in the first place.

Mayer said this is not intended to prohibit construction but to control excessive noise on a given day. This isn't about normally accepted activities like lawnmowers or leafblowers, but if someone decided to jackhammer their driveway it would be a problem.

Banach complimented Pierce for working out the details of this ordinance and subsequent compromises. The way the ordinance is written now a chain saw running is actually breaking the law and he too wondered why Sunday was singled out. He said he could not support the ordinance and believed that we are limiting people's individual freedoms.

Cole thought the amendment was a problem, that Sunday observance is a cultural thing, not necessarily a religious issue and more quiet times are needed in a community. A do it yourselfer still has a lot of other things that can be done that don't violate the law. Folks have a right to enjoy the outside without being bombarded with heavy equipment engaged in construction.

Sherman said he joined Banach in the individual freedom position. It's always someone's freedom vs someone else's freedom. He asked if Sabbagh was willing to make Sunday a 7am-7pm possibility as a way of compromising.

Sabbagh said he would consider it and think about it. Sooner or later College Mall Rd is going to be improved and there will be a lot of traffic and construction and if we are going to extend the length of construction, the mayor can exempt it or we can exempt ourselves and that doesn't send the right message to people in the community.

Mayer said that casual observance suggests that the 7th day of the week is a quieter day and that alone suggests treating it as a different kind of day.

Banach suggested including Sunday, not single it out and once again thought it was a serious imposition on personal freedom.

James McNamara said that the administration supported Sabbagh's amendment and said that the Sunday aspect of it was a problem for him personally. It's cultural to an extent with some things being ok for Saturday and for some people Sunday is the same.

Jill Spires, a do it yourselfer, said that weekends are her home improvement time and she was offended that she would have to be quiet so that someone else can have their relaxation time.

Pierce said that there is a current ordinance in place that says a construction period exempts someone from regulations for 24 hours a day if one has a construction permit. Pierce asked if a home handy person has to technically conform to the noise ordinance all the time. Dan Sherman said that is why the exemption was drafted for homeowners who did not need a permit for whatever they wanted or needed to do. This was never intended to be a ban but as a way of create some quiet during the week. Sunday was not picked out for religious purposes and he said this would not have that big an impact and he was willing to go with the will of the council, if he knew what it actually was. He said he was tempted to vote against it because he felt that he had already compromised a lot already.

Sabbagh said that a lot of construction goes on that isn't a jack hammer or heavy equipment and even these small tools would violate our ordinance.

Amendment #2 received a roll call vote of Ayes: 3 (Sabbagh, Sherman, Banach), Nays:5. The amendment failed.

Pierce said that if this "new scheme" proves to be unnecessarily burdensome he would be the first one to return with a different way to fix it.

Sabbagh moved that Amendment #3 be considered, striking references to holidays with appropriate renumbering in order to allow construction on any day and avoids government telling when and what they can do.

Cole did not see this as government saying what people can and can't do, but as a way of protecting people who need to have a separation of noise/quiet. This seems like trying to reinvent the wheel as to when and what we can do.

Sherman said this is restricting people's freedom and we make a lot of noise when we want to: July 4th, firecrackers, etc. And the accepted expressions are very arbitrary.

Mike Bauer said he lives two blocks away and when Hoosierfest is going on in the Showers Parking Lot, he can sing along with the lead singer. He didn't think the council had enough information to make these changes and telling a homeowner that he can't work or build his garage on a weekend is wrong.

Jill Spires talked again and urged the council not to support this.

Banach asked if this applied to the university and Dan Sherman said no.

Amendment #3 received a roll call vote of Ayes:3 (Sherman, Sabbagh, Banach), Nays:5. The amendment failed.

Pierce moved that Amendment #4 be considered that would exclude nail guns and other pneumatic hammers from the list of construction equipment between the hours of 7am and 8pm.

Linda Williamson said that this is like deja vu during the zoning ordinance discussion and all the questions that occurred at that time; how to measure, where to measure, seasonal and weather related noise. These questions still have not been worked out and more importantly how is it to be enforced.

Amendment #4 received a roll call vote of Ayes:8, Nays:0.

Sabbagh said that he would not support the ordinance because he did not

feel that it was good enough.

Banach dittoed Sabbagh and once again thanked Pierce for what he is trying to do but in it's current form it is problematic.

The ordinance, as amended, received a roll call vote of Ayes:6, Nays:2. (Banach, Sabbagh).

It was moved and seconded that Ordinance 97-36 be introduced and read by title only. Clerk Williams read the legislation by title only. It was moved and seconded that Ordinance 97-36 be adopted. The synopsis and committee recommendation of Do-Pass 7-0.

ORDINANCE 97-36

Chief Saunders reviewed the ordinance for the council and there are only four areas that are new: fire appliances, the location of fire hydrants, definition of fire lanes and increases the fine for violation of fire lane to \$50 and added, the new sections are now more "user friendly".

The ordinance received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Resolution 97-14 be introduced and read by title only. Clerk Williams read the legislation by title only. It was moved and seconded that Resolution 97-14 be adopted. The synopsis and committee recommendation of Do-Pass 4-0-3 was given. There was also an amendment that received a Do-Pass vote of 6-0-1.

RESOLUTION 97-14

David Sabbagh presented a potential Conflict of Interest statement covering the next two pieces of legislation stating that his wife is a principal owner of an accounting firm that provides accounting services for Prairie Dog Corp and Bio-Pharm. He said that he would be able to deliberate, consider and vote on these two petitions.

Sabbagh's disclosure statements (2) were approved by a voice vote.

Randy Lloyd, Economic Development Assistant to the Mayor, said this is a request for a 10 year tax abatement for Prairie Dog Corp. Tim Boeglin, the owner of both the existing XJD Corp and the newly created Prairie Dog was faced with some serious business changes and subsequent decisions that required a new manufacturing corporation to be created or essentially go out of business. There will also be an Waiver for the Installation of the equipment that will be necessary for the council to approve. When the EDC approved the abatement application the equipment had not been installed and that was during the summer that this whole process actually took place. The Statement of Benefits form has also been amended. Lloyd said that in reference to an earlier question about the need for the area to be considered "blighted" XJD has made an infusion of over a million dollars in equipment, 60 new jobs as well as retaining the existing 28 positions, with a 1.2 million dollar payroll plus benefits.

Tim Boeglin, petitioner and owner of the businesses mentioned above, said that the abatement is needed by his company, that they started off as a very small company, it has slowly grown and this expenditure of money for equipment is a major investment for us, as a small company.

Sabbagh and Sherman both spoke in support of this resolution.

Pierce talked about the role of tax abatement, to be used as an inducement, the guidelines that currently exist, if the area is an ERA or a blighted or is an undesirable area, that the abatement may not be approved before a

building or equipment is started or installed. Lloyd defended the ability of the council to use their own discretion when needed, hence, the waiver provision. He also pointed out that this is in our Urban Enterprise Zone and has been earmarked for development. Pierce also commented on the equipment purchase-installation schedule and he asked if this was not something that could happen without our abatement and thirdly, he wondered if the council was just a rubber stamp for abatements and especially the 10 year abatements.

Boeglin suggested that an abatement also is a measure of support so that the business can actually succeed and frees up capital so that other things can be financed.

Cole said that the area was empty and in a way blighted in 1990 when the Enterprise Zone was established and the area is fragile, even as it attempts to revitalize and the balance needs to be supported so that good things continue to happen.

Banach said the "rubber stamp" aspect has bothered him too and Pierce has raised some very valid points we should be thinking about, and also the fact that our abatements are always for ten years.

Lloyd said that recent Indiana Code changes allow the 10 year abatement for equipment and it seems appropriate for this type of long life equipment this company is purchasing.

Banach and Pierce continued to be concerned about the 10 years.

Sherman thought this company was providing what we have been talking about for years - with good paying jobs plus benefits.

Sabbagh said that the property tax on the improvements, without tax abatement would be \$130,814 and with abatement it is \$43,169 and that is money that can be reinvested in the community. He iterated all the various taxes and benefits that come back to the community in terms of COIT, payrolls, houses, etc.

Service moved that Amendment #2 changing the abatement to 5 years, rather than 10 years be considered. The amendment failed for lack of a second.

It was moved and seconded that Amendment #1 be considered: to remove two references in the existing ordinance dealing with installation of equipment after approval. The amendment also allows for the insertion of the Waiver clause to be approved at a public hearing that will take place on October 15, 1997 at the time that the confirming resolution is approved.

The amendment received a roll call vote of Ayes:8, Nays:0.

Service said she would not support the resolution; we are already getting the benefits of this improvement without the abatement and what is the community gaining by granting the 10 year abatement rather than 5 years and the community is losing the benefits of taxes for 5 years if the 5 year abatement was granted.

Pizzo spoke in strong support of the abatement request.

Mike Bauer also spoke in support of the resolution and hoped this business will really succeed and benefit the community.

The resolution received a roll call vote of Ayes:7, Nays:1 (Service)

It was moved and seconded that Resolution 97-15 be introduced and read by title only. Clerk Williams read the legislation by title only.

RESOLUTION 97-15

It was moved and seconded that Resolution 97-17 be adopted. The synopsis and committee recommendation of Do-Pass 6-0-1 was given.

Randy Lloyd presented a brief overview of the company's objectives and plans for the location of the company to Bloomington.

It was moved and seconded that an amendment be considered to include in the ordinance the fact that the company intends to relocate outside the corporate limits of the city.

The amendment received a roll call vote of Ayes:8, Nays:0.

Sabbagh thanked the banking/lending institution (Irwin Miller) for their willingness to invest in this start up company.

The resolution, as amended, received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Ordinance 97-38 be introduced and read by title only. Clerk Williams read the legislation by title only.

ORDINANCE 97-38

It was moved and seconded that Ordinance 97-38 be adopted. The synopsis and committee recommendation of Do-Pass 3-2-2 was given.

Don Hastings over viewed several options the council has in viewing this petition. Last week the owners said that they wanted parking on the east side of the complex and introduced that as an amendment to any plan that the council would approve. He said that staff would not support parking on the east side, because it does not achieve what was attempted when this was redesigned to put the building as close as possible to Canada Dr and Sare Road and to put the parking on the side. Putting the parking out front detracts from the quality of that design and does not achieve what we feel is the standard we want to set for this PUD and other enlarged PUD that strive for a high visual quality of street scape by not placing parking and asphalt in prominent locations. While we appreciate the petitioner forthrightness, it is still an unacceptable change to the petition and the staff would not support it before the Plan Commission. Options the council has are: approve as submitted with only side parking or to deny it based on what the council feels are the shortcomings, as they are before us now and not including the parking. He said he thought it was important for the council to vote on the petition as it is before them now knowing that there may be a final plan amendment that would not be supported by staff. He said that while he could not speak for the Plan Commission, he knew that several of the commissioners were also concerned about the placement of the parking.

Sherman expressed concern that this is our last vote on this petition and many of the council would prefer that there be a condition of approval regarding the parking and the only way to do that is to consider parking as an issue or not consider it. Staff being unsupported of this does not guarantee the plan commissions denial. Hastings said that if it were denied tonight, the petitioner could go back to the Plan Commission and no front parking could be included and it could then come back to the council once more.

Tom Micuda reviewed the various votes and issues that occurred over the summer Plan Commission and Common Council meetings, the DUE

discussions, as well as affordability issues that has now been discarded. Now there will be 42 units on 2.2 acres and there will only be 54 units left on the remaining 13.5 acres. So instead of 81 units, there will be 54. He showed overheads of the first plan that was submitted that had the access off Canada Drive and parking in front of the development and there was concern that this kind of design was not in keeping with the rest of the general design for the total project. Now the reworked plan has the parking side loaded and the building is about 40 feet closer to the pavement edge than originally submitted. The parking is not part of the original development but is a future parking if other conversions for use were to take place. The first plan has a favorable staff recommendation.

Sabbagh asked about the drop on Sare Road and if that would be a visibility concern. Micuda said that sight distance was fine.

Steve Smith, representing the petitioner, said that this is really just about the outline plan petition for the assisted living proposal. He talked about where assisted housing should be located and that it should be in a residential areas rather than commercial or industrial areas. He thought the council was getting bogged down in what should be Plan Commission decisions.

Sherman said that if this comes before the Plan Commission he would speak against the petition. He did not have a problem with the proposal but the problem was the parking.

Mayer said that no one has spoken against the assisted living for this site and that is not an issue and asked Smith if he can work with staff to make this parking work. Smith said that the petitioner has simply said that they want the parking in front.

Pierce said that while he supported the petition the first time around, he believed that he would vote for the project tonight despite the eloquent comments from fellow councilmembers.

Service said that she would not support the project because of the overall plan and her objections to the commercial development adjacent to Jackson Creek even though this particular plan by itself was not objectionable.

The ordinance received a roll call vote of Ayes:4 (Sabbagh, Sherman, Pierce, Banach), Nays:4 (Cole, Pizzo, Service, Mayer). The ordinance failed.

Pierce moved and it was seconded that the ordinance be reconsidered on October 15, 1997.

The motion received a roll call vote of Ayes:7, Nays:1 (Service).

It was move and seconded that the following ordinance be introduced and read by title only by the Clerk for First Reading before the Common Council.

Ordinance 97-39 To Adopt the Provisions of Indiana Code 36-1-14.3-et seq. Regarding Public-Private Agreements.

It was moved and seconded that the council not meet next week for Committee of the Whole.

The motion received a roll call vote of Ayes:6, Nays:2 (Service, Sabbagh).

There was no public input.

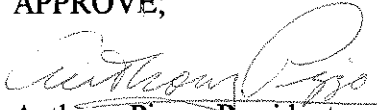
LEGISLATION FOR
FIRST READING
ORDINANCE 97-39

PUBLIC INPUT

The meeting was adjourned at 10:40pm.

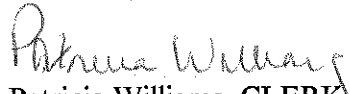
ADJOURNMENT

APPROVE;



Anthony Pizzo, President
Bloomington Common Council

ATTEST;


Patricia Williams, CLERK
City of Bloomington